

## LAW ENFORCEMENT OFFICER INDEPENDENT REVIEW BOARD

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### DRAFT GUIDELINES FOR REVIEW OF OFFICER-INVOLVED DEATHS (6-19-18)

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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.<sup>1</sup>

2. 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 disseminated to each member of the Board via encrypted transmission 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.

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3. 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.

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4. The Board may request that the prosecuting attorney conduct further investigation. Board members will not engage in any investigation that is independent from the law enforcement agency's investigation or the prosecuting attorney's investigation.

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5. The Board shall meet in person to evaluate the fairness of the criminal investigation and determine whether criminal prosecution is warranted. The Board's recommendation whether criminal charges should be filed or whether the prosecuting attorney should conduct further investigation shall be determined by majority vote of at least five (5) members. An audio recording of meetings shall be kept and minutes prepared. The audio recording shall be maintained at the Department of the Attorney General.

6. 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 a Board member designated by the chairperson, will be responsible for completing the recommendation. The recommendation shall be supported by a majority vote of at least five (5) members.

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Comment [LG1]: Suggest removing "report" because the law only refers to a "recommendation", not a report.

7. All concurring Board members will sign the recommendation. (6-19-18 meeting)

8. 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.

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<sup>1</sup> §28-151, Hawaii Revised Statutes.

9. Once complete, the Board will transmit its' recommendation to the host-venue Prosecutor.

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10. 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.

11. 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. (1-21-20 meeting)

[Proposed revisions by LGoto, 5/6/21]

**[PART XI.] LAW ENFORCEMENT OFFICER INDEPENDENT REVIEW BOARD****Note**

Part repealed June 30, 2022. L 2016, c 161, §7(3).

Law enforcement officer independent review board; report on activities to 2022 legislature. L 2016, c 161, §3.

**[\$28-151] Definitions.** *[See Note at part heading.]* As used in this part:

"Board" means the law enforcement officer independent review board established by section 28-152.

"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. {L 2016, c 161, pt of §1}

[Previous](#)

[Vol01\\_Ch0001-0042F](#)

[Next](#)

**§28-152 Law enforcement officer independent review board; established.** [See Note at part heading.] (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 or 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. [L 2016, c 161, pt of §1; am L 2017, c 12, §3]

[Previous](#)[Vol01\\_Ch0001-0042F](#)[Next](#)

**[§28-153] Review of incidents of officer-involved death.** [See Note at part heading.] (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. [L 2016, c 161, pt of §1]

[Previous](#)

[Vol01\\_Ch0001-0042F](#)

[Next](#)