

# Professional Compliance Bulletin

## Issue #72

November 2018

and February 2019



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 hearings, 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 hearings held for cases from the rescheduled November 1, 2018, hearing and cases from February 7, 2019.

## November 1, 2018

### **Case # 42757- Misuse of Public Position; Misuse of Electronic Database-DAVID (10 counts); Misuse of Electronic Database-FCIC/NCIC**

The respondent is currently employed by the Florida Highway Patrol. She was suspended for 80 hours for a sustained charge of conduct unbecoming a public employee. On October 5, 2017, the Florida Highway Patrol received a complaint from a sergeant stating that the respondent may have misused her mobile data computer. The sergeant stated that he received information from a corporal that the respondent ran her boyfriend using the mobile data computer and discovered that he had a felony warrant. In an interview with the respondent, she stated that she conducted an FCIC/NCIC check on her boyfriend because she thought he may have been involved in a fatal crash that occurred near his residence. She stated that she also accessed FCIC/NCIC to check the status of her boyfriend’s driver’s license and that was when she discovered he had a warrant. The respondent stated that she wanted to give her boyfriend a chance to turn himself in so she did not attempt to confirm the warrant. Upon further investigation, it was determined that the respondent conducted multiple checks on several individuals for non-law enforcement purposes and she admitted to running the checks. No criminal charges were filed.

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

FDLE Prosecution requested a 20 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 # 41401-Perjury in an Official Proceeding; Sex on Duty**

---

The respondent was terminated from the Jupiter Police Department prior to the conclusion of an internal investigation which sustained the charges of Conduct Unbecoming an Officer, Code of Ethics, Neglect of Duty, and Perjury in Official Proceeding. During an unrelated investigation, a complainant provided allegations that she and the respondent engaged in sexual activity on two occasions while he was on duty. The complainant provided text messages in relation to the incidents; however, she was only able to provide evidence for one of the two incidents. The complainant provided a video that she alleged the respondent recorded on her phone while she performed oral sex on him. A forensic review of the video revealed the date, time, and GPS location of the video. The GPS location of the video matched the complainant's residence. Records showed that the respondent was on duty at the time the video was recorded and the time corresponded with the text messages exchanged between the respondent and the complainant. The respondent provided numerous statements and denied all allegations of having sex on duty with the complainant. The respondent was given an opportunity to review the texts and video. He admitted to writing the text messages, and admitted the possibility he went to the complainant's home that night to take her dinner. However, the respondent denied that he was the male in the video.

**Penalty Guideline:** Prospective Suspension to Revocation; Suspension to Revocation  
FDLE Prosecution requested a 22 month retroactive suspension; 90 day prospective suspension; 1 year probation to begin at the conclusion of the suspension period.

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

**Case # 42324-Barbituate Possession without a Prescription; Petit Theft**

---

The respondent was terminated from the Monroe County Sheriff's Office after her arrest for grand theft of a controlled substance and possession of a controlled substance without a prescription. (She was later hired back in a civilian position). On October 23, 2017, the respondent was babysitting at the home of the victim (an officer with the Key West Police Department). The respondent had previously been in the victim's home as an invited guest. The victim suspected the respondent had removed several pills from his prescription bottles on previous occasions; therefore, he counted the number of pills in the bottles prior to leaving his home that night. When he returned, he again counted his pills and realized 10 Oxycodone and 16 Alprazolam pills were missing. The victim confronted the respondent, and she denied taking the pills. The victim contacted the Monroe County Sheriff's Office. As part of the investigation, the victim placed a recorded call to the respondent. The respondent stated that her boyfriend had stopped by the victim's residence while she was babysitting and alleged he removed the pills. The victim asked the respondent to return the pills. She agreed, but stated she only had the Alprazolam and that her boyfriend had the Oxycodone. The respondent met the victim in the parking lot of the Key West Police Department and returned the 16 Alprazolam pills. The exchange was observed by deputies from the Monroe County Sheriff's Office who were staged in the parking lot. The respondent was stopped shortly after the exchange and was arrested. She provided a voluntary statement and admitted she took both the Oxycodone and the Alprazolam from the victim's residence. On March 23, 2018, the respondent was placed in a pre-trial intervention program. She was ordered to undergo 12 months supervision, required to pay court, probation services, and related costs. She was also ordered to complete a recovery

program and follow-up, and submit to random urinalysis for illicit drugs. The case will be nolle prosequi if the respondent completes the terms of the intervention program.

**Penalty Guideline:** Revocation; Suspension to Revocation  
FDLE Prosecution requested revocation.

**Disciplinary Action by the Commission:** The Commission rejected the requested penalty and imposed a 1 year retroactive suspension; 6 month prospective suspension; 2 year probation to begin at the conclusion of the suspension period; provide staff with proof of successful completion of Commission-approved substance abuse counseling.

## **February 7, 2019**

### **Case # 42330-Failure to Report Child Abuse**

---

The respondent was terminated from the Lake County Sheriff's Office subsequent to an internal investigation which sustained the charge of commission of a criminal act. On September 20, 2017, a lieutenant with the Lake County Sheriff's Office was contacted by the respondent who advised that he had information regarding a sexual battery of a child by a law enforcement officer. The respondent made contact with the lieutenant at her residence and informed her that he had been contacted by the wife of his best friend, who is a law enforcement officer. On September 7, 2017, the wife disclosed to the respondent that in June 2017, she learned that her husband had sexually battered her daughter in November 2016. The respondent stated to the lieutenant that he believed the allegations were true and described his friend as a "sexual deviant". The respondent stated that he did not immediately report the allegations because he instructed his friend's wife to report the allegations. The respondent stated that he did not follow-up to make sure the allegations were reported. The respondent also stated that he was afraid of what his best friend would have done if he had reported him. The respondent was arrested for failure to report child abuse. On January 23, 2018, the respondent was accepted into a pre-trial intervention contract for a period of 18 months.

**Penalty Guideline:** Suspension to Revocation  
FDLE Prosecution requested 1 year prospective suspension; 2 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 # 41630-Falsifying Records**

---

The respondent was terminated from the Department of Corrections subsequent to an internal investigation which sustained willful violation of rules and regulations and falsification of records. On July 13, 2016, it was reported to the Department of Corrections that the respondent was allowing an offender to report to the probation and parole office via email instead of making physical visits. On or between July 1, 2014, and June 7, 2016, the respondent would note in the system that the offender was reporting to the office physically, but was actually reporting by email. In an interview with the offender, she stated that the respondent was made aware of her medical conditions and that the respondent told her she did not have to report to the office but could email her every month. She stated the respondent would come by her residence from time to time to check in on her. In an interview with the respondent, she stated that the offender

initially reported to her but when she was hospitalized, she spoke with her supervisor about the situation and requested the offender be placed on a non-reporting status. The respondent stated she received a verbal agreement from her supervisor. The respondent did not document the conversation or put anything in the case notes indicating she received verbal authorization to have the offender check in by email. In an interview with the respondent's supervisor, he stated he did not give verbal consent to have the offender check in by email. No criminal charges were filed.

**Penalty Guideline:** Probation to Suspension

FDLE Prosecution requested a 180 day retroactive suspension; 20 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 settlement agreement.

**Case # 37829-Battery-Domestic Violence (slight to moderate victim injury); Child Abuse**

The respondent was employed with the Miami-Dade County Department of Corrections and Rehabilitation at the time of his arrest. He received a record of counseling for the sustained charge of departmental misconduct/excessive force. On August 31, 2014, officers with the Miami Gardens Police Department responded to a residence in reference to a domestic disturbance. The victim told the officers that she and the respondent were driving home when an argument ensued. During the argument, the respondent punched the victim in the left cheek and then choked her with his right hand. While driving, the respondent continued to punch the victim. When he stopped the vehicle to let the victim out, the respondent proceeded to punch and choke her again. The victim stated that she was in and out of consciousness the second time she was choked by the respondent. The victim's 10 year old son, who was also a passenger, tried to intervene but was not strong enough to get the respondent to stop the attack. The respondent grabbed the son by the neck, choked him, and pushed him away. The son then exited the vehicle and ran to a nearby house for help. The resident, who was a neighbor, ran outside to assist the victim. While attempting to pull the victim out of the car, the resident witnessed the respondent on top of the victim punching her. The resident could not get the victim away from the respondent because he had his left hand around her neck and one knee on her lap while punching her in the face with a closed fist. When the resident was able to get the victim out of the car, the respondent exited the vehicle, got on top of the victim again and continued to punch her. The son tried to get the respondent off of his mother but the respondent grabbed him by the throat and shoved him away. When law enforcement was called the respondent drove to his home, which was close by, and a witness saw him throwing the victim's clothes out of the residence. As law enforcement arrived, the respondent left the residence. He returned a short time later and was arrested. The entire incident lasted approximately 30 minutes. The victim's injuries consisted of marks on her face and neck, bruising on her left knee, and swelling and a laceration to her bottom lip. Her son did not sustain any visible marks or injuries. The respondent's injuries consisted of scratches to his facial area. The respondent denied punching and choking the victim and said that she was yelling at him and scratching him and that the victim stabbed him with something. A superficial puncture wound on the respondent's left shoulder was documented with no bleeding noted. The respondent denied choking the victim's son. The victim was issued a petition for injunction for protection against domestic violence. On January 26, 2015, the State Attorney's Office filed Nolle Prosequi for 2 counts of battery.

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

FDLE Prosecution requested a 30 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 anger management counseling prior to the end of the probationary period.

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

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

The Criminal Justice Standards and Training Commission is required by Section 943.1395(8)(b)2 to conduct a workshop each odd-numbered year to receive public comment, evaluate disciplinary guidelines and penalties and make recommendations to the Commission concerning penalty guidelines. Statute requires the panel be made up of twelve members, six in management positions, six in officer positions. The workshop was held on January 16, 2019, at the Seminole State College, Center for Public Safety. The task force was made up of the following members:

	<b>Name</b>
<b>Management</b>	<b>Chairman Robert A. Hardwick (Chief)</b>
<b>Management</b>	<b>Circuit Administrator Corlis Campbell</b>
<b>Management</b>	<b>Commissioner William “Bill” Prummell (Sheriff)</b>
<b>Management</b>	<b>Commissioner Michael L. Allen (Chief)</b>
<b>Management</b>	<b>Assistant Warden Eric Lane</b>
<b>Management</b>	<b>Director Charles McIntosh</b>
<b>Officer</b>	<b>Commissioner William “Willie” Weiss (Deputy Sheriff)</b>
<b>Officer</b>	<b>Support Services Sergeant Jennifer Chapman</b>
<b>Officer</b>	<b>Commissioner Kathleen A. Connell (Sergeant)</b>
<b>Officer</b>	<b>PBA President John Kazanjian</b>
<b>Officer</b>	<b>Correctional Probation Senior Officer Alisha White</b>
<b>Officer</b>	<b>Sergeant Paul Villaverde</b>

**ISSUE NUMBER 1:**

Commission rule contains penalty provisions for an individual found to have committed a moral character violation while employed on a Temporary Employment Authorization (TEA). Frequently, an agency employing an officer on a TEA terminates the officer when a moral character violation occurs. Since the officer has been terminated, is not certified, and has not applied for certification, staff closes these cases with a finding No Cause-TEA. Yet, Commission rule allows for the Commission to impose a five year ban on individuals who violate rules related to the administration of the Basic Abilities Test or State Officer Certification Examination even though they are not certified and have not applied for certification.

**Amends Rule 11B-27.005(10), F.A.C.; Temporary Employment Authorization.**

(10) Temporary Employment Authorization (TEA). Individuals employed on a TEA, pursuant to Section 943.131, F.S., who are retained by the employing agency, are subject to the following discipline by the Commission when found to have committed an act or acts establishing a "lack of good moral character," defined in subsection 11B-27.0011(4), F.A.C.:

(a) If the Commission issues a probationary period to an individual employed on a TEA, such individual shall be eligible for certification pending successful completion of the terms and conditions of the probationary period.

(b) If the Commission issues a suspension period to an individual employed on a TEA, such individual shall not be eligible for certification until the completion of the suspension period.

(c) If an individual commits a revocable offense the Commission shall deny the individual's request for certification.

(11) Individuals employed on a TEA who are found to have committed an act or acts establishing a "lack of good moral character," defined in subsection 11B-27.0011(4), F.A.C., and are terminated from employment prior to certification are subject to the following discipline by the Commission. Upon a finding of probable cause by a panel of the Commission, the Commission shall: Declare the individual ineligible to apply for certification in any discipline for a period of two years pursuant to Section 943.13(7), F.S., regarding good moral character for employment or appointment as an officer.

**Task Force Vote: Passed.**

**ISSUE NUMBER 2:**

Amend current rule language to add an enumerated penalty guideline of revocation for the felony charge of Sexual Misconduct (Section 944.35(3)(b)(2), F.S.), which prohibits any employee of the Department of Corrections or a private correctional facility from engaging in sexual misconduct with an inmate or an offender supervised by the department in the community, without committing the crime of sexual battery. The current penalty guideline rule places Sexual Misconduct within the generic penalty guideline of suspension to revocation for felony moral character violations. However, the charge of Sexual Misconduct involves an inappropriate relationship with an inmate or offender, and the statute specifically states that consent in these relationships cannot be raised as a defense. Any aggravators or mitigating circumstances as outlined in Rule 11B-27.005(6)(a)-(b), F.A.C., may be considered when determining the appropriate final disciplinary action by the Commission.

**Amends Rule 11B-27.005(5), F.A.C.; Range of Penalties-Felony Violations.**

(5) When the Commission finds that a certified officer has committed an act that violates Section 943.13(7), F.S., the Commission shall issue a final order imposing penalties within the ranges recommended in the following disciplinary guidelines:

(a) For the perpetration by the officer of an act that would constitute any felony offense, pursuant to paragraph 11B-27.0011(4)(a), F.A.C., but where there was not a violation of Section 943.13(4), F.S., the action of the Commission shall be to impose a penalty ranging from suspension of certification to revocation. Specific violations and penalties that shall be imposed, absent mitigating circumstances, include the following:

	<b>Violation</b>	<b>Recommended Penalty Range</b>
<u>20.</u>	<u>Sexual Misconduct (944.35(3)(b)(2) F.S.)</u>	<u>Revocation</u>

**Task Force Vote: Passed.**

**ISSUE NUMBER 3:**

Amend current rule language to add enumerated penalty guidelines for misdemeanor moral character violations of Driving or Boating Under the Influence as outlined in Florida Statutes. Currently, the Commission's penalty guidelines only contain the misdemeanor charges of Driving or Boating Under the Influence and DUI-Second Offense. However, Chapter 316.193, F.S., includes offenses based on certain additional elements of the offense.

While the Commission can discipline outside of the existing penalty guidelines of Probation with Substance Abuse Counseling or Prospective Suspension to Revocation, the addition of these offenses will provide clarity to the penalty guidelines and will help ensure consistency. Any aggravators or mitigating circumstances as outlined in Rule 11B-27.005(6)(a)-(b), F.A.C., may be considered when determining the appropriate final disciplinary action by the Commission.

**Amends Rule 11B-27.005(5), F.A.C.; Range of Penalties-Misdemeanor Violations.**

(5) When the Commission finds that a certified officer has committed an act that violates Section 943.13(7), F.S., the Commission shall issue a final order imposing penalties within the ranges recommended in the following disciplinary guidelines:

(b) For the perpetration by the officer of an act that would constitute any of the misdemeanor offenses, pursuant to paragraph 11B-27.0011(4)(b), F.A.C., but where there was not a violation of Section 943.13(4), F.S., the action of the Commission shall be to impose a penalty ranging from probation of certification to suspension of certification. Specific violations and penalties that shall be imposed, absent aggravating or mitigating circumstances, include the following:

10.	<p>Driving or boating under the influence; <del>Second DUI Offense</del> (Sections 316.193 and 327.35, F.S.)</p> <p><u>Driving or boating under the influence-Second Offense</u></p> <p><u>Driving or boating under the influence with property damage or injury</u></p> <p><u>Driving or boating under the influence -blood-alcohol level or breath-alcohol level of 0.15 or higher</u></p> <p><u>Driving or boating under the influence while accompanied in the vehicle by a person under the age of 18 years</u></p>	<p>Probation with substance abuse counseling; <del>prospective suspension with substance abuse counseling to revocation</del></p> <p><u>Prospective suspension with substance abuse counseling to revocation</u></p> <p><u>Prospective suspension with substance abuse counseling to revocation</u></p> <p><u>Prospective suspension with substance abuse counseling to revocation</u></p> <p><u>Prospective suspension with substance abuse counseling to revocation</u></p>
-----	--	---

Task Force Vote: Passed.

**ISSUE NUMBER 4:**

Chapter 316.1939, F.S., Refusal to Submit to Testing, is a misdemeanor criminal offense and applies to individuals who refuse to submit to a physical test of breath, blood, or urine for a second time. However, this is currently not one of the Commission's enumerated misdemeanors. The misdemeanor charge should be added to the list of misdemeanor moral character violations and associated penalty guidelines.

**Amends Rule 11B-27.0011(4), F.A.C.; Moral Character-Misdemeanor Violations.**

(4) For the purposes of the Criminal Justice Standards and Training Commission's implementation of any of the penalties specified in Section 943.1395(6) or (7), F.S., a certified officer's failure to maintain good moral character required by Section 943.13(7), F.S., is defined as:

(b) Except as otherwise provided in Section 943.13(4), F.S., a plea of guilty or a verdict of guilty after a criminal trial for any of the following misdemeanor or criminal offenses, notwithstanding any suspension of sentence or withholding of adjudication, or the perpetration by an officer of an act that would constitute any of the following misdemeanor or criminal offenses whether criminally prosecuted or not:

1. Sections 316.193, 316.1939, 327.35, 365.16(1)(c),(d), 414.39, 741.31, 784.011, 784.03, 784.047, 784.048, 784.05, 784.049(3)(a), 784.046(15), 790.01, 790.10, 790.15, 790.27, 794.027, 796.07, 800.02, 800.03, 806.101, 806.13, 810.08, 810.14, 812.014, 812.015, 812.14, 817.235, 817.49, 817.563, 817.565, 817.61, 817.64, 827.04, 828.12, 831.30, 831.31(1)(b), 832.05, 836.12(2), 837.012, 837.05, 837.055,



837.06, 839.13, 839.20, 843.02, 843.03, 843.06, 843.085, 847.011, 856.021, 870.01, 893.13, 893.147, 901.36 914.22, 934.03, 944.35, 944.37, and 944.39, F.S.

**Amends Rule 11B-27.005(5), F.A.C.; Range of Penalties-Misdemeanor Violations.**

(5) When the Commission finds that a certified officer has committed an act that violates Section 943.13(7), F.S., the Commission shall issue a final order imposing penalties within the ranges recommended in the following disciplinary guidelines:

(b) For the perpetration by the officer of an act that would constitute any of the misdemeanor offenses, pursuant to paragraph 11B-27.0011(4)(b), F.A.C., but where there was not a violation of Section 943.13(4), F.S., the action of the Commission shall be to impose a penalty ranging from probation of certification to suspension of certification. Specific violations and penalties that shall be imposed, absent aggravating or mitigating circumstances, include the following:

	<b>Violation</b>	<b>Recommended Penalty Range</b>
11.	<u>Second refusal to submit to a physical test of breath, blood, or urine ( 316.1939, F.S.)</u>	<u>Prospective suspension with substance abuse counseling to revocation</u>

Task Force Vote: Passed.

**ISSUE NUMBER 5:**

Chapter 499.03, F.S., Possession of Certain Drugs without Prescriptions, is a misdemeanor criminal offense and applies to individuals possessing any habit-forming, toxic, harmful, or new drugs. However, this charge is not one of the Commission's enumerated misdemeanor violations. The misdemeanor charge should be added to the list of misdemeanor moral character violations and associated penalty guidelines.

**Amends Rule 11B-27.0011(4), F.A.C.; Moral Character-Misdemeanor Violations.**

(4) For the purposes of the Criminal Justice Standards and Training Commission's implementation of any of the penalties specified in Section 943.1395(6) or (7), F.S., a certified officer's failure to maintain good moral character required by Section 943.13(7), F.S., is defined as:

(b) Except as otherwise provided in Section 943.13(4), F.S., a plea of guilty or a verdict of guilty after a criminal trial for any of the following misdemeanor or criminal offenses, notwithstanding any suspension of sentence or withholding of adjudication, or the perpetration by an officer of an act that would constitute any of the following misdemeanor or criminal offenses whether criminally prosecuted or not:

1. Sections 316.193, 316.1939, 327.35, 365.16(1)(c),(d), 414.39, 499.03, 741.31, 784.011, 784.03, 784.047, 784.048, 784.05, 784.049(3)(a), 784.046(15), 790.01, 790.10, 790.15, 790.27, 794.027, 796.07, 800.02, 800.03, 806.101, 806.13, 810.08, 810.14, 812.014, 812.015, 812.14, 817.235, 817.49, 817.563, 817.565, 817.61, 817.64, 827.04, 828.12, 831.30, 831.31(1)(b), 832.05, 836.12(2), 837.012, 837.05, 837.055, 837.06, 839.13, 839.20, 843.02, 843.03, 843.06, 843.085, 847.011, 856.021, 870.01, 893.13, 893.147, 901.36 914.22, 934.03, 944.35, 944.37, and 944.39, F.S.

**Amends Rule 11B-27.005(5), F.A.C.; Range of Penalties-Misdemeanor Violations.**

(5) When the Commission finds that a certified officer has committed an act that violates Section 943.13(7), F.S., the Commission shall issue a final order imposing penalties within the ranges recommended in the following disciplinary guidelines:

(b) For the perpetration by the officer of an act that would constitute any of the misdemeanor offenses, pursuant to paragraph 11B-27.0011(4)(b), F.A.C., but where there was not a violation of Section 943.13(4), F.S., the action of the Commission shall be to impose a penalty ranging from probation of certification to suspension of certification. Specific violations and penalties that shall be imposed, absent aggravating or mitigating circumstances, include the following:

	<b>Violation</b>	<b>Recommended Penalty Range</b>
18.	<u>Possession of certain drugs without prescriptions (Section 499.03, F.S.)</u>	<u>Suspension to revocation</u>

Task Force Vote: Passed.

**ISSUE NUMBER 6:**

Amend current rule language to add an enumerated penalty guideline for the felony charge of Possession of Certain Drugs without Prescriptions with the intent to sell, dispense, or deliver (Section 499.03, F.S.). Any aggravators or mitigating circumstances as outlined in Rule 11B-27.005(6)(a)-(b), F.A.C., may be considered when determining the appropriate final disciplinary action by the Commission.

**Amends Rule 11B-27.005(5), F.A.C.; Range of Penalties-Felony Violations.**

(5) When the Commission finds that a certified officer has committed an act that violates Section 943.13(7), F.S., the Commission shall issue a final order imposing penalties within the ranges recommended in the following disciplinary guidelines:

(a) For the perpetration by the officer of an act that would constitute any felony offense, pursuant to paragraph 11B-27.0011(4)(a), F.A.C., but where there was not a violation of Section 943.13(4), F.S., the action of the Commission shall be to impose a penalty ranging from suspension of certification to revocation. Specific violations and penalties that shall be imposed, absent mitigating circumstances, include the following:

	<b>Violation</b>	<b>Recommended Penalty Range</b>
21.	<u>Possession of Certain Drugs without Prescriptions with the intent to sell, dispense, or deliver (Section 499.03, F.S.)</u>	<u>Prospective suspension to revocation</u>

Task Force Vote: Passed.

**ISSUE NUMBER 7:**

Chapter 934.425, F.S., Installation of Tracking Devices or Applications, is a misdemeanor criminal offense and applies to an individual installing a device whose primary purpose is to reveal its location or movement by the transmission of electronic signals. However, this charge is not one of the Commission's enumerated misdemeanor violations although it is sometimes criminally charged in conjunction with charges related to stalking. The misdemeanor charge should be added to the list of misdemeanor moral character violations and associated penalty guidelines.

**Amends Rule 11B-27.0011(4), F.A.C.; Moral Character-Misdemeanor Violations.**

(4) For the purposes of the Criminal Justice Standards and Training Commission's implementation of any of the penalties specified in Section 943.1395(6) or (7), F.S., a certified officer's failure to maintain good moral character required by Section 943.13(7), F.S., is defined as:

(b) Except as otherwise provided in Section 943.13(4), F.S., a plea of guilty or a verdict of guilty after a criminal trial for any of the following misdemeanor or criminal offenses, notwithstanding any suspension of sentence or withholding of adjudication, or the perpetration by an officer of an act that would constitute any of the following misdemeanor or criminal offenses whether criminally prosecuted or not:

1. Sections 316.193, 316.1939, 327.35, 365.16(1)(c),(d), 414.39, 499.03, 741.31, 784.011, 784.03, 784.047, 784.048, 784.05, 784.049(3)(a), 784.046(15), 790.01, 790.10, 790.15, 790.27, 794.027, 796.07, 800.02, 800.03, 806.101, 806.13, 810.08, 810.14, 812.014, 812.015, 812.14, 817.235, 817.49, 817.563, 817.565, 817.61, 817.64, 827.04, 828.12, 831.30, 831.31(1)(b), 832.05, 836.12(2), 837.012, 837.05, 837.055, 837.06, 839.13, 839.20, 843.02, 843.03, 843.06, 843.085, 847.011, 856.021, 870.01, 893.13, 893.147, 901.36 914.22, 934.03, 934.425, 944.35, 944.37, and 944.39, F.S.

**Amends Rule 11B-27.005(5), F.A.C.; Range of Penalties-Misdemeanor Violations.**

(5) When the Commission finds that a certified officer has committed an act that violates Section 943.13(7), F.S., the Commission shall issue a final order imposing penalties within the ranges recommended in the following disciplinary guidelines:

(b) For the perpetration by the officer of an act that would constitute any of the misdemeanor offenses, pursuant to paragraph 11B-27.0011(4)(b), F.A.C., but where there was not a violation of Section 943.13(4), F.S., the action of the Commission shall be to impose a penalty ranging from probation of certification to suspension of certification. Specific violations and penalties that shall be imposed, absent aggravating or mitigating circumstances, include the following:

	<b>Violation</b>	<b>Recommended Penalty Range</b>
15.	<u>Installation of Tracking Devices or Applications (Section 934.425, F.S.)</u>	<u>Suspension to revocation</u>

**Task Force Vote: Passed.**

**ISSUE NUMBER 8:**

In many criminal cases involving misdemeanor charges, individuals enter a plea of no contest and are adjudicated guilty. Therefore, the issue of whether the respondent committed the underlying behavior has already been determined by a judge and does not need to be proven again. The Commission's rule should be amended to recognize this finding by the court.

**Amends Rule 11B-27.0011(4), F.A.C.; Moral Character-Misdemeanor Violations.**

(4) For the purposes of the Criminal Justice Standards and Training Commission's implementation of any of the penalties specified in Section 943.1395(6) or (7), F.S., a certified officer's failure to maintain good moral character required by Section 943.13(7), F.S., is defined as:

(b) Except as otherwise provided in Section 943.13(4), F.S., a plea of guilty, an adjudication of guilt, or a verdict of guilt after a criminal trial for any of the following misdemeanor or criminal offenses, notwithstanding any suspension of sentence or withholding of adjudication, or the perpetration by an officer of an act that would constitute any of the following misdemeanor or criminal offenses whether criminally prosecuted or not:

**Task Force Vote: Passed.**

**ISSUE NUMBER 9:**

The current penalty guideline for the charge of Grand Theft is revocation. This penalty limits possibilities for settlements for this charge when the circumstances of the case may not rise to the level of revocation, such as the respondent making full restitution. It is recommended to amend current rule language for the enumerated penalty guideline for the felony charge of Grand Theft and place it in the generic penalty guideline for felony offenses of suspension to revocation. Any aggravators or mitigating circumstances as outlined in Rule 11B-27.005(6)(a)-(b), F.A.C., may be considered when determining the appropriate final disciplinary action by the Commission.

**Amends Rule 11B-27.005(5), F.A.C.; Range of Penalties-Felony Violations.**

(a) For the perpetration by the officer of an act that would constitute any felony offense, pursuant to paragraph 11B-27.0011(4)(a), F.A.C., but where there was not a violation of Section 943.13(4), F.S., the action of the Commission shall be to impose a penalty ranging from suspension of certification to revocation. Specific violations and penalties that shall be imposed, absent mitigating circumstances, include the following:

	<b>Violation</b>	<b>Recommended Penalty Range</b>
3.	Grand theft (Section 812.014, F.S.)	Revocation

**Task Force Vote: Passed.**

**ISSUE NUMBER 10:**

The Commission is currently prevented from proceeding on cases when administrative review, such as arbitration or Public Employment Relations Commission hearings, result in a final reversal of discipline imposed by the employing agency relating to alleged misconduct. The administrative employment proceeding is conducted by an entity with a separate and distinct purpose than that of the Commission. An employer's purpose at an administrative review is to justify their adverse employment action, not prove by clear and convincing evidence a moral character violation occurred. Florida appellate courts have held that the doctrines of res judicata and estoppel by judgment are not applicable where two separate and distinct governmental units independently considered similar factual allegations but for different purposes. *Newberry v. Florida Department of Law Enforcement, Criminal Justice Standards and Training Commission*, 585 So.2d 500, 501 (Fla. 3rd DCA 1991). The reason for this, as in the reason for the

proposed rule change, is that different evidence may be utilized for one hearing that, although available to both, may not be utilized in the other due to the difference in purpose and function.

**Amends Rule 11B-27.004(10)(b), F.A.C.; Probable Cause Determinations.**

At the conclusion of the preliminary investigation and when the reports and documents are received as directed by Sections 943.139 and 943.1395, F.S., a determination of probable cause shall be made before the Commission initiates proceedings to take disciplinary action against the certification of an officer.

~~(10)(b) In cases in which administrative or judicial review results in a final reversal of discipline imposed by the employing agency relating to the alleged misconduct that is subject to review by the Commission, or criminal proceedings that result in the respondent's acquittal on all charges subject to review by the Commission after a trial, Commission staff shall take no further action, provided that Commission staff may present the case to a Probable Cause Panel upon Commission staff's specific showing that the findings of fact in the collateral proceedings were based upon inclusion or exclusion of evidence, or that the testimony was a departure from the essential requirements of law, the findings of fact in the collateral proceedings were not supported by competent and substantial evidence, or were clearly contrary to the evidence presented.~~

Task Force Vote: Item did not pass.

ISSUE NUMBER 11:
------------------

Discuss medical marijuana as it pertains to the Commission's moral character standard.

**Task Force Vote: The Task Force voted to direct Commission staff to generate a CJSTC Technical Memorandum to include the federal laws as it pertains to medical marijuana and the Commission's moral character standard.**

If you have any issues that you would like to be address in this bulletin, please forward them to R. 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](mailto:stacylehman@fdle.state.fl.us).