

LAW ENFORCEMENT STANDARDS BOARD MEETING
NOVEMBER 7, 2018
10:30 am

Attorney General Russell Suzuki (“AG Suzuki”): First matter on the agenda - Interim Chair, AG Suzuki called the meeting of the Law Enforcement Standards Board (“Board”) to order. Quorum confirmed with 9 members of the Board present:

AG Suzuki

Nolan Espinda, Director of the Department of Public Safety

Roy Catalani, Deputy Director, Department of Transportation (Director’s designee)

Jason Redulla, DOCARE Administrator, Department of Land and Natural Resources
(Chairperson of the Board of Land and Natural Resources designee)

Damien Elefante, Deputy Director, Department of Taxation (Director’s designee)

Susan Ballard, Chief of Police, County of Honolulu

Michael Contrades, Chief of Police, County of Kauai

Tivoli Faaumu, Chief of Police, County of Maui

Paul Ferreira, Chief of Police, County of Hawaii

AG Suzuki: Third matter on the agenda - selection of the Chair and Vice-chair. Opened the floor for nominations. AG Suzuki asked Director Nolan Espinda (“Director Espinda”) and Chief Susan Ballard (“Chief Ballard”) if they would be interested in serving as Chair. Both declined.

Director Espinda: Nominated AG Suzuki for Chair of the Board, which was seconded by Deputy Director Damien Elefante (“Deputy Director Elefante”). By a vote of 9 ayes, 0 nays, AG Suzuki elected as Chair of the Board.

Chief Paul Ferreira (“Chief Ferreira”): Nominated Chief Tivoli Faaumu (“Chief Faaumu”) for Vice-chair of Board, which was seconded by Chief Michael Contrades (“Chief Contrades”). By vote of 9 ayes, 0 nays, Chief Faaumu elected as Vice-chair of the Board.

AG Suzuki: Fourth matter on the agenda - Board’s proposed rule for public testimony to be limited to three minutes per testifier, per agenda item, to control length of meetings. Called for any public member present to testify as to this matter. No public member indicated desire to testify. Deputy Director Elefante moved to pass this rule relating to testimony, which was seconded. By vote of 9 ayes, 0 nays, the rule to limit public testimony to three minutes per testifier, per agenda item, in the interest of time was passed.

AG Suzuki: Fifth item on agenda – discussion and decision-making on proposed legislation to amend Act 220 (2018). AG Suzuki asked Deputy Attorney General Lance Goto (“Deputy AG Goto”) to give a brief overview of proposed legislation, after which the matter would be opened to the floor for discussion. (Proposed legislation attached hereto).

Deputy AG Goto: Indicated that the proposed changes to existing law are intended to clarify powers and duties given to the Board.

Chief Ballard: Suggested that the proposed legislation be tabled because they did not have sufficient time to consider the specific amendments as the draft was provided to them only one day ago and on a holiday (November 6, 2018 election day).

AG Suzuki: Indicated that because he feels that it is important to amend Act 220 to enable the Board to accomplish what the Act requires, the Board needs to agree to something as soon as possible so that any proposed amendment can be included as part of Administration's legislative package. Therefore, he asked if the Board could at least preliminarily approve the proposal, subject to later comments and corrections.

First Deputy AG Dana Viola ("FD Viola"): Stated that the proposed amendments were not intended to specify duties or requirements not already contained in Act 220. Rather amendments were intended to clarify the Act. AG tried to fix current bill to give the Board the ability to set certification standards, etc. Currently, the Act doesn't give the Board the means to do so. Specifically, it doesn't give the Board enough time, or sufficient resources. We tried to amend Act 220 to give the power to Board to do what the bill intends.

Chief Ballard: Asserted that she still believes that more time is needed to consider this proposal because she is concerned with what Act 220 requires, and she doesn't want to make matters worse by providing specifics via the amendments that further restrict the Board's decision-making.

AG Suzuki: Stated that he understood Chief Ballard's concerns but observed the need for basic support services, like staffing. He asked that Deputy AG Goto continue to go over the specific amendments.

Deputy AG Goto: On page 3 of the amendment, he added a new paragraph 3 which clarified the Board's certification requirements because he felt Act 220 did not sufficiently establish these powers. Act 220 did not make clear what actions the Board could take as to certifications.

Deputy Director Roy Catalani ("Deputy Director Catalani"): Agreed with Chief Ballard that he did not have sufficient time to review the proposed amendments. He indicated that he read Act 220 to only require the setting of standards and establishment of training. He did not believe Act 220 required the Board to certify applicants and thereby get involved in the hiring process. Therefore, he asked if the proposed amendments were going beyond the powers established in Act 220 by requiring certification?

Deputy AG Goto: Stated that he did not believe Act 220 specified powers relating to the hiring process. However, Act 220 did establish certification requirements.

Chief Ferreira: Questioned intent of Act 220's certification process and how amendments were presuming what this intent was. He asked when the certification would be required? Would the law enforcement officers be certified after they are trained so the county police departments could not hire prior to certification?

Chief Ballard: Questioned whether amendments were requiring certification of applicants before they are trained? She stated that these questions are critical, so further review of the amendments are necessary.

AG Suzuki: Agreed with Chief Ballard and Chief Ferreira. Decided that the Board should defer action on the proposed amendments to allow further review, comments and any necessary changes. But again asked if Deputy AG Goto could explain all proposed changes.

Deputy AG Goto: Noted that the page 4, paragraph 7 amendment is more significant clarification. Although Act 220 described the Board's responsibility to establish minimum curriculum requirements etc., the Board's authority over the training programs that would satisfy the certification requirements set by the Board was not clearly established in the Act. Such authority is implied because of the connection between training and certification, but it is not clearly articulated in the Act.

Chief Ballard: Regarding training, asked if intent of Act 220 and proposed amendments is that every island would be required to have its own academy or would the Honolulu academy to be certified for all law enforcement entities?

Deputy AG Goto: Responded that specifics of training requirements would be up to the Board to determine.

AG Suzuki: Clarified that the Board could establish specific requirements through the passage of its rules under Hawaii Revised Statutes, chapter 91.

Chief Ferreira: Noted that each county has its own requirements for the number of hours for training, for example 40 hours of use of force training (which they systematically exceed).

Chief Ballard: Noted that each county has own training requirements, which must be evaluated and approved. Would the Board have to review every standard?

Deputy AG Goto: Responded that decisions such as these would be for the Board to decide. If the proposed amendments are too specific, then the Board can change the wording. Act 220 leaves it to the Board to determine how to address issues that the Chiefs were identifying.

Chief Ballard: Agreed that the specifics should be left to Board, which is why she is concerned about the proposed amendments that she feels includes specifics that leave the Board with less flexibility.

Deputy AG Goto: Clarified that the proposed amendments were not intended to restrict the Board's authority but were instead meant to fill gaps in law, to clarify the Board's powers and duties.

Chief Faaumu: Noted that he believes what was intended would be like what DCCA does through its licensing boards, for example how private detectives are licensed. The detective licensing board establishes guidelines and minimum requirements for anyone who wants to be a private detective. He added that he sits on the detective licensing board. If have any issues arise as to a particular licensee, for example regarding a licensee's background, then the board would make decisions on whether such information would impact the licensing qualifications of that specific applicant or existing detective. Is this what was intended by Act 220?

FD Viola: Exactly how the Board would determine certification requirements and how that would operate are subject to the Board's decision. If the Board wants to structure their processes like the DCCA does with licensing, then the Board can do so. The legislature claimed that Hawaii is the only state without standardized requirements for law enforcement so wanted the Board to establish and certify compliance with these standards. In preparing the proposed amendments, Deputy AG Goto reviewed other states' programs. Certain other states have tiers for different kinds of law enforcement. Act 220 does leave it the Board to determine what is needed and how it would be implemented.

Chief Faaumu: Stated that he believes that the intent of Act 220 appears to be to create a system similar to DCCA.

AG Suzuki: Suggested that if the Board wants to broaden its discretion then perhaps Act 220 should be amended to change the mandates from "shall" to "may." Further, the Board can pass administrative rules to explain how standards will apply, in other words provide the specifics on implementation in the rules.

Chief Ballard: Noted that she believes the law is saying whatever the Board says has the force of law, that the Board is to establish the certification requirements, which would constitute the minimum requirements for hiring. She added that she believes that the Board should decide the specific application through rules, so they should leave Act 220 as broad as possible.

Deputy AG Goto: Added that Act 220 did not establish Board authority to certify trainers.

Chief Ferreira: Expressed concern regarding the amendments on page 5, new section 13, regarding probationary status. He stated that SHOPO already has established probationary periods, which would be different from other law enforcement officer requirements. How would the Board account for this discrepancy?

Director Espinda: Agreed that the sheriffs also have also established probationary periods and any changes to these periods would impact union contract provisions. This will result in challenges from the unions.

Chief Ballard: Further added that minimum standards, if they differ from existing standards, are likely to conflict with existing union agreements.

Deputy AG Goto: Stated that the existing law on pages 9-10 of Act 220 provides that certification requirements would not apply to persons employed on probationary bases.

Chief Contrades: Commented that it does not make sense that someone can be on probation for 18 months and do everything a law enforcement officer would be doing but that individual would not need to be certified.

Chief Ferreira: Noted that the process involves 3-4 months of recruit training, then a period where the applicant performs all the duties of a law enforcement officer. Therefore, when will certification be required?

Chief Ballard: Inquired about Fourth watch. Would certification occur after recruit school?

AG Suzuki: Asked if different tiers of certification would be required for the different stages of training?

Chief Contrades: Noted that this critical determination of when the certification would be required is not yet clear and would need to be further evaluated.

Deputy AG Goto: Suggested that such a determination could be clarified in the administrative rules rather than in the legislation.

Chief Ballard: Agreed with Deputy AG Goto and stated that this is what she was referring to when she was commenting on keeping the legislation broad earlier in this discussion.

FD Viola: Stated that minimum standards do not mean that the individual agencies cannot go beyond these standards. The agencies can add requirements as they see fit and not violated the statute.

Chief Faaumu: Reiterated that DCCA does just that – sets minimum standards. Once the licensee is certified, then they can be hired in their particular field. If we fiddle with the probation period, then we will run into problems. We should stay with certifying the pool of individuals who want to become law enforcement officers. The DCCA can revoke certification, and the employer can do what they want to do because of the revocation.

Chief Ballard: Responded would we then need to develop a central location to be trained, from which all agencies can pick up whoever they choose to employ?

Chief Contrades: A central training facility will not work for the neighbor islands.

Deputy Director Elefante: Noted that the Department of Taxation only has 6 enforcement officers, so our training needs would be VERY different from those of police officers.

AG Suzuki: Responded that the Board can adopt different tiers for different types of enforcement. The Board would need to determine how the different standards for certification would be applicable.

Chief Faaumu: Repeated that he believes this is how the DCCA operates.

Deputy AG Goto: Stated that he was not clear as to what was being suggested. Was the Board saying that whoever was interested in law enforcement could go through an approved training programs (ex: paid instruction through schooling) to be eligible to train to apply to a law enforcement agency? In other words, someone could become certified by satisfying minimum requirements at UH but would then need to go through additional training to even apply for a law enforcement job? Added that he is not sure that was the intent of Act 220.

Chief Faaumu: He believes that Act 220 intended that law enforcement officers could get training and certification anywhere, via a certified instructor, and once they obtain their certification/license, they can apply for a law enforcement job.

Chief Contrades and Chief Ferreira: Stated that this would kill recruitment. Noted that they already have difficulty attracting applicants, so an additional certification requirement would further dampen recruitment.

Chief Ballard: Stated that we must go back to the intent of Act 220. Police officer standards in training (POST) do not contain tiers. Anyone with powers of arrest who can use deadly force must satisfy minimum POST requirements. However, if each county has its own academy, with its own minimum requirements (ex: 40 hours of use of force, 30 hours of domestic violence, 100 hours of Haw Rev Stat), then what is the minimum requirements to be certified? Further what would certification mean in terms of employment? Further still, if certification is revoked, what process is followed? Currently, discipline involves Loudermill hearings, internal affairs investigations. How would revocation of certification by the Board impact all these layers of process to take disciplinary action, much less employment termination?

AG Suzuki: Noted that rules should be able to account for the impact on existing requirements. The tiers could apply to different types of enforcement (i.e., different standards for tax investigators versus police officers), not necessarily to different processes within an agency.

Chief Ballard: Commented that if a law enforcement officer can carry a firearm (tax investigators carry weapons), then all must be subject to certain minimum standards.

AG Suzuki: Based upon this discussion, we should indicate that it is near impossible to implement the law as written and should suggest that a further study is necessary to sufficiently evaluate what is needed to accomplish what the Board believes to be Act 220's intent. Therefore, we should suggest an extension of the Act's implementation deadline.

Chief Ballard: Added that any request should include that the Board members can assign Board responsibilities to their designees.

Chief Contrades: Agreed that because Act 220 involves the analysis of the impact of so many moving parts, further study is needed. This was what the Chiefs had suggested when Act 220 was being considered.

AG Suzuki: Noted that to accomplish what he suggests, the proposed amendment would need to add several whereas clauses to set out the reasons for the extended implementation deadline. Does the Board want to suggest that 4 years is needed?

Deputy Director Elefante: Inquired if there was another Act that required a similar study?

Deputy Director Rene Sonobe-Hong (Department of Public Safety): Responded that the Legislative Reference Bureau is conducting a study to evaluate the consolidation of all state law enforcement functions into a single department.

Chief Ferreira: Pointed out that the Department of Taxation doesn't respond to domestic violence, traffic accidents, etc. Therefore, the standards should be different. Unless the officer is required to respond to all situations that the police are trained for and expected to respond to, then standards need to be different for different law enforcement functions.

Deputy Chief Clyde Ho (Honolulu Police Department) ("Deputy Chief Ho"): Stated that POST accreditation standards would be over-reaching for other forms of law enforcement. Don't want to risk de-certification by diluting standards based upon different functions of other law enforcement agencies. Other states are having this very problem with de-certification - losing certification when standards diluted. Noted that must keep in mind what was behind Act 220 in the first place. The problem was that one agency hired someone from another law enforcement agency who wasn't a good fit. The Board should focus on the powers and duties granted by Act 220 in that context – focus on the impact of hiring when someone claims to have law enforcement expertise that may not translate to the law enforcement powers of another agency.

Chief Faaumu: Agreed with Deputy Chief Ho and Chief Ferreira. The various law enforcement agencies have very different functions. But if set minimum standards in the form of basic education, may be able to set across the board standards. This will help to give the Board the ability to do background checks on applicant, just like the DCCA boards do via their licensing authority.

AG Suzuki: Commented that the Hawaii Teachers Standards Board has similar difficulties with teacher certification. On the job experience impacts certification and revoking of certification presents the same types of problems that have already been identified. Therefore, is it this Board's consensus to ask the legislature to put off implementation of this law for 4 years?

Board: Yes.

FD Viola: Summarized that the new proposed amendment to Act 220 will include a number of whereas clauses to explain requests (including LRB study, any additional study as deemed necessary by the Board, impact of the new DOCARE training facility, impact on collective bargaining requirements, etc.) and will not change content except to: (1) change implementation date to 4 years from now, (2) add that Board members, specifically the AG, Director of Public Safety, and all Chiefs of Police, can appoint designees to serve as Board members.

Added that AG has sent recommendations to Governor so that he can appoint public Board members as required by Act 220.

Chief Faaumu: Requested that the law enforcement officers Board member requirement be amended from 2 to 5 to include law enforcement representation from each county and one from the state. (See page 4, lines 17-19 of Act 220).

Deputy AG Goto: Added that will need staff and appropriation to do the work suggested by the Board.

Chief Contrades: Requested that page 5, section (D), lines 15-18, be amended to delete the phrase "provided that experience in a county police department shall not itself be sufficient to qualify under this paragraph." He indicated that he did not see why such experience should not be relevant.

Deputy AG Goto: Responded that he believed the legislature was trying to provide for public members with law enforcement experience other than police officers.

FD Viola: Noted that because the deadline for amendments for the upcoming session is fast approaching, including the need to submit the Board's report 20 days before start of session, please provide justifications for what we've discussed by Monday, November 12, at the latest.

To review, the proposed amendment will reference the need to consider the LRB study, the Board's own study, the impact of the bill on collective bargaining, the impact of the new DOCARE training academy, and any other factors, to justify extending deadline for implementation to 4 years. The amendment will also request designating authority, the amendments relating to public Board members requested by Chiefs Faaumu and Contrades, and additional staff and an increased appropriation.

The AG will draft the bill as proposed (once all suggestions as to factors requiring delayed implementation are received), circulate the draft, and based upon responses, determine if another meeting is necessary. AG asks that all suggestions be provided to the entire Board.

Chief Ferreira: Noted that the comments were not meant to attack Deputy AG Goto for his work on the proposed amendments and that they appreciate his attempt to fix Act 220.

AG Suzuki: Noted that there was no further discussion and adjourned the meeting.