

CRIMINAL JUSTICE STANDARDS AND TRAINING COMMISSION MEETING CONFERENCE CALL

DECEMBER 7, 2011

3:30 p.m.

CONFERENCE CALL DETAILS

1. Conference Call Number: 1-888-808-6959 (Call at 3:25 p.m.)
2. Conference Call Code: 4108657# (Enter this code after you dial the number and the operator asks you to enter the code)

***FLORIDA DEPARTMENT OF LAW ENFORCEMENT
TALLAHASSEE, FLORIDA***



**Florida Department of Law Enforcement
Commissioner Gerald M. Bailey**

**Criminal Justice Professionalism Program
Program Director: TBA**

Criminal Justice Standards and Training Commission

**Chairman Ernie W. George
Florida Citizen**

**Vice-Chairman Ric L. Bradshaw
Palm Beach County Sheriff's Office**

DECEMBER 7, 2011

3:30 P.M.

CRIMINAL JUSTICE STANDARDS AND TRAINING
COMMISSION MEETING CONFERENCE CALL

Business Meeting Called to Order

Vice-Chairman Ric Bradshaw

Roll Call

Commission Secretary Donna Hunt

Approval of the December 7, 2011 Business Agenda

Commission Secretary Donna Hunt

SUPPORTING INFORMATION IS AVAILABLE FOR ALL AGENDA
ITEMS ON CD-ROM ONLY AND IS NOT AVAILABLE ON-LINE OR IN PAPER FORMAT.
TO REQUEST A CD-ROM OF THE SUPPORTING INFORMATION,
E-MAIL: DONNAHUNT@FDLE.STATE.FL.US

1. Request for Variances or Waivers:

Staff Counsel Grace Jaye

- A.** Request for Waiver of Rule 11B-27.00212(14), F.A.C., by Cedar Key Police Department
- B.** Request for Waiver of Rule 11B-27.00212(14), F.A.C., by Lee County Port Authority Police Department
- C.** Request for Waiver of Rule 11B-27.00212(14), F.A.C., by Daytona Beach Police Department
- D.** Request for Waiver of Rule 11B-27.00212(14), F.A.C., by Lake Hamilton Police Department
- E.** Request for Waiver of Rule 11B-27.00212(14), F.A.C., by Lawtey Police Department
- F.** Request for Waiver of Rule 11B-27.00212(14), F.A.C., by Alachua County Sheriff's Office
- G.** Request for Waiver of Rule 11B-27.00212(14), F.A.C., by Gulf Breeze Police Department
- H.** Request for Waiver of Rule 11B-27.00212(14), F.A.C., by Hillsboro Beach Police Department
- I.** Request for Waiver of Rule 11B-27.00212(14), F.A.C., by State Attorney's Office, 1st Judicial Circuit
- J.** Request for Waiver of Rule 11B-27.00212(14), F.A.C., by Satellite Beach Police Department
- K.** Request for Waiver of Rule 11B-27.00212(14), F.A.C., by Blountstown Police Department
- L.** Request for Waiver of Rule 11B-27.00212(14), F.A.C., by Jupiter Inlet Colony Police Department
- M.** Request for Waiver of Rule 11B-27.00212(14), F.A.C., by Wildwood Police Department
- N.** Request for Waiver of Rule 11B-27.00212(14), F.A.C., by Parker Police Department
- O.** Request for Waiver of Rule 11B-27.00212(14), F.A.C., by Florida City Police Department
- P.** Request for Waiver of Rule 11B-27.00212(14), F.A.C., by Maitland Police Department
- Q.** Request for Waiver of Rule 11B-27.00212(14), F.A.C., by Tavares Police Department
- R.** Request for Waiver of Rule 11B-35.001(9)(b), F.A.C., by Criminal Justice Institute at Valencia Community College
- S.** Request for Waiver of Rule 11B-35.001(9)(b), F.A.C., by Green Cove Springs Police Department

2. Officer Discipline Case: Recommended Order for Respondent Maricela Ponce

Staff Counsel Kerra Smith

FUTURE COMMISSION MEETINGS

<p style="text-align: center;">FEBRUARY 2, 2012 Hilton Sandestin Beach 4000 South Sandestin Boulevard Miramar Beach, FL 32550</p> <p>Telephone: 850-267-9500, Fax: 850-267-3076 Guestroom Rate: \$78.00 each night for Single/Double from 1/29/12 – 2/3/12 (\$20.00 charge for each additional adult) Reservation Deadline: January 13, 2012</p>	<p style="text-align: center;">MAY 10, 2012 Hilton In Naples 5111 Tamiami Trail North Naples, FL 34103</p> <p>Telephone: 239-430-4900, Fax: 239-430-4901 Guestroom Rate: \$97.00 each night for Single/Double from May 6 - 11, 2012 Reservation Deadline: April 20, 2012</p>
<p style="text-align: center;">AUGUST 9, 2012 Sawgrass Marriott 1000 PGA Tour Boulevard Ponte Vedra Beach, FL 32082</p> <p>Telephone: 904-285-7777, Fax: 904-285-0906 Guestroom Rate: \$97.00 each night for Single/Double from 8/5/12 – 8/10/12 Group Name: FDLE - Criminal Justice Standards and Training Commission Meeting Reservation Deadline: July 20, 2012</p>	<p style="text-align: center;">NOVEMBER 1, 2012 Hyatt Regency Sarasota 1000 Boulevard of the Arts Sarasota, FL 34236</p> <p>Telephone: 941-953-1234, Fax: 941-952-1987 Guestroom Rate: \$86.00 each night for Single/Double from 10/28/12 – 11/2/12 Reservation Deadline: October 12, 2012</p>
<p style="text-align: center;">January 31, 2013 The Renaissance At World Golf Village 500 South Legacy Trail St. Augustine, FL 32092</p> <p>Telephone: 904-940-8000, Fax: TBA Guestroom Rate: \$109.00 each night for Single/Double from 1/29/13 – 2/2/13 Reservation Deadline: January 11, 2013</p>	<p style="text-align: center;">MAY 9, 2013 Hyatt Regency Sarasota 1000 Boulevard of the Arts Sarasota, FL 34236</p> <p>Telephone: 941-953-1234, Fax: 941-952-1987 Guestroom rate: \$86.00 each night for Single/Double from 5/5/13 – 5/10/13 Reservation Deadline: April 19, 2013</p>
<p style="text-align: center;">AUGUST 8, 2013 Sawgrass Marriott 1000 PGA Tour Boulevard Ponte Vedra Beach, FL 32082</p> <p>Telephone: 904-285-7777, Fax: 904-285-0906 Guestroom Rate: \$97.00 each night for Single/Double from 8/4/13 – 8/9/13 Group Name: FDLE - Criminal Justice Standards and Training Commission Meeting Reservation Deadline: July 19, 2013</p>	<p style="text-align: center;">NOVEMBER 7, 2013 Hilton Sandestin Beach 4000 South Sandestin Boulevard Miramar Beach, FL 32550</p> <p>Telephone: 850-267-9500, Fax: 850-267-3076 Guestroom rate: \$78.00 each night for Single/Double from 11/3/13 – 11/8/13 (\$20.00 charge for each additional adult) Reservation Deadline: October 18, 2013</p>

19-MEMBER CRIMINAL JUSTICE STANDARDS AND
TRAINING COMMISSION MEMBERSHIP

Secretary of the Department of Corrections	Attorney General
<p>Assistant Secretary Russell Hosford (effective 8/24/11), proxy for Secretary Ken Tucker Office of Institutions Florida Department of Corrections 501 South Calhoun Street Tallahassee, Florida 32399-2500 Telephone Number: 850-488-2288 Fax Number: 850-487-3701 E-mail: Tucker.Ken@mail.dc.state.fl.us Secretary or Contact Person(s): April Cox (850-488-4757) and Mary Gonzalez (850-717-3243) E-mail: Cox.April@mail.dc.state.fl.us E-mail: Gonzalez.Mary@mail.dc.state.fl.us E-mail: Buss.Edwin@mail.dc.state.fl.us Term: Not applicable</p>	<p>Captain Steve Courtoy proxy for Attorney General Pam Bondi (effective 4/25/11) Tampa Police Department, District 11 411 N. Franklin Street Tampa, Florida 33602 Telephone Number: 813-913-6500 E-mail: Charles.Courtoy@tampagov.net Term: Not applicable</p>
Director of Florida Highway Patrol	
<p>Colonel David H. Brierton, Jr. (Effective 3/2/2011) Florida Department of Highway Safety and Motor Vehicles Division of Florida Highway Patrol Neil Kirkman Building, Room A437 2900 Apalachee Parkway Tallahassee, Florida 32399-0500 Telephone Number: 850-617-2300 Fax Number: 850-617-5113 E-mail: davidbrierton@flhsmv.gov Secretary: Elizabeth Denmark, 850-617-2309 E-mail: elizabethdenmark@flhsmv.gov Term: Not applicable</p>	
Sheriffs (3)	
<p>Sheriff John H. Rutherford Jacksonville Sheriff's Office 501 E. Bay Street Jacksonville, Florida 32202 Telephone Number: 904-630-5898 Fax Number: 904-630-1772 E-mail: Linda.McElroy@jaxsheriff.org Secretary: Linda McElroy E-mail: Linda.McElroy@jaxsheriff.org Partial Term: 4/7/2009 – 8/1/2009 First Term: 8/3/2009 – 8/1/2013</p>	<p>Sheriff Susan Benton Highlands County Sheriff's Office 434 Fernleaf Avenue Sebring, FL 33870 Telephone Number: 863-402-7243 Fax Number: 863-402-7296 E-mail: sheriff@highlandssheriff.org Secretary: Darlene Peebles E-mail: Dpeebles@highlandssheriff.org First Term: 12/10/2010 – 8/1/2014</p>
<p>Sheriff Ric L. Bradshaw Palm Beach County Sheriff's Office 3228 Gun Club Road West Palm Beach, Florida 33406 Telephone Number: 561-688-3021 Fax Number: 561-688-3033 E-mail: bradshaw@pbso.org Executive Assistant: Annette Marvin E-mail: marvina@pbso.org First Term: 8/25/2008 – 8/1/2012</p>	

Chiefs of Police (3)	
<p>Chief Dennis M. Jones Tallahassee Police Department 234 East Seventh Avenue Tallahassee, FL 32303 Telephone Number: 850-891-4393 Fax Number: 850-891-4428 E-mail: Dennis.Jones@talgov.com Secretary Sharon Chrishon E-mail: Sharon.Chrishon@talgov.com First Term: 12/10/2010 – 8/1/2014</p>	<p>Chief Steven Steinberg Aventura Police Department 19200 West Country Club Drive Aventura, Florida 33180 Telephone Number: 305-466-8966 Fax Number: 305-466-8991 E-mail: ssteinberg@aventurapolice.com Secretary: Rita Noa E-mail: Noar@aventurapolice.com First Term: 8/2/2011 – 8/1/2012</p>
<p>Chief Brian K. Lock West Melbourne Police Department 2290 Minton Road West Melbourne, Florida 32904 Telephone Number: 321-723-9673 E103 Fax Number: 321-952-2857 E-mail: Chief@WestMelbournePolice.org Secretary: Denise Garceau E-mail: dgarceau@westmelbournepolice.org First Term: 8/2/2011 – 8/1/2015</p>	
Law Enforcement Officers (5) Who are the Rank of Sergeant or Below	
<p>Sergeant Michael "Mick" McHale Sarasota Police Department Mailing Address: Florida Police Benevolent Association 2075 Main Street, Suite 4 Sarasota, Florida 34237 Telephone Number: 941-366-1436 Fax Number: 941-366-1447 E-mail: mick@flpba.org Secretary: Laura Smith; E-mail: laurasmith@flpba.org Partial Term: 5/1/2007 – 8/1/2009 First Term: 8/3/2009 – 8/1/2013</p>	<p>Officer Nelson Cuba President, Fraternal Order of Police Lodge 5-30 Jacksonville Sheriff's Office 5530 Beach Boulevard Jacksonville, Florida 32207 Telephone Number: 904-398-7010 Ext 17, for Corina Ext 11 Fax Number: 904-398-7192 E-mail: ncuba@fop530.com Secretary: Evelyn McCranie; E-mail: emccranie@fop530.com First Term: 12/5/2005 – 8/1/2009 Second Term: 8/3/2009 – 8/1/2013</p>
<p>Officer Patrick M. Hanrahan Broward County Sheriff's Office 2601 West Broward Boulevard Ft. Lauderdale, FL. 33312 Telephone Number: 954-584-7600 Fax Number: 954-583-0405 E-mail: Pat@BCPBA.org Secretary: NA First Term: 8/3/2009 – 8/1/2013</p>	<p>Sergeant John Rivera Miami-Dade Police Department Mailing Address: Dade County Police Benevolent Association 10680 N. W. 25th Street, Miami, Florida 33172 Telephone Number: 305-593-0044 Fax Number: 305-593-1901 E-mail: john@dcpba.org Secretary: Mora Rivas; E-mail: mora@dcpba.org First Term: 11/4/2004 – 8/1/2008 Second Term: 8/25/2008 – 8/1/2012</p>
<p>Officer Kathleen A. Connell Tallahassee Police Department 234 East Seventh Avenue Tallahassee, Florida 32303 Telephone Number: 850-891-4353 Fax Number: 850-891-4627 E-mail: Kathleen.Connell@talgov.com Secretary: NA First Term: 4/7/2009 – 8/1/2012</p>	

Correctional Officers (2) Administrator of a State Correctional Institution and a Sergeant or Lower Rank											
<p>Warden Edward L. Griffin Marion Correctional Institution Post Office Box 158 Lowell, Florida 32663-0158 3269 N.W. 105th St. (physical location) Lowell, Florida 32663-0158 Ocala, Florida 34475 (shipping only) Telephone Number: 352-401-6404 Fax Number: 352-840-5657 E-mail : Griffin.Edward@mail.dc.state.fl.us Secretary: Penny Wiseman E-Mail: Wiseman.Penny@mail.dc.state.fl.us First Term: 8/2/2011 – 8/1/2015</p>	<p>Officer Belinda Murvin Palm Beach County Sheriffs Office 673 West Fairgrounds Road West Palm Beach, Florida 33411 (Commission meeting materials will be mailed to her home address) Telephone Number: 561-688-4913 Pager: 561-610-0096 Fax Number: 561-688-4929 E-mail: murvinb@pbsso.org Secretary: None First Term: 10/9/2006 - 8/1/2010 Second Term: 11/4/2010 – 8/1/2014</p>										
Training Center Director	County Correctional Institution Head										
<p>Director James C. Brock St. Petersburg College Southeastern Public Safety Institute 3200 34th Street South St. Petersburg, Florida 33711-3829 Telephone Number: 727-341-4495 Fax Number: 727-341-4476 E-mail: brockj@spcollege.edu Secretary: Carol Mashburn (727-341-4530) E-mail: mashburn.carol@spcollege.edu First Term: 8/25/2008 - 8/1/2012</p>	<p>Captain Bennie G. Coleman, Detention Facility Administrator Columbia County Sheriff's Office 4917 US Highway 90 Lake City, Florida 32055-6288 Telephone Number: 386-755-7000 Fax Number: 386-754-1176 E-mail: Bennie.Coleman@columbiasheriff.org Secretary: Marcia Dow E-mail: Marcia.dow@columbiasheriff.org First Term: 8/2/2011 – 8/1/2015</p>										
State Resident	Commission Attorney										
<p>Ernest (Ernie) W. George, Chairman Police Benevolent Association 2100 Florida Mango Road West Palm Beach, Florida 33409 Telephone Number: 561-689-3745 Fax Number: 561-687-0154 E-mail: ernie@pbcpcbpa.org Secretary: Gail Seldomridge (561-689-3745) E-mail: gail@pbcpcbpa.org Partial Term: 1/6/2006 – 8/1/2009 First Term: 8/3/2009 – 8/1/2013</p>	<p>Chief Assistant Statewide Prosecutor Brian Fernandes Office of Attorney General Statewide Prosecution Fort Myers 2075 West First Street, Suite # 201 Fort Myers, Florida 33901 Telephone Number: 239-338-2440 Fax Number: 239-338-2341 E-mail: fernandes_brian@oag.state.fl.us Secretary: Dawn Andrews (239-338-2440) E-mail: dawn.andrews@myfloridalegal.com</p>										
Criminal Justice Professionalism Program Management	Commission Staff Attorneys										
<table style="width: 100%; border: none;"> <tr> <td style="width: 70%;">Program Director Michael Crews</td> <td style="text-align: right;">850-410-8611</td> </tr> <tr> <td>Bureau Chief Dwight Floyd</td> <td style="text-align: right;">850-410-8675</td> </tr> <tr> <td style="padding-left: 20px;">Bureau of Training</td> <td></td> </tr> <tr> <td>Bureau Chief Glen Hopkins</td> <td style="text-align: right;">850-410-8660</td> </tr> <tr> <td style="padding-left: 20px;">Bureau of Standards</td> <td></td> </tr> </table>	Program Director Michael Crews	850-410-8611	Bureau Chief Dwight Floyd	850-410-8675	Bureau of Training		Bureau Chief Glen Hopkins	850-410-8660	Bureau of Standards		<p>Assistant General Counsel Joe White (850-410-7688) and Assistant General Counsel Kerra Smith (850-410-7684) Florida Department of Law Enforcement Office of Executive Director, 2331 Phillips Road (Post Office Box 1489, 32302-1489), Tallahassee, Florida 32308</p>
Program Director Michael Crews	850-410-8611										
Bureau Chief Dwight Floyd	850-410-8675										
Bureau of Training											
Bureau Chief Glen Hopkins	850-410-8660										
Bureau of Standards											

AGENDA ITEM: 1A

Request for Variance or Waiver: Request for Waiver of Rule 11B-27.00212(14), F.A.C.,
by Cedar Key Police Department

ISSUE NUMBER 1

This agenda item is presented to the Commission by Cedar Key Police Department to request a permanent waiver of Rule 11B-27.00212(14), F.A.C.

EXECUTIVE SUMMARY

1. Three officers of the Cedar Key Police Department were requalified pursuant to Rule 11B-27.00212(14), F.A.C., for the 2008 (7/1/06 – 6/30/08) mandatory firearms requalification reporting cycle by two instructors who had not completed an internship or submitted an application to become a CJSTC-certified general and/or firearms instructor.
2. Two officers were requalified for the 2010 (7/1/2008 – 6/30/2010) reporting cycle by the same instructors. The officers who received mandatory firearms requalification instruction from these instructors made every effort to ensure they were in compliance with Rule 11B-27.00212(14), F.A.C.; however, because the instructors did not know they had to complete an Instructor Certification form CJSTC-71 or the certification internship required by the rule, this resulted in the present situation.
3. The Cedar Key Police Department believed, as did the instructors, that the firearms instructors were in compliance with CJSTC firearms instructor certification rules at the time the Department employed the instructors to requalify the officers.
4. The Cedar Key Police Department obtained mandatory firearms requalification instruction for its officers under a CJSTC-certified firearms instructor to ensure they were properly recertified for the 2010 - 2012 (7/1/10 – 6/30/12) reporting cycles.
5. The Cedar Key Police Department is requesting the Commission to view the 2008 and 2010 reporting cycles for the five officers as in compliance because they have complied with the performance requirements of Rule 11B-27.00212(14), F.A.C.

RECOMMENDATION(s): Commission staff recommends that the Commission grant the waiver of Rule 11B-27.00212(14), F.A.C.

VOTING IMPACT

CONSEQUENCES OF A "YES" VOTE ON STAFF RECOMMENDATION: The Cedar Key Police Department's request for a rule waiver shall be granted and the officers shall be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2006 – 2008 and 2008 – 2010 reporting cycles. The officers shall not incur a break in service.

CONSEQUENCES OF A "NO" VOTE ON STAFF RECOMMENDATION: The Cedar Key Police Department's request for a rule waiver shall not be granted and the officers shall not be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2006 – 2008 and 2008 – 2010 reporting cycles. The officers shall incur a break in service.

SUPPORTING INFORMATION

1. Rule 11B-27.00212(14), F.A.C., Maintenance of Officer Certification, **page 2**.
2. Section 120.542, F.S., Variances and Waivers, **page 3**.
3. Memorandum dated November 1, 2011, from Field Representative Donna Suereth, **page 4**.
4. Letter dated November 7, 2011, to State Attorney William Cervone, **page 5**.
5. Petition for Waiver of Rule 11B-27.00212(14), F.A.C., by Cedar Key Police Department, **pages 6 - 10**.

11B-27.00212; Maintenance of Officer Certification.

(14) Law Enforcement Officer Firearms Qualification Standard. Beginning July 1, 2006, a law enforcement officer shall be required to qualify on the Commission's approved course of fire with the proficiency skills documented on the Law Enforcement Officer Firearms Qualification Standard, form CJSTC-86A, revised January 29, 2009, hereby incorporated by reference, and maintained in the officer's employment file. Form CJSTC-86A can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850)410-8615.

(a) A certified law enforcement officer who fails to demonstrate proficiency skills on the required firearms qualification standard shall not perform the duties of a sworn officer.

(b) Reporting of the compliance with this standard shall be June 30, 2008, and every two years thereafter. Documentation supporting the demonstration of proficiency skills shall be reported on the Mandatory Firearms Training Report, form CJSTC-86, revised November 8, 2007, hereby incorporated by reference, and maintained in the officer's file. Form CJSTC-86 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The employing agency shall submit or electronically transmit to Commission staff through the Commission's ATMS, the date of completion.

(c) In the event a certified law enforcement officer fails to meet this standard by June 30 of each reporting year, the officer's certificate shall become inactive until the employing agency provides documentation to Commission staff establishing that the firearms qualification standard has been satisfied. Active officers who were separated from employment or appointment for not satisfying the firearms qualification standard, and do not meet the standard within six months of separation from employment or appointment, shall comply with the certification or reactivation of certification requirement(s) in subsection 11B-27.002(1), F.A.C., prior to reemployment.

(d) The certificate of a law enforcement officer shall become inactive if the officer has separated from employment or appointment and is not reemployed or reappointed within the two-year reporting cycle. The officer will be required to comply with the firearms qualification standard upon employment or appointment.

(e) In the event a certified law enforcement officer is injured in the line of duty and fails to meet this standard by June 30 of a reporting year, the agency administrator or designee shall complete the Injury in the Line of Duty, form CJSTC-86B, created January 29, 2009, hereby incorporated by reference. Form CJSTC-86B can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The agency shall submit form CJSTC-86B and the supporting documentation to Commission staff prior to the June 30 deadline to ensure the officer's certificate does not become inactive on the reporting deadline for that two-year reporting cycle.

Rulemaking Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12, 943.13(11), 943.135, 943.1395(3), 943.1701, 943.1715, 943.1716, 943.253 FS. History—New 11-5-02, Amended 12-3-03, 11-30-04, 3-27-06, 3-21-07, 6-9-08, 4-16-09, 9-28-09, 6-3-10.

120.542; Variances and Waivers. Section 120.542(2), F.S., mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of this statute states:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

AGENDA ITEM: 1B

Request for Variance or Waiver: Request for Waiver of Rule 11B-27.00212(14), F.A.C.,
by Lee County Port Authority Police Department

ISSUE NUMBER 1

This agenda item is presented to the Commission by Lee County Port Authority Police Department to request a permanent waiver of Rule 11B-27.00212(14), F.A.C.

EXECUTIVE SUMMARY

1. 59 officers of the Lee County Port Authority Police Department were requalified pursuant to Rule 11B-27.00212(14), F.A.C., for the 2008 (7/1/06 – 6/30/08) mandatory firearms requalification reporting cycle by instructors who had not completed training to become a CJSTC-certified general and/or firearms instructor. The officers who received mandatory firearms requalification instruction from these instructors made every effort to ensure they were in compliance with Rule 11B-27.00212(14), F.A.C.; however, because the instructors did not know they had to complete an Instructor Certification Application form CJSTC-71 or the certification internship required by the rule, this resulted in the present situation.
2. The Lee County Port Authority Police Department believed, as did the instructors, that the firearms instructors were in compliance with CJSTC firearms instructor certification rules at the time the Department employed the instructors to requalify the officers.
3. The Lee County Port Authority Police Department obtained mandatory firearms requalification instruction for its officers under a CJSTC-certified firearms instructor to ensure they were properly recertified for the 2008 - 2010 (7/1/2008 – 6/30/2010) and 2010 - 2012 (7/1/10 – 6/30/12) reporting cycles.
4. The Lee County Port Authority Police Department is requesting the Commission to view the 2008 reporting cycle for the 59 officers as in compliance because they have complied with the performance requirements of Rule 11B-27.00212(14), F.A.C.

RECOMMENDATION(S): Commission staff recommends the Commission to grant the waiver of Rule 11B-27.00212(14), F.A.C.

VOTING IMPACT

CONSEQUENCES OF A "YES" VOTE ON STAFF RECOMMENDATION: The Lee County Port Authority Police Department's request for a rule waiver shall be granted and the officers shall be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 reporting cycle. The officers shall not incur a break in service.

CONSEQUENCES OF A "NO" VOTE ON STAFF RECOMMENDATION: The Lee County Port Authority Police Department's request for a rule waiver shall not be granted and the officers shall not be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 reporting cycle. The officers shall incur a break in service.

SUPPORTING INFORMATION

1. Rule 11B-27.00212(14), F.A.C., Maintenance of Officer Certification, **page 2**.
2. Section 120.542, F.S., Variances and Waivers, **page 3**.
3. Memorandum dated September 27, 2011, from Field Representative Dawn Reed, **pages 4 - 5**.
4. Letter dated November 8, 2011, to State Attorney Stephen Russell, **page 6**.
5. Petition for Waiver of Rule 11B-27.00212(14), F.A.C., by Lee County Port Authority Police Department, **pages 7 - 11**.

11B-27.00212; Maintenance of Officer Certification.

(14) Law Enforcement Officer Firearms Qualification Standard. Beginning July 1, 2006, a law enforcement officer shall be required to qualify on the Commission's approved course of fire with the proficiency skills documented on the Law Enforcement Officer Firearms Qualification Standard, form CJSTC-86A, revised January 29, 2009, hereby incorporated by reference, and maintained in the officer's employment file. Form CJSTC-86A can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850)410-8615.

(a) A certified law enforcement officer who fails to demonstrate proficiency skills on the required firearms qualification standard shall not perform the duties of a sworn officer.

(b) Reporting of the compliance with this standard shall be June 30, 2008, and every two years thereafter. Documentation supporting the demonstration of proficiency skills shall be reported on the Mandatory Firearms Training Report, form CJSTC-86, revised November 8, 2007, hereby incorporated by reference, and maintained in the officer's file. Form CJSTC-86 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The employing agency shall submit or electronically transmit to Commission staff through the Commission's ATMS, the date of completion.

(c) In the event a certified law enforcement officer fails to meet this standard by June 30 of each reporting year, the officer's certificate shall become inactive until the employing agency provides documentation to Commission staff establishing that the firearms qualification standard has been satisfied. Active officers who were separated from employment or appointment for not satisfying the firearms qualification standard, and do not meet the standard within six months of separation from employment or appointment, shall comply with the certification or reactivation of certification requirement(s) in subsection 11B-27.002(1), F.A.C., prior to reemployment.

(d) The certificate of a law enforcement officer shall become inactive if the officer has separated from employment or appointment and is not reemployed or reappointed within the two-year reporting cycle. The officer will be required to comply with the firearms qualification standard upon employment or appointment.

(e) In the event a certified law enforcement officer is injured in the line of duty and fails to meet this standard by June 30 of a reporting year, the agency administrator or designee shall complete the Injury in the Line of Duty, form CJSTC-86B, created January 29, 2009, hereby incorporated by reference. Form CJSTC-86B can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The agency shall submit form CJSTC-86B and the supporting documentation to Commission staff prior to the June 30 deadline to ensure the officer's certificate does not become inactive on the reporting deadline for that two-year reporting cycle.

Rulemaking Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12, 943.13(11), 943.135, 943.1395(3), 943.1701, 943.1715, 943.1716, 943.253 FS. History—New 11-5-02, Amended 12-3-03, 11-30-04, 3-27-06, 3-21-07, 6-9-08, 4-16-09, 9-28-09, 6-3-10.

120.542; Variances and Waivers. Section 120.542(2), F.S., mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of this statute states:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

AGENDA ITEM: 1C

Request for Variance or Waiver: Request for Waiver of Rule 11B-27.00212(14), F.A.C.,
by Daytona Beach Police Department

ISSUE NUMBER 1

This agenda item is presented to the Commission by Daytona Beach Police Department to request a permanent waiver of Rule 11B-27.00212(14), F.A.C.

EXECUTIVE SUMMARY

1. 32 officers of the Daytona Beach Police Department were requalified pursuant to Rule 11B-27.00212(14), F.A.C., for the 2008 (7/1/06 – 6/30/08) and 2010 (7/1/2008 – 6/30/2010) mandatory firearms requalification reporting cycles by instructors who had not completed training to become a CJSTC-certified general and/or firearms instructor. The officers who received mandatory firearms requalification instruction from these instructors made every effort to ensure they were in compliance with Rule 11B-27.00212(14), F.A.C.; however, because the instructors did not know they had to complete the Instructor Certification Application form CJSTC-71 or the certification internship required by the rule, this resulted in the present situation.
2. The Daytona Beach Police Department believed, as did the instructors, that the firearms instructors were in compliance with CJSTC firearms instructor certification rules at the time the Department employed the instructors to requalify the officers.
3. The Daytona Beach Police Department obtained mandatory firearms requalification instruction for its officers under a CJSTC-certified firearms instructor to ensure they were properly recertified for the 2010 - 2012 (7/1/10 – 6/30/12) reporting cycle.
4. The Daytona Beach Police Department is requesting the Commission to view the 2008 and 2010 reporting cycles for the 32 officers as in compliance because they have complied with the performance requirements of Rule 11B-27.00212(14), F.A.C.

RECOMMENDATION(s): Commission staff recommends the Commission to grant the waiver of Rule 11B-27.00212(14), F.A.C.

VOTING IMPACT

CONSEQUENCES OF A "YES" VOTE ON STAFF RECOMMENDATION: The Daytona Beach Police Department's request for a rule waiver shall be granted and the officers shall be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 and 2010 reporting cycles. The officers shall not incur a break in service.

CONSEQUENCES OF A "NO" VOTE ON STAFF RECOMMENDATION: The Daytona Beach Police Department's request for a rule waiver shall not be granted and the officers shall not be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 and 2010 reporting cycles. The officers shall incur a break in service.

SUPPORTING INFORMATION

1. Rule 11B-27.00212(14), F.A.C., Maintenance of Officer Certification, **page 2**.
2. Section 120.542, F.S., Variances and Waivers, **page 3**.
3. Memorandum dated October 11, 2011, from Field Representative Kathy Myers, **pages 4 – 5**.
4. Letter dated November 4, 2011, to State Attorney R.J. Larizza, **page 6**.
5. Petition for Waiver of Rule 11B-27.00212(14), F.A.C., by Daytona Beach Police Department, **pages 7 - 12**.

11B-27.00212; Maintenance of Officer Certification.

(14) Law Enforcement Officer Firearms Qualification Standard. Beginning July 1, 2006, a law enforcement officer shall be required to qualify on the Commission's approved course of fire with the proficiency skills documented on the Law Enforcement Officer Firearms Qualification Standard, form CJSTC-86A, revised January 29, 2009, hereby incorporated by reference, and maintained in the officer's employment file. Form CJSTC-86A can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850)410-8615.

(a) A certified law enforcement officer who fails to demonstrate proficiency skills on the required firearms qualification standard shall not perform the duties of a sworn officer.

(b) Reporting of the compliance with this standard shall be June 30, 2008, and every two years thereafter. Documentation supporting the demonstration of proficiency skills shall be reported on the Mandatory Firearms Training Report, form CJSTC-86, revised November 8, 2007, hereby incorporated by reference, and maintained in the officer's file. Form CJSTC-86 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The employing agency shall submit or electronically transmit to Commission staff through the Commission's ATMS, the date of completion.

(c) In the event a certified law enforcement officer fails to meet this standard by June 30 of each reporting year, the officer's certificate shall become inactive until the employing agency provides documentation to Commission staff establishing that the firearms qualification standard has been satisfied. Active officers who were separated from employment or appointment for not satisfying the firearms qualification standard, and do not meet the standard within six months of separation from employment or appointment, shall comply with the certification or reactivation of certification requirement(s) in subsection 11B-27.002(1), F.A.C., prior to reemployment.

(d) The certificate of a law enforcement officer shall become inactive if the officer has separated from employment or appointment and is not reemployed or reappointed within the two-year reporting cycle. The officer will be required to comply with the firearms qualification standard upon employment or appointment.

(e) In the event a certified law enforcement officer is injured in the line of duty and fails to meet this standard by June 30 of a reporting year, the agency administrator or designee shall complete the Injury in the Line of Duty, form CJSTC-86B, created January 29, 2009, hereby incorporated by reference. Form CJSTC-86B can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The agency shall submit form CJSTC-86B and the supporting documentation to Commission staff prior to the June 30 deadline to ensure the officer's certificate does not become inactive on the reporting deadline for that two-year reporting cycle.

Rulemaking Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12, 943.13(11), 943.135, 943.1395(3), 943.1701, 943.1715, 943.1716, 943.253 FS. History—New 11-5-02, Amended 12-3-03, 11-30-04, 3-27-06, 3-21-07, 6-9-08, 4-16-09, 9-28-09, 6-3-10.

120.542; Variances and Waivers. Section 120.542(2), F.S., mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of this statute states:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

AGENDA ITEM: 1D

Request for Variance or Waiver: Request for Waiver of Rule 11B-27.00212(14), F.A.C.,
by Lake Hamilton Police Department

ISSUE NUMBER 1

This agenda item is presented to the Commission by Lake Hamilton Police Department to request a permanent waiver of Rule 11B-27.00212(14), F.A.C.

EXECUTIVE SUMMARY

1. Two officers of the Lake Hamilton Police Department were requalified pursuant to Rule 11B-27.00212(14), F.A.C., for the 2008 (7/1/06 – 6/30/08) mandatory firearms requalification reporting cycle by an instructor who had not completed training to become a CJSTC-certified general and/or firearms instructor. The officers who received mandatory firearms requalification instruction from this instructor made every effort to ensure they were in compliance with Rule 11B-27.00212(14), F.A.C.; however, because the instructor did not know he had to complete an Instructor Certification Application form CJSTC-71 or the certification internship required by the rule, this resulted in the present situation.
2. The Lake Hamilton Police Department believed, as did the instructor, that the firearms instructor was in compliance with CJSTC firearms instructor certification rules at the time the Department employed the instructor to requalify the officers.
3. The Lake Hamilton Police Department obtained mandatory firearms requalification instruction for its officers under a CJSTC-certified firearms instructor to ensure they were properly recertified for the 2008 - 2010 (7/1/2008 – 6/30/2010) and 2010 - 2012 (7/1/10 – 6/30/12) reporting cycles.
4. The Lake Hamilton Police Department is requesting the Commission to view the 2008 reporting cycle for the two officers as in compliance because they have complied with the performance requirements of Rule 11B-27.00212(14), F.A.C.

RECOMMENDATION(S): Commission staff recommends the Commission to grant the waiver of Rule 11B-27.00212(14), F.A.C.

VOTING IMPACT

CONSEQUENCES OF A "YES" VOTE ON STAFF RECOMMENDATION: The Lake Hamilton Police Department's request for a rule waiver shall be granted and the officers shall be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 reporting cycle. The officers shall not incur a break in service.

CONSEQUENCES OF A "NO" VOTE ON STAFF RECOMMENDATION: The Lake Hamilton Police Department's request for a rule waiver shall not be granted and the officers shall not be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 reporting cycle. The officers shall incur a break in service.

SUPPORTING INFORMATION

1. Rule 11B-27.00212(14), F.A.C., Maintenance of Officer Certification, **page 2**.
2. Section 120.542, F.S., Variances and Waivers, **page 3**.
3. Memorandum dated October 12, 2011, from Field Representative Chuck Reaume, **page 4**.
4. Letter dated November 14, 2011, to State Attorney Jerry Hill, **page 5**.
5. Petition for Waiver of Rule 11B-27.00212(14), F.A.C., by Lake Hamilton Police Department, **pages 6 - 9**.

11B-27.00212; Maintenance of Officer Certification.

(14) Law Enforcement Officer Firearms Qualification Standard. Beginning July 1, 2006, a law enforcement officer shall be required to qualify on the Commission's approved course of fire with the proficiency skills documented on the Law Enforcement Officer Firearms Qualification Standard, form CJSTC-86A, revised January 29, 2009, hereby incorporated by reference, and maintained in the officer's employment file. Form CJSTC-86A can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850)410-8615.

(a) A certified law enforcement officer who fails to demonstrate proficiency skills on the required firearms qualification standard shall not perform the duties of a sworn officer.

(b) Reporting of the compliance with this standard shall be June 30, 2008, and every two years thereafter. Documentation supporting the demonstration of proficiency skills shall be reported on the Mandatory Firearms Training Report, form CJSTC-86, revised November 8, 2007, hereby incorporated by reference, and maintained in the officer's file. Form CJSTC-86 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The employing agency shall submit or electronically transmit to Commission staff through the Commission's ATMS, the date of completion.

(c) In the event a certified law enforcement officer fails to meet this standard by June 30 of each reporting year, the officer's certificate shall become inactive until the employing agency provides documentation to Commission staff establishing that the firearms qualification standard has been satisfied. Active officers who were separated from employment or appointment for not satisfying the firearms qualification standard, and do not meet the standard within six months of separation from employment or appointment, shall comply with the certification or reactivation of certification requirement(s) in subsection 11B-27.002(1), F.A.C., prior to reemployment.

(d) The certificate of a law enforcement officer shall become inactive if the officer has separated from employment or appointment and is not reemployed or reappointed within the two-year reporting cycle. The officer will be required to comply with the firearms qualification standard upon employment or appointment.

(e) In the event a certified law enforcement officer is injured in the line of duty and fails to meet this standard by June 30 of a reporting year, the agency administrator or designee shall complete the Injury in the Line of Duty, form CJSTC-86B, created January 29, 2009, hereby incorporated by reference. Form CJSTC-86B can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The agency shall submit form CJSTC-86B and the supporting documentation to Commission staff prior to the June 30 deadline to ensure the officer's certificate does not become inactive on the reporting deadline for that two-year reporting cycle.

Rulemaking Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12, 943.13(11), 943.135, 943.1395(3), 943.1701, 943.1715, 943.1716, 943.253 FS. History—New 11-5-02, Amended 12-3-03, 11-30-04, 3-27-06, 3-21-07, 6-9-08, 4-16-09, 9-28-09, 6-3-10.

120.542; Variances and Waivers. Section 120.542(2), F.S., mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of this statute states:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

AGENDA ITEM: 1E

Request for Variance or Waiver: Request for Waiver of Rule 11B-27.00212(14), F.A.C.,
by Lawtey Police Department

ISSUE NUMBER 1

This agenda item is presented to the Commission by Lawtey Police Department to request a permanent waiver of Rule 11B-27.00212(14), F.A.C.

EXECUTIVE SUMMARY

1. The Lawtey Police Department hired Captain Troy Bennett in January of 2007, and his firearm qualification was verified through his previous employer. Two audits of Captain Bennett's file failed to find that Captain Bennett's requalification during the 2008 (7/1/2006 – 6/30/2008) mandatory firearms requalification reporting cycle failed to qualify him on the 40-round course or sign the Law Enforcement Officer Firearms Qualification Standard form CJSTC-86A. The discrepancy was discovered after Captain Bennett requalified for the 2010 (7/1/2008 – 6/30/2010) reporting cycle.
2. The Lawtey Police Department believed that Captain Bennett's requalification for the 2008 (7/1/2006 – 6/30/2008) reporting cycle was complete and that he did not know he had failed to complete the course of fire for his previous employer, or that form CJSTC-86A had been not completed and signed.
3. The Lawtey Police Department states that Captain Bennett has been an active member of the Department's team for several years, and to have this rule waiver denied and Captain Bennett declared inactive retroactive to 7/1/2008, would violate the principles of fairness and cause substantial hardship to the Department.

RECOMMENDATION(S): Commission staff recommends the Commission to grant the waiver of Rule 11B-27.00212(14), F.A.C.

VOTING IMPACT

CONSEQUENCES OF A "YES" VOTE ON STAFF RECOMMENDATION: The Lawtey Police Department's request for a rule waiver shall be granted for the 2008 reporting cycle and Captain Bennett shall be granted a waiver of Rule 11B-27.00212(14), F.A.C. Captain Bennett shall not incur a break in service.

CONSEQUENCES OF A "NO" VOTE ON STAFF RECOMMENDATION: The Lawtey Police Department's request for a rule waiver shall be denied for the 2008 reporting cycle and Captain Bennett shall not be granted a waiver of Rule 11B-27.00212(14), F.A.C. Captain Bennett shall incur a break in service.

SUPPORTING INFORMATION

1. Rule 11B-27.00212(14), F.A.C., Maintenance of Officer Certification., page 2.
2. Section 120.542, F.S., Variances and Waivers, page 3.
3. Memorandum dated September 15, 2011, from Field Representative Kathy Myers, page 4.
4. Letter dated November 4, 2011, to State Attorney William Cervone, page 5.
5. Petition for Waiver of Rule 11B-27.00212(14), F.A.C., by Lawtey Police Department, pages 6 - 10.

11B-27.00212; Maintenance of Officer Certification.

(14) Law Enforcement Officer Firearms Qualification Standard. Beginning July 1, 2006, a law enforcement officer shall be required to qualify on the Commission's approved course of fire with the proficiency skills documented on the Law Enforcement Officer Firearms Qualification Standard, form CJSTC-86A, revised January 29, 2009, hereby incorporated by reference, and maintained in the officer's employment file. Form CJSTC-86A can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850)410-8615.

(a) A certified law enforcement officer who fails to demonstrate proficiency skills on the required firearms qualification standard shall not perform the duties of a sworn officer.

(b) Reporting of the compliance with this standard shall be June 30, 2008, and every two years thereafter. Documentation supporting the demonstration of proficiency skills shall be reported on the Mandatory Firearms Training Report, form CJSTC-86, revised November 8, 2007, hereby incorporated by reference, and maintained in the officer's file. Form CJSTC-86 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The employing agency shall submit or electronically transmit to Commission staff through the Commission's ATMS, the date of completion.

(c) In the event a certified law enforcement officer fails to meet this standard by June 30 of each reporting year, the officer's certificate shall become inactive until the employing agency provides documentation to Commission staff establishing that the firearms qualification standard has been satisfied. Active officers who were separated from employment or appointment for not satisfying the firearms qualification standard, and do not meet the standard within six months of separation from employment or appointment, shall comply with the certification or reactivation of certification requirement(s) in subsection 11B-27.002(1), F.A.C., prior to reemployment.

(d) The certificate of a law enforcement officer shall become inactive if the officer has separated from employment or appointment and is not reemployed or reappointed within the two-year reporting cycle. The officer will be required to comply with the firearms qualification standard upon employment or appointment.

(e) In the event a certified law enforcement officer is injured in the line of duty and fails to meet this standard by June 30 of a reporting year, the agency administrator or designee shall complete the Injury in the Line of Duty, form CJSTC-86B, created January 29, 2009, hereby incorporated by reference. Form CJSTC-86B can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The agency shall submit form CJSTC-86B and the supporting documentation to Commission staff prior to the June 30 deadline to ensure the officer's certificate does not become inactive on the reporting deadline for that two-year reporting cycle.

Rulemaking Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12, 943.13(11), 943.135, 943.1395(3), 943.1701, 943.1715, 943.1716, 943.253 FS. History—New 11-5-02, Amended 12-3-03, 11-30-04, 3-27-06, 3-21-07, 6-9-08, 4-16-09, 9-28-09, 6-3-10.

120.542; Variances and Waivers. Section 120.542(2), F.S., mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of this statute states:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

AGENDA ITEM: 1F

Request for Variance or Waiver: Request for Waiver of Rule 11B-27.00212(14), F.A.C.,
by Alachua County Sheriff's Office

ISSUE NUMBER 1

This agenda item is presented to the Commission by Alachua County Sheriff's Office to request a permanent waiver of Rule 11B-27.00212(14), F.A.C.

EXECUTIVE SUMMARY

1. Five officers of the Alachua County Sheriff's Office were requalified pursuant to Rule 11B-27.00212(14), F.A.C., for the 2008 (7/1/06 – 6/30/08) mandatory firearms requalification cycle, and one officer was requalified for the 2010 (7/1/2008 – 6/30/2010) mandatory firearms requalification reporting cycle by instructors who had not completed training to become a CJSTC-certified general and/or firearms instructor. The officers who received mandatory firearms requalification instruction from these instructors made every effort to ensure they were in compliance with Rule 11B-27.00212(14), F.A.C.; however, because the instructors did not know they had to complete an Instructor Certification Application form CJSTC-71 or the certification internship required by the rule, this resulted in the present situation.
2. The Alachua County Sheriff's Office believed, as did the instructors, that the firearms instructors were in compliance with the CJSTC firearms instructor certification rules at the time the Department employed the instructors to requalify the officers.
3. The Alachua County Sheriff's Office obtained mandatory firearms requalification instruction for its officers under a CJSTC-certified firearms instructor to ensure they were properly recertified for the 2010 - 2012 (7/1/10 – 6/30/12) reporting cycle.
4. The Alachua County Sheriff's Office is requesting the Commission to view the 2008 reporting cycle for the five officers and the 2010 reporting cycle for the one officer as in compliance because they have complied with the performance requirements of Rule 11B-27.00212(14), F.A.C.

RECOMMENDATION(S): Commission staff recommends the Commission to grant the waiver of Rule 11B-27.00212(14), F.A.C.

VOTING IMPACT

CONSEQUENCES OF A "YES" VOTE ON STAFF RECOMMENDATION: The Alachua County Sheriff's Office request for a rule waiver shall be granted and five officers for the 2008 reporting cycle and one officer for the 2010 reporting cycle shall be deemed compliant with Rule 11B-27.00212(14), F.A.C. The officers shall not incur a break in service.

CONSEQUENCES OF A "NO" VOTE ON STAFF RECOMMENDATION: The Alachua County Sheriff's Office request for a rule waiver shall not be granted and five officers for the 2008 reporting cycle and one officer for the 2010 reporting cycle shall not be deemed compliant with Rule 11B-27.00212(14), F.A.C. The officers shall incur a break in service.

SUPPORTING INFORMATION

1. Rule 11B-27.00212(14), F.A.C., Maintenance of Officer Certification, **page 2**.
2. Section 120.542, F.S., Variances and Waivers, **page 3**.
3. Memorandum dated October 18, 2011, from Field Representative Donna Suereth, **pages 4 - 5**.
4. Letter dated November 7, 2011, to State Attorney Bill Cervonce, **page 6**.
5. Petition for Waiver of Rule 11B-27.00212(14), F.A.C., by Alachua County Sheriff's Office, **pages 7 - 10**.

11B-27.00212; Maintenance of Officer Certification.

(14) Law Enforcement Officer Firearms Qualification Standard. Beginning July 1, 2006, a law enforcement officer shall be required to qualify on the Commission's approved course of fire with the proficiency skills documented on the Law Enforcement Officer Firearms Qualification Standard, form CJSTC-86A, revised January 29, 2009, hereby incorporated by reference, and maintained in the officer's employment file. Form CJSTC-86A can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850)410-8615.

(a) A certified law enforcement officer who fails to demonstrate proficiency skills on the required firearms qualification standard shall not perform the duties of a sworn officer.

(b) Reporting of the compliance with this standard shall be June 30, 2008, and every two years thereafter. Documentation supporting the demonstration of proficiency skills shall be reported on the Mandatory Firearms Training Report, form CJSTC-86, revised November 8, 2007, hereby incorporated by reference, and maintained in the officer's file. Form CJSTC-86 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The employing agency shall submit or electronically transmit to Commission staff through the Commission's ATMS, the date of completion.

(c) In the event a certified law enforcement officer fails to meet this standard by June 30 of each reporting year, the officer's certificate shall become inactive until the employing agency provides documentation to Commission staff establishing that the firearms qualification standard has been satisfied. Active officers who were separated from employment or appointment for not satisfying the firearms qualification standard, and do not meet the standard within six months of separation from employment or appointment, shall comply with the certification or reactivation of certification requirement(s) in subsection 11B-27.002(1), F.A.C., prior to reemployment.

(d) The certificate of a law enforcement officer shall become inactive if the officer has separated from employment or appointment and is not reemployed or reappointed within the two-year reporting cycle. The officer will be required to comply with the firearms qualification standard upon employment or appointment.

(e) In the event a certified law enforcement officer is injured in the line of duty and fails to meet this standard by June 30 of a reporting year, the agency administrator or designee shall complete the Injury in the Line of Duty, form CJSTC-86B, created January 29, 2009, hereby incorporated by reference. Form CJSTC-86B can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The agency shall submit form CJSTC-86B and the supporting documentation to Commission staff prior to the June 30 deadline to ensure the officer's certificate does not become inactive on the reporting deadline for that two-year reporting cycle.

Rulemaking Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12, 943.13(11), 943.135, 943.1395(3), 943.1701, 943.1715, 943.1716, 943.253 FS. History—New 11-5-02, Amended 12-3-03, 11-30-04, 3-27-06, 3-21-07, 6-9-08, 4-16-09, 9-28-09, 6-3-10.

120.542; Variances and Waivers. Section 120.542(2), F.S., mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of this statute states:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

AGENDA ITEM: 1G

Request for Variance or Waiver: Request for Waiver of Rule 11B-27.00212(14), F.A.C., by
Gulf Breeze Police Department

ISSUE NUMBER 1

This agenda item is presented to the Commission by City of Gulf Breeze Police Department to request a permanent waiver of Rule 11B-27.00212(14), F.A.C.

EXECUTIVE SUMMARY

1. The Gulf Breeze Police Department utilized firearms instructors to conduct mandatory firearms requalification for 33 officers during the 2006 – 2008 (7/1/2006 – 6/30/2008) and/or 2008 – 2010 (7/1/2008 – 6/30/2010) mandatory firearms requalification reporting cycle. The instructor utilized by the Department had completed training to become a CJSTC-certified firearms instructor; however, he had not submitted his paperwork and was not a CJSTC-certified firearms instructor at the time he requalified the 33 officers. The instructor signed his own Law Enforcement Officer Firearms Qualification Standard form CJSTC-86A for the 2008 - 2010 reporting cycle; however, all other officers were properly qualified.
2. The Gulf Breeze Police Department made every effort to ensure that a CJSTC-certified firearms instructor requalified the 33 officers for the 2008 and 2010 reporting cycles.
3. The City of Gulf Breeze Police Department has signed form CJSTC-86A for all 33 officers for the 2008 and 2010 reporting cycles. These forms, the testimony of the officers involved, and the instructor who supervised the requalifications, clearly demonstrate that the officers completed the course of fire with qualifying scores as mandated by Commission rule. (**Note:** Upon initial review, four forms for the 2010 reporting cycle could not be located; however, the forms were subsequently located).
4. The Gulf Breeze Police Department has ensured that this situation will not recur by hiring an officer to conduct mandatory firearms requalification retraining who is a CJSTC-certified firearms instructor.
5. The Gulf Breeze Police Department is requesting the Commission to view the 2008 and 2010 reporting cycles for the 33 officers as in compliance because the 33 officers have complied with the performance requirements of Rule 11B-27.00212(14), F.A.C.

RECOMMENDATION(S): Commission staff recommends the Commission to grant the waiver of Rule 11B-27.00212(14), F.A.C.

VOTING IMPACT

CONSEQUENCES OF A “YES” VOTE ON STAFF RECOMMENDATION: The Gulf Breeze Police Department's request for a rule waiver shall be granted and the 33 officers shall be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 and 2010 reporting cycles. The officers shall not incur a break in service.

CONSEQUENCES OF A “NO” VOTE ON STAFF RECOMMENDATION: The Gulf Breeze Police Department's request for a rule waiver shall not be granted and the 33 officers shall not be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 and 2010 reporting cycles. The officers shall incur a break in service.

SUPPORTING INFORMATION

1. Rule 11B-27.00212(14), F.A.C., Maintenance of Officer Certification, **page 2**.
2. Section 120.542, Variances and Waivers, F.S., **page 3**.
3. Memorandum dated October 21, 2011, from Field Specialist Wayne Graves, **pages 4 – 5**.
4. Letter dated November 16, 2011, from Honorable William Eddins of the State Attorney's Office, **page 6**.
5. Petition for Waiver of Rule 11B-27.00212(14), F.A.C., by the Gulf Breeze Police Department, **pages 7 - 11**.

11B-27.00212; Maintenance of Officer Certification.

(14) Law Enforcement Officer Firearms Qualification Standard. Beginning July 1, 2006, a law enforcement officer shall be required to qualify on the Commission's approved course of fire with the proficiency skills documented on the Law Enforcement Officer Firearms Qualification Standard, form CJSTC-86A, revised January 29, 2009, hereby incorporated by reference, and maintained in the officer's employment file. Form CJSTC-86A can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850)410-8615.

(a) A certified law enforcement officer who fails to demonstrate proficiency skills on the required firearms qualification standard shall not perform the duties of a sworn officer.

(b) Reporting of the compliance with this standard shall be June 30, 2008, and every two years thereafter. Documentation supporting the demonstration of proficiency skills shall be reported on the Mandatory Firearms Training Report, form CJSTC-86, revised November 8, 2007, hereby incorporated by reference, and maintained in the officer's file. Form CJSTC-86 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The employing agency shall submit or electronically transmit to Commission staff through the Commission's ATMS, the date of completion.

(c) In the event a certified law enforcement officer fails to meet this standard by June 30 of each reporting year, the officer's certificate shall become inactive until the employing agency provides documentation to Commission staff establishing that the firearms qualification standard has been satisfied. Active officers who were separated from employment or appointment for not satisfying the firearms qualification standard, and do not meet the standard within six months of separation from employment or appointment, shall comply with the certification or reactivation of certification requirement(s) in subsection 11B-27.002(1), F.A.C., prior to reemployment.

(d) The certificate of a law enforcement officer shall become inactive if the officer has separated from employment or appointment and is not reemployed or reappointed within the two-year reporting cycle. The officer will be required to comply with the firearms qualification standard upon employment or appointment.

(e) In the event a certified law enforcement officer is injured in the line of duty and fails to meet this standard by June 30 of a reporting year, the agency administrator or designee shall complete the Injury in the Line of Duty, form CJSTC-86B, created January 29, 2009, hereby incorporated by reference. Form CJSTC-86B can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The agency shall submit form CJSTC-86B and the supporting documentation to Commission staff prior to the June 30 deadline to ensure the officer's certificate does not become inactive on the reporting deadline for that two-year reporting cycle.

Rulemaking Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12, 943.13(11), 943.135, 943.1395(3), 943.1701, 943.1715, 943.1716, 943.253 FS. History—New 11-5-02, Amended 12-3-03, 11-30-04, 3-27-06, 3-21-07, 6-9-08, 4-16-09, 9-28-09, 6-3-10.

120.542; Variances and Waivers. Section 120.542(2), F.S., mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of this statute states:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

AGENDA ITEM: 1H

Request for Variance or Waiver: Request for Waiver of Rule 11B-27.00212(14), F.A.C.,
by Hillsboro Beach Police Department

ISSUE NUMBER 1

This agenda item is presented to the Commission by Hillsboro Beach Police Department to request a permanent waiver of Rule 11B-27.00212(14), F.A.C.

EXECUTIVE SUMMARY

1. The Hillsboro Beach Police Department utilized a firearms instructor to conduct mandatory firearms requalification for 18 officers during the 2006 – 2008 mandatory firearms requalification reporting cycle. The instructor utilized by the Department had completed training to become a CJSTC-certified firearms instructor; however, had not submitted his paperwork and was not a CJSTC-certified firearms instructor at the time he requalified the 18 officers.
2. The Hillsboro Beach Police Department made every effort to ensure that the instructor who requalified the 18 officers for the 2006 - 2008 reporting cycle was a CJSTC-certified firearms instructor.
3. The Hillsboro Beach Police Department has signed the Law Enforcement Officer Firearms Qualification Standard form CJSTC-86A for the 18 officers for the 2006 – 2008 reporting cycle. These forms, the testimony of the officers involved, and the instructor who supervised the requalifications, clearly demonstrate that the officers have completed the course with qualifying scores as mandated by Commission rule.
4. The Hillsboro Beach Police Department has ensured that this situation will not recur by hiring an officer to conduct mandatory firearms requalification retraining who is a CJSTC-certified firearms instructor.
5. The Hillsboro Beach Police Department is requesting the Commission to view the 2008 reporting cycle for the 18 officers as in compliance because they have complied with the performance requirements of Rule 11B-27.00212(14), F.A.C.

RECOMMENDATION(S): Commission staff recommends the Commission to grant the waiver of Rule 11B-27.00212(14), F.A.C.

VOTING IMPACT

CONSEQUENCES OF A "YES" VOTE ON STAFF RECOMMENDATION: The Hillsboro Beach Police Department's request for a rule waiver shall be granted and 18 officers shall be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 reporting cycle. The officers shall not incur a break in service.

CONSEQUENCES OF A "NO" VOTE ON STAFF RECOMMENDATION: The Hillsboro Beach Police Department's request for a rule waiver shall not be granted and the 18 officers shall not be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 reporting cycle. The officers shall incur a break in service.

SUPPORTING INFORMATION

1. Rule 11B-27.00212(14), F.A.C., Maintenance of Officer Certification, **page 2**.
2. Section 120.542, F.S., Variances and Waivers, **page 3**.
3. Memorandums dated September 1, 2011 and November 8, 2011, from Field Representative Lee Zahuranec, **pages 4 – 5**.
4. Letter dated November 14, 2011, to State Attorney Michael J. Satz, **page 6**.
5. Petition for Waiver of Rule 11B-27.00212(14), F.A.C., by Hillsboro Beach Police Department, **pages 7 - 10**.

11B-27.00212; Maintenance of Officer Certification.

(14) Law Enforcement Officer Firearms Qualification Standard. Beginning July 1, 2006, a law enforcement officer shall be required to qualify on the Commission's approved course of fire with the proficiency skills documented on the Law Enforcement Officer Firearms Qualification Standard, form CJSTC-86A, revised January 29, 2009, hereby incorporated by reference, and maintained in the officer's employment file. Form CJSTC-86A can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850)410-8615.

(a) A certified law enforcement officer who fails to demonstrate proficiency skills on the required firearms qualification standard shall not perform the duties of a sworn officer.

(b) Reporting of the compliance with this standard shall be June 30, 2008, and every two years thereafter. Documentation supporting the demonstration of proficiency skills shall be reported on the Mandatory Firearms Training Report, form CJSTC-86, revised November 8, 2007, hereby incorporated by reference, and maintained in the officer's file. Form CJSTC-86 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The employing agency shall submit or electronically transmit to Commission staff through the Commission's ATMS, the date of completion.

(c) In the event a certified law enforcement officer fails to meet this standard by June 30 of each reporting year, the officer's certificate shall become inactive until the employing agency provides documentation to Commission staff establishing that the firearms qualification standard has been satisfied. Active officers who were separated from employment or appointment for not satisfying the firearms qualification standard, and do not meet the standard within six months of separation from employment or appointment, shall comply with the certification or reactivation of certification requirement(s) in subsection 11B-27.002(1), F.A.C., prior to reemployment.

(d) The certificate of a law enforcement officer shall become inactive if the officer has separated from employment or appointment and is not reemployed or reappointed within the two-year reporting cycle. The officer will be required to comply with the firearms qualification standard upon employment or appointment.

(e) In the event a certified law enforcement officer is injured in the line of duty and fails to meet this standard by June 30 of a reporting year, the agency administrator or designee shall complete the Injury in the Line of Duty, form CJSTC-86B, created January 29, 2009, hereby incorporated by reference. Form CJSTC-86B can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The agency shall submit form CJSTC-86B and the supporting documentation to Commission staff prior to the June 30 deadline to ensure the officer's certificate does not become inactive on the reporting deadline for that two-year reporting cycle.

Rulemaking Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12, 943.13(11), 943.135, 943.1395(3), 943.1701, 943.1715, 943.1716, 943.253 FS. History—New 11-5-02, Amended 12-3-03, 11-30-04, 3-27-06, 3-21-07, 6-9-08, 4-16-09, 9-28-09, 6-3-10.

120.542; Variances and Waivers. Section 120.542(2), F.S., mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of this statute states:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

AGENDA ITEM: 11

Request for Variance or Waiver: Request for Waiver of Rule 11B-27.00212(14), F.A.C.,
by the Office of the State Attorney, First Judicial Circuit

ISSUE NUMBER 1

This agenda item is presented to the Commission by the Office of the State Attorney, First Judicial Circuit, to request a permanent waiver of Rule 11B-27.00212(14), F.A.C.

EXECUTIVE SUMMARY

1. The Office of the State Attorney utilized firearms instructors to conduct mandatory firearms requalification for 16 officers during the 2006 – 2008 (7/1/2006 – 6/30/2008) mandatory firearms requalification reporting cycle, and one of the 16 officers for the 2008 - 2010 (7/1/2008 – 6/30/2010) mandatory firearms requalification reporting cycle.
2. Officer Rich Furmaniuk and Officer Timothy Sheldon, who were utilized as instructors by the Office of the State Attorney, had completed firearms instructor training to become CJSTC-certified firearms instructors; however, they had not completed the Instructor Techniques course or submitted the necessary paperwork, and were not CJSTC-certified firearms instructors at the time they requalified the officers. The Office of the State Attorney made every effort to ensure that its instructors who requalified the officers for the 2008 and 2010 reporting cycles were CJSTC-certified firearms instructors .
3. The Office of the State Attorney signed the Law Enforcement Officer Firearms Qualification Standard form CJSTC-86A for the 16 officers for the 2008 and 2010 reporting cycle. These forms and the testimony of the officers involved and the instructor who supervised the requalifications, clearly demonstrate that the officers have completed the course of fire with qualifying scores as mandated by Commission rule.
4. Several of the CJSTC-86A forms prepared for the 2010 reporting cycle were signed by Officer Harry Gomez, whose instructor certification had lapsed; however, he completed the requirements to become an active CJSTC-certified firearms instructor in October 2011.
5. The Office of the State Attorney stated that this situation will not recur because it has depth in the number of CJSTC-certified firearms instructors in its instructor pool to conduct mandatory firearms requalification retraining.
6. The Office of the State Attorney is requesting the Commission to view the 2008 reporting cycle for the 16 officers, and the 2010 reporting cycle for one of the 16 officers as in compliance, because they have complied with the performance requirements of Rule 11B-27.00212(14), F.A.C.

RECOMMENDATION(S): Commission staff recommends the Commission to grant the waiver of Rule 11B-27.00212(14), F.A.C.

VOTING IMPACT

CONSEQUENCES OF A "YES" VOTE ON STAFF RECOMMENDATION: The Office of the State Attorney's request for a rule waiver shall be granted for the 2008 reporting cycle for the 16 officers, and shall be granted for the 2010 reporting cycle for one of the 16 officers. The officers shall not incur a break in service.

CONSEQUENCES OF A "NO" VOTE ON STAFF RECOMMENDATION: The Office of the State Attorney's request for a rule waiver shall not be granted for the 2008 reporting cycle for the 16 officers, and shall not be granted for the 2010 reporting cycle for one of the 16 officers. The officers shall incur a break in service.

SUPPORTING INFORMATION

1. Rule 11B-27.00212(14), F.A.C., Maintenance of Officer Certification, **page 2**.
2. Section 120.542, F.S., Variances and Waivers, **page 3**.
3. Memorandum dated September 23, 2011, from Field Representative Wayne Graves, **pages 4 – 5**.
4. Letter dated November 8, 2011, to State Attorney William "Bill" Eddins, **page 6**.
5. Petition for Waiver of Rule 11B-27.00212(14), F.A.C., by the Office of the State Attorney, First Judicial Circuit, **pages 7 - 9**.

11B-27.00212; Maintenance of Officer Certification.

(14) Law Enforcement Officer Firearms Qualification Standard. Beginning July 1, 2006, a law enforcement officer shall be required to qualify on the Commission's approved course of fire with the proficiency skills documented on the Law Enforcement Officer Firearms Qualification Standard, form CJSTC-86A, revised January 29, 2009, hereby incorporated by reference, and maintained in the officer's employment file. Form CJSTC-86A can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850)410-8615.

(a) A certified law enforcement officer who fails to demonstrate proficiency skills on the required firearms qualification standard shall not perform the duties of a sworn officer.

(b) Reporting of the compliance with this standard shall be June 30, 2008, and every two years thereafter. Documentation supporting the demonstration of proficiency skills shall be reported on the Mandatory Firearms Training Report, form CJSTC-86, revised November 8, 2007, hereby incorporated by reference, and maintained in the officer's file. Form CJSTC-86 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The employing agency shall submit or electronically transmit to Commission staff through the Commission's ATMS, the date of completion.

(c) In the event a certified law enforcement officer fails to meet this standard by June 30 of each reporting year, the officer's certificate shall become inactive until the employing agency provides documentation to Commission staff establishing that the firearms qualification standard has been satisfied. Active officers who were separated from employment or appointment for not satisfying the firearms qualification standard, and do not meet the standard within six months of separation from employment or appointment, shall comply with the certification or reactivation of certification requirement(s) in subsection 11B-27.002(1), F.A.C., prior to reemployment.

(d) The certificate of a law enforcement officer shall become inactive if the officer has separated from employment or appointment and is not reemployed or reappointed within the two-year reporting cycle. The officer will be required to comply with the firearms qualification standard upon employment or appointment.

(e) In the event a certified law enforcement officer is injured in the line of duty and fails to meet this standard by June 30 of a reporting year, the agency administrator or designee shall complete the Injury in the Line of Duty, form CJSTC-86B, created January 29, 2009, hereby incorporated by reference. Form CJSTC-86B can be obtained at

the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The agency shall submit form CJSTC-86B and the supporting documentation to Commission staff prior to the June 30 deadline to ensure the officer's certificate does not become inactive on the reporting deadline for that two-year reporting cycle.

Rulemaking Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12, 943.13(11), 943.135, 943.1395(3), 943.1701, 943.1715, 943.1716, 943.253 FS. History—New 11-5-02, Amended 12-3-03, 11-30-04, 3-27-06, 3-21-07, 6-9-08, 4-16-09, 9-28-09, 6-3-10.

120.542; Variances and Waivers. Section 120.542(2), F.S., mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of this statute states:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

AGENDA ITEM: 1J

Request for Variance or Waiver: Request for Waiver of Rule 11B-27.00212(14), F.A.C.,
by Satellite Beach Police Department

ISSUE NUMBER 1

This agenda item is presented to the Commission by Satellite Beach Police Department to request a permanent waiver of Rule 11B-27.00212(14), F.A.C.

EXECUTIVE SUMMARY

1. The Satellite Beach Police Department's CJSTC-certified firearms instructor completed his mandatory firearms requalification requirement for the 2008 mandatory firearms requalification reporting cycle before an instructor who had completed all coursework to become a CJSTC-certified firearms instructor; however, he had not submitted his paperwork to obtain CJSTC-firearms instructor certification.
2. The Satellite Beach Police Department believed, as did the instructor supervising the requalification, that the supervising instructor was in compliance with CJSTC firearms instructor certification rules at the time the agency employed the instructor to requalify the officer.
3. The Satellite Beach Police Department obtained mandatory firearms requalification instruction for all of its officers under a CJSTC-certified firearms instructor to ensure they were properly recertified for the 2008 – 2010 (7/1/2008 – 6/30/2010) and 2010 - 2012 (7/1/10 – 6/30/12) reporting cycles.
4. The Satellite Beach Police Department is requesting the Commission to view the 2008 reporting cycle for the firearms instructor as in compliance because the instructor has complied with the performance requirements of Rule 11B-27.00212(14), F.A.C.

RECOMMENDATION(S): Commission staff recommends the Commission to grant the waiver of Rule 11B-27.00212(14), F.A.C.

VOTING IMPACT

CONSEQUENCES OF A "YES" VOTE ON STAFF RECOMMENDATION: The Satellite Beach Police Department's request for a rule waiver shall be granted and the officer shall be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 reporting cycle. The officer shall not incur a break in service.

CONSEQUENCES OF A "NO" VOTE ON STAFF RECOMMENDATION: The Satellite Beach Police Department's request for a rule waiver shall not be granted and the officer shall not be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 reporting cycle. The officer shall incur a break in service.

SUPPORTING INFORMATION

1. Rule 11B-27.00212(14), F.A.C., Maintenance of Officer Certification, **page 2**.
2. Section 120.542, F.S., Variances and Waivers, **page 3**.
3. Memorandum dated November 1, 2011, from Field Representative Joni Livingston, **page 4**.
4. Letter dated November 8, 2011, to State Attorney Norman Wolfinger, **page 5**.
5. Petition for Waiver of Rule 11B-27.00212(14), F.A.C., by Satellite Beach Police Department, **pages 6 - 9**.

11B-27.00212; Maintenance of Officer Certification.

(14) Law Enforcement Officer Firearms Qualification Standard. Beginning July 1, 2006, a law enforcement officer shall be required to qualify on the Commission's approved course of fire with the proficiency skills documented on the Law Enforcement Officer Firearms Qualification Standard, form CJSTC-86A, revised January 29, 2009, hereby incorporated by reference, and maintained in the officer's employment file. Form CJSTC-86A can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850)410-8615.

(a) A certified law enforcement officer who fails to demonstrate proficiency skills on the required firearms qualification standard shall not perform the duties of a sworn officer.

(b) Reporting of the compliance with this standard shall be June 30, 2008, and every two years thereafter. Documentation supporting the demonstration of proficiency skills shall be reported on the Mandatory Firearms Training Report, form CJSTC-86, revised November 8, 2007, hereby incorporated by reference, and maintained in the officer's file. Form CJSTC-86 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The employing agency shall submit or electronically transmit to Commission staff through the Commission's ATMS, the date of completion.

(c) In the event a certified law enforcement officer fails to meet this standard by June 30 of each reporting year, the officer's certificate shall become inactive until the employing agency provides documentation to Commission staff establishing that the firearms qualification standard has been satisfied. Active officers who were separated from employment or appointment for not satisfying the firearms qualification standard, and do not meet the standard within six months of separation from employment or appointment, shall comply with the certification or reactivation of certification requirement(s) in subsection 11B-27.002(1), F.A.C., prior to reemployment.

(d) The certificate of a law enforcement officer shall become inactive if the officer has separated from employment or appointment and is not reemployed or reappointed within the two-year reporting cycle. The officer will be required to comply with the firearms qualification standard upon employment or appointment.

(e) In the event a certified law enforcement officer is injured in the line of duty and fails to meet this standard by June 30 of a reporting year, the agency administrator or designee shall complete the Injury in the Line of Duty, form CJSTC-86B, created January 29, 2009, hereby incorporated by reference. Form CJSTC-86B can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The agency shall submit form CJSTC-86B and the supporting documentation to Commission staff prior to the June 30 deadline to ensure the officer's certificate does not become inactive on the reporting deadline for that two-year reporting cycle.

Rulemaking Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12, 943.13(11), 943.135, 943.1395(3), 943.1701, 943.1715, 943.1716, 943.253 FS. History—New 11-5-02, Amended 12-3-03, 11-30-04, 3-27-06, 3-21-07, 6-9-08, 4-16-09, 9-28-09, 6-3-10.

120.542; Variances and Waivers. Section 120.542(2), F.S., mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of this statute states:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

AGENDA ITEM: 1K

Request for Variance or Waiver: Request for Waiver of Rule 11B-27.00212(14), F.A.C.,
by Blountstown Police Department

ISSUE NUMBER 1

This agenda item is presented to the Commission by Blountstown Police Department to request a permanent waiver of Rule 11B-27.00212(14), F.A.C.

EXECUTIVE SUMMARY

1. The Blountstown Police Department utilized a firearms instructor to conduct mandatory firearms requalification for one officer during the 2006 – 2008 mandatory firearms requalification reporting cycle. The instructor utilized by the Department had been a CJSTC-certified firearms instructor; however, his certification had lapsed prior to conducting the requalification and he was not a CJSTC-certified firearms instructor at the time he requalified the officer.
2. The Blountstown Police Department made every effort to ensure that the instructor who requalified its officer for the 2006 -2008 reporting cycle was a CJSTC-certified firearms instructor. The Department, instructor, and the officer all believed the instructor's certification was current and valid at the time the instructor supervised the officer's requalification.
3. The Blountstown Police Department states that the instructor signed the officer's Law Enforcement Officer Firearms Qualification Standard form CJSTC-86A, indicating that the officer did shoot qualifying rounds for mandatory firearms requalification.
4. The Blountstown Police Department has ensured that this situation will not recur by hiring a CJSTC-certified firearms instructor to conduct all mandatory firearms requalification retraining.
5. The Blountstown Police Department is requesting the Commission to view the 2008 reporting cycle for the officer as in compliance because he has complied with the performance requirements of Rule 11B-27.00212(14), F.A.C.

RECOMMENDATION(S): Commission staff recommends the Commission to grant the waiver of Rule 11B-27.00212(14), F.A.C.

VOTING IMPACT

CONSEQUENCES OF A "YES" VOTE ON STAFF RECOMMENDATION: The Blountstown Police Department's request for a rule waiver shall be granted and the officer shall be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 reporting cycle. The officer shall not incur a break in service.

CONSEQUENCES OF A "NO" VOTE ON STAFF RECOMMENDATION: The Blountstown Police Department's request for a rule waiver shall not be granted and the officer shall not be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 reporting cycle. The officer shall incur a break in service.

SUPPORTING INFORMATION

1. Rule 11B-27.00212(14), F.A.C., Maintenance of Officer Certification, **page 2**.
2. Section 120.542, F.S., Variances and Waivers, **page 3**.
3. Memorandum dated October 14, 2011, from Field Representative Wayne Graves, **page 4**.
4. Letter dated November 8, 2011, to State Attorney Glenn Hess, **page 5**.
5. Petition for Waiver of Rule 11B-27.00212(14), F.A.C., by Blountstown Police Department, **pages 6 - 9**.

11B-27.00212; Maintenance of Officer Certification.

(14) Law Enforcement Officer Firearms Qualification Standard. Beginning July 1, 2006, a law enforcement officer shall be required to qualify on the Commission's approved course of fire with the proficiency skills documented on the Law Enforcement Officer Firearms Qualification Standard, form CJSTC-86A, revised January 29, 2009, hereby incorporated by reference, and maintained in the officer's employment file. Form CJSTC-86A can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850)410-8615.

(a) A certified law enforcement officer who fails to demonstrate proficiency skills on the required firearms qualification standard shall not perform the duties of a sworn officer.

(b) Reporting of the compliance with this standard shall be June 30, 2008, and every two years thereafter. Documentation supporting the demonstration of proficiency skills shall be reported on the Mandatory Firearms Training Report, form CJSTC-86, revised November 8, 2007, hereby incorporated by reference, and maintained in the officer's file. Form CJSTC-86 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The employing agency shall submit or electronically transmit to Commission staff through the Commission's ATMS, the date of completion.

(c) In the event a certified law enforcement officer fails to meet this standard by June 30 of each reporting year, the officer's certificate shall become inactive until the employing agency provides documentation to Commission staff establishing that the firearms qualification standard has been satisfied. Active officers who were separated from employment or appointment for not satisfying the firearms qualification standard, and do not meet the standard within six months of separation from employment or appointment, shall comply with the certification or reactivation of certification requirement(s) in subsection 11B-27.002(1), F.A.C., prior to reemployment.

(d) The certificate of a law enforcement officer shall become inactive if the officer has separated from employment or appointment and is not reemployed or reappointed within the two-year reporting cycle. The officer will be required to comply with the firearms qualification standard upon employment or appointment.

(e) In the event a certified law enforcement officer is injured in the line of duty and fails to meet this standard by June 30 of a reporting year, the agency administrator or designee shall complete the Injury in the Line of Duty, form CJSTC-86B, created January 29, 2009, hereby incorporated by reference. Form CJSTC-86B can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The agency shall submit form CJSTC-86B and the supporting documentation to Commission staff prior to the June 30 deadline to ensure the officer's certificate does not become inactive on the reporting deadline for that two-year reporting cycle.

Rulemaking Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12, 943.13(11), 943.135, 943.1395(3), 943.1701, 943.1715, 943.1716, 943.253 FS. History—New 11-5-02, Amended 12-3-03, 11-30-04, 3-27-06, 3-21-07, 6-9-08, 4-16-09, 9-28-09, 6-3-10.

120.542; Variances and Waivers. Section 120.542(2), F.S., mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of this statute states:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

AGENDA ITEM: 1L

Request for Variance or Waiver: Request for Waiver of Rule 11B-27.00212(14), F.A.C.,
by Jupiter Inlet Colony Police Department

ISSUE NUMBER 1

This agenda item is presented to the Commission by Jupiter Inlet Colony Police Department to request a permanent waiver of Rule 11B-27.00212(14), F.A.C.

EXECUTIVE SUMMARY

1. 18 officers of the Jupiter Inlet Colony Police Department were requalified pursuant to Rule 11B-27.00212(14), F.A.C., for the 2008 (7/1/06 – 6/30/08) and 2010 (7/1/2008 – 6/30/2010) mandatory firearms requalification reporting cycles by two instructors who had not completed an internship or submitted an application to become a CJSTC-certified general and/or firearms instructor.
2. The officers who received mandatory firearms requalification instruction from these instructors made every effort to ensure they were in compliance with Rule 11B-27.00212(14), F.A.C.; however, because the instructors did not know they had to complete an Instructor Certification Application CJSTC-71 form or the certification internship required by the rule, this resulted in the present situation.
3. The Jupiter Inlet Colony Police Department believed, as did the instructors, that the firearms instructors complied with CJSTC firearms instructor certification rules at the time the Department employed the instructors to requalify the officers.
4. The Jupiter Inlet Colony Police Department obtained mandatory firearms requalification instruction for its officers under a CJSTC-certified firearms instructor to ensure they were properly recertified for the 2010 - 2012 (7/1/10 – 6/30/12) reporting cycle.
5. The Jupiter Inlet Colony Police Department is requesting the Commission to view the 2008 and 2010 reporting cycles for the 18 officers as in compliance because they have complied with the performance requirements of Rule 11B-27.00212(14), F.A.C.

RECOMMENDATION(S): Commission staff recommends the Commission to grant the waiver of Rule 11B-27.00212(14), F.A.C.

VOTING IMPACT

CONSEQUENCES OF A "YES" VOTE ON STAFF RECOMMENDATION: The Jupiter Inlet Colony Police Department's request for a rule waiver shall be granted and the officers shall be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 and 2010 reporting cycles. The officers shall not incur a break in service.

CONSEQUENCES OF A "NO" VOTE ON STAFF RECOMMENDATION: The Jupiter Inlet Colony Police Department's request for a rule waiver shall not be granted and the officers shall not be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 and 2010 reporting cycles. The officers shall incur a break in service.

SUPPORTING INFORMATION

1. Rule 11B-27.00212(14), F.A.C., Maintenance of Officer Certification, **page 2**.
2. Section 120.542, F.S., Variances and Waivers, **page 3**.
3. Memorandum dated November 4, 2011, from Field Representative Joni Livingston, **page 4**.
4. Letter dated November 8, 2011, to State Attorney Michael McAuliffe, **page 5**.
5. Petition for Waiver of Rule 11B-27.00212(14), F.A.C., by Jupiter Inlet Colony Police Department, **pages 6 - 9**.

11B-27.00212; Maintenance of Officer Certification.

(14) Law Enforcement Officer Firearms Qualification Standard. Beginning July 1, 2006, a law enforcement officer shall be required to qualify on the Commission's approved course of fire with the proficiency skills documented on the Law Enforcement Officer Firearms Qualification Standard, form CJSTC-86A, revised January 29, 2009, hereby incorporated by reference, and maintained in the officer's employment file. Form CJSTC-86A can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850)410-8615.

(a) A certified law enforcement officer who fails to demonstrate proficiency skills on the required firearms qualification standard shall not perform the duties of a sworn officer.

(b) Reporting of the compliance with this standard shall be June 30, 2008, and every two years thereafter. Documentation supporting the demonstration of proficiency skills shall be reported on the Mandatory Firearms Training Report, form CJSTC-86, revised November 8, 2007, hereby incorporated by reference, and maintained in the officer's file. Form CJSTC-86 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The employing agency shall submit or electronically transmit to Commission staff through the Commission's ATMS, the date of completion.

(c) In the event a certified law enforcement officer fails to meet this standard by June 30 of each reporting year, the officer's certificate shall become inactive until the employing agency provides documentation to Commission staff establishing that the firearms qualification standard has been satisfied. Active officers who were separated from employment or appointment for not satisfying the firearms qualification standard, and do not meet the standard within six months of separation from employment or appointment, shall comply with the certification or reactivation of certification requirement(s) in subsection 11B-27.002(1), F.A.C., prior to reemployment.

(d) The certificate of a law enforcement officer shall become inactive if the officer has separated from employment or appointment and is not reemployed or reappointed within the two-year reporting cycle. The officer will be required to comply with the firearms qualification standard upon employment or appointment.

(e) In the event a certified law enforcement officer is injured in the line of duty and fails to meet this standard by June 30 of a reporting year, the agency administrator or designee shall complete the Injury in the Line of Duty, form CJSTC-86B, created January 29, 2009, hereby incorporated by reference. Form CJSTC-86B can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The agency shall submit form CJSTC-86B and the supporting documentation to Commission staff prior to the June 30 deadline to ensure the officer's certificate does not become inactive on the reporting deadline for that two-year reporting cycle.

Rulemaking Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12, 943.13(11), 943.135, 943.1395(3), 943.1701, 943.1715, 943.1716, 943.253 FS. History—New 11-5-02, Amended 12-3-03, 11-30-04, 3-27-06, 3-21-07, 6-9-08, 4-16-09, 9-28-09, 6-3-10.

120.542; Variances and Waivers. Section 120.542(2), F.S., mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of this statute states:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

AGENDA ITEM: 1M

Request for Variance or Waiver: Request for Waiver of Rule 11B-27.00212(14), F.A.C.,
by Wildwood Police Department

ISSUE NUMBER 1

This agenda item is presented to the Commission by Wildwood Police Department to request a permanent waiver of Rule 11B-27.00212(14), F.A.C.

EXECUTIVE SUMMARY

1. The Wildwood Police Department utilized firearms instructors to conduct mandatory firearms requalification for Officer Valentino during the 2006 – 2008 (7/1/2006 – 6/30/2008) and the 2008 – 2010 (7/1/2008 – 6/30/2010) mandatory firearms requalification reporting cycles. The instructors utilized by the Department had completed training to become a CJSTC-certified firearms instructor; however, the instructors had not submitted their paperwork and were not CJSTC-certified firearms instructors at the time they requalified Officer Valentino.
2. The Wildwood Police Department made every effort to ensure that the instructors who requalified Officer Valentino for the 2008 and 2010 reporting cycles were CJSTC-certified firearms instructors.
3. The Wildwood Police Department has on file a signed Law Enforcement Officer Firearms Qualification Standard form CJSTC-86A for both the 2008 and 2010 reporting cycles for Officer Valentino. The forms, testimony of the officer involved, and the instructor who supervised the requalifications, clearly demonstrate that the officer completed the course of fire mandated by Commission rule with qualifying scores for both the 2008 and 2010 reporting cycles.
4. The Wildwood Police Department has ensured that this situation will not recur by ensuring that its firearms instructors are completing or have completed all requirements to become CJSTC-certified firearms instructors.
5. The Wildwood Police Department is requesting the Commission to view the 2008 and 2010 reporting cycles for Officer Valentino as in compliance because he has complied with the performance requirements of Rule 11B-27.00212(14), F.A.C.

RECOMMENDATION(S): Commission staff recommends the Commission to grant the waiver of Rule 11B-27.00212(14), F.A.C.

VOTING IMPACT

CONSEQUENCES OF A “YES” VOTE ON STAFF RECOMMENDATION: The Wildwood Police Department's request for a rule waiver shall be granted and Officer Valentino shall be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 and 2010 reporting cycles. Officer Valentino shall not incur a break in service.

CONSEQUENCES OF A “NO” VOTE ON STAFF RECOMMENDATION: The Wildwood Police Department's request for a rule waiver shall not be granted and Officer Valentino shall not be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 and 2010 reporting cycles. Officer Valentino shall incur a break in service.

SUPPORTING INFORMATION

1. Rule 11B-27.00212(14), F.A.C., Maintenance of Officer Certification, **page 2**.
2. Section 120.542, F.S., Variances and Waivers, **page 3**.
3. Memorandum dated November 1, 2011, from Field Representative Donna Suereth, **page 4**.
4. Letter dated November 8, 2011, to State Attorney Brad King, **page 5**.
5. Petition for Waiver of Rule 11B-27.00212(14), F.A.C., by Wildwood Police Department, **pages 6 - 9**.

11B-27.00212; Maintenance of Officer Certification.

(14) Law Enforcement Officer Firearms Qualification Standard. Beginning July 1, 2006, a law enforcement officer shall be required to qualify on the Commission's approved course of fire with the proficiency skills documented on the Law Enforcement Officer Firearms Qualification Standard, form CJSTC-86A, revised January 29, 2009, hereby incorporated by reference, and maintained in the officer's employment file. Form CJSTC-86A can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850)410-8615.

(a) A certified law enforcement officer who fails to demonstrate proficiency skills on the required firearms qualification standard shall not perform the duties of a sworn officer.

(b) Reporting of the compliance with this standard shall be June 30, 2008, and every two years thereafter. Documentation supporting the demonstration of proficiency skills shall be reported on the Mandatory Firearms Training Report, form CJSTC-86, revised November 8, 2007, hereby incorporated by reference, and maintained in the officer's file. Form CJSTC-86 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The employing agency shall submit or electronically transmit to Commission staff through the Commission's ATMS, the date of completion.

(c) In the event a certified law enforcement officer fails to meet this standard by June 30 of each reporting year, the officer's certificate shall become inactive until the employing agency provides documentation to Commission staff establishing that the firearms qualification standard has been satisfied. Active officers who were separated from employment or appointment for not satisfying the firearms qualification standard, and do not meet the standard within six months of separation from employment or appointment, shall comply with the certification or reactivation of certification requirement(s) in subsection 11B-27.002(1), F.A.C., prior to reemployment.

(d) The certificate of a law enforcement officer shall become inactive if the officer has separated from employment or appointment and is not reemployed or reappointed within the two-year reporting cycle. The officer will be required to comply with the firearms qualification standard upon employment or appointment.

(e) In the event a certified law enforcement officer is injured in the line of duty and fails to meet this standard by June 30 of a reporting year, the agency administrator or designee shall complete the Injury in the Line of Duty, form CJSTC-86B, created January 29, 2009, hereby incorporated by reference. Form CJSTC-86B can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The agency shall submit form CJSTC-86B and the supporting documentation to Commission staff prior to the June 30 deadline to ensure the officer's certificate does not become inactive on the reporting deadline for that two-year reporting cycle.

Rulemaking Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12, 943.13(11), 943.135, 943.1395(3), 943.1701, 943.1715, 943.1716, 943.253 FS. History—New 11-5-02, Amended 12-3-03, 11-30-04, 3-27-06, 3-21-07, 6-9-08, 4-16-09, 9-28-09, 6-3-10.

120.542; Variances and Waivers. Section 120.542(2), F.S., mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of this statute states:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

AGENDA ITEM: 1N

Request for Variance or Waiver: Request for Waiver of Rule 11B-27.00212(14), F.A.C.,
by Parker Police Department

ISSUE NUMBER 1

This agenda item is presented to the Commission by Parker Police Department to request a permanent waiver of Rule 11B-27.00212(14), F.A.C.

EXECUTIVE SUMMARY

1. The Parker Police Department utilized two firearms instructors, Officer Wilson and Officer Hutto to conduct mandatory firearms requalification for ten officers during the 2006 – 2008 (7/1/2006 – 6/30/2008) mandatory firearms requalification reporting cycle and one of those officers for the 2008 – 2010 (7/1/2008 – 6/30/2010) mandatory firearms requalification reporting cycle. The instructors utilized by the Department were not CJSTC-certified firearms instructors at the time of the requalifications.
2. The Parker Police Department has made every effort to ensure that the instructors who requalified the ten officers for the 2008 reporting cycle, and the one of those officers for the 2010 reporting cycle, were CJSTC-certified firearms instructors.
3. The Parker Police Department has on file a signed Law Enforcement Officer Firearms Qualification Application form CJSTC-86A for ten officers for the 2008 reporting cycle, and one of those officers for the 2010 reporting cycle. These forms, the testimony of the officers involved, and the instructors who supervised the requalifications, demonstrate that the officers completed the course of fire with qualifying scores as mandated by Commission rules.
4. Officer Wilson conducted the requalifications of all ten officers for the 2008 reporting cycle prior to becoming a CJSTC-certified firearms instructor. Officer Hutto supervised Officer Wilson's requalification for one of those officers for the 2010 reporting cycle prior to becoming a CJSTC-certified firearms instructor.
5. The Parker Police Department has ensured that this situation will not recur by utilizing CJSTC-certified firearms instructors to conduct mandatory firearms requalifications.
6. The Parker Police Department is requesting the Commission to view all ten officers for the 2008 reporting cycle, and one of those officers for the 2010 reporting cycle as in compliance because they have complied with the performance requirements of Rule 11B-27.00212(14), F.A.C.

RECOMMENDATION(S): Commission staff recommends the Commission to grant the waiver of Rule 11B-27.00212(14), F.A.C.

VOTING IMPACT

CONSEQUENCES OF A "YES" VOTE ON STAFF RECOMMENDATION: The Parker Police Department's request for a rule waiver shall be granted and the ten officers for the 2008 reporting cycle, and one of those officers for the 2010 reporting cycle shall be deemed compliant with Rule 11B-27.00212(14), F.A.C. The officers shall not incur a break in service.

CONSEQUENCES OF A "NO" VOTE ON STAFF RECOMMENDATION: The Parker Police Department's request for a rule waiver shall not be granted and the ten officers for the 2008 reporting cycle, and one of those officers for the 2010 reporting cycle shall not be deemed compliant with Rule 11B-27.00212(14), F.A.C. The officers shall incur a break in service.

SUPPORTING INFORMATION

1. Rule 11B-27.00212(14), F.A.C., Maintenance of Officer Certification, **page 2**.
2. Section 120.542, F.S., Variances and Waivers, **page 3**.
3. Memorandum dated October 7, 2011, from Field Representative Wayne Graves, **page 4**.
4. Letter dated November 14, 2011, to State Attorney Glenn Hess, **page 5**.
5. Petition for Waiver of Rule 11B-27.00212(14), F.A.C., by Parker Police Department, **pages 6 - 10**.

11B-27.00212; Maintenance of Officer Certification.

(14) Law Enforcement Officer Firearms Qualification Standard. Beginning July 1, 2006, a law enforcement officer shall be required to qualify on the Commission's approved course of fire with the proficiency skills documented on the Law Enforcement Officer Firearms Qualification Standard, form CJSTC-86A, revised January 29, 2009, hereby incorporated by reference, and maintained in the officer's employment file. Form CJSTC-86A can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850)410-8615.

(a) A certified law enforcement officer who fails to demonstrate proficiency skills on the required firearms qualification standard shall not perform the duties of a sworn officer.

(b) Reporting of the compliance with this standard shall be June 30, 2008, and every two years thereafter. Documentation supporting the demonstration of proficiency skills shall be reported on the Mandatory Firearms Training Report, form CJSTC-86, revised November 8, 2007, hereby incorporated by reference, and maintained in the officer's file. Form CJSTC-86 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The employing agency shall submit or electronically transmit to Commission staff through the Commission's ATMS, the date of completion.

(c) In the event a certified law enforcement officer fails to meet this standard by June 30 of each reporting year, the officer's certificate shall become inactive until the employing agency provides documentation to Commission staff establishing that the firearms qualification standard has been satisfied. Active officers who were separated from employment or appointment for not satisfying the firearms qualification standard, and do not meet the standard within six months of separation from employment or appointment, shall comply with the certification or reactivation of certification requirement(s) in subsection 11B-27.002(1), F.A.C., prior to reemployment.

(d) The certificate of a law enforcement officer shall become inactive if the officer has separated from employment or appointment and is not reemployed or reappointed within the two-year reporting cycle. The officer will be required to comply with the firearms qualification standard upon employment or appointment.

(e) In the event a certified law enforcement officer is injured in the line of duty and fails to meet this standard by June 30 of a reporting year, the agency administrator or designee shall complete the Injury in the Line of Duty, form CJSTC-86B, created January 29, 2009, hereby incorporated by reference. Form CJSTC-86B can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The agency shall submit form CJSTC-86B and the supporting documentation to Commission staff prior to the June 30 deadline to ensure the officer's certificate does not become inactive on the reporting deadline for that two-year reporting cycle.

Rulemaking Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12, 943.13(11), 943.135, 943.1395(3), 943.1701, 943.1715, 943.1716, 943.253 FS. History—New 11-5-02, Amended 12-3-03, 11-30-04, 3-27-06, 3-21-07, 6-9-08, 4-16-09, 9-28-09, 6-3-10.

120.542; Variances and Waivers. Section 120.542(2), F.S., mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of this statute states:

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AGENDA ITEM: 10

Request for Variances and Waivers: Request for Waiver of Rule 11B-27.00212(14), F.A.C.,
by Florida City Police Department

ISSUE NUMBER 1

This agenda item is presented to the Commission by Florida City Police Department to request a permanent waiver of Rule 11B-27.00212(14), F.A.C.

EXECUTIVE SUMMARY

1. The Florida City Police Department utilized firearms instructors to conduct mandatory firearms requalification for 31 officers during the 2008 (7/1/06 – 6/30/08) mandatory firearms requalification reporting cycle. The instructors utilized by the Department were not CJSTC-certified firearms instructors at the time of the requalifications.
2. The Florida City Police Department made every effort to ensure that the instructors who requalified 31 of its officers for the 2008 (7/1/06 – 6/30/08) reporting cycle were CJSTC-certified firearms instructors.
3. The Florida City Police Department has on file the signed Law Enforcement Officer Firearms Qualification Standard CJSTC-86A forms for all 31 officers for the 2008 (7/1/06 – 6/30/08) reporting cycle. These forms, the testimony of the officers involved, and the instructors who supervised the requalifications, clearly demonstrate that the officers completed the course of fire with qualifying scores as mandated by Commission rule.
4. The Florida City Police Department has ensured that this situation will not recur by utilizing only CJSTC-certified firearms instructors to conduct mandatory firearms requalifications.
5. The Florida City Police Department is requesting the Commission to view the 2008 reporting cycle for the 31 officers as in compliance because they have complied with the performance requirements of Rule 11B-27.00212(14), F.A.C.

RECOMMENDATION(S): Commission staff recommends the Commission to grant the waiver of Rule 11B-27.00212(14), F.A.C.

VOTING IMPACT

CONSEQUENCES OF A “YES” VOTE ON STAFF RECOMMENDATION: The Florida City Police Department's request for a rule waiver shall be granted and the 31 officers shall be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 reporting cycle. The officers shall not incur a break in service.

CONSEQUENCES OF A “NO” VOTE ON STAFF RECOMMENDATION: The Florida City Police Department's request for a rule waiver shall not be granted and the ten officers shall not be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 reporting cycle. The officers shall incur a break in service.

SUPPORTING INFORMATION

1. Rule 11B-27.00212(14), F.A.C., Maintenance of Officer Certification, **page 2**.
2. Section 120.542, F.S., Variances and Waivers, **page 3**.
3. Memorandum dated October 6, 2011, from Field Representative Lee Zahuranec, **page 4**.
4. Letter dated November 15, 2011, to State Attorney Katherine Fernandez Rundle, **page 5**.
5. Petition for Waiver of Rule 11B-27.00212(14), F.A.C., by Florida City Police Department, **pages 6 - 10**.

11B-27.00212; Maintenance of Officer Certification.

(14) Law Enforcement Officer Firearms Qualification Standard. Beginning July 1, 2006, a law enforcement officer shall be required to qualify on the Commission's approved course of fire with the proficiency skills documented on the Law Enforcement Officer Firearms Qualification Standard, form CJSTC-86A, revised January 29, 2009, hereby incorporated by reference, and maintained in the officer's employment file. Form CJSTC-86A can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850)410-8615.

(a) A certified law enforcement officer who fails to demonstrate proficiency skills on the required firearms qualification standard shall not perform the duties of a sworn officer.

(b) Reporting of the compliance with this standard shall be June 30, 2008, and every two years thereafter. Documentation supporting the demonstration of proficiency skills shall be reported on the Mandatory Firearms Training Report, form CJSTC-86, revised November 8, 2007, hereby incorporated by reference, and maintained in the officer's file. Form CJSTC-86 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The employing agency shall submit or electronically transmit to Commission staff through the Commission's ATMS, the date of completion.

(c) In the event a certified law enforcement officer fails to meet this standard by June 30 of each reporting year, the officer's certificate shall become inactive until the employing agency provides documentation to Commission staff establishing that the firearms qualification standard has been satisfied. Active officers who were separated from employment or appointment for not satisfying the firearms qualification standard, and do not meet the standard within six months of separation from employment or appointment, shall comply with the certification or reactivation of certification requirement(s) in subsection 11B-27.002(1), F.A.C., prior to reemployment.

(d) The certificate of a law enforcement officer shall become inactive if the officer has separated from employment or appointment and is not reemployed or reappointed within the two-year reporting cycle. The officer will be required to comply with the firearms qualification standard upon employment or appointment.

(e) In the event a certified law enforcement officer is injured in the line of duty and fails to meet this standard by June 30 of a reporting year, the agency administrator or designee shall complete the Injury in the Line of Duty, form CJSTC-86B, created January 29, 2009, hereby incorporated by reference. Form CJSTC-86B can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The agency shall submit form CJSTC-86B and the supporting documentation to Commission staff prior to the June 30 deadline to ensure the officer's certificate does not become inactive on the reporting deadline for that two-year reporting cycle.

Rulemaking Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12, 943.13(11), 943.135, 943.1395(3), 943.1701, 943.1715, 943.1716, 943.253 FS. History—New 11-5-02, Amended 12-3-03, 11-30-04, 3-27-06, 3-21-07, 6-9-08, 4-16-09, 9-28-09, 6-3-10.

120.542; Variances and Waivers. Section 120.542(2), F.S., mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of this statute states:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

AGENDA ITEM: 1P

Request for Variance or Waiver: Request for Waiver of Rule 11B-27.00212(14), F.A.C.,
by Maitland Police Department

ISSUE NUMBER 1

This agenda item is presented to the Commission by Maitland Police Department to request a permanent waiver of Rule 11B-27.00212(14), F.A.C.

EXECUTIVE SUMMARY

1. The Maitland Police Department utilized a CJSTC-certified firearms instructor to conduct mandatory firearms requalification during the 2008 – 2010 (7/1/2008 – 6/30/2010) reporting cycle. Instructor Sergeant Greg Fox utilized by the Department signed his own Law Enforcement Officer Firearms Qualification Standard form CJSTC-86A.
2. The Maitland Police Department and Sergeant Fox were unaware that the CJSTC-certified firearms instructor is not permitted to sign his own form CJSTC-86A.
3. Sergeant Fox was requalified by CJSTC-certified firearms instructor Morris Van Kershcaever on February 3, 2011.
4. The Maitland Police Department is requesting the Commission to view the 2010 reporting cycle for Sergeant Fox as in compliance because he has complied with the performance requirements of Rule 11B-27.00212(14), F.A.C.

RECOMMENDATION(s): Commission staff recommends the Commission to grant the waiver of Rule 11B-27.00212(14), F.A.C.

VOTING IMPACT

CONSEQUENCES OF A "YES" VOTE ON STAFF RECOMMENDATION: The Maitland Police Department's request for a rule waiver shall be granted and Sergeant Fox shall be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2010 reporting cycle. Sergeant Fox shall not incur a break in service.

CONSEQUENCES OF A "NO" VOTE ON STAFF RECOMMENDATION: The Maitland Police Department's request for a rule waiver shall not be granted and Sergeant Fox shall not be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2010 reporting cycle. Sergeant Fox shall incur a break in service.

SUPPORTING INFORMATION

1. Rule 11B-27.00212(14), F.A.C., Maintenance of Officer Certification, **page 2**.
2. Section 120.542, F.S., Variances and Waivers, **page 3**.
3. Memorandum dated November 8, 2011, from Field Representative Chuck Reaume, **page 4**.
4. Letter dated November 14, 2011, to State Attorney Lawson Lamar, **page 5**.
5. Petition for Waiver of Rule 11B-27.00212(14), F.A.C., by Maitland Police Department, **pages 6 - 9**.

11B-27.00212; Maintenance of Officer Certification.

(14) Law Enforcement Officer Firearms Qualification Standard. Beginning July 1, 2006, a law enforcement officer shall be required to qualify on the Commission's approved course of fire with the proficiency skills documented on the Law Enforcement Officer Firearms Qualification Standard, form CJSTC-86A, revised January 29, 2009, hereby incorporated by reference, and maintained in the officer's employment file. Form CJSTC-86A can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850)410-8615.

(a) A certified law enforcement officer who fails to demonstrate proficiency skills on the required firearms qualification standard shall not perform the duties of a sworn officer.

(b) Reporting of the compliance with this standard shall be June 30, 2008, and every two years thereafter. Documentation supporting the demonstration of proficiency skills shall be reported on the Mandatory Firearms Training Report, form CJSTC-86, revised November 8, 2007, hereby incorporated by reference, and maintained in the officer's file. Form CJSTC-86 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The employing agency shall submit or electronically transmit to Commission staff through the Commission's ATMS, the date of completion.

(c) In the event a certified law enforcement officer fails to meet this standard by June 30 of each reporting year, the officer's certificate shall become inactive until the employing agency provides documentation to Commission staff establishing that the firearms qualification standard has been satisfied. Active officers who were separated from employment or appointment for not satisfying the firearms qualification standard, and do not meet the standard within six months of separation from employment or appointment, shall comply with the certification or reactivation of certification requirement(s) in subsection 11B-27.002(1), F.A.C., prior to reemployment.

(d) The certificate of a law enforcement officer shall become inactive if the officer has separated from employment or appointment and is not reemployed or reappointed within the two-year reporting cycle. The officer will be required to comply with the firearms qualification standard upon employment or appointment.

(e) In the event a certified law enforcement officer is injured in the line of duty and fails to meet this standard by June 30 of a reporting year, the agency administrator or designee shall complete the Injury in the Line of Duty, form CJSTC-86B, created January 29, 2009, hereby incorporated by reference. Form CJSTC-86B can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The agency shall submit form CJSTC-86B and the supporting documentation to Commission staff prior to the June 30 deadline to ensure the officer's certificate does not become inactive on the reporting deadline for that two-year reporting cycle.

Rulemaking Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12, 943.13(11), 943.135, 943.1395(3), 943.1701, 943.1715, 943.1716, 943.253 FS. History—New 11-5-02, Amended 12-3-03, 11-30-04, 3-27-06, 3-21-07, 6-9-08, 4-16-09, 9-28-09, 6-3-10.

120.542; Variances and Waivers. Section 120.542(2), F.S., mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of this statute states:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

AGENDA ITEM: 1Q

Request for Variances and Waivers: Request for Waiver of Rule 11B-27.00212(14), F.A.C.,
by Tavares Police Department

ISSUE NUMBER 1

This agenda item is presented to the Commission by Tavares Police Department to request a permanent waiver of Rule 11B-27.00212(14), F.A.C.

EXECUTIVE SUMMARY

1. The Tavares Police Department utilized a CJSTC-certified firearms instructor to conduct mandatory firearms requalification for the 2006 – 2008 (7/1/2006 – 6/30/2008) and 2008 – 2010 (7/1/2008 – 6/30/2010) mandatory firearms requalification reporting cycles. The instructor utilized by the Department signed his own Law Enforcement Officer Firearms Qualification Standards CJSTC-86A form.
2. The Tavares Police Department and Instructor Danny Feleccia were unaware that a CJSTC-certified firearms instructor is not permitted to sign his own form CJSTC-86A.
3. Instructor Feleccia was requalified by CJSTC-certified firearms instructor Kevin Howard on October 11, 2011.
4. The Tavares Police Department is requesting the Commission to view the 2008 and 2010 reporting cycles for Instructor Danny Feleccia as in compliance because he has complied with the performance requirements of Rule 11B-27.00212(14), F.A.C.

RECOMMENDATION(S): Commission staff recommends the Commission to grant the waiver of Rule 11B-27.00212(14), F.A.C.

VOTING IMPACT

CONSEQUENCES OF A “YES” VOTE ON STAFF RECOMMENDATION: The Tavares Police Department's request for a rule waiver shall be granted and Instructor Feleccia shall be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 and 2010 reporting cycles. Instructor Feleccia shall not incur a break in service.

CONSEQUENCES OF A “NO” VOTE ON STAFF RECOMMENDATION: The Tavares Police Department's request for a rule waiver shall not be granted and Instructor Feleccia shall not be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 and 2010 reporting cycles. Instructor Feleccia shall incur a break in service.

SUPPORTING INFORMATION

1. Rule 11B-27.00212(14), F.A.C., Maintenance of Officer Certification, **page 2**.
2. Section 120.542, F.S., Variances and Waivers, **page 3**.
3. Memorandum dated October 12, 2011, from Field Representative Chuck Reaume, **page 4**.
4. Letter dated November 15, 2011, to State Attorney Brad King, **page 5**.
5. Petition for Waiver of Rule 11B-27.00212(14), F.A.C., by Tavares Police Department, **pages 6 - 9**.

11B-27.00212; Maintenance of Officer Certification.

(14) Law Enforcement Officer Firearms Qualification Standard. Beginning July 1, 2006, a law enforcement officer shall be required to qualify on the Commission's approved course of fire with the proficiency skills documented on the Law Enforcement Officer Firearms Qualification Standard, form CJSTC-86A, revised January 29, 2009, hereby incorporated by reference, and maintained in the officer's employment file. Form CJSTC-86A can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850)410-8615.

(a) A certified law enforcement officer who fails to demonstrate proficiency skills on the required firearms qualification standard shall not perform the duties of a sworn officer.

(b) Reporting of the compliance with this standard shall be June 30, 2008, and every two years thereafter. Documentation supporting the demonstration of proficiency skills shall be reported on the Mandatory Firearms Training Report, form CJSTC-86, revised November 8, 2007, hereby incorporated by reference, and maintained in the officer's file. Form CJSTC-86 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The employing agency shall submit or electronically transmit to Commission staff through the Commission's ATMS, the date of completion.

(c) In the event a certified law enforcement officer fails to meet this standard by June 30 of each reporting year, the officer's certificate shall become inactive until the employing agency provides documentation to Commission staff establishing that the firearms qualification standard has been satisfied. Active officers who were separated from employment or appointment for not satisfying the firearms qualification standard, and do not meet the standard within six months of separation from employment or appointment, shall comply with the certification or reactivation of certification requirement(s) in subsection 11B-27.002(1), F.A.C., prior to reemployment.

(d) The certificate of a law enforcement officer shall become inactive if the officer has separated from employment or appointment and is not reemployed or reappointed within the two-year reporting cycle. The officer will be required to comply with the firearms qualification standard upon employment or appointment.

(e) In the event a certified law enforcement officer is injured in the line of duty and fails to meet this standard by June 30 of a reporting year, the agency administrator or designee shall complete the Injury in the Line of Duty, form CJSTC-86B, created January 29, 2009, hereby incorporated by reference. Form CJSTC-86B can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The agency shall submit form CJSTC-86B and the supporting documentation to Commission staff prior to the June 30 deadline to ensure the officer's certificate does not become inactive on the reporting deadline for that two-year reporting cycle.

Rulemaking Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12, 943.13(11), 943.135, 943.1395(3), 943.1701, 943.1715, 943.1716, 943.253 FS. History—New 11-5-02, Amended 12-3-03, 11-30-04, 3-27-06, 3-21-07, 6-9-08, 4-16-09, 9-28-09, 6-3-10.

120.542; Variances and Waivers. Section 120.542(2), F.S., mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of this statute states:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

AGENDA ITEM: 1R

Request for Variances and Waivers: Request for Waiver of Rule 11B-35.001(9)(b), F.A.C.,
by Criminal Justice Institute at Valencia Community College

ISSUE NUMBER 1

This agenda item is presented to the Commission by Valencia Community College to request a permanent waiver of Rule 11B-35.001(9)(b), F.A.C.

EXECUTIVE SUMMARY

1. The Valencia Community College conducted an Advanced and Specified Specialized Training Program for corrections officers that ended with examinations on October 9, 2009. Two corrections officers received scores of 76% on the final examinations.
2. The week before the final examinations, the rule had changed the passing score from 75% to 80%. The two corrections officers would have passed the advanced training Criminal Law Course if they had taken the examination under the old rule.
3. The corrections officers named in the petition are at risk of not receiving training credit for taking the Criminal Law Course unless a waiver can be obtained to permit their scores to be deemed passing scores, as they were obtained within a week of the rule changing the passing scores from 75% to 80%.
4. Valencia Community College requests the Commission to view the score of 76% obtained by the two corrections officers as passing scores because they were awarded within a week of the rule changing the passing scores from 75% to 80%.

RECOMMENDATION(S): Commission staff recommends the Commission to grant the waiver of Rule 11B-35.001(9)(b), F.A.C.

VOTING IMPACT

CONSEQUENCES OF A "YES" VOTE ON STAFF RECOMMENDATION: The Valencia Community College's request for a rule waiver shall be granted and the officers' scores received on October 9, 2009, on the final examination for the Criminal Law Course shall be deemed passing scores for purposes of Rule 11B-35.001(9)(b), F.A.C.

CONSEQUENCES OF A "NO" VOTE ON STAFF RECOMMENDATION: The Valencia Community College's request for a rule waiver will not be granted and the officers' scores received on October 9, 2009, on the final examination for the Criminal Law Course shall not be deemed passing scores for purposes of Rule 11B-35.001(9)(b), F.A.C.

SUPPORTING INFORMATION

1. Rule 11B-35.001(9)(b), F.A.C., General Training Programs; Requirements and Specifications., **page 2**.
2. Section 120.542, F.S., Variances and Waivers, **page 2**.
3. Petition for Waiver of Rule 11B-35.001(9)(b), F.A.C., by Valencia College, **page 3**.

11B-35.001 General Training Programs; Requirements and Specifications.

(9) Student academic performance in courses.

(b) A student enrolled in a Commission-approved Basic Recruit Training Program shall achieve a score of no less than 80% on each of the written end-of-course examinations, exclusive of demonstration of proficiency skills in the Basic Recruit Training Courses. A student enrolled in a Commission-approved Advanced or Specified Specialized Training Program Course pursuant to subparagraph (d)1.-13., of this rule section shall achieve a score of no less than 80% on the written end-of-course examination. A student enrolled in a Specialized Instructor Training Course shall achieve a score of no less than 85% on the written end-of-course examination, exclusive of demonstration of any proficiency skills.

Rulemaking Authority 943.03(4), 943.12(1), (2), 943.17 FS. Law Implemented 943.12, 943.17 FS. History—New 12-13-92, Amended 8-7-94, 1-2-97, 7-7-99, 8-22-00, 7-29-01, 11-5-02, 11-30-04, 3-27-06, 3-21-07, 6-9-08, 9-28-09, 6-3-10.

120.542; Variances and Waivers. Section 120.542(2), F.S., mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of this statute states:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

AGENDA ITEM: 1S

Request for Variances and Waivers: Request for Waiver of Rule 11B-27.00212(14), F.A.C.,
by Green Cove Springs Police Department

ISSUE NUMBER 1

This agenda item is presented to the Commission by Green Cove Springs Police Department to request a permanent waiver of Rule 11B-27.00212(14), F.A.C.

EXECUTIVE SUMMARY

1. The Green Cove Springs Police Department utilized firearms instructors to conduct mandatory firearms requalification for six officers during the 2006 – 2008 (7/1/2006 – 6/30/2008) and 2008 – 2010 (7/1/2008 – 6/30/2010) mandatory firearms requalification reporting cycles. The instructors utilized by the Department were not CJSTC-certified firearms instructors.
2. The Green Cove Springs Police Department made every effort to ensure that the instructors who requalified six of its officers for the 2008 and 2010 reporting cycles were CJSTC-certified firearms Instructors.
3. The Green Cove Springs Police Department has on file signed Law Enforcement Officer Firearms Qualification Standard CJSTC-86A forms for all six officers for the 2008 and 2010 reporting cycles. These forms, the testimony of the officers involved, and the instructors who supervised the requalifications, clearly demonstrate that the officers completed the course of fire with qualifying scores as mandated by Commission rule.
4. The Green Cove Springs Police Department has ensured that this situation will not recur by utilizing CJSTC-certified firearms instructors to conduct mandatory firearms requalifications.
5. The Green Cove Springs Police Department is requesting the Commission to view the 2008 and 2010 reporting cycles for the six officers as in compliance because they have complied with the performance requirements of Rule 11B-27.00212(14), F.A.C.

RECOMMENDATION(S): Commission staff recommends the Commission to grant the waiver of Rule 11B-27.00212(14), F.A.C.

VOTING IMPACT

CONSEQUENCES OF A “YES” VOTE ON STAFF RECOMMENDATION: The Green Cove Springs Police Department’s request for a rule waiver shall be granted and six officers shall be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 and 2010 reporting cycles. The officers shall not incur a break in service.

CONSEQUENCES OF A “NO” VOTE ON STAFF RECOMMENDATION: The Green Cove Springs Police Department’s request for a rule waiver shall not be granted and the six officers shall not be deemed compliant with Rule 11B-27.00212(14), F.A.C., for the 2008 and 2010 reporting cycles. The officers shall incur a break in service.

SUPPORTING INFORMATION

1. Rule 11B-27.00212(14), F.A.C., Maintenance of Officer Certification, **page 2**.
2. Section 120.542, F.S., Variances and Waivers, **page 3**.
3. Memorandum dated October 17, 2011, from Field Representative Kathy Myers, **page 4**.
4. Letter dated November 15, 2011, to State Attorney Angela Corey, **page 5**.
5. Petition for Waiver of Rule 11B-27.00212(14), F.A.C., by Green Cove Springs Police Department, **pages 6 - 8**.

11B-27.00212; Maintenance of Officer Certification.

(14) Law Enforcement Officer Firearms Qualification Standard. Beginning July 1, 2006, a law enforcement officer shall be required to qualify on the Commission's approved course of fire with the proficiency skills documented on the Law Enforcement Officer Firearms Qualification Standard, form CJSTC-86A, revised January 29, 2009, hereby incorporated by reference, and maintained in the officer's employment file. Form CJSTC-86A can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850)410-8615.

(a) A certified law enforcement officer who fails to demonstrate proficiency skills on the required firearms qualification standard shall not perform the duties of a sworn officer.

(b) Reporting of the compliance with this standard shall be June 30, 2008, and every two years thereafter. Documentation supporting the demonstration of proficiency skills shall be reported on the Mandatory Firearms Training Report, form CJSTC-86, revised November 8, 2007, hereby incorporated by reference, and maintained in the officer's file. Form CJSTC-86 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The employing agency shall submit or electronically transmit to Commission staff through the Commission's ATMS, the date of completion.

(c) In the event a certified law enforcement officer fails to meet this standard by June 30 of each reporting year, the officer's certificate shall become inactive until the employing agency provides documentation to Commission staff establishing that the firearms qualification standard has been satisfied. Active officers who were separated from employment or appointment for not satisfying the firearms qualification standard, and do not meet the standard within six months of separation from employment or appointment, shall comply with the certification or reactivation of certification requirement(s) in subsection 11B-27.002(1), F.A.C., prior to reemployment.

(d) The certificate of a law enforcement officer shall become inactive if the officer has separated from employment or appointment and is not reemployed or reappointed within the two-year reporting cycle. The officer will be required to comply with the firearms qualification standard upon employment or appointment.

(e) In the event a certified law enforcement officer is injured in the line of duty and fails to meet this standard by June 30 of a reporting year, the agency administrator or designee shall complete the Injury in the Line of Duty, form CJSTC-86B, created January 29, 2009, hereby incorporated by reference. Form CJSTC-86B can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615. The agency shall submit form CJSTC-86B and the supporting documentation to Commission staff prior to the June 30 deadline to ensure the officer's certificate does not become inactive on the reporting deadline for that two-year reporting cycle.

Rulemaking Authority 943.03(4), 943.12(1) FS. Law Implemented 943.12, 943.13(11), 943.135, 943.1395(3), 943.1701, 943.1715, 943.1716, 943.253 FS. History—New 11-5-02, Amended 12-3-03, 11-30-04, 3-27-06, 3-21-07, 6-9-08, 4-16-09, 9-28-09, 6-3-10.

120.542; Variances and Waivers. Section 120.542(2), F.S., mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of this statute states:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

AGENDA ITEM: 2

Officer Discipline Case: Maricela Ponce, Case Number 29108, Case Category – Recommended Order

ISSUE NUMBER 1

This officer discipline case is presented to the Commission for Commission action as to the Administrative Law Judge's Recommended Order.

EXECUTIVE SUMMARY

1. Violation: Battery
2. Penalty Guideline: Suspension

RECOMMENDATION(S): Commission counsel recommends the Commission to accept the Administrative Law Judge's findings of fact, conclusions of law, and dismissal of the Administrative Complaint.

VOTING IMPACT

CONSEQUENCES OF A "YES" VOTE ON STAFF RECOMMENDATION: NA

CONSEQUENCES OF A "NO" VOTE ON STAFF RECOMMENDATION: NA

SUPPORTING INFORMATION

1. Case Summary Sheet, **page 2**.
2. Probable Cause Determination, **page 3**.
3. Administrative Law Judge's Recommended Order, **pages 4 – 17**.
4. CJSTC vs Maricela Ponce - Administrative Complaint, **pages 18 – 19**.
5. Election of Rights – Administrative Complaint/Statement of Denial, **page 20**.
6. September 29, 2010, letter from Ms. Maricela Ponce, **pages 21 - 22**.
7. Notice of Hearing, **pages 23 - 24**.