

**LAW ENFORCEMENT
OFFICER
INDEPENDENT REVIEW
BOARD**

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BOARD MEMBERS**

**June 20, 2019
Meeting**

**REDACTED PURSUANT TO
HRS § 28-153 (g) & HRS § 92-5(a)(8)**

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DAVID Y. IGE
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DANA O. VIOLA
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ATTORNEY GENERAL

LAW ENFORCEMENT OFFICER INDEPENDENT REVIEW BOARD

AGENDA

Thursday, June 20, 2019 9:30 a.m.
Leiopapa A Kamehameha, State Office Tower
235 South Beretania Street, Room 203
Honolulu, Hawaii 96813

1. Call to Order, Public Notice, Quorum
2. Sharp Edged Weapons – Honolulu Police Department presentation
3. Adoption of “Guidelines for Review of Officer-Involved Deaths”; deaths occurring while a suspect is in police custody.
4. Distribution of police reports, documents and information
5. Discussion re when the Board should release its recommendation and whether to release any accompanying reports, documents and information
6. Discussion re whether an attorney should be requested to advise the Board
7. Public Testimony on All Agenda Items.

All interested persons are invited to attend the public hearing to state their views on the agenda items. Statements may also be mailed to the Department of the Attorney General, 707 Richards Street, Suite 400, Honolulu, Hawaii 96813, or e-mailed to Criminal.Justice@hawaii.gov. Special accommodations for persons with disabilities can be made if requested reasonably in advance by contacting the Department of the Attorney General at the e mail address noted above.

the study. The first author (SM) was the primary investigator and was responsible for the design, data collection, data analysis and writing of the manuscript. The other authors were involved in the design, data collection and data analysis.

Methods

Study design

The study was a descriptive cross-sectional study. The data were collected from 1000 randomly selected Iranian nurses.

Study population

The study population consisted of 1000 Iranian nurses who were randomly selected from 100 hospitals in the city of Shiraz, Iran. The sample size was determined by the following formula:

$$n = \frac{Z^2 \cdot p \cdot q}{d^2} \quad (1)$$

where n is the sample size, Z is the standard normal deviate, p is the proportion of the population, q is the proportion of the population and d is the margin of error.

Sampling method

The sampling method was simple random sampling. The sampling was done by using a computer-generated random number table.

Questionnaire

The questionnaire was a self-administered questionnaire. It consisted of 100 items. The questionnaire was designed by the first author (SM) and was based on the literature.

Reliability

The reliability of the questionnaire was assessed by using the test-retest method. The test-retest was done by administering the questionnaire to the same group of nurses at two different times.

Data analysis

The data were analysed by using the SPSS software package. The statistical tests used were the chi-square test and the Fisher's exact test.

Results

The results of the study are presented in Table 1. The majority of the nurses (60%) were female and 40% were male.

Discussion

The results of the study indicate that the majority of the nurses (60%) were female and 40% were male.

Conclusion

The results of the study indicate that the majority of the nurses (60%) were female and 40% were male.

References

1. Smith, J. M., & Jones, P. A. (2000). The impact of gender on the career development of nurses. *Journal of Career Assessment*, 8, 1-15.

Draft
These Minutes have yet to be approved by the Law Enforcement Officers Independent
Review Board

Law Enforcement Officers Independent Review Board
January 23, 2019
Minutes

Room 204 Leiopapa A. Kamehameha Bldg.
235 South Beretania St. Honolulu, Hawaii

At 2:00 p.m. Chairperson, the Hon. Iwalani White, called the meeting to order.

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

Board Members Absent: None

Board Staff Present: J. Nickerson and Krissy Awakuni.

As all board members were present, Chairperson White determined a quorum was established.

At 2:02 pm the Board unanimously approved the Minutes from the June 19, 2018 meeting.

After finding there were no comments or question for the Board from members of the public, Chairman White moved the Board to enter executive session as provided by HRS §92-5 (a)(8) and HRS § 28-153 (g), for the Board's discussion of the shooting death of Justin Waikiki by officers of the Hawaii County Police (HCPD). This motion was seconded by Kevin Takata whereupon, Chairperson, White, Assistant Chairperson the Hon. Barbara Richardson, the Hon. Boyd Mossman, Jay Kimura, Lance Goto, Kevin Takata, Gary Yabuta, Melissa Pavlicek, and Katy Chen, voted in the affirmative and the Board conducted the following proceedings in executive session.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ A BearCat is an armored police personnel carrier manufactured by the Lenoco corporation. [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²
[REDACTED]

³
[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

At 2:53 a Motion was made by Katy Chen and seconded by Kevin Takata to come out of Executive Session. Chairman White called for a vote whereupon Chairperson, White, Assistant Chairperson Richardson, the Hon. Boyd Mossman, Jay Kimura, Lance Goto, Kevin Takata, Gary Yabuta, Melissa Pavlicek, and Katy Chen, and Kevin voted in the affirmative. There were no Board members voting in opposition.

After returning to public session the Board held further discussions on the next meeting of the Board and agenda items and a general discussion was had on what constituted a "law enforcement officer" as used in HRS and whether Adult Correctional Officers meet that definition. Per statute, the Board determined Adult Correctional Officers are not embraced by the statute.

At 2:58 there was a Motion to adjourn by Chairperson White which was seconded by Kevin Takata whereupon, Chairperson, White, Assistant Chairperson the Hon. Barbara Richardson, the Hon. Boyd Mossman, Jay Kimura, Lance Goto, Kevin Takata, Gary Yabuta, Melissa Pavlicek, and Katy Chen, voted in the affirmative.

Meeting adjourned.

DRAFT GUIDELINES FOR REVIEW OF OFFICER-INVOLVED DEATHS

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.¹
2. 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 disseminated to each member of the Board via encrypted pdf. All reports, documents, information and other investigative materials shall remain within the exclusive possession of Board members and shall not be disseminated or disclosed.
3. 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.
4. All correspondence and communication in any form (i.e., written, electronic) pertaining to an incident subject to these guidelines will be considered work product/confidential and shall not be disseminated or disclosed until the incident is adjudicated, unless otherwise prohibited by law.
5. The Board may request that the prosecuting attorney conduct further investigation. Board members will not engage in any investigation that is independent from the law enforcement agency's investigation or the prosecuting attorney's investigation.
6. The Board shall meet in person to evaluate the fairness of the criminal investigation and determine whether criminal prosecution is warranted. The Board's recommendation whether criminal charges should be filed or whether the prosecuting attorney should conduct further investigation shall be determined by majority vote of at least five (5) members.² An audio recording of meetings shall be kept and minutes prepared.
7. When the review of an incident is complete, a recommendation shall be prepared expeditiously. That recommendation shall be supported by a simple and concise report. The chairperson of the Board, or a Board member designated by the chairperson, will be responsible for completing the recommendation and report. The report shall be supported by majority vote of at least five (5) members.
8. 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.

¹ §28-151. Hawaii Revised Statutes.

² If two(2) or more members are conflicted from reviewing a case/incident, this number may have to be reduced.

9. Once complete, the Board will transmit its' recommendation and report to the host-venue Prosecutor.
10. All reports, documents and information submitted to the Board by the law enforcement agency, and all proceedings, recommendations and reports of the Board, shall be confidential until any criminal prosecution or proceedings in the state related to the officer-involved death have been adjudicated whereupon the Board shall release its' recommendations and any accompanying reports, documents, and information, including but not limited to correspondence, communications, audio recordings of meetings and meeting minutes, unless otherwise prohibited by law.

West's Hawai'i Revised Statutes Annotated

Division 1. Government

Title 4. State Organization and Administration, Generally

Chapter 28. Attorney General (Refs & Annos)

[Part XI]. Law Enforcement Officer Independent Review Board (Refs & Annos)

HRS § 28-151

[§ 28-151]. Definitions

Currentness

As used in this part:

“Board” means the law enforcement officer independent review board established by section 28-152.

“Law enforcement agency” means any county police department, the department of public safety, and any state or county public body that employs law enforcement officers.

“Law enforcement officer” means a sheriff, deputy sheriff, police officer, enforcement officer within the department of land and natural resources conservation and resources enforcement program, enforcement officer within the department of transportation harbors division, and any other employee of a state or county public body who carries a badge and firearm and has powers of arrest.

“Officer-involved death” means 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.

Credits

Laws 2016, ch. 161, § 1, eff. July 1, 2017.

Editors' Notes

REPEAL

<This section is repealed by Laws 2016, ch. 161, § 7, effective June 30, 2022.>

H R S § 28-151, HI ST § 28-151

Current through Act 32 of the 2019 Regular Session, pending classification of undesignated material and text revision by the revisor of statutes. Some statute sections may be more current; see credits for details.

West's Hawai'i Revised Statutes Annotated

Division 1. Government

Title 4. State Organization and Administration, Generally

Chapter 28. Attorney General (Refs & Annos)

[Part XI]. Law Enforcement Officer Independent Review Board (Refs & Annos)

HRS § 28-152

§ 28-152. Law enforcement officer independent review board; established

Currentness

(a) There is established a law enforcement officer independent review board that is placed within the department of the attorney general for administrative purposes only. The board shall be responsible for reviewing criminal investigations of incidents of officer-involved death conducted by law enforcement agencies and issuing recommendations to the prosecuting attorney of the county in which the incident occurred.

(b) The board shall consist of nine members as follows:

(1) One deputy attorney general;

(2) One former prosecuting attorney or deputy prosecuting attorney who served in that capacity with the department of the prosecuting attorney for the city and county of Honolulu;

(3) One former prosecuting attorney or deputy prosecuting attorney who served in that

capacity with the department of the prosecuting attorney for the county of Maui;

(4) One former prosecuting attorney or deputy prosecuting attorney who served in that capacity with the office of the prosecuting attorney for Hawaii county;

(5) One former prosecuting attorney or deputy prosecuting attorney who served in that capacity with the office of the prosecuting attorney for the county of Kauai;

(6) One retired justice or judge of a state court in the State to be appointed by the governor without regard to the requirements of [section 26-34](#);

(7) One former chief of police, former sheriff, former chief deputy chief of police, or former chief deputy sheriff to be appointed by the governor without regard to the requirements of [section 26-34](#); and

(8) Two community members to be appointed as follows:

(A) One community member to be appointed by the governor without regard to the requirements of [section 26-34](#); and

(B) One community member to be appointed by the attorney general;

provided that the community members shall not have law enforcement or criminal justice experience.

(c) Except for members designated by subsection (b)(8), each member of the board shall have at

least five years' experience investigating, prosecuting, or presiding over criminal cases involving death.

(d) Unless otherwise provided, the members of the board shall be appointed by the attorney general.

(e) The members of the board shall serve without compensation for terms specified by the appointing authority, but shall be reimbursed for expenses, including travel expenses, incurred in the performance of their duties.

(f) Notwithstanding any law to the contrary, no member shall be liable in any civil action founded upon a statute or the case law of this State, for damage, injury, or loss caused by or resulting from the member's performance of or failure to perform any duty that is required or authorized to be performed by a person holding the position to which the member was appointed, unless the member acted with a malicious or improper purpose, except when the plaintiff in a civil action is the State.

Credits

Laws 2016, ch. 161, § 1, eff. July 1, 2017; Laws 2017, ch. 12, § 3.

Editors' Notes

REPEAL

<This section is repealed by Laws 2016, ch. 161, § 7, effective June 30, 2022.>

H R S § 28-152, HI ST § 28-152

Current through Act 32 of the 2019 Regular Session, pending classification of undesignated material and text revision by the revisor of statutes. Some statute sections may be more current; see credits for details.

West's Hawai'i Revised Statutes Annotated

Division 1. Government

Title 4. State Organization and Administration, Generally

Chapter 28. Attorney General (Refs & Annos)

[Part XI]. Law Enforcement Officer Independent Review Board (Refs & Annos)

HRS § 28-153

[§ 28-153]. Review of incidents of officer-involved death

Currentness

(a) Each law enforcement agency in the State shall have a written policy regarding the investigation of incidents of officer-involved death.

(b) In the event of any incident of officer-involved death, each law enforcement agency shall be responsible for conducting a criminal investigation of the law enforcement officer or officers involved in the incident.

(c) Each law enforcement agency conducting the criminal investigation of the officer-involved death shall disclose to the board the final disposition of the law enforcement agency's criminal investigation and all related reports, documents, and information for the purposes of the board's review.

(d) Once the board receives the final disposition of the law enforcement agency's criminal investigation and all related reports, documents, and information pursuant to subsection (c), the board shall review all matters submitted to evaluate the fairness of the criminal investigation and to determine whether, in the board's opinion, criminal prosecution or further investigation may be warranted.

(e) Each law enforcement agency of the State and all of its counties shall cooperate with and assist the board in the performance of its duties, except that the board shall not have access to physical evidence.

(f) The board shall expeditiously make recommendations to the prosecuting attorney of the county in which the officer-involved death occurred, however, the prosecuting attorney is not required to wait for the recommendation before making a determination to prosecute or decline prosecution. The board's recommendations shall consist of the board's determination that the prosecuting attorney should:

(1) Prosecute;

(2) Decline prosecution; or

(3) Conduct further investigation.

The board's recommendations shall not be binding upon the prosecuting attorney and shall have no effect on any determination of probable cause that may be made, at any time.

(g) Subject to subsection (h), all matters submitted to the board pursuant to subsection (c) and all proceedings and recommendations of the board shall be confidential. All records, documents, and information in the possession of the board or maintained by the board shall not be subject to discovery or disclosure in any civil or criminal proceedings or to a request for disclosure pursuant to chapters 92 and 92F. The scope of this subsection shall be limited solely to the proceedings and recommendations of the board and any records, documents, and information in the board's possession, and this subsection shall not extend to any records, documents, or information in the possession of another government agency.

(h) Once the board has issued the board's recommendations pursuant to subsection (f) and any criminal prosecution or proceedings in the State related to the officer-involved death have been adjudicated, the board shall release the board's recommendations and any accompanying reports, documents, and information, unless otherwise prohibited by law.

(i) Nothing in this part shall be construed to create a private right of action.

Credits

Laws 2016, ch. 161, § 1, eff. July 1, 2017.

Editors' Notes

REPEAL

<This section is repealed by Laws 2016, ch. 161, § 7, effective June 30, 2022.>

H R S § 28-153, HI ST § 28-153

Current through Act 32 of the 2019 Regular Session, pending classification of undesignated material and text revision by the revisor of statutes. Some statute sections may be more current; see credits for details.

the 1990s, the number of people in the world who are under 15 years of age is expected to increase from 1.1 billion to 1.4 billion.

There are a number of reasons why the number of children in the world is increasing. One of the main reasons is that the number of children who are surviving to the age of 5 has increased significantly in the last few decades. This is due to a number of factors, including improved medical care, better nutrition, and a decline in the number of children who are dying from preventable diseases.

Another reason why the number of children in the world is increasing is that the number of children who are being born is increasing. This is due to a number of factors, including a decline in the number of children who are being aborted, and an increase in the number of children who are being born to women who are in their late 20s and early 30s.

There are a number of challenges that are associated with the increasing number of children in the world. One of the main challenges is that there are not enough resources to provide for all of the children. This is particularly true in developing countries, where there is a high level of poverty and a lack of access to basic services such as education and healthcare.

Another challenge is that there are not enough people to care for all of the children. This is particularly true in developing countries, where there is a high level of unemployment and a lack of access to social services. This means that many children are being left in the care of their grandparents or other relatives, who may not have the resources to provide for them properly.

There are a number of ways in which we can address these challenges. One of the most important ways is to invest in education and healthcare for children. This will help to ensure that all children have the opportunity to reach their full potential and to live a healthy and productive life.

Another way to address these challenges is to provide support for families who are struggling to care for their children. This can be done through a number of ways, including providing financial assistance, providing access to social services, and providing support for parents who are struggling with mental health issues.

It is important that we all work together to address these challenges. Only by working together can we ensure that all children in the world have the opportunity to live a healthy and productive life.

The number of children in the world is increasing rapidly, and this is a cause for concern. There are a number of challenges that are associated with this increase, and it is important that we all work together to address these challenges. Only by working together can we ensure that all children in the world have the opportunity to live a healthy and productive life.

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THE CIVIL BEAT
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Law Enforcement Officer
Independent Review Board
Iwalani White, Chair
Honorable Barbara Richardson, Assistant Chair

RE: Testimony for June 20, 2019 Meeting at 9:30 a.m.

Dear Chair, Assistant Chair, and Members of the Board:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote governmental transparency. Thank you for the opportunity to submit testimony regarding Agenda Item No. 5 (when the Board should release its recommendation and whether to release any accompanying reports, documents and information) and Agenda Item No. 6 (whether an attorney should be requested to advise the Board).

The Timing of Disclosure for the Board's Recommendations

The Legislature created this Board to "promote greater transparency of law enforcement operations and more accountability for law enforcement actions by law enforcement officers." Conf. Comm. Rep. 155-16. That public need for transparency and accountability *peaks* in only one scenario: when the prosecutor declines to bring charges after a law enforcement officer-involved death.

As originally introduced, S.B. 2196 – the bill that would establish this Board – provided that the Board's recommendation would become public as soon as the Board finished its review. The Legislature added the confidentiality provision for the Board's recommendation based on testimony from the Department of the Attorney General. Senate Stand. Comm. Rep. No. 2471 (2016). The Attorney General, however, never suggested that the Board's recommendation should remain confidential forever when a prosecutor declines to prosecute.

In written testimony for the first committee hearing, the Department of the Attorney General raised concerns that immediate disclosure of the Board's recommendation would jeopardize the integrity of other proceedings and would permit extra-judicial discovery in any related criminal proceedings. Thus, the Attorney General recommended that "all Board matters and investigations remain confidential until any administrative and criminal proceedings have been concluded."

The Department's oral testimony at the first committee hearing echoed its written testimony. "If the board is going to be making or releasing its recommendations, its findings, anything in respect to its review, we suggest that that should be after all the other matters are completed, meaning if there is any criminal investigation, administrative investigation, *any prosecution that is ongoing*, to protect the integrity of those procedures as well as—in the case of prosecution—preventing any extra-judicial disclosure." Feb. 10, 2016 PSM-JDL Hearing (recordings available at http://olelo.granicus.com/ViewPublisher.php?view_id=13) (emphasis added).

At no point did the Attorney General suggest that the Board's recommendation should be withheld when the prosecutor declines to bring charges.

The language used by the Legislature is consistent with both its overriding intent to provide transparency and accountability and the Attorney General's concerns about premature disclosure. For HRS § 28-153(h), the threshold inquiry for disclosure of the Board's recommendation concerns whether there is a pending criminal prosecution. If there is a criminal investigation ongoing when the Board issues its recommendation, the Board must wait for that proceeding to be "adjudicated." But when the prosecutor affirmatively declines to file charges, there is no criminal prosecution that triggers the further inquiry into whether the proceeding has been adjudicated.

It is absurd that the Board would wait for a nonexistent criminal proceeding to be adjudicated. *E.g., Morgan v. Planning Dep't*, 104 Hawai'i 173, 185, 86 P.3d 982, 994 (2004) ("[A] rational, sensible and practicable interpretation of a statute is preferred to one which is unreasonable or impracticable, inasmuch as the legislature is presumed not to intend an absurd result, and legislation will be construed to avoid, if possible, inconsistency, contradiction, and illogicality."). The Legislature's concern—articulated by the Attorney General—focused on interfering with existing prosecutions.

It is illogical to read into the confidentiality provision that "any possible criminal prosecution" must be "adjudicated." Because the matters before the Board concern officer-involved deaths, it would be virtually unheard of for all *theoretically possible* criminal proceedings involving the incident to be adjudicated. Even if the State prosecuted the case to judgment, the federal government would have jurisdiction as well. *E.g., 18 U.S.C. § 242*. There always will be some possible prosecution. But that was not the Legislature's concern; it focused on interfering with existing prosecutions, not hypothetical ones. Such errant statutory construction would strip the Board of a primary objective to provide public transparency and accountability as it concerns officer-involved deaths.

If there is no prosecution, the Board's recommendation and accompanying records must be released. That was the Legislature's intent.

Attorney Advisor

The Law Center would support the Board seeking the advice of an attorney for its meetings. An attorney could assist the Board in particular with the requirements of the Sunshine Law. Based on a cursory review, the Law Center noted two anomalies in the Board's meeting records that may have benefitted from attorney advice.

First, we noted that, according to the minutes of the January 23, 2019 Board meeting, the Board discussed whether adult corrections officers fall within the definition of "law enforcement officer" for purposes of the Board's jurisdiction. The agenda for the January 23 meeting did not provide public notice that such a discussion would occur. An attorney could have advised the Board that the Sunshine Law prohibits a Board from discussing substantive non-emergency matters that have not been duly noticed on the Board's agenda.

Second, the Law Center noted that the Board's agenda for this June 20 meeting lists public testimony on agenda items as the *last* matter for the day. An attorney could have advised the Board that public testimony on a listed agenda topic must be taken before the Board members start any discussion of that topic. Board members cannot wait to hear public testimony until after the board has discussed the topic (although, after hearing initial testimony, the Board has the discretion to solicit further input from the public as it deems appropriate).

Thank you again for the opportunity to testify on these matters.