

REFERENCE TITLE: **probation; peace officers; rights; investigations**

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

HB 2562

Introduced by
Representative Pierce J

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 38-651, Arizona Revised Statutes, is amended to
3 read:
4 38-651. Expenditure of monies for health and accident
5 insurance; definition
6 A. The department of administration may expend public monies
7 appropriated for such purpose to procure health and accident coverage for
8 full-time officers and employees of this state and its departments and
9 agencies. The department of administration may adopt rules that provide that
10 if an employee dies while the employee's surviving spouse's health insurance
11 is in force, the surviving spouse is entitled to no more than thirty-six
12 months of extended coverage at one hundred two per cent of the group rates by
13 paying the premiums. Except as provided by ~~section 38-1103~~ SECTIONS 38-1114
14 AND 38-1141, no public monies may be expended to pay all or any part of the
15 premium of health insurance continued in force by the surviving spouse. The
16 department of administration shall seek a variety of plans, including
17 indemnity health insurance, hospital and medical service plans, dental plans
18 and health maintenance organizations. On a recommendation of the department
19 of administration and the review of the joint legislative budget committee,
20 the department of administration may self-insure for the purposes of this
21 subsection. If the department of administration self-insures, the department
22 may contract directly with preferred provider organizations, physician and
23 hospital networks, indemnity health insurers, hospital and medical service
24 plans, dental plans and health maintenance organizations. If the department
25 self-insures, the department shall provide that the self-insurance program
26 include all health coverage benefits that are mandated pursuant to title 20.
27 The self-insurance program shall include provisions to provide for the
28 protection of the officers and employees, including grievance procedures for
29 claim or treatment denials, creditable coverage determinations,
30 dissatisfaction with care and access to care issues. The department of
31 administration by rule shall designate and adopt performance standards,
32 including cost competitiveness, utilization review issues, network
33 development and access, conversion and implementation, report timeliness,
34 quality outcomes and customer satisfaction for qualifying plans. The
35 qualifying plans for which the standards are adopted include indemnity health
36 insurance, hospital and medical service plans, closed panel medical and
37 dental plans and health maintenance organizations, and for eligibility of
38 officers and employees to participate in such plans. Any indemnity health
39 insurance or hospital and medical service plan designated as a qualifying
40 plan by the department of administration must be open for enrollment to all
41 permanent full-time state employees, except that any plan established prior
42 to June 6, 1977 may be continued as a separate plan. Any closed panel
43 medical or dental plan or health maintenance organization designated as the
44 qualifying plan by the department of administration must be open for
45 enrollment to all permanent full-time state employees residing within the

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

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

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

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

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

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

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

11 E. Subsection D of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 2. The disciplinary action related to off-duty activities unrelated to
44 the required duties of the law enforcement officer. If the department head
45 appeals the decision of the court, the court's award of any costs or attorney

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

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

9 E. A WRIT OF CERTIORARI AUTHORIZED BY THIS SECTION SHALL COMPLY WITH
10 TITLE 12, CHAPTER 7, ARTICLE 6.

11 Sec. 3. Heading change

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

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

18 Sec. 4. Repeal

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

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

22 38-1101. Definitions

23 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

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

29 3. "DISCIPLINARY ACTION" MEANS THE DISMISSAL, DEMOTION OR SUSPENSION
30 FOR MORE THAN A WORK SHIFT, AS DETERMINED BY THE NUMBER OF HOURS COMPRISING A
31 WORK SHIFT AT THE TIME THE CONDUCT WAS COMMITTED, OF A LAW ENFORCEMENT
32 OFFICER THAT IS AUTHORIZED BY STATUTE, CHARTER OR ORDINANCE AND THAT IS
33 SUBJECT TO A HEARING OR OTHER PROCEDURE BY A LOCAL MERIT BOARD, A CIVIL
34 SERVICE BOARD, AN ADMINISTRATIVE LAW JUDGE OR A HEARING OFFICER.

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

37 5. "GOOD FAITH" MEANS HONESTY OF PURPOSE AND ABSENCE OF INTENT TO
38 DEFRAUD.

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

42 7. "JUST CAUSE" MEANS:

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

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

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

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

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

11 8. "LAW ENFORCEMENT OFFICER" MEANS:

12 (a) AN INDIVIDUAL, OTHER THAN A PROBATIONARY EMPLOYEE, WHO IS
13 CERTIFIED BY THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD, OTHER
14 THAN A PERSON EMPLOYED BY A MULTI-COUNTY WATER CONSERVATION DISTRICT.

15 (b) A DETENTION OR CORRECTIONS OFFICER, OTHER THAN A PROBATIONARY
16 EMPLOYEE OR JUVENILE DETENTION OFFICER, WHO IS EMPLOYED BY THIS STATE OR A
17 POLITICAL SUBDIVISION OF THIS STATE.

18 (c) A NONPROBATIONARY REGULARLY APPOINTED AND PAID DEPUTY SHERIFF OF A
19 COUNTY.

20 (d) A NONPROBATIONARY REGULARLY EMPLOYED POLICE OFFICER IN A CITY OR
21 TOWN.

22 Sec. 6. Renumber

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

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

27 38-1102. Peace officer bill of rights; preemption

28 IN LIGHT OF INHERENT RISKS THAT LAW ENFORCEMENT OFFICERS FACE AND THE
29 PUBLIC SERVICE THEY PROVIDE, A PEACE OFFICERS BILL OF RIGHTS IS ESTABLISHED.
30 THE PEACE OFFICERS BILL OF RIGHTS SHALL BE LIBERALLY CONSTRUED TO AFFECT ITS
31 PURPOSE OF PROVIDING CERTAIN RIGHTS AND PROTECTIONS TO LAW ENFORCEMENT
32 OFFICERS. THIS ARTICLE DOES NOT PREEMPT AGREEMENTS THAT SUPPLANT, REVISE OR
33 OTHERWISE DEVIATE FROM THE PROVISIONS OF THIS ARTICLE, INCLUDING WRITTEN
34 AGREEMENTS BETWEEN THE EMPLOYER AND THE LAW ENFORCEMENT OFFICER OR THE LAW
35 ENFORCEMENT OFFICER'S LAWFUL REPRESENTATIVE ASSOCIATION.

36 38-1103. Discipline of law enforcement officers; exceptions

37 A. A LAW ENFORCEMENT OFFICER IS NOT SUBJECT TO DISCIPLINARY ACTION
38 EXCEPT FOR JUST CAUSE.

39 B. THIS SECTION DOES NOT APPLY TO:

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

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

1 B. SUBSECTION A OF THIS SECTION DOES NOT REQUIRE THE EMPLOYER TO
2 EITHER:
3 1. STOP AN INTERVIEW TO ISSUE ANOTHER NOTICE FOR ALLEGATIONS BASED ON
4 INFORMATION PROVIDED BY THE LAW ENFORCEMENT OFFICER DURING THE INTERVIEW.
5 2. DISCLOSE ANY FACT TO THE LAW ENFORCEMENT OFFICER OR THE LAW
6 ENFORCEMENT OFFICER'S REPRESENTATIVE THAT WOULD IMPEDE THE INVESTIGATION.
7 C. SUBSECTION A, PARAGRAPHS 1 AND 2 OF THIS SECTION DO NOT APPLY TO AN
8 INTERVIEW OF A LAW ENFORCEMENT OFFICER THAT IS:
9 1. IN THE NORMAL COURSE OF DUTY, COUNSELING OR INSTRUCTION OR AN
10 INFORMAL VERBAL ADMONISHMENT BY, OR OTHER ROUTINE OR UNPLANNED CONTACT WITH,
11 A SUPERVISOR OR ANY OTHER LAW ENFORCEMENT OFFICER.
12 2. PRELIMINARY QUESTIONING TO DETERMINE THE SCOPE OF THE ALLEGATIONS
13 OR IF AN INVESTIGATION IS NECESSARY.
14 3. CONDUCTED DURING THE COURSE OF A CRIMINAL INVESTIGATION.
15 4. CONDUCTED DURING THE COURSE OF A POLYGRAPH EXAMINATION.
16 D. THE EMPLOYER MAY REQUIRE THE LAW ENFORCEMENT OFFICER TO SUBMIT TO A
17 POLYGRAPH EXAMINATION IF THE OFFICER MAKES A STATEMENT TO THE EMPLOYER DURING
18 THE INVESTIGATION THAT DIFFERS FROM OTHER INFORMATION RELATING TO THE
19 INVESTIGATION THAT IS KNOWN TO THE EMPLOYER AND RECONCILING THAT DIFFERENCE
20 IS NECESSARY TO COMPLETE THE INVESTIGATION. IF A POLYGRAPH EXAMINATION IS
21 ADMINISTERED PURSUANT TO THIS PARAGRAPH, THE EMPLOYER OR THE PERSON
22 ADMINISTERING THE POLYGRAPH EXAMINATION SHALL MAKE AN AUDIO RECORDING OF THE
23 COMPLETE POLYGRAPH PROCEDURE AND PROVIDE A COPY OF THE RECORDING TO THE LAW
24 ENFORCEMENT OFFICER. SECTION 38-1108 APPLIES TO A POLYGRAPH EXAMINATION THAT
25 IS ADMINISTERED PURSUANT TO THIS SUBSECTION.
26 E. THIS SECTION DOES NOT APPLY TO A LAW ENFORCEMENT OFFICER WHO IS
27 EMPLOYED BY AN AGENCY OF THIS STATE AS AN AT WILL EMPLOYEE.
28 38-1105. Law enforcement officer as witness; right to
29 representation; exception
30 A. IF A LAW ENFORCEMENT OFFICER IS DESIGNATED AS A WITNESS BY THE LAW
31 ENFORCEMENT OFFICER'S EMPLOYER IN AN INVESTIGATION THAT COULD LEAD TO ANOTHER
32 LAW ENFORCEMENT OFFICER'S DISMISSAL, DEMOTION OR SUSPENSION, THE WITNESS LAW
33 ENFORCEMENT OFFICER MAY REQUEST TO HAVE A REPRESENTATIVE PRESENT AT NO COST
34 TO THE EMPLOYER DURING THE WITNESS INTERVIEW. UNLESS AGREED TO BY THE
35 EMPLOYER, THE REPRESENTATIVE SHALL BE FROM THE SAME AGENCY AND SHALL NOT BE
36 AN ATTORNEY EXCEPT THAT IF A REPRESENTATIVE FROM THE SAME AGENCY IS NOT
37 REASONABLY AVAILABLE, WITH THE EMPLOYER'S PERMISSION, THE WITNESS LAW
38 ENFORCEMENT OFFICER'S REPRESENTATIVE MAY BE FROM THE WITNESS LAW ENFORCEMENT
39 OFFICER'S PROFESSIONAL MEMBERSHIP ORGANIZATION.
40 B. THE WITNESS LAW ENFORCEMENT OFFICER SHALL ANSWER ALL QUESTIONS
41 ASKED BY THE LAW ENFORCEMENT OFFICER'S DEPARTMENT INVESTIGATOR, AND
42 INFORMATION LEARNED DURING A WITNESS INTERVIEW IS CONSIDERED PROPRIETARY AND
43 CONFIDENTIAL BY THE EMPLOYER AND SHALL REMAIN SO UNTIL THE WITNESS LAW
44 ENFORCEMENT OFFICER IS SERVED WITH A NOTICE OF INVESTIGATION BY THE EMPLOYER

1 OR THE WITNESS LAW ENFORCEMENT OFFICER IS RELEASED FROM THE CONFIDENTIALITY
2 REQUIREMENTS OF THIS SECTION.

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

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

12 38-1106. Appeal of disciplinary actions; transcripts; change of
13 hearing officer or administrative law judge; burden
14 of proof; exception

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

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

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

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

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

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

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

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

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

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

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

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

1 H. EXCEPT WHERE A STATUTE, RULE OR ORDINANCE MAKES THE ADMINISTRATIVE
2 EVIDENTIARY HEARING THE FINAL ADMINISTRATIVE DETERMINATION, AN EMPLOYER OR A
3 PERSON ACTING ON BEHALF OF AN EMPLOYER MAY AMEND, MODIFY, REJECT OR REVERSE A
4 DECISION MADE BY A HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD
5 AFTER A HEARING WHERE THE LAW ENFORCEMENT OFFICER AND THE EMPLOYER HAVE BEEN
6 EQUALLY ALLOWED TO CALL AND EXAMINE WITNESSES, CROSS-EXAMINE WITNESSES,
7 PROVIDE DOCUMENTARY EVIDENCE AND OTHERWISE FULLY PARTICIPATE IN THE HEARING
8 IF AND ONLY TO THE EXTENT THAT THE DECISION WAS ARBITRARY OR WITHOUT
9 REASONABLE JUSTIFICATION AND THE EMPLOYER OR PERSON ACTING ON BEHALF OF THE
10 EMPLOYER STATES THE REASON FOR THE AMENDMENT, MODIFICATION, REJECTION OR
11 REVERSAL.

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

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

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

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

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

28 4. BY ANY AMOUNT EARNED BY THE LAW ENFORCEMENT OFFICER IN ALTERNATIVE
29 EMPLOYMENT.

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

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

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

39 38-1107. Superior court review hearing; remedy; exceptions

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

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

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

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

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

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

23 1. AS A POLICE CHIEF OR AN ASSISTANT POLICE CHIEF IN A LAW ENFORCEMENT
24 AGENCY.

25 2. BY AN AGENCY OF THIS STATE.

26 Sec. 10. Renumber

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

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

31 38-1108. Polygraph examinations; exception

32 A. THE RESULTS OF A POLYGRAPH EXAMINATION IN AN INVESTIGATION MAY NOT
33 BE THE BASIS FOR DISCIPLINARY ACTION UNLESS OTHER CORROBORATING EVIDENCE OR
34 INFORMATION EXISTS TO SUPPORT THE ACTION.

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

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

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

3 38-1109. Confidentiality of records; exception

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

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

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

14 38-1110. Time limitation on disciplinary action against law
15 enforcement officer; exceptions

16 A. A LIMITATION PERIOD IS ESTABLISHED IN WHICH AN EMPLOYER SHALL MAKE
17 A GOOD FAITH EFFORT TO COMPLETE ANY INVESTIGATION OF EMPLOYEE MISCONDUCT
18 WITHIN ONE HUNDRED TWENTY CALENDAR DAYS AFTER THE EMPLOYER RECEIVES NOTICE OF
19 THE ALLEGATION BY A PERSON AUTHORIZED BY THE EMPLOYER TO INITIATE AN
20 INVESTIGATION OF THE MISCONDUCT. THE INVESTIGATION IS CONSIDERED COMPLETE ON
21 THE DATE THE EMPLOYEE IS SERVED WITH THE NOTICE OF DISCIPLINE OR THE NOTICE
22 OF FINDINGS. IF THE EMPLOYER EXCEEDS THE ONE HUNDRED TWENTY CALENDAR DAY
23 LIMIT, THE EMPLOYER SHALL PROVIDE THE EMPLOYEE WITH A WRITTEN EXPLANATION
24 CONTAINING THE REASONS THE INVESTIGATION CONTINUED BEYOND ONE HUNDRED TWENTY
25 CALENDAR DAYS.

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

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

30 2. IS SUSPENDED DURING THE PERIOD OF TIME IN WHICH A LAW ENFORCEMENT
31 OFFICER WHO IS INVOLVED IN THE INVESTIGATION IS INCAPACITATED OR OTHERWISE
32 UNAVAILABLE.

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

35 4. MAY BE SUSPENDED FOR EMERGENCIES OR NATURAL DISASTERS DURING THE
36 TIME PERIOD IN WHICH THE GOVERNOR HAS DECLARED A STATE OF EMERGENCY WITHIN
37 THE JURISDICTIONAL BOUNDARIES OF THE CONCERNED EMPLOYER.

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

41 C. ON AN APPEAL OF DISCIPLINE BY THE EMPLOYEE, A HEARING OFFICER,
42 ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD MAY DISMISS THE DISCIPLINE IF IT IS
43 DETERMINED THAT THE EMPLOYER DID NOT MAKE A GOOD FAITH EFFORT TO COMPLETE THE
44 INVESTIGATION WITHIN ONE HUNDRED TWENTY CALENDAR DAYS. THE ALLEGATION
45 REGARDING ANY ACT, OMISSION OR OTHER MISCONDUCT MAY BE SUSTAINED, AND THE

1 EMPLOYEE'S RECORD SHALL REFLECT THAT THE ALLEGATION WAS SUSTAINED BUT NO
2 DISCIPLINE WAS ADMINISTERED DUE TO THE FINDING OF THE HEARING OFFICER,
3 ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD THAT THE EMPLOYER DID NOT MAKE A
4 GOOD FAITH EFFORT TO COMPLETE THE INVESTIGATION IN ONE HUNDRED TWENTY
5 CALENDAR DAYS. THE SUSTAINED DISCIPLINE MAY BE CONSIDERED WHEN DETERMINING
6 DISCIPLINE IN ANY FUTURE SUSTAINED MISCONDUCT ALLEGATION. IF THE EMPLOYER
7 DETERMINES THAT DISCIPLINARY ACTION IS APPROPRIATE, THE EMPLOYER SHALL
8 COMPLETE THE EMPLOYER'S INVESTIGATION AND GIVE NOTICE IN WRITING TO THE LAW
9 ENFORCEMENT OFFICER OF THE EMPLOYER'S INTENT TO PROCEED WITH DISCIPLINARY
10 ACTION, ALONG WITH A PROPOSAL OF THE SPECIFIC ACTION SOUGHT, INCLUDING LENGTH
11 OF SUSPENSION, IF APPLICABLE.

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

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

16 38-1111. Critical incident stress management team member;
17 privilege; exceptions; definitions

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

25 B. Subsection A does not apply if:

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

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

31 3. The communication or advice is made during the course of a criminal
32 investigation.

33 4. The designated person who received crisis response services
34 voluntarily testifies, in which case the critical incident stress management
35 team member may be compelled to testify on the same subject.

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

38 C. For the purposes of this section:

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

42 2. "Critical incident stress management team member" means an
43 individual who has completed training through a recognized organization that
44 delivers critical incident stress management training and WHO is part of a

1 law enforcement, probation, firefighter or emergency medical provider crisis
2 response team.

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

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

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

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

10 7. "Law enforcement officer" means:

11 (a) An individual who is certified by the Arizona peace officer
12 standards and training board, other than a person employed by a multi-county
13 water conservation district.

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

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

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

22 38-1112. Law enforcement officers; fitness for duty
23 examinations; rights of officers; definitions

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

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

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

1 D. The report shall be provided only to the employer and the law
2 enforcement officer ~~or probation officer~~ and shall not be provided to any
3 other person except as required for any subsequent appeal or certification
4 action involving the law enforcement officer ~~or probation officer~~. The
5 employer shall provide notice to the law enforcement officer ~~or probation~~
6 ~~officer~~ that the report has been received by the employer. The report shall
7 be provided to the law enforcement officer ~~or probation officer~~ immediately
8 if the law enforcement officer ~~or probation officer~~ presents the final report
9 of an independent medical examination or if the law enforcement officer ~~or~~
10 ~~probation officer~~ waives any right to request an independent medical
11 examination. If the law enforcement officer ~~or probation officer~~ does not
12 present the results of an independent medical examination within twenty
13 CALENDAR days after the employer provides NOTICE TO the law enforcement
14 officer ~~or probation officer notice~~ that the report has been received by the
15 employer, the law enforcement officer ~~or probation officer~~ is deemed to have
16 waived the right to present the results of the independent medical
17 examination.

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

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

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

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

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

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

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

2 1. "Independent medical examination" means an assessment that is
3 requested by a law enforcement officer ~~or probation officer~~, that is
4 conducted by a physician who is licensed pursuant to title 32, chapter 13 or
5 17 and that is used to provide a second, independent opinion of a current law
6 enforcement officer ~~or probation officer~~ who has been determined to not be
7 able to perform essential functions of the job as a result of observation and
8 a subsequent employer-ordered physical examination.

9 2. "Law enforcement officer" means:

10 (a) A regularly employed and paid individual, other than a
11 probationary employee, who is certified by the Arizona peace officer
12 standards and training board and who is working in a position requiring
13 certification by the Arizona peace officer standards and training board,
14 other than a person employed by a multi-county water conservation district,
15 an at-will employee or a voluntary or reserve employee.

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

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

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

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

27 38-1114. Health insurance payments for spouse or dependents of
28 law enforcement officer killed in the line of duty:
29 applicability; definitions

30 A. Notwithstanding any other law, the surviving spouse or a surviving
31 dependent of a deceased law enforcement officer is entitled to receive
32 payments for health insurance premiums from public monies of the employer of
33 the law enforcement officer if the law enforcement officer was killed in the
34 line of duty or died from injuries suffered in the line of duty.

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

39 1. The health insurance program of the employer.

40 2. The health insurance program that is offered by the state
41 retirement system or plan from which the surviving spouse or surviving
42 dependent is receiving benefits.

43 C. If a surviving spouse or surviving dependent was enrolled in either
44 health insurance program described in subsection B of this section at the
45 time the law enforcement officer was killed in the line of duty or died from

1 injuries suffered in the line of duty and is eligible pursuant to subsection
2 D of this section to receive health insurance premium payments under this
3 section but is no longer enrolled in either health insurance program
4 described in subsection B of this section, the employer shall allow the
5 surviving spouse and any surviving dependent to enroll in the employer's
6 health insurance program to receive health insurance premium payments
7 pursuant to this section.

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

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

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

24 F. This section applies:

25 1. To a surviving spouse or a surviving dependent of a deceased law
26 enforcement officer, as defined in subsection G, paragraph 2, subdivision
27 (a), (b), ~~OR~~ (c) ~~or (d)~~ of this section, who was killed in the line of duty
28 or who died from injuries suffered in the line of duty on or after April 5,
29 1933.

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

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

38 G. For the purposes of this section:

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

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

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

4 2. "Law enforcement officer" means:

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

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

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

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

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

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

19 ARTICLE 2. ADULT AND JUVENILE PROBATION OFFICERS

20 38-1131. Definitions

21 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

24 2. "DISCIPLINARY ACTION" MEANS THE DISMISSAL, DEMOTION OR SUSPENSION
25 FOR MORE THAN A WORK SHIFT, AS DETERMINED BY THE NUMBER OF HOURS COMPRISING A
26 WORK SHIFT AT THE TIME THE CONDUCT WAS COMMITTED, OF A PROBATION OFFICER THAT
27 IS AUTHORIZED BY STATUTE, CHARTER OR ORDINANCE AND THAT IS SUBJECT TO A
28 HEARING OR OTHER PROCEDURE BY A LOCAL MERIT BOARD, A CIVIL SERVICE BOARD OR A
29 HEARING OFFICER.

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

33 4. "JUST CAUSE" MEANS:

34 (a) THE EMPLOYER INFORMED THE PROBATION OFFICER OF THE POSSIBLE
35 DISCIPLINARY ACTION RESULTING FROM THE OFFICER'S CONDUCT THROUGH AGENCY
36 MANUALS, EMPLOYEE HANDBOOKS, THE EMPLOYER'S RULES AND REGULATIONS OR OTHER
37 COMMUNICATIONS TO THE OFFICER OR THE CONDUCT WAS SUCH THAT THE OFFICER SHOULD
38 HAVE REASONABLY KNOWN DISCIPLINARY ACTION COULD OCCUR.

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

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

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

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

7 38-1132. Preemption

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

12 38-1133. Discipline of probation officers

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

15 B. THIS SECTION DOES NOT APPLY TO:

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

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

20 38-1134. Internal investigations; employee representative;
21 polygraph examination

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

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

42 2. BEFORE THE COMMENCEMENT OF ANY INTERVIEW DESCRIBED IN THIS SECTION,
43 THE EMPLOYER SHALL PROVIDE THE PROBATION OFFICER WITH A WRITTEN NOTICE
44 INFORMING THE OFFICER OF THE ALLEGED FACTS THAT ARE THE BASIS OF THE
45 INVESTIGATION, THE SPECIFIC NATURE OF THE INVESTIGATION, THE OFFICER'S STATUS

1 DURING THE INVESTIGATION, ALL KNOWN ALLEGATIONS OF MISCONDUCT THAT ARE THE
2 REASON FOR THE INTERVIEW AND THE OFFICER'S RIGHT TO HAVE A REPRESENTATIVE
3 PRESENT AT THE INTERVIEW. THE NOTICE SHALL INCLUDE COPIES OF ALL COMPLAINTS
4 THAT CONTAIN THE ALLEGED FACTS THAT ARE REASONABLY AVAILABLE, EXCEPT FOR
5 COPIES OF COMPLAINTS THAT ARE FILED WITH THE EMPLOYER AND THAT INCLUDE
6 ALLEGATIONS OF UNLAWFUL DISCRIMINATION, HARASSMENT OR RETALIATION OR
7 COMPLAINTS THAT INVOLVE MATTERS UNDER THE JURISDICTION OF THE EQUAL
8 EMPLOYMENT OPPORTUNITY COMMISSION.

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

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

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

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

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

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

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

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

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

28 D. AN EMPLOYER MAY REQUIRE THE PROBATION OFFICER TO SUBMIT TO A
29 POLYGRAPH EXAMINATION IF THE OFFICER MAKES A STATEMENT TO THE EMPLOYER DURING
30 THE INVESTIGATION THAT DIFFERS FROM OTHER INFORMATION RELATING TO THE
31 INVESTIGATION THAT IS KNOWN TO THE EMPLOYER AND RECONCILING THAT DIFFERENCE
32 IS NECESSARY TO COMPLETE THE INVESTIGATION. IF A POLYGRAPH EXAMINATION IS
33 ADMINISTERED PURSUANT TO THIS SUBSECTION, THE EMPLOYER OR THE PERSON
34 ADMINISTERING THE POLYGRAPH EXAMINATION SHALL MAKE AN AUDIO RECORDING OF THE
35 COMPLETE POLYGRAPH PROCEDURE AND PROVIDE A COPY OF THE RECORDING TO THE
36 PROBATION OFFICER. SECTION 38-1137 APPLIES TO A POLYGRAPH EXAMINATION THAT
37 IS ADMINISTERED PURSUANT TO THIS SUBSECTION.

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

40 A. IF A PROBATION OFFICER IS DESIGNATED AS A WITNESS BY THE PROBATION
41 OFFICER'S EMPLOYER IN AN INVESTIGATION THAT COULD LEAD TO ANOTHER PROBATION
42 OFFICER'S DISMISSAL, DEMOTION OR SUSPENSION, THE WITNESS PROBATION OFFICER
43 MAY REQUEST TO HAVE A REPRESENTATIVE PRESENT AT NO COST TO THE EMPLOYER
44 DURING THE WITNESS INTERVIEW. UNLESS AGREED TO BY THE EMPLOYER, THE
45 REPRESENTATIVE SHALL BE FROM THE SAME AGENCY AND SHALL NOT BE AN ATTORNEY

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

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

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

17 38-1136. Appeal of disciplinary action; change of hearing
18 officer; burden of proof

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

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

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

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

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

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

43 B. IT IS UNLAWFUL FOR A PERSON TO DISSEMINATE INFORMATION THAT IS
44 DISCLOSED PURSUANT TO SUBSECTION A OF THIS SECTION TO ANY PERSON OTHER THAN
45 THE PARTIES TO THE APPEAL AND THEIR LAWFUL REPRESENTATIVES FOR PURPOSES OF

1 THE APPEAL OF THE DISCIPLINARY ACTION. THIS SUBSECTION DOES NOT PROHIBIT THE
2 USE OF THE INFORMATION IN THE HEARING OR DISCLOSURE PURSUANT TO TITLE 39,
3 CHAPTER 1, ARTICLE 2.

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

7 D. THE EMPLOYER OR THE PROBATION OFFICER MAY SEEK A DETERMINATION BY
8 THE HEARING OFFICER OR APPEALS BOARD HEARING THE APPEAL REGARDING ANY
9 EVIDENCE THAT THE EMPLOYER OR THE PROBATION OFFICER BELIEVES SHOULD NOT BE
10 DISCLOSED PURSUANT TO SUBSECTION A OF THIS SECTION BECAUSE THE RISK OF HARM
11 INVOLVED IN DISCLOSURE OUTWEIGHS ANY USEFULNESS OF THE DISCLOSURE IN THE
12 HEARING. IN DETERMINING WHETHER EVIDENCE WILL BE DISCLOSED, THE HEARING
13 OFFICER OR APPEALS BOARD MAY PERFORM AN IN CAMERA REVIEW OF THE EVIDENCE AND
14 MAY DISCLOSE THE MATERIAL SUBJECT TO ANY RESTRICTION ON THE DISCLOSURE,
15 INCLUDING THE CLOSING OF THE HEARING OR THE SEALING OF THE RECORDS, THAT THE
16 HEARING OFFICER OR APPEALS BOARD FINDS NECESSARY UNDER THE CIRCUMSTANCES.

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

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

37 G. EXCEPT WHERE A STATUTE, RULE OR ORDINANCE MAKES THE ADMINISTRATIVE
38 EVIDENTIARY HEARING THE FINAL ADMINISTRATIVE DETERMINATION, AN EMPLOYER OR A
39 PERSON ACTING ON BEHALF OF AN EMPLOYER MAY AMEND, MODIFY, REJECT OR REVERSE A
40 DECISION MADE BY A HEARING OFFICER OR APPEALS BOARD AFTER A HEARING WHERE THE
41 PROBATION OFFICER AND THE EMPLOYER HAVE BEEN EQUALLY ALLOWED TO CALL AND
42 EXAMINE WITNESSES, CROSS-EXAMINE WITNESSES, PROVIDE DOCUMENTARY EVIDENCE AND
43 OTHERWISE FULLY PARTICIPATE IN THE HEARING IF THE DECISION WAS ARBITRARY OR
44 WITHOUT REASONABLE JUSTIFICATION AND THE EMPLOYER OR PERSON ACTING ON BEHALF

1 OF THE EMPLOYER STATES THE REASON FOR THE AMENDMENT, MODIFICATION, REJECTION
2 OR REVERSAL.

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

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

12 38-1137. Confidentiality of records

13 AN EMPLOYER SHALL NOT INCLUDE IN THAT PORTION OF THE PERSONNEL FILE OF
14 A PROBATION OFFICER THAT IS AVAILABLE FOR PUBLIC INSPECTION AND COPYING ANY
15 INFORMATION ABOUT AN INVESTIGATION UNTIL THE INVESTIGATION IS COMPLETE OR THE
16 EMPLOYER HAS DISCONTINUED THE INVESTIGATION. IF THE PROBATION OFFICER HAS
17 TIMELY APPEALED A DISCIPLINARY ACTION, THE INVESTIGATION IS NOT COMPLETE
18 UNTIL THE CONCLUSION OF THE APPEAL PROCESS.

19 38-1138. Polygraph examinations

20 A. THE RESULTS OF A POLYGRAPH EXAMINATION IN AN INVESTIGATION MAY NOT
21 BE THE BASIS FOR DISCIPLINARY ACTION UNLESS OTHER CORROBORATING EVIDENCE OR
22 INFORMATION EXISTS.

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

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

33 38-1139. Critical incident stress management team member:
34 privilege: exceptions: definitions

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

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

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

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

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

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

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

10 C. FOR THE PURPOSES OF THIS SECTION:

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

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

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

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

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

24 38-1140. Probation officers; fitness for duty; examinations;
25 rights of probation officers; definitions

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

35 B. THE ORDER SHALL PROVIDE AT LEAST TEN CALENDAR DAYS' NOTICE TO THE
36 PROBATION OFFICER TO BE EXAMINED AND SHALL SPECIFY THE TIME, PLACE, MANNER,
37 CONDITIONS AND SCOPE OF THE EXAMINATION AND THE PERSON OR PERSONS WHO WILL
38 CONDUCT THE EXAMINATION. THE PROBATION OFFICER TO BE EXAMINED MAY HAVE A
39 REPRESENTATIVE PRESENT DURING THE EXAMINATION IF THE PHYSICIAN CONDUCTING
40 THE EXAMINATION AGREES.

41 C. THE EMPLOYER SHALL PROVIDE THE PROBATION OFFICER WITH THE FINAL
42 REPORT OF THE EXAMINATION CONTAINING THE MEDICAL PROFESSIONAL'S FINDINGS.
43 THE EMPLOYER MAY PROVIDE ANY ADDITIONAL INFORMATION RELATED TO THE FITNESS
44 FOR DUTY EXAMINATION TO THE EXAMINING PHYSICIAN.

1 D. THE REPORT SHALL BE PROVIDED ONLY TO THE EMPLOYER AND THE PROBATION
2 OFFICER AND SHALL NOT BE PROVIDED TO ANY OTHER PERSON EXCEPT AS REQUIRED FOR
3 ANY SUBSEQUENT APPEAL OR CERTIFICATION ACTION INVOLVING THE PROBATION
4 OFFICER. THE EMPLOYER SHALL PROVIDE NOTICE TO THE PROBATION OFFICER THAT
5 THE REPORT HAS BEEN RECEIVED BY THE EMPLOYER. THE REPORT SHALL BE PROVIDED
6 TO THE PROBATION OFFICER IMMEDIATELY IF THE PROBATION OFFICER PRESENTS THE
7 FINAL REPORT OF AN INDEPENDENT MEDICAL EXAMINATION OR IF THE PROBATION
8 OFFICER WAIVES ANY RIGHT TO REQUEST AN INDEPENDENT MEDICAL EXAMINATION. IF
9 THE PROBATION OFFICER DOES NOT PRESENT THE RESULTS OF AN INDEPENDENT MEDICAL
10 EXAMINATION WITHIN TWENTY CALENDAR DAYS AFTER THE EMPLOYER PROVIDES NOTICE
11 TO THE PROBATION OFFICER THAT THE REPORT HAS BEEN RECEIVED BY THE EMPLOYER,
12 THE PROBATION OFFICER IS DEEMED TO HAVE WAIVED THE RIGHT TO PRESENT THE
13 RESULTS OF THE INDEPENDENT MEDICAL EXAMINATION.

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

16 F. THE PHYSICIAN MAY CONSIDER AND REPORT ON ONLY THE PROBATION
17 OFFICER'S MEDICAL OR OTHER RECORDS THAT ARE DIRECTLY RELEVANT TO THE ACTIONS
18 IN QUESTION AND WHEN CONDUCTING THE EXAMINATION, INCLUDING MEDICAL RECORDS
19 THAT RECORD PREEXISTING CONDITIONS THAT ARE RELEVANT TO THE EXAMINATION.
20 THE PHYSICIAN MAY ADDITIONALLY CONSIDER AND REPORT ANY CONDITION OF THE
21 PROBATION OFFICER THAT THE PHYSICIAN IDENTIFIES DURING THE COURSE OF THE
22 PHYSICAL EXAMINATION AND THAT ENDANGERS THE HEALTH AND SAFETY OF THE
23 PROBATION OFFICER OR THE COMMUNITY.

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

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

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

33 J. FOR THE PURPOSES OF THIS SECTION:

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

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

1 38-1141. Health insurance payments for spouse or dependents of
2 a probation officer killed in the line of duty:
3 applicability; definitions

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

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

13 1. THE HEALTH INSURANCE PROGRAM OF THE EMPLOYER.

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

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

27 D. THE HEALTH INSURANCE PREMIUM AMOUNT PAYABLE BY THE EMPLOYER OF THE
28 DECEASED PROBATION OFFICER IS THE AMOUNT THE EMPLOYER OF THE DECEASED
29 PROBATION OFFICER WOULD PAY FOR AN ACTIVE PROBATION OFFICER FOR A FAMILY
30 COVERAGE PREMIUM OR SINGLE COVERAGE PREMIUM, WHICHEVER IS APPLICABLE.
31 PAYMENTS SHALL BE DISCONTINUED PURSUANT TO THIS SECTION IF:

32 1. THE SURVIVING SPOUSE REMARRIES.

33 2. THE SURVIVING SPOUSE BECOMES MEDICARE ELIGIBLE.

34 3. THE SURVIVING SPOUSE DIES.

35 4. FOR DEPENDENT COVERAGE, THE PERSON IS NO LONGER CONSIDERED A
36 DEPENDENT.

37 E. IF THE EMPLOYER CURRENTLY PAYS A GREATER PORTION OF THE HEALTH
38 INSURANCE PREMIUM FOR A SURVIVING SPOUSE OR A SURVIVING DEPENDENT THAN THE
39 REQUIRED AMOUNT PRESCRIBED IN SUBSECTION D OF THIS SECTION, THE SURVIVING
40 SPOUSE OR SURVIVING DEPENDENT SHALL RECEIVE THE GREATER AMOUNT AS PAYMENT
41 TOWARD THE SURVIVING SPOUSE'S OR SURVIVING DEPENDENT'S HEALTH INSURANCE
42 PREMIUM.

1 F. THIS SECTION APPLIES:
2 1. TO A SURVIVING SPOUSE OR A SURVIVING DEPENDENT OF A DECEASED
3 PROBATION OFFICER WHO WAS KILLED IN THE LINE OF DUTY OR WHO DIED FROM
4 INJURIES SUFFERED IN THE LINE OF DUTY ON OR AFTER APRIL 5, 1933.
5 2. ONLY TO HEALTH INSURANCE PREMIUMS PAID ON OR AFTER SEPTEMBER
6 13, 2013.
7 G. FOR THE PURPOSES OF THIS SECTION:
8 1. "DEPENDENT" MEANS AN UNMARRIED CHILD OF A DECEASED PROBATION
9 OFFICER WHO MEETS ONE OF THE FOLLOWING QUALIFICATIONS:
10 (a) IS UNDER EIGHTEEN YEARS OF AGE.
11 (b) IS AT LEAST EIGHTEEN YEARS OF AGE AND UNDER TWENTY-THREE YEARS OF
12 AGE ONLY DURING ANY PERIOD THAT THE CHILD IS A FULL-TIME STUDENT.
13 (c) IS UNDER A DISABILITY THAT BEGAN BEFORE THE CHILD ATTAINED
14 TWENTY-THREE YEARS OF AGE AND REMAINS A DEPENDENT OF THE SURVIVING SPOUSE OR
15 A GUARDIAN.
16 2. "PROBATION OFFICER" MEANS A SURVEILLANCE OFFICER, JUVENILE
17 DETENTION OFFICER OR A JUVENILE OR ADULT PROBATION OFFICER WHO IS EMPLOYED BY
18 THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.
19 Sec. 17. Effective date
20 This act is effective from and after December 31, 2014.