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

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

Section 1. Section 38-612, Arizona Revised Statutes, is amended to read:

38-612. Administration of payroll salary deductions

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

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

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

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

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

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

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

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

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

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

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

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

5. Federal savings bond plans.
6. Recurrent fees, charges or other payments payable to a state agency under a collection plan approved by the director of the department of administration.

7. Except as provided in subsection G of this section, contributions made to a charitable organization:
   (a) Organized and operated exclusively for charitable purposes and selected by the presidents of the state universities. Employees of the state universities shall be advised by form of the charitable organizations to which the employees may contribute through payroll salary deductions. The advisory provided under this subdivision shall be substantially similar to the following and prominently printed:
   “You may contribute to any charitable organization registered under internal revenue code section 501(c)(3), tax exempt status.

Charitable organization name

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

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

8. Contributions made for the purpose of contributing to a fundraising campaign for a university or a club for faculty or staff, or both, which is recognized by the university president and authorized by the Arizona board of regents. This paragraph applies only to academic personnel and nonacademic employees of the state universities.

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

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

11. Automobile or homeowner's insurance premiums.

12. Premiums for the following state-sponsored group benefits that are established primarily for the purpose of serving state officers and employees and their families:
   (a) Long-term care insurance.
   (b) Critical care insurance.
   (c) Prepaid legal services.
   (d) Identity theft protection services.

13. A computer system as defined in section 13-2301 for personal use.
D. In order for the department of administration to establish and maintain a dues deduction pursuant to subsection C, paragraph 3 of this section, the department of administration may establish and maintain the deduction without the appropriation of any additional monies or technological improvements. The department of administration shall track all personnel hours dedicated to dues deduction. The department of administration may charge a fee to a recognized association that qualifies under subsection C, paragraph 3 of this section for establishing the automatic dues deduction and anytime changes are needed in the automatic dues deduction system as a result of an increase or decrease in association dues. If the membership criteria of a recognized association falls below the criteria set forth in subsection C, paragraph 3 of this section, the recognized association shall be on probation for one year. If the membership of a recognized association falls below the criteria set forth in subsection C, paragraph 3 of this section for more than one year, or if the members of the association engage in a work slowdown or work stoppage, the dues deduction authorized by this section shall immediately be discontinued.

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

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

G. There shall be no payroll salary deductions from the compensation of state officers or employees for contributions made to a charitable organization that performs a nonfederally qualified abortion or maintains or operates a facility where a nonfederally qualified abortion is performed for the provision of family planning services. For the purposes of this subsection, "nonfederally qualified abortion" has the same meaning prescribed in section 35-196.05 means an abortion that does not meet the requirements for federal reimbursement under Title XIX of the Social Security Act.
H. The state, the director of the department of administration or any other appropriate state officer shall be relieved of any liability to employees authorizing deductions or organizations receiving deductions that may result from authorizations pursuant to this section.

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

38-1004. Appeals; hearings

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

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

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

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

C. If a law enforcement officer of a county, city or town described in section 38-1007 appeals from a decision of a department head in connection with the law enforcement officer's suspension greater than sixteen hours, demotion or dismissal and the county, city or town maintains a merit system or civil service plan for its employees, and the merit system or civil service plan appeals board exonerates the officer, the merit system or civil service plan appeals board may award, in whole or in part, the reasonable costs and attorney fees that the law enforcement officer incurred or were incurred on behalf of the law enforcement officer in connection with the appeal. The amount of the award by the merit system or civil service plan appeals board shall not exceed ten thousand dollars $10,000. If the department head appeals the decision of the merit system or civil service appeals board, the award of
attorney fees shall be stayed pending the conclusion of the appeal. If
the officer appeals to court the decision of the merit system or civil
service plan appeals board, or of the city or town council or board of
supervisors if the city, town or county has no such board, and the court
exonernates the officer, the court may award, in whole or in part, the
reasonable costs and attorney fees that the law enforcement officer
incurred or were incurred on behalf of the law enforcement officer in
connection with the appeal. The award of attorney fees by the governing
body or court shall not exceed fifteen thousand dollars $15,000. An award
of attorney fees under this subsection does not apply if either of the
following applies:
1. The order of the department head was not for disciplinary
purposes but was for administrative purposes such as a reduction in force.
2. The disciplinary action related to off-duty activities unrelated
to the required duties of the law enforcement officer. If the department
head appeals the decision of the court, the court's award of any costs or
attorney fees to an officer shall be stayed pending the conclusion of the
appeal. If the department head's decision is upheld on appeal, the award
of costs or attorney fees in favor of the officer shall be reversed.
D. A department head shall have the right to have all council
policies and decisions reviewed pursuant to title 12, chapter 7, article 6
in the superior court of the county in which the law enforcement officer
resides and legal counsel for the department head shall be provided by the
county or city attorney in whose jurisdiction the department lies.
E. Notwithstanding section 38-1106, subsection F, any appeal of
a suspension, demotion or dismissal in which a single hearing officer or
administrative law judge has been appointed by the merit system council or
appeals board to conduct the appeal hearing shall be open to the public
unless the hearing officer or administrative law judge determines that
good cause exists to close the hearing.
Sec. 3. Section 38-1104, Arizona Revised Statutes, is amended to
read:
38-1104. Internal investigations; employee representative;
exception
A. If an employer interviews a law enforcement officer in the
course of an administrative investigation and the employer or law
enforcement officer reasonably believes that the interview could result in
dismissal, demotion or suspension:
1. The law enforcement officer may request to have a representative
of the officer present at no cost to the employer during the interview.
The law enforcement officer shall select a representative who is available
on reasonable notice so that the interview is not unreasonably delayed.
The representative shall participate in the interview only as an observer.
Unless agreed to by the employer, the representative shall not be an
attorney and shall be from the same agency except that if a representative
from the same agency is not reasonably available, with the employer's permission, the law enforcement officer's representative may be from the law enforcement officer's professional membership organization. The law enforcement officer's representative may take notes during the interview. The law enforcement officer and the officer's representative and attorney may use notes taken during the interview only to assist the officer in an investigation or a disciplinary matter. Notes taken by the law enforcement officer, the officer's representative or the officer's attorney do not constitute an official record of the interview. The law enforcement officer may discuss the officer's interview with the officer's representative or attorney. If the law enforcement officer or the officer's representative or attorney releases information without authorization, the employer may subject the law enforcement officer or the officer's representative, if the representative is from the same agency, to disciplinary action. The law enforcement officer shall be permitted reasonable breaks of limited duration during any interview for telephonic or in-person consultation with authorized persons, including an attorney, who are immediately available. An employer shall not discipline, retaliate against or threaten to retaliate against a law enforcement officer for requesting that a representative be present or for acting as the representative of a law enforcement officer pursuant to this paragraph.

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

3. In the course of an administrative investigation, the law enforcement officer is allowed to record the officer's own interview. Recordings made by the law enforcement officer, the officer's representative or the officer's attorney do not constitute an official record of the interview.
4. At the conclusion of the interview, the law enforcement officer is entitled to a period of time to consult with the officer's representative and may make a statement not to exceed five minutes addressing specific facts or policies that are related to the interview.

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

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

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

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

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

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

3. Conducted during the course of a criminal investigation.

4. Conducted during the course of a polygraph examination.

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

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

F. This section does not apply to a law enforcement officer who is employed by an agency of this state as an at will employee.
Sec. 4. Section 38-1106, Arizona Revised Statutes, is amended to read:

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

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

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

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

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

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

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

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

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

C. If a transcript is required in an administrative hearing, the employer shall obtain the transcript and provide a copy to the law enforcement officer within ten calendar days after the employer's receipt of the transcript.
D. Failure to comply with the requirements of subsection A or B of this section shall result in the exclusion of the witness, evidence or testimony, unless the failure to comply is because of excusable neglect.

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

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

G. The employer has the burden of proof in an appeal of a disciplinary action by a law enforcement officer.
H. THE HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD MAY TAKE INTO CONSIDERATION VIOLATIONS OF THIS ARTICLE AS MITIGATION IN DETERMINING DISCIPLINE.

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

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

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

1. If there is undue delay in setting a hearing date caused by the law enforcement officer or the law enforcement officer's representative.
2. If the law enforcement officer requests a continuance.
3. If there exists a period between separation and reinstatement that the law enforcement officer would have been unable to perform the duties of a law enforcement officer.
4. By any amount earned by the law enforcement officer in alternative employment.
5. If the hearing officer, administrative law judge or appeals board finds that the law enforcement officer's action or misconduct warrants suspension or demotion.

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

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

H. N. This section does not apply to a law enforcement officer who is employed by an agency of this state as an at will employee.
Sec. 5. Section 38-1108, Arizona Revised Statutes, is amended to read:

38-1108. Polygraph examinations; exception
A. An employer may not administer a polygraph examination to a law enforcement officer in administrative investigations.
B. The results of a polygraph examination in an investigation may not be the basis for disciplinary action unless other corroborating evidence or information exists to support that disciplinary action.
C. Notwithstanding section 39-123, all data and reports from a polygraph examination of a law enforcement officer are confidential and may be used only for employment, certification or reactivation of certification purposes or for the administrative matter for which a polygraph was administered, including other ancillary matters. All other uses are prohibited.
D. Except for a preemployment polygraph after which an applicant was not hired or in the case of an active investigation or an appeal, the data and reports from a polygraph examination of a law enforcement officer shall be destroyed as soon as practicable three years after the date of appointment or employment but not more than ninety calendar days after that date.
E. This section does not apply to a law enforcement officer who is employed by an agency of this state as an at will employee.

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

38-1110. Time limitation on disciplinary action against law enforcement officer; notice of findings; exceptions
A. An employer shall make a good faith effort to complete any investigation of employee misconduct within one hundred eighty calendar days after the employer receives notice of the allegation by a person authorized by the employer to initiate an investigation of the misconduct. The investigation is considered complete on the date the employee is served with the notice of discipline or the notice of findings. Before the employer exceeds the one hundred eighty-calendar-day limit, the employer shall provide the employee with a written explanation containing the reasons the investigation continued beyond one hundred eighty calendar days.
B. If, in the course of an investigation involving multiple law enforcement officers, evidence is discovered that exonerates the law enforcement officer or fails to sustain any wrongdoing, the employer shall issue the individual law enforcement officer a notice of findings. The employer may continue to order the law enforcement officer not to discuss or disclose any information regarding the investigation except to the law enforcement officer’s legal counsel, spouse, representative or medical provider.
B. C. The limitation period established by subsection A of this section:

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

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

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

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

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

D. E. On an appeal of discipline by the employee, a hearing officer, administrative law judge or appeals board may dismiss the discipline if it is determined that the employer did not make a good faith effort to complete the investigation within one hundred eighty calendar days. The allegation regarding any act, omission or other misconduct may be sustained, and the employee's record shall reflect that the allegation was sustained but no discipline was administered due to the finding of the hearing officer, administrative law judge or appeals board that the employer did not make a good faith effort to complete the investigation in one hundred eighty calendar days. The sustained discipline may be considered when determining discipline in any future sustained misconduct allegation. If the employer determines that disciplinary action is appropriate, the employer shall complete the employer's investigation and give notice in writing to the law enforcement officer of the employer's intent to proceed with disciplinary action, along with a proposal of the specific action sought, including length of suspension, if applicable.

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

Sec. 7. Section 38-1112, Arizona Revised Statutes, is amended to read:

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

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

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

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

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

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

F. The physician PROFESSIONAL may consider and report on only the
law enforcement officer's medical or other records that are directly
relevant to the actions in question, INCLUDING PREEMPLOYMENT PHYSICAL,
BEHAVIORAL AND PSYCHOLOGICAL EVALUATIONS, and when conducting the
examination, including medical records that record preexisting conditions
that are relevant to the examination. The physician PROFESSIONAL may
additionally consider and report any condition of the law enforcement
officer that the physician PROFESSIONAL identifies during the course of
the physical examination and that endangers the safety of the law
enforcement officer or the community.
G. The employer shall not take any final action until after the law enforcement officer has had at least twenty calendar days to review the report unless the law enforcement officer waives the twenty-day period or the employer grants an extension.

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

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

J. For the purposes of this section:

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

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

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

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