

REFERENCE TITLE: **peace officers; discipline; hearings; discovery**

State of Arizona
House of Representatives
Fifty-fourth Legislature
First Regular Session
2019

HB 2634

Introduced by
Representative Payne

AN ACT

AMENDING SECTIONS 38-1101, 38-1104, 38-1106 AND 38-1110, ARIZONA REVISED STATUTES; RELATING TO LAW ENFORCEMENT OFFICERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 38-1101, Arizona Revised Statutes, is amended to
3 read:

4 38-1101. 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, an administrative law judge or a hearing officer.

8 2. "At will" means an employment relationship where either party to
9 the relationship may sever the relationship at any time for any reason
10 other than an unlawful reason.

11 3. "Disciplinary action" means the dismissal, the demotion or any
12 suspension of a law enforcement officer that is ~~authorized by statute,~~
13 ~~charter or ordinance and that is subject to a hearing or other procedure~~
14 ~~by a local merit board, a civil service board, an administrative law judge~~
15 ~~or a hearing officer.~~ A RESULT OF MISCONDUCT OR UNSATISFACTORY PERFORMANCE.

16 4. "Excusable neglect" means neglect or inadvertence that might be
17 the act of a reasonably prudent person under similar circumstances.

18 5. "Good faith" means honesty of purpose and absence of intent to
19 defraud.

20 6. "Investigative file" means the law enforcement agency's complete
21 report and any attachments detailing the incidents leading to the
22 disciplinary action, INCLUDING COMPLAINTS, AUDIO RECORDINGS, VIDEO
23 RECORDINGS, PHOTOGRAPHS, WITNESS STATEMENTS AND EXCULPATORY AND MITIGATING
24 EVIDENCE.

25 7. "Just cause" means:

26 (a) The employer informed the law enforcement officer of the
27 possible disciplinary action resulting from the officer's conduct through
28 agency manuals, employee handbooks, the employer's rules and regulations
29 or other communications to the officer or the conduct was such that the
30 officer should have reasonably known disciplinary action could occur.

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

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

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

39 8. "Law enforcement officer" means:

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

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

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

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

5 Sec. 2. Section 38-1104, Arizona Revised Statutes, is amended to
6 read:

7 38-1104. Internal investigations; employee representative;
8 polygraph examination; exception

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

13 1. The law enforcement officer may request to have a representative
14 of the officer present at no cost to the employer during the interview.
15 The law enforcement officer shall select a representative who is available
16 on reasonable notice so that the interview is not unreasonably delayed.
17 The representative shall participate in the interview only as an observer.
18 Unless agreed to by the employer, the representative shall not be an
19 attorney and shall be from the same agency except that if a representative
20 from the same agency is not reasonably available, with the employer's
21 permission, the law enforcement officer's representative may be from the
22 law enforcement officer's professional membership organization. The law
23 enforcement officer's representative may take notes during the interview.
24 The law enforcement officer and the officer's representative and attorney
25 may use notes taken during the interview only to assist the officer in an
26 investigation or a disciplinary matter. Notes taken by the law
27 enforcement officer, the officer's representative or the officer's
28 attorney do not constitute an official record of the interview. The law
29 enforcement officer may discuss the officer's interview with the officer's
30 representative or attorney. If the law enforcement officer or the
31 officer's representative or attorney releases information without
32 authorization, the employer may subject the law enforcement officer or the
33 officer's representative, if the representative is from the same agency,
34 to disciplinary action. The law enforcement officer shall be permitted
35 reasonable breaks of limited duration during any interview for telephonic
36 or in person consultation with authorized persons, including an attorney,
37 who are immediately available. An employer shall not discipline,
38 retaliate against or threaten to retaliate against a law enforcement
39 officer for requesting that a representative be present or for acting as
40 the representative of a law enforcement officer pursuant to this
41 paragraph.

42 2. Before the commencement of any interview described in this
43 section, the employer shall provide the law enforcement officer with a
44 written notice informing the officer of the alleged facts that are the
45 basis of the investigation, the specific nature of the investigation, the

1 officer's status in the investigation, all known allegations of misconduct
2 that are the reason for the interview and the officer's right to have a
3 representative present at the interview. THE EMPLOYER SHALL PROVIDE THE
4 LAW ENFORCEMENT OFFICER WITH A COPY OF THE WRITTEN NOTICE THAT THE OFFICER
5 MAY RETAIN. ALONG WITH the notice, THE EMPLOYER shall ~~include copies of~~
6 ~~and~~ PROVIDE ANY RELEVANT AND READILY AVAILABLE MATERIALS, INCLUDING
7 complaints that contain the alleged facts ~~that are reasonably available~~,
8 except for ~~copies of~~ complaints that are filed with the employer and that
9 include allegations of unlawful discrimination, harassment or retaliation
10 or complaints that involve matters under the jurisdiction of the United
11 States equal employment opportunity commission. THE FORMAT OF THE
12 MATERIALS MAY BE WRITTEN, AUDIO OR VIDEO.

13 3. IN THE COURSE OF AN ADMINISTRATIVE INVESTIGATION, THE LAW
14 ENFORCEMENT OFFICER IS ALLOWED TO RECORD THE OFFICER'S OWN INTERVIEW.
15 RECORDINGS MADE BY THE LAW ENFORCEMENT OFFICER, THE OFFICER'S
16 REPRESENTATIVE OR THE OFFICER'S ATTORNEY DO NOT CONSTITUTE AN OFFICIAL
17 RECORD OF THE INTERVIEW.

18 ~~3.~~ 4. At the conclusion of the interview, the law enforcement
19 officer is entitled to a period of time to consult with the officer's
20 representative and may make a statement not to exceed five minutes
21 addressing specific facts or policies that are related to the interview.

22 B. Subsection A of this section does not require the employer to
23 either:

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

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

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

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

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

36 3. Conducted during the course of a criminal investigation.

37 4. Conducted during the course of a polygraph examination.

38 D. The employer may require the law enforcement officer to submit
39 to a polygraph examination if the officer makes a statement to the
40 employer during the investigation that differs from other information
41 relating to the investigation that is known to the employer and
42 reconciling that difference is necessary to complete the investigation.
43 If a polygraph examination is administered pursuant to this subsection,
44 the employer or the person administering the polygraph examination shall
45 make an audio recording of the complete polygraph procedure and provide a

1 copy of the recording to the law enforcement officer. Section 38-1108
2 applies to a polygraph examination that is administered pursuant to this
3 subsection.

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

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

16 Sec. 3. Section 38-1106, Arizona Revised Statutes, is amended to
17 read:

18 38-1106. Appeal of disciplinary actions; transcripts; change
19 of hearing officer or administrative law judge;
20 burden of proof; exception

21 A. In any appeal of a disciplinary action by a law enforcement
22 officer, the parties shall cooperate with each other, act in good faith
23 and exchange copies of all relevant documents and a list of all witnesses
24 pursuant to the following time periods and requirements:

25 1. Within fourteen calendar days after the employer's receipt of a
26 written request from the law enforcement officer for a copy of the
27 investigative file that is accompanied by a copy of the filed notice of
28 appeal, the employer shall provide a complete copy of the investigative
29 file as well as the names and contact information for all persons
30 interviewed during the course of the investigation.

31 2. ~~NO~~ NOT later than fourteen calendar days before the appeal
32 hearing, the parties shall produce and serve on every party the following
33 information:

34 (a) The name of each witness whom the disclosing party expects to
35 call at the appeal hearing, with a designation of the subject matter on
36 which each witness might be called to testify. A witness may decline an
37 interview. The parties shall not interfere with any decision of a witness
38 regarding whether to be interviewed. An employer shall not discipline,
39 retaliate against or threaten to retaliate against any witness for
40 agreeing to be interviewed or for testifying or providing evidence in the
41 appeal.

42 (b) The name and contact information of each person who has given
43 statements, whether written or recorded or signed or unsigned, regarding
44 matters relevant to the notice of discipline and the custodian of the
45 copies of those statements.

1 (c) Copies of any documents that may be introduced at the hearing
2 and that have not previously been disclosed.

3 3. THE DUTY TO DISCLOSE INFORMATION CONTINUES TO EXIST THROUGHOUT
4 THE PROCESS AND UP TO THE END OF THE APPEAL PROCESS.

5 B. It is unlawful for a person to disseminate information that is
6 disclosed pursuant to subsection A of this section to any person other
7 than the parties to the appeal and their lawful representatives for
8 purposes of the appeal of the disciplinary action. This subsection does
9 not prohibit the use of the information in the hearing or disclosure
10 pursuant to title 39, chapter 1, article 2.

11 C. If a transcript is required in an administrative hearing, the
12 employer shall obtain the transcript and provide a copy to the law
13 enforcement officer within ten calendar days after the employer's receipt
14 of the transcript.

15 D. Failure to comply with the requirements of subsection A or B of
16 this section shall result in the exclusion of the witness, evidence or
17 testimony, unless the failure to comply is because of excusable neglect.

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

30 F. In any appeal of a disciplinary action by a law enforcement
31 officer in which a single hearing officer or administrative law judge has
32 been appointed to conduct the appeal hearing, the law enforcement officer
33 or the employer, within ten calendar days after the appointment of the
34 hearing officer or administrative law judge, may request a change of
35 hearing officer or administrative law judge. In cases before the office
36 of administrative hearings or if the employer is a county, city or town,
37 on the first request of a party, the request shall be granted. A city or
38 town with a population of less than sixty-five thousand persons or a
39 county with a population of less than two hundred fifty thousand persons
40 must provide, if necessary to comply with this subsection, for an
41 alternate hearing officer by means of an interagency agreement with
42 another city, town or county. If the law enforcement officer is the party
43 who requested the alternate hearing officer, the law enforcement officer
44 shall reimburse the city, town or county for one-half of any additional
45 expenses incurred by the city, town or county in procuring the alternate

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

10 G. The employer has the burden of proof in an appeal of a
11 disciplinary action by a law enforcement officer.

12 H. Except where a statute, rule or ordinance makes the
13 administrative evidentiary hearing the final administrative determination
14 and after a hearing where the law enforcement officer and the employer
15 have been equally allowed to call and examine witnesses, cross-examine
16 witnesses, provide documentary evidence and otherwise fully participate in
17 the hearing, an employer or a person acting on behalf of an employer may
18 amend, modify, reject or reverse the portion of a decision made by a
19 hearing officer, administrative law judge or appeals board that was
20 arbitrary or without reasonable justification. The employer or person
21 acting on behalf of the employer shall state the reason for the amendment,
22 modification, rejection or reversal.

23 I. Notwithstanding chapter 3, article 3.1 of this title, all
24 hearings pursuant to this section shall be open to the public. Executive
25 sessions permitted pursuant to section 38-431.03 shall be limited to legal
26 advice to a personnel appeals board or for deliberations.

27 J. A law enforcement officer who prevails in an appeal where a
28 termination has been reversed shall be awarded retroactive compensation
29 from the date of the officer's separation to the date of
30 reinstatement. The hearing officer, administrative law judge or appeals
31 board hearing the appeal shall determine the amount of retroactive
32 compensation awarded and any reduction to that amount. Retroactive
33 compensation may be reduced:

34 1. If there is undue delay in setting a hearing date caused by the
35 law enforcement officer or the law enforcement officer's representative.

36 2. If the law enforcement officer requests a continuance.

37 3. If there exists a period between separation and reinstatement
38 that the law enforcement officer would have been unable to perform the
39 duties of a law enforcement officer.

40 4. By any amount earned by the law enforcement officer in
41 alternative employment.

42 5. If the hearing officer, administrative law judge or appeals
43 board finds that the law enforcement officer's action or misconduct
44 warrants suspension or demotion.

1 K. The hearing officer, administrative law judge or appeals board
2 shall state in every finding of disciplinary action whether or not just
3 cause existed for the disciplinary action.

4 L. The hearing officer, administrative law judge or appeals board
5 shall document in the record those circumstances where the hearing
6 officer, administrative law judge or appeals board determines that a party
7 has clearly violated a party's obligation under this section.

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

10 Sec. 4. Section 38-1110, Arizona Revised Statutes, is amended to
11 read:

12 38-1110. Time limitation on disciplinary action against law
13 enforcement officer; exceptions

14 A. An employer shall make a good faith effort to complete any
15 investigation of employee misconduct within one hundred eighty calendar
16 days after the employer receives notice of the allegation by a person
17 authorized by the employer to initiate an investigation of the
18 misconduct. The investigation is considered complete on the date the
19 employee is served with the notice of discipline or the notice of
20 findings. ~~if~~ BEFORE the employer exceeds the one hundred eighty calendar
21 day limit, the employer shall provide the employee with a written
22 explanation containing the reasons the investigation continued beyond one
23 hundred eighty calendar days.

24 B. The limitation period established by subsection A of this
25 section:

26 1. Is suspended during the time that any criminal investigation or
27 prosecution is pending in connection with the act, omission or other
28 allegation of misconduct.

29 2. Is suspended during the period of time in which a law
30 enforcement officer who is involved in the investigation is incapacitated
31 or otherwise unavailable.

32 3. May be suspended for a period prescribed in a written waiver of
33 the limitation by the law enforcement officer.

34 4. May be suspended for emergencies or natural disasters during the
35 time period in which the governor has declared a state of emergency within
36 the jurisdictional boundaries of the concerned employer.

37 5. In a multijurisdictional investigation, may be extended for a
38 period of time reasonably necessary to facilitate the coordination of the
39 employers involved.

40 C. On an appeal of discipline by the employee, a hearing officer,
41 administrative law judge or appeals board may dismiss the discipline if it
42 is determined that the employer did not make a good faith effort to
43 complete the investigation within one hundred eighty calendar days. The
44 allegation regarding any act, omission or other misconduct may be
45 sustained, and the employee's record shall reflect that the allegation was

1 sustained but no discipline was administered due to the finding of the
2 hearing officer, administrative law judge or appeals board that the
3 employer did not make a good faith effort to complete the investigation in
4 one hundred eighty calendar days. The sustained discipline may be
5 considered when determining discipline in any future sustained misconduct
6 allegation. If the employer determines that disciplinary action is
7 appropriate, the employer shall complete the employer's investigation and
8 give notice in writing to the law enforcement officer of the employer's
9 intent to proceed with disciplinary action, along with a proposal of the
10 specific action sought, including length of suspension, if applicable.

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