

**LAW ENFORCEMENT OFFICER INDEPENDENT REVIEW BOARD**  
**TUESDAY, MAY 11, 2021, 10:00 AM**

THIS MEETING WAS HELD AS A VIDEO CONFERENCE  
PURSUANT TO THE GOVERNOR'S NINETEENTH PROCLAMATION  
RELATED TO THE COVID-19 EMERGENCY. MEMBERS OF THE  
PUBLIC JOINED THE  
ZOOM WEBINAR MEETING

**DRAFT MINUTES**

I. **Call to Order; Roll Call and Quorum Determination**

The meeting was called to order by Acting Chair Judge Barbara Richardson. Present were Board Members: Gary Yabuta, Judge Barbara Richardson, John Tam, Landon Murata, Lance Goto, Dr. Bettina Ackerman. Katy Chen was delayed and joined later.

II. **Public Testimony**

- A. Individuals may only testify on items contained in the agenda. Public testimony was given by Georgia Thompson-West and Kylie Aikona.
- B. No written testimony was submitted.

III. **New Business**

A. **Introduce new members**

Three new board members were introduced and welcomed: Dr. Bettina Ackerman, Landon Murata, and John Tam.

B. **Election of new chair**

A volunteer was solicited to serve a Board Chair. No public comment. Gary Yabuta volunteered to serve as Chair. Landon Murata moved to elect Gary Yabuta as the Chair. Second by John Tam. A roll call vote of the members present at that time was taken. All members (Goto, Tam, Murata, Ackermann, Richardson) voted yes. Katy Chen was not present. Assistant Chair Richardson asked Gary Yabuta to take over the remainder of the agenda. Gary Yabuta thanked the member for their confidence in selecting him as Chair.

C. **Review draft guidelines**

No public testimony.

Board member Goto stated the “old” board worked on the guidelines. The draft guidelines which was distributed to the board members is the latest draft. The draft was still a work in progress and never formally approved by the prior board. Since we have a new board with new members, it would be good to review the guidelines. Board member Goto shared that he made a few proposed amendments in red in track changes based on some of the prior board discussions

and wanted to make some suggestions for this board to consider. Board member Goto asked Chair Yabuta how he would like to proceed through the draft guidelines. Except for the items highlighted in red track changes, the guidelines were drafted by the previous board members.

Katy Chen joined the board meeting.

Judge Richardson inquired if she should move to adopt the current draft of the guidelines.

Further discussion was held.

Board member Goto raised how cases are initiated. HRS section 28-158(c) states that each law enforcement agency that conducts these investigations need to turn over the full investigative reports to the board. In the past, the board has been sending out letter requests to remind them of their duty to provide the investigative reports to the board, but board member Goto suggested that board prepare letters to all investigating agencies including the prosecutors if they conduct investigations to remind them of their duty to provide the reports. The agencies should be doing so regardless of whether the board sends a letter request since the board may not be fully aware of all incidents being investigated. Chair Yabuta said that if that was not implemented already, that is something that should be done to make sure board has any and all cases. Discussion had regarding provision to make it clear that the Board may issue letters to law enforcement agencies reminding them of their statutory duty to submit investigative reports to the Board pursuant to section 28-153(c), HRS.

Chair Yabuta mentioned that the revisions in items 10 and 11 of the draft guidelines appear contradictory. Judge Richardson shared the reports and documents are submitted by the law enforcement agencies, and the board has no control other than what has been submitted. The board would return those documents because those agency records do not belong to the board. She explained that items 10 and 11 make clear that the board is disclosing its recommendation and not all the documents reviewed by the board. Judge Richardson further explained that somewhere in the beginning, the board would issue letters to the agencies as a reminder of its duty under 28-153(c).

Board member Goto stated that maybe the letter reminders do not need to be in the guidelines, but the agencies should submit their reports without waiting for the board to remind them. Judge Richardson agreed that it did not need to be in the guidelines. Board member Goto suggested that the board may send out letters reminding agencies of their duty per 28-153(c).

Dr. Ackermann inquired about items 10 and 11. Board member Murata explained that 10 was pulled from statute. The statute requires release of the recommendation to the public. But in general, all things submitted to the board

are confidential, and not publicly released unless they are part of the recommendation. Board member Murata further stated that reports are returned to the agency that generated them. Judge Richardson explained that there may have been confusion about the word “report,” so the board didn’t want to confuse the reports received from the law enforcement agency. If the board issued a report with the board’s recommendation, that report would be public.

Board member Goto was asked to incorporate current changes into the guidelines, and the board will address them at next meeting.

Board member John Tam addressed item 4 regarding the board requesting the prosecuting attorney to conduct further investigation. Board member Tam stated that he would like to see specific outcomes listed. What other actions can the board do, and can they be specific? What are the different outcomes of the board’s review?

Board member Goto explained that HRS section 28-153(f) provides that the board shall make its recommendation to the prosecutor to do one of three things: prosecute, decline to prosecute, or conduct further investigation.

Judge Richardson suggested clarifying the Board’s recommendation by referencing the statute in item 5.

Board member Murata expressed that item 4 is not appropriate because the board can recommend further investigation. However, asking for the result of the investigation is not contemplated by statute. Judge Richardson agreed that item 4 should be deleted. Board member Goto shared that item 4 is to make clear that the board cannot conduct an independent investigation. Judge Richardson suggested deleting the first sentence.

Board member made suggestion that “request” be revised to “recommend,” but Judge Richardson said that would be covered in Item 5.

Board member Murata suggested that item 5 can be made clearer by referencing the statute. It was also suggested that the three alternative recommendations should be laid out.

Judge Richardson suggested removing the apostrophe on item 9.

Board member Murata pointed out item 7 and questioned whether all board members need to sign the recommendation. Board member Goto gave prior history on this topic, and suggested that for efficiency, perhaps only Chair Yabuta can sign the recommendation. Chair Yabuta recommended that Chair sign on behalf of the board. Judge Richardson agreed because the recommendation requires board action by quorum. The board vote will be recorded in the minutes.

**D. Discuss board procedures**

Public comment was taken from Georgia Thompson-West. She proposed that the guidelines and procedures clarify instructions and procedures on how often public meetings will be held and how the public will be notified of these meetings. Also, the board should clarify how the board intends to embody and execute the spirit of openness and transparency. She reiterated the clarification about the written policy that she brought up in her testimony. She recommended establishing timelines because of the backlog of cases so as not to run out of time when the board expires in 2022.

Board member Murata moved that the Board go into executive session based upon HRS 28-153(g).

Board member Goto raised the subject of having a Board PIO to respond to media inquiries. Discussion was held. The AG's office will receive the inquiries and facilitate responses for the Board.

Judge Richardson recommend that request be made to the AG's office and be submitted to board. Inquiries can be made to the board email address, and the responses can be from Chair Yabuta. Judge Richardson moved to make Chair Yabuta the designated spokesperson for the Board. Seconded by board member Murata. The motion was carried by unanimous roll call vote (Richardson, Chen, Goto, Tam, Ackerman, Murata) that Chair Yabuta be designated spokesperson for the board.

Board member Tam asked for clarification on item 5 in the guidelines to follow the language of the statute as closely as possible. Item 5 will be redrafted to track 28-153(f) more closely. Then it would be good idea to delete the first sentence of item 4.

Murata previously move that the Board go into executive session. Katy Chen seconded. There will be no discussion of substantive matters of the submissions, but the Board will review confidential matters to discuss workload.

Roll call vote – executive session approved by unanimous vote. (Richardson, Chen, Goto, Tam, Ackerman, Murata)

Board entered into executive session at about one hour and twenty minutes into the meeting.

Board returned to open session.

The board will examine and review up to three cases, reviewed at an upcoming meeting preferably in one month. The cases to be reviewed will be coordinated by the AG's office.

Mr. Murata asked for clarification on the Chair's comment about questions can be addressed to him. Any questions will be routed through the AG's office.

IV. **Old Business**

No old business was listed, so nothing for the board to consider. No public comment.

V. **Adjournment**

Chair Yabuta thanked all the Board members and AG staff for their time.

There are two more members to appoint for Kauai County and Hawaii County.

Meeting adjourned.

# LAW ENFORCEMENT OFFICER INDEPENDENT REVIEW BOARD

## DRAFT GUIDELINES FOR REVIEW OF OFFICER-INVOLVED DEATHS (05-11-21)

1. The review of officer-involved deaths by the Law Enforcement Officer Independent Review Board (“Board”) applies to a death of an individual that results directly from an act or omission of a law enforcement officer while the law enforcement officer is on duty or while the law enforcement officer is off duty but performing activities that are within the scope of the officer's law enforcement duties.<sup>1</sup>

2. The Board may issue letters to law enforcement agencies to remind them of their duty pursuant to section 28-153(c), Hawaii Revised Statutes (HRS), to disclose to the Board the final disposition of all criminal investigations of officer-involved deaths, along with all related reports, documents, and information for the purposes of Board review.

3. When the final disposition is received from the law enforcement agency’s criminal investigation with all related reports, documents and information, those materials and information will be made available to each member of the Board as those documents and information become available. All reports, documents, information and other investigative materials shall remain within the exclusive possession of Board members and shall not be disseminated or disclosed.

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4. Board members shall disclose any potential conflicts of interest with a particular case. A majority of the remaining members shall decide whether a conflict exists. If it is determined that a conflict exists, that Board member shall not participate in the review of that officer-involved death. A Board member may voluntarily remove themselves from the review of a specific incident.

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5. Board members will not engage in any investigation that is independent from the law enforcement agency’s investigation or the prosecuting attorney’s investigation.

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6. The Board shall evaluate the fairness of the criminal investigation and determine whether criminal prosecution is warranted. The Board’s recommendation, determined by a majority vote of at least five (5) members, shall consist of a determination that the prosecuting attorney should:

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(a) Prosecute;

(b) Decline prosecution; or

(c) Conduct further investigation.

See section 28-153(f), HRS.

7. An audio recording of meetings shall be kept and minutes prepared. The audio recording shall be maintained at the Department of the Attorney General.

<sup>1</sup> §28-151, Hawaii Revised Statutes.

8. When the review of an incident is complete, a recommendation shall be prepared expeditiously. That recommendation shall be simple and concise. The chairperson of the Board, or the chairperson's designee, will be responsible for completing the recommendation. The recommendation shall be supported by a majority vote of at least five (5) members.
9. The chairperson of the Board will sign the recommendation on behalf of the Board.
10. The Board will review officer-involved deaths for criminal charging purposes only, not for purposes of civil liability or whether a law enforcement agency's procedures were or were not followed.
11. Once complete, the Board will transmit its recommendation to the prosecuting attorney.
12. Once the Board has issued its recommendation and any criminal prosecution or proceedings related to the officer-involved death have been adjudicated, the Board shall release its recommendation and any accompanying reports, documents, and information, unless otherwise prohibited by law. Section 28-153(h), HRS.
13. Once the Board has agreed on a recommendation, all reports, documents, and information received shall be returned to the law enforcement agency that provided them, and those materials shall not "accompany" the recommendation. Only the Board's recommendation shall be released when appropriate. (1-21-20 meeting)

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