

ACT 161

S.B. NO. 2196

A Bill for an Act Relating to the Law Enforcement Officer Independent Review Board.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 28, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . LAW ENFORCEMENT OFFICER INDEPENDENT REVIEW BOARD

§28-A Definitions. As used in this part:

“Board” means the law enforcement officer independent review board established by section 28-B.

“Law enforcement agency” means any county police department, the department of public safety, and any state or county public body that employs law enforcement officers.

“Law enforcement officer” means a sheriff, deputy sheriff, police officer, enforcement officer within the department of land and natural resources conservation and resources enforcement program, enforcement officer within the department of transportation harbors division, and any other employee of a state or county public body who carries a badge and firearm and has powers of arrest.

“Officer-involved death” means a death of an individual that results directly from an act or omission of a law enforcement officer while the law enforcement officer is on duty or while the law enforcement officer is off duty but

performing activities that are within the scope of the officer's law enforcement duties.

§28-B Law enforcement officer independent review board; established. (a)

There is established a law enforcement officer independent review board that is placed within the department of the attorney general for administrative purposes only. The board shall be responsible for reviewing criminal investigations of incidents of officer-involved death conducted by law enforcement agencies and issuing recommendations to the prosecuting attorney of the county in which the incident occurred.

(b) The board shall consist of nine members as follows:

- (1) One deputy attorney general;
- (2) One former prosecuting attorney or deputy prosecuting attorney who served in that capacity with the department of the prosecuting attorney for the city and county of Honolulu;
- (3) One former prosecuting attorney or deputy prosecuting attorney who served in that capacity with the department of the prosecuting attorney for the county of Maui;
- (4) One former prosecuting attorney or deputy prosecuting attorney who served in that capacity with the office of the prosecuting attorney for Hawaii county;
- (5) One former prosecuting attorney or deputy prosecuting attorney who served in that capacity with the office of the prosecuting attorney for the county of Kauai;
- (6) One retired justice or judge of a state court in the State to be appointed by the governor without regard to the requirements of section 26-34;
- (7) One former chief of police, former sheriff, former chief deputy chief of police, or former chief deputy sheriff to be appointed by the governor without regard to the requirements of section 26-34; and
- (8) Two community members to be appointed as follows:
 - (A) One community member to be appointed by the governor without regard to the requirements of section 26-34; and
 - (B) One community member to be appointed by the attorney general;

provided that the community members shall not have law enforcement or criminal justice experience.

(c) Except for members designated by subsection (b)(8), each member of the board shall have at least five years' experience investigating, prosecuting, or presiding over criminal cases involving death.

(d) Unless otherwise provided, the members of the board shall be appointed by the attorney general.

(e) The members of the board shall serve without compensation for terms specified by the appointing authority, but shall be reimbursed for expenses, including travel expenses, incurred in the performance of their duties.

(f) Notwithstanding any law to the contrary, no member shall be liable in any civil action founded upon a statute or the case law of this State, for damage, injury, or loss caused by or resulting from the member's performance of failure to perform any duty that is required or authorized to be performed by a person holding the position to which the member was appointed, unless the member acted with a malicious or improper purpose, except when the plaintiff in a civil action is the State.

§28-C Review of incidents of officer-involved death. (a) Each law enforcement agency in the State shall have a written policy regarding the investigation of incidents of officer-involved death.

(b) In the event of any incident of officer-involved death, each law enforcement agency shall be responsible for conducting a criminal investigation of the law enforcement officer or officers involved in the incident.

(c) Each law enforcement agency conducting the criminal investigation of the officer-involved death shall disclose to the board the final disposition of the law enforcement agency's criminal investigation and all related reports, documents, and information for the purposes of the board's review.

(d) Once the board receives the final disposition of the law enforcement agency's criminal investigation and all related reports, documents, and information pursuant to subsection (c), the board shall review all matters submitted to evaluate the fairness of the criminal investigation and to determine whether, in the board's opinion, criminal prosecution or further investigation may be warranted.

(e) Each law enforcement agency of the State and all of its counties shall cooperate with and assist the board in the performance of its duties, except that the board shall not have access to physical evidence.

(f) The board shall expeditiously make recommendations to the prosecuting attorney of the county in which the officer-involved death occurred, however, the prosecuting attorney is not required to wait for the recommendation before making a determination to prosecute or decline prosecution. The board's recommendations shall consist of the board's determination that the prosecuting attorney should:

- (1) Prosecute;
- (2) Decline prosecution; or
- (3) Conduct further investigation.

The board's recommendations shall not be binding upon the prosecuting attorney and shall have no effect on any determination of probable cause that may be made, at any time.

(g) 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. All records, documents, and information in the possession of the board or maintained by the board shall not be subject to discovery or disclosure in any civil or criminal proceedings or to a request for disclosure pursuant to chapters 92 and 92F. The scope of this subsection shall be limited solely to the proceedings and recommendations of the board and any records, documents, and information in the board's possession, and this subsection shall not extend to any records, documents, or information in the possession of another government agency.

(h) Once the board has issued the board's recommendations pursuant to subsection (f) and any criminal prosecution or proceedings in the State related to the officer-involved death have been adjudicated, the board shall release the board's recommendations and any accompanying reports, documents, and information, unless otherwise prohibited by law.

(i) Nothing in this part shall be construed to create a private right of action."

SECTION 2. Section 712A-16, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

"(4) There is established in the department of the attorney general a revolving fund to be known as the criminal forfeiture fund, hereinafter referred to as the "fund" in which shall be deposited one-half of the proceeds of a forfeiture

ACT 161

and any penalties paid pursuant to section 712A-10(6). All moneys in the fund shall be expended by the attorney general and are ~~hereby~~ appropriated for the following purposes:

- (a) The payment of any expenses necessary to seize, detain, appraise, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to this chapter or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property and such contract services and payments to reimburse any federal, state, or county agency for any expenditures made to perform the foregoing functions;
- (b) The payment of awards for information or assistance leading to a civil or criminal proceeding;
- (c) The payment of supplemental sums to state and county agencies for law enforcement purposes;
- (d) The payment of expenses arising in connection with programs for training and education of law enforcement officers; ~~and~~
- (e) The payment of expenses arising in connection with enforcement pursuant to the drug nuisance abatement unit in the department of the attorney general[-]; and
- (f) The payment of expenses arising in connection with the law enforcement officer independent review board in the department of the attorney general.”

SECTION 3. The law enforcement officer independent review board shall review its activities pursuant to this Act and submit a report to the legislature of its findings and recommendations, including any proposed legislation, no later than twenty days prior to the convening of the regular session of 2022.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2016-2017 for the establishment of the law enforcement officer independent review board and expenses arising in connection with the board.

The sum appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 5. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2017; provided that:

- (1) Section 4 of this Act shall take effect on July 1, 2016;
- (2) The sum appropriated by section 4 of this Act shall serve as the source of funding for the establishment of the law enforcement officer independent review board and expenses arising in connection with the board; and
- (3) This Act shall be repealed on June 30, 2022, and section 712A-16, Hawaii Revised Statutes, shall be reenacted in the form in which it read on June 30, 2017.

(Approved June 29, 2016.)