

Report Title:

Police Officers; Representation by Counsel

Description:

Clarifies meaning of "acts done in the performance of the officer's duty as a police officer" for purposes of determining if a police officer who is prosecuted or sued must be represented by an attorney provided by the county. Specifies that the police commission's request for recommendation by the county attorney or corporation counsel shall be responded to within seven days. (SD2)



A BILL FOR AN ACT

RELATING TO POLICE OFFICERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 52D-8, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§52D-8[+] **Police officers; counsel for.** (a) Whenever
4 a police officer is prosecuted for a crime or sued in a civil
5 action for acts done in the performance of the officer's duty as
6 a police officer, the police officer shall be represented and
7 defended:

8 (1) In criminal proceedings, by an attorney to be employed
9 and paid by the county in which the officer is
10 serving; and

11 (2) In civil cases, by the corporation counsel or county
12 attorney of the county in which the police officer is
13 serving.

14 (b) For purposes of this section, "acts done in the
15 performance of the officer's duty as a police officer" shall
16 include, but not be limited to:

17 (1) Any action while in a duty status or while the police
18 officer is on duty;



1 (2) Any action performed by an off-duty police officer
2 while effecting an arrest or performing any other
3 police duty; or

4 (3) Any action performed by the police officer while on
5 special duty status."

6 SECTION 2. Section 52D-9, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "~~[~~§52D-9~~]~~ **Determination of scope of duty.** ~~[The]~~
9 Subject to section 52D-8, the determination of whether an act,
10 for which the police officer who is being prosecuted or sued,
11 was done in the performance of the police officer's duty, ~~[so as~~
12 ~~to entitle]~~ entitling the police officer to be represented by
13 counsel provided by the county, shall be made by the police
14 commission of the county. Before making a determination, the
15 police commission shall consult the county attorney or the
16 corporation counsel, who may make a recommendation to the police
17 commission with respect thereto if the county attorney or
18 corporation counsel so desires. If the county attorney or
19 corporation counsel of the county in which the police officer is
20 serving fails to provide the police commission with a
21 recommendation within seven days of the commission's request,
22 the discretion to make a recommendation shall be deemed waived



1 and the police commission may make a determination required of
2 this section without considering any recommendation by the
3 county attorney or corporation counsel. The determination of
4 the police commission shall be conclusive for the purpose of
5 this section and section 52D-8[-], but shall be subject to
6 judicial review."

7 SECTION 3. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 4. This Act shall take effect upon approval.

