

REFERENCE TITLE: law enforcement officer representation; attorney

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SB 1332

Introduced by
Senator Gray C

AN ACT

AMENDING SECTION 38-1101, 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. Law enforcement officers; probation officers; right to
5 representation; right to evidence on appeal; change
6 of hearing officer or administrative law judge;
7 definitions

8 A. If an employer interviews a law enforcement officer or probation
9 officer and the employer reasonably believes that the interview could result
10 in dismissal, demotion or suspension, the law enforcement officer or
11 probation officer may request to have a representative of the officer **OR A**
12 **LAW ENFORCEMENT OFFICER MAY REQUEST TO HAVE AN ATTORNEY OF THE OFFICER'S**
13 **CHOICE** present at no cost to the employer during the interview. The law
14 enforcement officer or probation officer shall select a representative **OR THE**
15 **LAW ENFORCEMENT OFFICER SHALL SELECT AN ATTORNEY** who is available on
16 reasonable notice so that the interview is not unreasonably delayed. The
17 representative, **OR ATTORNEY OF THE LAW ENFORCEMENT OFFICER**, shall participate
18 in the interview only as an observer. Unless agreed to by the employer, the
19 representative shall be from the same agency and shall not be an attorney,
20 **EXCEPT IF REQUESTED BY A LAW ENFORCEMENT OFFICER**. The law enforcement
21 officer or probation officer shall be permitted reasonable breaks of limited
22 duration during any interview for telephonic or in person consultation with
23 others, including an attorney, who are immediately available. An employer
24 shall not discipline, retaliate against or threaten to retaliate against a
25 law enforcement officer **OR PROBATION OFFICER** for requesting that a
26 representative **OR, IF REQUESTED BY A LAW ENFORCEMENT OFFICER, AN ATTORNEY** be
27 present or for acting as the representative of a law enforcement officer **OR**
28 **PROBATION OFFICER** pursuant to this subsection.

29 B. Subsection A does not apply to an interview of a law enforcement
30 officer or probation 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 with,
33 a supervisor or any other law enforcement officer or probation officer.

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

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

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

38 C. In any appeal of a disciplinary action by a law enforcement officer
39 or probation officer, the parties shall exchange copies of all relevant
40 documents and a list of all witnesses pursuant to the following time periods
41 and requirements:

42 1. Within three business days after the employer's receipt of a
43 written request from the law enforcement officer or probation officer for a
44 copy of the investigative file that is accompanied by a copy of the filed
45 notice of appeal, the employer shall provide a complete copy of the

1 investigative file as well as the names and home or work mailing addresses of
2 all persons interviewed during the course of the investigation.

3 2. No later than five business days before the appeal hearing, or, if
4 the appeal hearing is scheduled more than twenty days after the notice of
5 appeal, no later than ten business days before the appeal hearing, the
6 employer and the law enforcement officer or probation officer shall exchange
7 copies of any documents that may be introduced at the hearing and that have
8 not previously been disclosed.

9 3. No later than five business days before the appeal hearing, or, if
10 the appeal hearing is scheduled more than twenty days after the notice of
11 appeal, no later than ten business days before the appeal hearing, the
12 employer and the law enforcement officer or probation officer shall exchange
13 the names of all witnesses who may be called to testify. A witness may be
14 interviewed at the discretion of the witness. The parties shall not
15 interfere with any decision of a witness regarding whether to be interviewed.
16 An employer shall not discipline, retaliate against or threaten to retaliate
17 against any witness for agreeing to be interviewed or for testifying or
18 providing evidence in the appeal.

19 D. It is unlawful for a person to disseminate information that is
20 disclosed pursuant to subsection C to any person other than the parties to
21 the appeal and their lawful representatives for purposes of the appeal of the
22 disciplinary action. This subsection does not prohibit the use of the
23 information in the hearing or disclosure pursuant to title 39, chapter 1,
24 article 2.

25 E. The employer or the law enforcement officer or probation officer
26 may seek a determination by the hearing officer, administrative law judge or
27 appeals board hearing the appeal regarding any evidence that the employer or
28 the law enforcement officer or probation officer believes should not be
29 disclosed pursuant to subsection C because the risk of harm involved in
30 disclosure outweighs any usefulness of the disclosure in the hearing. In
31 determining whether evidence will be disclosed, the hearing officer,
32 administrative law judge or appeals board may perform an in camera review of
33 the evidence and may disclose the material subject to any restriction on the
34 disclosure, including the closing of the hearing or the sealing of the
35 records, that the hearing officer, administrative law judge or appeals board
36 finds necessary under the circumstances.

37 F. In any appeal of a disciplinary action by a law enforcement officer
38 or probation officer in which a single hearing officer or administrative law
39 judge has been appointed to conduct the appeal hearing, the law enforcement
40 officer or probation officer or the employer may request a change of hearing
41 officer or administrative law judge. In cases before the office of
42 administrative hearings, on the first request of a party, the request shall
43 be granted. All other requests, including any subsequent requests in cases
44 before the office of administrative hearings, may be granted only on a
45 showing that a fair and impartial hearing cannot be obtained due to the

1 prejudice of the assigned hearing officer or administrative law judge. The
2 supervisor or supervising body of the hearing officer or administrative law
3 judge shall decide whether a showing of prejudice has been made.

4 G. A party who violates subsection C or D, unless the violation is
5 harmless, shall not be permitted to use that evidence at the hearing, except
6 on a showing of good cause. The hearing officer or administrative law judge,
7 on a showing of good cause, may grant the opposing party a continuance,
8 otherwise limit the use of the evidence or make such other order as may be
9 appropriate.

10 H. If the employer amends, modifies, rejects or reverses the decision
11 of a hearing officer, administrative law judge or board, the employer shall
12 state the employer's reasons for the amendment, modification, rejection or
13 reversal.

14 I. This section does not preempt agreements that supplant, revise or
15 otherwise alter the provisions of this section, including preexisting
16 agreements between the employer and the law enforcement officer or probation
17 officer or the law enforcement officer's or probation officer's lawful
18 representative association.

19 J. For the purposes of this section:

20 1. "Appeal" means a hearing before a state or local merit board, a
21 civil service board, an administrative law judge or a hearing officer.

22 2. "Disciplinary action" means the dismissal or demotion or the
23 suspension for more than forty hours of a law enforcement officer or
24 probation officer that is authorized by statute, charter or ordinance and
25 that is subject to a hearing or other procedure by a local merit board, a
26 civil service board, an administrative law judge or a hearing officer.

27 3. "Investigative file" means the law enforcement agency's complete
28 report and any attachments detailing the incidents leading to the
29 disciplinary action.

30 4. "Law enforcement officer" means:

31 (a) An individual, other than a probationary employee, who is
32 certified by the Arizona peace officer standards and training board.

33 (b) A detention officer or correction officer who is employed by this
34 state or a political subdivision of this state other than a multi-county
35 water conservation district.

36 5. "Probation officer" means a probation officer or surveillance
37 officer who is employed by this state or a political subdivision of this
38 state.