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

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

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

A. The department of administration may expend public monies appropriated for such purpose to procure health and accident coverage for full-time officers and employees of this state and its departments and agencies. The department of administration may adopt rules that provide that if an employee dies while the employee's surviving spouse's health insurance is in force, the surviving spouse is entitled to no more than thirty-six months of extended coverage at one hundred two per cent of the group rates by paying the premiums. Except as provided by section 38-1103 SECTIONS 38-1114 AND 38-1141, no public monies may be expended to pay all or any part of the premium of health insurance continued in force by the surviving spouse. The department of administration shall seek a variety of plans, including indemnity health insurance, hospital and medical service plans, dental plans and health maintenance organizations. On a recommendation of the department of administration and the review of the joint legislative budget committee, the department of administration may self-insure for the purposes of this subsection. If the department of administration self-insures, the department may contract directly with preferred provider organizations, physician and hospital networks, indemnity health insurers, hospital and medical service plans, dental plans and health maintenance organizations. If the department self-insures, the department shall provide that the self-insurance program include all health coverage benefits that are mandated pursuant to title 20. The self-insurance program shall include provisions to provide for the protection of the officers and employees, including grievance procedures for claim or treatment denials, creditable coverage determinations, dissatisfaction with care and access to care issues. The department of administration by rule shall designate and adopt performance standards, including cost competitiveness, utilization review issues, network development and access, conversion and implementation, report timeliness, quality outcomes and customer satisfaction for qualifying plans. The qualifying plans for which the standards are adopted include indemnity health insurance, hospital and medical service plans, closed panel medical and dental plans and health maintenance organizations, and for eligibility of officers and employees to participate in such plans. Any indemnity health insurance or hospital and medical service plan designated as a qualifying plan by the department of administration must be open for enrollment to all permanent full-time state employees, except that any plan established prior to June 6, 1977 may be continued as a separate plan. Any closed panel medical or dental plan or health maintenance organization designated as the qualifying plan by the department of administration must be open for enrollment to all permanent full-time state employees residing within the
The department of administration may expend public monies appropriated for such purpose to procure health and accident coverage for the dependents of full-time officers and employees of this state and its departments and agencies. The department of administration shall seek a variety of plans, including indemnity health insurance, hospital and medical service plans, dental plans and health maintenance organizations. On a recommendation of the department of administration and the review of the joint legislative budget committee, the department of administration may self-insure for the purposes of this subsection. If the department of administration self-insures, the department may contract directly with preferred provider organizations, physician and hospital networks, indemnity health insurers, hospital and medical service plans, dental plans and health maintenance organizations. If the department self-insures, the department shall provide that the self-insurance program include all health coverage benefits that are mandated pursuant to title 20. The self-insurance program shall include provisions to provide for the protection of the officers and employees, including grievance procedures for claim or treatment denials, creditable coverage determinations, dissatisfaction with care and access to care issues. The department of administration by rule shall designate and adopt performance standards, including cost competitiveness, utilization review issues, network development and access, conversion and implementation, report timeliness, quality outcomes and customer satisfaction for qualifying plans. The qualifying plans for which the standards are adopted include indemnity health insurance, hospital and medical service plans, closed panel medical and dental plans and health maintenance organizations, and for eligibility of the dependents of officers and employees to participate in such plans. Any indemnity health insurance or hospital and medical service plan designated as a qualifying plan by the department of administration must be open for enrollment to all permanent full-time state employees, except that any plan established prior to June 6, 1977 may be continued as a separate plan. Any closed panel medical or dental plan or health maintenance organization designated as a qualifying plan by the department of administration must be open for enrollment to all permanent full-time state employees residing within the geographic area or area to be served by the plan or organization. Officers and employees may select coverage under the available options.

C. The department of administration may designate the Arizona health care cost containment system established by title 36, chapter 29 as a qualifying plan for the provision of health and accident coverage to full-time state officers and employees and their dependents. The Arizona health care cost containment system shall not be the exclusive qualifying plan for health and accident coverage for state officers and employees either on a statewide or regional basis.
D. Except as provided in section 38-652, public monies expended pursuant to this section each month shall not exceed:
   1. Five hundred dollars multiplied by the number of officers and employees who receive individual coverage.
   2. One thousand two hundred dollars multiplied by the number of married couples if both members of the couple are either officers or employees and each receives individual coverage or family coverage.
   3. One thousand two hundred dollars multiplied by the number of officers or employees who receive family coverage if the spouses of the officers or employees are not officers or employees.

E. Subsection D of this section:
   1. Establishes a total maximum expenditure of public monies pursuant to this section.
   2. Does not establish a minimum or maximum expenditure for each individual officer or employee.

F. In order to ensure that an officer or employee does not suffer a financial penalty or receive a financial benefit based on the officer's or employee's age, gender or health status, the department of administration shall consider implementing the following:
   1. Requests for proposals for health insurance that specify that the carrier's proposed premiums for each plan be based on the expected age, gender and health status of the entire pool of employees and officers and their family members enrolled in all qualifying plans and not on the age, gender or health status of the individuals expected to enroll in the particular plan for which the premium is proposed.
   2. Recommendations from a legislatively established study group on risk adjustments relating to a system for reallocating premium revenues among the contracting qualifying plans to the extent necessary to adjust the revenues received by any carrier to reflect differences between the average age, gender and health status of the enrollees in that carrier's plan or plans and the average age, gender and health status of all enrollees in all qualifying plans.

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

H. If a qualifying health maintenance organization is not available to an officer or employee within fifty miles of the officer's or employee's residence and the officer or employee is enrolled in a qualifying plan, the officer or employee shall be offered the opportunity to enroll with a health maintenance organization when the option becomes available. If a health maintenance organization is available within fifty miles and it is determined by the department of administration that there is an insufficient number of medical providers in the organization, the department may provide for a
change in enrollment from plans designated by the director when additional medical providers join the organization.

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

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

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

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

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

K. The department of administration shall determine the actual administrative and operational costs associated with school districts, charter schools, cities, towns, counties, community college districts, special taxing districts, authorities and public entities organized pursuant to the laws of this state participating in the state health and accident insurance coverage. These costs shall be allocated to each school district, charter school, city, town, county, community college district, special taxing district, authority and public entity organized pursuant to the laws of this state based on the total number of employees participating in the
coverage. This subsection only applies to a health plan that is offered by the department and that is subject to title 20, chapter 1, article 1.

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

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

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

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

Sec. 2. Section 38-1004, Arizona Revised Statutes, is amended to read:

A. A classified law enforcement officer who is suspended, demoted or dismissed by the department head, after a hearing and review before the merit system council, may have the determination of the council reviewed upon writ of certiorari PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6 in the superior court of the county in which the law enforcement officer resides. If the
determination of the council is overruled by the court, the law enforcement
officer shall be reinstated in the officer's position and the officer shall
be reimbursed for any compensation withheld pending determination by the
council and court.

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

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

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

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

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

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

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

Sec. 3. Heading change
A. The chapter heading of title 38, chapter 8, Arizona Revised Statutes, is changed from "LAW ENFORCEMENT OFFICERS" to "PUBLIC SAFETY OFFICERS".

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

Sec. 4. Repeal
Section 38-1101, Arizona Revised Statutes, is repealed.

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

38-1101. Definitions
IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:
1. "APPEAL" MEANS A HEARING BEFORE A STATE OR LOCAL MERIT BOARD, A CIVIL SERVICE BOARD, AN ADMINISTRATIVE LAW JUDGE OR A HEARING OFFICER.
2. "AT WILL" MEANS AN EMPLOYMENT RELATIONSHIP WHERE EITHER PARTY TO THE RELATIONSHIP MAY SEVER THE RELATIONSHIP AT ANY TIME FOR ANY REASON OTHER THAN AN UNLAWFUL REASON.
3. "DISCIPLINARY ACTION" MEANS THE DISMISSAL, DEMOTION OR SUSPENSION FOR MORE THAN EIGHT HOURS OF A LAW ENFORCEMENT OFFICER THAT IS AUTHORIZED BY STATUTE, CHARTER OR ORDINANCE AND THAT IS SUBJECT TO A HEARING OR OTHER PROCEDURE BY A LOCAL MERIT BOARD, A CIVIL SERVICE BOARD, AN ADMINISTRATIVE LAW JUDGE OR A HEARING OFFICER.
4. "EXCUSABLE NEGLECT" MEANS NEGLECT OR INADVERTENCE THAT MIGHT BE THE ACT OF A REASONABLY PRUDENT PERSON UNDER SIMILAR CIRCUMSTANCES.
5. "GOOD FAITH" MEANS HONESTY OF PURPOSE AND ABSENCE OF INTENT TO DEFRAUD.
6. "INVESTIGATIVE FILE" MEANS THE LAW ENFORCEMENT AGENCY'S COMPLETE REPORT AND ANY ATTACHMENTS DETAILING THE INCIDENTS LEADING TO THE DISCIPLINARY ACTION.
7. "JUST CAUSE" MEANS:
(a) THE EMPLOYER INFORMED THE LAW ENFORCEMENT OFFICER OF THE POSSIBLE DISCIPLINARY ACTION RESULTING FROM THE OFFICER'S CONDUCT THROUGH AGENCY MANUALS, EMPLOYEE HANDBOOKS, THE EMPLOYER'S RULES AND REGULATIONS OR OTHER COMMUNICATIONS TO THE OFFICER OR THE CONDUCT WAS SUCH THAT THE OFFICER SHOULD HAVE REASONABLY KNOWN DISCIPLINARY ACTION COULD OCCUR.
(b) The disciplinary action is reasonably related to the standards of conduct for a professional law enforcement officer, the mission of the agency, the orderly, efficient or safe operation of the agency or the officer's fitness for duty.

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

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

8. "Law enforcement officer" means:

(a) an individual, other than a probationary employee, who is certified by the Arizona Peace Officer Standards and Training Board, other than a person employed by a multi-county water conservation district.

(b) a detention or corrections officer, other than a probationary employee or juvenile detention officer, who is employed by this state or a political subdivision of this state.

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

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

Sec. 6. Renumber Sections 38-1102 and 38-1103, Arizona Revised Statutes, are renumbered as sections 38-1113 and 38-1114, respectively.

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

38-1102. Peace officer bill of rights; preemption

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

38-1103. Discipline of law enforcement officers; exceptions

A. A law enforcement officer is not subject to disciplinary action except for just cause.

B. THIS SECTION DOES NOT APPLY TO:

1. A dismissal or demotion that is for administrative purposes, including a reduction in force.

2. A law enforcement officer who is employed by an agency of this state as an at will employee.

Sec. 8. Repeal Sections 38-1104, 38-1105, 38-1106 and 38-1107, Arizona Revised Statutes, are repealed.
Sec. 9. Title 38, chapter 8, article 1, Arizona Revised Statutes, is amended by adding new sections 38-1104, 38-1105, 38-1106 and 38-1107, to read:

38-1104. Internal investigations; employee representative; polygraph examination; exception

A. If an employer interviews a law enforcement officer in the course of an administrative investigation and the employer or law enforcement officer reasonably believes that the interview could result in dismissal, demotion or suspension:

1. The law enforcement officer may request to have a representative of the officer present at no cost to the employer during the interview. The law enforcement officer shall select a representative who is available on reasonable notice so that the interview is not unreasonably delayed. The representative shall participate in the interview only as an observer. Unless agreed to by the employer, the representative shall not be an attorney and shall be from the same agency except that if a representative from the same agency is not reasonably available, with the employer's permission, the law enforcement officer's representative may be from the law enforcement officer's professional membership organization. The law enforcement officer shall be permitted reasonable breaks of limited duration during any interview for telephonic or in person consultation with authorized persons, including an attorney, who are immediately available. An employer shall not discipline, retaliate against or threaten to retaliate against a law enforcement officer for requesting that a representative be present or for acting as the representative of a law enforcement officer pursuant to this paragraph.

2. Before the commencement of any interview described in this section, the employer shall provide the law enforcement officer with a written notice informing the officer of the alleged facts that are the basis of the investigation, the specific nature of the investigation, the officer's status in the investigation, all known allegations of misconduct that are the reason for the interview and the officer's right to have a representative present at the interview. The notice shall include copies of all complaints that contain the alleged facts that are reasonably available, except for copies of complaints that are filed with the employer and that include allegations of unlawful discrimination, harassment or retaliation or complaints that involve matters under the jurisdiction of the Equal Employment Opportunity Commission.

3. At the conclusion of the interview, the law enforcement officer is entitled to a period of time to consult with the officer's representative and may make a statement not to exceed five minutes addressing specific facts or policies that are related to the interview.
B. Subsection A of this section does not require the employer to either:

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

2. Disclose any fact to the law enforcement officer or the law enforcement officer’s representative that would impede the investigation.

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

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

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

3. Conducted during the course of a criminal investigation.

4. Conducted during the course of a polygraph examination.

D. The employer may require the law enforcement officer to submit to a polygraph examination if the officer makes a statement to the employer during the investigation that differs from other information relating to the investigation that is known to the employer and reconciling that difference is necessary to complete the investigation. If a polygraph examination is administered pursuant to this paragraph, the employer or the person administering the polygraph examination shall make an audio recording of the complete polygraph procedure and provide a copy of the recording to the law enforcement officer. Section 38-1108 applies to a polygraph examination that is administered pursuant to this subsection.

E. If after an employer completes an investigation of a law enforcement officer the employer seeks disciplinary action, at the request of the law enforcement officer, the employer shall provide a basic summary of any discipline ordered against any other law enforcement officer of generally similar rank and experience employed by the employer within the previous two years for the same or a similar violation. As an alternative, the employer may provide file copies of the relevant disciplinary cases. The employer shall not take final action and the employer shall not schedule a hearing until the basic summary or file copies are provided to the law enforcement officer.

F. This section does not apply to a law enforcement officer who is employed by an agency of this state as an at will employee.

38-1105. Law enforcement officer as witness; right to representation; exception

A. If a law enforcement officer is designated as a witness by the law enforcement officer’s employer in an investigation that could lead to another law enforcement officer’s dismissal, demotion or suspension, the witness law enforcement officer may request to have a representative present at no cost to the employer during the witness interview. Unless agreed to by the employer, the representative shall be from the same agency and shall not be
AN ATTORNEY EXCEPT THAT IF A REPRESENTATIVE FROM THE SAME AGENCY IS NOT
REASONABLY AVAILABLE, WITH THE EMPLOYER'S PERMISSION, THE WITNESS LAW
ENFORCEMENT OFFICER'S REPRESENTATIVE MAY BE FROM THE WITNESS LAW ENFORCEMENT
OFFICER'S PROFESSIONAL MEMBERSHIP ORGANIZATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. IN ANY APPEAL OF A DISCIPLINARY ACTION BY A LAW ENFORCEMENT OFFICER
IN WHICH A SINGLE HEARING OFFICER OR ADMINISTRATIVE LAW JUDGE HAS BEEN
APPOINTED TO CONDUCT THE APPEAL HEARING, THE LAW ENFORCEMENT OFFICER OR THE
EMPLOYER, WITHIN TEN CALENDAR DAYS AFTER THE APPOINTMENT OF THE HEARING
OFFICER OR ADMINISTRATIVE LAW JUDGE, MAY REQUEST A CHANGE OF HEARING OFFICER
OR ADMINISTRATIVE LAW JUDGE. IN CASES BEFORE THE OFFICE OF ADMINISTRATIVE
HEARINGS OR IF THE EMPLOYER IS A COUNTY, CITY OR TOWN, ON THE FIRST REQUEST
OF A PARTY, THE REQUEST SHALL BE GRANTED. A CITY OR TOWN WITH A POPULATION
OF LESS THAN SIXTY-FIVE THOUSAND PERSONS OR A COUNTY WITH A POPULATION OF
LESS THAN TWO HUNDRED FIFTY THOUSAND PERSONS MUST PROVIDE, IF NECESSARY TO
COMPLY WITH THIS SUBSECTION, FOR AN ALTERNATE HEARING OFFICER BY MEANS OF AN
INTERAGENCY AGREEMENT WITH ANOTHER CITY, TOWN OR COUNTY. IF THE LAW
ENFORCEMENT OFFICER IS THE PARTY WHO REQUESTED THE ALTERNATE HEARING OFFICER,
THE LAW ENFORCEMENT OFFICER SHALL REIMBURSE THE CITY, TOWN OR COUNTY FOR
ONE-HALF OF ANY ADDITIONAL EXPENSES INCURRED BY THE CITY, TOWN OR COUNTY IN
PROCURING THE ALTERNATE HEARING OFFICER UNDER THE INTERAGENCY AGREEMENT. IF
AN ALTERNATE HEARING OFFICER IS REQUESTED BY MEANS OF AN INTERAGENCY AGREEMENT, THE HEARING OFFICER SHALL PROVIDE TO THE LAW ENFORCEMENT OFFICER OR EMPLOYER THE OPTION OF CONTINUING THE HEARING FOR AN ADDITIONAL TEN CALENDAR DAYS. ANY SUBSEQUENT REQUESTS MAY BE GRANTED ONLY ON A SHOWING THAT A FAIR AND IMPARTIAL HEARING CANNOT BE OBTAINED DUE TO THE PREJUDICE OF THE ASSIGNED HEARING OFFICER OR ADMINISTRATIVE LAW JUDGE. THE SUPERVISOR OR SUPERVISING BODY OF THE HEARING OFFICER OR ADMINISTRATIVE LAW JUDGE SHALL DECIDE WHETHER A SHOWING OF PREJUDICE HAS BEEN MADE.

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

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

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

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

1. IF THERE IS UNDUE DELAY IN SETTING A HEARING DATE CAUSED BY THE LAW ENFORCEMENT OFFICER OR THE LAW ENFORCEMENT OFFICER'S REPRESENTATIVE.
2. IF THE LAW ENFORCEMENT OFFICER REQUESTS A CONTINUANCE.
3. IF THERE EXISTS A PERIOD BETWEEN SEPARATION AND REINSTATEMENT THAT THE LAW ENFORCEMENT OFFICER WOULD HAVE BEEN UNABLE TO PERFORM THE DUTIES OF A LAW ENFORCEMENT OFFICER.
4. BY ANY AMOUNT EARNED BY THE LAW ENFORCEMENT OFFICER IN ALTERNATIVE EMPLOYMENT.

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

L. THE HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD SHALL DOCUMENT IN THE RECORD THOSE CIRCUMSTANCES WHERE THE HEARING OFFICER,
ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD DETERMINES THAT A PARTY HAS CLEARLY VIOLATED A PARTY'S OBLIGATION UNDER THIS SECTION.

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

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

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

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

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

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

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

F. THIS SECTION DOES NOT APPLY TO A LAW ENFORCEMENT OFFICER WHO IS EMPLOYED AS AN AT WILL EMPLOYEE:
   1. AS A POLICE CHIEF OR AN ASSISTANT POLICE CHIEF IN A LAW ENFORCEMENT AGENCY.
   2. BY AN AGENCY OF THIS STATE.

Sec. 10. Renumeral
Sections 38-1108 and 38-1109, Arizona Revised Statutes, are renumbered as sections 38-1111 and 38-1112, respectively.

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

38-1108. Polygraph examinations; exception

A. THE RESULTS OF A POLYGRAPH EXAMINATION IN AN INVESTIGATION MAY NOT BE THE BASIS FOR DISCIPLINARY ACTION UNLESS OTHER CORROBORATING EVIDENCE OR INFORMATION EXISTS TO SUPPORT THAT DISCIPLINARY ACTION.
B. NOTWITHSTANDING SECTION 39-123, ALL DATA AND REPORTS FROM A POLYGRAPH EXAMINATION OF A LAW ENFORCEMENT OFFICER ARE CONFIDENTIAL AND MAY BE USED ONLY FOR EMPLOYMENT, CERTIFICATION OR REACTIVATION OF CERTIFICATION PURPOSES OR FOR THE ADMINISTRATIVE MATTER FOR WHICH A POLYGRAPH WAS ADMINISTERED, INCLUDING OTHER ANCILLARY MATTERS. ALL OTHER USES ARE PROHIBITED.

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

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

38-1109. Confidentiality of records; exception

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

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

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

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

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

B. THE LIMITATION PERIOD ESTABLISHED BY SUBSECTION A OF THIS SECTION:
1. IS SUSPENDED DURING THE TIME THAT ANY CRIMINAL INVESTIGATION OR PROSECUTION IS PENDING IN CONNECTION WITH THE ACT, OMISSION OR OTHER ALLEGATION OF MISCONDUCT.
2. IS SUSPENDED DURING THE PERIOD OF TIME IN WHICH A LAW ENFORCEMENT OFFICER WHO IS INVOLVED IN THE INVESTIGATION IS INCAPACITATED OR OTHERWISE UNAVAILABLE.
3. MAY BE SUSPENDED FOR A PERIOD PRESCRIBED IN A WRITTEN WAIVER OF THE LIMITATION BY THE LAW ENFORCEMENT OFFICER.
4. MAY BE SUSPENDED FOR EMERGENCIES OR NATURAL DISASTERS DURING THE TIME PERIOD IN WHICH THE GOVERNOR HAS DECLARED A STATE OF EMERGENCY WITHIN THE JURISDICTIONAL BOUNDARIES OF THE CONCERNED EMPLOYER.

5. IN A MULTIJURISDICTIONAL INVESTIGATION, MAY BE EXTENDED FOR A PERIOD OF TIME REASONABLY NECESSARY TO FACILITATE THE COORDINATION OF THE EMPLOYERS INVOLVED.

C. ON AN APPEAL OF DISCIPLINE BY THE EMPLOYEE, A HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD MAY DISMISS THE DISCIPLINE IF IT IS DETERMINED THAT THE EMPLOYER DID NOT MAKE A GOOD FAITH EFFORT TO COMPLETE THE INVESTIGATION WITHIN ONE HUNDRED EIGHTY CALENDAR DAYS. THE ALLEGATION REGARDING ANY ACT, OMISSION OR OTHER MISCONDUCT MAY BE SUSTAINED, AND THE EMPLOYEE'S RECORD SHALL REFLECT THAT THE ALLEGATION WAS SUSTAINED BUT NO DISCIPLINE WAS ADMINISTERED DUE TO THE FINDING OF THE HEARING OFFICER. ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD THAT THE EMPLOYER DID NOT MAKE A GOOD FAITH EFFORT TO COMPLETE THE INVESTIGATION IN ONE HUNDRED EIGHTY CALENDAR DAYS. THE SUSTAINED DISCIPLINE MAY BE CONSIDERED WHEN DETERMINING DISCIPLINE IN ANY FUTURE SUSTAINED MISCONDUCT ALLEGATION. IF THE EMPLOYER DETERMINES THAT DISCIPLINARY ACTION IS APPROPRIATE, THE EMPLOYER SHALL COMPLETE THE EMPLOYER'S INVESTIGATION AND GIVE NOTICE IN WRITING TO THE LAW ENFORCEMENT OFFICER OF THE EMPLOYER'S INTENT TO PROCEED WITH DISCIPLINARY ACTION, ALONG WITH A PROPOSAL OF THE SPECIFIC ACTION SOUGHT, INCLUDING LENGTH OF SUSPENSION, IF APPLICABLE.

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

Sec. 13. Section 38-1111, Arizona Revised Statutes, as renumbered by this act, is amended to read:

38-1111. Critical incident stress management team member; privilege; exceptions; definitions

A. Except as provided in subsection B, a critical incident stress management team member who, in the course of the member's response to a critical incident at the request of the member or member's agency, acquires information secretly and in confidence from a designated person shall not be compelled to disclose that information in a legal proceeding, trial or investigation before any agency of this state or a political subdivision of this state.

B. Subsection A does not apply if:

1. The communication or advice indicates clear and present danger to the designated person who received crisis response services or to other persons.

2. The designated person who received crisis response services gives express consent to the testimony.

3. The communication or advice is made during the course of a criminal investigation.
4. The designated person who received crisis response services voluntarily testifies, in which case the critical incident stress management team member may be compelled to testify on the same subject.

5. There exists a breach of department policy EXISTS AND that BREACH amounts to a violation of laws that are normally enforced by law enforcement.

C. For the purposes of this section:

1. "Crisis response services" means consultation, risk assessment, referral and onsite crisis intervention services provided by a critical incident stress management team to a designated person.

2. "Critical incident stress management team member" means an individual who has completed training through a recognized organization that delivers critical incident stress management training and WHO is part of a law enforcement, probation, firefighter or emergency medical provider crisis response team.

3. "Department" means the branch of government in which a designated person is employed.

4. "Designated person" means an emergency medical provider, firefighter, OR law enforcement officer or probation officer.

5. "Emergency medical provider" means municipal or state emergency medical services personnel.

6. "Firefighter" means a municipal or state firefighter.

7. "Law enforcement officer" means:
   (a) An individual who is certified by the Arizona peace officer standards and training board, other than a person employed by a multi-county water conservation district.
   (b) A detention officer or correction officer, other than a probationary employee, who is employed by this state or a political subdivision of this state.

8. "Probation officer" means a probation officer or surveillance officer who is employed by this state or a political subdivision of this state.

Sec. 14. Section 38-1112, Arizona Revised Statutes, as renumbered by this act, is amended to read:

38-1112. Law enforcement officers; fitness for duty examinations; rights of officers; definitions

A. An employer may order a law enforcement officer or probation officer to submit to a physical examination only if the law enforcement officer or probation officer has acted or failed to act in an observable manner that indicates that there is a physical condition materially limiting the law enforcement officer's or probation officer's ability to perform the essential functions of the law enforcement officer's or probation officer's job within the law enforcement officer's or probation officer's job description. The order shall state all of the specific objective facts on which the order for the physical exam is based except that the order may omit
the specific names of individuals who reported the law enforcement officer's
or probation officer's conduct to the supervisor.

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

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

D. The report shall be provided only to the employer and the law
enforcement officer or probation officer and shall not be provided to any
other person except as required for any subsequent appeal or certification
action involving the law enforcement officer or probation officer. The
employer shall provide notice to the law enforcement officer or probation
officer that the report has been received by the employer. The report shall
be provided to the law enforcement officer or probation officer immediately
if the law enforcement officer or probation officer presents the final report
of an independent medical examination or if the law enforcement officer or
probation officer waives any right to request an independent medical
examination. If the law enforcement officer or probation officer does not
present the results of an independent medical examination within twenty
CALENDAR days after the employer provides NOTICE TO the law enforcement
officer or probation officer notice that the report has been received by the
employer, the law enforcement officer or probation officer is deemed to have
waived the right to present the results of the independent medical
examination.

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

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

G. The employer shall not take any final action until after the law
enforcement officer or probation officer has had at least twenty CALENDAR
days to review the report unless the law enforcement officer or probation
officer waives the twenty-day period or the employer grants an extension.
H. This section does not prohibit the preexamination materials from being used in any proceeding held pursuant to section 38-1101 38-1104.

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

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

K. For the purposes of this section:

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

2. "Law enforcement officer" means:
   (a) A regularly employed and paid individual, other than a probationary employee, who is certified by the Arizona peace officer standards and training board and who is working in a position requiring certification by the Arizona peace officer standards and training board, other than a person employed by a multi-county water conservation district, an at-will employee or a voluntary or reserve employee.
   (b) A corrections officer or detention officer, excluding OTHER THAN a juvenile detention officer, who is employed by this state or a political subdivision of this state.

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

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

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

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

A. Notwithstanding any other law, the surviving spouse or a surviving dependent of a deceased law enforcement officer is entitled to receive payments for health insurance premiums from public monies of the employer of the law enforcement officer if the law enforcement officer was killed in the line of duty or died from injuries suffered in the line of duty.
B. The employer shall make payments if the surviving spouse or surviving dependent is enrolled or was enrolled at the time the law enforcement officer was killed in the line of duty or died from injuries suffered in the line of duty in either:

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

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

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

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

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

F. This section applies:

1. To a surviving spouse or a surviving dependent of a deceased law enforcement officer, as defined in subsection G, paragraph 2, subdivision (a), (b), OR (c) or (d) of this section, who was killed in the line of duty or who died from injuries suffered in the line of duty on or after April 5, 1933.
2. To a surviving spouse or a surviving dependent of a deceased law enforcement officer, as defined in subsection G, paragraph 2, subdivision (e) or (d) of this section, who was killed in the line of duty or who died from injuries suffered in the line of duty on or after April 5, 2013.
3. For the surviving spouse or the surviving dependent who qualifies pursuant to paragraph 1 of this subsection, only to health insurance premiums paid on or after the effective date of this amendment to this section SEPTEMBER 13, 2013.

G. For the purposes of this section:

1. "Dependent" means an unmarried child of a deceased law enforcement officer who meets one of the following qualifications:
   (a) Is under eighteen years of age.
   (b) Is at least eighteen years of age and under twenty-three years of age only during any period that the child is a full-time student.
   (c) Is under a disability that began before the child attained twenty-three years of age and remains a dependent of the surviving spouse or a guardian.

2. "Law enforcement officer" means:
   (a) A peace officer who is certified by the Arizona peace officer standards and training board.
   (b) A detention officer or corrections officer who, OTHER THAN A JUVENILE DETENTION OFFICER, is employed by this state or a political subdivision of this state.
   (c) A probation officer or surveillance officer who is employed by this state or a political subdivision of this state.
   (d) A firefighter who is employed by this state or a political subdivision of this state.
   (e) A corrections officer or firefighter who works on behalf of this state or a political subdivision of this state through a contract with a private company.

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

ARTICLE 2. ADULT AND JUVENILE PROBATION OFFICERS

38-1131. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

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

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

4. "JUST CAUSE" MEANS:
   (a) THE EMPLOYER INFORMED THE PROBATION OFFICER OF THE POSSIBLE DISCIPLINARY ACTION RESULTING FROM THE OFFICER'S CONDUCT THROUGH AGENCY MANUALS, EMPLOYEE HANDBOOKS, THE EMPLOYER'S RULES AND REGULATIONS OR OTHER
COMMUNICATIONS TO THE OFFICER OR THE CONDUCT WAS SUCH THAT THE OFFICER SHOULD
HAVE REASONABLY KNOWN DISCIPLINARY ACTION COULD OCCUR.

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

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

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

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

38-1132. Preemption

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

38-1133. Discipline of probation officers

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

B. THIS SECTION DOES NOT APPLY TO:

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

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

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

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

1. THE PROBATION OFFICER MAY REQUEST TO HAVE A REPRESENTATIVE OF THE
OFFICER PRESENT AT NO COST TO THE EMPLOYER DURING THE INTERVIEW. THE
PROBATION OFFICER SHALL SELECT A REPRESENTATIVE WHO IS AVAILABLE ON
REASONABLE NOTICE SO THAT THE INTERVIEW IS NOT UNREASONABLY DELAYED. THE
REPRESENTATIVE SHALL PARTICIPATE IN THE INTERVIEW ONLY AS AN OBSERVER.
UNLESS AGREED TO BY THE EMPLOYER, THE REPRESENTATIVE SHALL NOT BE AN ATTORNEY
AND SHALL BE FROM THE SAME AGENCY EXCEPT THAT IF A REPRESENTATIVE FROM THE
SAME AGENCY IS NOT REASONABLY AVAILABLE, WITH THE EMPLOYER'S PERMISSION, THE
PROBATION OFFICER'S REPRESENTATIVE MAY BE FROM THE PROBATION OFFICER'S
PROFESSIONAL MEMBERSHIP ORGANIZATION. THE PROBATION OFFICER SHALL BE
PERMITTED REASONABLE BREAKS OF LIMITED DURATION DURING ANY INTERVIEW FOR
TELEPHONIC OR IN PERSON CONSULTATION WITH AUTHORIZED PERSONS, INCLUDING AN
ATTORNEY, WHO ARE IMMEDIATELY AVAILABLE. AN EMPLOYER SHALL NOT DISCIPLINE, RETALIATE AGAINST OR THREATEN TO RETALIATE AGAINST A PROBATION OFFICER FOR REQUESTING THAT A REPRESENTATIVE BE PRESENT OR FOR ACTING AS THE REPRESENTATIVE OF A PROBATION OFFICER PURSUANT TO THIS PARAGRAPH.


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

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

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

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

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

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

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

3. CONDUCTED DURING THE COURSE OF A CRIMINAL INVESTIGATION.

4. CONDUCTED DURING THE COURSE OF A POLYGRAPH EXAMINATION.

D. AN EMPLOYER MAY REQUIRE THE PROBATION OFFICER TO SUBMIT TO A POLYGRAPH EXAMINATION IF THE OFFICER MAKES A STATEMENT TO THE EMPLOYER DURING THE INVESTIGATION THAT DIFFERS FROM OTHER INFORMATION RELATING TO THE INVESTIGATION THAT IS KNOWN TO THE EMPLOYER AND RECONCILING THAT DIFFERENCE IS NECESSARY TO COMPLETE THE INVESTIGATION. IF A POLYGRAPH EXAMINATION IS ADMINISTERED PURSUANT TO THIS SUBSECTION, THE EMPLOYER OR THE PERSON ADMINISTERING THE POLYGRAPH EXAMINATION SHALL MAKE AN AUDIO RECORDING OF THE COMPLETE POLYGRAPH PROCEDURE AND PROVIDE A COPY OF THE RECORDING TO THE PROBATION OFFICER. SECTION 38-1137 APPLIES TO A POLYGRAPH EXAMINATION THAT IS ADMINISTERED PURSUANT TO THIS SUBSECTION.
E. If after an employer completes an investigation of a probation officer the employer seeks disciplinary action, at the request of the probation officer, the employer shall provide a basic summary of any discipline ordered against any other probation officer of generally similar rank and experience employed by the employer within the previous two years for the same or a similar violation. As an alternative, the employer may provide file copies of the relevant disciplinary cases. The employer shall not take final action and the employer shall not schedule a hearing until the basic summary or file copies are provided to the probation officer. This subsection does not apply if court rule prohibits the release of file copies of disciplinary cases.

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

A. If a probation officer is designated as a witness by the probation officer's employer in an investigation that could lead to another probation officer's dismissal, demotion or suspension, the witness probation officer may request to have a representative present at no cost to the employer during the witness interview. Unless agreed to by the employer, the representative shall be from the same agency and shall not be an attorney except that if a representative from the same agency is not reasonably available, with the employer's permission, the witness probation officer's representative may be from the witness probation officer's professional membership organization.

B. The witness probation officer shall answer all questions asked by the probation officer's department investigator. Any information learned during a witness interview is considered proprietary and confidential by the employer and shall remain so until the witness probation officer is served with a notice of investigation by the employer or the witness probation officer is released from the confidentiality requirements of this section.

C. The witness probation officer may discuss the probation officer's witness interview with the witness probation officer's representative or that representative's legal counsel. If the witness probation officer or the witness probation officer's representative releases information without authorization, the employer may subject the witness probation officer or the witness probation officer's representative to disciplinary action.

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

A. In any appeal of a disciplinary action by a probation officer, the parties shall exchange copies of all relevant documents and a list of all witnesses pursuant to the following time periods and requirements:

1. Within fourteen calendar days after the employer's receipt of a written request from the probation officer for a copy of the investigative file that is accompanied by a copy of the filed notice of appeal, the employer shall provide a complete copy of the investigative file as well as
THE NAMES AND CONTACT INFORMATION FOR ALL PERSONS INTERVIEWED DURING THE COURSE OF THE INVESTIGATION.

2. NO LATER THAN FOURTEEN CALENDAR DAYS BEFORE THE APPEAL HEARING, THE PARTIES SHALL PRODUCE AND SERVE ON EVERY PARTY THE FOLLOWING INFORMATION:
   (a) THE NAME OF EACH WITNESS WHOM THE DISCLOSING PARTY EXPECTS TO CALL AT THE APPEAL HEARING, WITH A DESIGNATION OF THE SUBJECT MATTER ON WHICH EACH WITNESS MIGHT BE CALLED TO TESTIFY. A WITNESS MAY CONSENT TO A PREHEARING INTERVIEW. THE PARTIES SHALL NOT INTERFERE WITH ANY DECISION OF A WITNESS REGARDING WHETHER TO BE INTERVIEWED. AN EMPLOYER SHALL NOT DISCIPLINE, RETALIATE AGAINST OR THREATEN TO RETALIATE AGAINST ANY WITNESS FOR AGREEING TO BE INTERVIEWED OR FOR TESTIFYING OR PROVIDING EVIDENCE IN THE APPEAL.
   (b) THE NAME AND CONTACT INFORMATION OF EACH PERSON WHO HAS GIVEN STATEMENTS, WHETHER WRITTEN OR RECORDED OR SIGNED OR UNSIGNED, REGARDING MATTERS RELEVANT TO THE NOTICE OF DISCIPLINE AND THE CUSTODIAN OF THE COPIES OF THOSE STATEMENTS.
   (c) COPIES OF ANY DOCUMENTS THAT MAY BE INTRODUCED AT THE HEARING AND THAT HAVE NOT PREVIOUSLY BEEN DISCLOSED.

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

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


E. IN ANY APPEAL OF A DISCIPLINARY ACTION BY A PROBATION OFFICER IN WHICH A SINGLE HEARING OFFICER HAS BEEN APPOINTED TO CONDUCT THE APPEAL HEARING, THE PROBATION OFFICER OR THE EMPLOYER, WITHIN TEN CALENDAR DAYS AFTER THE APPOINTMENT OF THE HEARING OFFICER, MAY REQUEST A CHANGE OF HEARING OFFICER. IF THE EMPLOYER IS A COUNTY, CITY OR TOWN, ON THE FIRST REQUEST OF A PARTY, THE REQUEST SHALL BE GRANTED. A CITY OR TOWN WITH A POPULATION OF LESS THAN SIXTY-FIVE THOUSAND PERSONS OR A COUNTY WITH A POPULATION OF LESS THAN TWO HUNDRED FIFTY THOUSAND PERSONS MUST PROVIDE, IF NECESSARY TO COMPLY WITH THIS SUBSECTION, FOR AN ALTERNATE HEARING OFFICER BY MEANS OF AN
INTERAGENCY AGREEMENT WITH ANOTHER CITY, TOWN OR COUNTY. IF THE PROBATION OFFICER IS THE PARTY WHO REQUESTED THE ALTERNATE HEARING OFFICER, THE PROBATION OFFICER SHALL REIMBURSE THE CITY, TOWN OR COUNTY FOR ONE-HALF OF ANY ADDITIONAL EXPENSES INCURRED BY THE CITY, TOWN OR COUNTY IN PROCURING THE ALTERNATE HEARING OFFICER UNDER THE INTERAGENCY AGREEMENT. ANY SUBSEQUENT REQUESTS MAY BE GRANTED ONLY ON A SHOWING THAT A FAIR AND IMPARTIAL HEARING CANNOT BE OBTAINED DUE TO THE PREJUDICE OF THE ASSIGNED HEARING OFFICER. THE SUPERVISOR OR SUPERVISING BODY OF THE HEARING OFFICER SHALL DECIDE WHETHER A SHOWING OF PREJUDICE HAS BEEN MADE.

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

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

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

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

38-1137. Confidentiality of records
AN EMPLOYER SHALL NOT INCLUDE IN THAT PORTION OF THE PERSONNEL FILE OF A PROBATION OFFICER THAT IS AVAILABLE FOR PUBLIC INSPECTION AND COPYING ANY INFORMATION ABOUT AN INVESTIGATION UNTIL THE INVESTIGATION IS COMPLETE OR THE EMPLOYER HAS DISCONTINUED THE INVESTIGATION. IF THE PROBATION OFFICER HAS TIMELY APPEALED A DISCIPLINARY ACTION, THE INVESTIGATION IS NOT COMPLETE UNTIL THE CONCLUSION OF THE APPEAL PROCESS.

38-1138. Polygraph examinations
A. THE RESULTS OF A POLYGRAPH EXAMINATION IN AN INVESTIGATION MAY NOT BE THE BASIS FOR DISCIPLINARY ACTION UNLESS OTHER CORROBORATING EVIDENCE OR INFORMATION EXISTS TO SUPPORT THAT DISCIPLINARY ACTION.

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

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

38-1139. Critical incident stress management team member:

privilege; exceptions; definitions

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

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

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

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

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

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

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

C. FOR THE PURPOSES OF THIS SECTION:

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

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

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

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

5. "FIREFIGHTER" MEANS A MUNICIPAL OR STATE FIREFIGHTER.
38-1140. Probation officers; fitness for duty; examinations; rights of probation officers; definitions

A. An employer may order a probation officer to submit to a physical examination only if the probation officer has acted or failed to act in an observable manner that indicates that there is a physical condition materially limiting the probation officer’s ability to perform the essential functions of the probation officer’s job within the probation officer’s job description. The order shall state all of the specific objective facts on which the order for the physical exam is based except that the order may omit the specific names of individuals who reported the probation officer’s conduct to the supervisor.

B. The order shall provide at least ten calendar days' notice to the probation officer to be examined and shall specify the time, place, manner, conditions and scope of the examination and the person or persons who will conduct the examination. The probation officer to be examined may have a representative present during the examination if the physician conducting the examination agrees.

C. The employer shall provide the probation officer with the final report of the examination containing the medical professional’s findings. The employer may provide any additional information related to the fitness for duty examination to the examining physician.

D. The report shall be provided only to the employer and the probation officer and shall not be provided to any other person except as required for any subsequent appeal or certification action involving the probation officer. The employer shall provide notice to the probation officer that the report has been received by the employer. The report shall be provided to the probation officer immediately if the probation officer presents the final report of an independent medical examination or if the probation officer waives any right to request an independent medical examination. If the probation officer does not present the results of an independent medical examination within twenty calendar days after the employer provides notice to the probation officer that the report has been received by the employer, the probation officer is deemed to have waived the right to present the results of the independent medical examination.

E. The employer shall make a reasonable good faith effort to deliver the report to the probation officer.

F. The physician may consider and report on only the probation officer’s medical or other records that are directly relevant to the actions in question and when conducting the examination, including medical records that record preexisting conditions that are relevant to the examination. The physician may additionally consider and report any condition of the probation officer that the physician identifies during the course of the physical examination and that endangers the health and safety of the probation officer or the community.
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G. THE EMPLOYER SHALL NOT TAKE ANY FINAL ACTION UNTIL AFTER THE
PROBATION OFFICER HAS HAD AT LEAST TWENTY CALENDAR DAYS TO REVIEW THE REPORT
UNLESS THE PROBATION OFFICER WAIVES THE TWENTY-DAY PERIOD OR THE EMPLOYER
GRANTS AN EXTENSION.

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

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

J. FOR THE PURPOSES OF THIS SECTION:

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

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

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

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

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

1. THE HEALTH INSURANCE PROGRAM OF THE EMPLOYER.

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

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

D. THE HEALTH INSURANCE PREMIUM AMOUNT PAYABLE BY THE EMPLOYER OF THE
DECEASED PROBATION OFFICER IS THE AMOUNT THE EMPLOYER OF THE DECEASED
PROBATION OFFICER WOULD PAY FOR AN ACTIVE PROBATION OFFICER FOR A FAMILY
COVERAGE PREMIUM OR SINGLE COVERAGE PREMIUM, WHICHEVER IS APPLICABLE.
PAYMENTS SHALL BE DISCONTINUED PURSUANT TO THIS SECTION IF:
1. THE SURVIVING SPOUSE REMARRIES.
2. THE SURVIVING SPOUSE BECOMES MEDICARE ELIGIBLE.
3. THE SURVIVING SPOUSE DIES.
4. FOR DEPENDENT COVERAGE, THE PERSON IS NO LONGER CONSIDERED A
DEPENDENT.
E. IF THE EMPLOYER CURRENTLY PAYS A GREATER PORTION OF THE HEALTH
INSURANCE PREMIUM FOR A SURVIVING SPOUSE OR A SURVIVING DEPENDENT THAN THE
REQUIRED AMOUNT PRESCRIBED IN SUBSECTION D OF THIS SECTION, THE SURVIVING
SPOUSE OR SURVIVING DEPENDENT SHALL RECEIVE THE GREATER AMOUNT AS PAYMENT
TOWARD THE SURVIVING SPOUSE'S OR SURVIVING DEPENDENT'S HEALTH INSURANCE
PREMIUM.
F. THIS SECTION APPLIES:
1. TO A SURVIVING SPOUSE OR A SURVIVING DEPENDENT OF A DECEASED
PROBATION OFFICER WHO WAS KILLED IN THE LINE OF DUTY OR WHO DIED FROM
INJURIES SUFFERED IN THE LINE OF DUTY ON OR AFTER APRIL 5, 1933.
2. ONLY TO HEALTH INSURANCE PREMIUMS PAID ON OR AFTER SEPTEMBER
13, 2013.
G. FOR THE PURPOSES OF THIS SECTION:
1. "DEPENDENT" MEANS AN UNMARRIED CHILD OF A DECEASED PROBATION
OFFICER WHO MEETS ONE OF THE FOLLOWING QUALIFICATIONS:
   (a) IS UNDER EIGHTEEN YEARS OF AGE.
   (b) IS AT LEAST EIGHTEEN YEARS OF AGE AND UNDER TWENTY-THREE YEARS OF
   AGE ONLY DURING ANY PERIOD THAT THE CHILD IS A FULL-TIME STUDENT.
   (c) IS UNDER A DISABILITY THAT BEGAN BEFORE THE CHILD ATTAINED
   TWENTY-THREE YEARS OF AGE AND REMAINS A DEPENDENT OF THE SURVIVING SPOUSE OR
   A GUARDIAN.
2. "PROBATION OFFICER" MEANS A SURVEILLANCE OFFICER, JUVENILE
DETENTION OFFICER OR A JUVENILE OR ADULT PROBATION OFFICER WHO IS EMPLOYED BY
THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.

Sec. 17. Effective date
This act is effective from and after December 31, 2014.