

REFERENCE TITLE: disciplinary appeal; law enforcement officers

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

# HB 2348

Introduced by  
Representative Payne

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; exception

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

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

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

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

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

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

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

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

42 C. If a transcript is required in an administrative hearing, the  
43 employer shall obtain the transcript and provide a copy to the law  
44 enforcement officer within ten calendar days after the employer's receipt  
45 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.

43 H. ~~Except where a statute, rule or ordinance makes the~~  
44 ~~administrative evidentiary hearing the final administrative determination~~  
45 ~~and~~ After a hearing where the law enforcement officer and the employer

1 have been equally allowed to call and examine witnesses, cross-examine  
2 witnesses, provide documentary evidence and otherwise fully participate in  
3 the hearing, ~~an employer or a person acting on behalf of an employer may~~  
4 ~~amend, modify, reject or reverse the portion of a~~ THE decision made by a  
5 hearing officer, administrative law judge or appeals board ~~that was~~  
6 ~~arbitrary or without reasonable justification. The employer or person~~  
7 ~~acting on behalf of the employer shall state the reason for the amendment,~~  
8 ~~modification, rejection or reversal~~ SHALL BE THE FINAL ADMINISTRATIVE  
9 DETERMINATION SUBJECT TO JUDICIAL REVIEW ON WHETHER SUCH DETERMINATION WAS  
10 CLEARLY ERRONEOUS.

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

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

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

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

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

27 4. By any amount earned by the law enforcement officer in  
28 alternative employment.

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

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

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

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