

# Professional Compliance Bulletin

May 2019 – Issue #73



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 on May 2, 2019.

## **Case # 43642-Excessive Use of Force**

The respondent was terminated from the Miami-Dade Department of Corrections & Rehabilitation subsequent to an internal investigation which sustained the charge of use of excessive force. Arbitration regarding the termination was completed and the discipline was reduced to a 30 day suspension, with no back pay or benefits for the time period between his dismissal and reinstatement. On January 11, 2014, an inmate was speaking over the phone in a loud, abusive voice when the respondent told him to quiet down. The inmate refused and the respondent approached the inmate and struck him in the head. The inmate stood up and the respondent struck him several more times. Officers responded to the area and separated the two men. The inmate sustained swelling in the affected area and the respondent later complained that the inmate spat on him and stated that he wanted to go to the hospital. The sergeant noted that there appeared to be no need for force and said the respondent struck the inmate numerous times, which caused swelling to the right side of the inmate’s head. He noted that no efforts were made by the respondent to temper the force and, based on a review of the video, he did not concur with the force utilized by the respondent. In a sworn interview, the respondent said he accidentally tapped the inmate in the facial area, apologized, and told the inmate that he was going to be placed in a holding cell. He said the inmate stated that he was not going anywhere and spat on him. The respondent said he then struck the inmate in the facial area several times, causing the inmate to fall. The respondent said he later reported to the hospital and received a tetanus shot. The respondent denied using excessive force on the inmate, provoking a use of force incident involving the inmate, using profanity towards the inmate, and he denied failing to accurately document the incident. The inmate said in his statement that he was on the telephone with his girlfriend telling her what was happening and that he was tired of waiting when she asked if there were any supervisors present. He said he responded with a negative statement and the respondent got up, got in his face and started beating him. He was medically evaluated and it was determined that he had swelling to the

right side of his head and he complained that he had a headache. No criminal charges were filed.

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

**Disciplinary Action by the Commission:** The Commission rejected the requested penalty and imposed a 180 day 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 anger management counseling.

### **Case # 42390- Child Abuse**

---

The respondent resigned from the Florida Department of Highway Safety And Motor Vehicles subsequent to an internal investigation which sustained the charge of violation of law or agency rules and conduct unbecoming a public employee. On September 23, 2017, a deputy with the Jackson County Sheriff's Office received a complaint stating that the respondent had abused a 4 year old child. The victim's father stated that on September 22, 2017, when he picked up his son from his mother, he observed red marks on his son's face. He then contacted the victim's mother who stated that the respondent had disciplined him for poor performance in school. While the deputy was photographing the victim's injury he noticed the victim also had multiple bruises on his buttocks. The deputy forwarded the report to the Department of Children and Families (DCF). The DCF report stated the strikes were hard enough to cause blood blisters. DCF also found that the bruising visible on the victim's face, neck, and buttocks were caused by hard strikes. The victim's neck injury was more consistent with strangulation. In a sworn interview with the respondent, he admitted to using his hand to strike the victim once on the face and twice on his bare buttocks. He stated that he has previously slapped the victim on the cheek and buttocks but it never resulted in injury. In a sworn interview, the victim's mother stated that she was not home during the incident and did not observe any injuries to the victim before he left the house. She stated that the victim never received any injuries when the respondent punished him on other occasions. On February 16, 2018, the respondent entered into a deferred prosecution agreement and was placed on 12 months probation. He was ordered to complete an anger management course and pay court costs and fines.

**Penalty Guideline:** Prospective Suspension to Revocation  
FDLE Prosecution requested 90 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 rejected the requested penalty and revoked the respondent's certification.

### **Case # 43393-Petit Theft**

---

The respondent resigned from the Jacksonville Sheriff's Office (JSO) while the subject of an internal investigation which ultimately sustained commission of conduct supporting criminal acts-tampering with evidence and petit theft. On October 5, 2017, the respondent was a member of a narcotic tactical team engaged in serving a search warrant at a residence. During the search of the residence, the team recovered cash, to include a \$100.00 bill from a bedroom.

All of the collected evidence was photographed and placed in a central evidence collection point inside the residence. During the confirmation count of the money, the \$100.00 bill was missing. A thorough search of the residence was conducted and failed locate the missing bill. All members of the team were then brought into the same room and were instructed to empty their pockets in front of each other. The respondent pulled the bill in question from his pocket. On October 6, 2017, the respondent stated to investigators that he found the bill on the floor of the residence near a bedroom. He further stated that he decided to keep the bill for himself, and put it into his left front pocket. On January 9, 2018, the respondent pled nolo contendere to petit theft. Adjudication was withheld. He was sentenced to a one-year period of probation. He was ordered to resign from the JSO, not to apply to be a law enforcement officer within the 4th judicial circuit, perform 50 hours of community service, and pay fines and court costs.

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

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

**Case # 43394-Possession of Marijuana Under 20 Grams;  
Possession of Drug Paraphernalia**

---

The respondent is currently employed by the Florida Fish and Wildlife Conservation Commission. He was suspended for 30 days for the sustained charges of use of controlled substance and conduct unbecoming a state employee. On March 1, 2018 a captain with the Florida Fish and Wildlife Conservation Commission received information that the respondent smoked marijuana. Upon further investigation, it was discovered that on February 27, 2018, the respondent attended an archery tournament where other officers were present. While on the trip, he possessed and smoked marijuana on several occasions. In an interview with the respondent, he admitted to possessing and smoking marijuana. He stated that he had a small amount of marijuana in a pill bottle and that he used a metal pipe to smoke it. No criminal charges were filed.

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

**Disciplinary Action by the Commission:** The Commission rejected the proposed discipline and imposed a 30 day retroactive suspension, 2-year period of probation; provide staff with proof of successful completion of Commission-approved substance abuse counseling prior to the end of the probationary period.

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

---

Section 943.1395 F.S. provides the Commission the authority to discipline an officer's certification for violating the Commission's moral character rules. One such portion of the moral character rule involves certified individuals charged with a criminal offense. Commission Rule 11B-27.0011 states, includes a description of moral character offenses related to criminal arrests:

(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:

(a) The perpetration by an officer of an act that would constitute any felony offense, whether criminally prosecuted or not.

(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, 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.

2. Any principal, accessory, attempt, solicitation, or conspiracy, pursuant to Chapter 777, F.S., which had the crime been committed or completed would have been a felony offense; or

3. The perpetration of an act in any jurisdiction other than the State of Florida, which if committed in the State of Florida would constitute any offense listed in this rule section.

It is important to note the Commission's rule states that disciplinary action can be taken regardless of criminal prosecution for criminal arrests. In the event an individual certified by the Commission is arrested and the state files a nolo prosequi, dismisses the charge, or does not file a charge, the Commission may still discipline the individual for that offense. Additionally, the Commission can utilize the charge associated with an arrest instead of a lesser charge used during the criminal adjudication. For example; an individual arrested for Grand Theft may be adjudicated by the court for the lesser charge of Petit Theft. However, if sufficient evidence exists for the Commission to prove the Grand Theft charge at a clear and convincing burden of proof, then the Commission will charge the individual with Grand Theft.

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).