

**LAW ENFORCEMENT OFFICER INDEPENDENT REVIEW BOARD
TUESDAY, NOVEMBER 2, 2021, 9:00 AM**

THIS MEETING WAS HELD AS A VIDEO CONFERENCE
PURSUANT TO THE GOVERNOR'S EMERGENCY
PROCLAMATION RELATED TO THE STATE'S COVID-19
DELTA RESPONSE, DATED OCTOBER 1, 2021.
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,
Judge Barbara Takase, John Tam, Katy Chen, Lance Goto, Landon Murata, and
Dr. Bettina Ackermann.

II. Public Testimony.

No Public Testimony Provided

III. Approval of Minutes for October 5, 2021 meeting

Judge Barbara Richardson moved to approve the Open Session minutes for the October 5, 2021 meeting; second by Landon Murata. Roll call vote taken – all except Katy Chen voted in support of approving the minutes. Board member Chen abstained because she did not attend the October 5, 2021 meeting. Open Session minutes approved.

Landon Murata moved to approve the Executive Session minutes for the October 5, 2021 meeting; second by Dr. Bettina Ackermann. Roll call vote taken – all except Katy Chen voted in support of approving the minutes. Board member Chen abstained because she did not attend the October 5, 2021 meeting. Executive Session minutes approved.

IV. New Business.

A. Report to the Legislature

The Board reviewed the draft report included in the Board packet.

The Board also reviewed and discussed the summary drafted by Dr. Ackermann. Dr. Ackermann stated that her summary is intended to explain what the Board is statutorily mandated to do as well as what's outside the scope of the Board's responsibilities. Discussion had about whether Dr. Ackermann's summary should be included in Part I to express the concern that the Board's functions may be misunderstood or misconstrued by some members of the public, or if it should be included as a recommendation to the Legislature to amend the existing statute to be more specific as to Board's duties and functions. Judge Richardson suggested that it should replace Part I, commenting on the Board's duties, in addition to the Board's duty to review the fairness of the investigation. Dr. Ackermann shared that it was not intended to be a recommendation, but a reflection of what members of the public have expressed to make sure the Legislature understands the Board's narrow task to determine the fairness of an investigation and make a recommendation to prosecute, decline prosecution, or investigate further.

Katy Chen noted a comment in the chat. Landon Murata stated that public testimony is taken only at the beginning of the meeting. Renee Sonobe Hong explained the posted Notice and Agenda states that public testimony will only be taken at the beginning of the meeting. Testifiers will be limited to three minutes per agenda item. If the Chair, however, wants to entertain testimony after the public testimony is closed, that is left to the Chair's discretion. The Chair elected to continue with the meeting. Renee Sonobe Hong noted that all members can read the chat. The chat from Carolyn Eaton read: "If you're familiar with a front-page article in the Sunday NYT, this expansion of considerations leading up to an officer-involved death is a very important issue."

Lance Goto noted that in Part I, the title needs to be changed to the Law Enforcement Office Independent Review Board.

Discussion had about meaning of "case review tabled" in the statistics section under Part II. Chair Yabuta indicated he would revise and incorporate changes.

Discussion had on Recommendation #1 under Part IV of the report: Lance Goto explained that HRS section 26-35.5 provides that the Department of the Attorney General will provide legal representation to board members when board members are being subjected to civil liability or civil action. Section 26-35.5 is different from what Recommendation #1 in the draft report is intended to do. Recommendation #1 addresses when a board member is being subpoenaed or is being required to appear or participate in judicial hearing or deposition as a witness. He noted that depositions are not judicial proceedings.

The Board discussed the proposal submitted by Lance Goto to replace Recommendation #1:

"A Board member or a former Board member who is required by the court to appear and/or participate in a civil or criminal judicial proceeding in which the Board member or former Board member is not a party or in a deposition, and that participation is related to any Board action shall be represented by the Department of the Attorney General,

provided the Board member or former Board member makes a written request for such representation.”

The Board discussed and made revisions. Revisions made to Recommendation #1 will be incorporated into the final draft of the report to be distributed at the December meeting.

Landon Murata moved to include Dr. Ackermann’s recommendation as a second paragraph to Part I. Second by Judge Takase. John Tam asked for the specific language and discussion had. John Tam shared that the language appears as if the Board is requesting direction that in addition to its current statutory duties, the Board also comment on training and whether the police action was appropriate. Judge Richardson suggested that the statement can be revised to state that it would be outside the purview of the Board to comment. John Tam shared that he would not be comfortable coming up with recommendations as to how the police could have handled the situation differently with adequate training. The Board agreed to the revisions made during the discussion, and the revisions will be included in the final draft for the next meeting.

Katy Chen clarified that her position as CEO is held with Goodwill Hawaii.

Dr. Ackermann corrected the spelling of her name.

Discussion about the statistical categories. The Board agreed upon: (1) case submission reviewed, (2) written recommendations issued, (3) written recommendations published.

Landon Murata moved to approve amendments constructed by the Board at this meeting in addition to Lance Goto’s revisions to recommendation #1 regarding board representation. Second by Judge Richardson. Roll call vote taken. Motion unanimously carried.

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

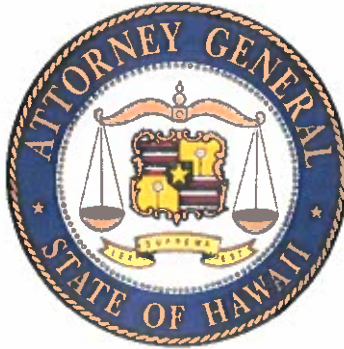
Dr. Ackermann moved for the Board to go into executive session pursuant to sections 28-153(g) and 92-5(a)(8) for the purposes of reviewing cases submitted to the Board, finalizing recommendation letters, and determining the next cases for review. (Items IV. B, C, and D on the agenda.) Second by Landon Murata. No objections. The Board went into executive session.

After returning to open session from executive session, Chair Yabuta reported that the Board reviewed two cases submissions and approved three recommendation letters that will be sent to the prosecutors. The Board will continue to review more cases.

V. Adjournment.

John Tam moved to adjourn. Second by Judge Richardson. Motion carried. Board member Katy Chen was absent when the Board returned to open session. Meeting adjourned.

State of Hawai'i
Department of the Attorney General



REPORT ON THE LAW ENFORCEMENT
OFFICER INDEPENDENT REVIEW BOARD

Pursuant to Act 161, Session Laws of Hawai'i 2016

Submitted to
The Thirty-First State Legislature
Regular Session of 2022

The Law Enforcement Officer Independent Review Board ("Board") was established by Act 161, Session Laws of Hawaii 2016, and placed for administrative purposes within the Department of the Attorney General. Act 161, which created a new part XI of chapter 28, Hawaii Revised Statutes (HRS), requires the Board to submit a report to the legislature of its findings and recommendations, including any proposed legislation.

I. The Law Enforcement Officer Independent Review Board

Pursuant to section 28-152(a), HRS, the Board is responsible for reviewing criminal investigations of incidents of officer-involved death conducted by law enforcement agencies. The Board evaluates the fairness of the investigations and issues recommendations to prosecute, decline prosecution, or conduct further investigation to the prosecuting attorney of the county in which the incident occurred. Board members serve without compensation.

The goal was for this independent body to review investigations to reassure the public that prosecutions against officers were being pursued, if appropriate, or that at the very least, if officers were not being prosecuted, that too was justified.

Throughout the public testimony at Board meetings, the Board heard members of the community express frustration with transparency regarding cases of officer involved deaths. What the Board heard from the community was that they not only want to know that the deaths were justified, but also that everything possible was done to prevent the deaths from happening at all. It is, however, outside the purview of this Board to comment on how situations leading up to an officer involved death could have unfolded differently.

II. Activities of the Board

On September 29, 2017, the Department of the Attorney General officially announced the formation of the Law Enforcement Officer Independent Review Board and its appointed original membership.

On June 19, 2018, the Board held its first meeting.

On January 23, 2019, the Board reviewed its first officer-involved death case submission, and the Board's recommendation was subsequently posted on the Board's public website.

The Board conducted meetings on June 20, 2019; August 22, 2019; and January 21, 2020. No further recommendations were issued at these three meetings.

On April 20, 2020, due to the pandemic and by virtue of the Governor's Emergency Proclamation, public in person meetings were suspended, and the Board postponed further meetings. Prior to this postponement of Board meetings, only one officer-

involved death case had been fully reviewed and disposed with the posting of a written recommendation. The inability to conduct Board meetings due to the COVID-19 pandemic precluded further case reviews and recommendations until the Board was able to re-establish meetings virtually.

On May 11, 2021, the Board met virtually for the first time since last convening in-person on January 21, 2020. Since May 11, 2021, the Board has aggressively scheduled monthly meetings virtually to review case submissions which were backlogged since the COVID-19 pandemic and the Governor's Emergency Proclamation's suspension of in person meetings.

Since August 2019, several Board members who were initially appointed have resigned, and one vacancy remains. The current Board members are:

- | | | |
|----|---------------------------------|---------------------------|
| 1. | Gary Yabuta (Chair) | Retired Maui Police Chief |
| 2. | Barbara Richardson (Vice-Chair) | Retired State Judge |
| 3. | Barbara Takase | Retired State Judge |
| 4. | John Tam | Retired Maui Prosecutor |
| 5. | Katy Chen | Goodwill Hawai'i CEO |
| 6. | Lance Goto | Deputy Attorney General |
| 7. | Landon Murata | Deputy Attorney General |
| 8. | Bettina Ackermann | Physician |

Since May 11, 2021, the Board has conducted XX Meetings, reviewed XX officer-involved death case submissions, and accomplished the following:

XX case submissions reviewed

XX written recommendations issued to prosecuting attorney

XX written recommendations published

III. Recommended Legislation

Should the State Legislature decide to extend the implementation of the LEOIRB past the statutory sunset date of June 30, 2022, the Board respectfully provides the following recommendations to further advance its effectiveness:

1. In addition to the protections provided by section 26-35.5, a Board member or a former Board member who is required by the Court to appear and/or participate in any legal proceeding, and that participation is related to any Board action, shall be represented by the Department of the Attorney General, provided the Board member or former Board member makes a written request for such representation. The Board member or former Board member may decline representation if the member so chooses.
2. Law enforcement agencies conducting the criminal investigation of an officer-involved death shall disclose to the Board all reports, documents, and related investigative information for the Board's review, no later than 30 days from the date on which the law enforcement agency provided such information to the prosecutor. Any follow-up investigative information or material shall be simultaneously disclosed to both the Prosecutor and LEOIRB.
3. The magnitude of the operational aspects of the Board requires a fulltime Administrative Coordinator position dedicated to the Board, and funding, under the direction of the Department of the Attorney General.