

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HOUSE BILL 2562

AN ACT

AMENDING SECTIONS 38-651 AND 38-1004, ARIZONA REVISED STATUTES; CHANGING THE DESIGNATION OF TITLE 38, CHAPTER 8, ARIZONA REVISED STATUTES, TO "PUBLIC SAFETY OFFICERS"; CHANGING THE DESIGNATION OF TITLE 38, CHAPTER 8, ARTICLE 1, ARIZONA REVISED STATUTES, TO "LAW ENFORCEMENT OFFICERS"; REPEALING SECTION 38-1101, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 8, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 38-1101; RENUMBERING SECTIONS 38-1102 AND 38-1103, ARIZONA REVISED STATUTES, AS SECTIONS 38-1113 AND 38-1114, RESPECTIVELY; AMENDING TITLE 38, CHAPTER 8, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 38-1102 AND 38-1103; REPEALING SECTIONS 38-1104, 38-1105, 38-1106 AND 38-1107, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 8, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 38-1104, 38-1105, 38-1106 AND 38-1107; RENUMBERING SECTIONS 38-1108 AND 38-1109, ARIZONA REVISED STATUTES, AS SECTIONS 38-1111 AND 38-1112, RESPECTIVELY; AMENDING TITLE 38, CHAPTER 8, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 38-1108 AND 38-1109; AMENDING TITLE 38, CHAPTER 8, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 38-1110; AMENDING SECTIONS 38-1111, 38-1112 AND 38-1114, ARIZONA REVISED STATUTES, AS RENUMBERED BY THIS ACT; AMENDING TITLE 38, CHAPTER 8, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2; RELATING TO LAW ENFORCEMENT AND PROBATION OFFICER RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 38-651, Arizona Revised Statutes, is amended to
3 read:

4 38-651. Expenditure of monies for health and accident
5 insurance; definition

6 A. The department of administration may expend public monies
7 appropriated for such purpose to procure health and accident coverage for
8 full-time officers and employees of this state and its departments and
9 agencies. The department of administration may adopt rules that provide that
10 if an employee dies while the employee's surviving spouse's health insurance
11 is in force, the surviving spouse is entitled to no more than thirty-six
12 months of extended coverage at one hundred two per cent of the group rates by
13 paying the premiums. Except as provided by ~~section 38-1103~~ SECTIONS 38-1114
14 AND 38-1141, no public monies may be expended to pay all or any part of the
15 premium of health insurance continued in force by the surviving spouse. The
16 department of administration shall seek a variety of plans, including
17 indemnity health insurance, hospital and medical service plans, dental plans
18 and health maintenance organizations. On a recommendation of the department
19 of administration and the review of the joint legislative budget committee,
20 the department of administration may self-insure for the purposes of this
21 subsection. If the department of administration self-insures, the department
22 may contract directly with preferred provider organizations, physician and
23 hospital networks, indemnity health insurers, hospital and medical service
24 plans, dental plans and health maintenance organizations. If the department
25 self-insures, the department shall provide that the self-insurance program
26 include all health coverage benefits that are mandated pursuant to title 20.
27 The self-insurance program shall include provisions to provide for the
28 protection of the officers and employees, including grievance procedures for
29 claim or treatment denials, creditable coverage determinations,
30 dissatisfaction with care and access to care issues. The department of
31 administration by rule shall designate and adopt performance standards,
32 including cost competitiveness, utilization review issues, network
33 development and access, conversion and implementation, report timeliness,
34 quality outcomes and customer satisfaction for qualifying plans. The
35 qualifying plans for which the standards are adopted include indemnity health
36 insurance, hospital and medical service plans, closed panel medical and
37 dental plans and health maintenance organizations, and for eligibility of
38 officers and employees to participate in such plans. Any indemnity health
39 insurance or hospital and medical service plan designated as a qualifying
40 plan by the department of administration must be open for enrollment to all
41 permanent full-time state employees, except that any plan established prior
42 to June 6, 1977 may be continued as a separate plan. Any closed panel
43 medical or dental plan or health maintenance organization designated as the
44 qualifying plan by the department of administration must be open for
45 enrollment to all permanent full-time state employees residing within the

1 geographic area or area to be served by the plan or organization. Officers
2 and employees may select coverage under the available options.

3 B. The department of administration may expend public monies
4 appropriated for such purpose to procure health and accident coverage for the
5 dependents of full-time officers and employees of this state and its
6 departments and agencies. The department of administration shall seek a
7 variety of plans, including indemnity health insurance, hospital and medical
8 service plans, dental plans and health maintenance organizations. On a
9 recommendation of the department of administration and the review of the
10 joint legislative budget committee, the department of administration may
11 self-insure for the purposes of this subsection. If the department of
12 administration self-insures, the department may contract directly with
13 preferred provider organizations, physician and hospital networks, indemnity
14 health insurers, hospital and medical service plans, dental plans and health
15 maintenance organizations. If the department self-insures, the department
16 shall provide that the self-insurance program include all health coverage
17 benefits that are mandated pursuant to title 20. The self-insurance program
18 shall include provisions to provide for the protection of the officers and
19 employees, including grievance procedures for claim or treatment denials,
20 creditable coverage determinations, dissatisfaction with care and access to
21 care issues. The department of administration by rule shall designate and
22 adopt performance standards, including cost competitiveness, utilization
23 review issues, network development and access, conversion and implementation,
24 report timeliness, quality outcomes and customer satisfaction for qualifying
25 plans. The qualifying plans for which the standards are adopted include
26 indemnity health insurance, hospital and medical service plans, closed panel
27 medical and dental plans and health maintenance organizations, and for
28 eligibility of the dependents of officers and employees to participate in
29 such plans. Any indemnity health insurance or hospital and medical service
30 plan designated as a qualifying plan by the department of administration must
31 be open for enrollment to all permanent full-time state employees, except
32 that any plan established prior to June 6, 1977 may be continued as a
33 separate plan. Any closed panel medical or dental plan or health maintenance
34 organization designated as a qualifying plan by the department of
35 administration must be open for enrollment to all permanent full-time state
36 employees residing within the geographic area or area to be served by the
37 plan or organization. Officers and employees may select coverage under the
38 available options.

39 C. The department of administration may designate the Arizona health
40 care cost containment system established by title 36, chapter 29 as a
41 qualifying plan for the provision of health and accident coverage to
42 full-time state officers and employees and their dependents. The Arizona
43 health care cost containment system shall not be the exclusive qualifying
44 plan for health and accident coverage for state officers and employees either
45 on a statewide or regional basis.

1 D. Except as provided in section 38-652, public monies expended
2 pursuant to this section each month shall not exceed:

3 1. Five hundred dollars multiplied by the number of officers and
4 employees who receive individual coverage.

5 2. One thousand two hundred dollars multiplied by the number of
6 married couples if both members of the couple are either officers or
7 employees and each receives individual coverage or family coverage.

8 3. One thousand two hundred dollars multiplied by the number of
9 officers or employees who receive family coverage if the spouses of the
10 officers or employees are not officers or employees.

11 E. Subsection D of this section:

12 1. Establishes a total maximum expenditure of public monies pursuant
13 to this section.

14 2. Does not establish a minimum or maximum expenditure for each
15 individual officer or employee.

16 F. In order to ensure that an officer or employee does not suffer a
17 financial penalty or receive a financial benefit based on the officer's or
18 employee's age, gender or health status, the department of administration
19 shall consider implementing the following:

20 1. Requests for proposals for health insurance that specify that the
21 carrier's proposed premiums for each plan be based on the expected age,
22 gender and health status of the entire pool of employees and officers and
23 their family members enrolled in all qualifying plans and not on the age,
24 gender or health status of the individuals expected to enroll in the
25 particular plan for which the premium is proposed.

26 2. Recommendations from a legislatively established study group on
27 risk adjustments relating to a system for reallocating premium revenues among
28 the contracting qualifying plans to the extent necessary to adjust the
29 revenues received by any carrier to reflect differences between the average
30 age, gender and health status of the enrollees in that carrier's plan or
31 plans and the average age, gender and health status of all enrollees in all
32 qualifying plans.

33 G. Each officer or employee shall certify on the initial application
34 for family coverage that the officer or employee is not receiving more than
35 the contribution for which eligible pursuant to subsection D of this section.
36 Each officer or employee shall also provide the certification on any change
37 of coverage or marital status.

38 H. If a qualifying health maintenance organization is not available to
39 an officer or employee within fifty miles of the officer's or employee's
40 residence and the officer or employee is enrolled in a qualifying plan, the
41 officer or employee shall be offered the opportunity to enroll with a health
42 maintenance organization when the option becomes available. If a health
43 maintenance organization is available within fifty miles and it is determined
44 by the department of administration that there is an insufficient number of
45 medical providers in the organization, the department may provide for a

1 change in enrollment from plans designated by the director when additional
2 medical providers join the organization.

3 I. Notwithstanding subsection H of this section, officers and
4 employees who enroll in a qualifying plan and reside outside the area of a
5 qualifying health maintenance organization shall be offered the option to
6 enroll with a qualified health maintenance organization offered through their
7 provider under the same premiums as if they lived within the area boundaries
8 of the qualified health maintenance organization, if:

9 1. All medical services are rendered and received at an office
10 designated by the qualifying health maintenance organization or at a facility
11 referred by the health maintenance organization.

12 2. All nonemergency or nonurgent travel, ambulatory and other expenses
13 from the residence area of the officer or employee to the designated office
14 of the qualifying health maintenance organization or the facility referred by
15 the health maintenance organization are the responsibility of and at the
16 expense of the officer or employee.

17 3. All emergency or urgent travel, ambulatory and other expenses from
18 the residence area of the officer or employee to the designated office of the
19 qualifying health maintenance organization or the facility referred by the
20 health maintenance organization are paid pursuant to any agreement between
21 the health maintenance organization and the officer or employee living
22 outside the area of the qualifying health maintenance organization.

23 J. The department of administration shall allow any school district in
24 this state that meets the requirements of section 15-388, a charter school in
25 this state that meets the requirements of section 15-187.01 or a city, town,
26 county, community college district, special taxing district, authority or
27 public entity organized pursuant to the laws of this state that meets the
28 requirements of section 38-656 to participate in the health and accident
29 coverage prescribed in this section, except that participation is only
30 allowed in a health plan that is offered by the department and that is
31 subject to title 20, chapter 1, article 1. A school district, a charter
32 school, a city, a town, a county, a community college district, a special
33 taxing district, an authority or any public entity organized pursuant to the
34 laws of this state rather than this state shall pay directly to the benefits
35 provider the premium for its employees.

36 K. The department of administration shall determine the actual
37 administrative and operational costs associated with school districts,
38 charter schools, cities, towns, counties, community college districts,
39 special taxing districts, authorities and public entities organized pursuant
40 to the laws of this state participating in the state health and accident
41 insurance coverage. These costs shall be allocated to each school district,
42 charter school, city, town, county, community college district, special
43 taxing district, authority and public entity organized pursuant to the laws
44 of this state based on the total number of employees participating in the

1 coverage. This subsection only applies to a health plan that is offered by
2 the department and that is subject to title 20, chapter 1, article 1.

3 L. Insurance providers contracting with this state shall separately
4 maintain records that delineate claims and other expenses attributable to
5 participation of a school district, charter school, city, town, county,
6 community college district, special taxing district, authority and public
7 entity organized pursuant to the laws of this state in the state health and
8 accident insurance coverage and, by November 1 of each year, shall report to
9 the department of administration the extent to which state costs are impacted
10 by participation of school districts, charter schools, cities, towns,
11 counties, community college districts, special taxing districts, authorities
12 and public entities organized pursuant to the laws of this state in the state
13 health and accident insurance coverage. By December 1 of each year, the
14 director of the department of administration shall submit a report to the
15 president of the senate and the speaker of the house of representatives
16 detailing the information provided to the department by the insurance
17 providers and including any recommendations for possible legislative action.

18 M. Notwithstanding subsection J of this section, any school district
19 in this state that meets the requirements of section 15-388, a charter school
20 in this state that meets the requirements of section 15-187.01 or a city,
21 town, county, community college district, special taxing district, authority
22 or public entity organized pursuant to the laws of this state that meets the
23 requirements of section 38-656 may apply to the department of administration
24 to participate in the self-insurance program that is provided by this section
25 pursuant to rules adopted by the department. A participating entity shall
26 reimburse the department for all premiums and administrative or other
27 insurance costs. The department shall actuarially prescribe the annual
28 premium for each participating entity to reflect the actual cost of each
29 participating entity.

30 N. Any person that submits a bid to provide health and accident
31 coverage pursuant to this section shall disclose any court or administrative
32 judgments or orders issued against that person within the last ten years
33 before the submittal.

34 O. For the purposes of this section, "dependent" means a spouse under
35 the laws of this state, a child who is under twenty-six years of age or a
36 child who was disabled before reaching nineteen years of age, who continues
37 to be disabled under 42 United States Code section 1382c and for whom the
38 employee had custody before reaching nineteen years of age.

39 Sec. 2. Section 38-1004, Arizona Revised Statutes, is amended to read:
40 38-1004. Appeals; hearings

41 A. A classified law enforcement officer who is suspended, demoted or
42 dismissed by the department head, after a hearing and review before the merit
43 system council, may have the determination of the council reviewed ~~upon writ~~
44 ~~of certiorari~~ PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6 in the superior
45 court of the county in which the law enforcement officer resides. If the

1 determination of the council is overruled by the court, the law enforcement
2 officer shall be reinstated in the officer's position and the officer shall
3 be reimbursed for any compensation withheld pending determination by the
4 council and court.

5 B. If the order of the department head was for a suspension greater
6 than sixteen hours, demotion or dismissal and the court exonerates the
7 officer, the court may award, in whole or in part, the reasonable costs and
8 attorney fees that the law enforcement officer incurred or were incurred on
9 behalf of the law enforcement officer in the court proceedings. The award of
10 attorney fees by the court shall not exceed fifteen thousand dollars. An
11 award of attorney fees does not apply if either of the following applies:

12 1. The order of the department head was not for disciplinary purposes
13 but was for administrative purposes such as a reduction in force.

14 2. The disciplinary action related to off-duty activities unrelated to
15 the required duties of the law enforcement officer. If the department head
16 appeals the decision of the court, the court's award of any costs or attorney
17 fees to an officer shall be stayed pending the conclusion of the appeal. If
18 the department head's decision is upheld on appeal, the award of costs or
19 attorney fees in favor of the officer shall be reversed.

20 C. If a law enforcement officer of a county, city or town described in
21 section 38-1007 appeals from a decision of a department head in connection
22 with the law enforcement officer's suspension greater than sixteen hours,
23 demotion or dismissal and the county, city or town maintains a merit system
24 or civil service plan for its employees, and the merit system or civil
25 service plan appeals board exonerates the officer, the merit system or civil
26 service plan appeals board may award, in whole or in part, the reasonable
27 costs and attorney fees that the law enforcement officer incurred or were
28 incurred on behalf of the law enforcement officer in connection with the
29 appeal. The amount of the award by the merit system or civil service plan
30 appeals board shall not exceed ten thousand dollars. If the department head
31 appeals the decision of the merit system or civil service appeals board, the
32 award of attorney fees shall be stayed pending the conclusion of the appeal.
33 If the officer appeals to court the decision of the merit system or civil
34 service plan appeals board, or of the city or town council or board of
35 supervisors if the city, town or county has no such board, and the court
36 exonerates the officer, the court may award, in whole or in part, the
37 reasonable costs and attorney fees that the law enforcement officer incurred
38 or were incurred on behalf of the law enforcement officer in connection with
39 the appeal. The award of attorney fees by the governing body or court shall
40 not exceed fifteen thousand dollars. An award of attorney fees under this
41 subsection does not apply if either of the following applies:

42 1. The order of the department head was not for disciplinary purposes
43 but was for administrative purposes such as a reduction in force.

44 2. The disciplinary action related to off-duty activities unrelated to
45 the required duties of the law enforcement officer. If the department head

1 appeals the decision of the court, the court's award of any costs or attorney
2 fees to an officer shall be stayed pending the conclusion of the appeal. If
3 the department head's decision is upheld on appeal, the award of costs or
4 attorney fees in favor of the officer shall be reversed.

5 D. A department head shall have the right to have all council policies
6 and decisions reviewed ~~upon writ of certiorari~~ PURSUANT TO TITLE 12, CHAPTER
7 7, ARTICLE 6 in the superior court of the county in which the law enforcement
8 officer resides and legal counsel for the department head shall be provided
9 by the county or city attorney in whose jurisdiction the department lies.

10 Sec. 3. Heading change

11 A. The chapter heading of title 38, chapter 8, Arizona Revised
12 Statutes, is changed from "LAW ENFORCEMENT OFFICERS" to "PUBLIC SAFETY
13 OFFICERS".

14 B. The article heading of title 38, chapter 8, article 1, Arizona
15 Revised Statutes, is changed from "GENERAL PROVISIONS" to "LAW ENFORCEMENT
16 OFFICERS".

17 Sec. 4. Repeal

18 Section 38-1101, Arizona Revised Statutes, is repealed.

19 Sec. 5. Title 38, chapter 8, article 1, Arizona Revised Statutes, is
20 amended by adding a new section 38-1101, to read:

21 38-1101. Definitions

22 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

23 1. "APPEAL" MEANS A HEARING BEFORE A STATE OR LOCAL MERIT BOARD, A
24 CIVIL SERVICE BOARD, AN ADMINISTRATIVE LAW JUDGE OR A HEARING OFFICER.

25 2. "AT WILL" MEANS AN EMPLOYMENT RELATIONSHIP WHERE EITHER PARTY TO
26 THE RELATIONSHIP MAY SEVER THE RELATIONSHIP AT ANY TIME FOR ANY REASON OTHER
27 THAN AN UNLAWFUL REASON.

28 3. "DISCIPLINARY ACTION" MEANS THE DISMISSAL, DEMOTION OR SUSPENSION
29 FOR MORE THAN EIGHT HOURS OF A LAW ENFORCEMENT OFFICER THAT IS AUTHORIZED BY
30 STATUTE, CHARTER OR ORDINANCE AND THAT IS SUBJECT TO A HEARING OR OTHER
31 PROCEDURE BY A LOCAL MERIT BOARD, A CIVIL SERVICE BOARD, AN ADMINISTRATIVE
32 LAW JUDGE OR A HEARING OFFICER.

33 4. "EXCUSABLE NEGLIGENCE" MEANS NEGLIGENCE OR INADVERTENCE THAT MIGHT BE THE
34 ACT OF A REASONABLY PRUDENT PERSON UNDER SIMILAR CIRCUMSTANCES.

35 5. "GOOD FAITH" MEANS HONESTY OF PURPOSE AND ABSENCE OF INTENT TO
36 DEFRAUD.

37 6. "INVESTIGATIVE FILE" MEANS THE LAW ENFORCEMENT AGENCY'S COMPLETE
38 REPORT AND ANY ATTACHMENTS DETAILING THE INCIDENTS LEADING TO THE
39 DISCIPLINARY ACTION.

40 7. "JUST CAUSE" MEANS:

41 (a) THE EMPLOYER INFORMED THE LAW ENFORCEMENT OFFICER OF THE POSSIBLE
42 DISCIPLINARY ACTION RESULTING FROM THE OFFICER'S CONDUCT THROUGH AGENCY
43 MANUALS, EMPLOYEE HANDBOOKS, THE EMPLOYER'S RULES AND REGULATIONS OR OTHER
44 COMMUNICATIONS TO THE OFFICER OR THE CONDUCT WAS SUCH THAT THE OFFICER SHOULD
45 HAVE REASONABLY KNOWN DISCIPLINARY ACTION COULD OCCUR.

1 (b) THE DISCIPLINARY ACTION IS REASONABLY RELATED TO THE STANDARDS OF
2 CONDUCT FOR A PROFESSIONAL LAW ENFORCEMENT OFFICER, THE MISSION OF THE
3 AGENCY, THE ORDERLY, EFFICIENT OR SAFE OPERATION OF THE AGENCY OR THE
4 OFFICER'S FITNESS FOR DUTY.

5 (c) THE DISCIPLINE IS SUPPORTED BY A PREPONDERANCE OF EVIDENCE THAT
6 THE CONDUCT OCCURRED.

7 (d) THE DISCIPLINE IS NOT EXCESSIVE AND IS REASONABLY RELATED TO THE
8 SERIOUSNESS OF THE OFFENSE AND THE OFFICER'S SERVICE RECORD.

9 8. "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 OR CORRECTIONS OFFICER, OTHER THAN A PROBATIONARY
14 EMPLOYEE OR JUVENILE DETENTION OFFICER, WHO IS EMPLOYED BY THIS STATE OR A
15 POLITICAL SUBDIVISION OF THIS STATE.

16 (c) A NONPROBATIONARY REGULARLY APPOINTED AND PAID DEPUTY SHERIFF OF A
17 COUNTY.

18 (d) A NONPROBATIONARY REGULARLY EMPLOYED POLICE OFFICER IN A CITY OR
19 TOWN.

20 Sec. 6. Renumber

21 Sections 38-1102 and 38-1103, Arizona Revised Statutes, are renumbered
22 as sections 38-1113 and 38-1114, respectively.

23 Sec. 7. Title 38, chapter 8, article 1, Arizona Revised Statutes, is
24 amended by adding new sections 38-1102 and 38-1103, to read:

25 38-1102. Peace officer bill of rights; preemption

26 A PEACE OFFICERS BILL OF RIGHTS IS ESTABLISHED. THIS ARTICLE DOES NOT
27 PREEMPT AGREEMENTS THAT SUPPLANT, REVISE OR OTHERWISE DEVIATE FROM THE
28 PROVISIONS OF THIS ARTICLE, INCLUDING WRITTEN AGREEMENTS BETWEEN THE EMPLOYER
29 AND THE LAW ENFORCEMENT OFFICER OR THE LAW ENFORCEMENT OFFICER'S LAWFUL
30 REPRESENTATIVE ASSOCIATION.

31 38-1103. Discipline of law enforcement officers; exceptions

32 A. A LAW ENFORCEMENT OFFICER IS NOT SUBJECT TO DISCIPLINARY ACTION
33 EXCEPT FOR JUST CAUSE.

34 B. THIS SECTION DOES NOT APPLY TO:

35 1. A DISMISSAL OR DEMOTION THAT IS FOR ADMINISTRATIVE PURPOSES,
36 INCLUDING A REDUCTION IN FORCE.

37 2. A LAW ENFORCEMENT OFFICER WHO IS EMPLOYED BY AN AGENCY OF THIS
38 STATE AS AN AT WILL EMPLOYEE.

39 Sec. 8. Repeal

40 Sections 38-1104, 38-1105, 38-1106 and 38-1107, Arizona Revised
41 Statutes, are repealed.

1 B. SUBSECTION A OF THIS SECTION DOES NOT REQUIRE THE EMPLOYER TO
2 EITHER:
3 1. STOP AN INTERVIEW TO ISSUE ANOTHER NOTICE FOR ALLEGATIONS BASED ON
4 INFORMATION PROVIDED BY THE LAW ENFORCEMENT OFFICER DURING THE INTERVIEW.
5 2. DISCLOSE ANY FACT TO THE LAW ENFORCEMENT OFFICER OR THE LAW
6 ENFORCEMENT OFFICER'S REPRESENTATIVE THAT WOULD IMPEDE THE INVESTIGATION.
7 C. SUBSECTION A, PARAGRAPHS 1 AND 2 OF THIS SECTION DO NOT APPLY TO AN
8 INTERVIEW OF A LAW ENFORCEMENT OFFICER THAT IS:
9 1. IN THE NORMAL COURSE OF DUTY, COUNSELING OR INSTRUCTION OR AN
10 INFORMAL VERBAL ADMONISHMENT BY, OR OTHER ROUTINE OR UNPLANNED CONTACT WITH,
11 A SUPERVISOR OR ANY OTHER LAW ENFORCEMENT OFFICER.
12 2. PRELIMINARY QUESTIONING TO DETERMINE THE SCOPE OF THE ALLEGATIONS
13 OR IF AN INVESTIGATION IS NECESSARY.
14 3. CONDUCTED DURING THE COURSE OF A CRIMINAL INVESTIGATION.
15 4. CONDUCTED DURING THE COURSE OF A POLYGRAPH EXAMINATION.
16 D. THE EMPLOYER MAY REQUIRE THE LAW ENFORCEMENT OFFICER TO SUBMIT TO A
17 POLYGRAPH EXAMINATION IF THE OFFICER MAKES A STATEMENT TO THE EMPLOYER DURING
18 THE INVESTIGATION THAT DIFFERS FROM OTHER INFORMATION RELATING TO THE
19 INVESTIGATION THAT IS KNOWN TO THE EMPLOYER AND RECONCILING THAT DIFFERENCE
20 IS NECESSARY TO COMPLETE THE INVESTIGATION. IF A POLYGRAPH EXAMINATION IS
21 ADMINISTERED PURSUANT TO THIS PARAGRAPH, THE EMPLOYER OR THE PERSON
22 ADMINISTERING THE POLYGRAPH EXAMINATION SHALL MAKE AN AUDIO RECORDING OF THE
23 COMPLETE POLYGRAPH PROCEDURE AND PROVIDE A COPY OF THE RECORDING TO THE LAW
24 ENFORCEMENT OFFICER. SECTION 38-1108 APPLIES TO A POLYGRAPH EXAMINATION THAT
25 IS ADMINISTERED PURSUANT TO THIS SUBSECTION.
26 E. IF AFTER AN EMPLOYER COMPLETES AN INVESTIGATION OF A LAW
27 ENFORCEMENT OFFICER THE EMPLOYER SEEKS DISCIPLINARY ACTION, AT THE REQUEST OF
28 THE LAW ENFORCEMENT OFFICER, THE EMPLOYER SHALL PROVIDE A BASIC SUMMARY OF
29 ANY DISCIPLINE ORDERED AGAINST ANY OTHER LAW ENFORCEMENT OFFICER OF GENERALLY
30 SIMILAR RANK AND EXPERIENCE EMPLOYED BY THE EMPLOYER WITHIN THE PREVIOUS TWO
31 YEARS FOR THE SAME OR A SIMILAR VIOLATION. AS AN ALTERNATIVE, THE EMPLOYER
32 MAY PROVIDE FILE COPIES OF THE RELEVANT DISCIPLINARY CASES. THE EMPLOYER
33 SHALL NOT TAKE FINAL ACTION AND THE EMPLOYER SHALL NOT SCHEDULE A HEARING
34 UNTIL THE BASIC SUMMARY OR FILE COPIES ARE PROVIDED TO THE LAW ENFORCEMENT
35 OFFICER.
36 F. THIS SECTION DOES NOT APPLY TO A LAW ENFORCEMENT OFFICER WHO IS
37 EMPLOYED BY AN AGENCY OF THIS STATE AS AN AT WILL EMPLOYEE.
38 38-1105. Law enforcement officer as witness; right to
39 representation; exception
40 A. IF A LAW ENFORCEMENT OFFICER IS DESIGNATED AS A WITNESS BY THE LAW
41 ENFORCEMENT OFFICER'S EMPLOYER IN AN INVESTIGATION THAT COULD LEAD TO ANOTHER
42 LAW ENFORCEMENT OFFICER'S DISMISSAL, DEMOTION OR SUSPENSION, THE WITNESS LAW
43 ENFORCEMENT OFFICER MAY REQUEST TO HAVE A REPRESENTATIVE PRESENT AT NO COST
44 TO THE EMPLOYER DURING THE WITNESS INTERVIEW. UNLESS AGREED TO BY THE
45 EMPLOYER, THE REPRESENTATIVE SHALL BE FROM THE SAME AGENCY AND SHALL NOT BE

1 AN ATTORNEY EXCEPT THAT IF A REPRESENTATIVE FROM THE SAME AGENCY IS NOT
2 REASONABLY AVAILABLE, WITH THE EMPLOYER'S PERMISSION, THE WITNESS LAW
3 ENFORCEMENT OFFICER'S REPRESENTATIVE MAY BE FROM THE WITNESS LAW ENFORCEMENT
4 OFFICER'S PROFESSIONAL MEMBERSHIP ORGANIZATION.

5 B. THE WITNESS LAW ENFORCEMENT OFFICER SHALL ANSWER ALL QUESTIONS
6 ASKED BY THE LAW ENFORCEMENT OFFICER'S DEPARTMENT INVESTIGATOR, AND
7 INFORMATION LEARNED DURING A WITNESS INTERVIEW IS CONSIDERED PROPRIETARY AND
8 CONFIDENTIAL BY THE EMPLOYER AND SHALL REMAIN SO UNTIL THE WITNESS LAW
9 ENFORCEMENT OFFICER IS SERVED WITH A NOTICE OF INVESTIGATION BY THE EMPLOYER
10 OR THE WITNESS LAW ENFORCEMENT OFFICER IS RELEASED FROM THE CONFIDENTIALITY
11 REQUIREMENTS OF THIS SECTION.

12 C. THE WITNESS LAW ENFORCEMENT OFFICER MAY DISCUSS THE LAW ENFORCEMENT
13 OFFICER'S WITNESS INTERVIEW WITH THE WITNESS LAW ENFORCEMENT OFFICER'S
14 REPRESENTATIVE OR THAT REPRESENTATIVE'S LEGAL COUNSEL. IF THE WITNESS LAW
15 ENFORCEMENT OFFICER OR THE WITNESS LAW ENFORCEMENT OFFICER'S REPRESENTATIVE
16 RELEASES INFORMATION WITHOUT AUTHORIZATION, THE EMPLOYER MAY SUBJECT THE
17 WITNESS LAW ENFORCEMENT OFFICER OR THE WITNESS LAW ENFORCEMENT OFFICER'S
18 REPRESENTATIVE TO DISCIPLINARY ACTION.

19 D. THIS SECTION DOES NOT APPLY TO A LAW ENFORCEMENT OFFICER WHO IS
20 EMPLOYED BY AN AGENCY OF THIS STATE AS AN AT WILL EMPLOYEE.

21 38-1106. Appeal of disciplinary actions; transcripts; change of
22 hearing officer or administrative law judge; burden
23 of proof; exception

24 A. IN ANY APPEAL OF A DISCIPLINARY ACTION BY A LAW ENFORCEMENT
25 OFFICER, THE PARTIES SHALL COOPERATE WITH EACH OTHER, ACT IN GOOD FAITH AND
26 EXCHANGE COPIES OF ALL RELEVANT DOCUMENTS AND A LIST OF ALL WITNESSES
27 PURSUANT TO THE FOLLOWING TIME PERIODS AND REQUIREMENTS:

28 1. WITHIN FOURTEEN CALENDAR DAYS AFTER THE EMPLOYER'S RECEIPT OF A
29 WRITTEN REQUEST FROM THE LAW ENFORCEMENT OFFICER FOR A COPY OF THE
30 INVESTIGATIVE FILE THAT IS ACCOMPANIED BY A COPY OF THE FILED NOTICE OF
31 APPEAL, THE EMPLOYER SHALL PROVIDE A COMPLETE COPY OF THE INVESTIGATIVE FILE
32 AS WELL AS THE NAMES AND CONTACT INFORMATION FOR ALL PERSONS INTERVIEWED
33 DURING THE COURSE OF THE INVESTIGATION.

34 2. NO LATER THAN FOURTEEN CALENDAR DAYS BEFORE THE APPEAL HEARING, THE
35 PARTIES SHALL PRODUCE AND SERVE ON EVERY PARTY THE FOLLOWING INFORMATION:

36 (a) THE NAME OF EACH WITNESS WHOM THE DISCLOSING PARTY EXPECTS TO CALL
37 AT THE APPEAL HEARING, WITH A DESIGNATION OF THE SUBJECT MATTER ON WHICH EACH
38 WITNESS MIGHT BE CALLED TO TESTIFY. A WITNESS MAY DECLINE AN INTERVIEW. THE
39 PARTIES SHALL NOT INTERFERE WITH ANY DECISION OF A WITNESS REGARDING WHETHER
40 TO BE INTERVIEWED. AN EMPLOYER SHALL NOT DISCIPLINE, RETALIATE AGAINST OR
41 THREATEN TO RETALIATE AGAINST ANY WITNESS FOR AGREEING TO BE INTERVIEWED OR
42 FOR TESTIFYING OR PROVIDING EVIDENCE IN THE APPEAL.

43 (b) THE NAME AND CONTACT INFORMATION OF EACH PERSON WHO HAS GIVEN
44 STATEMENTS, WHETHER WRITTEN OR RECORDED OR SIGNED OR UNSIGNED, REGARDING

1 MATTERS RELEVANT TO THE NOTICE OF DISCIPLINE AND THE CUSTODIAN OF THE COPIES
2 OF THOSE STATEMENTS.

3 (c) COPIES OF ANY DOCUMENTS THAT MAY BE INTRODUCED AT THE HEARING AND
4 THAT HAVE NOT PREVIOUSLY BEEN DISCLOSED.

5 B. IT IS UNLAWFUL FOR A PERSON TO DISSEMINATE INFORMATION THAT IS
6 DISCLOSED PURSUANT TO SUBSECTION A OF THIS SECTION TO ANY PERSON OTHER THAN
7 THE PARTIES TO THE APPEAL AND THEIR LAWFUL REPRESENTATIVES FOR PURPOSES OF
8 THE APPEAL OF THE DISCIPLINARY ACTION. THIS SUBSECTION DOES NOT PROHIBIT THE
9 USE OF THE INFORMATION IN THE HEARING OR DISCLOSURE PURSUANT TO TITLE 39,
10 CHAPTER 1, ARTICLE 2.

11 C. IF A TRANSCRIPT IS REQUIRED IN AN ADMINISTRATIVE HEARING, THE
12 EMPLOYER SHALL OBTAIN THE TRANSCRIPT AND PROVIDE A COPY TO THE LAW
13 ENFORCEMENT OFFICER WITHIN TEN CALENDAR DAYS AFTER THE EMPLOYER'S RECEIPT OF
14 THE TRANSCRIPT.

15 D. FAILURE TO COMPLY WITH THE REQUIREMENTS OF SUBSECTION A OR B OF
16 THIS SECTION SHALL RESULT IN THE EXCLUSION OF THE WITNESS, EVIDENCE OR
17 TESTIMONY, UNLESS THE FAILURE TO COMPLY IS BECAUSE OF EXCUSABLE NEGLIGENCE.

18 E. THE EMPLOYER OR THE LAW ENFORCEMENT OFFICER MAY SEEK A
19 DETERMINATION BY THE HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS
20 BOARD HEARING THE APPEAL REGARDING ANY EVIDENCE THAT THE EMPLOYER OR THE LAW
21 ENFORCEMENT OFFICER BELIEVES SHOULD NOT BE DISCLOSED PURSUANT TO SUBSECTION A
22 OF THIS SECTION BECAUSE THE RISK OF HARM INVOLVED IN DISCLOSURE OUTWEIGHS ANY
23 USEFULNESS OF THE DISCLOSURE IN THE HEARING. IN DETERMINING WHETHER EVIDENCE
24 WILL BE DISCLOSED, THE HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS
25 BOARD MAY PERFORM AN IN CAMERA REVIEW OF THE EVIDENCE AND MAY DISCLOSE THE
26 MATERIAL SUBJECT TO ANY RESTRICTION ON THE DISCLOSURE, INCLUDING THE CLOSING
27 OF THE HEARING OR THE SEALING OF THE RECORDS, THAT THE HEARING OFFICER,
28 ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD FINDS NECESSARY UNDER THE
29 CIRCUMSTANCES.

30 F. IN ANY APPEAL OF A DISCIPLINARY ACTION BY A LAW ENFORCEMENT OFFICER
31 IN WHICH A SINGLE HEARING OFFICER OR ADMINISTRATIVE LAW JUDGE HAS BEEN
32 APPOINTED TO CONDUCT THE APPEAL HEARING, THE LAW ENFORCEMENT OFFICER OR THE
33 EMPLOYER, WITHIN TEN CALENDAR DAYS AFTER THE APPOINTMENT OF THE HEARING
34 OFFICER OR ADMINISTRATIVE LAW JUDGE, MAY REQUEST A CHANGE OF HEARING OFFICER
35 OR ADMINISTRATIVE LAW JUDGE. IN CASES BEFORE THE OFFICE OF ADMINISTRATIVE
36 HEARINGS OR IF THE EMPLOYER IS A COUNTY, CITY OR TOWN, ON THE FIRST REQUEST
37 OF A PARTY, THE REQUEST SHALL BE GRANTED. A CITY OR TOWN WITH A POPULATION
38 OF LESS THAN SIXTY-FIVE THOUSAND PERSONS OR A COUNTY WITH A POPULATION OF
39 LESS THAN TWO HUNDRED FIFTY THOUSAND PERSONS MUST PROVIDE, IF NECESSARY TO
40 COMPLY WITH THIS SUBSECTION, FOR AN ALTERNATE HEARING OFFICER BY MEANS OF AN
41 INTERAGENCY AGREEMENT WITH ANOTHER CITY, TOWN OR COUNTY. IF THE LAW
42 ENFORCEMENT OFFICER IS THE PARTY WHO REQUESTED THE ALTERNATE HEARING OFFICER,
43 THE LAW ENFORCEMENT OFFICER SHALL REIMBURSE THE CITY, TOWN OR COUNTY FOR
44 ONE-HALF OF ANY ADDITIONAL EXPENSES INCURRED BY THE CITY, TOWN OR COUNTY IN
45 PROCURING THE ALTERNATE HEARING OFFICER UNDER THE INTERAGENCY AGREEMENT. IF

1 AN ALTERNATE HEARING OFFICER IS REQUESTED BY MEANS OF AN INTERAGENCY
2 AGREEMENT, THE HEARING OFFICER SHALL PROVIDE TO THE LAW ENFORCEMENT OFFICER
3 OR EMPLOYER THE OPTION OF CONTINUING THE HEARING FOR AN ADDITIONAL TEN
4 CALENDAR DAYS. ANY SUBSEQUENT REQUESTS MAY BE GRANTED ONLY ON A SHOWING THAT
5 A FAIR AND IMPARTIAL HEARING CANNOT BE OBTAINED DUE TO THE PREJUDICE OF THE
6 ASSIGNED HEARING OFFICER OR ADMINISTRATIVE LAW JUDGE. THE SUPERVISOR OR
7 SUPERVISING BODY OF THE HEARING OFFICER OR ADMINISTRATIVE LAW JUDGE SHALL
8 DECIDE WHETHER A SHOWING OF PREJUDICE HAS BEEN MADE.

9 G. THE EMPLOYER HAS THE BURDEN OF PROOF IN AN APPEAL OF A DISCIPLINARY
10 ACTION BY A LAW ENFORCEMENT OFFICER.

11 H. EXCEPT WHERE A STATUTE, RULE OR ORDINANCE MAKES THE ADMINISTRATIVE
12 EVIDENTIARY HEARING THE FINAL ADMINISTRATIVE DETERMINATION AND AFTER A
13 HEARING WHERE THE LAW ENFORCEMENT OFFICER AND THE EMPLOYER HAVE BEEN EQUALLY
14 ALLOWED TO CALL AND EXAMINE WITNESSES, CROSS-EXAMINE WITNESSES, PROVIDE
15 DOCUMENTARY EVIDENCE AND OTHERWISE FULLY PARTICIPATE IN THE HEARING, AN
16 EMPLOYER OR A PERSON ACTING ON BEHALF OF AN EMPLOYER MAY AMEND, MODIFY,
17 REJECT OR REVERSE THE PORTION OF A DECISION MADE BY A HEARING OFFICER,
18 ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD THAT WAS ARBITRARY OR WITHOUT
19 REASONABLE JUSTIFICATION. THE EMPLOYER OR PERSON ACTING ON BEHALF OF THE
20 EMPLOYER SHALL STATE THE REASON FOR THE AMENDMENT, MODIFICATION, REJECTION OR
21 REVERSAL.

22 I. NOTWITHSTANDING CHAPTER 3, ARTICLE 3.1 OF THIS TITLE, ALL HEARINGS
23 PURSUANT TO THIS SECTION SHALL BE OPEN TO THE PUBLIC. EXECUTIVE SESSIONS
24 PERMITTED PURSUANT TO SECTION 38-431.03 SHALL BE LIMITED TO LEGAL ADVICE TO A
25 PERSONNEL APPEALS BOARD OR FOR DELIBERATIONS.

26 J. A LAW ENFORCEMENT OFFICER WHO PREVAILS IN AN APPEAL WHERE A
27 TERMINATION HAS BEEN REVERSED MAY BE AWARDED RETROACTIVE COMPENSATION FROM
28 THE DATE OF THE OFFICER'S SEPARATION TO THE DATE OF REINSTATEMENT. THE
29 HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD HEARING THE APPEAL
30 SHALL DETERMINE THE AMOUNT OF RETROACTIVE COMPENSATION AWARDED AND ANY
31 REDUCTION TO THAT AMOUNT. RETROACTIVE COMPENSATION MAY BE REDUCED:

32 1. IF THERE IS UNDUE DELAY IN SETTING A HEARING DATE CAUSED BY THE LAW
33 ENFORCEMENT OFFICER OR THE LAW ENFORCEMENT OFFICER'S REPRESENTATIVE.

34 2. IF THE LAW ENFORCEMENT OFFICER REQUESTS A CONTINUANCE.

35 3. IF THERE EXISTS A PERIOD BETWEEN SEPARATION AND REINSTATEMENT THAT
36 THE LAW ENFORCEMENT OFFICER WOULD HAVE BEEN UNABLE TO PERFORM THE DUTIES OF A
37 LAW ENFORCEMENT OFFICER.

38 4. BY ANY AMOUNT EARNED BY THE LAW ENFORCEMENT OFFICER IN ALTERNATIVE
39 EMPLOYMENT.

40 K. THE HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD
41 SHALL STATE IN EVERY FINDING OF DISCIPLINARY ACTION WHETHER OR NOT JUST CAUSE
42 EXISTED FOR THE DISCIPLINARY ACTION.

43 L. THE HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD
44 SHALL DOCUMENT IN THE RECORD THOSE CIRCUMSTANCES WHERE THE HEARING OFFICER,

1 ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD DETERMINES THAT A PARTY HAS CLEARLY
2 VIOLATED A PARTY'S OBLIGATION UNDER THIS SECTION.

3 M. THIS SECTION DOES NOT APPLY TO A LAW ENFORCEMENT OFFICER WHO IS
4 EMPLOYED BY AN AGENCY OF THIS STATE AS AN AT WILL EMPLOYEE.

5 38-1107. Superior court review hearing; remedy; exceptions

6 A. IF A LAW ENFORCEMENT OFFICER IS DEMOTED OR TERMINATED AS THE RESULT
7 OF AN EMPLOYER OR A PERSON ACTING ON BEHALF OF AN EMPLOYER REVERSING THE
8 DECISION OR RECOMMENDATION OF A HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR
9 APPEALS BOARD WHERE THE FINDING STATES THAT THERE WAS NO JUST CAUSE FOR THE
10 DEMOTION OR TERMINATION, THE LAW ENFORCEMENT OFFICER MAY BRING AN ACTION IN
11 SUPERIOR COURT FOR A HEARING DE NOVO ON THE DEMOTION OR TERMINATION.

12 B. IF A LAW ENFORCEMENT OFFICER IS DEMOTED OR TERMINATED BY AN
13 EMPLOYER OR A PERSON ACTING ON BEHALF OF AN EMPLOYER WHERE THERE IS NO
14 HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD TO REVIEW THE
15 DEMOTION OR TERMINATION, THE LAW ENFORCEMENT OFFICER MAY BRING AN ACTION IN
16 SUPERIOR COURT TO REVIEW THE AGENCY'S FILE. IF THE COURT FINDS FROM A REVIEW
17 OF THE FILE THAT THERE WAS NO JUST CAUSE FOR THE DEMOTION OR TERMINATION, THE
18 OFFICER IS ENTITLED TO A HEARING DE NOVO ON THE DEMOTION OR TERMINATION.

19 C. IF THE SUPERIOR COURT FINDS THAT JUST CAUSE FOR A DEMOTION OR
20 TERMINATION DID NOT EXIST, THE COURT SHALL ORDER THE OFFICER REINSTATED TO
21 THE OFFICER'S PREVIOUS POSITION WITH THE LAW ENFORCEMENT AGENCY AND MAY AWARD
22 TO THE LAW ENFORCEMENT OFFICER MONETARY DAMAGES THAT SHALL NOT EXCEED THE
23 OFFICER'S COMBINED TOTAL OF WAGES AND BENEFITS DURING THE PERIOD OF IMPOSED
24 DISCIPLINARY ACTION THAT WAS LOST AS A RESULT OF THE DEMOTION OR TERMINATION.

25 D. AN ACTION PURSUANT TO SUBSECTION A OR B OF THIS SECTION SHALL BE
26 COMMENCED WITHIN THIRTY-FIVE CALENDAR DAYS AFTER A COPY OF THE DECISION
27 SOUGHT TO BE REVIEWED IS SERVED ON THE LAW ENFORCEMENT OFFICER.

28 E. IN AN ACTION PURSUANT TO SUBSECTION A OR B OF THIS SECTION THE
29 COURT MAY AWARD THE SUCCESSFUL PARTY REASONABLE ATTORNEY FEES AS SET FORTH IN
30 SECTION 12-341.01, SUBSECTION B AND SHALL AWARD THE SUCCESSFUL PARTY ALL
31 COSTS PURSUANT TO SECTION 12-341.

32 F. THIS SECTION DOES NOT APPLY TO A LAW ENFORCEMENT OFFICER WHO IS
33 EMPLOYED AS AN AT WILL EMPLOYEE:

34 1. AS A POLICE CHIEF OR AN ASSISTANT POLICE CHIEF IN A LAW ENFORCEMENT
35 AGENCY.

36 2. BY AN AGENCY OF THIS STATE.

37 Sec. 10. Renumber

38 Sections 38-1108 and 38-1109, Arizona Revised Statutes, are renumbered
39 as sections 38-1111 and 38-1112, respectively.

40 Sec. 11. Title 38, chapter 8, article 1, Arizona Revised Statutes, is
41 amended by adding new sections 38-1108 and 38-1109, to read:

42 38-1108. Polygraph examinations; exception

43 A. THE RESULTS OF A POLYGRAPH EXAMINATION IN AN INVESTIGATION MAY NOT
44 BE THE BASIS FOR DISCIPLINARY ACTION UNLESS OTHER CORROBORATING EVIDENCE OR
45 INFORMATION EXISTS TO SUPPORT THAT DISCIPLINARY ACTION.

1 B. NOTWITHSTANDING SECTION 39-123, ALL DATA AND REPORTS FROM A
2 POLYGRAPH EXAMINATION OF A LAW ENFORCEMENT OFFICER ARE CONFIDENTIAL AND MAY
3 BE USED ONLY FOR EMPLOYMENT, CERTIFICATION OR REACTIVATION OF CERTIFICATION
4 PURPOSES OR FOR THE ADMINISTRATIVE MATTER FOR WHICH A POLYGRAPH WAS
5 ADMINISTERED, INCLUDING OTHER ANCILLARY MATTERS. ALL OTHER USES ARE
6 PROHIBITED.

7 C. EXCEPT FOR A PREEMPLOYMENT POLYGRAPH AFTER WHICH AN APPLICANT WAS
8 NOT HIRED OR IN THE CASE OF AN ACTIVE INVESTIGATION OR AN APPEAL, THE DATA
9 AND REPORTS FROM A POLYGRAPH EXAMINATION OF A LAW ENFORCEMENT OFFICER SHALL
10 BE DESTROYED AS SOON AS PRACTICABLE THREE YEARS AFTER THE DATE OF APPOINTMENT
11 OR EMPLOYMENT BUT NOT MORE THAN NINETY CALENDAR DAYS AFTER THAT DATE.

12 D. THIS SECTION DOES NOT APPLY TO A LAW ENFORCEMENT OFFICER WHO IS
13 EMPLOYED BY AN AGENCY OF THIS STATE AS AN AT WILL EMPLOYEE.

14 38-1109. Confidentiality of records; exception

15 A. AN EMPLOYER SHALL NOT INCLUDE IN THAT PORTION OF THE PERSONNEL FILE
16 OF A LAW ENFORCEMENT OFFICER THAT IS AVAILABLE FOR PUBLIC INSPECTION AND
17 COPYING ANY INFORMATION ABOUT AN INVESTIGATION UNTIL THE INVESTIGATION IS
18 COMPLETE OR THE EMPLOYER HAS DISCONTINUED THE INVESTIGATION.

19 B. IF THE LAW ENFORCEMENT OFFICER HAS TIMELY APPEALED A DISCIPLINARY
20 ACTION, THE INVESTIGATION IS NOT COMPLETE UNTIL THE CONCLUSION OF THE APPEAL
21 PROCESS. THIS SUBSECTION DOES NOT APPLY TO A LAW ENFORCEMENT OFFICER WHO IS
22 EMPLOYED BY AN AGENCY OF THIS STATE AS AN AT WILL EMPLOYEE.

23 Sec. 12. Title 38, chapter 8, article 1, Arizona Revised Statutes, is
24 amended by adding section 38-1110, to read:

25 38-1110. Time limitation on disciplinary action against law
26 enforcement officer; exceptions

27 A. AN EMPLOYER SHALL MAKE A GOOD FAITH EFFORT TO COMPLETE ANY
28 INVESTIGATION OF EMPLOYEE MISCONDUCT WITHIN ONE HUNDRED EIGHTY CALENDAR DAYS
29 AFTER THE EMPLOYER RECEIVES NOTICE OF THE ALLEGATION BY A PERSON AUTHORIZED
30 BY THE EMPLOYER TO INITIATE AN INVESTIGATION OF THE MISCONDUCT. THE
31 INVESTIGATION IS CONSIDERED COMPLETE ON THE DATE THE EMPLOYEE IS SERVED WITH
32 THE NOTICE OF DISCIPLINE OR THE NOTICE OF FINDINGS. IF THE EMPLOYER EXCEEDS
33 THE ONE HUNDRED EIGHTY CALENDAR DAY LIMIT, THE EMPLOYER SHALL PROVIDE THE
34 EMPLOYEE WITH A WRITTEN EXPLANATION CONTAINING THE REASONS THE INVESTIGATION
35 CONTINUED BEYOND ONE HUNDRED EIGHTY CALENDAR DAYS.

36 B. THE LIMITATION PERIOD ESTABLISHED BY SUBSECTION A OF THIS SECTION:

37 1. IS SUSPENDED DURING THE TIME THAT ANY CRIMINAL INVESTIGATION OR
38 PROSECUTION IS PENDING IN CONNECTION WITH THE ACT, OMISSION OR OTHER
39 ALLEGATION OF MISCONDUCT.

40 2. IS SUSPENDED DURING THE PERIOD OF TIME IN WHICH A LAW ENFORCEMENT
41 OFFICER WHO IS INVOLVED IN THE INVESTIGATION IS INCAPACITATED OR OTHERWISE
42 UNAVAILABLE.

43 3. MAY BE SUSPENDED FOR A PERIOD PRESCRIBED IN A WRITTEN WAIVER OF THE
44 LIMITATION BY THE LAW ENFORCEMENT OFFICER.

1 the specific names of individuals who reported the law enforcement officer's
2 ~~or probation officer's~~ conduct to the supervisor.

3 B. The order shall provide at least ten **CALENDAR** days' notice to the
4 law enforcement officer ~~or probation officer~~ to be examined and shall specify
5 the time, place, manner, conditions and scope of the examination and the
6 person or persons who will conduct the examination. The law enforcement
7 officer ~~or probation officer~~ to be examined may have a representative present
8 during the examination if the physician conducting the examination agrees.

9 C. The employer shall provide the law enforcement officer ~~or probation~~
10 ~~officer~~ with the final report of the examination containing the medical
11 professional's findings. The employer may provide any additional information
12 related to the fitness for duty examination to the examining physician.

13 D. The report shall be provided only to the employer and the law
14 enforcement officer ~~or probation officer~~ and shall not be provided to any
15 other person except as required for any subsequent appeal or certification
16 action involving the law enforcement officer ~~or probation officer~~. The
17 employer shall provide notice to the law enforcement officer ~~or probation~~
18 ~~officer~~ that the report has been received by the employer. The report shall
19 be provided to the law enforcement officer ~~or probation officer~~ immediately
20 if the law enforcement officer ~~or probation officer~~ presents the final report
21 of an independent medical examination or if the law enforcement officer ~~or~~
22 ~~probation officer~~ waives any right to request an independent medical
23 examination. If the law enforcement officer ~~or probation officer~~ does not
24 present the results of an independent medical examination within twenty
25 **CALENDAR** days after the employer provides **NOTICE TO** the law enforcement
26 officer ~~or probation officer notice~~ that the report has been received by the
27 employer, the law enforcement officer ~~or probation officer~~ is deemed to have
28 waived the right to present the results of the independent medical
29 examination.

30 E. The employer shall make a reasonable good faith effort to deliver
31 the report to the law enforcement officer ~~or probation officer~~.

32 F. The physician may consider and report on only the law enforcement
33 officer's ~~or probation officer's~~ medical or other records that are directly
34 relevant to the actions in question and when conducting the examination,
35 including medical records that record preexisting conditions that are
36 relevant to the examination. The physician may additionally consider and
37 report any condition of the law enforcement officer ~~or probation officer~~ that
38 the physician identifies during the course of the physical examination and
39 that endangers the safety of the law enforcement officer ~~or probation officer~~
40 or the community.

41 G. The employer shall not take any final action until after the law
42 enforcement officer ~~or probation officer~~ has had at least twenty **CALENDAR**
43 days to review the report unless the law enforcement officer ~~or probation~~
44 ~~officer~~ waives the twenty-day period or the employer grants an extension.

1 H. This section does not prohibit the preexamination materials from
2 being used in any proceeding held pursuant to section ~~38-1101~~ 38-1104.

3 I. Providing the preexamination materials to the person conducting the
4 independent examination of the law enforcement officer ~~or probation officer~~
5 does not change the disclosure requirements under section ~~38-1101~~ 38-1104.

6 ~~J. This section does not diminish any rights of a law enforcement
7 officer or probation officer that exist in this title and does not preempt
8 agreements that supplant, revise or otherwise alter the provisions of this
9 section, including preexisting agreements between employers and law
10 enforcement officers or probation officers or the law enforcement officer's
11 or probation officer's lawful representative association.~~

12 ~~K.~~ J. For the purposes of this section:

13 1. "Independent medical examination" means an assessment that is
14 requested by a law enforcement officer ~~or probation officer~~, that is
15 conducted by a physician who is licensed pursuant to title 32, chapter 13 or
16 17 and that is used to provide a second, independent opinion of a current law
17 enforcement officer ~~or probation officer~~ who has been determined to not be
18 able to perform essential functions of the job as a result of observation and
19 a subsequent employer-ordered physical examination.

20 2. "Law enforcement officer" means:

21 (a) A regularly employed and paid individual, other than a
22 probationary employee, who is certified by the Arizona peace officer
23 standards and training board and who is working in a position requiring
24 certification by the Arizona peace officer standards and training board,
25 other than a person employed by a multi-county water conservation district,
26 an at-will employee or a voluntary or reserve employee.

27 (b) A corrections officer or detention officer, ~~excluding~~ OTHER THAN a
28 juvenile detention officer, who is employed by this state or a political
29 subdivision of this state.

30 3. "Preexamination materials" means all information or materials that
31 the employer gives to the physician who conducts the physical examination and
32 that serve as the basis for the examination.

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

36 Sec. 15. Section 38-1114, Arizona Revised Statutes, as renumbered by
37 this act, is amended to read:

38 38-1114. Health insurance payments for spouse or dependents of
39 law enforcement officer killed in the line of duty;
40 applicability; definitions

41 A. Notwithstanding any other law, the surviving spouse or a surviving
42 dependent of a deceased law enforcement officer is entitled to receive
43 payments for health insurance premiums from public monies of the employer of
44 the law enforcement officer if the law enforcement officer was killed in the
45 line of duty or died from injuries suffered in the line of duty.

1 B. The employer shall make payments if the surviving spouse or
2 surviving dependent is enrolled or was enrolled at the time the law
3 enforcement officer was killed in the line of duty or died from injuries
4 suffered in the line of duty in either:

- 5 1. The health insurance program of the employer.
- 6 2. The health insurance program that is offered by the state
7 retirement system or plan from which the surviving spouse or surviving
8 dependent is receiving benefits.

9 C. If a surviving spouse or surviving dependent was enrolled in either
10 health insurance program described in subsection B of this section at the
11 time the law enforcement officer was killed in the line of duty or died from
12 injuries suffered in the line of duty and is eligible pursuant to subsection
13 D of this section to receive health insurance premium payments under this
14 section but is no longer enrolled in either health insurance program
15 described in subsection B of this section, the employer shall allow the
16 surviving spouse and any surviving dependent to enroll in the employer's
17 health insurance program to receive health insurance premium payments
18 pursuant to this section.

19 D. The health insurance premium amount payable by the employer of the
20 deceased law enforcement officer is the amount the employer of the deceased
21 law enforcement officer would pay for an active law enforcement officer for a
22 family coverage premium or single coverage premium, whichever is applicable.
23 Payments shall be discontinued pursuant to this section if:

- 24 1. The surviving spouse remarries.
- 25 2. The surviving spouse becomes medicare eligible.
- 26 3. The surviving spouse dies.
- 27 4. For dependent coverage, the person is no longer considered a
28 dependent.

29 E. If the employer currently pays a greater portion of the health
30 insurance premium for a surviving spouse or a surviving dependent than the
31 required amount prescribed in subsection D of this section, the surviving
32 spouse or surviving dependent shall receive the greater amount as payment
33 toward the surviving spouse's or surviving dependent's health insurance
34 premium.

35 F. This section applies:

36 1. To a surviving spouse or a surviving dependent of a deceased law
37 enforcement officer, as defined in subsection G, paragraph 2, subdivision
38 (a), (b), ~~OR~~ (c) ~~or (d)~~ of this section, who was killed in the line of duty
39 or who died from injuries suffered in the line of duty on or after April 5,
40 1933.

41 2. To a surviving spouse or a surviving dependent of a deceased law
42 enforcement officer, as defined in subsection G, paragraph 2, subdivision ~~(e)~~
43 (d) of this section, who was killed in the line of duty or who died from
44 injuries suffered in the line of duty on or after April 5, 2013.

1 3. For the surviving spouse or the surviving dependent who qualifies
2 pursuant to paragraph 1 of this subsection, only to health insurance premiums
3 paid on or after ~~the effective date of this amendment to this section~~
4 **SEPTEMBER 13, 2013.**

5 G. For the purposes of this section:

6 1. "Dependent" means an unmarried child of a deceased law enforcement
7 officer who meets one of the following qualifications:

8 (a) Is under eighteen years of age.

9 (b) Is at least eighteen years of age and under twenty-three years of
10 age only during any period that the child is a full-time student.

11 (c) Is under a disability that began before the child attained
12 twenty-three years of age and remains a dependent of the surviving spouse or
13 a guardian.

14 2. "Law enforcement officer" means:

15 (a) A peace officer who is certified by the Arizona peace officer
16 standards and training board.

17 (b) A detention officer or corrections officer who, **OTHER THAN A**
18 **JUVENILE DETENTION OFFICER**, is employed by this state or a political
19 subdivision of this state.

20 ~~(c) A probation officer or surveillance officer who is employed by~~
21 ~~this state or a political subdivision of this state.~~

22 ~~(d)~~ (c) A firefighter who is employed by this state or a political
23 subdivision of this state.

24 ~~(e)~~ (d) A corrections officer or firefighter who works on behalf of
25 this state or a political subdivision of this state through a contract with a
26 private company.

27 Sec. 16. Title 38, chapter 8, Arizona Revised Statutes, is amended by
28 adding article 2, to read:

29 ARTICLE 2. ADULT AND JUVENILE PROBATION OFFICERS

30 **38-1131. Definitions**

31 **IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:**

32 1. "APPEAL" MEANS A HEARING BEFORE A STATE OR LOCAL MERIT BOARD, A
33 CIVIL SERVICE BOARD OR A HEARING OFFICER.

34 2. "DISCIPLINARY ACTION" MEANS THE DISMISSAL, DEMOTION OR SUSPENSION
35 FOR MORE THAN EIGHT HOURS OF A PROBATION OFFICER THAT IS AUTHORIZED BY
36 STATUTE, CHARTER OR ORDINANCE AND THAT IS SUBJECT TO A HEARING OR OTHER
37 PROCEDURE BY A LOCAL MERIT BOARD, A CIVIL SERVICE BOARD OR A HEARING OFFICER.

38 3. "INVESTIGATIVE FILE" MEANS THE PROBATION DEPARTMENT'S COMPLETE
39 REPORT AND ANY ATTACHMENTS DETAILING THE INCIDENTS LEADING TO THE
40 DISCIPLINARY ACTION.

41 4. "JUST CAUSE" MEANS:

42 (a) THE EMPLOYER INFORMED THE PROBATION OFFICER OF THE POSSIBLE
43 DISCIPLINARY ACTION RESULTING FROM THE OFFICER'S CONDUCT THROUGH AGENCY
44 MANUALS, EMPLOYEE HANDBOOKS, THE EMPLOYER'S RULES AND REGULATIONS OR OTHER

1 COMMUNICATIONS TO THE OFFICER OR THE CONDUCT WAS SUCH THAT THE OFFICER SHOULD
2 HAVE REASONABLY KNOWN DISCIPLINARY ACTION COULD OCCUR.

3 (b) THE DISCIPLINARY ACTION IS REASONABLY RELATED TO THE STANDARDS OF
4 CONDUCT FOR A PROFESSIONAL PROBATION OFFICER, THE MISSION OF THE AGENCY, THE
5 ORDERLY, EFFICIENT OR SAFE OPERATION OF THE AGENCY OR THE OFFICER'S FITNESS
6 FOR DUTY.

7 (c) THE DISCIPLINE IS SUPPORTED BY A PREPONDERANCE OF EVIDENCE THAT
8 THE CONDUCT OCCURRED.

9 (d) THE DISCIPLINE IS NOT EXCESSIVE AND IS REASONABLY RELATED TO THE
10 SERIOUSNESS OF THE OFFENSE AND THE OFFICER'S SERVICE RECORD.

11 5. "PROBATION OFFICER" MEANS A SURVEILLANCE OFFICER, JUVENILE
12 DETENTION OFFICER OR JUVENILE OR ADULT PROBATION OFFICER, OTHER THAN A
13 PROBATIONARY EMPLOYEE, WHO IS EMPLOYED BY THIS STATE OR A POLITICAL
14 SUBDIVISION OF THIS STATE.

15 38-1132. Preemption

16 THIS ARTICLE DOES NOT PREEMPT AGREEMENTS THAT SUPPLANT, REVISE OR
17 OTHERWISE DEVIATE FROM THE PROVISIONS OF THIS ARTICLE, INCLUDING WRITTEN
18 AGREEMENTS BETWEEN THE EMPLOYER AND THE PROBATION OFFICER OR THE PROBATION
19 OFFICER'S LAWFUL REPRESENTATIVE ASSOCIATION.

20 38-1133. Discipline of probation officers

21 A. A PROBATION OFFICER IS NOT SUBJECT TO DISCIPLINARY ACTION EXCEPT
22 FOR JUST CAUSE.

23 B. THIS SECTION DOES NOT APPLY TO:

24 1. A DISMISSAL OR DEMOTION THAT IS FOR ADMINISTRATIVE PURPOSES,
25 INCLUDING A REDUCTION IN FORCE.

26 2. A PROBATION OFFICER WHO HAS NOT COMPLETED AN INITIAL PROBATIONARY
27 PERIOD IF A PROBATIONARY PERIOD IS REQUIRED BY THE EMPLOYER.

28 38-1134. Internal investigations; employee representative;
29 polygraph examination

30 A. IF AN EMPLOYER INTERVIEWS A PROBATION OFFICER IN THE COURSE OF AN
31 ADMINISTRATIVE INVESTIGATION AND THE EMPLOYER OR PROBATION OFFICER REASONABLY
32 BELIEVES THAT THE INTERVIEW COULD RESULT IN DISMISSAL, DEMOTION OR
33 SUSPENSION:

34 1. THE PROBATION OFFICER MAY REQUEST TO HAVE A REPRESENTATIVE OF THE
35 OFFICER PRESENT AT NO COST TO THE EMPLOYER DURING THE INTERVIEW. THE
36 PROBATION OFFICER SHALL SELECT A REPRESENTATIVE WHO IS AVAILABLE ON
37 REASONABLE NOTICE SO THAT THE INTERVIEW IS NOT UNREASONABLY DELAYED. THE
38 REPRESENTATIVE SHALL PARTICIPATE IN THE INTERVIEW ONLY AS AN OBSERVER.
39 UNLESS AGREED TO BY THE EMPLOYER, THE REPRESENTATIVE SHALL NOT BE AN ATTORNEY
40 AND SHALL BE FROM THE SAME AGENCY EXCEPT THAT IF A REPRESENTATIVE FROM THE
41 SAME AGENCY IS NOT REASONABLY AVAILABLE, WITH THE EMPLOYER'S PERMISSION, THE
42 PROBATION OFFICER'S REPRESENTATIVE MAY BE FROM THE PROBATION OFFICER'S
43 PROFESSIONAL MEMBERSHIP ORGANIZATION. THE PROBATION OFFICER SHALL BE
44 PERMITTED REASONABLE BREAKS OF LIMITED DURATION DURING ANY INTERVIEW FOR
45 TELEPHONIC OR IN PERSON CONSULTATION WITH AUTHORIZED PERSONS, INCLUDING AN

1 ATTORNEY, WHO ARE IMMEDIATELY AVAILABLE. AN EMPLOYER SHALL NOT DISCIPLINE,
2 RETALIATE AGAINST OR THREATEN TO RETALIATE AGAINST A PROBATION OFFICER FOR
3 REQUESTING THAT A REPRESENTATIVE BE PRESENT OR FOR ACTING AS THE
4 REPRESENTATIVE OF A PROBATION OFFICER PURSUANT TO THIS PARAGRAPH.

5 2. BEFORE THE COMMENCEMENT OF ANY INTERVIEW DESCRIBED IN THIS SECTION,
6 THE EMPLOYER SHALL PROVIDE THE PROBATION OFFICER WITH A WRITTEN NOTICE
7 INFORMING THE OFFICER OF THE ALLEGED FACTS THAT ARE THE BASIS OF THE
8 INVESTIGATION, THE SPECIFIC NATURE OF THE INVESTIGATION, THE OFFICER'S STATUS
9 IN THE INVESTIGATION, ALL KNOWN ALLEGATIONS OF MISCONDUCT THAT ARE THE REASON
10 FOR THE INTERVIEW AND THE OFFICER'S RIGHT TO HAVE A REPRESENTATIVE PRESENT AT
11 THE INTERVIEW. THE NOTICE SHALL INCLUDE COPIES OF ALL COMPLAINTS THAT
12 CONTAIN THE ALLEGED FACTS THAT ARE REASONABLY AVAILABLE, EXCEPT FOR COPIES OF
13 COMPLAINTS THAT ARE FILED WITH THE EMPLOYER AND THAT INCLUDE ALLEGATIONS OF
14 UNLAWFUL DISCRIMINATION, HARASSMENT OR RETALIATION OR COMPLAINTS THAT INVOLVE
15 MATTERS UNDER THE JURISDICTION OF THE EQUAL EMPLOYMENT OPPORTUNITY
16 COMMISSION.

17 3. AT THE CONCLUSION OF THE INTERVIEW, THE PROBATION OFFICER IS
18 ENTITLED TO A PERIOD OF TIME TO CONSULT WITH THE OFFICER'S REPRESENTATIVE AND
19 MAY MAKE A STATEMENT NOT TO EXCEED FIVE MINUTES ADDRESSING SPECIFIC FACTS OR
20 POLICIES THAT ARE RELATED TO THE INTERVIEW.

21 B. SUBSECTION A OF THIS SECTION DOES NOT REQUIRE THE EMPLOYER TO
22 EITHER:

23 1. STOP AN INTERVIEW TO ISSUE ANOTHER NOTICE FOR ALLEGATIONS BASED ON
24 INFORMATION PROVIDED BY THE PROBATION OFFICER DURING THE INTERVIEW.

25 2. DISCLOSE ANY FACT TO THE PROBATION OFFICER OR THE PROBATION
26 OFFICER'S REPRESENTATIVE THAT WOULD IMPEDE THE INVESTIGATION.

27 C. SUBSECTION A, PARAGRAPHS 1 AND 2 OF THIS SECTION DO NOT APPLY TO AN
28 INTERVIEW OF A PROBATION OFFICER THAT IS:

29 1. IN THE NORMAL COURSE OF DUTY, COUNSELING OR INSTRUCTION OR AN
30 INFORMAL VERBAL ADMONISHMENT BY, OR OTHER ROUTINE OR UNPLANNED CONTACT WITH,
31 A SUPERVISOR OR ANY OTHER PROBATION OFFICER.

32 2. PRELIMINARY QUESTIONING TO DETERMINE THE SCOPE OF THE ALLEGATIONS
33 OR IF AN INVESTIGATION IS NECESSARY.

34 3. CONDUCTED DURING THE COURSE OF A CRIMINAL INVESTIGATION.

35 4. CONDUCTED DURING THE COURSE OF A POLYGRAPH EXAMINATION.

36 D. AN EMPLOYER MAY REQUIRE THE PROBATION OFFICER TO SUBMIT TO A
37 POLYGRAPH EXAMINATION IF THE OFFICER MAKES A STATEMENT TO THE EMPLOYER DURING
38 THE INVESTIGATION THAT DIFFERS FROM OTHER INFORMATION RELATING TO THE
39 INVESTIGATION THAT IS KNOWN TO THE EMPLOYER AND RECONCILING THAT DIFFERENCE
40 IS NECESSARY TO COMPLETE THE INVESTIGATION. IF A POLYGRAPH EXAMINATION IS
41 ADMINISTERED PURSUANT TO THIS SUBSECTION, THE EMPLOYER OR THE PERSON
42 ADMINISTERING THE POLYGRAPH EXAMINATION SHALL MAKE AN AUDIO RECORDING OF THE
43 COMPLETE POLYGRAPH PROCEDURE AND PROVIDE A COPY OF THE RECORDING TO THE
44 PROBATION OFFICER. SECTION 38-1137 APPLIES TO A POLYGRAPH EXAMINATION THAT
45 IS ADMINISTERED PURSUANT TO THIS SUBSECTION.

1 E. IF AFTER AN EMPLOYER COMPLETES AN INVESTIGATION OF A PROBATION
2 OFFICER THE EMPLOYER SEEKS DISCIPLINARY ACTION, AT THE REQUEST OF THE
3 PROBATION OFFICER, THE EMPLOYER SHALL PROVIDE A BASIC SUMMARY OF ANY
4 DISCIPLINE ORDERED AGAINST ANY OTHER PROBATION OFFICER OF GENERALLY SIMILAR
5 RANK AND EXPERIENCE EMPLOYED BY THE EMPLOYER WITHIN THE PREVIOUS TWO YEARS
6 FOR THE SAME OR A SIMILAR VIOLATION. AS AN ALTERNATIVE, THE EMPLOYER MAY
7 PROVIDE FILE COPIES OF THE RELEVANT DISCIPLINARY CASES. THE EMPLOYER SHALL
8 NOT TAKE FINAL ACTION AND THE EMPLOYER SHALL NOT SCHEDULE A HEARING UNTIL THE
9 BASIC SUMMARY OR FILE COPIES ARE PROVIDED TO THE PROBATION OFFICER. THIS
10 SUBSECTION DOES NOT APPLY IF COURT RULE PROHIBITS THE RELEASE OF FILE COPIES
11 OF DISCIPLINARY CASES.

12 38-1135. Probation officers as witnesses; right to
13 representation

14 A. IF A PROBATION OFFICER IS DESIGNATED AS A WITNESS BY THE PROBATION
15 OFFICER'S EMPLOYER IN AN INVESTIGATION THAT COULD LEAD TO ANOTHER PROBATION
16 OFFICER'S DISMISSAL, DEMOTION OR SUSPENSION, THE WITNESS PROBATION OFFICER
17 MAY REQUEST TO HAVE A REPRESENTATIVE PRESENT AT NO COST TO THE EMPLOYER
18 DURING THE WITNESS INTERVIEW. 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 WITNESS PROBATION OFFICER'S
22 REPRESENTATIVE MAY BE FROM THE WITNESS PROBATION OFFICER'S PROFESSIONAL
23 MEMBERSHIP ORGANIZATION.

24 B. THE WITNESS PROBATION OFFICER SHALL ANSWER ALL QUESTIONS ASKED BY
25 THE PROBATION OFFICER'S DEPARTMENT INVESTIGATOR. ANY INFORMATION LEARNED
26 DURING A WITNESS INTERVIEW IS CONSIDERED PROPRIETARY AND CONFIDENTIAL BY THE
27 EMPLOYER AND SHALL REMAIN SO UNTIL THE WITNESS PROBATION OFFICER IS SERVED
28 WITH A NOTICE OF INVESTIGATION BY THE EMPLOYER OR THE WITNESS PROBATION
29 OFFICER IS RELEASED FROM THE CONFIDENTIALITY REQUIREMENTS OF THIS SECTION.

30 C. THE WITNESS PROBATION OFFICER MAY DISCUSS THE PROBATION OFFICER'S
31 WITNESS INTERVIEW WITH THE WITNESS PROBATION OFFICER'S REPRESENTATIVE OR THAT
32 REPRESENTATIVE'S LEGAL COUNSEL. IF THE WITNESS PROBATION OFFICER OR THE
33 WITNESS PROBATION OFFICER'S REPRESENTATIVE RELEASES INFORMATION WITHOUT
34 AUTHORIZATION, THE EMPLOYER MAY SUBJECT THE WITNESS PROBATION OFFICER OR THE
35 WITNESS PROBATION OFFICER'S REPRESENTATIVE TO DISCIPLINARY ACTION.

36 38-1136. Appeal of disciplinary action; change of hearing
37 officer; burden of proof

38 A. IN ANY APPEAL OF A DISCIPLINARY ACTION BY A PROBATION OFFICER, THE
39 PARTIES SHALL EXCHANGE COPIES OF ALL RELEVANT DOCUMENTS AND A LIST OF ALL
40 WITNESSES PURSUANT TO THE FOLLOWING TIME PERIODS AND REQUIREMENTS:

41 1. WITHIN FOURTEEN CALENDAR DAYS AFTER THE EMPLOYER'S RECEIPT OF A
42 WRITTEN REQUEST FROM THE PROBATION OFFICER FOR A COPY OF THE INVESTIGATIVE
43 FILE THAT IS ACCOMPANIED BY A COPY OF THE FILED NOTICE OF APPEAL, THE
44 EMPLOYER SHALL PROVIDE A COMPLETE COPY OF THE INVESTIGATIVE FILE AS WELL AS

1 THE NAMES AND CONTACT INFORMATION FOR ALL PERSONS INTERVIEWED DURING THE
2 COURSE OF THE INVESTIGATION.

3 2. NO LATER THAN FOURTEEN CALENDAR DAYS BEFORE THE APPEAL HEARING, THE
4 PARTIES SHALL PRODUCE AND SERVE ON EVERY PARTY THE FOLLOWING INFORMATION:

5 (a) THE NAME OF EACH WITNESS WHOM THE DISCLOSING PARTY EXPECTS TO CALL
6 AT THE APPEAL HEARING, WITH A DESIGNATION OF THE SUBJECT MATTER ON WHICH EACH
7 WITNESS MIGHT BE CALLED TO TESTIFY. A WITNESS MAY CONSENT TO A PREHEARING
8 INTERVIEW. THE PARTIES SHALL NOT INTERFERE WITH ANY DECISION OF A WITNESS
9 REGARDING WHETHER TO BE INTERVIEWED. AN EMPLOYER SHALL NOT DISCIPLINE,
10 RETALIATE AGAINST OR THREATEN TO RETALIATE AGAINST ANY WITNESS FOR AGREEING
11 TO BE INTERVIEWED OR FOR TESTIFYING OR PROVIDING EVIDENCE IN THE APPEAL.

12 (b) THE NAME AND CONTACT INFORMATION OF EACH PERSON WHO HAS GIVEN
13 STATEMENTS, WHETHER WRITTEN OR RECORDED OR SIGNED OR UNSIGNED, REGARDING
14 MATTERS RELEVANT TO THE NOTICE OF DISCIPLINE AND THE CUSTODIAN OF THE COPIES
15 OF THOSE STATEMENTS.

16 (c) COPIES OF ANY DOCUMENTS THAT MAY BE INTRODUCED AT THE HEARING AND
17 THAT HAVE NOT PREVIOUSLY BEEN DISCLOSED.

18 B. IT IS UNLAWFUL FOR A PERSON TO DISSEMINATE INFORMATION THAT IS
19 DISCLOSED PURSUANT TO SUBSECTION A OF THIS SECTION TO ANY PERSON OTHER THAN
20 THE PARTIES TO THE APPEAL AND THEIR LAWFUL REPRESENTATIVES FOR PURPOSES OF
21 THE APPEAL OF THE DISCIPLINARY ACTION. THIS SUBSECTION DOES NOT PROHIBIT THE
22 USE OF THE INFORMATION IN THE HEARING OR DISCLOSURE PURSUANT TO TITLE 39,
23 CHAPTER 1, ARTICLE 2.

24 C. FAILURE TO COMPLY WITH THE REQUIREMENTS OF SUBSECTION A OR B OF
25 THIS SECTION SHALL RESULT IN THE EXCLUSION OF THE WITNESS, EVIDENCE OR
26 TESTIMONY, UNLESS THE FAILURE TO COMPLY IS BECAUSE OF EXCUSABLE NEGLIGENCE.

27 D. THE EMPLOYER OR THE PROBATION OFFICER MAY SEEK A DETERMINATION BY
28 THE HEARING OFFICER OR APPEALS BOARD HEARING THE APPEAL REGARDING ANY
29 EVIDENCE THAT THE EMPLOYER OR THE PROBATION OFFICER BELIEVES SHOULD NOT BE
30 DISCLOSED PURSUANT TO SUBSECTION A OF THIS SECTION BECAUSE THE RISK OF HARM
31 INVOLVED IN DISCLOSURE OUTWEIGHS ANY USEFULNESS OF THE DISCLOSURE IN THE
32 HEARING. IN DETERMINING WHETHER EVIDENCE WILL BE DISCLOSED, THE HEARING
33 OFFICER OR APPEALS BOARD MAY PERFORM AN IN CAMERA REVIEW OF THE EVIDENCE AND
34 MAY DISCLOSE THE MATERIAL SUBJECT TO ANY RESTRICTION ON THE DISCLOSURE,
35 INCLUDING THE CLOSING OF THE HEARING OR THE SEALING OF THE RECORDS, THAT THE
36 HEARING OFFICER OR APPEALS BOARD FINDS NECESSARY UNDER THE CIRCUMSTANCES.

37 E. IN ANY APPEAL OF A DISCIPLINARY ACTION BY A PROBATION OFFICER IN
38 WHICH A SINGLE HEARING OFFICER HAS BEEN APPOINTED TO CONDUCT THE APPEAL
39 HEARING, THE PROBATION OFFICER OR THE EMPLOYER, WITHIN TEN CALENDAR DAYS
40 AFTER THE APPOINTMENT OF THE HEARING OFFICER, MAY REQUEST A CHANGE OF HEARING
41 OFFICER. IF THE EMPLOYER IS A COUNTY, CITY OR TOWN, ON THE FIRST REQUEST OF A
42 PARTY, THE REQUEST SHALL BE GRANTED. A CITY OR TOWN WITH A POPULATION OF
43 LESS THAN SIXTY-FIVE THOUSAND PERSONS OR A COUNTY WITH A POPULATION OF LESS
44 THAN TWO HUNDRED FIFTY THOUSAND PERSONS MUST PROVIDE, IF NECESSARY TO COMPLY
45 WITH THIS SUBSECTION, FOR AN ALTERNATE HEARING OFFICER BY MEANS OF AN

1 INTERAGENCY AGREEMENT WITH ANOTHER CITY, TOWN OR COUNTY. IF THE PROBATION
2 OFFICER IS THE PARTY WHO REQUESTED THE ALTERNATE HEARING OFFICER, THE
3 PROBATION OFFICER SHALL REIMBURSE THE CITY, TOWN OR COUNTY FOR ONE-HALF OF
4 ANY ADDITIONAL EXPENSES INCURRED BY THE CITY, TOWN OR COUNTY IN PROCURING THE
5 ALTERNATE HEARING OFFICER UNDER THE INTERAGENCY AGREEMENT. ANY SUBSEQUENT
6 REQUESTS MAY BE GRANTED ONLY ON A SHOWING THAT A FAIR AND IMPARTIAL HEARING
7 CANNOT BE OBTAINED DUE TO THE PREJUDICE OF THE ASSIGNED HEARING OFFICER. THE
8 SUPERVISOR OR SUPERVISING BODY OF THE HEARING OFFICER SHALL DECIDE WHETHER A
9 SHOWING OF PREJUDICE HAS BEEN MADE.

10 F. THE EMPLOYER HAS THE BURDEN OF PROOF BY A PREPONDERANCE OF THE
11 EVIDENCE IN AN APPEAL OF A DISCIPLINARY ACTION BY A PROBATION OFFICER.

12 G. EXCEPT WHERE A STATUTE, RULE OR ORDINANCE MAKES THE ADMINISTRATIVE
13 EVIDENTIARY HEARING THE FINAL ADMINISTRATIVE DETERMINATION AND AFTER A
14 HEARING WHERE THE PROBATION OFFICER AND THE EMPLOYER HAVE BEEN EQUALLY
15 ALLOWED TO CALL AND EXAMINE WITNESSES, CROSS-EXAMINE WITNESSES, PROVIDE
16 DOCUMENTARY EVIDENCE AND OTHERWISE FULLY PARTICIPATE IN THE HEARING, AN
17 EMPLOYER OR A PERSON ACTING ON BEHALF OF AN EMPLOYER MAY AMEND, MODIFY,
18 REJECT OR REVERSE THE PORTION OF A DECISION MADE BY A HEARING OFFICER OR
19 APPEALS BOARD THAT WAS ARBITRARY OR WITHOUT REASONABLE JUSTIFICATION. THE
20 EMPLOYER OR PERSON ACTING ON BEHALF OF THE EMPLOYER SHALL STATE THE REASON
21 FOR THE AMENDMENT, MODIFICATION, REJECTION OR REVERSAL.

22 H. IF A TRANSCRIPT IS REQUIRED IN AN ADMINISTRATIVE HEARING, THE
23 EMPLOYER SHALL OBTAIN THE TRANSCRIPT AND PROVIDE A COPY TO THE PROBATION
24 OFFICER WITHIN TEN CALENDAR DAYS AFTER THE EMPLOYER'S RECEIPT OF THE
25 TRANSCRIPT.

26 I. A PROBATION OFFICER WHO PREVAILS IN AN APPEAL WHERE A TERMINATION
27 HAS BEEN REVERSED MAY BE AWARDED RETROACTIVE COMPENSATION FROM THE DATE OF
28 THE OFFICER'S SEPARATION TO THE DATE OF REINSTATEMENT. THE EMPLOYER MAY
29 EXCLUDE ANY PENALTIES DEEMED APPROPRIATE BY THE REVIEWING AUTHORITY FROM THE
30 RETROACTIVE PAYMENT.

31 38-1137. Confidentiality of records

32 AN EMPLOYER SHALL NOT INCLUDE IN THAT PORTION OF THE PERSONNEL FILE OF
33 A PROBATION OFFICER THAT IS AVAILABLE FOR PUBLIC INSPECTION AND COPYING ANY
34 INFORMATION ABOUT AN INVESTIGATION UNTIL THE INVESTIGATION IS COMPLETE OR THE
35 EMPLOYER HAS DISCONTINUED THE INVESTIGATION. IF THE PROBATION OFFICER HAS
36 TIMELY APPEALED A DISCIPLINARY ACTION, THE INVESTIGATION IS NOT COMPLETE
37 UNTIL THE CONCLUSION OF THE APPEAL PROCESS.

38 38-1138. Polygraph examinations

39 A. THE RESULTS OF A POLYGRAPH EXAMINATION IN AN INVESTIGATION MAY NOT
40 BE THE BASIS FOR DISCIPLINARY ACTION UNLESS OTHER CORROBORATING EVIDENCE OR
41 INFORMATION EXISTS TO SUPPORT THAT DISCIPLINARY ACTION.

42 B. NOTWITHSTANDING SECTION 39-123, ALL DATA AND REPORTS FROM A
43 POLYGRAPH EXAMINATION OF A PROBATION OFFICER ARE CONFIDENTIAL AND MAY BE USED
44 ONLY FOR EMPLOYMENT, CERTIFICATION OR REACTIVATION OF CERTIFICATION PURPOSES
45 OR FOR THE ADMINISTRATIVE MATTER FOR WHICH A POLYGRAPH WAS ADMINISTERED,

1 INCLUDING OTHER ANCILLARY MATTERS. ALL OTHER USES ARE PROHIBITED.

2 C. EXCEPT FOR A PREEMPLOYMENT POLYGRAPH AFTER WHICH AN APPLICANT WAS
3 NOT HIRED OR IN THE CASE OF AN ACTIVE INVESTIGATION OR AN APPEAL, THE DATA
4 AND REPORTS FROM A POLYGRAPH EXAMINATION OF A PROBATION OFFICER SHALL BE
5 DESTROYED AS SOON AS PRACTICABLE THREE YEARS AFTER THE DATE OF APPOINTMENT OR
6 EMPLOYMENT BUT NOT MORE THAN NINETY CALENDAR DAYS AFTER THAT DATE.

7 38-1139. Critical incident stress management team member:
8 privilege; exceptions; definitions

9 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, A CRITICAL
10 INCIDENT STRESS MANAGEMENT TEAM MEMBER WHO, IN THE COURSE OF THE MEMBER'S
11 RESPONSE TO A CRITICAL INCIDENT AT THE REQUEST OF THE MEMBER OR MEMBER'S
12 AGENCY, ACQUIRES INFORMATION SECRETLY AND IN CONFIDENCE FROM A PROBATION
13 OFFICER SHALL NOT BE COMPELLED TO DISCLOSE THAT INFORMATION IN A LEGAL
14 PROCEEDING, TRIAL OR INVESTIGATION BEFORE ANY AGENCY OF THIS STATE OR A
15 POLITICAL SUBDIVISION OF THIS STATE.

16 B. SUBSECTION A OF THIS SECTION DOES NOT APPLY IF:

17 1. THE COMMUNICATION OR ADVICE INDICATES CLEAR AND PRESENT DANGER TO
18 THE PROBATION OFFICER WHO RECEIVED CRISIS RESPONSE SERVICES OR TO OTHER
19 PERSONS.

20 2. THE PROBATION OFFICER WHO RECEIVED CRISIS RESPONSE SERVICES GIVES
21 EXPRESS CONSENT TO THE TESTIMONY.

22 3. THE COMMUNICATION OR ADVICE IS MADE DURING THE COURSE OF A CRIMINAL
23 INVESTIGATION.

24 4. THE PROBATION OFFICER WHO RECEIVED CRISIS RESPONSE SERVICES
25 VOLUNTARILY TESTIFIES, IN WHICH CASE THE CRITICAL INCIDENT STRESS MANAGEMENT
26 TEAM MEMBER MAY BE COMPELLED TO TESTIFY ON THE SAME SUBJECT.

27 5. A BREACH OF DEPARTMENT POLICY EXISTS AND THAT BREACH AMOUNTS TO A
28 VIOLATION OF LAWS THAT ARE NORMALLY ENFORCED BY LAW ENFORCEMENT.

29 C. FOR THE PURPOSES OF THIS SECTION:

30 1. "CRISIS RESPONSE SERVICES" MEANS CONSULTATION, RISK ASSESSMENT,
31 REFERRAL AND ONSITE CRISIS INTERVENTION SERVICES PROVIDED BY A CRITICAL
32 INCIDENT STRESS MANAGEMENT TEAM TO A PROBATION OFFICER.

33 2. "CRITICAL INCIDENT STRESS MANAGEMENT TEAM MEMBER" MEANS AN
34 INDIVIDUAL WHO HAS COMPLETED TRAINING THROUGH A RECOGNIZED ORGANIZATION THAT
35 DELIVERS CRITICAL INCIDENT STRESS MANAGEMENT TRAINING AND WHO IS PART OF A
36 LAW ENFORCEMENT, PROBATION, FIREFIGHTER OR EMERGENCY MEDICAL PROVIDER CRISIS
37 RESPONSE TEAM.

38 3. "DEPARTMENT" MEANS THE BRANCH OF GOVERNMENT IN WHICH A PROBATION
39 OFFICER IS EMPLOYED.

40 4. "EMERGENCY MEDICAL PROVIDER" MEANS MUNICIPAL OR STATE EMERGENCY
41 MEDICAL SERVICES PERSONNEL.

42 5. "FIREFIGHTER" MEANS A MUNICIPAL OR STATE FIREFIGHTER.

1 38-1140. Probation officers: fitness for duty: examinations:
2 rights of probation officers: definitions

3 A. AN EMPLOYER MAY ORDER A PROBATION OFFICER TO SUBMIT TO A PHYSICAL
4 EXAMINATION ONLY IF THE PROBATION OFFICER HAS ACTED OR FAILED TO ACT IN AN
5 OBSERVABLE MANNER THAT INDICATES THAT THERE IS A PHYSICAL CONDITION
6 MATERIALLY LIMITING THE PROBATION OFFICER'S ABILITY TO PERFORM THE ESSENTIAL
7 FUNCTIONS OF THE PROBATION OFFICER'S JOB WITHIN THE PROBATION OFFICER'S JOB
8 DESCRIPTION. THE ORDER SHALL STATE ALL OF THE SPECIFIC OBJECTIVE FACTS ON
9 WHICH THE ORDER FOR THE PHYSICAL EXAM IS BASED EXCEPT THAT THE ORDER MAY
10 OMIT THE SPECIFIC NAMES OF INDIVIDUALS WHO REPORTED THE PROBATION OFFICER'S
11 CONDUCT TO THE SUPERVISOR.

12 B. THE ORDER SHALL PROVIDE AT LEAST TEN CALENDAR DAYS' NOTICE TO THE
13 PROBATION OFFICER TO BE EXAMINED AND SHALL SPECIFY THE TIME, PLACE, MANNER,
14 CONDITIONS AND SCOPE OF THE EXAMINATION AND THE PERSON OR PERSONS WHO WILL
15 CONDUCT THE EXAMINATION. THE PROBATION OFFICER TO BE EXAMINED MAY HAVE A
16 REPRESENTATIVE PRESENT DURING THE EXAMINATION IF THE PHYSICIAN CONDUCTING
17 THE EXAMINATION AGREES.

18 C. THE EMPLOYER SHALL PROVIDE THE PROBATION OFFICER WITH THE FINAL
19 REPORT OF THE EXAMINATION CONTAINING THE MEDICAL PROFESSIONAL'S FINDINGS.
20 THE EMPLOYER MAY PROVIDE ANY ADDITIONAL INFORMATION RELATED TO THE FITNESS
21 FOR DUTY EXAMINATION TO THE EXAMINING PHYSICIAN.

22 D. THE REPORT SHALL BE PROVIDED ONLY TO THE EMPLOYER AND THE PROBATION
23 OFFICER AND SHALL NOT BE PROVIDED TO ANY OTHER PERSON EXCEPT AS REQUIRED FOR
24 ANY SUBSEQUENT APPEAL OR CERTIFICATION ACTION INVOLVING THE PROBATION
25 OFFICER. THE EMPLOYER SHALL PROVIDE NOTICE TO THE PROBATION OFFICER THAT
26 THE REPORT HAS BEEN RECEIVED BY THE EMPLOYER. THE REPORT SHALL BE PROVIDED
27 TO THE PROBATION OFFICER IMMEDIATELY IF THE PROBATION OFFICER PRESENTS THE
28 FINAL REPORT OF AN INDEPENDENT MEDICAL EXAMINATION OR IF THE PROBATION
29 OFFICER WAIVES ANY RIGHT TO REQUEST AN INDEPENDENT MEDICAL EXAMINATION. IF
30 THE PROBATION OFFICER DOES NOT PRESENT THE RESULTS OF AN INDEPENDENT MEDICAL
31 EXAMINATION WITHIN TWENTY CALENDAR DAYS AFTER THE EMPLOYER PROVIDES NOTICE
32 TO THE PROBATION OFFICER THAT THE REPORT HAS BEEN RECEIVED BY THE EMPLOYER,
33 THE PROBATION OFFICER IS DEEMED TO HAVE WAIVED THE RIGHT TO PRESENT THE
34 RESULTS OF THE INDEPENDENT MEDICAL EXAMINATION.

35 E. THE EMPLOYER SHALL MAKE A REASONABLE GOOD FAITH EFFORT TO DELIVER
36 THE REPORT TO THE PROBATION OFFICER.

37 F. THE PHYSICIAN MAY CONSIDER AND REPORT ON ONLY THE PROBATION
38 OFFICER'S MEDICAL OR OTHER RECORDS THAT ARE DIRECTLY RELEVANT TO THE ACTIONS
39 IN QUESTION AND WHEN CONDUCTING THE EXAMINATION, INCLUDING MEDICAL RECORDS
40 THAT RECORD PREEXISTING CONDITIONS THAT ARE RELEVANT TO THE EXAMINATION.
41 THE PHYSICIAN MAY ADDITIONALLY CONSIDER AND REPORT ANY CONDITION OF THE
42 PROBATION OFFICER THAT THE PHYSICIAN IDENTIFIES DURING THE COURSE OF THE
43 PHYSICAL EXAMINATION AND THAT ENDANGERS THE HEALTH AND SAFETY OF THE
44 PROBATION OFFICER OR THE COMMUNITY.

1 G. THE EMPLOYER SHALL NOT TAKE ANY FINAL ACTION UNTIL AFTER THE
2 PROBATION OFFICER HAS HAD AT LEAST TWENTY CALENDAR DAYS TO REVIEW THE REPORT
3 UNLESS THE PROBATION OFFICER WAIVES THE TWENTY-DAY PERIOD OR THE EMPLOYER
4 GRANTS AN EXTENSION.

5 H. THIS SECTION DOES NOT PROHIBIT THE PREEXAMINATION MATERIALS FROM
6 BEING USED IN ANY PROCEEDING HELD PURSUANT TO SECTION 38-1134.

7 I. PROVIDING THE PREEXAMINATION MATERIALS TO THE PERSON CONDUCTING THE
8 INDEPENDENT EXAMINATION OF THE PROBATION OFFICER DOES NOT CHANGE THE
9 DISCLOSURE REQUIREMENTS UNDER SECTION 38-1134.

10 J. FOR THE PURPOSES OF THIS SECTION:

11 1. "INDEPENDENT MEDICAL EXAMINATION" MEANS AN ASSESSMENT THAT IS
12 REQUESTED BY A PROBATION OFFICER, THAT IS CONDUCTED BY A PHYSICIAN WHO IS
13 LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17 AND THAT IS USED TO PROVIDE
14 A SECOND, INDEPENDENT OPINION OF A CURRENT PROBATION OFFICER WHO HAS BEEN
15 DETERMINED TO NOT BE ABLE TO PERFORM ESSENTIAL FUNCTIONS OF THE JOB AS A
16 RESULT OF OBSERVATION AND A SUBSEQUENT EMPLOYER-ORDERED PHYSICAL
17 EXAMINATION.

18 2. "PREEXAMINATION MATERIALS" MEANS ALL INFORMATION OR MATERIALS THAT
19 THE EMPLOYER GIVES TO THE PHYSICIAN WHO CONDUCTS THE PHYSICAL EXAMINATION
20 AND THAT SERVE AS THE BASIS FOR THE EXAMINATION.

21 38-1141. Health insurance payments for spouse or dependents of
22 a probation officer killed in the line of duty;
23 applicability; definitions

24 A. NOTWITHSTANDING ANY OTHER LAW, THE SURVIVING SPOUSE OR A SURVIVING
25 DEPENDENT OF A DECEASED PROBATION OFFICER IS ENTITLED TO RECEIVE PAYMENTS FOR
26 HEALTH INSURANCE PREMIUMS FROM PUBLIC MONIES OF THE EMPLOYER OF THE PROBATION
27 OFFICER IF THE PROBATION OFFICER WAS KILLED IN THE LINE OF DUTY OR DIED FROM
28 INJURIES SUFFERED IN THE LINE OF DUTY.

29 B. THE EMPLOYER SHALL MAKE PAYMENTS IF THE SURVIVING SPOUSE OR
30 SURVIVING DEPENDENT IS ENROLLED OR WAS ENROLLED AT THE TIME THE PROBATION
31 OFFICER WAS KILLED IN THE LINE OF DUTY OR DIED FROM INJURIES SUFFERED IN THE
32 LINE OF DUTY IN EITHER:

33 1. THE HEALTH INSURANCE PROGRAM OF THE EMPLOYER.

34 2. THE HEALTH INSURANCE PROGRAM THAT IS OFFERED BY THE STATE
35 RETIREMENT SYSTEM OR PLAN FROM WHICH THE SURVIVING SPOUSE OR SURVIVING
36 DEPENDENT IS RECEIVING BENEFITS.

37 C. IF A SURVIVING SPOUSE OR SURVIVING DEPENDENT WAS ENROLLED IN EITHER
38 HEALTH INSURANCE PROGRAM DESCRIBED IN SUBSECTION B OF THIS SECTION AT THE
39 TIME THE PROBATION OFFICER WAS KILLED IN THE LINE OF DUTY OR DIED FROM
40 INJURIES SUFFERED IN THE LINE OF DUTY AND IS ELIGIBLE PURSUANT TO SUBSECTION
41 D OF THIS SECTION TO RECEIVE HEALTH INSURANCE PREMIUM PAYMENTS UNDER THIS
42 SECTION BUT IS NO LONGER ENROLLED IN EITHER HEALTH INSURANCE PROGRAM
43 DESCRIBED IN SUBSECTION B OF THIS SECTION, THE EMPLOYER SHALL ALLOW THE
44 SURVIVING SPOUSE AND ANY SURVIVING DEPENDENT TO ENROLL IN THE EMPLOYER'S

1 HEALTH INSURANCE PROGRAM TO RECEIVE HEALTH INSURANCE PREMIUM PAYMENTS
2 PURSUANT TO THIS SECTION.

3 D. THE HEALTH INSURANCE PREMIUM AMOUNT PAYABLE BY THE EMPLOYER OF THE
4 DECEASED PROBATION OFFICER IS THE AMOUNT THE EMPLOYER OF THE DECEASED
5 PROBATION OFFICER WOULD PAY FOR AN ACTIVE PROBATION OFFICER FOR A FAMILY
6 COVERAGE PREMIUM OR SINGLE COVERAGE PREMIUM, WHICHEVER IS APPLICABLE.
7 PAYMENTS SHALL BE DISCONTINUED PURSUANT TO THIS SECTION IF:

- 8 1. THE SURVIVING SPOUSE REMARRIES.
- 9 2. THE SURVIVING SPOUSE BECOMES MEDICARE ELIGIBLE.
- 10 3. THE SURVIVING SPOUSE DIES.
- 11 4. FOR DEPENDENT COVERAGE, THE PERSON IS NO LONGER CONSIDERED A
12 DEPENDENT.

13 E. IF THE EMPLOYER CURRENTLY PAYS A GREATER PORTION OF THE HEALTH
14 INSURANCE PREMIUM FOR A SURVIVING SPOUSE OR A SURVIVING DEPENDENT THAN THE
15 REQUIRED AMOUNT PRESCRIBED IN SUBSECTION D OF THIS SECTION, THE SURVIVING
16 SPOUSE OR SURVIVING DEPENDENT SHALL RECEIVE THE GREATER AMOUNT AS PAYMENT
17 TOWARD THE SURVIVING SPOUSE'S OR SURVIVING DEPENDENT'S HEALTH INSURANCE
18 PREMIUM.

19 F. THIS SECTION APPLIES:

- 20 1. TO A SURVIVING SPOUSE OR A SURVIVING DEPENDENT OF A DECEASED
21 PROBATION OFFICER WHO WAS KILLED IN THE LINE OF DUTY OR WHO DIED FROM
22 INJURIES SUFFERED IN THE LINE OF DUTY ON OR AFTER APRIL 5, 1933.
- 23 2. ONLY TO HEALTH INSURANCE PREMIUMS PAID ON OR AFTER SEPTEMBER
24 13, 2013.

25 G. FOR THE PURPOSES OF THIS SECTION:

- 26 1. "DEPENDENT" MEANS AN UNMARRIED CHILD OF A DECEASED PROBATION
27 OFFICER WHO MEETS ONE OF THE FOLLOWING QUALIFICATIONS:
 - 28 (a) IS UNDER EIGHTEEN YEARS OF AGE.
 - 29 (b) IS AT LEAST EIGHTEEN YEARS OF AGE AND UNDER TWENTY-THREE YEARS OF
30 AGE ONLY DURING ANY PERIOD THAT THE CHILD IS A FULL-TIME STUDENT.
 - 31 (c) IS UNDER A DISABILITY THAT BEGAN BEFORE THE CHILD ATTAINED
32 TWENTY-THREE YEARS OF AGE AND REMAINS A DEPENDENT OF THE SURVIVING SPOUSE OR
33 A GUARDIAN.

34 2. "PROBATION OFFICER" MEANS A SURVEILLANCE OFFICER, JUVENILE
35 DETENTION OFFICER OR A JUVENILE OR ADULT PROBATION OFFICER WHO IS EMPLOYED BY
36 THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.

37 Sec. 17. Effective date

38 This act is effective from and after December 31, 2014.