

REFERENCE TITLE: law enforcement officers; omnibus

State of Arizona  
Senate  
Fiftieth Legislature  
Second Regular Session  
2012

## **SB 1186**

Introduced by  
Senator Gray

AN ACT

AMENDING TITLE 12, CHAPTER 6, ARTICLE 12, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-718; AMENDING SECTIONS 13-1210, 32-2414, 38-1101 AND 38-1104, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 8, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 38-1109; 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. Title 12, chapter 6, article 12, Arizona Revised Statutes,  
3 is amended by adding section 12-718, to read:

4 12-718. Fireman's rule

5 THE COMMON LAW DOCTRINE KNOWN AS THE FIREMAN'S RULE SHALL NOT OPERATE  
6 TO DENY ANY PEACE OFFICER A RECOVERY IN ANY ACTION AT LAW OR AUTHORIZED BY  
7 STATUTE.

8 Sec. 2. Section 13-1210, Arizona Revised Statutes, is amended to read:

9 13-1210. Assaults on public safety employees or volunteers and  
10 state hospital employees; disease testing; petition;  
11 hearing; notice; definitions

12 A. A public safety employee or volunteer or the employing agency,  
13 officer or entity may petition the court for an order authorizing testing of  
14 another person for the human immunodeficiency virus, common blood borne  
15 diseases or other diseases specified in the petition if there are reasonable  
16 grounds to believe an exposure occurred and ~~either~~ ONE of the following  
17 applies:

18 1. The person is charged in any criminal complaint and the complaint  
19 alleges that the person interfered with the official duties of the public  
20 safety employee or volunteer by biting, scratching, spitting or transferring  
21 blood or other bodily fluids on or through the skin or membranes of the  
22 public safety employee or volunteer.

23 2. There is probable cause to believe that the person interfered with  
24 the official duties of the public safety employee or volunteer by biting,  
25 scratching, spitting or transferring blood or other bodily fluids on or  
26 through the skin or membranes of the public safety employee or volunteer and  
27 that the person is deceased.

28 3. THE PERSON IS ARRESTED, CHARGED OR IN CUSTODY AND THE PUBLIC SAFETY  
29 EMPLOYEE OR VOLUNTEER ALLEGES, BY AFFIDAVIT, THAT THE PERSON INTERFERED WITH  
30 THE OFFICIAL DUTIES OF THE PUBLIC SAFETY EMPLOYEE OR VOLUNTEER BY BITING,  
31 SCRATCHING, SPITTING OR TRANSFERRING BLOOD OR OTHER BODILY FLUIDS ON OR  
32 THROUGH THE SKIN OR MEMBRANES OF THE PUBLIC SAFETY EMPLOYEE OR VOLUNTEER.

33 B. An employee of the Arizona state hospital or the employing agency  
34 may petition the court for an order authorizing testing of another person for  
35 the human immunodeficiency virus, common blood borne diseases or other  
36 diseases specified in the petition if there are reasonable grounds to believe  
37 an exposure occurred and the person is a patient who is confined to the  
38 Arizona state hospital and who is alleged to have interfered with the  
39 official duties of the Arizona state hospital employee by biting, scratching,  
40 spitting or transferring blood or other bodily fluids on or through the skin  
41 or membranes of the Arizona state hospital employee.

42 C. The court shall hear the petition promptly. If the court finds  
43 that probable cause exists to believe that a possible transfer of blood or  
44 other bodily fluids occurred between the person and the public safety

1 employee or volunteer or the Arizona state hospital employee, the court shall  
2 order that either:

3 1. The person provide two specimens of blood for testing.

4 2. If the person is deceased, the medical examiner draw two specimens  
5 of blood for testing.

6 D. Notwithstanding subsection C, paragraph 2 of this section, on  
7 written notice from the agency, officer or entity employing the public safety  
8 employee or volunteer, the medical examiner is authorized to draw two  
9 specimens of blood for testing during the autopsy or other examination of the  
10 deceased person's body. The medical examiner shall release the specimen to  
11 the employing agency, officer or entity for testing only after the court  
12 issues its order pursuant to subsection C, paragraph 2 of this section. If  
13 the court does not issue an order within thirty days after the medical  
14 examiner collects the specimen, the medical examiner shall destroy the  
15 specimen.

16 E. Notice of the test results shall be provided as prescribed by the  
17 department of health services to the person tested, to the public safety  
18 employee or volunteer or the Arizona state hospital employee named in the  
19 petition and to the employee's or volunteer's employing agency, officer or  
20 entity and, if the person tested is incarcerated or detained, to the officer  
21 in charge and the chief medical officer of the facility in which the person  
22 is incarcerated or detained.

23 F. Section 36-665 does not apply to this section.

24 G. For the purposes of this section:

25 1. "Arizona state hospital" includes the Arizona community protection  
26 and treatment center.

27 2. "Arizona state hospital employee" means an employee of the Arizona  
28 state hospital who has direct patient contact.

29 3. "Private prison security officer" means a security officer who is  
30 employed by a private contractor that contracts with a governmental entity to  
31 provide detention or incarceration facility services for offenders.

32 4. "Public safety employee or volunteer" means a law enforcement  
33 officer, any employee or volunteer of a state or local law enforcement  
34 agency, a probation officer, a surveillance officer, an adult or juvenile  
35 correctional service officer, a detention officer, a private prison security  
36 officer, a firefighter or an emergency medical technician.

37 Sec. 3. Section 32-2414, Arizona Revised Statutes, is amended to read:

38 32-2414. Licensure or registration of peace officers prohibited

39 The department may not issue a license or registration certificate  
40 pursuant to this chapter to a peace officer, including a reserve peace  
41 officer. This section does not apply to retired OR RESERVE peace officers or  
42 peace officers who are accident reconstructionists OR FIRE ORIGIN AND CAUSE  
43 INVESTIGATORS.

1           Sec. 4. Section 38-1101, Arizona Revised Statutes, is amended to read:

2           38-1101. Law enforcement officers; probation officers; right to  
3                                   representation; right to evidence on appeal; change  
4                                   of hearing officer or administrative law judge;  
5                                   burden of proof; polygraph examinations; definitions

6           A. If an employer interviews a law enforcement officer or probation  
7 officer and the employer reasonably believes that the interview could result  
8 in dismissal, demotion or suspension or if the law enforcement officer or  
9 probation officer reasonably believes the investigation could result in a  
10 dismissal, demotion or suspension:

11           1. The law enforcement officer or probation officer may request to  
12 have a representative of the officer present at no cost to the employer  
13 during the interview. The law enforcement officer or probation officer shall  
14 select a representative who is available on reasonable notice so that the  
15 interview is not unreasonably delayed. The representative shall participate  
16 in the interview only as an observer. Unless agreed to by the employer, the  
17 representative shall be from the same agency and shall not be an attorney  
18 except that if a representative from the same agency is not reasonably  
19 available, with the employer's permission, the law enforcement officer's or  
20 probation officer's representative may be from the law enforcement officer's  
21 or probation officer's professional membership organization. The law  
22 enforcement officer or probation officer shall be permitted reasonable breaks  
23 of limited duration during any interview for telephonic or in person  
24 consultation with others, including an attorney, who are immediately  
25 available. An employer shall not discipline, retaliate against or threaten  
26 to retaliate against a law enforcement officer or probation officer for  
27 requesting that a representative be present or for acting as the  
28 representative of a law enforcement officer or probation officer pursuant to  
29 this paragraph.

30           2. Before the commencement of any interview described in this section,  
31 the employer shall provide the law enforcement officer or probation officer  
32 with a written notice informing the officer of the alleged facts that are the  
33 basis of the investigation, the specific nature of the investigation, the  
34 officer's status in the investigation, all known allegations of misconduct  
35 that are the reason for the interview and the officer's right to have a  
36 representative present at the interview. The notice shall include copies of  
37 all complaints that contain the alleged facts that are reasonably available,  
38 except for copies of complaints that involve matters pursuant to federal laws  
39 under the jurisdiction of the equal employment opportunity commission.

40           3. After an employer completes an investigation of a law enforcement  
41 officer or probation officer if the employer seeks disciplinary action at the  
42 request of the law enforcement officer or probation officer, the employer  
43 shall provide a basic summary of any discipline ordered against any other law  
44 enforcement officer or probation officer of generally similar rank and

1 experience employed by the employer within the previous two years for the  
2 same or a similar violation. As an alternative, the employer may provide  
3 file copies of the relevant disciplinary cases. The employer shall not take  
4 final action and the employer shall not schedule the hearing until the basic  
5 summary or file copies are provided to the law enforcement officer or  
6 probation officer. This paragraph does not apply if court rule prohibits the  
7 release of file copies of disciplinary cases.

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

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

21 B. The results of a polygraph examination in an investigation shall  
22 not be the basis for disciplinary action unless other evidence or information  
23 exists.

24 C. Subsection A of this section does not require the employer to  
25 either:

26 1. Stop an interview to issue another notice for allegations based on  
27 information provided by the law enforcement officer or probation officer  
28 during the interview.

29 2. Disclose any fact to the law enforcement officer or probation  
30 officer or the law enforcement officer's or probation officer's  
31 representative that would impede the investigation.

32 D. Subsection A, paragraphs 1 and 2 of this section do not apply to an  
33 interview of a law enforcement officer or probation officer that is:

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

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

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

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

41 E. In any appeal of a disciplinary action by a law enforcement officer  
42 or probation officer, the parties shall exchange copies of all relevant  
43 documents and a list of all witnesses pursuant to the following time periods  
44 and requirements:

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

7           2. 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 copies of any documents that may be introduced at the hearing and that have  
12 not previously been disclosed.

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

23           F. It is unlawful for a person to disseminate information that is  
24 disclosed pursuant to subsection E of this section to any person other than  
25 the parties to the appeal and their lawful representatives for purposes of  
26 the appeal of the disciplinary action. This subsection does not prohibit the  
27 use of the information in the hearing or disclosure pursuant to title 39,  
28 chapter 1, article 2.

29           G. The employer or the law enforcement officer or probation officer  
30 may seek a determination by the hearing officer, administrative law judge or  
31 appeals board hearing the appeal regarding any evidence that the employer or  
32 the law enforcement officer or probation officer believes should not be  
33 disclosed pursuant to subsection E of this section because the risk of harm  
34 involved in disclosure outweighs any usefulness of the disclosure in the  
35 hearing. In determining whether evidence will be disclosed, the hearing  
36 officer, administrative law judge or appeals board may perform an in camera  
37 review of the evidence and may disclose the material subject to any  
38 restriction on the disclosure, including the closing of the hearing or the  
39 sealing of the records, that the hearing officer, administrative law judge or  
40 appeals board finds necessary under the circumstances.

41           H. In any appeal of a disciplinary action by a law enforcement officer  
42 or probation officer in which a single hearing officer or administrative law  
43 judge has been appointed to conduct the appeal hearing, the law enforcement  
44 officer or probation officer or the employer may request a change of hearing

1 officer or administrative law judge. In cases before the office of  
2 administrative hearings or if the employer is a county, city or town on the  
3 first request of a party, the request shall be granted. A city or town with  
4 a population of less than sixty-five thousand persons or a county with a  
5 population of less than two hundred fifty thousand persons must provide, **IF**  
6 **NECESSARY TO COMPLY WITH THIS SUBSECTION**, for an alternate hearing officer by  
7 means of an interagency agreement with another city, town or county. If the  
8 law enforcement officer or probation officer is the party that requested the  
9 alternate hearing officer, 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 alternate  
12 hearing officer under the interagency agreement. If an alternate hearing  
13 officer is requested by means of an interagency agreement, the hearing  
14 officer shall provide to the law enforcement officer or probation officer or  
15 employer the option of continuing the hearing for an additional ten days.  
16 Any subsequent requests may be granted only on a showing that a fair and  
17 impartial hearing cannot be obtained due to the prejudice of the assigned  
18 hearing officer or administrative law judge. The supervisor or supervising  
19 body of the hearing officer or administrative law judge shall decide whether  
20 a showing of prejudice has been made.

21 I. A party who violates subsection A, paragraph 1 of this section, or  
22 subsection E or F of this section, unless the violation is harmless, shall  
23 not be permitted to use that evidence at the hearing, except on a showing of  
24 good cause. The hearing officer or administrative law judge, on a showing of  
25 good cause, may grant the opposing party a continuance, otherwise limit the  
26 use of the evidence or make such other order as may be appropriate.

27 J. The burden of proof in an appeal of a disciplinary action by a law  
28 enforcement officer or probation officer shall be on the employer.

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

40 L. An employer shall not include in that portion of the personnel file  
41 of a law enforcement officer or probation officer that is available for  
42 public inspection and copying any information about an investigation until  
43 the investigation is complete or the employer has discontinued the  
44 investigation. If the law enforcement officer or probation officer has

1 timely appealed a disciplinary action, the investigation is not complete  
2 until the conclusion of the appeal process.

3 M. This section does not preempt agreements that supplant, revise or  
4 otherwise alter the provisions of this section, including preexisting  
5 agreements between the employer and the law enforcement officer or probation  
6 officer or the law enforcement officer's or probation officer's lawful  
7 representative association.

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

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

20 P. For the purposes of this section:

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

23 2. "Disciplinary action" means the dismissal, demotion or suspension  
24 for more than eight hours of a law enforcement officer or probation officer  
25 that is authorized by statute, charter or ordinance and that is subject to a  
26 hearing or other procedure by a local merit board, a civil service board, an  
27 administrative law judge or a hearing officer.

28 3. "Investigative file" means the law enforcement agency's complete  
29 report and any attachments detailing the incidents leading to the  
30 disciplinary action.

31 4. "Law enforcement officer" means:

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

35 (b) A detention officer or ~~correction~~ CORRECTIONS officer, other than  
36 a probationary employee, who is employed by this state or a political  
37 subdivision of this state.

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





1           3. "Just cause" means:

2           (a) The employer informed the officer of the possible disciplinary  
3 action resulting from the officer's conduct through agency manuals, employee  
4 handbooks, the employer's rules and regulations or other communications to  
5 the officer or the conduct was such that the officer should have reasonably  
6 known disciplinary action could occur.

7           (b) The disciplinary action is reasonably related to the standards of  
8 conduct for a professional law enforcement officer, the mission of the  
9 agency, the orderly, efficient or safe operation of the agency or the  
10 officer's fitness for duty.

11           (c) The discipline is supported by a preponderance of evidence that  
12 the conduct occurred.

13           (d) The discipline is not excessive and is reasonably related to the  
14 seriousness of the offense and the officer's service record.

15           4. "Law enforcement officer" means:

16           (a) An individual who is certified by the Arizona peace officer  
17 standards and training board, other than a person employed by a multi-county  
18 water conservation district, a reserve police officer, a volunteer or a  
19 person who is otherwise exempted by an existing merit system.

20           (b) A ~~correction~~ CORRECTIONS officer or detention officer, excluding a  
21 juvenile detention officer, who is employed by this state or a political  
22 subdivision of this state.

23           (c) A regularly appointed and paid deputy sheriff of a county.

24           (d) A regularly employed police officer in a city or town.

25           Sec. 6. Title 38, chapter 8, article 1, Arizona Revised Statutes, is  
26 amended by adding section 38-1109, to read:

27           38-1109. Law enforcement officers; fitness for duty  
28                                   examinations; rights of officers; definitions

29           A. AN EMPLOYER MAY ORDER A LAW ENFORCEMENT OFFICER TO SUBMIT TO A  
30 PHYSICAL EXAMINATION ONLY IF THE OFFICER HAS ACTED OR FAILED TO ACT IN AN  
31 OBSERVABLE MANNER THAT INDICATES THAT THERE IS A PHYSICAL CONDITION  
32 MATERIALLY LIMITING THE OFFICER'S ABILITY TO PERFORM THE OFFICER'S JOB WITHIN  
33 THE OFFICER'S JOB DESCRIPTION. THE EMPLOYER SHALL ORDER THE EXAMINATION ONLY  
34 FOR GOOD CAUSE SHOWN. THE ORDER SHALL STATE ALL OF THE SPECIFIC OBJECTIVE  
35 FACTS ON WHICH THE ORDER FOR THE PHYSICAL EXAM IS BASED EXCEPT THAT THE ORDER  
36 MAY OMIT THE SPECIFIC NAMES OF INDIVIDUALS WHO REPORTED THE OFFICER'S CONDUCT  
37 TO THE SUPERVISOR.

38           B. THE ORDER SHALL PROVIDE AT LEAST TEN DAYS NOTICE TO THE OFFICER TO  
39 BE EXAMINED AND SHALL SPECIFY THE TIME, PLACE, MANNER, CONDITIONS AND SCOPE  
40 OF THE EXAMINATION AND THE PERSON OR PERSONS WHO WILL CONDUCT THE  
41 EXAMINATION. THE OFFICER TO BE EXAMINED MAY HAVE A REPRESENTATIVE PRESENT  
42 DURING THE EXAMINATION UNLESS THE PHYSICIAN CONDUCTING THE EXAMINATION STATES  
43 THAT THE PRESENCE OF THAT REPRESENTATIVE ADVERSELY AFFECTS THE OUTCOME OF THE

1 EXAMINATION. THE OFFICER TO BE EXAMINED MAY AUDIOTAPE OR VIDEOTAPE ANY  
2 PHYSICAL EXAMINATION.

3 C. THE EMPLOYER SHALL PROVIDE THE LAW ENFORCEMENT OFFICER WITH THE  
4 FINAL REPORT OF THE EXAMINATION CONTAINING THE MEDICAL PROFESSIONAL'S  
5 FINDINGS. THE REPORT SHALL INCLUDE ANY PREEXAMINATION MATERIALS, THE RESULTS  
6 OF ALL DIAGNOSES, CONDITIONS AND TESTS MADE AND REPORTS OF ALL EARLIER  
7 EXAMINATIONS OF THE SAME CONDITION THAT WERE CONSIDERED BY THE MEDICAL  
8 PROFESSIONAL IN PREPARING THE FINAL REPORT. THE EMPLOYER MAY PROVIDE ANY  
9 ADDITIONAL INFORMATION RELATED TO THE FITNESS FOR DUTY EXAMINATION TO THE LAW  
10 ENFORCEMENT OFFICER.

11 D. THE REPORT SHALL BE PROVIDED ONLY TO THE EMPLOYER AND THE LAW  
12 ENFORCEMENT OFFICER AND SHALL NOT BE PROVIDED TO ANY OTHER PERSON EXCEPT AS  
13 REQUIRED FOR ANY SUBSEQUENT APPEAL OR CERTIFICATION ACTION INVOLVING THE LAW  
14 ENFORCEMENT OFFICER.

15 E. THE REPORT SHALL BE PROVIDED TO THE OFFICER:

16 1. IMMEDIATELY, IF THE LAW ENFORCEMENT OFFICER PRESENTS THE FINAL  
17 REPORT OF AN INDEPENDENT EXAMINATION.

18 2. WITHIN TEN BUSINESS DAYS AFTER THE EMPLOYER RECEIVES THE FINAL  
19 REPORT OF THE EXAMINATION IF THE LAW ENFORCEMENT OFFICER WAIVES ANY RIGHT TO  
20 REQUEST AN INDEPENDENT EXAMINATION.

21 F. THE EMPLOYER SHALL MAKE A REASONABLE GOOD FAITH EFFORT TO DELIVER  
22 THE REPORT TO THE OFFICER.

23 G. THE EMPLOYER MAY RECEIVE OR REVIEW ONLY THE OFFICER'S MEDICAL OR  
24 OTHER RECORDS THAT ARE DIRECTLY RELEVANT TO THE ACTIONS IN QUESTION AND WHEN  
25 CONDUCTING THE EXAMINATION. THE PHYSICIAN SHALL RECEIVE AND REVIEW ONLY  
26 THOSE RECORDS.

27 H. THE EMPLOYER SHALL NOT TAKE ANY FINAL ACTION UNTIL AFTER THE LAW  
28 ENFORCEMENT OFFICER HAS HAD AT LEAST TWENTY DAYS TO REVIEW THE REPORT.

29 I. THE LAW ENFORCEMENT OFFICER MAY HAVE AN INDEPENDENT MEDICAL  
30 EXAMINATION AND MAY SUBMIT THAT REPORT TO THE EMPLOYER WITHIN THE TWENTY-DAY  
31 PERIOD. FOR THE PURPOSES OF THIS SUBSECTION, "INDEPENDENT MEDICAL  
32 EXAMINATION" MEANS AN ASSESSMENT THAT IS REQUESTED BY A LAW ENFORCEMENT  
33 OFFICER, THAT IS CONDUCTED BY A PHYSICIAN WHO IS LICENSED PURSUANT TO TITLE  
34 32, CHAPTER 13 OR 17 AND THAT IS USED TO PROVIDE A SECOND, INDEPENDENT  
35 OPINION OF A CURRENT LAW ENFORCEMENT OFFICER WHO HAS BEEN DETERMINED TO NOT  
36 BE ABLE TO PERFORM ESSENTIAL FUNCTIONS OF THE JOB AS A RESULT OF OBSERVATION  
37 AND A SUBSEQUENT EMPLOYER-ORDERED PHYSICAL EXAMINATION.

38 J. THIS SECTION DOES NOT PROHIBIT THE PREEXAMINATION MATERIALS FROM  
39 BEING USED IN ANY PROCEEDING HELD PURSUANT TO SECTION 38-1101.

40 K. PROVIDING THE PREEXAMINATION MATERIALS TO THE PERSON CONDUCTING THE  
41 INDEPENDENT EXAMINATION OF THE LAW ENFORCEMENT OFFICER DOES NOT CHANGE THE  
42 DISCLOSURE REQUIREMENTS UNDER SECTION 38-1101.

43 L. THIS SECTION DOES NOT DIMINISH ANY RIGHTS OF A LAW ENFORCEMENT  
44 OFFICER THAT EXIST AT COMMON LAW AND DOES NOT PREEMPT AGREEMENTS THAT

1 SUPPLANT, REVISE OR OTHERWISE ALTER THE PROVISIONS OF THIS SECTION, INCLUDING  
2 PREEXISTING AGREEMENTS BETWEEN EMPLOYERS AND LAW ENFORCEMENT OFFICERS OR THE  
3 LAW ENFORCEMENT OFFICER'S LAWFUL REPRESENTATIVE ASSOCIATION.

4 M. FOR THE PURPOSES OF THIS SECTION:

5 1. "LAW ENFORCEMENT OFFICER" MEANS:

6 (a) A REGULARLY EMPLOYED AND PAID INDIVIDUAL, OTHER THAN A  
7 PROBATIONARY EMPLOYEE, WHO IS CERTIFIED BY THE ARIZONA PEACE OFFICER  
8 STANDARDS AND TRAINING BOARD AND WHO IS WORKING IN A POSITION REQUIRING  
9 CERTIFICATION BY THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD,  
10 OTHER THAN A PERSON EMPLOYED BY A MULTI-COUNTY WATER CONSERVATION DISTRICT,  
11 AN AT WILL EMPLOYEE OR A VOLUNTARY OR RESERVE EMPLOYEE.

12 (b) A DETENTION OFFICER OR CORRECTIONS OFFICER WHO IS EMPLOYED BY THIS  
13 STATE OR A POLITICAL SUBDIVISION OF THIS STATE.

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