

REFERENCE TITLE: law enforcement; probation; officers; investigations

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

## **SB 1339**

Introduced by  
Senators Gray L, Blendu; Representatives McClure, Nelson; Senators  
Miranda, Soltero; Representatives Kavanagh, Tobin

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 burden of proof; 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:

11 1. The law enforcement officer or probation officer may request to  
12 have a representative of the officer present at no cost to the employer  
13 during the interview. The law enforcement officer or probation officer shall  
14 select a representative who is available on reasonable notice so that the  
15 interview is not unreasonably delayed. The representative shall participate  
16 in the interview only as an observer. Unless agreed to by the employer, the  
17 representative shall be from the same agency and shall not be an attorney.  
18 The law enforcement officer or probation officer shall be permitted  
19 reasonable breaks of limited duration during any interview for telephonic or  
20 in person consultation with others, including an attorney, who are  
21 immediately available. An employer shall not discipline, retaliate against  
22 or threaten to retaliate against a law enforcement officer or probation  
23 officer for requesting that a representative be present or for acting as the  
24 representative of a law enforcement officer or probation officer pursuant to  
25 this paragraph.

26 2. Before the commencement of any interview described in this section,  
27 the employer shall provide the law enforcement officer or probation officer  
28 with a written notice informing the officer of the specific nature of the  
29 investigation, the officer's status in the investigation, all known  
30 allegations of misconduct that are the reason for the interview and the  
31 officer's right to have a representative present at the interview.

32 3. THE EMPLOYER SHALL NOT REQUIRE THE LAW ENFORCEMENT OFFICER OR  
33 PROBATION OFFICER TO SUBMIT TO A POLYGRAPH EXAMINATION. THIS PARAGRAPH DOES  
34 NOT APPLY TO A POLYGRAPH EXAMINATION THAT IS ADMINISTERED TO RECONCILE A  
35 MATERIAL DIFFERENCE BETWEEN A STATEMENT THE OFFICER MAKES TO THE EMPLOYER  
36 DURING THE INVESTIGATION AND OTHER EVIDENCE THAT IS OBTAINED BY THE EMPLOYER  
37 DURING THE INVESTIGATION. IF A POLYGRAPH EXAMINATION IS ADMINISTERED  
38 PURSUANT TO THIS PARAGRAPH, THE EMPLOYER OR THE PERSON ADMINISTERING THE  
39 POLYGRAPH EXAMINATION SHALL MAKE AN AUDIO RECORDING OF THE COMPLETE POLYGRAPH  
40 PROCEDURE AND PROVIDE A COPY OF THE RECORDING TO THE LAW ENFORCEMENT OFFICER  
41 OR PROBATION OFFICER.

42 B. ~~Nothing in this subsection shall~~ SUBSECTION A DOES NOT require the  
43 employer to either:

44 1. Stop an interview to issue another notice for allegations based on  
45 information provided by the employee during the interview.

1           2. ~~To~~ Disclose any fact to the employee or the employee's  
2 representative that would impede the investigation.

3           C. Subsection A does not apply to an interview of a law enforcement  
4 officer or probation officer that is:

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

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

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

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

12          D. In any appeal of a disciplinary action by a law enforcement officer  
13 or probation officer, the parties shall exchange copies of all relevant  
14 documents and a list of all witnesses pursuant to the following time periods  
15 and requirements:

16          1. Within three business days after the employer's receipt of a  
17 written request from the law enforcement officer or probation officer for a  
18 copy of the investigative file that is accompanied by a copy of the filed  
19 notice of appeal, the employer shall provide a complete copy of the  
20 investigative file as well as the names and home or work mailing addresses of  
21 all persons interviewed during the course of the investigation.

22          2. No later than five business days before the appeal hearing, or, if  
23 the appeal hearing is scheduled more than twenty days after the notice of  
24 appeal, no later than ten business days before the appeal hearing, the  
25 employer and the law enforcement officer or probation officer shall exchange  
26 copies of any documents that may be introduced at the hearing and that have  
27 not previously been disclosed.

28          3. No later than five business days before the appeal hearing, or, if  
29 the appeal hearing is scheduled more than twenty days after the notice of  
30 appeal, no later than ten business days before the appeal hearing, the  
31 employer and the law enforcement officer or probation officer shall exchange  
32 the names of all witnesses who may be called to testify. A witness may be  
33 interviewed at the discretion of the witness. The parties shall not  
34 interfere with any decision of a witness regarding whether to be interviewed.  
35 An employer shall not discipline, retaliate against or threaten to retaliate  
36 against any witness for agreeing to be interviewed or for testifying or  
37 providing evidence in the appeal.

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

1 F. The employer or the law enforcement officer or probation officer  
 2 may seek a determination by the hearing officer, administrative law judge or  
 3 appeals board hearing the appeal regarding any evidence that the employer or  
 4 the law enforcement officer or probation officer believes should not be  
 5 disclosed pursuant to subsection D because the risk of harm involved in  
 6 disclosure outweighs any usefulness of the disclosure in the hearing. In  
 7 determining whether evidence will be disclosed, the hearing officer,  
 8 administrative law judge or appeals board may perform an in camera review of  
 9 the evidence and may disclose the material subject to any restriction on the  
 10 disclosure, including the closing of the hearing or the sealing of the  
 11 records, that the hearing officer, administrative law judge or appeals board  
 12 finds necessary under the circumstances.

13 G. In any appeal of a disciplinary action by a law enforcement officer  
 14 or probation officer in which a single hearing officer or administrative law  
 15 judge has been appointed to conduct the appeal hearing, the law enforcement  
 16 officer or probation officer or the employer may request a change of hearing  
 17 officer or administrative law judge. ~~In cases before the office of~~  
 18 ~~administrative hearings,~~ On the first request of a party, the request shall  
 19 be granted. All other requests, ~~including any subsequent requests in cases~~  
 20 ~~before the office of administrative hearings,~~ may be granted only on a  
 21 showing that a fair and impartial hearing cannot be obtained due to the  
 22 prejudice of the assigned hearing officer or administrative law judge. The  
 23 supervisor or supervising body of the hearing officer or administrative law  
 24 judge shall decide whether a showing of prejudice has been made.

25 H. A party who violates subsection D or E, unless the violation is  
 26 harmless, shall not be permitted to use that evidence at the hearing, except  
 27 on a showing of good cause. The hearing officer or administrative law judge,  
 28 on a showing of good cause, may grant the opposing party a continuance,  
 29 otherwise limit the use of the evidence or make such other order as may be  
 30 appropriate.

31 I. THE BURDEN OF PROOF IN AN APPEAL OF A DISCIPLINARY ACTION BY A LAW  
 32 ENFORCEMENT OFFICER OR PROBATION OFFICER SHALL BE ON THE EMPLOYER.

33 ~~I.~~ J. If the employer amends, modifies, rejects or reverses the  
 34 decision of a hearing officer, administrative law judge or board, the  
 35 employer shall state the employer's reasons for the amendment, modification,  
 36 rejection or reversal.

37 ~~J.~~ K. This section does not preempt agreements that supplant, revise  
 38 or otherwise alter the provisions of this section, including preexisting  
 39 agreements between the employer and the law enforcement officer or probation  
 40 officer or the law enforcement officer's or probation officer's lawful  
 41 representative association.

42 ~~K.~~ L. For the purposes of this section:

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

- 1           2. "Disciplinary action" means the dismissal, ~~or~~ demotion or ~~the~~  
2 suspension ~~for more than forty hours~~ of a law enforcement officer or  
3 probation officer that is authorized by statute, charter or ordinance and  
4 that is subject to a hearing or other procedure by a local merit board, a  
5 civil service board, an administrative law judge or a hearing officer.
- 6           3. "Investigative file" means the law enforcement agency's complete  
7 report and any attachments detailing the incidents leading to the  
8 disciplinary action.
- 9           4. "Law enforcement officer" means:  
10           (a) An individual, other than a probationary employee, who is  
11 certified by the Arizona peace officer standards and training board, other  
12 than a person employed by a multi-county water conservation district.  
13           (b) A detention officer or correction officer who is employed by this  
14 state or a political subdivision of this state.
- 15           5. "Probation officer" means a probation officer or surveillance  
16 officer who is employed by this state or a political subdivision of this  
17 state.