

**"CHAPTER 28
ATTORNEY GENERAL**

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"PART I. DEPARTMENT, GENERALLY

§28-1 Appears for State. The attorney general shall appear for the State personally or by deputy, in all the courts of record, in all cases criminal or civil in which the State may be a party, or be interested, and may in like manner appear in the district courts in such cases. [L 1866, p 16; RL 1925, §1486; RL 1935, §500; RL 1945, §1501; RL 1955, §30-1; HRS §28-1; am L 1969, c 175, §13; am L 1989, c 230, §1]

Cross References

District courts as courts of record, see §604-17.
Functions generally, see §26-7.

Attorney General Opinions

Authority to bring action against public officers, in the public interest. Att. Gen. Op. 68-26.

Case Notes

Office of attorney general first constituted in 1846, history of the office under the Kingdom. 6 H. 718, 728 (single justice); 8 H. 572. Performance of functions by another temporarily. Early cases: See 8 H. 521, compare 3 H. 669, 5 H. 59.

Accountability for acts: 6 H. 718 (will not be held in contempt for refusing to prosecute, decision of single justice); 12 H. 124, 128-30; 26 H. 570 (liability to disbarment or suspension of government attorney for misconduct in administration of office); 21 H. 539, 549 (liability to damages); 23 H. 362 (liability to damages).

Criminal cases, prosecution by county prosecuting officers under authority of attorney general. 16 H. 769, 779-80; 19 H. 162; 26 H. 570.

Charitable trusts, functions in connection with. 33 H. 647; 36 H. 250; 36 H. 334; 37 H. 111, 116.

Scope of functions as parens patriae of charitable trusts. 54 H. 299, 507 P.2d 724.

Section is irrelevant and attorney general is without standing as party to rate proceeding before PUC. 54 H. 663, 513 P.2d 1376.

Attorney general may represent a state employee in a civil action while prosecuting the same employee in a criminal matter. 71 H. 598, 801 P.2d 548.

Cited: 18 H. 76.

" **§28-2 Prosecutes offenders, enforces bonds.** The attorney general shall be vigilant and active in detecting offenders against the laws of the State, and shall prosecute the same with diligence. The attorney general shall also enforce all bonds and other obligations in favor of the State that may be placed in the attorney general's hands for that purpose, by any person having the lawful custody of the papers; and the attorney general shall likewise be diligent in prosecuting all persons who may obstruct any street, channel, harbor, wharf, or other highway, or any stream or public watercourse, or commit any trespass, or waste on any portion of the public domain, or other public property. [L 1866, p 17; RL 1925, §1487; RL 1935, §501; RL 1945, §1502; RL 1955, §30-2; HRS §28-2; gen ch 1993]

Case Notes

Duties in connection with divorce matters. 35 H. 849.

Supersession of county prosecutor upheld. 63 H. 424, 629 P.2d 1126.

" **§28-2.5 Investigations.** (a) The attorney general shall investigate alleged violations of the law when directed to do so by the governor, or when the attorney general determines that an investigation would be in the public interest.

(b) The attorney general, when conducting a civil, administrative, or criminal investigation, or the county prosecuting attorneys, when conducting a criminal investigation in their respective jurisdictions, may, subject to the privileges enjoyed by all witnesses in this State, subpoena witnesses, examine them under oath, and require the production of any books, papers, documents, or other objects designated therein or any other record however maintained, including those electronically stored, which are relevant or material to the investigation.

(c) A subpoena issued under subsection (b):

(1) Shall state the name of the issuing authority and shall command each person to whom it is directed to

attend and give testimony at the time and place specified therein, and may also command the person to whom it is directed to produce books, papers, documents, or other objects specifically designated therein;

- (2) May be served by any police officer or by any employee of the issuing authority who has the powers of a police officer at any place within the jurisdiction of the issuing authority;
- (3) Shall require attendance of the witness only in the county wherein the witness is served with the subpoena or at such other place as is agreed upon by the witness and the issuing authority; provided that if the subpoena is served in a county other than that in which the witness resides or is employed or transacts the witness' business in person, the issuing authority shall bear the expense of travel by the witness to and attendance at the place named in the subpoena to the same extent as provided by the rules of court; and
- (4) Shall contain a short, plain statement of the recipient's rights and the procedure for enforcing and contesting the subpoena.

(d) The issuing authority shall pay to a financial institution which is served a subpoena issued under this section a fee for reimbursement of such costs as are necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, documents, or other objects designated by the subpoena. Reimbursement shall be paid at the rate of \$15 per hour for research time and 50 cents per page for reproduction.

(e) Upon application by the attorney general or the county prosecuting attorney who issued the subpoena, a circuit court of the county wherein the witness resides or is found may compel obedience to the subpoena; provided that the court, on motion promptly made, may quash or modify the subpoena if compliance would be unreasonable or oppressive or violate any privilege the witness may be entitled to exercise in a court proceeding.

(f) Compliance with a subpoena issued pursuant to this section shall not give rise to a civil action for damages by an individual or entity as to whom testimony has been given or documents or other things provided in compliance with the subpoena. [L 1972, c 33, §1; gen ch 1985; am L 1986, c 170, §1; am L 1990, c 279, §1; am L 1991, c 244, §1; am L 1992, c 273, §1; gen ch 1992]

Marsland v. First Hawaiian Bank: Home Rule and the Scope of the County Prosecutor's Power. 12 UH L. Rev. 261.

Case Notes

Prosecutor's authority is derived directly from the authority of the attorney general; prosecutor cannot have greater powers to subpoena than the attorney general. 70 H. 126, 764 P.2d 1228.

" **§28-3 Gives opinions.** The attorney general shall, when requested, give opinions upon questions of law submitted by the governor, the legislature, or its members, or the head of any department. The attorney general shall file a copy of each opinion with the lieutenant governor, the public archives, the supreme court library, and the legislative reference bureau within three days of the date it is issued. Opinions on file with the lieutenant governor, the public archives, and the supreme court library shall be available for public inspection. The legislative reference bureau shall furnish the members of the legislature with a list of the most recent opinions filed with the bureau, at least once a year, not later than twenty days before the beginning of each regular session. [L 1866, p 17; RL 1925, §1488; RL 1935, §502; RL 1945, §1503; RL 1955, §30-3; am L 1961, c 98, §1; HRS §28-3; am L 1988, c 88, §1]

" **§28-4 Advises public officers.** The attorney general shall, without charge, at all times when called upon, give advice and counsel to the heads of departments, district judges, and other public officers, in all matters connected with their public duties, and otherwise aid and assist them in every way requisite to enable them to perform their duties faithfully. [L 1866, p 17; RL 1925, §1489; RL 1935, §503; RL 1945, §1504; RL 1955, §30-4; am L 1963, c 85, §3; HRS §28-4; am L 1970, c 188, §39; gen ch 1993]

Case Notes

Early cases: 15 H. 718; see also 12 H. 124.

Attorney general has affirmative duty to provide counsel for judges being sued in their official capacities. 57 H. 284, 554 P.2d 1128.

" **§28-5 Aids poor.** The attorney general shall give counsel and aid to poor and oppressed citizens of the State and assist them in obtaining their just rights without charge; provided that the attorney general shall not be obliged to render such aid, counsel, and assistance, unless requested so to do by the governor, or by some one of the heads of departments. [L 1866, p 17; RL 1925, §1490; RL 1935, §504; RL 1945, §1505; RL 1955, §30-5; HRS §28-5; gen ch 1993]

" **§28-5.1 REPEALED.** L 1979, c 105, §4.

" **[\$28-5.2] Protection of charitable assets; attorney general's authority.** (a) The attorney general shall represent the public interest in the protection of charitable assets and may:

- (1) Enforce the application of a charitable asset in accordance with:
 - (A) The law and terms governing the use, management, investment, distribution, and expenditure of the charitable asset; and
 - (B) The charitable purpose of the person holding the asset;
 - (2) Act to prevent or remedy:
 - (A) The misapplication, diversion, or waste of a charitable asset; or
 - (B) A breach of fiduciary or other legal duty in the governance, management, or administration of a charitable asset; or
 - (3) Commence or intervene in an action to:
 - (A) Prevent, remedy, or obtain damages for:
 - (i) The misapplication, diversion, or waste of a charitable asset; or
 - (ii) A breach of fiduciary or other legal duty in the governance, management, or administration of a charitable asset; or
 - (B) Determine that an asset is a charitable asset.
- (b) If the attorney general has reason to believe an investigation is necessary to determine whether action is advisable under this section, the attorney general may conduct an investigation, including exercising administrative subpoena power under sections 28-2.5 and 467B-9.3.
- (c) This section shall not limit the powers and duties of the attorney general under the laws of this State.
- (d) As used in this section, "charitable asset" means property that is given, received, or held for a charitable

purpose. The term does not include property acquired or held for a for-profit purpose. [L 2014, c 217, §2]

" **§28-6 No fee; not to act as attorney.** The attorney general shall not receive any fee or reward from or in behalf of any person or prosecutor, for services rendered in any prosecution or business to which it shall be the attorney general's official duty to attend; nor be concerned as counsel or attorney for either party in any civil action depending upon the same state of facts. [L 1866, p 17; RL 1925, §1491; RL 1935, §505; RL 1945, §1506; RL 1955, §30-6; HRS §28-6; gen ch 1993]

Case Notes

Construed, as to power to accept assistance of private counsel employed by complaining witness in prosecuting criminal case. 19 H. 437; 20 H. 7; 20 H. 71.

" **§28-7 Accounts.** The attorney general shall account, in the manner provided by law, for all fees, bills of costs and other moneys collected or received by the attorney general by virtue of the attorney general's office. [L 1866, p 17; am L 1923, c 35, §1; RL 1925, §1492; am L 1931, c 59, §1; RL 1935, §506; RL 1945, §1507; RL 1955, §30-7; HRS §28-7; gen ch 1993]

Cross References

Generally, see §40-31.

" **[\$28-7.5] Administrative services manager; appointment and duties.** The attorney general may appoint and, at the attorney general's pleasure, dismiss an administrative services manager of the department of the attorney general who shall generally assist the attorney general, as the attorney general may require, in the performance of the administrative and managerial duties of the attorney general that are not required to be performed by an attorney. The administrative services manager shall be appointed without regard to chapter 76, need not be an attorney, and shall hold no other public or private office or employment. Section 26-53 shall not apply to the administrative services manager of the department of the attorney general. [L 1988, c 348, §1; am L 2000, c 253, §150]

" **§28-8 First deputy attorney general; other deputies.** (a) The attorney general shall appoint, and at the attorney general's pleasure remove, a first deputy attorney general and other deputies and law clerks as the exigencies of the public service may require, and shall be responsible for all of the acts of the first deputy attorney general, other deputies, and law clerks. They shall act under the direction of the attorney general and shall perform duties as the attorney general may require regardless of the source of funding for their compensation and notwithstanding any law to the contrary, except that the attorney general shall not require the performance of duties that would violate the terms of an applicable funding source or that would be in contravention of a federal requirement, restriction, or condition. The first deputy attorney general and other deputies, subject to the attorney general's directions, may perform or exercise any and all duties or powers by law required of or conferred upon the attorney general.

(b) The attorney general may appoint and, by contract, retain the services of special deputies to perform such duties and exercise such powers as the attorney general may specify in their several appointments. The special deputies shall serve at the pleasure of the attorney general. At the option of the attorney general, special deputies may be compensated on a fixed-price basis, an hourly rate basis, with or without a fixed cap, or, if a special deputy has been appointed to represent the State in an action by the State pursuant to section 661-10, through a contingent fee arrangement to be specified in the contract and payable out of all sums the special deputy recovers for the State by judgment, order, or settlement. [L 1866, p 18; RL 1925, §1494; RL 1935, §508; am L 1937, c 52, §1; RL 1945, §1509; RL 1955, §30-9; am L 1963, c 54, §1; HRS §28-8; am L 1982, c 68, §1; gen ch 1985; am L 1995, c 73, §1; am L 2001, c 46, §1; am L 2006, c 48, §2]

Case Notes

Authority of deputy attorney general, early cases. 15 H. 139, 145; 15 H. 612.

" **§28-8.3 Employment of attorneys.** (a) No department of the State other than the attorney general may employ or retain any attorney, by contract or otherwise, for the purpose of representing the State or the department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing

provision shall not apply to the employment or retention of attorneys:

- (1) By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;
- (2) By any court or judicial or legislative office of the State; provided that if the attorney general is requested to provide representation to a court or judicial office by the chief justice or the chief justice's designee, or to a legislative office by the speaker of the house of representatives and the president of the senate jointly, and the attorney general declines to provide such representation on the grounds of conflict of interest, the attorney general shall retain an attorney for the court, judicial, or legislative office, subject to approval by the court, judicial, or legislative office;
- (3) By the legislative reference bureau;
- (4) By any compilation commission that may be constituted from time to time;
- (5) By the real estate commission for any action involving the real estate recovery fund;
- (6) By the contractors license board for any action involving the contractors recovery fund;
- (7) By the office of Hawaiian affairs;
- (8) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and 485A;
- (9) As grand jury counsel;
- (10) By the Hawaii health systems corporation, or its regional system boards, or any of their facilities;
- (11) By the auditor;
- (12) By the office of ombudsman;
- (13) By the insurance division;
- (14) By the University of Hawaii;
- (15) By the Kahoolawe island reserve commission;
- (16) By the division of consumer advocacy;
- (17) By the office of elections;
- (18) By the campaign spending commission;
- (19) By the Hawaii tourism authority, as provided in section 201B-2.5;
- (20) By the division of financial institutions for any action involving the mortgage loan recovery fund;
- (21) By the office of information practices; or
- (22) By a department, if the attorney general, for reasons deemed by the attorney general to be good and sufficient, declines to employ or retain an attorney

for a department; provided that the governor waives the provision of this section.

(b) For purposes of this section the term "department" includes any department, board, commission, agency, bureau, or officer of the State.

(c) Every attorney employed by any department on a full-time basis, except an attorney employed by the public utilities commission, the labor and industrial relations appeals board, the Hawaii labor relations board, the office of Hawaiian affairs, the Hawaii health systems corporation or its regional system boards, the department of commerce and consumer affairs in prosecution of consumer complaints, insurance division, the division of consumer advocacy, the University of Hawaii, the Hawaii tourism authority as provided in section 201B-2.5, the office of information practices, or as grand jury counsel, shall be a deputy attorney general.

(d) All attorneys retained by contract, whether by the attorney general or a department, shall be retained in accordance with chapter 103D. [L 1995, c 178, §1; am L 1996, c 52, §1, c 262, §4, and c 270, §4; am L 1997, c 251, §3; am L 1998, c 115, §5; am L 2000, c 105, §1 and c 272, §1; am L 2004, c 57, §5 and c 58, §§2, 14(2); am L 2005, c 22, §50; am L 2006, c 306, §1; am L 2007, c 290, §5; am L 2008, c 16, §3 and c 45, §1; am L Sp 2009, c 5, §12; am L 2010, c 84, §4; am L 2011, c 124, §39; am L 2015, c 92, §3]

Case Notes

Discussed: 87 H. 152, 952 P.2d 1215.

" **[\$28-8.5] Special assistant to the attorney general; appointment and duties; secretary.** The attorney general may appoint, and at the attorney general's pleasure dismiss, a special assistant to the attorney general who shall generally assist the attorney general, as the attorney general may require, in the initiation, direction, or monitoring of administrative or managerial special projects that the attorney general has determined to be necessary. In addition, the special assistant shall, as the attorney general may direct, serve as the attorney general's representative to, and monitor and apprise the attorney general of the activities of, the various national, regional, state, and local organizations and committees in which the attorney general has membership, participation, or interest. The special assistant to the attorney general shall be appointed without regard to chapter 76, need not be an attorney, and shall hold no other public or

private office or employment. Section 26-53 shall not be applicable to the special assistant to the attorney general. The attorney general may also appoint, without regard to chapter 76, one secretary for the special assistant to the attorney general. [L 1989, c 82, §1; am L 2000, c 253, §150]

" **§28-9 Additional deputies for acquisition of rights-of-way.** The attorney general may appoint and employ deputy attorneys general, additional to those covered by the appropriation for the department of the attorney general, to provide legal services for the acquisition of rights-of-way and for proceedings therefor, and the compensation for such services shall be paid by the state department of transportation from the state highway fund. [L 1953, c 189, §2; RL 1955, §30-9.5; am L Sp 1959 2d, c 1, §26; HRS §28-9]

" **§28-10 Prohibition on private practice of law by the attorney general, first deputy, and other deputies.** The attorney general, the attorney general's first deputy, and other deputies shall devote their entire time and attention to the duties of their respective offices. They shall not engage in the private practice of law, nor accept any fees or emoluments other than their official salaries for any legal services. This section shall not apply to any special deputy employed on a part-time basis for a limited period. [L 1953, c 105, §9; RL 1955, §30-10; am L 1957, c 180, §2; HRS §28-10; am L 1982, c 68, §2; gen ch 1985]

Case Notes

Disqualification after retirement from office. See 33 H. 305; 49 H. 252, 413 P.2d 249.

" **§28-10.5 Criminal and juvenile justice resource coordination; administrator and staff.** (a) The department of the attorney general shall serve as the clearinghouse for information on financial and nonfinancial resources that may be available to assist in improving the delivery or coordination of services under, or the implementation of, programs of the criminal justice and juvenile justice systems and agencies and shall develop, update, and coordinate the implementation of a comprehensive statewide plan of programs and priorities for the improvement of law enforcement and criminal justice, including

the prevention and control of juvenile delinquency. In addition, the department may:

- (1) Seek, apply for, and administer federal funding and other resources to enhance and expand the capabilities of the criminal and juvenile justice agencies;
- (2) Coordinate and assess information on a statewide basis for the development of policies to improve the criminal justice and juvenile justice systems and programs;
- (3) Administer state-funded criminal and juvenile justice programs as specifically directed by law or as may be implied through the appropriation of funds; and
- (4) Administer programs for the prevention of sexual violence and the protection and treatment of victims of sexual violence.

(b) The attorney general may employ, without regard to chapter 76, and at pleasure dismiss, an administrator to oversee and carry out the resource coordination functions of the department set forth in subsection (a). In addition, the attorney general may employ, in accordance with chapter 76, other support staff necessary for the performance of the resource coordination functions. [L 1988, c 71, §1; am L 2000, c 253, §150; am L 2005, c 133, §1; am L 2006, c 300, §4]

Cross References

Juvenile justice information system, see chapter 846D.

" **§28-10.6 Crime research, prevention, and education; administrator and staff.** (a) The department of the attorney general shall initiate, develop, and perform or coordinate programs, projects, and activities, as determined by the attorney general, on the subject of crime, including but not limited to crime research, prevention, and education. The attorney general may:

- (1) Research, evaluate, and make recommendations regarding crime, crime prevention, and the criminal justice system to the governor, the legislature, the judiciary, criminal justice agencies, or the general public, as appropriate;
- (2) Develop and implement or coordinate statewide crime prevention programs and activities including:
 - (A) Providing crime prevention training programs for law enforcement agencies, citizens, businesses, and civic groups; and

- (B) Assisting in the organization of crime prevention teams in communities to encourage the development of community crime prevention programs;
- (3) Develop public education programs through various broadcast or print media to provide to the general public information that will assist citizens in developing the knowledge and confidence to prevent crime and to avoid becoming victims of crime;
- (4) Establish, as deemed by the attorney general to be necessary or appropriate, citizen and government agency representative study teams to study specific crime subjects or criminal justice system problems, in order to obtain input or advice from a more specialized segment of the criminal justice or public community on those specific matters; and
- (5) Establish trust funds or accounts and receive and expend financial grants and donations for crime research, prevention, or education.

(b) The attorney general may employ, without regard to chapter 76, and at the attorney general's pleasure dismiss, an administrator to oversee and carry out the programs, projects, and activities on the subject of crime, as set forth in subsection (a). The attorney general may also employ other support staff, in accordance with chapter 76, necessary for the performance or coordination of the programs, projects, and activities on the subject of crime. [L 1989, c 332, pt of §1; am L 2000, c 253, §150; am L 2006, c 300, §5]

Case Notes

This section does not authorize the prosecuting attorney to use public funds and resources to advocate for a proposed constitutional amendment in a general election. 113 H. 446, 153 P.3d 1131.

" **§28-10.7 REPEALED.** L 1990, c 260, §2.

" **[§28-10.8] Rules.** The department of the attorney general may adopt, amend, or repeal rules, pursuant to chapter 91, that may be necessary or convenient for the performance of its functions. The department's rules may include general rules of practice and procedure that apply to all administrative offices, boards, and commissions placed or established within the department without the necessity of individual adoption by the

administrative offices, boards, or commissions within the department. [L 1989, c 332, pt of §1]

" **§28-11 Investigators; appointment and powers.** (a) The attorney general shall appoint and commission one or more investigators as the exigencies of the public service may require. Persons appointed and commissioned under this section shall have and may exercise all of the powers and authority and the benefits and privileges of a police officer or of a deputy sheriff. These investigators shall consist of personnel whose primary duty will be to conduct investigations as directed by the attorney general.

(b) The attorney general may also appoint persons whose primary function shall be to provide security coverage for the governor and other public officials of this State, to be known as security investigators, who shall have and may exercise all the powers and authority of the investigators appointed under subsection (a). When not providing security coverage for the governor or other public officials, the security investigators shall conduct other investigations as directed by the attorney general. The positions of security investigators may be exempt from chapter 76. [L 1951, c 163, §1; am L 1951, c 264, §2; RL 1955, §30-11; am L 1963, c 85, §3; HRS §28-11; am L 1973, c 48, §1; am L 1981, c 161, §1; am L 1989, c 211, §10; am L 1990, c 281, §11; am L 2006, c 300, §6]

" **§28-11.5 REPEALED.** L 1992, c 146, §4.

" **§28-12 Seal of department.** The attorney general shall procure a proper seal of the department of the attorney general with such suitable inscriptions and devices as the attorney general may approve, to be known as the official seal of the attorney general of the State. The seal shall remain in the attorney general's custody to be kept and used by the attorney general to verify official documents under such rules and regulations as the attorney general may prescribe. [L 1907, c 92, §1; RL 1925, §1495; RL 1935, §509; RL 1945, §1510; RL 1955, §30-12; HRS §28-12; gen ch 1985]

" **[§28-13] Antitrust trust fund.** (a) There is established in the state treasury the antitrust trust fund, into which shall be deposited:

- (1) Ten per cent of any antitrust judgment or settlement received by the State except where the deposit is inconsistent with the court order or settlement agreement relating to the amount; and

- (2) Appropriations made by the legislature.

(b) The antitrust trust fund shall be administered by the department of the attorney general and shall be used for expenditures relating to the enforcement of antitrust laws, including but not limited to expenditures for training, equipment purchases, educational resources, and facilitating participation in antitrust lawsuits and investigations initiated by other states.

(c) All unencumbered and unexpended moneys in excess of \$250,000 remaining on balance in the antitrust trust fund at the close of June 30 of each year shall lapse to the credit of the general fund.

(d) The department of the attorney general shall submit a report to the legislature no later than twenty days prior to the convening of each regular session to provide an accounting of the receipts and expenditures of the fund. [L 2001, c 97, §2]

" **§28-14 REPEALED.** L 2003, c 177, §8.

" **§28-15 Tobacco enforcement special fund.** (a) There is established in the state treasury the tobacco enforcement special fund, into which shall be deposited the tobacco settlement moneys as provided by section 328L-2(a), the allocated portion of the stamp fee designated to pay for the cost of enforcing the cigarette tax stamp as provided by section 245-26, and fines as provided for by section 245-41.

(b) The tobacco enforcement special fund shall be administered by the department of the attorney general and shall be used for administering, operating, monitoring, and ensuring compliance with and enforcement of:

- (1) The Master Settlement Agreement as defined in chapter 675 and any other statutes or programs relating to that agreement;
- (2) Chapter 675;
- (3) Tobacco prevention programs;
- (4) The cigarette tax stamp as defined in chapter 245 and any other statutes or programs relating to that chapter;
- (5) Chapter 245;
- (6) Chapter 486P and any other statutes or programs relating to that chapter; and

(7) Any other requirement deemed necessary to carry out the purposes of the fund.

(c) All unencumbered and unexpended moneys in excess of \$500,000 remaining on balance in the tobacco enforcement special fund at the close of June 30 of each year shall lapse to the credit of the state general fund.

(d) The department of the attorney general shall submit a report to the legislature, no later than twenty days prior to the convening of each regular session, providing an accounting of the receipts and expenditures of the fund. [L 2001, c 270, pt of §1; am L 2003, c 177, §1; am L 2004, c 43, §19 and c 52, §19]

" **[\$28-16] Litigation deposits trust fund.** (a) There is created in the state treasury the litigation deposits trust fund. There shall be deposited into this fund all moneys received through any civil action in which the State is a party where the settlement amount is \$100,000 or higher, except for those actions involving departments able to procure their own legal services as provided for by section 28-8.3 and where no other state statute or court order specifically provides for the deposit of moneys received through the action.

(b) The fund shall be administered by the department of the attorney general. The department shall maintain accounting records of fund moneys, including subsidiary records of individual litigation deposits and disbursements thereof. Moneys in the fund may be separated into subsidiary accounts; provided that one subsidiary account shall not be commingled with moneys from another account except for deposit or investment purposes under subsection (d).

(c) Disbursements from each account maintained under subsection (b) may include attorney's fees and other necessary expenses that the department determines to be reasonable and directly related to prosecution of the civil action for which the account is maintained; provided that in the case of moneys deposited as a result of recoveries by an agency to which a non-general fund applies, the moneys shall be held and disbursed intact for deposit to the credit of the non-general fund. Money deposited in the fund pursuant to an order of the court shall be disbursed in accordance with the order of the court. Any residual funds remaining in an account shall be transferred to the respective non-general or general fund with which the civil action is associated no later than thirty days after the civil action for which the account is maintained is closed and all costs of that civil action have been paid, unless otherwise provided for by statute.

(d) Moneys in the fund may be invested by the department in securities as provided by section 36-21. Investment earnings shall be deposited in the general fund.

(e) The department shall submit a report to the legislature no later than twenty days prior to the convening of each regular session on:

- (1) The transactions, by subsidiary account, that take place in the fund for each fiscal year; and
- (2) A summary of the collections made in any amount on behalf of other departments and agencies specifying the appropriate number of transactions and amount collected for each department and agency. [L 2002, c 178, §1]

"PART II. SHERIFF--REPEALED

§§28-21 to 28 REPEALED. L 1975, c 192, §2.

"PART III. CIVIL IDENTIFICATION--REPEALED

§§28-31 to 49 REPEALED. L 1983, c 78, §2.

Cross References

For present provisions, see chapter 846, part II.

"PART IV. CRIME STATISTICS--REPEALED

§§28-51 to 56 REPEALED. L 1975, c 120, §2; L 1983, c 78, §2.

Cross References

Criminal justice data center, see chapter 846.

"[PART V. ORGANIZED CRIME UNIT]

[\$28-71] Organized crime unit. There is established in the department of the attorney general an organized crime unit.

The organized crime unit shall consist of attorneys, and other specialized personnel necessary to implement this section. They shall be appointed by the attorney general who shall fix their compensation. Every attorney and specialist shall be

entitled to hold the attorney's and specialist's position during good behavior, subject to removal by the attorney general only as provided in chapter 76.

The organized crime unit shall:

- (1) Receive, gather, and analyze information;
- (2) Develop tactical and strategic intelligence;
- (3) Assist in control of organized criminal activity;
- (4) Provide technical assistance and training to county law enforcement agencies in the detection and prosecution of organized crime; and
- (5) Provide with the attorney general's approval specialized personnel and technological equipment for the use of law enforcement agencies in the State with respect to organized crime.

For purposes of this section, "organized crime" means the unlawful activities of the members of an organized association engaged in supplying illegal goods and services, including but not limited to gambling, prostitution, loan sharking, narcotics, labor racketeering, and other unlawful activities of members of such organizations. [L 1971, c 108, §1; gen ch 1993]

Cross References

Organized crime control, see chapter 842.

"PART VI. MEDICAID FRAUD UNIT

[\$28-91] Medicaid fraud unit. There is established in the department of the attorney general a medicaid fraud unit.

The unit shall employ such attorneys, auditors, investigators, and other personnel as necessary to promote the effective and efficient conduct of the unit's activities. Except for the attorneys, all other employees of the medicaid fraud unit shall be subject to chapter 76.

The purpose of the medicaid fraud unit shall be to conduct a statewide program for the investigation and prosecution of medicaid fraud cases and violations of all applicable state laws relating to the providing of medical assistance and the activities of providers of such assistance. The medicaid fraud unit may also review and take appropriate action on complaints of abuse and neglect of patients of health care facilities receiving payments under the state plan for medical assistance and may provide for collection or referral for collection of overpayments made under the state plan for medical assistance that are discovered by the unit in carrying out its activities. [L 1978, c 106, §2; am L 2000, c 253, §150]

Law Journals and Reviews

Holding Hawai`i Nursing Facilities Accountable for the Inadequate Pain Management of Elderly Residents. 27 UH L. Rev. 233.

" **[\$28-91.5] Medicaid investigations recovery fund; established.** There is established in the state treasury the medicaid investigations recovery fund as a special fund, and which is to be administered by the department of the attorney general, into which shall be deposited all funds that have been recovered as a result of medicaid fraud settlements. Moneys from this special fund shall be used to support a portion of operating expenses of the medicaid fraud unit within the department of the attorney general. [L Sp 1995, c 15, §1]

" **[\$28-94] Dependent elder abuse; suits by the State; civil penalties.** (a) The attorney general may bring a civil action on behalf of the State, against any caregiver who commits abuse of a dependent elder, to prevent, restrain, or remedy such conduct. Any caregiver against whom a civil judgment is entered on a complaint alleging that the caregiver committed abuse against a dependent elder, shall be subject to a civil penalty of not less than \$500 nor more than \$1,000 for each day that the abuse occurred, and the costs of investigation.

(b) For the purposes of this section:

"Abuse" means actual or imminent physical injury, psychological abuse or neglect, sexual abuse, financial exploitation, negligent treatment, or maltreatment.

Abuse occurs where:

- (1) Any dependent elder exhibits evidence of:
 - (A) Substantial or multiple skin bruising or any other internal bleeding;
 - (B) Any injury to skin causing substantial bleeding;
 - (C) Malnutrition;
 - (D) A burn or burns;
 - (E) Poisoning;
 - (F) The fracture of any bone;
 - (G) A subdural hematoma;
 - (H) Soft tissue swelling;
 - (I) Extreme physical pain; or
 - (J) Extreme mental distress which includes a consistent pattern of actions or verbalizations including threats, insults, or harassment, that

- humiliates, provokes, intimidates, confuses, and frightens the dependent elder;
and the injury is not justifiably explained, or where the history given is at variance with the degree or type of injury, or circumstances indicate that the injury is not the product of an accidental occurrence;
- (2) Any dependent elder has been the victim of nonconsensual sexual contact or conduct by a caregiver, including but not limited to:
 - (A) Sexual assault, molestation, sexual fondling, incest, prostitution;
 - (B) Obscene or pornographic photographing, filming, or depiction; or
 - (C) Other similar forms of sexual exploitation;
 - (3) Any dependent elder is provided with dangerous, harmful, or detrimental drugs as defined by section 712-1240; however, this paragraph shall not apply when such drugs are provided to the dependent elder pursuant to the direction or prescription of a practitioner, as defined in section 712-1240;
 - (4) Any dependent elder is subject to neglect;
 - (5) Any dependent elder appears to lack sufficient understanding or capacity to make or communicate responsible decisions concerning the dependent elder's person, and appears to be exposed to a situation or condition which poses an imminent risk of death or risk of serious physical harm; or
 - (6) There is financial and economic exploitation.

"Caregiver" means any person who has undertaken the care, custody, or physical control of, or who has a legal or contractual duty to care for the health, safety, and welfare of a dependent elder, including, but not limited to, owners, operators, employees, or staff of:

- (1) Hospitals;
- (2) Hospices;
- (3) Adult residential care homes;
- (4) Developmentally disabled domiciliary homes;
- (5) Developmentally disabled adult foster homes;
- (6) Intermediate care facilities;
- (7) Skilled nursing facilities;
- (8) Special treatment facilities;
- (9) Assisted living facilities;
- (10) Adult foster family homes;
- (11) Adult day health care centers and adult day care programs;
- (12) Independent living centers;
- (13) Long-term care facilities;

- (14) Community care facilities for the elderly;
- (15) Respite care facilities;
- (16) Foster homes; and
- (17) Private residences used for commercial purposes to care for dependent elders.

"Dependent elder" means any person sixty-two years of age or older who, because of mental or physical impairment, is dependent upon another person, a care organization, or a care facility for personal health, safety, or welfare.

"Financial and economic exploitation" means the wrongful or negligent taking, withholding, misappropriation, or use of a dependent elder's money, real property, or personal property. "Financial and economic exploitation" may include but is not limited to:

- (1) Breaches of fiduciary relationships such as the misuse of a power of attorney or the abuse of guardianship privileges, resulting in the unauthorized appropriation, sale, or transfer of property;
- (2) The unauthorized taking of personal assets;
- (3) The misappropriation, misuse, or unauthorized transfer of moneys belonging to the dependent elder from a personal or joint account; or
- (4) The intentional or negligent failure to effectively use a dependent elder's income and assets for the necessities required for the elder's support and maintenance.

The exploitations may involve coercion, manipulation, threats, intimidation, misrepresentation, or exertion of undue influence.

"Neglect" means the reckless disregard for the health, safety or welfare of a dependent elder, that results in injury, loss, or damage. "Neglect" includes, but is not limited to:

- (1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter;
- (2) Failure to provide or arrange for necessary psychological, physical, or health care; except when such failure is in accordance with the dependent elder's directive;
- (3) Failure to protect a dependent elder from known health or safety hazards; and
- (4) Failure to protect against known acts of abuse by third parties. [L 2003, c 196, §2]

Cross References

Some other actions or penalties for violations committed against elders, see §§412:3-114.5, 444-10.7, 454-4.5, 480-13, 480-13.5, 485A-603.5, 485A-604.5, and 487-14.

Law Journals and Reviews

Holding Hawai'i Nursing Facilities Accountable for the Inadequate Pain Management of Elderly Residents. 27 UH L. Rev. 233.

Elder Law Hawaii. 13 HBJ, no. 13, at 85 (2009).

"[PART VII.] WITNESS SECURITY

Cross References

Rights of victims and witnesses in criminal proceedings, see chapter 801D.

§28-101 Witness security and protection. (a) The attorney general shall establish a statewide witness program through which the attorney general may fund or provide for the security and protection of a government witness or a potential government witness in an official proceeding or investigation where the attorney general determines that an offense described in section 710-1071 (intimidating a witness), 710-1072 (tampering with a witness), or 710-1072.2 (retaliating against a witness) is likely to be committed or involves great public interest. The attorney general may also fund or provide for the security and protection of the immediate family of, or a person otherwise closely associated with, the witness or potential witness if the family or person may also be endangered. In determining whether the funds or security and protection are to be provided, the attorney general shall give greatest priority to official proceedings or investigations involving pending or potential organized crime, racketeering activity, promoting prostitution, sex trafficking, or career criminal prosecutions.

(b) In connection with the security and protection of a witness, a potential witness, or an immediate family member or close associate of a witness or potential witness, the attorney general may fund or take any action the attorney general determines to be necessary to protect such person from bodily injury, or to assure the person's health, safety, and welfare, for as long as, in the judgment of the attorney general, such danger exists.

(c) Any county or state prosecuting attorney or law enforcement agency may request the security and protection

provided by the attorney general or funding from the attorney general for the purpose of implementing county witness security and protection, or for contracting or arranging for security provided by other state or federal agencies such as the United States Marshals Service. Requests shall be made and approved in a timely and equitable manner as established by the attorney general.

(d) The attorney general may condition the provision of security and protection or funding upon a county matching basis or reimbursement in whole or in part by a county government to the State for the cost of such witness security and protection or for the funds granted. Such reimbursement shall be appropriate when security and protection are provided or funding is granted on an emergency basis where the provision of such protection is primarily a county responsibility.

(e) The county prosecuting attorneys, the county police departments, and all other law enforcement agencies in the State shall cooperate with the attorney general to implement a statewide witness security program. Appropriations for the purposes authorized by this section shall be made to and administered by the attorney general, who may also receive and use gifts, moneys, services, or assistance from any private source to implement the purposes of this section. [L 1982, c 231, §1; gen ch 1985; am L 2011, c 145, §1; am L 2016, c 206, §1]

" **[\$28-111] Victim-witness assistance program.** (a) There is established a victim-witness assistance program in the department of the attorney general, whose purpose shall be to provide information, assistance, and support services to the victims of and witnesses to crimes committed in the State.

(b) The attorney general shall allocate and award appropriated funds to counties whose victim-witness assistance units are in substantial compliance with the policies and criteria established. The attorney general and the county prosecutors shall work together to establish victim-witness assistance program policies and criteria which shall not be subject to chapter 91. The county prosecutors shall implement the program in their respective counties.

(c) Any sums appropriated by the State for the victim-witness units in each of the respective counties shall be contingent upon the respective counties providing a minimum of twenty-five per cent of the sum appropriated to each county. [L 1986, c 204, §2]

"PART VIII. MISSING CHILD CENTER-HAWAII

Note

Part heading amended by L 2005, c 32, §1(1).

§28-121 Missing child center-Hawaii; programs. (a) There is established within the department of the attorney general a program to be known as the missing child center-Hawaii, formerly known as the Hawaii state clearinghouse for missing children, to assist in the implementation of federal and state laws relating to missing children.

(b) The missing child center-Hawaii shall include programs to coordinate the efforts of state and county agencies with those of federal agencies in locating, recovering, and protecting missing children and to promote community awareness of the problem of missing children.

(c) The department of the attorney general shall employ, without regard to chapter 76, a coordinator and an assistant to the coordinator who shall coordinate existing public and private resources and further define and develop, to the extent of available resources, the most appropriate system for addressing the problem of missing children, which may include the following:

- (1) A communication network among county and state law enforcement agencies and the National Crime Information Center in Washington, D.C.;
- (2) A standardized reporting system in all counties developed in conjunction with law enforcement officials at all levels;
- (3) Assistance in the establishment of trained search teams that can be activated in each county;
- (4) Educational programs designed to prevent child abduction, enhance child safety, and raise public awareness about ways to prevent child abduction, molestation, and sexual exploitation;
- (5) A directory of resources to assist in locating missing children including names, addresses, and services provided by public and private organizations; and
- (6) A statewide centralized, uniform, and computerized information database relating to family-related and nonfamily-related child abductions, as well as runaways and children who are unwanted by their parents. [L 1997, c 259, pt of §2; am L 2000, c 253, §150; am L 2005, c 32, §1(2)]

" **§§28-122 to 124 REPEALED.** L 2003, c 192, §§2 to 4.

"[PART IX.] DRUG NUISANCE ABATEMENT UNIT

[\$28-131] Drug nuisance abatement unit. (a) There is established in the department of the attorney general a drug nuisance abatement unit.

(b) The unit shall employ such attorneys, auditors, investigators, and other personnel as necessary to promote the effective and efficient conduct of the unit's activities. Except for the attorneys, all other employees of the drug nuisance abatement unit shall be subject to chapter 76.

(c) The purpose of the drug nuisance abatement unit shall be to provide for the effective enforcement and prosecution of those violations of the drug nuisance abatement laws under chapter 712, part V but only for offenses related to drugs and intoxicating compounds as provided under chapter 712, part IV. The drug nuisance [abatement] unit may also review and take appropriate action on drug nuisance complaints of any citizen of the State, or drug nuisances that are discovered by the unit in carrying out its activities. [L 2003, c 63, §1]

"[PART X. SURVEILLANCE REVIEW UNIT]

[\$28-141] Surveillance review unit. There is established in the department of the attorney general a surveillance review unit, which shall be responsible for reviewing all applications for interception of wire, oral, or electronic communications under chapter 803 prior to their submittal to a designated judge, regardless of whether submitted by county or state investigative or law enforcement officers. A surveillance review unit deputy attorney general shall review the application in a timely manner to ensure it meets the requirements of part IV of chapter 803 and applicable law and recommend any necessary additions or changes to the application. Thereafter, the surveillance review unit deputy attorney general shall prepare a written memorandum recommending approval or disapproval of the application, which shall be submitted to the district court judge or designated judge with the application. The attorney general shall establish standards and procedures for the timely review of these applications to ensure continuity and conformity with applicable law. [L 2006, c 200, §1]

"[PART XI.] LAW ENFORCEMENT OFFICER INDEPENDENT REVIEW BOARD

Note

Part effective July 1, 2017, and 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. 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]

" **[\$28-152] 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 [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]

Note

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

" **[\$28-153] 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. [L 2016, c 161, pt of §1]