

DAVID Y. IGE
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December 27, 2021

The Honorable Ronald D. Kouchi
President and Members of the Senate
Thirty-First State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki
Speaker and Members of the House of
Representatives
Thirty-First State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the Report on the Law Enforcement Officer Independent Review Board, as required by Act 161, Session Laws of Hawaii 2016, on behalf of the Law Enforcement Officer Independent Review Board ("LEOIRB"). The report is independently prepared by the LEOIRB, which is administratively attached to the Department of the Attorney General. In accordance with section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at <http://ag.hawaii.gov/publications/reports/reports-to-the-legislature/>.

If you have any questions or concerns, please feel free to call me at 586-1500.

Respectfully,

A handwritten signature in cursive script that reads "Holly T. Shikada".

Holly T. Shikada
Attorney General

c: David Y. Ige, Governor
Josh Green, Lieutenant Governor
Legislative Reference Bureau (Attn.: Karen Mau)
Leslie H. Kondo, State Auditor
Craig K. Hirai, Director of Finance, Department of Budget and Finance
Stacey A. Aldrich, State Librarian, Hawaii State Public Library System
David Lassner, PhD., President, University of Hawaii

Enclosure

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 (Act 161), 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 purpose for establishing the Board 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 wanted to know that the decisions not to prosecute 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 start of 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 appointments have been made pursuant to HRS section 28-152(b) by the Governor (Gov) and the Attorney General (AG). The current Board members are:

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|----|---------------------------------|--|
| 1. | Gary Yabuta (Chair) | Former Chief of Police (Gov) |
| 2. | Barbara Richardson (Vice-Chair) | Retired State Judge (Gov) |
| 3. | Barbara Takase | Former Hawaii Deputy Prosecutor (AG) |
| 4. | John Tam | Former Maui Deputy Prosecutor (AG) |
| 5. | Katy Chen | Community Member (AG) |
| 6. | Lance Goto | Deputy Attorney General (AG) |
| 7. | Landon Murata | Former Honolulu Deputy Prosecutor (AG) |
| 8. | Bettina Ackermann | Community Member (Gov) |

Since May 11, 2021, the Board has conducted eight meetings and accomplished the following:

Eighteen case submissions reviewed;

Seventeen written recommendations issued to prosecuting attorney; and

Ten written recommendations published.

III. Recommended Legislation

Should the Legislature decide to extend the implementation of the Board 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, HRS, a Board member or a former Board member who is required by the Court to appear and/or participate in any legal proceeding, where 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 to the Department for such representation, and the Department confirms that the appearance by the member is related to Board action or responsibility and further determines that the Department has no conflict of interest. If a conflict exists, the State shall provide independent counsel for the member. 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 thirty 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 the Board.
3. The magnitude of the operational aspects of the Board requires a full-time Administrative Coordinator position dedicated to the Board, and funding, under the direction of the Department of the Attorney General.