

Draft Minutes Law Enforcement Officer Independent Review Board  
Meeting  
June 20, 2019  
Room 203  
Lkeiopapa A. Kamehameha State Office Tower  
235 South Beretania St. Honolulu, Hawaii

These Minutes Have Yet to be Approved by the Board

At 9:41 a.m. the meeting was called to Order by the Chairperson, the Hon. Iwalani White (Chairperson White), who noted the absence of Board Member Deputy Attorney General Lance Goto who was on vacation.

Board Members Present: Chairperson White, Assistant Chairperson the Hon. Barbara Richardson (Assistant Chairperson Richardson), the Hon. Boyd Mossman, Jay Kimura, Gary Yabuta, Melissa Pavlicek, Katy Chen, and Kevin Takata.

Chairperson White noted that agenda item 2 the sharp-edged weapons presentation by the Honolulu Police Department would be rescheduled for another meeting.

Chairperson White noted the Board had received the written testimony of Mr. Brian Black the Director of the Civil Beat Law Center and requested Mr. Black's testimony be taken out of order in order that the Board could incorporate his comments in their discussion. The Board then unanimously voted to take Mr. Black's testimony out of order.

Mr. Black noted his comments reflected his understanding of the enabling legislation's language regarding confidentiality based upon his presence at the Legislature as the Act moved through committee. He believed if there is no prosecution, then the committee never has to reach the question of whether there has been an adjudication. His focus with respect to the Act was on subsection (g) of what ultimately became HRS §28-153 but recognized there were likewise confidentiality issues in subsection (h) too. During the committee hearings on the Act both committee members and witnesses had no question that when a prosecutor issued a decline the Board would be required to disclose its recommendation to the prosecutor. Board members then questioned Mr. Black as to his interpretation of the statute's disclosure requirements, his definition of "adjudication," and the effect of the prosecution of co-defendants related to the officer involved shooting would have on disclosure. Mr. Black believed the statute provided the Board with "flexibility" to determine when a prosecutor who has not publicly announced a decision not to prosecute had never the less engaged in a de facto decline. In the absence of such a public statement he believed the Board had the authority to make inquiry of the prosecutor. He believed only a criminal prosecution could operate to preclude disclosure.

Katy Chen noted this questioning returned the Board to the necessity of obtaining legal opinions from the Attorney General.

The Board then turned to Agenda Item 4, the distribution of police reports. Kevin Takata noted prior distribution of these via hard disc was quite cumbersome and recommended future distribution of police investigations be via a secure on-line portal.

At 10:20 a.m. a motion was then made for future distribution to be via a secure on-line portal. The motion passed by unanimous voice vote of the Board. Immediately after this Katy Chen was required to leave the meeting and Chairman White noted the continuing presence of a quorum.

A short discussion was then had regarding redactions of police reports and Kevin Takata noted all agencies had been advised they should only supply redacted reports.

The Board then turned to agenda item 6, whether the Board should request the Attorney General provide legal counsel to the Board.

At 10:24 a.m. a motion was made by Assistant Chairperson Richardson to make such a request for legal advice limited to issues of disclosure. Kevin Takata amended that motion so that all legal questions of the Board could be addressed by a Deputy Attorney General assigned to the Board. Gary Yabuta then recommended the Attorney General assigned to the Board solicit the opinions of Corporation Counsel with respect to the disclosure of police records. Other Board members believed Corporation Counsel should not participate in such decisions. Judge Mossman believed counsel for the Board could solicit Corporation Counsel's views on questions of disclosure and Jay Kimura concurred. Other Board members did not believe such consultation was necessary.

At 10:30 a.m. Chairperson White noted a parliamentary point of procedure that the Motion before the Board was merely whether a request for counsel should be made to the Attorney General as to the Board's statutory requirements. This motion was seconded.

Chairperson White, Assistant Chairperson Richardson, the Hon. Boyd Mossman, Jay Kimura, Gary Yabuta, Melissa Pavlicek, and Kevin Takata voted in favor of the motion. No Board member voted in opposition.

Chairperson White then called for discussion on Agenda Item 3, in custody deaths. Kevin Takata noted that Judge Mossman had requested a discussion on death's while in custody and the statute made reference to deaths by omission. He recommended that deaths in custody be reviewed by the Board. He noted there were death in custody cases. Chairman White then requested the matter be tabled until legal counsel could advise the Board as to whether such deaths were within the scope of its review. Judge Mossman so moved and Chairperson White, Assistant Chairperson, Richardson, the Hon. Boyd Mossman, Jay Kimura, Gary Yabuta, Melissa Pavlicek, and Kevin Takata voted in the affirmative. No Board members voted in opposition

At 10:35 Kevin Takata moved to adjourn. The motion was seconded and Chairperson White, Assistant Chairperson, Richardson, the Hon. Boyd Mossman, Jay Kimura, Gary Yabuta, Melissa Pavlicek, and Kevin Takata voted in the affirmative, and the meeting was adjourned