

LAW ENFORCEMENT OFFICER INDEPENDENT REVIEW BOARD

DRAFT GUIDELINES FOR REVIEW OF OFFICER-INVOLVED DEATHS (Final Approved October 5, 2021)

1. The review of officer-involved deaths by the Law Enforcement Officer Independent Review Board (“Board”) applies to 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.¹ (A "law enforcement officer", by definition, does not include an adult corrections officer.)
2. The Board may issue letters to law enforcement agencies to remind them of their duty pursuant to section 28-153(c), Hawaii Revised Statutes (HRS), to disclose to the Board the final disposition of all criminal investigations of officer-involved deaths, along with all related reports, documents, and information for the purposes of Board review.
3. When the final disposition is received from the law enforcement agency’s criminal investigation with all related reports, documents and information, those materials and information will be made available to each member of the Board as those documents and information become available. All reports, documents, information and other investigative materials shall remain within the exclusive possession of Board members and shall not be disseminated or disclosed.
4. Board members shall disclose any potential conflicts of interest with a particular case. A majority of the remaining members shall decide whether a conflict exists. If it is determined that a conflict exists, that Board member shall not participate in the review of that officer-involved death. A Board member may voluntarily remove themselves from the review of a specific incident.
5. Board members will not engage in any investigation that is independent from the law enforcement agency’s investigation or the prosecuting attorney’s investigation.
6. The Board shall evaluate the fairness of the criminal investigation and determine whether criminal prosecution is warranted. The Board’s recommendation, determined by a majority vote of at least five (5) members, shall consist of a determination that the prosecuting attorney should:
 - (a) Prosecute;
 - (b) Decline prosecution; or
 - (c) Conduct further investigation.

See section 28-153(f), HRS.

¹ §28-151, Hawaii Revised Statutes.

7. When the review of an incident is complete, a recommendation shall be prepared expeditiously. That recommendation shall be simple and concise. The chairperson of the Board, or the chairperson's designee, will be responsible for completing the recommendation. The recommendation shall be supported by a majority vote of at least five (5) members.
8. The chairperson of the Board will sign the recommendation on behalf of the Board.
9. The Board will review officer-involved deaths for criminal charging purposes only, not for purposes of civil liability or whether a law enforcement agency's procedures were or were not followed.
10. Once complete, the Board will transmit its recommendation to the prosecuting attorney.
11. Once the Board has issued its recommendation and any criminal prosecution or proceedings related to the officer-involved death have been adjudicated, the Board shall release its recommendation and any accompanying reports, documents, and information, unless otherwise prohibited by law. Section 28-153(h), HRS. For purposes of this paragraph, the following proceedings will be considered adjudicated:
 - (a) When a prosecutor declines a case;
 - (b) When a case is charged and resolved by a conviction following a plea or trial; or
 - (c) When a case is dismissed with prejudice by the court.
12. Once the Board has agreed on a recommendation, all reports, documents, and information received shall be returned to the law enforcement agency that provided them, and those materials shall not "accompany" the recommendation. Only the Board's recommendation shall be released when appropriate.