

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SENATE BILL 1325

AN ACT

AMENDING SECTION 38-1101, ARIZONA REVISED STATUTES; RELATING TO LAW ENFORCEMENT OFFICERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-1101, Arizona Revised Statutes, is amended to
3 read:

4 38-1101. Law enforcement officers; probation officers; right to
5 representation; right to evidence on appeal; change
6 of hearing officer or administrative law judge;
7 burden of proof; polygraph examinations; definitions

8 A. If an employer interviews a law enforcement officer or probation
9 officer and the employer reasonably believes that the interview could result
10 in dismissal, demotion or suspension OR IF THE LAW ENFORCEMENT OFFICER OR
11 PROBATION OFFICER REASONABLY BELIEVES THE INVESTIGATION COULD RESULT IN A
12 DISMISSAL, DEMOTION OR SUSPENSION:

13 1. The law enforcement officer or probation officer may request to
14 have a representative of the officer present at no cost to the employer
15 during the interview. The law enforcement officer or probation officer shall
16 select a representative who is available on reasonable notice so that the
17 interview is not unreasonably delayed. The representative shall participate
18 in the interview only as an observer. Unless agreed to by the employer, the
19 representative shall be from the same agency and shall not be an attorney
20 EXCEPT THAT IF A REPRESENTATIVE FROM THE SAME AGENCY IS NOT REASONABLY
21 AVAILABLE, WITH THE EMPLOYER'S PERMISSION, THE LAW ENFORCEMENT OFFICER'S OR
22 PROBATION OFFICER'S REPRESENTATIVE MAY BE FROM THE LAW ENFORCEMENT OFFICER'S
23 OR PROBATION OFFICER'S PROFESSIONAL MEMBERSHIP ORGANIZATION. The law
24 enforcement officer or probation officer shall be permitted reasonable breaks
25 of limited duration during any interview for telephonic or in person
26 consultation with others, including an attorney, who are immediately
27 available. An employer shall not discipline, retaliate against or threaten
28 to retaliate against a law enforcement officer or probation officer for
29 requesting that a representative be present or for acting as the
30 representative of a law enforcement officer or probation officer pursuant to
31 this paragraph.

32 2. Before the commencement of any interview described in this section,
33 the employer shall provide the law enforcement officer or probation officer
34 with a written notice informing the officer of the ALLEGED FACTS THAT ARE THE
35 BASIS OF THE INVESTIGATION, THE specific nature of the investigation, the
36 officer's status in the investigation, all known allegations of misconduct
37 that are the reason for the interview and the officer's right to have a
38 representative present at the interview. THE NOTICE SHALL INCLUDE COPIES OF
39 ALL COMPLAINTS THAT CONTAIN THE ALLEGED FACTS THAT ARE REASONABLY AVAILABLE,
40 EXCEPT FOR COPIES OF COMPLAINTS THAT INVOLVE MATTERS PURSUANT TO FEDERAL LAWS
41 UNDER THE JURISDICTION OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

42 3. The employer may require the law enforcement officer or probation
43 officer to submit to a polygraph examination if the officer makes a statement
44 to the employer during the investigation that differs from other information
45 relating to the investigation that is known to the employer and reconciling

1 that difference is necessary to complete the investigation. If a polygraph
2 examination is administered pursuant to this paragraph, the employer or the
3 person administering the polygraph examination shall make an audio recording
4 of the complete polygraph procedure and provide a copy of the recording to
5 the law enforcement officer or probation officer.

6 4. The law enforcement officer or probation officer, at the conclusion
7 of the interview, is entitled to a period of time to consult with the
8 officer's representative and may make a statement not to exceed five minutes
9 addressing specific facts or policies that are related to the interview.

10 B. Subsection A does not require the employer to either:

11 1. Stop an interview to issue another notice for allegations based on
12 information provided by the law enforcement officer or probation officer
13 during the interview.

14 2. Disclose any fact to the law enforcement officer or probation
15 officer or the law enforcement officer's or probation officer's
16 representative that would impede the investigation.

17 C. Subsection A, paragraphs 1 and 2 do not apply to an interview of a
18 law enforcement officer or probation officer that is:

19 1. In the normal course of duty, counseling or instruction or an
20 informal verbal admonishment by, or other routine or unplanned contact with,
21 a supervisor or any other law enforcement officer or probation officer.

22 2. Preliminary questioning to determine the scope of the allegations
23 or if an investigation is necessary.

24 3. Conducted in the course of a criminal investigation.

25 4. Conducted in the course of a polygraph examination.

26 D. In any appeal of a disciplinary action by a law enforcement officer
27 or probation officer, the parties shall exchange copies of all relevant
28 documents and a list of all witnesses pursuant to the following time periods
29 and requirements:

30 1. Within three business days after the employer's receipt of a
31 written request from the law enforcement officer or probation officer for a
32 copy of the investigative file that is accompanied by a copy of the filed
33 notice of appeal, the employer shall provide a complete copy of the
34 investigative file as well as the names and home or work mailing addresses of
35 all persons interviewed during the course of the investigation.

36 2. No later than five business days before the appeal hearing, or, if
37 the appeal hearing is scheduled more than twenty days after the notice of
38 appeal, no later than ten business days before the appeal hearing, the
39 employer and the law enforcement officer or probation officer shall exchange
40 copies of any documents that may be introduced at the hearing and that have
41 not previously been disclosed.

42 3. No later than five business days before the appeal hearing, or, if
43 the appeal hearing is scheduled more than twenty days after the notice of
44 appeal, no later than ten business days before the appeal hearing, the
45 employer and the law enforcement officer or probation officer shall exchange

1 the names of all witnesses who may be called to testify. A witness may be
2 interviewed at the discretion of the witness. The parties shall not
3 interfere with any decision of a witness regarding whether to be interviewed.
4 An employer shall not discipline, retaliate against or threaten to retaliate
5 against any witness for agreeing to be interviewed or for testifying or
6 providing evidence in the appeal.

7 E. It is unlawful for a person to disseminate information that is
8 disclosed pursuant to subsection D to any person other than the parties to
9 the appeal and their lawful representatives for purposes of the appeal of the
10 disciplinary action. This subsection does not prohibit the use of the
11 information in the hearing or disclosure pursuant to title 39, chapter 1,
12 article 2.

13 F. The employer or the law enforcement officer or probation officer
14 may seek a determination by the hearing officer, administrative law judge or
15 appeals board hearing the appeal regarding any evidence that the employer or
16 the law enforcement officer or probation officer believes should not be
17 disclosed pursuant to subsection D because the risk of harm involved in
18 disclosure outweighs any usefulness of the disclosure in the hearing. In
19 determining whether evidence will be disclosed, the hearing officer,
20 administrative law judge or appeals board may perform an in camera review of
21 the evidence and may disclose the material subject to any restriction on the
22 disclosure, including the closing of the hearing or the sealing of the
23 records, that the hearing officer, administrative law judge or appeals board
24 finds necessary under the circumstances.

25 G. In any appeal of a disciplinary action by a law enforcement officer
26 or probation officer in which a single hearing officer or administrative law
27 judge has been appointed to conduct the appeal hearing, the law enforcement
28 officer or probation officer or the employer may request a change of hearing
29 officer or administrative law judge. In cases before the office of
30 administrative hearings or if the employer is a county with a population of
31 two hundred fifty thousand or more persons or a city with a population of
32 sixty-five thousand or more persons, on the first request of a party, the
33 request shall be granted. All other requests, including any subsequent
34 requests in cases before the office of administrative hearings or if the
35 employer is a county with a population of two hundred fifty thousand or more
36 persons or a city with a population of sixty-five thousand or more persons,
37 may be granted only on a showing that a fair and impartial hearing cannot be
38 obtained due to the prejudice of the assigned hearing officer or
39 administrative law judge. The supervisor or supervising body of the hearing
40 officer or administrative law judge shall decide whether a showing of
41 prejudice has been made.

42 H. A party who violates subsection D or E, unless the violation is
43 harmless, shall not be permitted to use that evidence at the hearing, except
44 on a showing of good cause. The hearing officer or administrative law judge,
45 on a showing of good cause, may grant the opposing party a continuance,

1 otherwise limit the use of the evidence or make such other order as may be
2 appropriate.

3 I. The burden of proof in an appeal of a disciplinary action by a law
4 enforcement officer or probation officer shall be on the employer.

5 J. Except where a statute or ordinance makes the administrative
6 evidentiary hearing the final administrative determination, an employer or a
7 person acting on behalf of an employer may amend, modify, reject or reverse a
8 decision made by a hearing officer, administrative law judge or appeals board
9 after a hearing where the law enforcement officer or probation officer and
10 the employer have been equally allowed to call and examine witnesses,
11 cross-examine witnesses, provide documentary evidence and otherwise fully
12 participate in the hearing if the decision was arbitrary or without
13 reasonable justification and the employer or person acting on behalf of the
14 employer states the reason for the amendment, modification, rejection or
15 reversal.

16 K. An employer shall not include in that portion of the personnel file
17 of a law enforcement officer or probation officer that is available for
18 public inspection and copying any information about an investigation until
19 the investigation is complete or the employer has discontinued the
20 investigation. If the law enforcement officer or probation officer has
21 timely appealed a disciplinary action, the investigation is not complete
22 until the conclusion of the appeal process.

23 L. This section does not preempt agreements that supplant, revise or
24 otherwise alter the provisions of this section, including preexisting
25 agreements between the employer and the law enforcement officer or probation
26 officer or the law enforcement officer's or probation officer's lawful
27 representative association.

28 M. NOTWITHSTANDING SECTION 39-123, ALL DATA AND REPORTS FROM A
29 POLYGRAPH EXAMINATION OF A LAW ENFORCEMENT OFFICER OR PROBATION OFFICER ARE
30 CONFIDENTIAL AND MAY ONLY BE USED FOR EMPLOYMENT, CERTIFICATION OR
31 REACTIVATION OF CERTIFICATION PURPOSES OR THE ADMINISTRATIVE MATTER FOR WHICH
32 A POLYGRAPH WAS ADMINISTERED, INCLUDING OTHER ANCILLARY MATTERS. ALL OTHER
33 USES ARE PROHIBITED.

34 N. EXCEPT FOR A PREEMPLOYMENT POLYGRAPH IN WHICH AN APPLICANT WAS NOT
35 HIRED OR IN THE CASE OF AN ACTIVE INVESTIGATION OR AN APPEAL, THE DATA AND
36 REPORTS FROM A POLYGRAPH EXAMINATION OF A LAW ENFORCEMENT OFFICER OR
37 PROBATION OFFICER SHALL BE DESTROYED AS SOON AS PRACTICABLE THREE YEARS AFTER
38 THE DATE OF APPOINTMENT OR EMPLOYMENT BUT NOT MORE THAN NINETY DAYS AFTER
39 THAT DATE.

40 ~~M.~~ O. For the purposes of this section:

41 1. "Appeal" means a hearing before a state or local merit board, a
42 civil service board, an administrative law judge or a hearing officer.

- 1 2. "Disciplinary action" means the dismissal, demotion or suspension
2 for more than ~~twenty-four~~ SIXTEEN hours of a law enforcement officer or
3 probation officer that is authorized by statute, charter or ordinance and
4 that is subject to a hearing or other procedure by a local merit board, a
5 civil service board, an administrative law judge or a hearing officer.
- 6 3. "Investigative file" means the law enforcement agency's complete
7 report and any attachments detailing the incidents leading to the
8 disciplinary action.
- 9 4. "Law enforcement officer" means:
10 (a) An individual, other than a probationary employee, who is
11 certified by the Arizona peace officer standards and training board, other
12 than a person employed by a multi-county water conservation district.
13 (b) A detention officer or correction officer, other than a
14 probationary employee, who is employed by this state or a political
15 subdivision of this state.
- 16 5. "Probation officer" means a probation officer or surveillance
17 officer, other than a probationary employee, who is employed by this state or
18 a political subdivision of this state.