

SUBJECT:

Understanding the Officer's Bill of Rights and Administrative/Criminal Investigations

AZ POST DESIGNATION:

8.5.1 and 8.5.2

HOURS:

Instructor - 5 hour lesson plan

COURSE CONTENT:

Understanding the Officers Bill of Rights related to Administrative/Internal Investigations and cross over with Criminal Investigations.

PERFORMANCE OBEJCTIVES:

Upon completion of this course of instruction, students using notes, handouts and other support materials as reference, within the allotted time will:

Identify the following aspects of an Administrative Investigation to comply with State law.

- A. Officer Bill of Rights Title 38, 1101 to 1116
- B. Just Cause
- C. Involved Officer Interview
- D. Witness Interview
- E. NOI
- F. Persons NOT covered by the Bill of Rights
- G. Persons covered under the Bill of Rights
- H. CISM witness
- I. Witness and Representation
- J. Unit/Lawyer representative Boundaries
- K. Recordings
- L. Garrity
- M. Recording Inerview
- N. Polygraph
- O. Fitness for Duty
- P. Use of Force – video recordings
- Q. Investigative Report
- R. Appeal Process
- S. Superior Court

Identify the process to appeal a disciplinary action and time frames for relevant documents and witnesses.

- A. When the Investigation is Final
- B. Public Records Request
- C. Release Investigation for Other Purposes
- D. Medical Records
- E. Personnel File

Identify the materials for the basis of the investigation

- F. Polygraph
- G. Use of Polygraph
- H. Data and Reports from a Polygraph

Identify the Confidentiality of Records for Release

- I. Public Records Request
- J. Completed Investigation

Identify the time frames to complete an Investigation

- K. Notice of Investigation
- L. Dismissal of Investigation

Criminal Investigation

- M. Crossover
- N. Garrity

INSTRUCTOR REFERENCES: Arizona Revised Statutes Title 38. Westlaw.

CLASS LEVEL: Instructor

TRAINING AIDS: Powerpoint, handouts

INSTRUCTIONAL STRATEGY: Interactive lecture and class discussion

SUCCESS CRITERIA: 70% or higher on a written, multiple-choice examination

COMPUTER FILE NAMES: Officer Bill of Rights AZPOST JLL

- I. INTRODUCTION
- II. PEACE OFFICER BILL OF RIGHTS and/or MOU – LAW ENFORCEMENT OFFICER.
 - a. Large Agencies – MOU – Bill of Rights does not pre-empt agreements that supplant, revise or otherwise deviate written agreements between the employer and employee/union (MOU) Title 38
 - b. Smaller Agencies – if no MOU follow State statute
 - c. Just cause

- i. The employer informed the law enforcement officer of the possible disciplinary action resulting from the officer's conduct through agency manuals, employee handbooks, the employer's rules and regulations or other communications to the officer or the conduct was such that the officer should have reasonably known disciplinary action could occur.
 - ii. The disciplinary action is reasonably related to the standards of conduct for a professional law enforcement officer, the mission of the agency, the orderly, efficient or safe operation of the agency or the officer's fitness for duty.
 - iii. The discipline is supported by a preponderance of evidence that the conduct occurred.
 - iv. The discipline is not excessive and is reasonably related to the seriousness of the offense and the officer's service record.
 - d. Law Enforcement Meaning
 - i. An individual, other than a probationary employee, who is certified by the Arizona peace officer standards and training board, other than a person employed by a multi-county water conservation district.
 - ii. A detention or corrections officer, other than a probationary employee or juvenile detention officer, who is employed by this state or a political subdivision of this state.
 - iii. A non-probationary regularly appointed and paid deputy sheriff of a county.
 - iv. A non-probationary regularly employed police officer in a city or town.
 - e. Applicable Infractions to apply the Bill of Rights
 - i. Suspension
 - ii. Demotion
 - iii. Dismissal
 - iv. DOES not apply to a dismissal or demotion for administrative purposes like reduction in force
 - f. Employees COVERED under the Bill of Rights
 - i. Must be AZ POST certified and a
 - ii. Detention or correction officers employed by this state or a political subdivision of the state, or;
 - iii. Deputy sheriff of a county or;
 - iv. A police officer in a city or town.
- III. NOT COVERED UNDER THE BILL OF RIGHTS
 - a. Officers who are in a probationary status
 - b. Minor violations
 - c. Probation
 - d. At will employee

- e. Police officer NOT in a city or town
- IV. MISCONDUCT
 - a. Non compliance with or by knowingly or intentionally violating any rule or procedure in a MOU/MOA, Employee Association Agreement, Operations Manual, other department or City policy/orders, Administrative Regulations, or City Personnel Rules which may result in disciplinary action.
- V. VIOLATIONS LEADING TO MISCONDUCT
 - a. Policy
 - b. Manual
 - c. City Administrative Rules
 - d. City Code/Ordinance
 - e. Law
- VI. NON SERIOUS INCIDENTS
 - a. Training
 - b. Coaching
 - c. Written Reprimand
 - d. Verbal Counseling
- VII. ADMONISHMENT
 - a. Cannot speak about the incident unless:
 - i. With attorney if attorney client relationship exists
 - ii. Unit representative
 - iii. Spouse
 - iv. clergy
- VIII. NOI (Notice of Investigation)
 - a. Served when an employee is under investigation by IA or supervisor for anything that could lead to a suspension, demotion or dismissal and before the interview/interrogation or production of any documents.
 - b. In writing of the allegation, date, time, nature, status, all known allegations.
 - c. Must provide the facts that are the basis of the investigation and any relevant material to the officer to include written, audio, video.
 - d. The written notice must inform the employee of the specific nature of the investigation and the employee's status in the investigation.
 - e. Along with the NOI, 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.
 - f. A written notice is not required if the violation is deemed to be a performance issue or an incident only requiring a supervisory counseling.
 - g. Sign and date acknowledging receipt and provide copy

- h. If another violation is learned about during the investigation, the statute does not require the employer to:
 - i. Stop an interview to issue another notice for allegations based on information provided by the law enforcement officer during the interview.
 - ii. Disclose any fact to the law enforcement officer or the law enforcement officer's representative that would impede the investigation.
 - i. NOI does not apply in the following cases:
 - i. 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.
 - ii. Preliminary questioning to determine the scope of the allegations or if an investigation is necessary.
 - iii. Conducted during the course of a criminal investigation.
 - iv. Conducted during the course of a polygraph examination.
- IX. INVOLVED OFFICER
- a. Compelled as a condition of employment to cooperate
 - b. Policy/MOU
- X. WITNESS OFFICER
- a. Policy must cooperate
 - i. CISM officer cannot be compelled to disclose information learned secretly and in confidence from the involved employee unless:
 1. The communication or advice indicates clear and present danger to the designated person who received crisis response services or to other persons.
 2. The designated person who received crisis response services gives express consent to the testimony.
 3. The communication or advice is made during the course of a criminal investigation.
 4. The designated person who received crisis response services voluntarily testifies, in which case the critical incident stress management team member may be compelled to testify on the same subject.
 5. A breach of department policy exists and that breach amounts to a violation of laws that are normally enforced by law enforcement.
 - b. If a law enforcement officer is designated as a witness by the law enforcement officer's employer in an investigation that could lead to another law enforcement officer's dismissal, demotion or suspension, the witness law enforcement officer may request to have a representative present at no cost to the employer during the witness interview. Unless agreed to by the employer, the representative shall be from the same

agency and shall not be an attorney except that if a representative from the same agency is not reasonably available, with the employer's permission, the witness law enforcement officer's representative may be from the witness law enforcement officer's professional membership organization. The witness law enforcement officer's representative may take notes during the interview.

- c. The witness law enforcement officer shall answer all questions asked by the law enforcement officer's department investigator, and information learned during a witness interview is considered proprietary and confidential by the employer and shall remain so until the witness law enforcement officer is served with a notice of investigation by the employer or the witness law enforcement officer is released from the confidentiality requirements of this section.
- d. The witness law enforcement officer may discuss the law enforcement officer's witness interview with the witness law enforcement officer's representative or that representative's legal counsel. The witness law enforcement officer, the witness law enforcement officer's representative or that representative's legal counsel may use the witness law enforcement officer representative's notes only to assist the law enforcement officer in any investigation or disciplinary matter. Notes taken by the witness law enforcement officer, the witness law enforcement officer's representative or that representative's legal counsel do not constitute an official record of the interview. If the witness law enforcement officer or the witness law enforcement officer's representative releases information without authorization, the employer may subject the witness law enforcement officer or the witness law enforcement officer's representative to disciplinary action. Doesn't apply to "At Will" employee.

XI. UNIT REPRESENTATION

- a. Officer may request
- b. Shall select a rep who is available on reasonable notice so interview not delayed. To your advantage to be reasonable and accommodating so won't have appeal issues later.
- c. Only participate as an observer
- d. Can have an attorney if employer agrees
- e. Representative must be from same agency unless not reasonable available, or can be from professional membership organization if permission from employer (again, be reasonable)
- f. Rep can take notes. Notes by employees and Resp are not an official part of the record.
- g. Officer can discuss interview with Rep/Attny
- h. Officer and Rep/Attny cannot release information about interview without employee permission, and officer/rep can be subject to discipline.

- i. Can take reasonable breaks, and officer can consult an attorney by phone or in person at the location of interview (immediately available).
 - j. Cannot retaliate against officer for “requesting” a Rep/Attny.
- XII. RECORDINGS
 - a. Audio and Video all recordings of interviews with complainants, employee witnesses, and non-employees witnesses if possible.
 - b. 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.
 - c. Provide status reports every three months to all parties involved
- XIII. GARRITY RIGHTS
 - a. Read from a card
 - i. Consistency
 - ii. Automatic
 - b. Can be used in a civil proceeding
 - c. Statements and evidence derived from compelled statements cannot be used against the employee in a criminal manner.
- XIV. AUDIO/VIDEO RECORDING THE INTERVIEW
 - a. Generally done to preserve the record
 - b. May allow employee and rep to record
 - c. Recommend transcribing agency recording to maintain accuracy
 - d. Can have the employee sign for accuracy
- XV. POLYGRAPH
 - a. This is also compelled
 - b. 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.
 - c. 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. This section does not apply to a law enforcement officer who is employed by an agency of this state as an at will employee.

- d. 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.
- e. 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.
- f. 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.
- g. This section does not apply to a law enforcement officer who is employed by an agency of this state as an at will employee.
- h. Recommend only criminal cases or serious conduct or concealing information.
 - i. if necessary with approval from at least an Asst Chief
- i. Not admissible in court
- j. Help evaluate truthfulness of statement
- k. Right to attorney does not exist in this circumstance
- l. Use qualified examiners
- m. Keep questions relevant to misconduct

XVI. FITNESS FOR DUTY

- a. An employer may order a law enforcement officer to submit to a physical examination only if the law enforcement officer has acted or failed to act in an observable manner that indicates that there is a physical 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 is based except that the order may omit the specific names of individuals who reported the law enforcement officer's conduct 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. The law enforcement officer to be examined may have a representative present during the examination if the physician 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. The employer may provide any additional information related to the fitness for duty examination to the examining physician.
- 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 may consider and report on only the law enforcement officer's medical or other records that are directly relevant to the actions in question and when conducting the examination, including medical records that record preexisting conditions that are relevant to the examination. The physician may additionally consider and report any condition of the law enforcement officer that the physician 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.
 - i. Any information given to a physician to conduct a physical exam and that serves as the bases for the examination.

XVII. USE OF FORCE INVESTIGATION

- a. In an administrative investigation of a law enforcement officer's use of force incident that resulted in a death or serious physical injury to another

person, if the law enforcement officer recorded a video, both of the following apply:

- i. The administrative investigation is not complete until after the officer has an opportunity to view the recorded video and provide any further information regarding the footage that the officer believes is relevant.
- ii. The law enforcement officer must be read the following notice before viewing the recorded video:
 1. Video evidence has limitations and may depict events differently than you recall. The video evidence may assist your memory and may assist in explaining your state of mind at the time of the incident. Viewing video evidence may or may not provide additional clarity to what you remember. You should not feel in any way compelled or obligated to explain any difference in what you remember and acted on from what viewing the additional evidence provides you.
- iii. Does not prohibit a law enforcement agency from adopting a policy or rule that relates to a law enforcement officer's review of that officer's recorded video.

XVIII. FIREARMS

- a. A peace officer shall not be prohibited from carrying a firearm, except that if the peace officer is employed as a law enforcement officer in this state, the peace officer must be in compliance with the firearm requirements prescribed by the Arizona peace officer standards and training board.
- b. Prohibited carry: (peace officer or retired)
 - i. In a jail, correctional facility or juvenile detention facility.
 - ii. Except for peace officers acting in their official capacity and carrying official peace officer identification, by order of:
 1. The presiding judge or justice when attending any court that is established pursuant to the constitution of this state or title 12, except if the peace officer or retired peace officer is providing court security or responding to an emergency.
 2. A justice court when attending the justice court, except if the peace officer or retired peace officer is providing court security or responding to an emergency.
 3. A municipal court when attending the municipal court, except if the peace officer or retired peace officer is providing court security or responding to an emergency.
 - iii. When the peace officer is relieved of duty and is under a criminal or administrative investigation.
 - iv. When the peace officer is relieved of duty and is under a criminal or administrative investigation.

- v. When in a secured police facility.
- vi. When consuming alcohol at a licensed liquor establishment, except if a peace officer's employing agency authorizes the consumption of alcohol in the performance of the peace officer's duties
- vii. In a location prohibited by federal law.
- viii. Pursuant to court order.
- ix. Pursuant to any state or federal law that makes the officer a prohibited possessor.
- x. When in the judgment of the department head, or the department head's designee, the peace officer exhibits any impairment, including any physical or mental impairment that would cause concern for the well-being and safety of the officer, the officer's law enforcement agency, law enforcement agency employees or the community.
- xi. The law enforcement agency may determine the number, type, model, caliber and brand of firearm and the ammunition that is carried by its peace officers on or off duty.
- xii. A presiding judge may establish rules or policies that are consistent with this section for the protection of the court.

XIX. INVESTIGATIVE REPORT

- a. IA report number
- b. Summary of investigation
 - i. Names of complainant and witnesses
 - ii. List of all attachments
 - iii. Synopsis of allegations (just facts)
 - iv. Findings
- c. Do not place personal "beliefs" or "feelings" in the investigation or "conclusion" type statements or non relevant information (*today the sky is blue and my teeth look white*) who cares?! Nothing to do with the underlying conduct.
- d. Details of investigation
 - i. Facts only
- e. Conclusion
 - i. 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.
 - ii. Keep it simple
- f. Closing
 - i. Organize with the beginning allegations and findings

- ii. Make sure to document all training or supervisory counseling as a result of the conduct in notes. This includes mentoring, coaching, remediation with dates and times.
 - iii.
- XX. APPEAL PROCESS
 - a. PRR – cannot release the IA investigation until complete
 - i. This means after the appeal process is over (60 days to appeal) if doesn't appeal can release.
 - ii. Medical Records
 - 1. Confidential
 - 2. Will not be released
 - 3. Maintain separate from the regular IA investigation
 - b. What can be released?
 - i. related criminal – can be released.
 - ii. Discovery/disclosure – purpose of a court rule
 - iii. AZ POST for purposes of de-certification/charging.
 - 1. Not released as a public records request but for some other purpose.
 - 2. No IA – can release PRR release
 - 3. IA – appeal process must run before PRR release
 - c. Discovery
 - i. 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.
- ii. 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.
 - iii. 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.
 - iv. 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.
 - v. 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.
 - vi. 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.

- vii. The employer has the burden of proof in an appeal of a disciplinary action by a law enforcement officer.
- viii. 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.
- ix. Notwithstanding chapter 3, article 3.1 of this title, all hearings pursuant to this section shall be open to the public. Executive sessions permitted pursuant to section 38-431.03 shall be limited to legal advice to a personnel appeals board or for deliberations.

- x. 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.
- xi. 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.
- xii. 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.
- xiii. This section does not apply to a law enforcement officer who is employed by an agency of this state as an at will employee.

XXI. SUPERIOR COURT REVIEW

- a. If a law enforcement officer is demoted or terminated as the result of an employer or a person acting on behalf of an employer reversing the decision or recommendation of a hearing officer, administrative law judge or appeals board where the finding states that there was no just cause for the demotion or termination, the law enforcement officer may bring an action in superior court for a hearing de novo on the demotion or termination.
- b. If a law enforcement officer is demoted or terminated by an employer or a person acting on behalf of an employer where there is no hearing officer, administrative law judge or appeals board to review the demotion or termination, the law enforcement officer may bring an action in superior court to review the agency's file. If the court finds from a review of the file

that there was no just cause for the demotion or termination, the officer is entitled to a hearing de novo on the demotion or termination.

- c. If the superior court finds that just cause for a demotion or termination did not exist, the court shall order the officer reinstated to the officer's previous position with the law enforcement agency and may award to the law enforcement officer monetary damages that shall not exceed the officer's combined total of wages and benefits during the period of imposed disciplinary action that was lost as a result of the demotion or termination.
- d. An action pursuant to subsection A or B of this section shall be commenced within thirty-five calendar days after a copy of the decision sought to be reviewed is served on the law enforcement officer.
- e. In an action pursuant to subsection A or B of this section the court may award the successful party reasonable attorney fees as set forth in section 12-341.01, subsection B and shall award the successful party all costs pursuant to section 12-341.
- f. This section does not apply to a law enforcement officer who is employed as an at will employee:
 - i. As a police chief or an assistant police chief in a law enforcement agency.
 - ii. By an agency of this state.

XXII. PERSONNEL FILE

- a. An employer shall not include in that portion of the personnel file of a law enforcement officer that is available for public inspection and copying any information about an investigation until the investigation is complete or the employer has discontinued the investigation.
- b. If the law enforcement officer has timely appealed a disciplinary action, the investigation is not complete until the conclusion of the appeal process. This subsection does not apply to a law enforcement officer who is employed by an agency of this state as an at will employee.

XXIII. TIME LIMITATIONS ON DISCIPLINARY ACTION AGAINST L.E. OFFICER

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

- ii. Is suspended during the period of time in which a law enforcement officer who is involved in the investigation is incapacitated or otherwise unavailable.
 - iii. May be suspended for a period prescribed in a written waiver of the limitation by the law enforcement officer.
 - iv. 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.
 - v. In a multijurisdictional investigation, may be extended for a period of time reasonably necessary to facilitate the coordination of the employers involved.
- b. 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.

XXIV. JOINT CRIMINAL AND ADMINISTRATIVE INVESTIGATION

- a. GARRITY
 - i. compelled statements cannot be subsequently used in a criminal investigation
 - ii. Voluntary statements may be used in subsequent investigation but not compelled statements
 - iii. Disclosure of Information
 - iv. Be careful with Garrity and sharing information. Criminal can share with IA absent "grand jury" or "wiretap investigations".
- b. RS or PC officer committed a crime
 - i. Follow your department policy
 - ii. Consider an outside agency cooperation
 - iii. Conduct an IA investigation

END!