

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

**CHAPTER 240**  
**HOUSE BILL 2562**

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

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

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

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

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

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

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

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

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

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

11 E. Subsection D of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 council and court.

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

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

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

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

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

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

1 D. A department head shall have the right to have all council policies  
2 and decisions reviewed ~~upon writ of certiorari~~ PURSUANT TO TITLE 12, CHAPTER  
3 7, ARTICLE 6 in the superior court of the county in which the law enforcement  
4 officer resides and legal counsel for the department head shall be provided  
5 by the county or city attorney in whose jurisdiction the department lies.

6 Sec. 3. Heading change

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

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

13 Sec. 4. Repeal

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

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

17 38-1101. Definitions

18 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

21 2. "AT WILL" MEANS AN EMPLOYMENT RELATIONSHIP WHERE EITHER PARTY TO  
22 THE RELATIONSHIP MAY SEVER THE RELATIONSHIP AT ANY TIME FOR ANY REASON OTHER  
23 THAN AN UNLAWFUL REASON.

24 3. "DISCIPLINARY ACTION" MEANS THE DISMISSAL, THE DEMOTION OR ANY  
25 SUSPENSION OF A LAW ENFORCEMENT OFFICER THAT IS AUTHORIZED BY STATUTE,  
26 CHARTER OR ORDINANCE AND THAT IS SUBJECT TO A HEARING OR OTHER PROCEDURE BY A  
27 LOCAL MERIT BOARD, A CIVIL SERVICE BOARD, AN ADMINISTRATIVE LAW JUDGE OR A  
28 HEARING OFFICER.

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

31 5. "GOOD FAITH" MEANS HONESTY OF PURPOSE AND ABSENCE OF INTENT TO  
32 DEFRAUD.

33 6. "INVESTIGATIVE FILE" MEANS THE LAW ENFORCEMENT AGENCY'S COMPLETE  
34 REPORT AND ANY ATTACHMENTS DETAILING THE INCIDENTS LEADING TO THE  
35 DISCIPLINARY ACTION.

36 7. "JUST CAUSE" MEANS:

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

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



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

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

5 8. "LAW ENFORCEMENT OFFICER" MEANS:

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

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

12 (c) A NONPROBATIONARY REGULARLY APPOINTED AND PAID DEPUTY SHERIFF OF A  
13 COUNTY.

14 (d) A NONPROBATIONARY REGULARLY EMPLOYED POLICE OFFICER IN A CITY OR  
15 TOWN.

16 Sec. 6. Renumber

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

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

21 38-1102. Peace officer bill of rights; preemption

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

27 38-1103. Discipline of law enforcement officers; exceptions

28 A. A LAW ENFORCEMENT OFFICER IS NOT SUBJECT TO DISCIPLINARY ACTION  
29 EXCEPT FOR JUST CAUSE.

30 B. THIS SECTION DOES NOT APPLY TO:

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

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

35 Sec. 8. Repeal

36 Sections 38-1104, 38-1105, 38-1106 and 38-1107, Arizona Revised  
37 Statutes, are repealed.

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

41 38-1104. Internal investigations; employee representative;  
42 polygraph examination; exception

43 A. IF AN EMPLOYER INTERVIEWS A LAW ENFORCEMENT OFFICER IN THE COURSE  
44 OF AN ADMINISTRATIVE INVESTIGATION AND THE EMPLOYER OR LAW ENFORCEMENT  
45 OFFICER REASONABLY BELIEVES THAT THE INTERVIEW COULD RESULT IN DISMISSAL,  
46 DEMOTION OR SUSPENSION:

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

18           2. BEFORE THE COMMENCEMENT OF ANY INTERVIEW DESCRIBED IN THIS SECTION,  
19 THE EMPLOYER SHALL PROVIDE THE LAW ENFORCEMENT OFFICER WITH A WRITTEN NOTICE  
20 INFORMING THE OFFICER OF THE ALLEGED FACTS THAT ARE THE BASIS OF THE  
21 INVESTIGATION, THE SPECIFIC NATURE OF THE INVESTIGATION, THE OFFICER'S STATUS  
22 IN THE INVESTIGATION, ALL KNOWN ALLEGATIONS OF MISCONDUCT THAT ARE THE REASON  
23 FOR THE INTERVIEW AND THE OFFICER'S RIGHT TO HAVE A REPRESENTATIVE PRESENT AT  
24 THE INTERVIEW. THE NOTICE SHALL INCLUDE COPIES OF ALL COMPLAINTS THAT  
25 CONTAIN THE ALLEGED FACTS THAT ARE REASONABLY AVAILABLE, EXCEPT FOR COPIES OF  
26 COMPLAINTS THAT ARE FILED WITH THE EMPLOYER AND THAT INCLUDE ALLEGATIONS OF  
27 UNLAWFUL DISCRIMINATION, HARASSMENT OR RETALIATION OR COMPLAINTS THAT INVOLVE  
28 MATTERS UNDER THE JURISDICTION OF THE EQUAL EMPLOYMENT OPPORTUNITY  
29 COMMISSION.

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

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

36           1. STOP AN INTERVIEW TO ISSUE ANOTHER NOTICE FOR ALLEGATIONS BASED ON  
37 INFORMATION PROVIDED BY THE LAW ENFORCEMENT OFFICER DURING THE INTERVIEW.

38           2. DISCLOSE ANY FACT TO THE LAW ENFORCEMENT OFFICER OR THE LAW  
39 ENFORCEMENT OFFICER'S REPRESENTATIVE THAT WOULD IMPEDE THE INVESTIGATION.

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

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

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

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

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

3           D. THE EMPLOYER MAY REQUIRE THE LAW ENFORCEMENT OFFICER TO SUBMIT TO A  
4 POLYGRAPH EXAMINATION IF THE OFFICER MAKES A STATEMENT TO THE EMPLOYER DURING  
5 THE INVESTIGATION THAT DIFFERS FROM OTHER INFORMATION RELATING TO THE  
6 INVESTIGATION THAT IS KNOWN TO THE EMPLOYER AND RECONCILING THAT DIFFERENCE  
7 IS NECESSARY TO COMPLETE THE INVESTIGATION. IF A POLYGRAPH EXAMINATION IS  
8 ADMINISTERED PURSUANT TO THIS PARAGRAPH, THE EMPLOYER OR THE PERSON  
9 ADMINISTERING THE POLYGRAPH EXAMINATION SHALL MAKE AN AUDIO RECORDING OF THE  
10 COMPLETE POLYGRAPH PROCEDURE AND PROVIDE A COPY OF THE RECORDING TO THE LAW  
11 ENFORCEMENT OFFICER. SECTION 38-1108 APPLIES TO A POLYGRAPH EXAMINATION THAT  
12 IS ADMINISTERED PURSUANT TO THIS SUBSECTION.

13           E. IF AFTER AN EMPLOYER COMPLETES AN INVESTIGATION OF A LAW  
14 ENFORCEMENT OFFICER THE EMPLOYER SEEKS DISCIPLINARY ACTION, AT THE REQUEST OF  
15 THE LAW ENFORCEMENT OFFICER, THE EMPLOYER SHALL PROVIDE A BASIC SUMMARY OF  
16 ANY DISCIPLINE ORDERED AGAINST ANY OTHER LAW ENFORCEMENT OFFICER OF GENERALLY  
17 SIMILAR RANK AND EXPERIENCE EMPLOYED BY THE EMPLOYER WITHIN THE PREVIOUS TWO  
18 YEARS FOR THE SAME OR A SIMILAR VIOLATION. AS AN ALTERNATIVE, THE EMPLOYER  
19 MAY PROVIDE FILE COPIES OF THE RELEVANT DISCIPLINARY CASES. THE EMPLOYER  
20 SHALL NOT TAKE FINAL ACTION AND THE EMPLOYER SHALL NOT SCHEDULE A HEARING  
21 UNTIL THE BASIC SUMMARY OR FILE COPIES ARE PROVIDED TO THE LAW ENFORCEMENT  
22 OFFICER.

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

25           38-1105. Law enforcement officer as witness: right to  
26 representation: exception

27           A. IF A LAW ENFORCEMENT OFFICER IS DESIGNATED AS A WITNESS BY THE LAW  
28 ENFORCEMENT OFFICER'S EMPLOYER IN AN INVESTIGATION THAT COULD LEAD TO ANOTHER  
29 LAW ENFORCEMENT OFFICER'S DISMISSAL, DEMOTION OR SUSPENSION, THE WITNESS LAW  
30 ENFORCEMENT OFFICER MAY REQUEST TO HAVE A REPRESENTATIVE PRESENT AT NO COST  
31 TO THE EMPLOYER DURING THE WITNESS INTERVIEW. UNLESS AGREED TO BY THE  
32 EMPLOYER, THE REPRESENTATIVE SHALL BE FROM THE SAME AGENCY AND SHALL NOT BE  
33 AN ATTORNEY EXCEPT THAT IF A REPRESENTATIVE FROM THE SAME AGENCY IS NOT  
34 REASONABLY AVAILABLE, WITH THE EMPLOYER'S PERMISSION, THE WITNESS LAW  
35 ENFORCEMENT OFFICER'S REPRESENTATIVE MAY BE FROM THE WITNESS LAW ENFORCEMENT  
36 OFFICER'S PROFESSIONAL MEMBERSHIP ORGANIZATION.

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

44           C. THE WITNESS LAW ENFORCEMENT OFFICER MAY DISCUSS THE LAW ENFORCEMENT  
45 OFFICER'S WITNESS INTERVIEW WITH THE WITNESS LAW ENFORCEMENT OFFICER'S  
46 REPRESENTATIVE OR THAT REPRESENTATIVE'S LEGAL COUNSEL. IF THE WITNESS LAW

1 ENFORCEMENT OFFICER OR THE WITNESS LAW ENFORCEMENT OFFICER'S REPRESENTATIVE  
2 RELEASES INFORMATION WITHOUT AUTHORIZATION, THE EMPLOYER MAY SUBJECT THE  
3 WITNESS LAW ENFORCEMENT OFFICER OR THE WITNESS LAW ENFORCEMENT OFFICER'S  
4 REPRESENTATIVE TO DISCIPLINARY ACTION.

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

7 38-1106. Appeal of disciplinary actions; transcripts; change of  
8 hearing officer or administrative law judge; burden  
9 of proof; exception

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

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

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

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

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

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

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

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

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

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

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

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

42 H. EXCEPT WHERE A STATUTE, RULE OR ORDINANCE MAKES THE ADMINISTRATIVE  
43 EVIDENTIARY HEARING THE FINAL ADMINISTRATIVE DETERMINATION AND AFTER A  
44 HEARING WHERE THE LAW ENFORCEMENT OFFICER AND THE EMPLOYER HAVE BEEN EQUALLY  
45 ALLOWED TO CALL AND EXAMINE WITNESSES, CROSS-EXAMINE WITNESSES, PROVIDE  
46 DOCUMENTARY EVIDENCE AND OTHERWISE FULLY PARTICIPATE IN THE HEARING, AN

1 EMPLOYER OR A PERSON ACTING ON BEHALF OF AN EMPLOYER MAY AMEND, MODIFY,  
2 REJECT OR REVERSE THE PORTION OF A DECISION MADE BY A HEARING OFFICER,  
3 ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD THAT WAS ARBITRARY OR WITHOUT  
4 REASONABLE JUSTIFICATION. THE EMPLOYER OR PERSON ACTING ON BEHALF OF THE  
5 EMPLOYER SHALL STATE THE REASON FOR THE AMENDMENT, MODIFICATION, REJECTION OR  
6 REVERSAL.

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

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

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

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

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

23 4. BY ANY AMOUNT EARNED BY THE LAW ENFORCEMENT OFFICER IN ALTERNATIVE  
24 EMPLOYMENT.

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

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

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

34 38-1107. Superior court review hearing; remedy; exceptions

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

41 B. IF A LAW ENFORCEMENT OFFICER IS DEMOTED OR TERMINATED BY AN  
42 EMPLOYER OR A PERSON ACTING ON BEHALF OF AN EMPLOYER WHERE THERE IS NO  
43 HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD TO REVIEW THE  
44 DEMOTION OR TERMINATION, THE LAW ENFORCEMENT OFFICER MAY BRING AN ACTION IN  
45 SUPERIOR COURT TO REVIEW THE AGENCY'S FILE. IF THE COURT FINDS FROM A REVIEW

1 OF THE FILE THAT THERE WAS NO JUST CAUSE FOR THE DEMOTION OR TERMINATION, THE  
2 OFFICER IS ENTITLED TO A HEARING DE NOVO ON THE DEMOTION OR TERMINATION.

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

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

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

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

18 1. AS A POLICE CHIEF OR AN ASSISTANT POLICE CHIEF IN A LAW ENFORCEMENT  
19 AGENCY.

20 2. BY AN AGENCY OF THIS STATE.

21 Sec. 10. Renumber

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

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

26 38-1108. Polygraph examinations; exception

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

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

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

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

43 38-1109. Confidentiality of records; exception

44 A. AN EMPLOYER SHALL NOT INCLUDE IN THAT PORTION OF THE PERSONNEL FILE  
45 OF A LAW ENFORCEMENT OFFICER THAT IS AVAILABLE FOR PUBLIC INSPECTION AND

1 COPYING ANY INFORMATION ABOUT AN INVESTIGATION UNTIL THE INVESTIGATION IS  
2 COMPLETE OR THE EMPLOYER HAS DISCONTINUED THE INVESTIGATION.

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

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

9 38-1110. Time limitation on disciplinary action against law  
10 enforcement officer; exceptions

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

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

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

24 2. IS SUSPENDED DURING THE PERIOD OF TIME IN WHICH A LAW ENFORCEMENT  
25 OFFICER WHO IS INVOLVED IN THE INVESTIGATION IS INCAPACITATED OR OTHERWISE  
26 UNAVAILABLE.

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

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

32 5. IN A MULTI JURISDICTIONAL INVESTIGATION, MAY BE EXTENDED FOR A  
33 PERIOD OF TIME REASONABLY NECESSARY TO FACILITATE THE COORDINATION OF THE  
34 EMPLOYERS INVOLVED.

35 C. ON AN APPEAL OF DISCIPLINE BY THE EMPLOYEE, A HEARING OFFICER,  
36 ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD MAY DISMISS THE DISCIPLINE IF IT IS  
37 DETERMINED THAT THE EMPLOYER DID NOT MAKE A GOOD FAITH EFFORT TO COMPLETE THE  
38 INVESTIGATION WITHIN ONE HUNDRED EIGHTY CALENDAR DAYS. THE ALLEGATION  
39 REGARDING ANY ACT, OMISSION OR OTHER MISCONDUCT MAY BE SUSTAINED, AND THE  
40 EMPLOYEE'S RECORD SHALL REFLECT THAT THE ALLEGATION WAS SUSTAINED BUT NO  
41 DISCIPLINE WAS ADMINISTERED DUE TO THE FINDING OF THE HEARING OFFICER,  
42 ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD THAT THE EMPLOYER DID NOT MAKE A  
43 GOOD FAITH EFFORT TO COMPLETE THE INVESTIGATION IN ONE HUNDRED EIGHTY  
44 CALENDAR DAYS. THE SUSTAINED DISCIPLINE MAY BE CONSIDERED WHEN DETERMINING  
45 DISCIPLINE IN ANY FUTURE SUSTAINED MISCONDUCT ALLEGATION. IF THE EMPLOYER  
46 DETERMINES THAT DISCIPLINARY ACTION IS APPROPRIATE, THE EMPLOYER SHALL



1 COMPLETE THE EMPLOYER'S INVESTIGATION AND GIVE NOTICE IN WRITING TO THE LAW  
2 ENFORCEMENT OFFICER OF THE EMPLOYER'S INTENT TO PROCEED WITH DISCIPLINARY  
3 ACTION, ALONG WITH A PROPOSAL OF THE SPECIFIC ACTION SOUGHT, INCLUDING LENGTH  
4 OF SUSPENSION, IF APPLICABLE.

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

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

9 38-1111. Critical incident stress management team member;  
10 privilege; exceptions; definitions

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

18 B. Subsection A does not apply if:

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

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

24 3. The communication or advice is made during the course of a criminal  
25 investigation.

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

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

31 C. For the purposes of this section:

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

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

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

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

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

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

1           7. "Law enforcement officer" means:

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

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

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

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

13           38-1112. Law enforcement officers; fitness for duty  
14 examinations; rights of officers; definitions

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

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

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

36           D. The report shall be provided only to the employer and the law  
37 enforcement officer ~~or probation officer~~ and shall not be provided to any  
38 other person except as required for any subsequent appeal or certification  
39 action involving the law enforcement officer ~~or probation officer~~. The  
40 employer shall provide notice to the law enforcement officer ~~or probation~~  
41 ~~officer~~ that the report has been received by the employer. The report shall  
42 be provided to the law enforcement officer ~~or probation officer~~ immediately  
43 if the law enforcement officer ~~or probation officer~~ presents the final report  
44 of an independent medical examination or if the law enforcement officer ~~or~~  
45 ~~probation officer~~ waives any right to request an independent medical  
46 examination. If the law enforcement officer ~~or probation officer~~ does not

1 present the results of an independent medical examination within twenty  
2 CALENDAR days after the employer provides NOTICE TO the law enforcement  
3 officer ~~or probation officer notice~~ that the report has been received by the  
4 employer, the law enforcement officer ~~or probation officer~~ is deemed to have  
5 waived the right to present the results of the independent medical  
6 examination.

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

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

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

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

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

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

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

34 1. "Independent medical examination" means an assessment that is  
35 requested by a law enforcement officer ~~or probation officer~~, that is  
36 conducted by a physician who is licensed pursuant to title 32, chapter 13 or  
37 17 and that is used to provide a second, independent opinion of a current law  
38 enforcement officer ~~or probation officer~~ who has been determined to not be  
39 able to perform essential functions of the job as a result of observation and  
40 a subsequent employer-ordered physical examination.

41 2. "Law enforcement officer" means:

42 (a) A regularly employed and paid individual, other than a  
43 probationary employee, who is certified by the Arizona peace officer  
44 standards and training board and who is working in a position requiring  
45 certification by the Arizona peace officer standards and training board,

1 other than a person employed by a multi-county water conservation district,  
2 an at-will employee or a voluntary or reserve employee.

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

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

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

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

14 38-1114. Health insurance payments for spouse or dependents of  
15 law enforcement officer killed in the line of duty;  
16 applicability; definitions

17 A. Notwithstanding any other law, the surviving spouse or a surviving  
18 dependent of a deceased law enforcement officer is entitled to receive  
19 payments for health insurance premiums from public monies of the employer of  
20 the law enforcement officer if the law enforcement officer was killed in the  
21 line of duty or died from injuries suffered in the line of duty.

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

26 1. The health insurance program of the employer.

27 2. The health insurance program that is offered by the state  
28 retirement system or plan from which the surviving spouse or surviving  
29 dependent is receiving benefits.

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

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

45 1. The surviving spouse remarries.

46 2. The surviving spouse becomes medicare eligible.

1           3. The surviving spouse dies.

2           4. For dependent coverage, the person is no longer considered a  
3 dependent.

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

10          F. This section applies:

11           1. To a surviving spouse or a surviving dependent of a deceased law  
12 enforcement officer, as defined in subsection G, paragraph 2, subdivision  
13 (a), (b), ~~OR (c) or (d)~~ of this section, who was killed in the line of duty  
14 or who died from injuries suffered in the line of duty on or after April 5,  
15 1933.

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

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

24          G. For the purposes of this section:

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

27           (a) Is under eighteen years of age.

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

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

33           2. "Law enforcement officer" means:

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

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

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

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

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

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

3           ARTICLE 2. ADULT AND JUVENILE PROBATION OFFICERS

4           38-1131. Definitions

5           IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

8           2. "DISCIPLINARY ACTION" MEANS THE DISMISSAL, THE DEMOTION OR ANY  
9 SUSPENSION OF A PROBATION OFFICER THAT IS AUTHORIZED BY STATUTE, CHARTER OR  
10 ORDINANCE AND THAT IS SUBJECT TO A HEARING OR OTHER PROCEDURE BY A LOCAL  
11 MERIT BOARD, A CIVIL SERVICE BOARD OR A HEARING OFFICER.

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

15           4. "JUST CAUSE" MEANS:

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

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

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

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

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

33           38-1132. Preemption

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

38           38-1133. Discipline of probation officers

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

41           B. THIS SECTION DOES NOT APPLY TO:

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

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

1           38-1134. Internal investigations: employee representative:  
2                                   polygraph examination

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

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

23           2. BEFORE THE COMMENCEMENT OF ANY INTERVIEW DESCRIBED IN THIS SECTION,  
24 THE EMPLOYER SHALL PROVIDE THE PROBATION OFFICER WITH A WRITTEN NOTICE  
25 INFORMING THE OFFICER OF THE ALLEGED FACTS THAT ARE THE BASIS OF THE  
26 INVESTIGATION, THE SPECIFIC NATURE OF THE INVESTIGATION, THE OFFICER'S STATUS  
27 IN THE INVESTIGATION, ALL KNOWN ALLEGATIONS OF MISCONDUCT THAT ARE THE REASON  
28 FOR THE INTERVIEW AND THE OFFICER'S RIGHT TO HAVE A REPRESENTATIVE PRESENT AT  
29 THE INTERVIEW. THE NOTICE SHALL INCLUDE COPIES OF ALL COMPLAINTS THAT  
30 CONTAIN THE ALLEGED FACTS THAT ARE REASONABLY AVAILABLE, EXCEPT FOR COPIES OF  
31 COMPLAINTS THAT ARE FILED WITH THE EMPLOYER AND THAT INCLUDE ALLEGATIONS OF  
32 UNLAWFUL DISCRIMINATION, HARASSMENT OR RETALIATION OR COMPLAINTS THAT INVOLVE  
33 MATTERS UNDER THE JURISDICTION OF THE EQUAL EMPLOYMENT OPPORTUNITY  
34 COMMISSION.

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

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

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

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

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





1 C. THE WITNESS PROBATION OFFICER MAY DISCUSS THE PROBATION OFFICER'S  
2 WITNESS INTERVIEW WITH THE WITNESS PROBATION OFFICER'S REPRESENTATIVE OR THAT  
3 REPRESENTATIVE'S LEGAL COUNSEL. IF THE WITNESS PROBATION OFFICER OR THE  
4 WITNESS PROBATION OFFICER'S REPRESENTATIVE RELEASES INFORMATION WITHOUT  
5 AUTHORIZATION, THE EMPLOYER MAY SUBJECT THE WITNESS PROBATION OFFICER OR THE  
6 WITNESS PROBATION OFFICER'S REPRESENTATIVE TO DISCIPLINARY ACTION.

7 38-1136. Appeal of disciplinary action; change of hearing  
8 officer; burden of proof

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

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

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

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

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

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

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

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

42 D. THE EMPLOYER OR THE PROBATION OFFICER MAY SEEK A DETERMINATION BY  
43 THE HEARING OFFICER OR APPEALS BOARD HEARING THE APPEAL REGARDING ANY  
44 EVIDENCE THAT THE EMPLOYER OR THE PROBATION OFFICER BELIEVES SHOULD NOT BE  
45 DISCLOSED PURSUANT TO SUBSECTION A OF THIS SECTION BECAUSE THE RISK OF HARM  
46 INVOLVED IN DISCLOSURE OUTWEIGHS ANY USEFULNESS OF THE DISCLOSURE IN THE

1 HEARING. IN DETERMINING WHETHER EVIDENCE WILL BE DISCLOSED, THE HEARING  
2 OFFICER OR APPEALS BOARD MAY PERFORM AN IN CAMERA REVIEW OF THE EVIDENCE AND  
3 MAY DISCLOSE THE MATERIAL SUBJECT TO ANY RESTRICTION ON THE DISCLOSURE,  
4 INCLUDING THE CLOSING OF THE HEARING OR THE SEALING OF THE RECORDS, THAT THE  
5 HEARING OFFICER OR APPEALS BOARD FINDS NECESSARY UNDER THE CIRCUMSTANCES.

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

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

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

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

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

45 38-1137. Confidentiality of records

1 AN EMPLOYER SHALL NOT INCLUDE IN THAT PORTION OF THE PERSONNEL FILE OF  
2 A PROBATION OFFICER THAT IS AVAILABLE FOR PUBLIC INSPECTION AND COPYING ANY  
3 INFORMATION ABOUT AN INVESTIGATION UNTIL THE INVESTIGATION IS COMPLETE OR THE  
4 EMPLOYER HAS DISCONTINUED THE INVESTIGATION. IF THE PROBATION OFFICER HAS  
5 TIMELY APPEALED A DISCIPLINARY ACTION, THE INVESTIGATION IS NOT COMPLETE  
6 UNTIL THE CONCLUSION OF THE APPEAL PROCESS.

7 38-1138. Polygraph examinations

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

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

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

21 38-1139. Critical incident stress management team member;  
22 privilege; exceptions; definitions

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

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

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

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

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

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

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

1 C. FOR THE PURPOSES OF THIS SECTION:  
2 1. "CRISIS RESPONSE SERVICES" MEANS CONSULTATION, RISK ASSESSMENT,  
3 REFERRAL AND ONSITE CRISIS INTERVENTION SERVICES PROVIDED BY A CRITICAL  
4 INCIDENT STRESS MANAGEMENT TEAM TO A PROBATION OFFICER.  
5 2. "CRITICAL INCIDENT STRESS MANAGEMENT TEAM MEMBER" MEANS AN  
6 INDIVIDUAL WHO HAS COMPLETED TRAINING THROUGH A RECOGNIZED ORGANIZATION THAT  
7 DELIVERS CRITICAL INCIDENT STRESS MANAGEMENT TRAINING AND WHO IS PART OF A  
8 LAW ENFORCEMENT, PROBATION, FIREFIGHTER OR EMERGENCY MEDICAL PROVIDER CRISIS  
9 RESPONSE TEAM.  
10 3. "DEPARTMENT" MEANS THE BRANCH OF GOVERNMENT IN WHICH A PROBATION  
11 OFFICER IS EMPLOYED.  
12 4. "EMERGENCY MEDICAL PROVIDER" MEANS MUNICIPAL OR STATE EMERGENCY  
13 MEDICAL SERVICES PERSONNEL.  
14 5. "FIREFIGHTER" MEANS A MUNICIPAL OR STATE FIREFIGHTER.  
15 38-1140. Probation officers; fitness for duty; examinations;  
16 rights of probation officers; definitions  
17 A. AN EMPLOYER MAY ORDER A PROBATION OFFICER TO SUBMIT TO A PHYSICAL  
18 EXAMINATION ONLY IF THE PROBATION OFFICER HAS ACTED OR FAILED TO ACT IN AN  
19 OBSERVABLE MANNER THAT INDICATES THAT THERE IS A PHYSICAL CONDITION  
20 MATERIALLY LIMITING THE PROBATION OFFICER'S ABILITY TO PERFORM THE ESSENTIAL  
21 FUNCTIONS OF THE PROBATION OFFICER'S JOB WITHIN THE PROBATION OFFICER'S JOB  
22 DESCRIPTION. THE ORDER SHALL STATE ALL OF THE SPECIFIC OBJECTIVE FACTS ON  
23 WHICH THE ORDER FOR THE PHYSICAL EXAM IS BASED EXCEPT THAT THE ORDER MAY  
24 OMIT THE SPECIFIC NAMES OF INDIVIDUALS WHO REPORTED THE PROBATION OFFICER'S  
25 CONDUCT TO THE SUPERVISOR.  
26 B. THE ORDER SHALL PROVIDE AT LEAST TEN CALENDAR DAYS' NOTICE TO THE  
27 PROBATION OFFICER TO BE EXAMINED AND SHALL SPECIFY THE TIME, PLACE, MANNER,  
28 CONDITIONS AND SCOPE OF THE EXAMINATION AND THE PERSON OR PERSONS WHO WILL  
29 CONDUCT THE EXAMINATION. THE PROBATION OFFICER TO BE EXAMINED MAY HAVE A  
30 REPRESENTATIVE PRESENT DURING THE EXAMINATION IF THE PHYSICIAN CONDUCTING  
31 THE EXAMINATION AGREES.  
32 C. THE EMPLOYER SHALL PROVIDE THE PROBATION OFFICER WITH THE FINAL  
33 REPORT OF THE EXAMINATION CONTAINING THE MEDICAL PROFESSIONAL'S FINDINGS.  
34 THE EMPLOYER MAY PROVIDE ANY ADDITIONAL INFORMATION RELATED TO THE FITNESS  
35 FOR DUTY EXAMINATION TO THE EXAMINING PHYSICIAN.  
36 D. THE REPORT SHALL BE PROVIDED ONLY TO THE EMPLOYER AND THE PROBATION  
37 OFFICER AND SHALL NOT BE PROVIDED TO ANY OTHER PERSON EXCEPT AS REQUIRED FOR  
38 ANY SUBSEQUENT APPEAL OR CERTIFICATION ACTION INVOLVING THE PROBATION  
39 OFFICER. THE EMPLOYER SHALL PROVIDE NOTICE TO THE PROBATION OFFICER THAT  
40 THE REPORT HAS BEEN RECEIVED BY THE EMPLOYER. THE REPORT SHALL BE PROVIDED  
41 TO THE PROBATION OFFICER IMMEDIATELY IF THE PROBATION OFFICER PRESENTS THE  
42 FINAL REPORT OF AN INDEPENDENT MEDICAL EXAMINATION OR IF THE PROBATION  
43 OFFICER WAIVES ANY RIGHT TO REQUEST AN INDEPENDENT MEDICAL EXAMINATION. IF  
44 THE PROBATION OFFICER DOES NOT PRESENT THE RESULTS OF AN INDEPENDENT MEDICAL  
45 EXAMINATION WITHIN TWENTY CALENDAR DAYS AFTER THE EMPLOYER PROVIDES NOTICE  
46 TO THE PROBATION OFFICER THAT THE REPORT HAS BEEN RECEIVED BY THE EMPLOYER,

1 THE PROBATION OFFICER IS DEEMED TO HAVE WAIVED THE RIGHT TO PRESENT THE  
2 RESULTS OF THE INDEPENDENT MEDICAL EXAMINATION.

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

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

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

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

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

22 J. FOR THE PURPOSES OF THIS SECTION:

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

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

33 38-1141. Health insurance payments for spouse or dependents of  
34 a probation officer killed in the line of duty:  
35 applicability; definitions

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

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

45 1. THE HEALTH INSURANCE PROGRAM OF THE EMPLOYER.

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

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

14           D. THE HEALTH INSURANCE PREMIUM AMOUNT PAYABLE BY THE EMPLOYER OF THE  
15 DECEASED PROBATION OFFICER IS THE AMOUNT THE EMPLOYER OF THE DECEASED  
16 PROBATION OFFICER WOULD PAY FOR AN ACTIVE PROBATION OFFICER FOR A FAMILY  
17 COVERAGE PREMIUM OR SINGLE COVERAGE PREMIUM, WHICHEVER IS APPLICABLE.  
18 PAYMENTS SHALL BE DISCONTINUED PURSUANT TO THIS SECTION IF:

- 19           1. THE SURVIVING SPOUSE REMARRIES.
- 20           2. THE SURVIVING SPOUSE BECOMES MEDICARE ELIGIBLE.
- 21           3. THE SURVIVING SPOUSE DIES.
- 22           4. FOR DEPENDENT COVERAGE, THE PERSON IS NO LONGER CONSIDERED A  
23 DEPENDENT.

24           E. IF THE EMPLOYER CURRENTLY PAYS A GREATER PORTION OF THE HEALTH  
25 INSURANCE PREMIUM FOR A SURVIVING SPOUSE OR A SURVIVING DEPENDENT THAN THE  
26 REQUIRED AMOUNT PRESCRIBED IN SUBSECTION D OF THIS SECTION, THE SURVIVING  
27 SPOUSE OR SURVIVING DEPENDENT SHALL RECEIVE THE GREATER AMOUNT AS PAYMENT  
28 TOWARD THE SURVIVING SPOUSE'S OR SURVIVING DEPENDENT'S HEALTH INSURANCE  
29 PREMIUM.

30           F. THIS SECTION APPLIES:

31           1. TO A SURVIVING SPOUSE OR A SURVIVING DEPENDENT OF A DECEASED  
32 PROBATION OFFICER 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, 1933.

34           2. ONLY TO HEALTH INSURANCE PREMIUMS PAID ON OR AFTER SEPTEMBER 13,  
35 2013.

36           G. FOR THE PURPOSES OF THIS SECTION:

37           1. "DEPENDENT" MEANS AN UNMARRIED CHILD OF A DECEASED PROBATION  
38 OFFICER WHO MEETS ONE OF THE FOLLOWING QUALIFICATIONS:

39           (a) IS UNDER EIGHTEEN YEARS OF AGE.

40           (b) IS AT LEAST EIGHTEEN YEARS OF AGE AND UNDER TWENTY-THREE YEARS OF  
41 AGE ONLY DURING ANY PERIOD THAT THE CHILD IS A FULL-TIME STUDENT.

42           (c) IS UNDER A DISABILITY THAT BEGAN BEFORE THE CHILD ATTAINED  
43 TWENTY-THREE YEARS OF AGE AND REMAINS A DEPENDENT OF THE SURVIVING SPOUSE OR  
44 A GUARDIAN.

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

4           Sec. 17. Effective date

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

APPROVED BY THE GOVERNOR APRIL 25, 2014.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2014.