

HOUSE BILL No. 1165

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-8.

Synopsis: Disciplinary process for firefighters and police. Establishes minimum rights of a full-time, paid, nonprobationary member of a fire department or a police department (a public safety officer) to be represented in any interaction that may result in an adverse employment action against the public safety officer. Allows the public safety officer to choose representation by either or both of the following: (1) Legal counsel. (2) Labor organization representative or other representative. Provides that an interaction with the public safety officer's employer or supervisor may not proceed until the public safety officer is provided a reasonable opportunity and amount of time to obtain the requested representation.

Effective: July 1, 2016.

**Mahan, Frye R, Ellington,
Lawson L**

January 19, 2016, read first time and referred to Committee on Veterans Affairs and Public Safety.



Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1165

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 36-8-1-8 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2016]: Sec. 8. **(a) Except as provided in**
3 **subsection (b), "member of the fire department" means the fire chief**
4 **or a firefighter appointed to the department.**
5 **(b) "Member of the fire department", for purposes of**
6 **IC 36-8-2.5, does not include a person who holds an upper level**
7 **policymaking position.**
8 SECTION 2. IC 36-8-1-9 IS AMENDED TO READ AS FOLLOWS
9 [EFFECTIVE JULY 1, 2016]: Sec. 9. (a) Except as provided in
10 ~~subsection~~ **subsections (b) and (c), "member of the police department"**
11 **means the police chief or a police officer appointed to the department.**
12 **(b) "Member of the police department", for purposes of**
13 **IC 36-8-2.5, does not include a person who holds an upper level**
14 **policymaking position.**
15 ~~(b)~~ **(c) "Member of the police department", for purposes of**
16 **IC 36-8-4-7, does not include the police chief hired under a waiver**
17 **under IC 36-8-4-6.5(c).**



1 SECTION 3. IC 36-8-2.5 IS ADDED TO THE INDIANA CODE
 2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2016]:

4 **Chapter 2.5. Public Safety Officer Representation**

5 **Sec. 1. (a) This chapter applies only to the following:**

6 (1) A firefighter who is a full-time, paid, nonprobationary
 7 member of a fire department.

8 (2) A police officer who is a full-time, paid, nonprobationary
 9 member of a police department.

10 (b) This chapter does not apply to a member of a fire
 11 department or police department who holds an upper level
 12 policymaking position.

13 **Sec. 2. This chapter does not apply to any interview,
 14 interrogation, or other proceeding that is part of an investigation
 15 of criminal charges against a public safety officer.**

16 **Sec. 3. As used in this chapter, "fire department" means a fire
 17 department established by a county, city, town, or township,
 18 including a fire protection district under IC 36-8-11 or a fire
 19 protection territory established under IC 36-8-19. The term does
 20 not include a volunteer fire department.**

21 **Sec. 4. As used in this chapter, "police department" means any
 22 of the following:**

23 (1) A county sheriff's department.

24 (2) A city police department.

25 (3) A town police department, including a town marshal
 26 system.

27 **Sec. 5. As used in this chapter, "public safety officer" means a
 28 firefighter or police officer to whom this chapter applies.**

29 **Sec. 6. A public safety officer has at least the rights that are set
 30 forth in this chapter, in any interaction that:**

31 (1) the public safety officer is the subject of and is present at,
 32 including:

33 (A) an interview or interrogation of the public safety
 34 officer; or

35 (B) a meeting or administrative proceeding;

36 (2) is conducted by a supervisor, commanding officer, or
 37 board, commission, body, officer, or employee of the:

38 (A) fire department;

39 (B) police department; or

40 (C) unit;

41 that employs the public safety officer; and

42 (3) concerns any matter that may result in an adverse



1 **employment action against the public safety officer.**

2 **Sec. 7. (a) A public safety officer has the right to be represented**
 3 **in any interaction under section 6 of this chapter by either or both**
 4 **of the following of the public safety officer's own choosing:**

5 **(1) Legal counsel.**

6 **(2) A labor organization representative or other**
 7 **representative.**

8 **(b) Nothing in this chapter prohibits a public safety officer from**
 9 **waiving the officer's right of representation under this chapter.**

10 **Sec. 8. (a) An interaction under section 6 of this chapter may not**
 11 **proceed until the public safety officer is provided a reasonable:**

12 **(1) opportunity; and**

13 **(2) amount of time;**

14 **to obtain the representation requested by the public safety officer.**

15 **(b) A public safety officer may request representation at any**
 16 **time before or during an interaction under section 6 of this**
 17 **chapter.**

18 **Sec. 9. This chapter does not affect a contract executed or**
 19 **renewed before July 1, 2016.**

20 **Sec. 10. The rights of a public safety officer provided by this**
 21 **chapter are in addition to and do not abridge, diminish, or cancel**
 22 **the rights and privileges of a public safety officer that are provided**
 23 **under contract or any other law.**

24 SECTION 4. IC 36-8-3-3.5 IS ADDED TO THE INDIANA CODE
 25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 26 1, 2016]: **Sec. 3.5. (a) This section applies to a member of the police**
 27 **department or fire department of a county, city, town, or township**
 28 **to whom IC 36-8-2.5 applies.**

29 **(b) A member has at least the rights of representation set forth**
 30 **in IC 36-8-2.5 in any interaction or proceeding under this chapter**
 31 **that:**

32 **(1) is described in IC 36-8-2.5-6; and**

33 **(2) may result in an adverse employment action against the**
 34 **member.**

35 SECTION 5. IC 36-8-3-4 IS AMENDED TO READ AS FOLLOWS
 36 [EFFECTIVE JULY 1, 2016]: **Sec. 4. (a) This section also applies to**
 37 **all towns and townships that have full-time, paid police or fire**
 38 **departments. For purposes of this section, the appropriate appointing**
 39 **authority of a town or township is considered the safety board of a town**
 40 **or township. In a town with a board of metropolitan police**
 41 **commissioners, that board is considered the safety board of the town**
 42 **for police department purposes.**



1 (b) Except as provided in subsection (m), a member of the police or
 2 fire department holds office or grade until the member is dismissed or
 3 demoted by the safety board. Except as provided in subsection (n), a
 4 member may be disciplined by demotion, dismissal, reprimand,
 5 forfeiture, or suspension upon either:

- 6 (1) conviction in any court of any crime; or
 7 (2) a finding and decision of the safety board that the member has
 8 been or is guilty of any one (1) or more of the following:
 9 (A) Neglect of duty.
 10 (B) A violation of rules.
 11 (C) Neglect or disobedience of orders.
 12 (D) Incapacity.
 13 (E) Absence without leave.
 14 (F) Immoral conduct.
 15 (G) Conduct injurious to the public peace or welfare.
 16 (H) Conduct unbecoming an officer.
 17 (I) Another breach of discipline.

18 The safety board may not consider the political affiliation of the
 19 member in making a decision under this section. If a member is
 20 suspended or placed on administrative leave under this subsection, the
 21 member is entitled to the member's allowances for insurance benefits
 22 to which the member was entitled before being suspended or placed on
 23 administrative leave. In addition, the local unit may provide the
 24 member's allowances for any other fringe benefits to which the member
 25 was entitled before being suspended or placed on administrative leave.

26 (c) Before a member of a police or fire department may be
 27 suspended in excess of five (5) days without pay, demoted, or
 28 dismissed, the safety board shall offer the member an opportunity for
 29 a hearing. If a member desires a hearing, the member must request the
 30 hearing not more than five (5) days after the notice of the suspension,
 31 demotion, or dismissal. Written notice shall be given either by service
 32 upon the member in person or by a copy left at the member's last and
 33 usual place of residence at least fourteen (14) days before the date set
 34 for the hearing. The hearing conducted under this subsection shall be
 35 held not more than thirty (30) days after the hearing is requested by the
 36 member, unless a later date is mutually agreed upon by the parties. The
 37 notice must state:

- 38 (1) the time and place of the hearing;
 39 (2) the charges against the member;
 40 (3) the specific conduct that comprises the charges;
 41 (4) that the member is entitled to be represented by counsel;
 42 **(5) that if the member is subject to IC 36-8-2.5, the member is**



1 **entitled to representation by the member's labor organization**
 2 **or other representative instead of or in addition to**
 3 **representation by counsel;**

4 ~~(5)~~ (6) that the member is entitled to call and cross-examine
 5 witnesses;

6 ~~(6)~~ (7) that the member is entitled to require the production of
 7 evidence; and

8 ~~(7)~~ (8) that the member is entitled to have subpoenas issued,
 9 served, and executed in the county where the unit is located.

10 If the corporation counsel or city attorney is a member of the safety
 11 board of a city, the counsel or attorney may not participate as a safety
 12 board member in a disciplinary hearing concerning a member of either
 13 department. The safety board shall determine if a member of the police
 14 or fire department who is suspended in excess of five (5) days shall
 15 continue to receive the member's salary during the suspension.

16 (d) Upon an investigation into the conduct of a member of the police
 17 or fire department, or upon the trial of a charge preferred against a
 18 member of either department, the safety board may compel the
 19 attendance of witnesses, examine them under oath, and require the
 20 production of books, papers, and other evidence at a meeting of the
 21 board. For this purpose, the board may issue subpoenas and have them
 22 served and executed in any part of the county where the unit is located.
 23 If a witness refuses to testify or to produce books or papers in the
 24 witness's possession or under the witness's control, IC 36-4-6-21
 25 controls to the extent applicable. The proper court may compel
 26 compliance with the order by attachment, commitment, or other
 27 punishment.

28 (e) The reasons for the suspension, demotion, or dismissal of a
 29 member of the police or fire department shall be entered as specific
 30 findings of fact upon the records of the safety board. A member who is
 31 suspended for a period exceeding five (5) days, demoted, or dismissed
 32 may appeal the decision to the circuit or superior court of the county in
 33 which the unit is located. However, a member may not appeal any other
 34 decision.

35 (f) An appeal under subsection (e) must be taken by filing in court,
 36 within thirty (30) days after the date the decision is rendered, a verified
 37 complaint stating in concise manner the general nature of the charges
 38 against the member, the decision of the safety board, and a demand for
 39 the relief asserted by the member. A bond must also be filed that
 40 guarantees the appeal will be prosecuted to a final determination and
 41 that the plaintiff will pay all costs adjudged against the plaintiff. The
 42 bond must be approved as bonds for costs are approved in other cases.



1 The unit must be named as the sole defendant, and the plaintiff shall
2 have a summons issued as in other cases against the unit. Neither the
3 safety board nor the members of it may be made parties defendant to
4 the complaint, but all are bound by service upon the unit and the
5 judgment rendered by the court.

6 (g) In an appeal under subsection (e), no pleading is required by the
7 unit to the complaint, but the allegations are considered denied. The
8 unit may file a motion to dismiss the appeal for failure to perfect it
9 within the time and in the manner required by this section. If more than
10 one (1) person was included in the same charges and in the same
11 decision of dismissal by the safety board, then one (1) or more of the
12 persons may join as plaintiffs in the same complaint, but only the
13 persons that appeal from the decision are affected by it. The decision
14 of the safety board is final and conclusive upon all persons not
15 appealing. The decision appealed from is not stayed or affected
16 pending the final determination of the appeal, but remains in effect
17 unless modified or reversed by the final judgment of the court.

18 (h) A decision of the safety board is considered prima facie correct,
19 and the burden of proof is on the party appealing. All appeals shall be
20 tried by the court. The appeal shall be heard de novo only upon any
21 new issues related to the charges upon which the decision of the safety
22 board was made. The charges are considered to be denied by the
23 accused person. Within ten (10) days after the service of summons the
24 safety board shall file in court a complete transcript of all papers,
25 entries, and other parts of the record relating to the particular case.
26 Inspection of these documents by the person affected, or by the person's
27 agent, must be permitted by the safety board before the appeal is filed,
28 if requested. Each party may produce evidence relevant to the issues
29 that it desires, and the court shall review the record and decision of the
30 safety board upon appeal.

31 (i) The court shall make specific findings and state the conclusions
32 of law upon which its decision is made. If the court finds that the
33 decision of the safety board appealed from should in all things be
34 affirmed, its judgment should state that, and judgment for costs shall
35 be rendered against the party appealing. If the court finds that the
36 decision of the safety board appealed from should not be affirmed in all
37 things, then the court shall make a general finding, setting out
38 sufficient facts to show the nature of the proceeding and the court's
39 decision on it. The court shall either:

40 (1) reverse the decision of the safety board; or

41 (2) order the decision of the safety board to be modified.

42 (j) The final judgment of the court may be appealed by either party.



1 Upon the final disposition of the appeal by the courts, the clerk shall
2 certify and file a copy of the final judgment of the court to the safety
3 board, which shall conform its decisions and records to the order and
4 judgment of the court. If the decision is reversed or modified, then the
5 safety board shall pay to the party entitled to it any salary or wages
6 withheld from the party pending the appeal and to which the party is
7 entitled under the judgment of the court.

8 (k) Either party shall be allowed a change of venue from the court
9 or a change of judge in the same manner as such changes are allowed
10 in civil cases. The Indiana Rules of Trial Procedure govern in all
11 matters of procedure upon the appeal that are not otherwise provided
12 for by this section.

13 (l) An appeal takes precedence over other pending litigation and
14 shall be tried and determined by the court as soon as practical.

15 (m) Except as provided in IC 36-5-2-13, the executive may reduce
16 in grade any member of the police or fire department who holds an
17 upper level policy making position. The reduction in grade may be
18 made without adhering to the requirements of subsections (b) through
19 (l). However, a member may not be reduced in grade to a rank below
20 that which the member held before the member's appointment to the
21 upper level policy making position.

22 (n) If the member is subject to criminal charges, the board may
23 place the member on administrative leave until the disposition of the
24 criminal charges in the trial court. Any other action by the board is
25 stayed until the disposition of the criminal charges in the trial court. An
26 administrative leave under this subsection may be with or without pay,
27 as determined by the board. If the member is placed on leave without
28 pay, the board, in its discretion, may award back pay if the member is
29 exonerated in the criminal matter.

30 SECTION 6. IC 36-8-3-4.3, AS ADDED BY P.L.13-2010,
31 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32 JULY 1, 2016]: Sec. 4.3. (a) This section also applies to a town or
33 township that has at least one (1) certified employee of a full-time, paid
34 fire or police department, without regard to whether:

- 35 (1) the employee is an appointed police officer or firefighter; or
36 (2) under section 5 of this chapter, the police or fire department
37 is exempt from sections 3, 4, and 4.1 of this chapter.

38 (b) As used in this section, "certified employee" means an individual
39 who, as a condition of employment, holds a valid certification issued
40 under IC 16-31-3 by the Indiana emergency medical services
41 commission established by IC 16-31-2-1.

42 (c) As used in this section, "medical director" means a physician



1 with an unlimited license to practice medicine in Indiana and who
 2 performs the duties and responsibilities described in 836 IAC 2-2-1.

3 (d) If a medical director takes any of the following actions against
 4 a certified employee, the medical director shall provide to the certified
 5 employee and to the chief of the certified employee's department a
 6 written explanation of the reasons for the action taken by the medical
 7 director:

8 (1) The medical director refuses or fails to supervise or otherwise
 9 provide medical control and direction to the certified employee.

10 (2) The medical director refuses or fails to attest to the
 11 competency of the certified employee to perform emergency
 12 medical services.

13 (3) The medical director suspends the certified employee from
 14 performing emergency medical services.

15 (e) Before a police or fire department takes any employment related
 16 action against a certified employee as the result of a medical director's
 17 action described in subsection (d), the certified employee is entitled to
 18 a hearing and appeal concerning the medical director's action as
 19 provided in section 4 of this chapter. **A certified employee to whom**
 20 **IC 36-8-2.5 applies has the rights of representation set forth in**
 21 **IC 36-8-2.5 in any interaction described in IC 36-8-2.5-6 with the**
 22 **police or fire department concerning the medical director's action**
 23 **that may result in an adverse employment action against the**
 24 **member.**

25 (f) If the medical director's action that is the subject of an appeal
 26 under subsection (e) is based on a health care decision made by the
 27 certified employee in performing emergency medical services, the
 28 safety board conducting the hearing shall consult with an independent
 29 medical expert to determine whether the certified employee followed
 30 the applicable emergency medical services protocol in making the
 31 health care decision. The independent medical expert:

32 (1) must be a physician trained in emergency medical services;
 33 and

34 (2) may not be affiliated with the same hospital as the medical
 35 director.

36 SECTION 7. IC 36-8-3.5-2.5 IS ADDED TO THE INDIANA
 37 CODE AS A NEW SECTION TO READ AS FOLLOWS
 38 [EFFECTIVE JULY 1, 2016]: **Sec. 2.5. (a) This section applies to a**
 39 **member of the police department or fire department of a county,**
 40 **city, town, or township to whom IC 36-8-2.5 applies.**

41 **(b) A member has at least the rights of representation set forth**
 42 **in IC 36-8-2.5 in any interaction or proceeding under this chapter**



1 **that:**

2 **(1) is described in IC 36-8-2.5-6; and**

3 **(2) may result in an adverse employment action against the**
 4 **member.**

5 SECTION 8. IC 36-8-3.5-17 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 17. (a) The commission
 7 may take the following disciplinary actions against a regular member
 8 of the department:

9 (1) Suspension with or without pay.

10 (2) Demotion.

11 (3) Dismissal.

12 If a member is suspended under this subsection, the member is entitled
 13 to the member's remuneration and allowances for insurance benefits to
 14 which the member was entitled before the suspension. In addition, the
 15 local unit may provide the member's allowances for any other fringe
 16 benefits to which the member was entitled before the suspension. The
 17 commission shall determine if a member of the department who is
 18 suspended in excess of five (5) days shall continue to receive the
 19 member's salary during suspension.

20 (b) A member may be disciplined by the commission if:

21 (1) the member is convicted of a crime; or

22 (2) the commission finds the member guilty of a breach of
 23 discipline, including:

24 (A) neglect of duty;

25 (B) violation of commission rules;

26 (C) neglect or disobedience of orders;

27 (D) continuing incapacity;

28 (E) absence without leave;

29 (F) immoral conduct;

30 (G) conduct injurious to the public peace or welfare;

31 (H) conduct unbecoming a member; or

32 (I) furnishing information to an applicant for appointment or
 33 promotion that gives that person an advantage over another
 34 applicant.

35 (c) If the chief of the department, after an investigation within the
 36 department, prefers charges against a member of the department for an
 37 alleged breach of discipline under subsection (b), including any civilian
 38 complaint of an alleged breach of discipline under subsection (b)(2)(F),
 39 (b)(2)(G), or (b)(2)(H), a hearing shall be conducted upon the request
 40 of the member. If a hearing is requested within five (5) days of the
 41 chief preferring charges, the parties may by agreement designate a
 42 hearing officer who is qualified by education, training, or experience.



1 If the parties do not agree within this five (5) day period, the
 2 commission may hold the hearing or designate a person or board to
 3 conduct the hearing, as provided in the commission's rules. The
 4 designated person or board must be qualified by education, training, or
 5 experience to conduct such a hearing and may not hold an upper level
 6 policy making position. The hearing conducted under this subsection
 7 shall be held within thirty (30) days after it is requested by the member.

8 (d) Written notice of the hearing shall be served upon the accused
 9 member in person or by a copy left at the member's last and usual place
 10 of residence at least fourteen (14) days before the date set for the
 11 hearing. The notice must state:

- 12 (1) the time and place of the hearing;
 13 (2) the charges against the member;
 14 (3) the specific conduct that comprises the charges;
 15 (4) that the member is entitled to be represented by counsel or
 16 another representative of the member's choice;
 17 **(5) that if the member is subject to IC 36-8-2.5, the member is**
 18 **entitled to representation by the member's labor organization**
 19 **or other representative instead of or in addition to**
 20 **representation by counsel;**
 21 ~~(5)~~ **(6)** that the member is entitled to call and cross-examine
 22 witnesses;
 23 ~~(6)~~ **(7)** that the member is entitled to require the production of
 24 evidence; and
 25 ~~(7)~~ **(8)** that the member is entitled to have subpoenas issued,
 26 served, and executed.

27 (e) The commission may:

- 28 (1) compel the attendance of witnesses by issuing subpoenas;
 29 (2) examine witnesses under oath; and
 30 (3) order the production of books, papers, and other evidence by
 31 issuing subpoenas.

32 (f) If a witness refuses to appear at a hearing of the commission after
 33 having received written notice requiring the witness's attendance, or
 34 refuses to produce evidence that the commission requests by written
 35 notice, the commission may file an affidavit in the circuit court of the
 36 county setting forth the facts of the refusal. Upon the filing of the
 37 affidavit, a summons shall be issued from the circuit court and served
 38 by the sheriff of the county requiring the appearance of the witness or
 39 the production of information or evidence to the commission.

40 (g) Disobedience of a summons constitutes contempt of the circuit
 41 court from which the summons has been issued. Expenses related to the
 42 filing of an affidavit and the issuance and service of a summons shall



1 be charged to the witness against whom the summons has been issued,
2 unless the circuit court finds that the action of the witness was taken in
3 good faith and with reasonable cause. In that case, and in any case in
4 which an affidavit has been filed without the issuance of a summons,
5 the expenses shall be charged to the commission.

6 (h) A decision to discipline a member may be made only if the
7 preponderance of the evidence presented at the hearing indicates such
8 a course of action.

9 (i) A member who is aggrieved by the decision of a person or board
10 designated to conduct a disciplinary hearing under subsection (c) may
11 appeal to the commission within ten (10) days of the decision. The
12 commission shall on appeal review the record and either affirm,
13 modify, or reverse the decision on the basis of the record and such oral
14 or written testimony that the commission determines, including
15 additional or newly discovered evidence.

16 (j) The commission, or the designated person or board, shall keep
17 a record of the proceedings in cases of suspension, demotion, or
18 dismissal. The commission shall give a free copy of the transcript to the
19 member upon request if an appeal is filed.

20 SECTION 9. IC 36-8-3.5-19.3, AS ADDED BY P.L.13-2010,
21 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2016]: Sec. 19.3. (a) This section applies to a department that
23 has at least one (1) certified employee, without regard to whether:

- 24 (1) the employee is an appointed police officer or firefighter; or
25 (2) the department has a merit system to which this chapter does
26 not otherwise apply as provided under section 1 of this chapter.

27 (b) As used in this section, "certified employee" means an individual
28 who, as a condition of employment, holds a valid certification issued
29 under IC 16-31-3 by the Indiana emergency medical services
30 commission established by IC 16-31-2-1.

31 (c) As used in this section, "medical director" means a physician
32 with an unlimited license to practice medicine in Indiana and who
33 performs the duties and responsibilities described in 836 IAC 2-2-1.

34 (d) If a medical director takes any of the following actions against
35 a certified employee, the medical director shall provide to the certified
36 employee and to the chief of the certified employee's department a
37 written explanation of the reasons for the action taken by the medical
38 director:

- 39 (1) The medical director refuses or fails to supervise or otherwise
40 provide medical control and direction to the certified employee.
41 (2) The medical director refuses or fails to attest to the
42 competency of the certified employee to perform emergency



1 medical services.

2 (3) The medical director suspends the certified employee from
3 performing emergency medical services.

4 (e) Before a department takes any employment related action as the
5 result of a medical director's action described in subsection (d) against
6 a certified employee, the certified employee is entitled to a hearing and
7 appeal concerning the medical director's action as provided in sections
8 17 and 18 of this chapter. **A certified employee to whom IC 36-8-2.5**
9 **applies has the rights of representation set forth in IC 36-8-2.5 in**
10 **any interaction with the department described in IC 36-8-2.5-6**
11 **concerning the medical director's action that may result in an**
12 **adverse employment action against the member.**

13 (f) If the medical director's action that is the subject of an appeal
14 under subsection (e) is based on a health care decision made by the
15 certified employee in performing emergency medical services, the
16 commission conducting the hearing shall consult with an independent
17 medical expert to determine whether the certified employee followed
18 the applicable emergency medical services protocol in making the
19 health care decision. The independent medical expert:

20 (1) must be a physician trained in emergency medical services;

21 and

22 (2) may not be affiliated with the same hospital as the medical
23 director.

24 SECTION 10. IC 36-8-10-10.7 IS ADDED TO THE INDIANA
25 CODE AS A NEW SECTION TO READ AS FOLLOWS
26 [EFFECTIVE JULY 1, 2016]: **Sec. 10.7. (a) This section applies to a**
27 **member of the department to whom IC 36-8-2.5 applies.**

28 **(b) A member has at least the rights of representation set forth**
29 **in IC 36-8-2.5 in any interaction or proceeding under this chapter**
30 **that:**

31 **(1) is described in IC 36-8-2.5-6; and**

32 **(2) may result in an adverse employment action against the**
33 **member.**

34 SECTION 11. IC 36-8-10-11, AS AMENDED BY P.L.135-2012,
35 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2016]: Sec. 11. (a) The sheriff may dismiss, demote, or
37 temporarily suspend a county police officer for cause after preferring
38 charges in writing and after a fair public hearing before the board,
39 which is reviewable in the circuit court. Written notice of the charges
40 and hearing must be delivered by certified mail to the officer to be
41 disciplined at least fourteen (14) days before the date set for the
42 hearing. The officer may be represented by counsel **and, if the**



1 **member is subject to IC 36-8-2.5, may be represented by the**
 2 **member's labor organization or other representative instead of or**
 3 **in addition to representation by counsel.** The board shall make
 4 specific findings of fact in writing to support its decision.

5 (b) The sheriff may temporarily suspend an officer with or without
 6 pay for a period not exceeding fifteen (15) days, without a hearing
 7 before the board, after preferring charges of misconduct in writing
 8 delivered to the officer.

9 (c) A county police officer may not be dismissed, demoted, or
 10 temporarily suspended because of political affiliation nor after the
 11 officer's probationary period, except as provided in this section. Subject
 12 to IC 3-5-9, an officer may:

13 (1) be a candidate for elective office and serve in that office if
 14 elected;

15 (2) be appointed to an office and serve in that office if appointed;
 16 and

17 (3) except when in uniform or on duty, solicit votes or campaign
 18 funds for the officer or others.

19 (d) The board has subpoena powers enforceable by the circuit court
 20 for hearings under this section. An officer on probation may be
 21 dismissed by the sheriff without a right to a hearing.

22 (e) An appeal under subsection (a) must be taken by filing in court,
 23 within thirty (30) days after the date the decision is rendered, a verified
 24 complaint stating in a concise manner the general nature of the charges
 25 against the officer, the decision of the board, and a demand for the
 26 relief asserted by the officer. A bond must also be filed that guarantees
 27 the appeal will be prosecuted to a final determination and that the
 28 plaintiff will pay all costs only if the court finds that the board's
 29 decision should be affirmed. The bond must be approved as bonds for
 30 costs are approved in other cases. The county must be named as the
 31 sole defendant and the plaintiff shall have a summons issued as in other
 32 cases against the county. Neither the board nor the members of it may
 33 be made parties defendant to the complaint, but all are bound by
 34 service upon the county and the judgment rendered by the court.

35 (f) All appeals shall be tried by the court. The appeal shall be heard
 36 de novo only upon any new issues related to the charges upon which
 37 the decision of the board was made. Within ten (10) days after the
 38 service of summons, the board shall file in court a complete written
 39 transcript of all papers, entries, and other parts of the record relating
 40 to the particular case. Inspection of these documents by the person
 41 affected, or by the person's agent, must be permitted by the board
 42 before the appeal is filed, if requested. The court shall review the



1 record and decision of the board on appeal.

2 (g) The court shall make specific findings and state the conclusions
3 of law upon which its decision is made. If the court finds that the
4 decision of the board appealed from should in all things be affirmed,
5 its judgment should so state. If the court finds that the decision of the
6 board appealed from should not be affirmed in all things, then the court
7 shall make a general finding, setting out sufficient facts to show the
8 nature of the proceeding and the court's decision on it. The court shall
9 either:

10 (1) reverse the decision of the board; or

11 (2) order the decision of the board to be modified.

12 (h) The final judgment of the court may be appealed by either party.
13 Upon the final disposition of the appeal by the courts, the clerk shall
14 certify and file a copy of the final judgment of the court to the board,
15 which shall conform its decisions and records to the order and
16 judgment of the court. If the decision is reversed or modified, then the
17 board shall pay to the party entitled to it any salary or wages withheld
18 from the party pending the appeal and to which the party is entitled
19 under the judgment of the court.

20 (i) Either party shall be allowed a change of venue from the court or
21 a change of judge in the same manner as such changes are allowed in
22 civil cases. The rules of trial procedure govern in all matters of
23 procedure upon the appeal that are not otherwise provided for by this
24 section.

25 (j) An appeal takes precedence over other pending litigation and
26 shall be tried and determined by the court as soon as practical.

