

**LAW ENFORCEMENT MERIT SYSTEM COUNCIL  
SUBSTANTIVE POLICY STATEMENT #2-2005**

**APPEAL TO THE COUNCIL  
AGENCY RESPONSIBILITY (burden of proof)  
R13-5-703.D**

The Law Enforcement Merit System Council (Council) adopted rules relating to disciplinary appeals. Specifically, R13-5-703.D, which deals with the agency's responsibility once an appeal has been filed.

This Substantive Policy Statement is advisory only. A Substantive Policy Statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this Substantial Policy Statement does impose additional requirements or penalties on regulated parties, you may petition the agency under Arizona Revised Statutes section 41-1033 for a review of the statement.

This Substantive Policy Statement is to inform the general public and employees under the jurisdiction of the Council, of the Council's interpretation of the rule relating to an agency's responsibility in proving a case before the Council.

Rule R13-5-703.D states "An agency shall have the burden of proof of going forward with the case once an appeal has been filed. An agency must prove the cause for disciplinary action by a preponderance of the evidence."

The Council was asked to clarify the meaning of "criminal investigation" as used in R13-5-701(C)(1) dealing with a criminal hold and the computation of the 120-day time limit for internal investigations. Specifically, whether or not the time spent in prosecutorial review is part of the 120-day time limit.

The Council determined that "criminal investigation" shall include time spent doing an investigation and time spent in prosecutorial review.

Approved and entered into the minutes on April 28, 2005.

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Gail N. Goodman, Chair

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Juan Martin, Vice-Chair

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Albert B. Lassen, Member