

REFERENCE TITLE: law enforcement officers; disciplinary procedures

State of Arizona  
Senate  
Fiftieth Legislature  
First Regular Session  
2011

## **SB 1235**

Introduced by  
Senators Gray: Aboud

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. AT THE REQUEST OF THE LAW ENFORCEMENT OFFICER OR PROBATION OFFICER,  
43 THE EMPLOYER SHALL PROVIDE A LIST AND BASIC SUMMARY OF ANY DISCIPLINE ORDERED  
44 AGAINST ANY OTHER LAW ENFORCEMENT OFFICER OR PROBATION OFFICER EMPLOYED BY  
45 THE EMPLOYER WITHIN THE PREVIOUS TWO YEARS FOR THE SAME OR A SIMILAR

1 VIOLATION. THE EMPLOYER SHALL NOT TAKE FINAL ACTION AND THE EMPLOYER SHALL  
2 NOT SCHEDULE THE HEARING UNTIL THE LIST AND BASIC SUMMARY ARE PROVIDED TO THE  
3 LAW ENFORCEMENT OFFICER OR PROBATION OFFICER.

4 ~~3-~~ 4. The employer may require the law enforcement officer or  
5 probation officer to submit to a polygraph examination if the officer makes a  
6 statement to the employer during the investigation that differs from other  
7 information relating to the investigation that is known to the employer and  
8 reconciling that difference is necessary to complete the investigation. If a  
9 polygraph examination is administered pursuant to this paragraph, the  
10 employer or the person administering the polygraph examination shall make an  
11 audio recording of the complete polygraph procedure and provide a copy of the  
12 recording to the law enforcement officer or probation officer.

13 ~~4-~~ 5. The law enforcement officer or probation officer, at the  
14 conclusion of the interview, is entitled to a period of time to consult with  
15 the officer's representative and may make a statement not to exceed five  
16 minutes addressing specific facts or policies that are related to the  
17 interview.

18 B. Subsection A OF THIS SECTION does not require the employer to  
19 either:

20 1. Stop an interview to issue another notice for allegations based on  
21 information provided by the law enforcement officer or probation officer  
22 during the interview.

23 2. Disclose any fact to the law enforcement officer or probation  
24 officer or the law enforcement officer's or probation officer's  
25 representative that would impede the investigation.

26 C. Subsection A, paragraphs 1 and 2 OF THIS SECTION do not apply to an  
27 interview of a law enforcement officer or probation officer that is:

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

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

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

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

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

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

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

7           3. No later than five business days before the appeal hearing, or, if  
8 the appeal hearing is scheduled more than twenty days after the notice of  
9 appeal, no later than ten business days before the appeal hearing, the  
10 employer and the law enforcement officer or probation officer shall exchange  
11 the names of all witnesses who may be called to testify. A witness may be  
12 interviewed at the discretion of the witness. The parties shall not  
13 interfere with any decision of a witness regarding whether to be interviewed.  
14 An employer shall not discipline, retaliate against or threaten to retaliate  
15 against any witness for agreeing to be interviewed or for testifying or  
16 providing evidence in the appeal.

17           E. It is unlawful for a person to disseminate information that is  
18 disclosed pursuant to subsection D OF THIS SECTION to any person other than  
19 the parties to the appeal and their lawful representatives for purposes of  
20 the appeal of the disciplinary action. This subsection does not prohibit the  
21 use of the information in the hearing or disclosure pursuant to title 39,  
22 chapter 1, article 2.

23           F. The employer or the law enforcement officer or probation officer  
24 may seek a determination by the hearing officer, administrative law judge or  
25 appeals board hearing the appeal regarding any evidence that the employer or  
26 the law enforcement officer or probation officer believes should not be  
27 disclosed pursuant to subsection D OF THIS SECTION because the risk of harm  
28 involved in disclosure outweighs any usefulness of the disclosure in the  
29 hearing. In determining whether evidence will be disclosed, the hearing  
30 officer, administrative law judge or appeals board may perform an in camera  
31 review of the evidence and may disclose the material subject to any  
32 restriction on the disclosure, including the closing of the hearing or the  
33 sealing of the records, that the hearing officer, administrative law judge or  
34 appeals board finds necessary under the circumstances.

35           G. In any appeal of a disciplinary action by a law enforcement officer  
36 or probation officer in which a single hearing officer or administrative law  
37 judge has been appointed to conduct the appeal hearing, the law enforcement  
38 officer or probation officer or the employer may request a change of hearing  
39 officer or administrative law judge. ~~In cases before the office of~~  
40 ~~administrative hearings or if the employer is a county with a population of~~  
41 ~~two hundred fifty thousand or more persons or a city with a population of~~  
42 ~~sixty five thousand or more persons, on the first request of a party, the~~  
43 ~~request shall be granted. All other requests, including any subsequent~~  
44 ~~requests in cases before the office of administrative hearings or if the~~  
45 ~~employer is a county with a population of two hundred fifty thousand or more~~

1 ~~persons or a city with a population of sixty five thousand or more persons,~~  
2 THE REQUEST SHALL BE GRANTED, EXCEPT THAT FOR A CITY OR TOWN WITH A  
3 POPULATION OF LESS THAN SIXTY-FIVE THOUSAND PERSONS OR FOR A COUNTY WITH A  
4 POPULATION OF LESS THAN TWO HUNDRED FIFTY THOUSAND PERSONS THAT PROVIDES FOR  
5 AN ALTERNATE HEARING OFFICER BY MEANS OF AN INTERAGENCY AGREEMENT WITH  
6 ANOTHER CITY, TOWN OR COUNTY, THE HEARING OFFICER AT THE REQUEST OF EITHER  
7 PARTY SHALL PROVIDE TO THE LAW ENFORCEMENT OFFICER OR PROBATION OFFICER OR  
8 EMPLOYER THE OPTION OF CONTINUING THE HEARING FOR AN ADDITIONAL TEN DAYS. IF  
9 THIS OPTION IS ACCEPTED, THE LAW ENFORCEMENT OFFICER OR PROBATION OFFICER  
10 SHALL REIMBURSE THE CITY, TOWN OR COUNTY FOR ONE-HALF OF ANY ADDITIONAL  
11 EXPENSES INCURRED BY THE CITY, TOWN OR COUNTY IN PROCURING THE ALTERNATIVE  
12 HEARING OFFICER UNDER THE INTERAGENCY AGREEMENT. ANY SUBSEQUENT REQUESTS  
13 may be granted only on a showing that a fair and impartial hearing cannot be  
14 obtained due to the prejudice of the assigned hearing officer or  
15 administrative law judge. The supervisor or supervising body of the hearing  
16 officer or administrative law judge shall decide whether a showing of  
17 prejudice has been made.

18 H. A party who violates subsection A, paragraph 1, or subsection D or  
19 E OF THIS SECTION, unless the violation is harmless, shall not be permitted  
20 to use that evidence at the hearing, except on a showing of good cause. The  
21 hearing officer or administrative law judge, on a showing of good cause, may  
22 grant the opposing party a continuance, otherwise limit the use of the  
23 evidence or make such other order as may be appropriate.

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

26 J. Except where a statute or ordinance makes the administrative  
27 evidentiary hearing the final administrative determination, an employer or a  
28 person acting on behalf of an employer may amend, modify, reject or reverse a  
29 decision made by a hearing officer, administrative law judge or appeals board  
30 after a hearing where the law enforcement officer or probation officer and  
31 the employer have been equally allowed to call and examine witnesses,  
32 cross-examine witnesses, provide documentary evidence and otherwise fully  
33 participate in the hearing if the decision was arbitrary or without  
34 reasonable justification and the employer or person acting on behalf of the  
35 employer states the reason for the amendment, modification, rejection or  
36 reversal.

37 K. An employer shall not include in that portion of the personnel file  
38 of a law enforcement officer or probation officer that is available for  
39 public inspection and copying any information about an investigation until  
40 the investigation is complete or the employer has discontinued the  
41 investigation. If the law enforcement officer or probation officer has  
42 timely appealed a disciplinary action, the investigation is not complete  
43 until the conclusion of the appeal process.

44 L. This section does not preempt agreements that supplant, revise or  
45 otherwise alter the provisions of this section, including preexisting

1 agreements between the employer and the law enforcement officer or probation  
2 officer or the law enforcement officer's or probation officer's lawful  
3 representative association.

4 M. Notwithstanding section 39-123, all data and reports from a  
5 polygraph examination of a law enforcement officer or probation officer are  
6 confidential and may only be used for employment, certification or  
7 reactivation of certification purposes or the administrative matter for which  
8 a polygraph was administered, including other ancillary matters. All other  
9 uses are prohibited.

10 N. Except for a preemployment polygraph in which an applicant was not  
11 hired or in the case of an active investigation or an appeal, the data and  
12 reports from a polygraph examination of a law enforcement officer or  
13 probation officer shall be destroyed as soon as practicable three years after  
14 the date of appointment or employment but not more than ninety days after  
15 that date.

16 0. For the purposes of this section:

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

19 2. "Disciplinary action" means the dismissal, demotion or suspension  
20 for more than ~~sixteen~~ EIGHT hours of a law enforcement officer or probation  
21 officer that is authorized by statute, charter or ordinance and that is  
22 subject to a hearing or other procedure by a local merit board, a civil  
23 service board, an administrative law judge or a hearing officer.

24 3. "Investigative file" means the law enforcement agency's complete  
25 report and any attachments detailing the incidents leading to the  
26 disciplinary action.

27 4. "Law enforcement officer" means:

28 (a) An individual, other than a probationary employee, who is  
29 certified by the Arizona peace officer standards and training board, other  
30 than a person employed by a multi-county water conservation district.

31 (b) A detention officer or correction officer, other than a  
32 probationary employee, who is employed by this state or a political  
33 subdivision of this state.

34 5. "Probation officer" means a probation officer or surveillance  
35 officer, other than a probationary employee, who is employed by this state or  
36 a political subdivision of this state.