

Professional Compliance Bulletin

February 2021

Issue #79



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 the hearings held on February 11, 2021.

Case #46396-False Official Statement

The respondent retired, prior to termination, from the St. Johns County Sheriff’s Office (SJCSO), subsequent to an internal investigation which sustained written and verbal untruthfulness. On January 9, 2020, a citizen called in a complaint alleging that SJCSO deputies and a Florida Highway Patrol (FHP) trooper used excessive force against her son, the subject, during a December 29, 2019 traffic stop. She also stated that she was given video by a witness to the incident which showed the subject being kicked in the head by deputies. During the ensuing investigation, inconsistencies were noted when comparing the video of the incident with the narratives of the deputies. The respondent wrote that after each time the subject was tased, he got back on his feet and continued to fight by punching and kicking. A review of the video showed that the subject never fully got back on his feet, nor was he punching or kicking. The respondent received injuries from the subject including a bite to his arm. A witness recorded the incident with his phone from about 15 feet away. The witness stated he never saw the subject fighting the deputies. He said the subject refused to lay on his stomach and would not let the deputies handcuff him. Another civilian witness walked out of a nearby store and observed the incident. He stated part of his view was obstructed by vehicles. He stated that he did not see the subject punch, kick or bite the deputies and did not observe the subject trying to stand up. The trooper who was present for the entire incident explained that the subject was in his vehicle moaning incoherently, gripping the steering wheel and shaking uncontrollably. The trooper explained that the situation was occurring quickly and his adrenaline was pumping. He stated once the subject was outside his vehicle, he was making large movements, trying to stand up, and not listening to commands. He did not recall seeing the subject kicking or punching the deputies but he was 5-10 feet away and at times could not see much of what was happening. No criminal charges were filed.

Penalty Guideline: 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 a Commission-approved ethics course 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 # 45094 – Driving Under the Influence

The respondent resigned from the Florida State University-University Police Department subsequent to an internal investigation which sustained violation of a provision of law or university rule or policy; drinking on the job or reporting to work under the influence of alcohol; possession, sale, distribution of alcoholic beverages or illegal drugs (controlled substances); unauthorized use of state property, equipment or personnel; and conduct unbecoming a public employee. On June 20, 2019, a trooper observed a Florida State University Police Department vehicle exiting a parking garage used by the patrons of several bars. The driver of the vehicle rapidly accelerated, causing the vehicle's tires to squeal. The trooper estimated the vehicle's speed at 65-mph in a 35-mph zone. The trooper pulled over the vehicle and contacted the respondent. At the time of the traffic stop, the respondent was the agency's on-call investigator. The trooper detected the odor of an alcoholic beverage coming from his person, which got more pronounced as the respondent spoke, his eyes were glassy, and he spoke with slurred and mumbled speech. The respondent identified himself as a law enforcement officer and admitted to drinking two beers. An inventory of the vehicle revealed half of a bottle of store-bought moonshine and a plastic flask containing an alcoholic beverage. The trooper observed the respondent to be uncoordinated, staggered as he walked, and swayed from front to back. The respondent refused to perform field sobriety exercises and a breath test. A second trooper arrived and placed the respondent under arrest for driving under the influence. On December 3, 2019, the respondent entered into a Deferred Prosecution Agreement with the State Attorney's Office for a period of 18 months. He was required to successfully complete the Veteran's Treatment Court (VTC) Program which required him to submit to a substance abuse and a mental health evaluation and complete any recommended treatment, meet with a mentor one time each month, abstain from possession or consumption of any controlled substance without a valid prescription, refrain from possession or consumption of alcohol, submit to random drug testing, report to the VTC only, and submit to any recommended treatment and aftercare.

Penalty Guideline: Probation with Substance Abuse Counseling

FDLE Prosecution requested a 15-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 substance abuse counseling prior to the end of the probationary period.

Disciplinary Action by the Commission: The Commission modified the term of prospective suspension to 60 days and accepted the remainder of the requested penalty.

Case # 44781– Battery

The respondent was terminated from the Pinellas County Sheriff's Office subsequent to an internal investigation which sustained simple battery. On January 11, 2019, the respondent was supervising an inmate (victim) who was on a trash disposal detail. At some point, the respondent

ordered the victim to perform pushups. While the victim was face down in the up position of the exercise, the respondent used his left foot to kick the victim in the rib cage area. The incident was captured on video. During an interview with investigators, the victim stated that while placing trash into a dumpster, he threw a cookie to a bird. Consequently, he was ordered by the respondent to perform pushups. The victim further stated that after he could no longer perform additional pushups, the respondent kicked him and directed him to get up. During a sworn interview on April 23, 2019, the respondent initially denied that there was any physical contact between him and the inmate. After being shown the video footage, the respondent stated that the victim was sagging while doing the pushups and that the contact was a “tap” rather than a kick. He could not recall what led to the incident. The respondent was subsequently charged with simple battery. On November 7, 2019, the respondent was ordered to be placed into a six-month pretrial diversion program, which included the successful completion of anger management and the payment of court and investigative costs.

Penalty Guideline: Suspension

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 rejected the settlement agreement and directed staff to seek a voluntary relinquishment or revocation or schedule the case for an administrative hearing.

Case # 44781– False Official Statement

The respondent was terminated from the Escambia County Corrections subsequent to an internal investigation which sustained the allegations of neglect of duty – negligence, endangering others or property through neglect; and improper conduct offenses - falsifying records. On January 31, 2019, the respondent and two other officers were assigned to the infirmary. One of their responsibilities was to conduct visual checks every fifteen minutes for inmates with a mental health designation. The officers were to document the time of each check and the status of the inmate on a check sheet. During the shift, an inmate was severely beaten by another inmate inside a cell in the infirmary. A review of the fixed wing video showed that at 10:26 p.m. the inmate was returned to cell a where three other inmates were being housed. At 10:42 p.m. the inmate was knocked unconscious and was severely beaten for approximately one minute and his dignity garment was removed. One of the inmates appeared to be asleep during the incident and another witnessed the incident, but did not intervene. At 10:50 p.m., the inmate that inflicted the injuries appeared to call for staff assistance. The injured inmate appeared to still be unconscious. The respondent made multiple entries on the check sheets that were not accurate or performed in a timely manner. Additionally, he made false electronic logbook entries indicating the visual checks had been completed at fifteen-minute intervals. During his interview on February 11, 2019, the respondent admitted to the false entries, stating that he had been busy with other duties. No criminal charges were filed.

Penalty Guideline: Prospective Suspension to Revocation

FDLE Prosecution requested a 2-year prospective suspension; 2-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.

The Criminal Justice Standards and Training Commission is required by Section 943.1395(8)(b)2 F.S. to conduct a workshop to receive public comment and evaluate disciplinary guidelines and penalties. Statute requires the panel be made up of twelve members, six in management positions, six in officer positions. The workshop was held on January 14, 2021, at the Polk County Sheriff's Office. The task force was made up of the following members:

Position	Name
Management	Commissioner Michael L. Allen (Chief and Task Force Chair)
Management	Chief Deputy Donna Luszczynski
Management	Inspector Robert "Andy" Wagner
Management	Chief Albert A. "Butch" Arenal
Management	Commissioner Gary T. Calhoun (Chief)-absent
Management	Major David De La Espriella
Officer	PBA President John Kazanjian
Officer	Officer Michael "Mick" McHale
Officer	Commissioner Darla Lynn Portman (Master Police Officer)
Officer	Detective Kevin Millan
Officer	Sergeant Glenn Matonak
Officer	Sergeant James "Randy" Reaves

The following agenda items were presented to the Task Force and all were approved:

ISSUE NUMBER 1:

In 2012, a statutory change was made to the charge of Video Voyeurism. This change made the charge a misdemeanor for anyone under 19 years old, and a felony for anyone 19 years old or older. At the time, the Commission required individuals to be 19 years old in order to become certified in any discipline. As such, the 2015 Penalty Guidelines Task Force removed charge of misdemeanor Video Voyeurism and associated penalty guideline from rule. However, a 2019 statutory change was made allowing for individuals 18 years old to become certified in corrections, so the misdemeanor charge of Video Voyeurism and associated penalty guideline should be added back to Commission rule. 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-27.0011(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 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, 810.145, 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:

	Violation	Recommended Penalty Range
8.	Prostitution or lewdness; voyeurism; <u>video voyeurism</u> (Sections 796.07, 810.14, <u>810.145</u> , F.S.)	Prospective suspension, and probation with counseling to revocation

ISSUE NUMBER 2:

Chapter 827 F.S., Abuse of Children, and chapter 847 F.S., Obscenity describe a variety of felony criminal offences involving children and minors. During staff review of these statutes, it was determined that some of these offenses fall into the generic penalty guideline for felony offenses of suspension to revocation of certification. As such, these charges for felonies within Chapters 827 F.S. and 847 F.S. are eligible for a Letter of Acknowledgment should the employing agency retain the officer’s employment and take significant agency action as described in Section 11B-27.005(1). Since the issuance of a Letter of Acknowledgment is statutorily mandated, the

Commission would have no authority to review these cases for possible discipline. The following charges should be added to the list of felony penalty guidelines; 827.071 F.S.-sexual performance by a child, 847.011(1)(c) F.S.-distribution or possession of obscene material depicting a minor, 847.011(5) F.S.-distribution of child-like sex doll, 847.0135 F.S.-computer pornography involving a minor/traveling to meet a minor, 847.0145 F.S.-buying or selling minors. 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:

	Violation	Recommended Penalty Range
11.	Child abuse (Section 827.03, <u>827.071</u> , F.S.)	Prospective suspension to revocation
<u>21.</u>	<u>Obscenity (Section 847.011(1)(c), 847.011(5), 847.0135, 847.0145, F.S.)</u>	<u>Prospective suspension to revocation</u>

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:

	Violation	Recommended Penalty Range
11.	Child abuse (Section 827.03, <u>827.071</u> , F.S.)	Prospective suspension to revocation
<u>21.</u>	<u>Obscenity (Section 847.011(1)(c), 847.011(5), 847.0135, 847.0145, F.S.)</u>	<u>Prospective suspension to revocation</u>

ISSUE NUMBER 3:

Chapter 847.011 F.S., Obscenity, includes the misdemeanor charge related to the possession of a child-like sex doll. Currently this charge is included as one of the Commission’s enumerated misdemeanor violations. During staff review of this statute, it was determined that this misdemeanor charge falls into the generic penalty guideline for misdemeanors of probation to suspension of certification. As such, the charge of possession of a child-like sex doll is eligible for a Letter of Acknowledgment should the employing agency retain the officer’s employment and take significant agency action as described in Section 11B-27.005(1). Since the issuance of a Letter of Acknowledgment is statutorily mandated, the Commission would have no authority to review these cases for possible discipline. Section 847.011(5), F.S., should be added to the list of penalty guidelines. 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:

<u>20.</u>	<u>Obscenity (847.011(5), F.S.)</u>	<u>Prospective suspension to revocation</u>
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Issue 4 was presented to the Task Force for discussion:

ISSUE NUMBER 4:

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

Discussion was held and it was decided that staff will continue to monitor developments related to the use of medical marijuana by Commission-certified officers. Additionally, this item was included in the Task Force presentation at the February Business Meeting for possible input by the Commission. No vote was taken for this issue.

If you have any issues that you would like to be addressed 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.