

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1066

H.P. 733

House of Representatives, March 17, 2009

**An Act To Establish the Independent Review Board for Police
Involved in Fatal Shootings**

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative PILON of Saco.
Cosponsored by Senator BLISS of Cumberland and
Representatives: HILL of York, KAENRATH of South Portland, LEWIN of Eliot, MILLER of
Somerville, Speaker PINGREE of North Haven, WEBSTER of Freeport, WHEELER of
Kittery, Senators: ALFOND of Cumberland, BARTLETT of Cumberland, GERZOFKY of
Cumberland, MARRACHÉ of Kennebec, SIMPSON of Androscoggin, TRAHAN of Lincoln.

1 Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 5 MRSA §12004-G, sub-§30-D is enacted to read:

3 30-D.

4 Public Safety Independent Review Not Authorized 25 MRSA §3831
5 Board for Police
6 Involved in Fatal
7 Shootings

8 Sec. 2. 25 MRSA c. 409 is enacted to read:

9 CHAPTER 409

10 USE OF DEADLY FORCE

11 §3831. Independent Review Board for Police Involved in Fatal Shootings

12 The Independent Review Board for Police Involved in Fatal Shootings, referred to in
13 this chapter as "the board," is established.

14 1. Members. The board consists of 7 members, appointed by the Governor as
15 follows:

16 A. One member of the clergy;

17 B. One retired lawyer who practiced in the field of criminal law;

18 C. One professional in the field of human behavior;

19 D. One professional in the field of mental health;

20 E. Two law enforcement officials, one who works in the field of law enforcement
21 and one who is retired; and

22 F. One public member who has never been a sworn member of a law enforcement
23 agency or employed as a corrections officer. In appointing the public member, the
24 Governor shall consider appointing a member from a minority community or the low-
25 income community or a representative of a statewide organization that advocates on
26 behalf of women.

27 Members serve 2-year terms and may not serve more than 4 consecutive terms.

28 2. Review. The board shall conduct a review of an incident involving the use of a
29 firearm by a law enforcement or corrections officer that results in the death of another
30 person for the purpose of determining:

31 A. The facts of the incident;

32 B. Whether relevant policy was clearly understandable and effective for the
33 particular circumstances;

34 C. Whether compliance with relevant policy occurred;

1 D. Whether the relevant current training curriculum was sufficient and effective for
2 the particular circumstances;

3 E. Whether changes in the relevant current policy, practice, procedures or training
4 are recommended;

5 F. Whether any remedial action should be recommended; and

6 G. Whether any recommendation other than those under paragraphs E and F should
7 be made.

8 **3. Access to records; deliberations not public proceedings.** The board is granted
9 access to the records and findings of the Attorney General, the records and findings of
10 any internal or administrative investigation undertaken by the department employing the
11 law enforcement or corrections officer whose actions are under review, the records and
12 findings of the Board of Trustees of the Maine Criminal Justice Academy if action was
13 contemplated or taken pursuant to section 2806 and personnel records maintained by the
14 department employing or any department that previously employed the law enforcement
15 or corrections officer whose actions are under review. To the extent the board determines
16 it relevant, the board must also be granted access to similar records relating to prior
17 incidents of the use of force that have been investigated by the Attorney General. The
18 grant of access to the records or findings described in this subsection does not constitute a
19 public right to access that does not otherwise exist. The review and deliberations of the
20 board do not constitute public proceedings as defined in Title 1, section 402, subsection
21 2.

22 **4. Public report.** The board, at the conclusion of its review and deliberations, shall
23 issue a public report stating its determinations with respect to each of the factors
24 identified in subsection 2. Prior to the board releasing its public report, the board or a
25 representative of the board may meet with the chief of the law enforcement agency whose
26 officer was involved in the incident under review or the Commissioner of Public Safety or
27 any other commissioner in the Executive Department to discuss the board's findings.
28 The board also shall report to the joint standing committee of the Legislature having
29 jurisdiction over public safety matters and to the law enforcement agency involved in the
30 incident under review.

31 **5. Admissibility of public report in subsequent proceedings.** The public report
32 issued pursuant to subsection 4 is not admissible in any litigation arising out of the
33 incident. The testimony of board members on the subjects covered by this report are not
34 discoverable or admissible in any subsequent proceeding, nor may the members of the
35 board be subject to subpoena for trial or deposition with respect to the subjects covered
36 by the report, except to the extent that a party seeking such testimony can show that a
37 member of the board possesses firsthand knowledge with respect to factual issues that is
38 not available from any other source. The opinions and conclusions of the board or of
39 individual board members are not discoverable or admissible under any circumstances.

40 **6. Unlawful dissemination.** A person is guilty of unlawful dissemination of
41 information relating to the board if that person knowingly disseminates confidential
42 information in violation of this section. Unlawful dissemination of information relating
43 to the board is a Class E crime.

1

SUMMARY

2 This bill establishes the Independent Review Board for Police Involved in Fatal
3 Shootings to review an incident involving the use of a firearm by a law enforcement or
4 corrections officer that results in the death of another person. At the conclusion of its
5 review, the board is required to issue a public report and report to the joint standing
6 committee of the Legislature having jurisdiction over public safety matters and to the law
7 enforcement agency involved in the incident under review.