

HONOLULU POLICE COMMISSION
City and County of Honolulu
State of Hawaii
Minutes of the Regular Meeting
October 3, 2018

CALL TO ORDER Chair Sheehan called the meeting to order at 2:00 p.m. on Wednesday, October 3, 2018, in Conference Room A at the Honolulu Police Department Alapai Headquarters

PRESENT Loretta A. Sheehan, Chair
Steven H. Levinson, Vice-Chair
Shannon L. Alivado, Member
Carrie K. S. Okinaga, Member

James K. S. Yuen, Executive Officer
Denise W. Wong, Deputy Corporation Counsel
Erin Marie Yamashita, Secretary

EXCUSED Karen Chang, Member
Jerry Gibson, Member
Richard T. Grimm, Member

ALSO PRESENT Jonathon B. Grems, Acting Chief of Police
Sean C. Naito, Acting Deputy Chief of Police

ASCERTAINMENT OF QUORUM Counsel Wong ascertained that a quorum was present

CHIEF OF POLICE REPORT

Acting Chief Grems informed commissioners that Chief Ballard is attending the Major Cities Chief Conference and will return to work on October 22, 2018.

Acting Chief Grems reported there were two homicides, two attempted homicides, two pedestrian fatalities and a cyclist in critical condition. All of the suspects involved in homicides and attempted homicides were identified and arrested.

The Honolulu Police Department (HPD) continues its aggressive actions on game rooms. There have been 21 search warrants conducted, 37 arrests made, seizure 300 of gambling devices, and just under \$200,000 in cash recovered. The process is an ongoing one and HPD is working with federal partners on the game room issues.

There were also some domestic violence incidents over the weekend that resulted in deaths. A conferral with the Department of the Prosecuting Attorney has been completed for the incident in which a female stabbed her boyfriend who expired. The incident was ruled self-defense and there was a history of domestic violence. Chair Sheehan requested clarification that the female stabbed the male in self defense and who made the determination that the incident was self-defense. Acting Chief Grems responded that she was correct and the woman stabbed the man and the prosecutors made the determination of self-defense.

CHIEF OF POLICE REPORT (Continued)

HPD will participate in the Men's March Against Domestic Violence on October 4, 2018.

There were also pedestrian fatalities this past weekend. Two were instances in which persons were laying in the roadway. Other incidents involved a cyclist clipped by a car in Waikiki and a doctor walking his dog in Mokuleia. HPD is working on locating and identify the drivers involved.

All districts participated in the Third Annual Coffee With A Cop. These events are community events in which people can speak with a police officer who works in their community. Because it was the third annual event, more commanders, including Acting Chief Gremms, participated. Vice-Chair Levinson wanted to know if the events were well attended. Acting Chief Gremms said he doesn't think people specifically go to the events, but it is an opportunity for officers to approach people at places like Starbucks and McDonalds and be able to talk and interact with community members. Acting Chief Gremms did ask people he spoke with what their biggest concerns were and found that homeless issues were problems in the Downtown and Waikiki areas and parking was an issue in the Kalihi area.

Questions/Comments from Commissioners

Chair Sheehan shared that community members have brought their concerns of the increase in the number of police-involved shootings to her attention and want to know if today's society is more violent, people do not respect police officers, or if there are trends or patterns. Acting Chief Gremms commented that each incident has been reviewed and there does not seem to be a specific pattern.

Acting Chief Gremms added that in order to address persons in crisis, HPD is introducing a new program, Mental Health First Aid, at the end of this year. As previously mentioned HPD's goal is to provide training to 20-percent of its officers in order for dealing with persons in crisis or have mental health issues.

Vice-Chair Levinson mentioned an article in *Civil Beat* on September 28, 2018, "Cops and Social Workers Join Forces to Get Homeless Help and Off the Street." The article had to do with the LEAD program and caught his attention because there was mention that law enforcement and the LEAD organizers have not come to an agreement over what crimes should be eligible for diversion. The article also said the program is open only to people who interact regularly with police and have not broken the law.

Vice-Chair Levinson said he remembered part of the original presentation given to commissioners last year, which explained that the program would be a diversion program in order to keep people out of the criminal justice system.

Acting Chief Gremms explained that LEAD and HPD have not come to a complete agreement on how to administer the program. For example, the administrators of the LEAD program want to include for diversion drug dealing. It is difficult for HPD to agree to allow drug offenses to be diverted and not prosecuted because HPD is trying to get drug dealers off the street. HPD is having difficulty convincing LEAD administrators that it is fruitless to guide a drug dealer to assistance.

Questions/Comments from Commissioners (Continued)

Another example provided by Acting Chief Gremis had to do with residentially challenged persons. Once diverted, no housing solutions are available and so they end up returning to the streets. HPD is trying to work out the mechanics within the program to get people the help they need, get them off the street, and to accept social services.

Vice-Chair Levinson wanted to know if there was discussion as to what, if any, criminal offenses will not disqualify a person from the program. Acting Chief Gremis said the current discussion is should felony offenses qualify a person for diversion.

Vice-Chair Levinson then brought up an article in the *Star Advertiser* regarding the teen who fatally stabbed a Marine in 2017 and will be tried as an adult. He was concerned the story seemed to imply HPD was involved in the decision as to whether the Prosecutor's Office would seek a waiver of Family Court since the 17-year-old male was taken into custody by HPD and was charged as an adult with second-degree murder. Acting Chief Gremis said the agency responsible for seeking the waiver was the Prosecutor's Office. Chair Sheehan explained the Prosecutor's Office would have made the decision to apply to the Family Court for a waiver in order for the juvenile male to be charged as an adult. The request is usually based upon the severity of the crime and the history of the juvenile. The family court judge is the decision maker on whether or not the juvenile will be tried as an adult.

Vice-Chair Levinson then shared his personal opinion that judges have been disregarding the initial rationale for trying juveniles civilly in family court and that for many of the same reasons the Prosecutor's Office is disregarding the theoretical reasons for family court jurisdiction. He added that the severity of the offense, as well as the criminal history of a juvenile, should have nothing to do with the waiver, but the reality is that if a 16 or 17 year old commits an offense which, if committed by an adult would be considered murder, they are almost always waived as if they are not children.

Commissioner Alivado asked Acting Chief Gremis how HPD was implementing Mental Health First Aid training was at the academy level or more within the existing department. Acting Chief Gremis explained the training is provided to the recruits and incumbent officers are cycled through, which is why it will take a while. Commissioner Alivado then asked if a certain type of officer is more prone to the training or if it was just an across the board training. Acting Chief Gremis answered that the 20-percent of officers who received the intensified training were the members of the community policing teams because they have already shown an interest, they were trained first using grant funding.

APPROVAL OF MINUTES

The approval of the August 15, 2018, meeting minutes was deferred to the October 17, 2018 meeting.

PUBLIC TESTIMONY

None.

Concerning public testimony during Commission meetings, Chair Sheehan stated that it was brought to her attention by Vice-Chair Levinson that commissioners have been allowing public testimony on issues that are not agenda items. She then asked if there was a HPC Rule allowing to allow testimony regarding topics which were not placed on the agenda. Commissioner Okinaga and Counsel Wong explained the rule is a Sunshine Law rule. Vice-Chair Levinson asked Commissioner Okinaga if she thought there would be a consequence if commissioners adhered to the guideline and did not accept testimony on non-agenda items. Commissioner Okinaga said it would be Chair Sheehan's decision and consistency is important.

Chair Sheehan then read HRS § 92-3, which says the board shall afford all interested persons an opportunity to submit data, views or arguments, in writing, on any agenda item. The board shall also afford all interested persons an opportunity to present oral testimony on any agenda item. The board has discretion for reasonable administration of oral testimony by rule.

Vice-Chair Levinson then said that it was his experience that commissioners have accepted testimony from persons who are not testifying on an agenda item. He explained that sometimes people attend the meeting to share their issues and experiences with HPD and there is rarely a time when commissioners can provide assistance other than asking the Chief to assist the individual. Chair Sheehan then said it seems unfair to limit someone to an agenda item because commissioners set the agenda, which has to be set six days in advance. The Commission may have a negative impact on someone who made an effort to attend a meeting if he/she would not be allowed to testify.

Vice-Chair Levinson said he assumes the rationale of the Sunshine Law was to provide the public a reasonable opportunity to provide input on Commission's business. If there is a way to open public testimony by rule, then perhaps a rule is needed. Chair Sheehan said it could be considered the next time the Commission's rules are revised.

NEW BUSINESS

Report on Actions Taken at the Executive Session of August 1, 2018

The report was deferred to the October 17, 2018, meeting.

Commissioner Individual Reports on Commission Business

Chair Sheehan requested two items be scheduled for discussion at the November 7, 2018, meeting. The first is the HPD Five-Year Plan and the second is the return of grant money for the Safe on Scene program.

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Task Commissioner Alivado to Organize Work on the 2019 Commissioners' Conference

Commissioner Alivado volunteered to work on the conference and will bring some of the ideas to the next meeting. She asked her fellow commissioners to think about or suggest speakers for the conference.

Chair Sheehan shared what she thought would be interesting topics and suggested:

1. A panel discussion with members of the media. It would be interested to get their point of view on transparency.
2. Invite a speaker from SHOPO to discuss the need for continued confidentiality of disciplinary actions since it is important for both sides to be heard.
3. Rules on disciplining the chief of police.

Commissioner Alivado suggested the LEAD program and the Hawaii State Law Enforcement Board.

Chair Sheehan said her preference would be to allow more time for commissioners to meet throughout the two days because there is a lot for commissioners to discuss among each other. She also suggested utilizing a mediator to keep discussion on track.

Discussion on Creation of Rules or Policies for the Discipline of the Chief of Police

Chair Sheehan received the information she requested from Acting Chief Grems which staff will copy and distribute to all commissioners. She also requested the issue remain on the agenda and commissioners will consider drafting rules stating when commissioners should be notified of incidents, when/how an investigation of the chief should take place, and provide guidelines to commissioners for discipline. Vice-Chair Levinson added that the amendment to the City Charter in 2016 provided for the Chief of Police to serve as an at-will employee and the decision by the Hawaii Intermediate Court of Appeals in Carvalho v. Kauai Police Commission makes it a law of the state that provides the power to discipline to the respective commissions rather than the mayor of each county.

Commissioner Okinaga explained that the process would not be tied to collective bargaining and that maximum flexibility should be provided. Chair Sheehan agreed and there was discussion on which agency, possibly the Department of the Corporation Counsel or Commission investigators, would conduct the investigation of the chief should it be necessary. Vice-Chair Levinson asked Commissioner Okinaga for her thoughts to which she referenced the Klattenhoff Decision and explained the many duties of the Department of the Corporation (COR) has to its multiple clients. Acting Chief Grems suggested commissioners consider consulting with the Department of Human Resources if necessary.

Discussion on Assisting HPD with its Firearms Registration Procedures

Chair Sheehan asked Acting Chief Grems if there was any interest from HPD to receive assistance from the commissioners on the written procedures for firearms registration. Acting Chief Grems said that once the internal process is formalized, they may reach out to commissioners for input. He is pleased with the draft that will be reviewed by COR and assured commissioners HPD does not want to decline input from the Commission but will leave that up to Chief Ballard.

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Discussion on Assisting HPD with its Firearms Registration Procedures (Continued)

Vice-Chair Levinson said that it is important to have a defensible mechanism in place for issuing open or concealed carry permits. He added that the procedure needs to be designed to withstand constitutional attack under the Second Amendment and said this is something all commissioners should be concerned about. Vice-Chair Levinson said lawsuits that have been filed are just the tip of the iceberg and referred to the Young lawsuit. He also said the Commission would be remiss in discharging its responsibility if its position was that the Commission was content without providing input.

Chair Sheehan said she understands Vice-Chair Levinson's position and that under the Charter Chief Ballard is not required to have the Commission advise her; however, there is a fair amount of legal talent on the Commission and it may be foolish on her part to decline the advice. Vice-Chair Levinson said he does not disagree with Chair Sheehan, but he thinks that the subject is one that transcends the matter of the police chief's tenure with the department. The issue is what the U. S. Supreme Court is may review and an outcome may be that the Second Amendment entitles people to the possession of firearms concealed or open.

UNFINISHED BUSINESS

Response to Concerns Raised by Col. John R. Bates, USMC (Ret.)

Chair Sheehan asked commissioners in attendance for their thoughts on the draft letter to Col. Bates that was circulated at the September 19, 2018 meeting. Commissioner Alivado said she was still in disagreement with requesting information from Col. Bates. She agrees that the Commission should acknowledge Col. Bates, but it is not appropriate to request the information as it may open a door for others to ask for assistance from the Commission on their requests to the HPD. Commissioner Alivado does not want to set a precedent to engage everyone who has been denied a concealed carry permit.

Vice-Chair Levinson explained that Col. Bates has not been given access to any written policies and guidelines that were used to assess his request for a concealed carry permit, and he has not been given any explanation for denial of his applications other than that they were denied because he didn't show sufficient need. Vice-Chair Levinson said Col. Bates will file a lawsuit if he does not get answers that he is entitled to, and he would be very uncomfortable if the Commission sat by and allowed him (Col. Bates) to initiate a legal proceeding that could result in the catastrophe he alluded to earlier.

Commissioner Alivado said that it was her understanding that Col. Bates has been applying for a concealed carry permit since 2005. It is now 2018 and she wanted to know if he had ever filed a lawsuit or has done so after the Young Decision. Vice-Chair Levinson said he apparently has not filed a lawsuit, but he says very clearly if he does not get what he is asking for he will file a FOIA (Freedom of Information Act) request and he is setting up the Commission.

Chair Sheehan suggested the Commission forward Col. Bates' request to Chief Ballard and notifying him, in writing. The letter would contain language that the Commission would expect Chief Ballard to provide commissioners with copy of the HPD's letter to Col. Bates. She explained that the purpose of the draft letter was to see what types of documents he had so commissioners could question Chief Ballard and then provide an answer to Col. Bates.

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Response to Concerns Raised by Col. John R. Bates, USMC (Ret.) (Continued)

Executive Officer Yuen offered to meet with Col. Bates to which Chair Sheehan and Vice-Chair Levinson said it was not necessary because he has come before the Commission to explain his complaint. Vice-Chair Levinson then said that if Col. Bates does not get what he wants, he is convinced that a lawsuit will be filed and he (Vice-Chair Levinson) is not willing to play Russian Roulette with the future of both the state and country's gun laws by passing the buck.

Acting Chief Grems asked Chair Sheehan if commissioners had been provided with any correspondence from HPD to Col. Bates. Chair Sheehan said due to privacy issues no documents have been provided to commissioners and that the purpose of the draft letter was to request permission from Col. Bates. Chair Sheehan wanted to know how HPD would notify commissioners of their response to Col. Bates. Acting Chief Grems said that he would have to check but it seems that because Col. Bates did want the Commission involved, they may be able to provide commissioners with a "cc" of the HPD's letter to Col. Bates.

Vice-Chair Levinson said that as a matter of law there is no distinguishing between the Honolulu Police Department and the Honolulu Police Commission. The City Charter states the Honolulu Police Commission is the first and foremost element of the HPD. Any letter would have to indicate that the HPC is referring the matter to Chief Ballard. Vice-Chair Levinson said a response from Chief Ballard with a "cc" to the Commission it would be acceptable; however, commissioners cannot forget they are the HPD just as much as the Chief Ballard. Chair Sheehan agreed and said that not all employees/members of the HPD have access to the same information as others.

Chair Sheehan will draft a response letter to Col. Bates indicating that the Commission is forwarding his request to Chief Ballard for a direct response, and to provide commissioners with a copy of her response letter to Col. Bates.

Commissioner Okinaga said she supports the response suggested by Chair Sheehan and said that Col. Bates has made requests to three chiefs and all of decisions have come to the same conclusion, to deny the concealed carry permit, so the denial is not just being given by Chief Ballard.

Executive Officer's Report

EO Yuen reported there are 51 complaints registered to date seven cases are pending. As requested at the September 19, 2018, meeting EO Yuen reported he has had his initial meeting with Officer Santiago.

Chair Sheehan asked EO Yuen how he would be handling meeting with Officer Santiago. EO Yuen reported they met and spoke for approximately two hours. The meeting was specific to his first complaint, the false reporting of a probable cause case. They will need to meet a few more times in order to address each of Officer Santiago's complaint separately.

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Executive Officer's Report (Continued)

Chair Sheehan also explained that many of Officer Santiago's issues are outside the purview of the Commission's authority and were old issues. She felt it was important for commissioners to answer Officer Santiago and that he has been informed nothing will be considered confidential. This will allow for commissioners to answer any media questions concerning his complaints.

Acting Chief Grems added that all of Officer Santiago's complaints and investigations have been packaged and sent to the FBI and the Attorney General's Office because HPD is not able to satisfy him.

EXECUTIVE SESSION

At 3:02 p.m., Vice-Chair Levinson made a motion to enter into executive session to review agenda items pursuant to HRS 92-5(a), subsections (2), (4), (5), (6) and (8): to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; to consult with its attorneys on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities; to investigate proceedings regarding criminal misconduct; to consider sensitive matters related to public safety or security; to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to state or federal law, or a court order.

Commissioner Alivado seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

RETURN TO OPEN SESSION

The Commission returned to the open session at 3:45 p.m.

Continuation of Deliberation for the Contested Case Hearing of Officer Ronald J. Lombardi

Vice-Chair Levinson defer item XI 1., the continued deliberation for the contested case hearing for Officer Ronald J. Lombardi, Civil No. 18-00100 ACK-KSC to the November 7, 2018, meeting as Commissioners Chang and Grimm, who are two of the five commissioners considering the matter, are not present.

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ANNOUNCEMENTS

Chair Sheehan announced the next meeting Honolulu Police Commission will be on October 3, 2018.

ADJOURNMENT

At 3:47 p.m., Commissioner Okinaga made a motion to adjourn the meeting. Vice-Chair Levinson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.