

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

SENATE BILL 1186

AN ACT

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. Section 13-1210, Arizona Revised Statutes, is amended to
3 read:

4 13-1210. Assaults on public safety employees or volunteers and
5 state hospital employees; disease testing; petition;
6 hearing; notice; definitions

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

13 1. The person is charged in any criminal complaint and the complaint
14 alleges that the person interfered with the official duties of the public
15 safety employee or volunteer by biting, scratching, spitting or transferring
16 blood or other bodily fluids on or through the skin or membranes of the
17 public safety employee or volunteer.

18 2. There is probable cause to believe that the person interfered with
19 the official duties of the public safety employee or volunteer by biting,
20 scratching, spitting or transferring blood or other bodily fluids on or
21 through the skin or membranes of the public safety employee or volunteer and
22 that the person is deceased.

23 3. **THE PERSON IS ARRESTED, CHARGED OR IN CUSTODY AND THE PUBLIC SAFETY**
24 **EMPLOYEE OR VOLUNTEER ALLEGES, BY AFFIDAVIT, THAT THE PERSON INTERFERED WITH**
25 **THE OFFICIAL DUTIES OF THE PUBLIC SAFETY EMPLOYEE OR VOLUNTEER BY BITING,**
26 **SCRATCHING, SPITTING OR TRANSFERRING BLOOD OR OTHER BODILY FLUIDS ON OR**
27 **THROUGH THE SKIN OR MEMBRANES OF THE PUBLIC SAFETY EMPLOYEE OR VOLUNTEER.**

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

37 C. The court shall hear the petition promptly. If the court finds
38 that probable cause exists to believe that a possible transfer of blood or
39 other bodily fluids occurred between the person and the public safety
40 employee or volunteer or the Arizona state hospital employee, the court shall
41 order that either:

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

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

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

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

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

19 G. For the purposes of this section:

20 1. "Arizona state hospital" includes the Arizona community protection
21 and treatment center.

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

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

27 4. "Public safety employee or volunteer" means a law enforcement
28 officer, any employee or volunteer of a state or local law enforcement
29 agency, a probation officer, a surveillance officer, an adult or juvenile
30 correctional service officer, a detention officer, a private prison security
31 officer, a firefighter or an emergency medical technician.

32 Sec. 2. Section 32-2414, Arizona Revised Statutes, is amended to read:

33 32-2414. Licensure or registration of peace officers prohibited

34 The department may not issue a license or registration certificate
35 pursuant to this chapter to a peace officer, including a reserve peace
36 officer. This section does not apply to retired peace officers or peace
37 officers, **INCLUDING RESERVE PEACE OFFICERS**, who are accident
38 reconstructionists **OR FIRE ORIGIN AND CAUSE INVESTIGATORS**.

39 Sec. 3. Section 38-1101, Arizona Revised Statutes, is amended to read:

40 38-1101. Law enforcement officers; probation officers; right to
41 representation; right to evidence on appeal; change
42 of hearing officer or administrative law judge;
43 burden of proof; polygraph examinations; definitions

44 A. If an employer interviews a law enforcement officer or probation
45 officer and the employer reasonably believes that the interview could result

1 in dismissal, demotion or suspension or if the law enforcement officer or
2 probation officer reasonably believes the investigation could result in a
3 dismissal, demotion or suspension:

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

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

33 3. After an employer completes an investigation of a law enforcement
34 officer or probation officer if the employer seeks disciplinary action at the
35 request of the law enforcement officer or probation officer, the employer
36 shall provide a basic summary of any discipline ordered against any other law
37 enforcement officer or probation officer of generally similar rank and
38 experience employed by the employer within the previous two years for the
39 same or a similar violation. As an alternative, the employer may provide
40 file copies of the relevant disciplinary cases. The employer shall not take
41 final action and the employer shall not schedule the hearing until the basic
42 summary or file copies are provided to the law enforcement officer or
43 probation officer. This paragraph does not apply if court rule prohibits the
44 release of file copies of disciplinary cases.

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

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

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

17 C. Subsection A of this section does not require the employer to
18 either:

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

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

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

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

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

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

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

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

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

44 2. No later than five business days before the appeal hearing, or, if
45 the appeal hearing is scheduled more than twenty days after the notice of

1 appeal, no later than ten business days before the appeal hearing, the
2 employer and the law enforcement officer or probation officer shall exchange
3 copies of any documents that may be introduced at the hearing and that have
4 not previously been disclosed.

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

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

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

33 H. In any appeal of a disciplinary action by a law enforcement officer
34 or probation officer in which a single hearing officer or administrative law
35 judge has been appointed to conduct the appeal hearing, the law enforcement
36 officer or probation officer or the employer may request a change of hearing
37 officer or administrative law judge. In cases before the office of
38 administrative hearings or if the employer is a county, city or town on the
39 first request of a party, the request shall be granted. A city or town with
40 a population of less than sixty-five thousand persons or a county with a
41 population of less than two hundred fifty thousand persons must provide, **IF**
42 **NECESSARY TO COMPLY WITH THIS SUBSECTION**, for an alternate hearing officer by
43 means of an interagency agreement with another city, town or county. If the
44 law enforcement officer or probation officer is the party that requested the
45 alternate hearing officer, the law enforcement officer or probation officer

1 shall reimburse the city, town or county for one-half of any additional
2 expenses incurred by the city, town or county in procuring the alternate
3 hearing officer under the interagency agreement. If an alternate hearing
4 officer is requested by means of an interagency agreement, the hearing
5 officer shall provide to the law enforcement officer or probation officer or
6 employer the option of continuing the hearing for an additional ten days.
7 Any subsequent requests may be granted only on a showing that a fair and
8 impartial hearing cannot be obtained due to the prejudice of the assigned
9 hearing officer or administrative law judge. The supervisor or supervising
10 body of the hearing officer or administrative law judge shall decide whether
11 a showing of prejudice has been made.

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

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

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

31 L. An employer shall not include in that portion of the personnel file
32 of a law enforcement officer or probation officer that is available for
33 public inspection and copying any information about an investigation until
34 the investigation is complete or the employer has discontinued the
35 investigation. If the law enforcement officer or probation officer has
36 timely appealed a disciplinary action, the investigation is not complete
37 until the conclusion of the appeal process.

38 M. This section does not preempt agreements that supplant, revise or
39 otherwise alter the provisions of this section, including preexisting
40 agreements between the employer and the law enforcement officer or probation
41 officer or the law enforcement officer's or probation officer's lawful
42 representative association.

43 N. Notwithstanding section 39-123, all data and reports from a
44 polygraph examination of a law enforcement officer or probation officer are
45 confidential and may only be used for employment, certification or

1 reactivation of certification purposes or the administrative matter for which
2 a polygraph was administered, including other ancillary matters. All other
3 uses are prohibited.

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

10 P. For the purposes of this section:

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

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

18 3. "Investigative file" means the law enforcement agency's complete
19 report and any attachments detailing the incidents leading to the
20 disciplinary action.

21 4. "Law enforcement officer" means:

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

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

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

31 Sec. 4. Section 38-1104, Arizona Revised Statutes, is amended to read:

32 38-1104. Discipline of law enforcement officers; exceptions;
33 definitions

34 A. A law enforcement officer shall not be subject to disciplinary
35 action except for just cause.

36 B. Subsection A of this section does not apply to any law enforcement
37 officer who has not completed an initial probationary period if a
38 probationary period is required by the employer or to a dismissal that is for
39 administrative purposes, including a reduction in force.

40 C. This section does not preempt agreements that supplant, revise or
41 otherwise alter the provisions of this section, including preexisting
42 agreements, between the employer and the law enforcement officer's lawful
43 representative association.

44 D. If a law enforcement officer is terminated as the result of a chief
45 of the law enforcement agency or the chief executive officer of a city or

1 town reversing the decision or recommendation of a civil service board or
2 merit commission, WHERE THE FINDING STATES THAT THERE WAS NO JUST CAUSE FOR
3 THE TERMINATION the law enforcement officer ~~who believes the termination was~~
4 ~~without just cause~~ may bring an action in superior court for a ~~new~~ hearing DE
5 NOVO on the termination.

6 E. If a law enforcement officer is terminated by the chief of the law
7 enforcement agency or chief executive officer of a city or town where there
8 is not a civil service board or merit commission to review the termination,
9 the law enforcement officer may bring an action in superior court to review
10 the agency's file. If the court finds from a review of the file that just
11 cause for the termination did not exist, the officer is entitled to a hearing
12 on the termination.

13 F. If the superior court finds that just cause for the termination did
14 not exist, the court shall order the officer reinstated to the officer's
15 previous position with the law enforcement agency and may award to the law
16 enforcement officer monetary damages that shall not exceed the officer's
17 combined total of wages and benefits lost as a result of the termination.

18 G. In an action pursuant to subsection D or E of this section the
19 court may award the successful party reasonable attorney fees as set forth in
20 section 12-341.01, subsection B and shall award the successful party all
21 costs pursuant to section 12-341.

22 H. This section does not apply to a law enforcement officer who is
23 employed as an at will employee as a police chief or an assistant police
24 chief in a law enforcement agency.

25 I. For the purposes of this section:

26 1. "At will employee" means a person who is employed as an employee
27 who may be terminated at the will of either the employee or employer, at any
28 time, with or without cause.

29 2. "Disciplinary action" has the same meaning prescribed in section
30 38-1101.

31 3. "Just cause" means:

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

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

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

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

1 4. "Law enforcement officer" means:

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

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

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

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

11 Sec. 5. Title 38, chapter 8, article 1, Arizona Revised Statutes, is
12 amended by adding section 38-1109, to read:

13 38-1109. Law enforcement officers; fitness for duty
14 examinations; rights of officers; definitions

15 A. AN EMPLOYER MAY ORDER A LAW ENFORCEMENT OFFICER TO SUBMIT TO A
16 PHYSICAL EXAMINATION ONLY IF THE OFFICER HAS ACTED OR FAILED TO ACT IN AN
17 OBSERVABLE MANNER THAT INDICATES THAT THERE IS A PHYSICAL CONDITION
18 MATERIALLY LIMITING THE OFFICER'S ABILITY TO PERFORM THE ESSENTIAL FUNCTIONS
19 OF THE OFFICER'S JOB WITHIN THE OFFICER'S JOB DESCRIPTION. THE ORDER SHALL
20 STATE ALL OF THE SPECIFIC OBJECTIVE FACTS ON WHICH THE ORDER FOR THE PHYSICAL
21 EXAM IS BASED EXCEPT THAT THE ORDER MAY OMIT THE SPECIFIC NAMES OF
22 INDIVIDUALS WHO REPORTED THE OFFICER'S CONDUCT TO THE SUPERVISOR.

23 B. THE ORDER SHALL PROVIDE AT LEAST TEN DAYS NOTICE TO THE OFFICER TO
24 BE EXAMINED AND SHALL SPECIFY THE TIME, PLACE, MANNER, CONDITIONS AND SCOPE
25 OF THE EXAMINATION AND THE PERSON OR PERSONS WHO WILL CONDUCT THE
26 EXAMINATION. THE OFFICER TO BE EXAMINED MAY HAVE A REPRESENTATIVE PRESENT
27 DURING THE EXAMINATION IF THE PHYSICIAN CONDUCTING THE EXAMINATION AGREES.

28 C. THE EMPLOYER SHALL PROVIDE THE LAW ENFORCEMENT OFFICER WITH THE
29 FINAL REPORT OF THE EXAMINATION CONTAINING THE MEDICAL PROFESSIONAL'S
30 FINDINGS. THE EMPLOYER MAY PROVIDE ANY ADDITIONAL INFORMATION RELATED TO THE
31 FITNESS FOR DUTY EXAMINATION TO THE EXAMINING PHYSICIAN.

32 D. THE REPORT SHALL BE PROVIDED ONLY TO THE EMPLOYER AND THE LAW
33 ENFORCEMENT OFFICER AND SHALL NOT BE PROVIDED TO ANY OTHER PERSON EXCEPT AS
34 REQUIRED FOR ANY SUBSEQUENT APPEAL OR CERTIFICATION ACTION INVOLVING THE LAW
35 ENFORCEMENT OFFICER. THE EMPLOYER SHALL PROVIDE NOTICE TO THE OFFICER THAT
36 THE REPORT HAS BEEN RECEIVED BY THE EMPLOYER. THE REPORT SHALL BE PROVIDED
37 TO THE OFFICER IMMEDIATELY IF THE OFFICER PRESENTS THE FINAL REPORT OF AN
38 INDEPENDENT MEDICAL EXAMINATION OR IF THE OFFICER WAIVES ANY RIGHT TO REQUEST
39 AN INDEPENDENT MEDICAL EXAMINATION. IF THE OFFICER DOES NOT PRESENT THE
40 RESULTS OF AN INDEPENDENT MEDICAL EXAMINATION WITHIN TWENTY DAYS AFTER THE
41 EMPLOYER PROVIDES THE OFFICER NOTICE THAT THE REPORT HAS BEEN RECEIVED BY THE
42 EMPLOYER, THE OFFICER IS DEEMED TO HAVE WAIVED THE RIGHT TO PRESENT THE
43 RESULTS OF THE INDEPENDENT MEDICAL EXAMINATION.

44 E. THE EMPLOYER SHALL MAKE A REASONABLE GOOD FAITH EFFORT TO DELIVER
45 THE REPORT TO THE OFFICER.

1 F. THE PHYSICIAN MAY CONSIDER AND REPORT ON ONLY THE OFFICER'S MEDICAL
2 OR OTHER RECORDS THAT ARE DIRECTLY RELEVANT TO THE ACTIONS IN QUESTION AND
3 WHEN CONDUCTING THE EXAMINATION, INCLUDING MEDICAL RECORDS THAT RECORD
4 PREEXISTING CONDITIONS THAT ARE RELEVANT TO THE EXAMINATION. THE PHYSICIAN
5 MAY ADDITIONALLY CONSIDER AND REPORT ANY CONDITION OF THE OFFICER THAT THE
6 PHYSICIAN IDENTIFIES DURING THE COURSE OF THE PHYSICAL EXAMINATION AND THAT
7 ENDANGERS THE SAFETY OF THE OFFICER OR THE COMMUNITY.

8 G. THE EMPLOYER SHALL NOT TAKE ANY FINAL ACTION UNTIL AFTER THE LAW
9 ENFORCEMENT OFFICER HAS HAD AT LEAST TWENTY DAYS TO REVIEW THE REPORT UNLESS
10 THE OFFICER WAIVES THE TWENTY DAY PERIOD OR THE EMPLOYER GRANTS AN EXTENSION.

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

13 I. PROVIDING THE PREEXAMINATION MATERIALS TO THE PERSON CONDUCTING THE
14 INDEPENDENT EXAMINATION OF THE LAW ENFORCEMENT OFFICER DOES NOT CHANGE THE
15 DISCLOSURE REQUIREMENTS UNDER SECTION 38-1101.

16 J. THIS SECTION DOES NOT DIMINISH ANY RIGHTS OF A LAW ENFORCEMENT
17 OFFICER THAT EXIST IN THIS TITLE AND DOES NOT PREEMPT AGREEMENTS THAT
18 SUPPLANT, REVISE OR OTHERWISE ALTER THE PROVISIONS OF THIS SECTION, INCLUDING
19 PREEXISTING AGREEMENTS BETWEEN EMPLOYERS AND LAW ENFORCEMENT OFFICERS OR THE
20 LAW ENFORCEMENT OFFICER'S LAWFUL REPRESENTATIVE ASSOCIATION.

21 K. FOR THE PURPOSES OF THIS SECTION:

22 1. "INDEPENDENT MEDICAL EXAMINATION" MEANS AN ASSESSMENT THAT IS
23 REQUESTED BY A LAW ENFORCEMENT OFFICER, THAT IS CONDUCTED BY A PHYSICIAN WHO
24 IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17 AND THAT IS USED TO
25 PROVIDE A SECOND, INDEPENDENT OPINION OF A CURRENT LAW ENFORCEMENT OFFICER
26 WHO HAS BEEN DETERMINED TO NOT BE ABLE TO PERFORM ESSENTIAL FUNCTIONS OF THE
27 JOB AS A RESULT OF OBSERVATION AND A SUBSEQUENT EMPLOYER-ORDERED PHYSICAL
28 EXAMINATION.

29 2. "LAW ENFORCEMENT OFFICER" MEANS:

30 (a) A REGULARLY EMPLOYED AND PAID INDIVIDUAL, OTHER THAN A
31 PROBATIONARY EMPLOYEE, WHO IS CERTIFIED BY THE ARIZONA PEACE OFFICER
32 STANDARDS AND TRAINING BOARD AND WHO IS WORKING IN A POSITION REQUIRING
33 CERTIFICATION BY THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD,
34 OTHER THAN A PERSON EMPLOYED BY A MULTI-COUNTY WATER CONSERVATION DISTRICT,
35 AN AT WILL EMPLOYEE OR A VOLUNTARY OR RESERVE EMPLOYEE.

36 (b) A CORRECTIONS OFFICER OR DETENTION OFFICER, EXCLUDING A JUVENILE
37 DETENTION OFFICER, WHO IS EMPLOYED BY THIS STATE OR A POLITICAL SUBDIVISION
38 OF THIS STATE.

39 3. "PREEXAMINATION MATERIALS" MEANS ALL INFORMATION OR MATERIALS THAT
40 THE EMPLOYER GIVES TO THE PHYSICIAN WHO CONDUCTS THE PHYSICAL EXAMINATION AND
41 THAT SERVE AS THE BASIS FOR THE EXAMINATION.