



GOV. MSG. NO. 1263

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 29, 2016

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

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

This is to inform you that on June 29, 2016, the following bill was signed into law:

SB2196 SD2 HD1 CD1

RELATING TO THE LAW ENFORCEMENT
OFFICER INDEPENDENT REVIEW BOARD
ACT 161 (16)

Sincerely,

A handwritten signature in black ink that reads "David Y. Ige".

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor
on JUN 29 2016
THE SENATE
TWENTY-EIGHTH LEGISLATURE, 2016
STATE OF HAWAII

ACT 161
S.B. NO. 2196
S.D. 2
H.D. 1
C.D. 1

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:

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

4 "PART . LAW ENFORCEMENT OFFICER INDEPENDENT REVIEW BOARD

5 §28-A Definitions. As used in this part:

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

8 "Law enforcement agency" means any county police
9 department, the department of public safety, and any state or
10 county public body that employs law enforcement officers.

11 "Law enforcement officer" means a sheriff, deputy sheriff,
12 police officer, enforcement officer within the department of
13 land and natural resources conservation and resources
14 enforcement program, enforcement officer within the department
15 of transportation harbors division, and any other employee of a
16 state or county public body who carries a badge and firearm and
17 has powers of arrest.



1 "Officer-involved death" means a death of an individual
2 that results directly from an act or omission of a law
3 enforcement officer while the law enforcement officer is on duty
4 or while the law enforcement officer is off duty but performing
5 activities that are within the scope of the officer's law
6 enforcement duties. ;

7 §28-B Law enforcement officer independent review board;
8 established. (a) There is established a law enforcement
9 officer independent review board that is placed within the
10 department of the attorney general for administrative purposes
11 only. The board shall be responsible for reviewing criminal
12 investigations of incidents of officer-involved death conducted
13 by law enforcement agencies and issuing recommendations to the
14 prosecuting attorney of the county in which the incident
15 occurred.

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

- 17 (1) One deputy attorney general;
- 18 (2) One former prosecuting attorney or deputy prosecuting
19 attorney who served in that capacity with the
20 department of the prosecuting attorney for the city
21 and county of Honolulu;



- 1 (3) One former prosecuting attorney or deputy prosecuting
2 attorney who served in that capacity with the
3 department of the prosecuting attorney for the county
4 of Maui;
- 5 (4) One former prosecuting attorney or deputy prosecuting
6 attorney who served in that capacity with the office
7 of the prosecuting attorney for Hawaii county;
- 8 (5) One former prosecuting attorney or deputy prosecuting
9 attorney who served in that capacity with the office
10 of the prosecuting attorney for the county of Kauai;
- 11 (6) One retired justice or judge of a state court in the
12 State to be appointed by the governor without regard
13 to the requirements of section 26-34;
- 14 (7) One former chief of police, former sheriff, former
15 chief deputy chief of police, or former chief deputy
16 sheriff to be appointed by the governor without regard
17 to the requirements of section 26-34; and
- 18 (8) Two community members to be appointed as follows:
 - 19 (A) One community member to be appointed by the
20 governor without regard to the requirements of
21 section 26-34; and



1 (B) One community member to be appointed by the
2 attorney general;
3 provided that the community members shall not have law
4 enforcement or criminal justice experience.

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

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

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

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



1 purpose, except when the plaintiff in a civil action is the
2 State.

3 §28-C Review of incidents of officer-involved death. (a)

4 Each law enforcement agency in the State shall have a written
5 policy regarding the investigation of incidents of officer-
6 involved death.

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

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

16 (d) Once the board receives the final disposition of the
17 law enforcement agency's criminal investigation and all related
18 reports, documents, and information pursuant to subsection (c),
19 the board shall review all matters submitted to evaluate the
20 fairness of the criminal investigation and to determine whether,



1 in the board's opinion, criminal prosecution or further
2 investigation may be warranted.

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

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

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

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

20 (g) Subject to subsection (h), all matters submitted to
21 the board pursuant to subsection (c) and all proceedings and



1 recommendations of the board shall be confidential. All
2 records, documents, and information in the possession of the
3 board or maintained by the board shall not be subject to
4 discovery or disclosure in any civil or criminal proceedings or
5 to a request for disclosure pursuant to chapters 92 and 92F.
6 The scope of this subsection shall be limited solely to the
7 proceedings and recommendations of the board and any records,
8 documents, and information in the board's possession, and this
9 subsection shall not extend to any records, documents, or
10 information in the possession of another government agency.

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

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

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



1 "(4) There is established in the department of the
2 attorney general a revolving fund to be known as the criminal
3 forfeiture fund, hereinafter referred to as the "fund" in which
4 shall be deposited one-half of the proceeds of a forfeiture and
5 any penalties paid pursuant to section 712A-10(6). All moneys
6 in the fund shall be expended by the attorney general and are
7 [~~hereby~~] appropriated for the following purposes:

8 (a) The payment of any expenses necessary to seize,
9 detain, appraise, inventory, safeguard, maintain,
10 advertise, or sell property seized, detained, or
11 forfeited pursuant to this chapter or of any other
12 necessary expenses incident to the seizure, detention,
13 or forfeiture of such property and such contract
14 services and payments to reimburse any federal, state,
15 or county agency for any expenditures made to perform
16 the foregoing functions;

17 (b) The payment of awards for information or assistance
18 leading to a civil or criminal proceeding;

19 (c) The payment of supplemental sums to state and county
20 agencies for law enforcement purposes;



- 1 (d) The payment of expenses arising in connection with
- 2 programs for training and education of law enforcement
- 3 officers; [and]
- 4 (e) The payment of expenses arising in connection with
- 5 enforcement pursuant to the drug nuisance abatement
- 6 unit in the department of the attorney general[-]; and
- 7 (f) The payment of expenses arising in connection with the
- 8 law enforcement officer independent review board in
- 9 the department of the attorney general."

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

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



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

3 SECTION 5. In codifying the new sections added by section
4 1 of this Act, the revisor of statutes shall substitute
5 appropriate section numbers for the letters used in designating
6 the new sections in this Act.

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

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

11 (1) Section 4 of this Act shall take effect on July 1,
12 2016;

13 (2) The sum appropriated by section 4 of this Act shall
14 serve as the source of funding for the establishment
15 of the law enforcement officer independent review
16 board and expenses arising in connection with the
17 board; and

18 (3) This Act shall be repealed on June 30, 2022, and
19 section 712A-16, Hawaii Revised Statutes, shall be
20 reenacted in the form in which it read on June 30,
21 2017.

S.B. NO.

2196
S.D. 2
H.D. 1
C.D. 1

APPROVED this 29 day of JUN, 2016

A handwritten signature in black ink, appearing to read "David Ige". The signature is fluid and cursive, with a large loop at the end of the last name.

GOVERNOR OF THE STATE OF HAWAII