

**LAW ENFORCEMENT OFFICER INDEPENDENT REVIEW BOARD
TUESDAY, OCTOBER 5, 2021, 9:00 AM**

**THIS MEETING WAS HELD AS A VIDEO CONFERENCE
PURSUANT TO THE GOVERNOR’S EMERGENCY
PROCLAMATION RELATED TO THE COVID-19
RESPONSE, DATED AUGUST 5, 2021.
MEMBERS OF THE PUBLIC JOINED IN
THE ZOOM WEBINAR MEETING.**

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, and Dr. Bettina Ackermann. John Tam joined late, but before public testimony was solicited. Katy Chen was not present.

II. Public Testimony.

No Public Testimony Provided

III. Approval of Minutes for September 10, 2021 meeting

Landon Murata moved to approve the Open Session minutes for the September 10, 2021 meeting; second by Dr. Bettina Ackermann. Roll call vote taken – all voted in support of approving the minutes. Open Session minutes approved.

Landon Murata moved to approve the Executive Session minutes for the September 10, 2021 meeting; second by Judge Barbara Richardson. Roll call vote taken – all voted in support of approving the minutes. Executive Session minutes approved.

IV. New Business.

A. Finalize Guidelines

The Board discussed the revisions to Paragraphs 1 and 12 as redlined on the October 5, 2021 draft, which was included in the board packet for this meeting. Paragraph 1 clarifies that “law enforcement officer” does not include adult correctional officers. Paragraph 12 deletes the date reference to the prior minutes. If approved today, then the guidelines will be final until such time as the board gives notice and moves to further amend. Landon Murata moved to accept the

October 5, 2021 draft guidelines as the Board's Guidelines. Second by Judge Barbara Takase. Roll call vote taken. Motion unanimously carried. Guidelines approved as final.

B. Report to the Legislature

Chair Gary Yabuta asked the board to think about recommendations to include in its report to the Legislature. The Board discussed the recommendations posted in the Board Packet for the October 5, 2021 meeting.

Recommendation #2:

Chair Yabuta recommended that law enforcement should disclose investigative reports to the Board no later than 60 days after the report is provided to the prosecutor's office. He suggested that law enforcement should be given a time limit.

Lance Goto read the language from Act 161 (2016), which sets out the requirement that the Board submit a report to the legislature for the 2022 session. Mr. Goto suggested that the report start with a brief description of the Board's statutory history, its duties and responsibilities, membership, number of meetings, number of cases reviewed, and recommendations.

Chair Yabuta stated that the report should include how to improve performance if the board continues. The Board has been affected by not getting timely reports and receiving incomplete reports.

The Board discussed a time limit for submitting reports. A delay in receiving reports affects the Board's ability to make a recommendation in a timely and meaningful manner. The reports should be received in a time that allows the law enforcement agency to redact personal identifying information, but such that the Board is able to make a recommendation to the prosecuting agency.

The report should include that the Covid-19 pandemic hindered the Board's ability to review cases.

The Board discussed including in the legislative report the gap between the public perception of what the Board is statutory obligated to do and what the Board should be doing. It appears that the public believes that beyond recommending whether to prosecute, not prosecute, or request further investigation, the public expects that the Board will comment on police tactics as well as feedback and improvement to police officers. If the latter, the Legislature would need to amend the law. If not, the public needs to be educated. Discussion had about possibly recommending an amendment to section 28-152(a) with a sentence stating that the Board is not tasked with opining on whether the police obeyed their own policies. Dr. Ackermann tasked with drafting this portion.

The Board discussed whether 60 days was a reasonable time for the law enforcement agency to submit the investigative reports. After full discussion, the Board agreed that 30 days was reasonable with any follow up reports provided to the Prosecutor's Office to be simultaneously submitted to the Board.

Recommendation #1:

Chair Yabuta shared that he was concerned about a board member being involved in criminal proceedings. The Board does not have immunity, and the recommendation would allow the board member to be provided legal counsel. Judge Richardson and Dr. Ackermann supported the recommendation.

Lance Goto pointed out HRS section 26-35.5. It appears 28-152(f) is the same as HRS section 26-35.5(b). It is unclear whether this statute applies to federal proceedings. Chair Yabuta asked Lance Goto to research further and provide recommendation at the next meeting.

Recommendation #3:

Chair Yabuta shared that methamphetamine is directly related to a lot of the cases which the Board has reviewed. He is interested in the State conducting a study between methamphetamine use and law enforcement deadly force incidents. The Board has opportunities to review medical examiner data and the toxicology results. A study could be used to address the methamphetamine problem in Hawaii.

Dr. Ackermann queried whether it would be a scientific study to correlate blood level and behavior, or a study on how many law enforcement officer-involved deaths included methamphetamine use and abuse.

Concerns were raised about whether recommendation #3 relates to Board business, and whether using the data would violate the confidentiality of the investigative reports reviewed by the Board. Dr. Ackermann suggested if there was a way to comment anecdotally to educate the community and address the problem of methamphetamine use and abuse.

After Board discussion, Chair Yabuta withdrew Recommendation #3, but he committed to pursuing this issue without violating the Board's statutory provisions.

Recommendation #4:

Chair Yabuta recommends a full time coordinator position for the Board. Judge Richardson, Judge Takase, and Dr. Ackermann concur.

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

Judge Richardson moved for the Board to go into executive session pursuant to sections 28-153(g), 92-5(a)(4), and 92-5(a)(8) for the purposes of reviewing cases submitted to the Board, finalizing recommendation letters, and determining the next cases for review. (Items IV.C, D, and E on the agenda.) Second by Landon Murata. Roll call vote taken. Motion carried by unanimous vote. The Board went into executive session.

After returning to open session from executive session, Renee Sonobe Hong shared that she had received an email from Brian Black of the Civil Beat Law Center about the Board's bases for moving into executive session. Ms. Sonobe Hong clarified the reason and statutory citations for why the Board moved into executive session as well as the business had during executive session. HRS section 28-153(g) states that "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". Section 92-5(a)(8) states that a board may go into executive session "to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order." Pursuant to those two sections, the board moved into executive session specifically to discuss case submissions and review investigative reports, in addition to finalizing recommendation letters for cases the board discussed and voted on at the last meeting. The Board also determined the next submissions for review. The Board did not discuss any board guidelines nor did it seek counsel or advice of the Board's attorney, so the Board did not have any matters under HRS section 92-5(a)(4).

At further meetings, specific to each agenda item, the Board should be clear as to what statutory section the Board relies upon when moving into executive session.

Finally, Mr. Black shared two comments about recommendations the Board may consider in its legislative report and those comments have been forwarded to the board. The first comment was about making the board permanent, and the second commented on autopsy and toxicology reports. Both emails have been forwarded to the Board.

Chair Yabuta entertained discussion on adding a recommendation to make this Board permanent after the sunset date of June 30, 2022. Landon Murata stated that the Board's recommendations should be based upon the Board's experiences in fulfilling its duties. The policy matter of whether this Board should continue should be left to the Legislature. Chair Yabuta agreed and tabled the discussion.

V. Adjournment.

Judge Barbara Richardson moved to adjourn. Second by Landon Murata. Motion unanimously carried. Meeting adjourned.