**Professional Compliance Bulletin**

**Issue #65**

**August 2016**

The Criminal Justice Standards and Training Commission has as its mission “to ensure that the citizens of the State of Florida are served by the most qualified, well trained, competent and ethical criminal justice officers in the nation”. The Commission meets quarterly in an open forum to address issues relating to criminal justice. As a part of these quarterly meetings, cases regarding officer misconduct are reviewed and action is taken against the officer’s criminal justice certification. Disciplinary action is based on the facts of each case and is guided by both Florida Statute and Florida Administrative Code. The following is a sample of the cases the Commission heard at its meeting held on August 4, 2016.

**Case #39091- Culpable Negligence – Inflicting Personal Injury**

The respondent resigned from the Escambia County Sheriff’s Office prior to the conclusion of an internal investigation which sustained the charges of Untruthfulness, Failure to Complete an Accurate Report, Unbecoming Conduct, Use and Handling of Weapons, and Compliance with a Direct Order of an Internal Affairs Investigator. On June 12, 2015, the respondent completed his assigned shift, and while off duty, stopped to visit a friend, the victim, at her place of employment. While visiting, the two engaged in friendly horseplay over a bottle of sweet tea. During the horseplay, the respondent pulled out his department-issued dart firing stun gun (DFSG) and shot the victim in the chest. The victim testified that she fell to the floor and could not remember much after that point. After tasing the victim, the respondent did not notify the Escambia County Sheriff’s Office. He retrieved the spent wires and probes, but never entered them into evidence. He spoke to the agency’s DFSG coordinator about the incident and told him that he accidentally discharged his DFSG, which struck his pillow. The respondent later spoke with the victim who explained she was filing a formal complaint. He then went back to the DFSG coordinator and admitted that he had tased the victim. In an effort to apologize to the victim, the respondent baked a cake and decorated it with one figure firing a DFSG at the other figure. The respondent later documented this incident with a false offense report, stating he accidentally tased the victim. He stated that the accident occurred when he lost his grip on the weapon while performing a safety check. The respondent refused to provide a statement to the Escambia County Sheriff’s Office. No criminal charges were filed.

**Penalty Guideline**: Probation to Suspension

FDLE Prosecution requested a 30-day retroactive suspension; 1 year probation to begin at the conclusion of the suspension period; provide staff with proof of successful completion of a Commission-approved ethics course prior to the end of the probationary period.

**Disciplinary Action by the Commission:** The Commission approved the settlement agreement.

**Case # 39308-** **Contributing to the Delinquency of a Minor (2 counts)**

The respondent resigned in lieu of termination from the Marianna Police Department subsequent to an internal investigation that sustained the charge of Contributing to the Delinquency of a Minor. On July 28, 2015, a special agent with the Florida Department of Law Enforcement was contacted and advised of an alleged inappropriate sexual relationship between a juvenile and a Marianna police officer. The agent met with the mother of the victim. According to the mother, her son became friends with the respondent and began spending time with him during 2011-2012. Later, after her son was of legal age, she learned that while he was in high school, he had engaged in a consensual, sexual relationship with the respondent. According to the mother, her son was 15 and the respondent was 21 at the time the relationship began. The agent was unsuccessful in making contact with the victim. According to the agent, without the victim's cooperation, a criminal case could not be pursued. The Marianna Police Department opened an administrative investigation to review allegations that the respondent provided alcohol to the victim and the victim's friend while they were underage. During his sworn internal affairs interview, the respondent admitted to having a consensual sexual relationship with the victim when the victim was 16 and he was 21. The respondent also admitted to providing the victim and his friend, both of whom were underage, with alcohol. No criminal charges were filed.

**Penalty Guideline**: Suspension to Revocation (both counts)

FDLE Prosecution requested revocation of the respondent’s certification.

**Disciplinary Action by the Commission:** The Commission accepted the requested penalty.

**Case # 38789 Misuse of Official Position-FCIC; Misuse of Electronic Database-FCIC**

The respondent was terminated from the Pasco County Sheriff’s Office subsequent to an internal investigation which sustained charges for Failure to Follow General Orders, Untruthfulness, Commission of a Felony, Association with Criminals and Conduct Unbecoming. During an agency criminal investigation in March of 2015, it was learned the respondent had been in the company of a known felon on multiple occasions. The respondent had also been present during discussions of obtaining illegal narcotics and prescription drugs between the felon and a confidential informant. As a result of this information, an administrative investigation was initiated. On April 20, 2015, an FDLE Transaction Archive Report (TAR) was obtained for the felon’s Criminal Justice Information System (CJIS) query history. It was discovered the respondent had logged in and accessed CJNET sixteen times to obtain information on the felon without authorization and with no legitimate law enforcement purpose between March 1, 2013 and March 11, 2015. The TAR report identified each specific computer where the query was performed. This information was compared to the respondent’s work schedule and assigned duty locations. On the date and time of each query, the respondent was on duty and in the work location where the query was performed. Copies of the respondent’s CJIS certificates were obtained which verified the respondent had taken and passed the required CJIS test on January 4, 2012 and again on December 4, 2013. The course study guide and test specifically direct users on utilizing the system for official criminal justice purposes only and provide the guidelines for misuse, including criminal prosecution. In her statement to investigators on May 7, 2015, the respondent admitted she ran the query on the felon’s driver’s license because he had mentioned that he had a DUI and did not know when he was getting his license back. During the discussion regarding the queries on the felon’s criminal history, the respondent’s story changed several times throughout the interview. Initially the respondent stated she did not know why she ran his criminal history, then she stated she might have run it, but did not check it, and advised when she viewed it she noticed most of the charges were dismissed. When questioned why she ran his name so many times, the respondent stated that she did not know. The respondent stated it was possible she was just obsessed with him and she was trying to find out information about him for herself. Finally the respondent admitted she ran the criminal history query, but stated she only skimmed through it because she knew it was wrong to be accessing the information. The respondent advised that as far as she knew he was not a felon. The respondent acknowledged she ran queries on the felon’s information for personal use and she knew it was prohibited. She further advised she did not make any copies of the information or provide it to anyone. After her admissions, the respondent was arrested and charged with Offense Against Users of Computers or Computer Systems. On June 16, 2015, the state attorney’s office filed a “No Information” on the criminal charge, concluding that the facts and circumstances did not warrant prosecution at that time.

**Penalty Guideline**: Probation to Revocation; Probation to Suspension

FDLE Prosecution requested a 120-day prospective suspension; 1 year probation to begin at the conclusion of the suspension period; provide staff with proof of successful completion of Commission-approved ethics training prior to the end of the probationary period.

**Disciplinary Action by the Commission:** The Commission accepted the requested penalty.

**Case # 38561-** **Assault; Perjury in an Official Proceeding**

The respondent was terminated from the St. Johns County Sheriff's Office subsequent to an internal investigation that sustained criminal act, bullying inmate, improper display of dart firing stun gun (DFST), and untruthfulness. On February 23, 2015, a lieutenant submitted a memorandum regarding an incident where the respondent caused his DSFG to spark toward an inmate in a threatening manner. According to a detention deputy, on February 19, 2015, he was in a cell when the respondent came in the cell and told the inmate he needed to remember who took his underwear because the respondent was getting blamed. The respondent then sparked his DSFG near the inmate’s thigh or groin and stated to the inmate that the DSFG might help him remember about the underwear. The inmate was sitting on his bunk and leaned away with his leg up toward the wall. The detention deputy witnessing the event was one of the deputies that allegedly threw away the inmate’s underwear. During the investigation, the investigator found that the respondent’s DSFG was sparked for three seconds on the day in question. In his interview, the inmate stated that the respondent came in his cell and stated that he did not understand why the inmate told others that the respondent threw away the underwear. The respondent then sparked his DSFG about two inches away from his leg. The respondent seemed mad when he came in the cell. When asked if the DSFG scared him, he stated that it did a little. In an interview, another inmate stated that the respondent came in the cell and told the inmate he got his name mixed up and that the inmate needed to clear the respondent’s name. The respondent then motioned to the DSFG while causing it to spark. The inmate stated that the respondent was laughing and did not seem angry. On March 4, 2015, during a sworn interview, the respondent stated that the witness deputy told him the inmate said that the respondent took his underwear. When he went in the cell, he asked the inmate if he took his underwear. He stated that the inmate said “no”. He then turned to the witness deputy and said that he had nothing to do with it and walked out. Nothing else happened in the cell. The respondent stated that the other inmate was not present. When asked, the respondent stated that he did not pull out his DSFG in the cell. The respondent stated that later that day, before going home, he pulled out his DSFG and spark tested it at his station, not in the cell. The respondent denied pointing the DSFG at anyone, denied testing the DSFG at anyone, and denied pointing the DSFG at the inmate’s groin, leg, or arm. The respondent stated he does not know why the inmate and the other inmate said he pulled out his DSFG and caused it to spark. He stated he does not have any trouble with any inmates. He stated that he did not know why the detention deputy said he pulled his DSFG and caused it to spark. The respondent repeatedly denied pulling out his DSFG in the cell and causing it to spark, denied pointing the DSFG at the inmate, and denied saying the DSFG would help the inmate remember who threw out his underwear. No criminal charges were filed.

**Penalty Guideline**: Suspension; Prospective Suspension to Revocation

FDLE Prosecution requested a 40-day prospective suspension; 1 year probation to begin at the conclusion of the suspension period; provide staff with proof of successful completion of a Commission-approved ethics course prior to the end of the probationary period.

**Disciplinary Action by the Commission:** The Commission accepted the requested penalty.

**The following information is provided to facilitate an understanding of the Professional Compliance process.**

When determining appropriate charges for presentation to the Commission for possible disciplinary action, staff takes into account may factors. One such factor is outlined by Commission rule 11B-27.004(12)(b), Florida Administrative Code, which states that:

Commission staff’s characterization of misconduct based upon the facts as presented shall control processing of misconduct cases under the rules of the Commission.

This rule has multiple applications for staff determining appropriate charges. First, this rule applies when an agency sustains a charge against an officer that is not a moral character violation, such as conduct unbecoming. If staff review of the case determines that the facts used to sustain the charge constitute a moral character violation, then that violation becomes the charge used in the Commission’s case. For example, an agency may sustain Conduct Unbecoming, but the underlying facts support that the officer committed a False Official Statement, then that becomes the charge presented to the Commission. The rule also applies when an individual enters a plea to a lesser offense that is not a moral character violation. For example, individuals arrested for Driving Under the Influence, a moral character violation, often plea to the lesser of charge of Reckless Driving, which is not a moral character violation. However, if the facts of the case support the charge, then staff presents the case to the Commission for the charge of DUI. This rule also applies when an individual enters a plea to a lesser offense that is a moral character violation. An individual arrested for Grand Theft may enter a plea to the reduced charge of Petit Theft. If the facts of the case support the initial charge of Grand Theft, then Commission staff will proceed with the Grand Theft charge. This rule is also applicable when determining charges in cases where no criminal charges are filed, are dismissed, or are nolle prossed.

If you have questions concerning the Officer Discipline process, or if you have any issues you would like to see addressed in the Professional Compliance Bulletin, please forward them to Stacy Lehman, Professional Compliance Section Manager in the Bureau of Standards, at the Florida Department of Law Enforcement, P.O. Box 1489, Tallahassee, Florida 32302 or via e-mail at :stacylehman@fdle.state.fl.us.