

**LAW ENFORCEMENT OFFICER INDEPENDENT REVIEW BOARD
FRIDAY, SEPTEMBER 10, 2021, 10:00 AM**

**THIS MEETING WAS HELD AS A VIDEO CONFERENCE
PURSUANT TO THE GOVERNOR'S EMERGENCY
PROCLAMATION RELATED TO THE COVID-19 RESPONSE.
MEMBERS OF THE PUBLIC JOINED IN
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, Assistant Chair Barbara Richardson, Lance Goto, Landon Murata, Judge Barbara Takase, Katy Chen, John Tam, and Dr. Bettina Ackermann.

II. Public Testimony.

No Public Testimony Provided

III. Approval of Minutes for July 12, 2021 meeting

John Tam moved to approve the Open Session minutes for the July 12, 2021 meeting; second by Landon Murata. Roll call vote taken – all voted in support of approving the minutes. Open Session minutes approved.

Dr. Bettina Ackermann moved to approve the Executive Session minutes for the July 12, 2021 meeting; second by Katy Chen. Roll call vote taken – all voted in support of approving the minutes. Executive Session minutes approved.

IV. New Business.

A. Report to the Legislature

Chair Yabuta explained that Act 163 of the 2016 State Legislature requires the Board to review its activities and submit a report to the legislature of its findings and recommendations, including any proposed legislation, no later than twenty days prior to the convening of the 2022 regular session. The Chair invited feedback, proposals, and recommendations for discussion on the report. The report will be submitted for Board approval by December.

- B. Review case submissions
- C. Finalize recommendation letters
- D. Determine next case submissions for review

Landon Murata moved for board to go into executive session pursuant to sections 28-153(g), 92-5(a)(4), and 92-5(8) for the purposes of reviewing cases submitted to the board, finalizing recommendation letters, determining next cases for review at the next meeting, and to receive legal advice on the issue of in custody death cases. (Items IV(B), (C), and (D), and V(A)) Second by Assistant Chair Richardson. Roll call vote taken. Motion carried by unanimous vote. The board went into executive session.

V. OLD BUSINESS

- A. Discussion regarding in custody deaths

Landon Murata moved that based upon the advice of the Board's attorney, law enforcement agencies may be required to submit cases regarding in custody deaths to the Board for review if it falls within the definition of "officer-involved death" under HRS section 28-151. If the law enforcement agency has any questions, the agency should consult the agency's own attorney for advice. Second by Assistant Chair Richardson. Roll call vote taken. All voted in support of the motion. The Board will also send a letter to law enforcement agencies informing them of such.

Chair Yabuta provided a summary of action taken by the Board since May 2021. The Board has had 4 meetings since May 2021 and reviewed 12 cases.

- 2 written recommendations published
- 3 case reviews tabled
- 3 case reviews completed today
- 4 final written recommendations approved

- V. Adjournment.

Meeting adjourned.

LAW ENFORCEMENT OFFICER INDEPENDENT REVIEW BOARD

DRAFT GUIDELINES FOR REVIEW OF OFFICER-INVOLVED DEATHS (Revised Draft, **October 5, 2021**)

Deleted: July 12

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 (A "law enforcement officer", by definition, does not include an adult corrections officer.)
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.

¹ §28-151, Hawaii Revised Statutes.

7. 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.

8. The chairperson of the Board will sign the recommendation on behalf of the Board.

9. 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.

10. Once complete, the Board will transmit its recommendation to the prosecuting attorney.

11. 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.

12. 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.

Deleted: (1-21-20 meeting)

For Board discussion: Chair Yabuta's recommendations for report to the Legislature

Recommendation #1

Section 28-152(f) provides:

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.

Recommend adding a provision:

A Board member or a former Board member required by the Court to appear and/or participate in a judicial proceeding involving a Review action, shall be represented by the Hawaii State Attorney General as the member's legal advisor in the judicial proceeding. This includes civil or criminal trials, depositions, or judicial hearings.

Recommendation #2

Section 28-153(c) provides:

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.

Recommend adding a provision:

By virtue of this statute, each law enforcement agency shall disclose to the board all related reports, documents, and information for the purposes of the board's review, no later than 60 days from which the law enforcement agency provided such information to the agency's Prosecutor.

Recommendation #3

The Board recommends a correlative study of methamphetamine abuse and law enforcement deadly force incidents. Such a study is necessary to identify causal behavior that increase the probability of law enforcement involved deadly force cases.

Recommendation #4

The magnitude of the operational aspects of the LEOIRB shall require a fulltime Administrative Coordinator position, dedicated to the LEOIRB and under the direction of the Hawaii State Attorney General.