

House Engrossed

disciplinary appeals; final disposition reporting

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

# HOUSE BILL 2340

AN ACT

AMENDING SECTION 38-1106, 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 38-1106, Arizona Revised Statutes, is amended to  
3 read:

4 38-1106. Appeal of disciplinary actions; transcripts; change  
5 of hearing officer or administrative law judge;  
6 burden of proof; final disposition report;  
7 exception

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

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

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

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

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

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

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

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

43 C. If a transcript is required in an administrative hearing, the  
44 employer shall obtain the transcript and provide a copy to the law

1 enforcement officer within ten calendar days after the employer's receipt  
2 of the transcript.

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

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

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

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

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

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

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

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

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

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

29 4. By any amount earned by the law enforcement officer in  
30 alternative employment.

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

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

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

41 M. IMMEDIATELY AFTER A LAW ENFORCEMENT OFFICER RECEIVES THE FINAL  
42 DISPOSITION OF AN APPEAL OF A DISCIPLINARY ACTION, THE ADMINISTRATIVE LAW  
43 JUDGE, HEARING OFFICER OR PRESIDING AUTHORITY SHALL PROVIDE A FINAL  
44 DISPOSITION REPORT THAT INCLUDES THE FINAL DECISION AND ANY AMENDED

1 FINDINGS OF FACT TO THE LAW ENFORCEMENT AGENCY THAT INITIATED OR IMPOSED  
2 THE DISCIPLINE.

3 N. A LAW ENFORCEMENT AGENCY THAT RECEIVES A FINAL DISPOSITION  
4 REPORT SHALL INCLUDE THE FINAL DISPOSITION REPORT IN THE AGENCY'S ORIGINAL  
5 INVESTIGATION RECORD. IF THE LAW ENFORCEMENT AGENCY PROVIDED A  
6 PROSECUTING AGENCY WITH INFORMATION THAT WAS OBTAINED DURING THE  
7 INVESTIGATION OF THE LAW ENFORCEMENT OFFICER FOR THE PROSECUTING AGENCY'S  
8 RULE 15.1 DATABASE, THE LAW ENFORCEMENT AGENCY SHALL FORWARD THE FINAL  
9 DISPOSITION REPORT TO THE PROSECUTING AGENCY.

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