

**LAW ENFORCEMENT OFFICER INDEPENDENT REVIEW BOARD
TUESDAY, JUNE 15, 2021, 10:00 AM**

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

DRAFT MINUTES

I. Call to Order; Public Notice; Roll Call and Quorum Determination.

The meeting was called to order by Board Chair Gary Yabuta.

Present were Board Members: Chair Gary Yabuta, Lance Goto, Landon Murata,
Judge Barbara Richardson, Dr. Bettina Ackerman, and John Tam.

Absent were Judge Barbara Takase and Katy Chen.

II. Public Testimony.

A. Individuals may only testify on items contained in the agenda.

Public Testimony was given by Ann Wright, Keisa Liu, Georgia
Thompson-West, Jennifer Kellinger, Kylie Akiona, Cathy Lee, Avril Lynn
Janice Kotze, Natalie Nimmer, Lesley Harvey, Louis Herman,
Christopher Egbo, person identified as "Share", and Danielle Fisher.

B. Previously submitted written testimony.

Written testimony from Ann Wright and Mele Stokesberry.

Written comments from Patricia Blair, Ryan Okuno, Ashley Yong, and Fabien
Melchior.

III. Approval of Minutes for May 11, 2021 meeting

Landon Murata moved to accept Open Session minutes for the May 11, 2021
meeting; second by Dr. Ackerman. Roll call vote taken. Motion carried by
unanimous vote. Open Session minutes approved.

Lance Goto moved to accept Executive Session Minutes for the May 11, 2021
meeting; second by Landon Murata. Roll call vote taken. Motion carried by
unanimous vote. Executive Session minutes approved.

IV. New Business.*

A. Introduce new board member Barbara Takase

Judge Takase was unable to be present.

B. Further review draft guidelines

1. Discuss “final adjudication”

Pursuant to section 28-153(h), HRS, once the board has issued the board’s recommendation 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 recommendation and any accompanying reports, documents, and information unless otherwise prohibited by law.

The board discussed what “adjudication” would trigger the release of information.

Lance Goto shared that at the January 21, 2020 meeting, the board made decisions on this issue: (1) when a prosecutor declines a case, it would constitute an adjudication; and (2) when a prosecutor has not made its position clear, the board would make a written request for a decision and allow the prosecutor reasonable time to respond, and if the prosecutor does not respond, the board would treat the matter as adjudicated. There are other instances to consider, such as conviction pending appeal and dismissal without prejudice.

Judge Richardson suggested the board’s recommendation could be released after trial. If the board waits for the appellate process to conclude, such a delay in time would not allow board to fulfill the purpose of board’s duty. Discussions were previously had that adjudication did not include civil or disciplinary proceedings.

There was further discussion regarding releasing the board’s recommendation if a prosecutor declines to prosecute or if the prosecutor charges the case and the matter is resolved by plea, trial (conviction or acquittal), or dismissal with prejudice.

Dr. Ackermann raised the question regarding a prosecutor’s obligation to announce a decision to prosecute or not. Comments made that there is no mandate that a prosecutor announce such a decision publicly.

Discussion had to include in draft guidelines that the board will release its recommendation when: (1) a case is declined; (2) if a case is

charged, the board will wait to release recommendation until plea or trial, and (3) dismissal with prejudice.

Landon Murata moved to accept draft guidelines as distributed today; second by Judge Richardson. Roll call vote taken. Motion carried by unanimous vote.

Lance Goto and Landon Murata to make further revisions on what will be considered an “adjudication” which triggers release of the recommendation.

2. Discussion regarding in custody deaths

A question was raised whether an in-custody death (a person arrested and in custody) falls within the board’s review. The board asked legal counsel to advise as to whether such deaths are within the scope of the board’s review. The board’s purview does not include an adult corrections officer.

C. Review case submissions 1, 2 and 4

Landon Murata moved for board to go into executive session pursuant to sections 28-153(g) and 92-5(a)(8) for the purposes of reviewing cases submitted to the board and for the board to consider the cases to review at the next meeting. Second by Judge Richardson. Roll call vote taken. Motion carried by unanimous vote. The board went into executive session.

D. Determine next case submissions for review

Board returned to open session. The board concluded its review of cases 1 and 2 with recommendations to be drafted and voted upon at the next board meeting, tentatively in July of this year.

V. Old Business.

A. Reminder request letters sent to law enforcement agencies

Old business was taken out of order before the board went into executive session. Chair Yabuta has issued letters to all the county police departments and State Law Enforcement agencies to include the Department of Public Safety, Department of Transportation, Department of Land and Natural Resources, and the State Attorney General Investigators to remind them of their statutory duty to submit investigations to this board with the provision that confidential information be redacted as the board agreed upon at the last meeting.

VI. Adjournment.

Meeting adjourned.

LAW ENFORCEMENT OFFICER INDEPENDENT REVIEW BOARD

DRAFT GUIDELINES FOR REVIEW OF OFFICER-INVOLVED DEATHS (Revised Draft, June 15, 2021)

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. 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.
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.
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.
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:
 - (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.

¹ §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. For purposes of this paragraph, the following proceedings will be considered adjudicated:

(a) When a prosecutor declines a case;

(b) When a case is charged and resolved by a conviction following a plea or trial; or

(c) When a case is dismissed with prejudice by the court.

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)