

Senate Engrossed House Bill

law enforcement officers; polygraph; examinations

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 175

HOUSE BILL 2159

AN ACT

AMENDING SECTIONS 38-612, 38-1004, 38-1104, 38-1106, 38-1108, 38-1110 AND 38-1112, 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 38-612, Arizona Revised Statutes, is amended to
3 read:

4 38-612. Administration of payroll salary deductions

5 A. There shall be no payroll salary deductions from the
6 compensation of state officers or employees except as specifically
7 authorized by federal law or regulation or by a statute of this state. An
8 administrative agency of this state may not authorize any other deduction.

9 B. Notwithstanding subsection A of this section, reductions to
10 retroactive payroll compensation are authorized pursuant to section
11 38-1106, subsection ~~J~~ K, paragraph 5.

12 C. In addition to those payroll salary deductions required by
13 federal law or regulation or by statute, state officers or employees may
14 authorize deductions to be made from their salaries or wages for the
15 payment of:

16 1. Premiums on any health benefits, disability plans or group life
17 plans provided for by statute and any existing insurance programs already
18 provided by payroll deduction.

19 2. Shares or obligations to any state or federally chartered credit
20 union established primarily for the purpose of serving state officers and
21 employees and their families.

22 3. Dues in a recognized association composed principally of
23 employees and former employees of agencies of this state, subject to the
24 following criteria:

25 (a) When composed of at least one thousand state employees other
26 than employees of the state universities, the department of public safety
27 and academic personnel of the Arizona state schools for the deaf and the
28 blind.

29 (b) When composed of at least twenty-five percent of the academic
30 personnel or of the nonacademic employees of any state university.

31 (c) When composed of at least twenty-five percent of the academic
32 personnel of the Arizona state schools for the deaf and the blind.

33 (d) When composed of at least four hundred state employees who are
34 certified as peace officers by the Arizona peace officer standards and
35 training board established by section 41-1821.

36 (e) When composed of a combined total of at least eight hundred
37 state employees described in subdivision (d) of this paragraph, state
38 employees of the state department of corrections and state employees who
39 are law enforcement officers.

40 4. Deferred compensation or tax sheltered annuity salary reductions
41 when made under approved plans.

42 5. Federal savings bond plans.

1 6. Recurrent fees, charges or other payments payable to a state
2 agency under a collection plan approved by the director of the department
3 of administration.

4 7. Except as provided in subsection G of this section,
5 contributions made to a charitable organization:

6 (a) Organized and operated exclusively for charitable purposes and
7 selected by the presidents of the state universities. Employees of the
8 state universities shall be advised by form of the charitable
9 organizations to which the employees may contribute through payroll salary
10 deductions. The advisory provided under this subdivision shall be
11 substantially similar to the following and prominently printed:

12 "You may contribute to any charitable organization registered under
13 internal revenue code section 501(c)(3), tax exempt status.

14
15 _____
16 Charitable organization name"

17 This subdivision applies only to academic personnel and nonacademic
18 employees of the state universities.

19 (b) Organized and operated exclusively for charitable purposes,
20 provided a fund drive by such an organization shall be applicable to all
21 state agencies except the state universities covered under subdivision (a)
22 of this paragraph and no state officer or employee of state agencies
23 subject to this subdivision may authorize more than one deduction for
24 charitable purposes to be in effect at the same time. This subdivision
25 applies to all state agencies except the universities covered under
26 subdivision (a) of this paragraph.

27 8. Contributions made for the purpose of contributing to a ~~fund~~
28 ~~raising~~ FUNDRAISING campaign for a university or a club for faculty or
29 staff, or both, which is recognized by the university president and
30 authorized by the Arizona board of regents. This paragraph applies only
31 to academic personnel and nonacademic employees of the state universities.

32 9. Charges payable for transportation expenses pursuant to section
33 41-710.01.

34 10. Payments ordered by courts of competent jurisdiction within
35 this state.

36 11. Automobile or homeowner's insurance premiums.

37 12. Premiums for the following state-sponsored group benefits that
38 are established primarily for the purpose of serving state officers and
39 employees and their families:

- 40 (a) Long-term care insurance.
- 41 (b) Critical care insurance.
- 42 (c) Prepaid legal services.
- 43 (d) Identity theft protection services.

44 13. A computer system as defined in section 13-2301 for personal
use.

1 D. In order for the department of administration to establish and
2 maintain a dues deduction pursuant to subsection C, paragraph 3 of this
3 section, the department of administration may establish and maintain the
4 deduction without the appropriation of any additional monies or
5 technological improvements. The department of administration shall track
6 all personnel hours dedicated to dues deduction. The department of
7 administration may charge a fee to a recognized association that qualifies
8 under subsection C, paragraph 3 of this section for establishing the
9 automatic dues deduction and anytime changes are needed in the automatic
10 dues deduction system as a result of an increase or decrease in
11 association dues. If the membership criteria of a recognized association
12 ~~falls~~ FALL below the criteria set forth in subsection C, paragraph 3 of
13 this section, the recognized association shall be on probation for one
14 year. If the membership of a recognized association falls below the
15 criteria set forth in subsection C, paragraph 3 of this section for more
16 than one year, or if the members of the association engage in a work
17 slowdown or work stoppage, the dues deduction authorized by this section
18 shall immediately be discontinued.

19 E. For those state officers and employees under payroll systems
20 that are under the direction of the director of the department of
21 administration, the director shall provide for the administration of
22 payroll deductions for the purposes set forth in this section. For all
23 other state officers and employees and for persons receiving allowances or
24 benefits under other state payroll and retirement systems, the appropriate
25 state officer shall provide for such administration of payroll deductions.
26 Such administration shall operate without cost or contribution from the
27 state other than the incidental expense of making the deductions and
28 remittances to the payees. If any payee requests additional services, the
29 director of the department of administration or any other appropriate
30 state officer may require payment for the additional cost of providing
31 such services.

32 F. As a means of readily identifying the employee from whom payroll
33 deductions are to be made, the state officer administering payroll
34 deductions may request an employee to enter such employee's social
35 security identification number on the payroll deduction authorization.
36 Such number shall not be used for any other purpose.

37 G. There shall be no payroll salary deductions from the
38 compensation of state officers or employees for contributions made to a
39 charitable organization that performs a nonfederally qualified abortion or
40 maintains or operates a facility where a nonfederally qualified abortion
41 is performed for the provision of family planning services. For the
42 purposes of this subsection, "nonfederally qualified abortion" ~~has the~~
43 ~~same meaning prescribed in section 35-196.05~~ MEANS AN ABORTION THAT DOES
44 NOT MEET THE REQUIREMENTS FOR FEDERAL REIMBURSEMENT UNDER TITLE XIX OF THE
45 SOCIAL SECURITY ACT.

1 H. The state, the director of the department of administration or
2 any other appropriate state officer shall be relieved of any liability to
3 employees authorizing deductions or organizations receiving deductions
4 that may result from authorizations pursuant to this section.

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

7 38-1004. Appeals; hearings

8 A. A classified law enforcement officer who is suspended, demoted
9 or dismissed by the department head, after a hearing and review before the
10 merit system council, may have the determination of the council reviewed
11 pursuant to title 12, chapter 7, article 6 in the superior court of the
12 county in which the law enforcement officer resides. If the determination
13 of the council is overruled by the court, the law enforcement officer
14 shall be reinstated in the officer's position and the officer shall be
15 reimbursed for any compensation withheld pending determination by the
16 council and court.

17 B. If the order of the department head was for a suspension greater
18 than sixteen hours, demotion or dismissal and the court exonerates the
19 officer, the court may award, in whole or in part, the reasonable costs
20 and attorney fees that the law enforcement officer incurred or were
21 incurred on behalf of the law enforcement officer in the court
22 proceedings. The award of attorney fees by the court shall not exceed
23 ~~fifteen thousand dollars~~ \$15,000. An award of attorney fees does not
24 apply if either of the following applies:

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

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

33 C. If a law enforcement officer of a county, city or town described
34 in section 38-1007 appeals from a decision of a department head in
35 connection with the law enforcement officer's suspension greater than
36 sixteen hours, demotion or dismissal and the county, city or town
37 maintains a merit system or civil service plan for its employees, and the
38 merit system or civil service plan appeals board exonerates the officer,
39 the merit system or civil service plan appeals board may award, in whole
40 or in part, the reasonable costs and attorney fees that the law
41 enforcement officer incurred or were incurred on behalf of the law
42 enforcement officer in connection with the appeal. The amount of the
43 award by the merit system or civil service plan appeals board shall not
44 exceed ~~ten thousand dollars~~ \$10,000. If the department head appeals the
45 decision of the merit system or civil service appeals board, the award of

1 attorney fees shall be stayed pending the conclusion of the appeal. If
2 the officer appeals to court the decision of the merit system or civil
3 service plan appeals board, or of the city or town council or board of
4 supervisors if the city, town or county has no such board, and the court
5 exonerates the officer, the court may award, in whole or in part, the
6 reasonable costs and attorney fees that the law enforcement officer
7 incurred or were incurred on behalf of the law enforcement officer in
8 connection with the appeal. The award of attorney fees by the governing
9 body or court shall not exceed ~~fifteen thousand dollars~~ \$15,000. An award
10 of attorney fees under this subsection does not apply if either of the
11 following applies:

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

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

20 D. A department head shall have the right to have all council
21 policies and decisions reviewed pursuant to title 12, chapter 7, article 6
22 in the superior court of the county in which the law enforcement officer
23 resides and legal counsel for the department head shall be provided by the
24 county or city attorney in whose jurisdiction the department lies.

25 E. Notwithstanding section 38-1106, subsection ~~I~~ J, any appeal of
26 a suspension, demotion or dismissal in which a single hearing officer or
27 administrative law judge has been appointed by the merit system council or
28 appeals board to conduct the appeal hearing shall be open to the public
29 unless the hearing officer or administrative law judge determines that
30 good cause exists to close the hearing.

31 Sec. 3. Section 38-1104, Arizona Revised Statutes, is amended to
32 read:

33 38-1104. Internal investigations; employee representative;
34 exception

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

39 1. The law enforcement officer may request to have a representative
40 of the officer present at no cost to the employer during the interview.
41 The law enforcement officer shall select a representative who is available
42 on reasonable notice so that the interview is not unreasonably delayed.
43 The representative shall participate in the interview only as an observer.
44 Unless agreed to by the employer, the representative shall not be an
45 attorney and shall be from the same agency except that if a representative

1 from the same agency is not reasonably available, with the employer's
2 permission, the law enforcement officer's representative may be from the
3 law enforcement officer's professional membership organization. The law
4 enforcement officer's representative may take notes during the interview.
5 The law enforcement officer and the officer's representative and attorney
6 may use notes taken during the interview only to assist the officer in an
7 investigation or a disciplinary matter. Notes taken by the law
8 enforcement officer, the officer's representative or the officer's
9 attorney do not constitute an official record of the interview. The law
10 enforcement officer may discuss the officer's interview with the officer's
11 representative or attorney. If the law enforcement officer or the
12 officer's representative or attorney releases information without
13 authorization, the employer may subject the law enforcement officer or the
14 officer's representative, if the representative is from the same agency,
15 to disciplinary action. The law enforcement officer shall be ~~permitted~~
16 ~~ALLOWED~~ reasonable breaks of limited duration during any interview for
17 telephonic or ~~in-person~~ IN-PERSON consultation with authorized persons,
18 including an attorney, who are immediately available. An employer shall
19 not discipline, retaliate against or threaten to retaliate against a law
20 enforcement officer for requesting that a representative be present or for
21 acting as the representative of a law enforcement officer pursuant to this
22 paragraph.

23 2. Before the commencement of any interview described in this
24 section, the employer shall provide the law enforcement officer with a
25 written notice informing the officer of the alleged facts that are the
26 basis of the investigation, the specific nature of the investigation, the
27 officer's status in the investigation, all known allegations of misconduct
28 that are the reason for the interview and the officer's right to have a
29 representative present at the interview. The employer shall provide the
30 law enforcement officer with a copy of the written notice that the officer
31 may retain. Along with the notice, the employer shall provide any
32 relevant and readily available materials, including complaints that
33 contain the alleged facts, except for complaints that are filed with the
34 employer and that include allegations of unlawful discrimination,
35 harassment or retaliation or complaints that involve matters under the
36 jurisdiction of the United States equal employment opportunity commission.
37 The format of the materials may be written, audio or video.

38 3. In the course of an administrative investigation, the law
39 enforcement officer is allowed to record the officer's own interview.
40 Recordings made by the law enforcement officer, the officer's
41 representative or the officer's attorney do not constitute an official
42 record of the interview.

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

5 B. Subsection A of this section does not require the employer to
6 either:

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

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

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

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

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

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

20 ~~4. Conducted during the course of a polygraph examination.~~

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

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

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

1 Sec. 4. Section 38-1106, Arizona Revised Statutes, is amended to
2 read:

3 38-1106. Appeal of disciplinary actions; transcripts; change
4 of hearing officer or administrative law judge;
5 burden of proof; exception

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

10 1. Within fourteen calendar days after the employer's receipt of a
11 written request from the law enforcement officer for a copy of the
12 investigative file that is accompanied by a copy of the filed notice of
13 appeal, the employer shall provide a complete copy of the investigative
14 file as well as the names and contact information for all persons
15 interviewed during the course of the investigation.

16 2. Not later than fourteen calendar days before the appeal hearing,
17 the parties shall produce and serve on every party the following
18 information:

19 (a) The name of each witness whom the disclosing party expects to
20 call at the appeal hearing, with a designation of the subject matter on
21 which each witness might be called to testify. A witness may decline an
22 interview. The parties shall not interfere with any decision of a witness
23 regarding whether to be interviewed. An employer shall not discipline,
24 retaliate against or threaten to retaliate against any witness for
25 agreeing to be interviewed or for testifying or providing evidence in the
26 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
30 copies of those statements.

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

33 3. The duty to disclose information continues to exist throughout
34 the process and up to the end of the appeal process.

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
37 than the parties to the appeal and their lawful representatives for
38 purposes of the appeal of the disciplinary action. This subsection does
39 not prohibit the use of the information in the hearing or disclosure
40 pursuant to title 39, 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
44 of 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 neglect.

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
7 law enforcement officer believes should not be disclosed pursuant to
8 subsection A of this section because the risk of harm involved in
9 disclosure outweighs any usefulness of the disclosure in the hearing. In
10 determining whether evidence will be disclosed, the hearing officer,
11 administrative law judge or appeals board may perform an in camera review
12 of the evidence and may disclose the material subject to any restriction
13 on the disclosure, including the closing of the hearing or the sealing of
14 the records, that the hearing officer, administrative law judge or appeals
15 board finds necessary under the circumstances.

16 F. In any appeal of a disciplinary action by a law enforcement
17 officer in which a single hearing officer or administrative law judge has
18 been appointed to conduct the appeal hearing, the law enforcement officer
19 or the employer, within ten calendar days after the appointment of the
20 hearing officer or administrative law judge, may request a change of
21 hearing officer or administrative law judge. In cases before the office
22 of administrative hearings or if the employer is a county, city or town,
23 on the first request of a party, the request shall be granted. A city or
24 town with a population of less than sixty-five thousand persons or a
25 county with a population of less than two hundred fifty thousand persons
26 must provide, if necessary to comply with this subsection, for an
27 alternate hearing officer by means of an interagency agreement with
28 another city, town or county. If the law enforcement officer is the party
29 who requested the alternate hearing officer, the law enforcement officer
30 shall reimburse the city, town or county for one-half of any additional
31 expenses incurred by the city, town or county in procuring the alternate
32 hearing officer under the interagency agreement. If an alternate hearing
33 officer is requested by means of an interagency agreement, the hearing
34 officer shall provide to the law enforcement officer or employer the
35 option of continuing the hearing for an additional ten calendar days. Any
36 subsequent requests may be granted only on a showing that a fair and
37 impartial hearing cannot be obtained due to the prejudice of the assigned
38 hearing officer or administrative law judge. The supervisor or
39 supervising body of the hearing officer or administrative law judge shall
40 decide whether a showing of prejudice has been made.

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

1 H. THE HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD
2 MAY TAKE INTO CONSIDERATION VIOLATIONS OF THIS ARTICLE AS MITIGATION IN
3 DETERMINING DISCIPLINE.

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

15 ~~I.~~ J. Notwithstanding chapter 3, article 3.1 of this title, all
16 hearings pursuant to this section shall be open to the public. Executive
17 sessions ~~permitted~~ ALLOWED pursuant to section 38-431.03 shall be limited
18 to legal advice to a personnel appeals board or for deliberations.

19 ~~J.~~ K. A law enforcement officer who prevails in an appeal where a
20 termination has been reversed shall be awarded retroactive compensation
21 from the date of the officer's separation to the date of reinstatement.
22 The hearing officer, administrative law judge or appeals board hearing the
23 appeal shall determine the amount of retroactive compensation awarded and
24 any reduction to that amount. Retroactive compensation may be reduced:

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

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

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

31 4. By any amount earned by the law enforcement officer in
32 alternative employment.

33 5. If the hearing officer, administrative law judge or appeals
34 board finds that the law enforcement officer's action or misconduct
35 warrants suspension or demotion.

36 ~~K.~~ L. The hearing officer, administrative law judge or appeals
37 board shall state in every finding of disciplinary action whether or not
38 just cause existed for the disciplinary action.

39 ~~L.~~ M. The hearing officer, administrative law judge or appeals
40 board shall document in the record those circumstances where the hearing
41 officer, administrative law judge or appeals board determines that a party
42 has clearly violated a party's obligation under this section.

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

1 Sec. 5. Section 38-1108, Arizona Revised Statutes, is amended to
2 read:

3 38-1108. Polygraph examinations; exception

4 A. AN EMPLOYER MAY NOT ADMINISTER A POLYGRAPH EXAMINATION TO A LAW
5 ENFORCEMENT OFFICER IN ADMINISTRATIVE INVESTIGATIONS.

6 ~~A.~~ B. The results of a polygraph examination in an investigation
7 may not be the basis for disciplinary action unless other corroborating
8 evidence or information exists to support that disciplinary action.

9 ~~B.~~ C. Notwithstanding section 39-123, all data and reports from a
10 polygraph examination of a law enforcement officer are confidential and
11 may be used only for employment, certification or reactivation of
12 certification purposes or for the administrative matter for which a
13 polygraph was administered, including other ancillary matters. All other
14 uses are prohibited.

15 ~~C.~~ D. Except for a preemployment polygraph after which an
16 applicant was not hired or in the case of ~~an active investigation or~~ an
17 appeal, the data and reports from a polygraph examination of a law
18 enforcement officer shall be destroyed as soon as practicable three years
19 after the date of appointment or employment but not more than ninety
20 calendar days after that date.

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

23 Sec. 6. Section 38-1110, Arizona Revised Statutes, is amended to
24 read:

25 38-1110. Time limitation on disciplinary action against law
26 enforcement officer; notice of findings;
27 exceptions

28 A. An employer shall make a good faith effort to complete any
29 investigation of employee misconduct within one hundred eighty calendar
30 days after the employer receives notice of the allegation by a person
31 authorized by the employer to initiate an investigation of the misconduct.
32 The investigation is considered complete on the date the employee is
33 served with the notice of discipline or the notice of findings. Before
34 the employer exceeds the one hundred ~~eighty calendar day~~
35 EIGHTY-CALENDAR-DAY limit, the employer shall provide the employee with a
36 written explanation containing the reasons the investigation continued
37 beyond one hundred eighty calendar days.

38 B. IF, IN THE COURSE OF AN INVESTIGATION INVOLVING MULTIPLE LAW
39 ENFORCEMENT OFFICERS, EVIDENCE IS DISCOVERED THAT EXONERATES THE LAW
40 ENFORCEMENT OFFICER OR FAILS TO SUSTAIN ANY WRONGDOING, THE EMPLOYER SHALL
41 ISSUE THE INDIVIDUAL LAW ENFORCEMENT OFFICER A NOTICE OF FINDINGS. THE
42 EMPLOYER MAY CONTINUE TO ORDER THE LAW ENFORCEMENT OFFICER NOT TO DISCUSS
43 OR DISCLOSE ANY INFORMATION REGARDING THE INVESTIGATION EXCEPT TO THE LAW
44 ENFORCEMENT OFFICER'S LEGAL COUNSEL, SPOUSE, REPRESENTATIVE OR MEDICAL
45 PROVIDER.

1 state all of the specific objective facts on which the order for the
2 ~~physicat exam~~ EXAMINATION is based except that the order may omit the
3 specific names of individuals who reported the law enforcement officer's
4 conduct to the supervisor.

5 B. The order shall provide at least ten calendar days' notice to
6 the law enforcement officer to be examined and shall specify the time,
7 place, manner, conditions and scope of the examination and the person or
8 persons who will conduct the examination. SPECIFIC TO PSYCHOLOGICAL
9 EXAMINATIONS, IF THE LAW ENFORCEMENT OFFICER IS A DANGER TO HIMSELF OR
10 OTHERS, THE TEN-DAY NOTICE IS NOT REQUIRED. The law enforcement officer
11 to be examined may have a representative present during the examination if
12 the ~~physician~~ PROFESSIONAL conducting the examination agrees.

13 C. The employer shall provide the law enforcement officer with the
14 final report of the examination containing the ~~medicat~~ professional's
15 findings WITHIN FIVE BUSINESS DAYS AFTER THE LAW ENFORCEMENT AGENCY
16 RECEIVES THE FINAL REPORT FROM THE PROFESSIONAL. The employer may provide
17 any additional information related to the fitness for duty examination to
18 the examining ~~physician~~ PROFESSIONAL.

19 D. The report shall be provided only to the employer and the law
20 enforcement officer and shall not be provided to any other person except
21 as required for any subsequent appeal or certification action involving
22 the law enforcement officer. The employer shall provide notice to the law
23 enforcement officer that the report has been received by the employer.
24 The report shall be provided to the law enforcement officer immediately if
25 the law enforcement officer presents the final report of an independent
26 medical examination or if the law enforcement officer waives any right to
27 request an independent medical examination. If the law enforcement
28 officer does not present the results of an independent medical examination
29 within twenty calendar days after the employer provides notice to the law
30 enforcement officer that the report has been received by the employer, the
31 law enforcement officer is deemed to have waived the right to present the
32 results of the independent medical examination.

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

35 F. The ~~physician~~ PROFESSIONAL may consider and report on only the
36 law enforcement officer's medical or other records that are directly
37 relevant to the actions in question, INCLUDING PREEMPLOYMENT PHYSICAL,
38 BEHAVIORAL AND PSYCHOLOGICAL EVALUATIONS, and when conducting the
39 examination, including medical records that record preexisting conditions
40 that are relevant to the examination. The ~~physician~~ PROFESSIONAL may
41 additionally consider and report any condition of the law enforcement
42 officer that the ~~physician~~ PROFESSIONAL identifies during the course of
43 the ~~physicat~~ examination and that endangers the safety of the law
44 enforcement officer or the community.

1 G. The employer shall not take any final action until after the law
2 enforcement officer has had at least twenty calendar days to review the
3 report unless the law enforcement officer waives the twenty-day period or
4 the employer grants an extension.

5 H. This section does not prohibit the preexamination materials from
6 being used in any proceeding held pursuant to section 38-1104.

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

10 J. For the purposes of this section:

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

18 2. "Law enforcement officer" means:

19 (a) A regularly employed and paid individual, other than a
20 probationary employee, who is certified by the Arizona peace officer
21 standards and training board and who is working in a position requiring
22 certification by the Arizona peace officer standards and training board,
23 other than a person employed by a multi-county water conservation
24 district, an at-will employee or a voluntary or reserve employee.

25 (b) A corrections officer or detention officer, other than a
26 juvenile detention officer, who is employed by this state or a political
27 subdivision of this state.

28 3. "Preexamination materials" means all information or materials,
29 INCLUDING PREEMPLOYMENT MATERIAL, that the employer gives to the physician
30 who conducts the ~~physical~~ examination and that serve as the basis for the
31 examination.

32 4. "PROFESSIONAL" MEANS ANY LICENSED PHYSICIAN, PSYCHOLOGIST OR
33 PSYCHIATRIST OR ANY LICENSED INDIVIDUAL WHO PROVIDES A BEHAVIORAL,
34 PHYSICAL OR PSYCHOLOGICAL EVALUATION OR OPINION ON A LAW ENFORCEMENT
35 OFFICER AFTER AN EMPLOYER'S ORDER.

APPROVED BY THE GOVERNOR APRIL 25, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2022.