

FLORIDA'S CRIMINAL JUSTICE Professional Compliance Process



Produced by:

**THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT
CRIMINAL JUSTICE PROFESSIONALISM**

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WHY A DISCIPLINARY PROCESS?

The State of Florida, through the Criminal Justice Standards and Training Commission (the Commission), oversees the certification, employment, training, and conduct of its law enforcement, correctional and correctional probation officers. The vast majority of these officers are professionals who take pride in ensuring the safety and welfare of the citizens of this state. Officers are entrusted with certain powers and responsibilities which enable them to fulfill their important role in society. Unfortunately, a small number of officers misuse this power, and/or abuse the public's trust. Through the Professional Compliance process the Commission works to achieve increased professionalism by disciplining individual officers who tarnish the criminal justice profession through their misconduct. The Commission recognizes that officer misconduct is a serious threat to the safety of Florida's citizens. The Commission's efforts are focused to ensure that the citizens of the State of Florida are served by the most qualified, well trained, and ethical officers in the Nation.

STANDARDS FOR CERTIFICATION

The State of Florida, through the Florida Legislature (Section 943.13, Florida Statutes), has set minimum requirements/standards which a person must meet before becoming certified as an officer. An officer must:

- be at least 19 years of age;
- be a citizen of the United States;
- be a high school graduate or its equivalent;
- not have been convicted of any felony, or of a misdemeanor which involves perjury or a false statement, regardless of withholding of adjudication or suspended sentence; not have pled guilty or nolo contendere to or found guilty of any felony or misdemeanor involving perjury or a false statement;
- not have received a dishonorable discharge from any of the Armed Forces of the United States;
- have processed fingerprints on file with the employing agency;
- have passed a physical examination by a licensed physician based on specifications established by the Commission;
- have good moral character, as determined by a background investigation under procedures established by the Commission;
- submit an affidavit attesting to compliance;
- satisfactorily complete a Commission-approved course of basic recruit training;
- satisfactorily pass the state examination in the respective discipline;
- comply with the continuing training or education requirements.

COMMISSION AUTHORITY TO DISCIPLINE

Florida Statutes grant the Commission authority to certify criminal justice officers, and once a certificate is issued, grants the Commission the authority to discipline the officer's certification if the officer fails to maintain the standards of certification listed above.

The Commission disciplines an officer's certification if the officer:

- pleads nolo contendere, pleads guilty, or is convicted of any felony;
- pleads nolo contendere, pleads guilty, or is convicted of a misdemeanor involving perjury or false statement;
- fails to maintain good moral character as defined by Rule 11B-27.0011 (4), Florida Administrative Code.

Discipline of an officer's certification is separate and distinct from any disciplinary action taken by the officer's employing agency for violations of agency policy and procedure. The Commission's decision in no way reflects upon the investigation, findings, conclusions, and/or disciplinary action of the employing agency.

EMPLOYING AGENCY INVESTIGATION AND REPORTING

According to Florida Statute and Florida Administrative Code, if an officer commits an act of misconduct, and the officer's employing agency has cause to believe that the officer has not maintained the minimum standards to be certified and/or has committed a violation of good moral character, then the employing agency must conduct an internal investigation concluding with an official disposition (e.g., sustained, not sustained, exonerated, unfounded). If the internal investigation sustains the allegation, then the agency shall submit the investigative findings and all supporting documentation to the Commission through the Commission's Staff at the Florida Department of Law Enforcement (FDLE).

Note: An investigation must be conducted and concluded, and shall contain an official disposition, even though the officer resigns, retires or is terminated while under investigation. (943.1395, F.S.; 11B-27.003, F.A.C.)

COMMISSION CASE INITIATION AND DEVELOPMENT

Commission disciplinary cases are opened and processed by Commission Staff (Staff) located in the Professional Compliance Section, within the Criminal Justice Professionalism at the FDLE. Cases are opened based on:

- information received from the employing agency in the form of a **sustained** violation of the officer's minimum standards to be certified, or a **sustained** violation of good moral character;
- notification of an officer's termination under undesirable circumstances involving a violation of the officer's minimum standards to be certified, or a violation of good moral character;
- notification of an officer's arrest;
- FDLE Staff documentation of a violation of the minimum standards to be certified, or a violation of good moral character;
- verifiable complaints received from citizens alleging a violation of the officer's minimum standards to be certified, or a violation of good moral character;

- by order of the Governor;
- whether or not a Letter of Acknowledgment is authorized.

Once a case has been initiated; all documentation from the incident is requested from the appropriate investigative sources. Upon receipt, the documentation is analyzed by Staff and Staff Legal Counsel. In accordance with Commission rules, regardless of the agency characterization of the misconduct, Staff's characterization of the misconduct controls the processing of the disciplinary case.

If staff determines that a Commission probable cause review is warranted, the case is then scheduled for the next available Commission Probable Cause Determination Hearing, and both the officer and the employing agency are noticed. If no probable cause review is initiated, then the case is closed and the employing agency is notified.

PROBABLE CAUSE HEARING AND THE DISCIPLINARY PROCESS

At the Commission Probable Cause Determination Hearing, the facts of the disciplinary case are presented to a panel composed of three Commission members. The probable cause panel determines whether probable cause exists to charge that the officer violated his/her minimum standards to be certified, or committed a moral character violation. If the probable cause panel determines that probable cause exists after evaluating the case facts, then an administrative complaint is filed and issued to the officer. From that point the procedure follows the administrative processes set forth in Chapter 120, Florida Statutes, and Chapter 28-106, Florida Administrative Code.

FELONY CONVICTIONS OR PLEAS AND REVOCATION

Under Florida law, the Commission **must revoke** an officer's certification if he/she pleads guilty, nolo contendere, or is found guilty of any **felony offense**, regardless of withholding of adjudication or suspension of sentence. **In this case the Commission has no discretion: the Commission penalty will be revocation** (943.13(4), F.S.).

**** When an officer's certification is revoked by the Commission, that officer can no longer work as a certified officer in the State of Florida.**

MISDEMEANOR CONVICTIONS OR PLEAS AND REVOCATION

Under Florida law, the Commission **must revoke** an officer's certification if he/she pleads guilty, nolo contendere, or is found guilty of any **misdemeanor involving perjury or false statement**, regardless of withholding of adjudication. **In this case, the Commission has no discretion: the Commission penalty will be revocation** (943.13(4), F.S.).

FAILURE TO MAINTAIN "GOOD MORAL CHARACTER"

According to Section 943.13(7), Florida Statutes, a criminal justice officer must, "Have good moral character as determined by a background investigation under procedures established by the Commission." Once certified, a criminal justice officer is subject to discipline by the Commission if he/she fails to maintain good moral character.

The Commission defines failure to maintain good moral character as:

- a. Any act constituting a felony offense *regardless of criminal prosecution*;
- b. A plea of guilty or a verdict of guilty after a criminal trial , or any act constituting one of the following enumerated misdemeanor offenses *regardless of criminal prosecution*;

316.193	DUI
327.35	BOATING UNDER THE INFLUENCE
365.16(1)(c)(d)	OBSCENE OR HARASSING TELEPHONE CALLS
414.39	WELFARE FRAUD
741.31	VIOLATION OF INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE
784.011	ASSAULT
784.03	BATTERY
784.047	VIOLATION OF INJUNCTION FOR PROTECTION AGAINST REPEAT VIOLENCE
784.048	STALKING
784.05	CULPABLE NEGLIGENCE
784.046(15)	VIOLATION OF INJUNCTION FOR PROTECTION AGAINST REPEAT DATING VIOLENCE
790.01	CARRYING A CONCEALED WEAPON
790.10	IMPROPER EXHIBITION OF DANGEROUS WEAPON
790.15	DISCHARGING FIREARM IN PUBLIC
790.27	POSSESSION/SALE/DELIVERY OF FIREARM WITH SERIAL NUMBER ALTERED/REMOVED
794.027	FAILURE TO REPORT SEXUAL BATTERY
796.07	PROSTITUTION ESTABLISHMENT
800.02	UNNATURAL AND LASCIVIOUS ACT
800.03	EXPOSURE OF SEXUAL ORGANS
806.101	FALSE ALARM OF FIRE
806.13	CRIMINAL MISCHIEF LESS THAN \$1000
810.08	TRESPASS IN STRUCTURE OR CONVEYANCE
810.14	VOYEURISM
810.145	VIDEO VOYEURISM
812.014	PETIT THEFT

812.015	RESISTING THEFT RECOVERY EFFORTS
812.14	TRESPASS & LARCENY WITH RELATION TO UTILITY FIXTURES
817.235	PERSONAL PROPERTY: REMOVE / ALTER ID MARKS
817.49	FALSE REPORT OF A CRIME
817.563	SALE IN LIEU OF A CONTROLLED SUBSTANCE
817.565	URINE TESTING, FRAUDULENT PRACTICES
817.61	FRAUDULENT USE OF A CREDIT CARD
817.64	RECIPT OF MONEY, ETC. FROM FRAUDULENT USE OF A CREDIT CARD
827.04	CONTRIBUTING TO THE DELINQUENCY OF A MINOR
828.12	CRUELTY TO ANIMALS
831.30	FORGED PRESCRIPTION
831.31(1)(b)	COUNTERFEIT CONTROLLED SUBSTANCE SALE/MANUFACTURE/DELIVERY/POSSESSION OR POSSESSION WITH INTENT
832.05	WORTHLESS CHECK
837.012	PERJURY NOT IN AN OFFICIAL PROCEEDING
837.05	FALSE REPORT TO LAW ENFORCEMENT
837.055	FALSE INFORMATION TO LAW ENFORCEMENT DURING INVESTIGATION
837.06	FALSE OFFICIAL STATEMENT
839.13	FALSIFYING RECORDS
839.20	REFUSAL TO EXECUTE CRIMINAL PROCESS
843.02	RESISTING OR OBSTRUCTING AN OFFICER WITHOUT VIOLENCE
843.03	OBSTRUCTION BY DISGUISED PERSON
843.06	NEGLECT OR REFUSAL TO AID PEACE OFFICERS
843.085	UNLAWFUL USE OF POLICE BADGE OR INDICIA
847.011	SALE OR POSSESSION OF OBSCENE MATERIAL/OBSCENE PERFORMANCE
856.021	LOITERING AND PROWLING
870.01	AFFRAY
893.13	CONTROLLED SUBSTANCES-SELL, MANUFACTURE, DELIVER AND/OR POSSESS WITH INTENT
893.147	USE OR POSSESSION OF DRUG PARAPHERNALIA
901.36	GIVING FALES NAME OR FALSE IDENTIFICATION BY PERSON ARRESTED OR LAWFULLY DETAINED
914.22	TAMPERING WITH A WITNESS, VICTIM, OR INFORMANT
934.03	INTERCEPTION AND DISCLOSURE OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS
944.35	MALICIOUS BATTERY
944.37	ACCEPTANCE OF UNAUTHORIZED COMPENSATION
944.39	INTERFERENCE WITH PRISONERS

- c. Any principal, accessory, attempt, solicitation, or conspiracy, pursuant to Chapter 777, Florida Statutes, where there would have been a felony offense had the crime been committed or completed;
- d. Any act in any jurisdiction other than the State of Florida, which if committed in the State of Florida, would constitute any offense listed in Rule 11B-27.0011 (4), Florida Administrative Code.
- e. The following non-criminal acts or conduct:
- Excessive use of force;
 - Sexual harassment involving physical contact or misuse of official position;
 - Misuse of official position, as defined in Section 112.313(6), Florida Statutes;
 - Engaging in sex while on duty;
 - Unprofessional relationship with an inmate, detainee, probationer or parolee, or community

controllee: having written or oral communication that is intended to facilitate conduct which is prohibited by Commission Rule; or engaging in physical contact not required in the performance of official duties, **defined as** kissing, fondling of the genital area, buttocks, and/or breasts, massaging or similar touching, holding hands, any other physical contact normally associated with the demonstration of affection, or sexual misconduct as applied to all certifications and defined in Section 944.35(3), Florida Statutes;

Engaging in a romantic association with an inmate, detainee, probationer, parolee, or community controllee. "Romantic association" is defined as the exchange of telephone calls, pictures, letters, greeting cards, or any other form of oral or written communication which expresses feelings or thoughts of affection or the desire to engage in a romantic relationship whether emotional or physical. This subsection shall not apply to an officer who is legally married to a inmate, detainee, probationer or parolee, or community controllee in the community, nor does it apply to any officer who has no knowledge, or reason to believe, that the person with whom the officer has engaged in a romantic association is an inmate, detainee, probationer or parolee, or community controllee;

- False statements during the employment application process;
 - Conduct that subverts or attempts to subvert the State Officer Certification Examination process pursuant to Rule 11B-30.009(1), F.A.C.;
 - Conduct that subverts or attempts to subvert the Criminal Justice Standards and Training Commission approved training examination process, **or** an employing agency promotional examination process;
 - Conduct that subverts or attempts to subvert the Basic Abilities Test process pursuant to subsections 11B-35.0011(1), F.A.C.;
 - Any overt, conspicuous, or public act of a sexual or simulated sexual nature which is likely to be observed by others.
 - Willful failure of the agency administrator to comply with Chapter 943, F.S., as it pertains to the Criminal Justice Standards and Training Commission or Commission rules.
 - Intentional abuse of a Temporary Employment Authorization, per 943.131(1), F.S.
- f. Testing positive for controlled substances by a urine or blood test, in accordance with the requirements for testing reliability and integrity set forth in Rule 11B-27.00225, F.A.C.

(For additional information refer to Rule 11B-27.0011(4)(a-d), F.A.C.)

THE PENALTIES FOR MISCONDUCT

At the conclusion of the Commission disciplinary process **the Commission imposes discipline on an officer's certification in keeping with an established set of penalty guidelines.** The penalties include written reprimand, probation up to two years (with or without mandatory re-training or counseling, if applicable), suspension up to two years (with or without mandatory re-training or counseling, if applicable), and revocation. An *overview* of these guidelines follows.

VIOLATIONS RESULTING IN REVOCATION

	Violation	Recommended Penalty Range
•	For any felony offense where there is a conviction, plea of nolo contendere or plea of guilty (regardless of suspension of sentence or withholding of adjudication);	Revocation
•	For a misdemeanor offense involving perjury or false statement where there is a conviction, plea of nolo contendere, or plea of guilty; (regardless of suspension of sentence or withholding of adjudication);	Revocation

Absent mitigating/aggravating circumstances, the following specific **felony acts/violations** result in the indicated penalty:

	Violation	Recommended Penalty Range
1.	Felony assault (784.021, 784.07, F.S.)	Prospective suspension to revocation
2.	Felony battery (784.041, 784.045, 784.07, F.S.)	Prospective suspension to revocation
3.	Grand theft (812.014, F.S.)	Revocation
4.	Possession, sale of controlled substance (893.13, F.S.)	Revocation
5.	Tampering with evidence (918.13, F.S.)	Revocation
6.	Introduction of contraband into a jail or prison involving a firearm, concealed weapon, controlled substance, currency, or a tool or implement useful in an attempt to escape from custody (843.11, 944.47, 951.22, F.S.)	Revocation
7.	Other introduction of contraband into a jail or prison (944.47, 951.22, F.S.)	Suspension to revocation
8.	False statements (837.02, 837.021, 837.05(2), 838.022, F.S.)	Prospective suspension to revocation
9.	Felony stalking (784.048, F.S.)	Revocation
10.	Sexual battery, unlawful sexual activity with a minor (794.011, 794.05, F.S.)	Revocation
11.	Lewd or lascivious offense, child under 16 (800.04, F.S.)	Revocation
12.	Child abuse (827.03, F.S.)	Prospective suspension to revocation
13.	Aggravated child abuse with violence (827.03, F.S.)	Revocation
14.	Resisting an officer with violence (843.01, F.S.)	Prospective suspension to revocation
15.	Felony controlled substance violation (893.13, 893.135, 893.147, 893.149, F.S.)	Revocation
16.	Bribery (838.015 F.S.)	Revocation
17.	Unlawful compensation or reward for official behavior (838.016 F.S.)	Revocation

(For additional information refer to Rule 11B-27.005, F.A.C.)

Absent mitigating/aggravating circumstances, the following specific **misdemeanor acts/violations** result in the indicated penalty:

	Violation	Recommended Penalty Range
1.	Assault (784.011, F.S.)	Suspension
2.	Battery (784.03, F.S.)	Suspension
3.	Petit Theft (812.014, F.S.)	Suspension to revocation
4.	False reports and statements (817.49, 837.012, 837.05(1), 837.055, 837.06, 901.36, 944.35, F.S.)	Prospective suspension to revocation
5.	Improper exhibition of a weapon (790.10, F.S.)	Probation with training
6.	Discharging a firearm in public (790.15, F.S.)	Suspension
7.	Passing a worthless check (832.05, F.S.)	Probation
8.	Prostitution or lewdness; voyeurism, video voyeurism (796.07, 810.14, 810.145 F.S.)	Prospective suspension, and probation with counseling to revocation
9.	Indecent exposure (800.03, F.S.)	Suspension, and probation with counseling, to revocation
10.	Driving or boating under the influence; second DUI offense (316.193 and 327.35, F.S.)	Probation with substance abuse counseling, prospective suspension to revocation
11.	Possess or delivery without consideration, and not more than 20 grams of Cannabis (893.13, F.S.)	Revocation
12.	Neglect or refusal to aid (843.06, F.S.)	Suspension to revocation
13.	Second violation of domestic violence or other protective injunction (741.31, 784.047, F.S.)	Prospective suspension to revocation
14.	Stalking (784.048, F.S.)	Prospective suspension to revocation
15.	Battery involving domestic violence with slight or moderate victim physical injury (741.28, 784.03, F.S.)	Prospective suspension to revocation

(For additional information refer to Rule 11B-27.005, F.A.C.)

Absent mitigating/aggravating circumstances, the following specific **non-criminal acts/violations** result in the indicated penalty:

	Violation	Recommended Penalty Range
1.	Excessive use of force under the color of authority	Suspension to revocation
2.	Sexual harassment involving physical contact or misuse of position	Probation with training to suspension
3.	Misuse of official position	Suspension
4.	Engaging in sex while on duty, or at any time the officer is acting under the color of authority as a Commission-certified officer	Suspension to revocation
5.	Unprofessional relationship with an inmate, detainee, probationer or parolee, or community controllee that substantially impairs the officer's ability to perform necessary duties and responsibilities fairly and objectively or that jeopardizes the security of the correctional institution	Revocation
6.	Other unprofessional relationship with an inmate, detainee, probationer or parolee, or community controllee	Probation of certification with training to suspension
7.	False statements during the employment application process	Suspension to revocation
8.	Conduct that subverts or attempts to subvert the State Officer Certification Examination process pursuant to subsection 11B-30.009(1), F.A.C.	Revocation
9.	Subverting Commission-approved training or employing agency promotional examination process	Suspension to revocation
10.	Any overt, conspicuous, or public act of a sexual or simulated sexual nature which is likely to be observed by others	Suspension to revocation
11.	Willful failure of the agency administrator to comply with Chapter 943, F.S., as it pertains to the Commission or Commission rules.	Suspension to revocation
12.	Conduct that subverts or attempts to subvert the Basic Abilities Test process pursuant to paragraphs 11B-35.0011(1), F.A.C.	Revocation

(For additional information refer to Rule 11B-27.005, F.A.C.)

Absent aggravating/mitigating circumstances the following specific acts/violations result in the indicated penalty:

	Violation	Recommended Penalty Range
1.	Positive drug test	Prospective suspension to revocation

(For additional information refer to Rule 11B-27.005, F.A.C.)

AGGRAVATING AND MITIGATING CIRCUMSTANCES

Florida Law allows the Commission to deviate from the above penalties when evidence is presented showing the presence of one or more of the following specific aggravating or mitigating circumstances:

Aggravating Circumstances

- Whether the officer used his/her official authority to facilitate the misconduct;
- Whether the misconduct was committed while the officer was performing his/her other duties;
- The number of violations found by the Commission;
- The number and severity of prior disciplinary actions taken against the officer by the Commission, provided the officer was previously disciplined by the Commission within the preceding eight years or received a Letter of Guidance within the preceding five years.
- The severity of the misconduct;
- The danger to the public;
- The actual damage, physical or otherwise, caused by the misconduct;
- The lack of deterrent effect of the penalty imposed by the employing agency;
- The pecuniary benefit or self-gain to the officer realized by the misconduct;
- Whether the misconduct was motivated by unlawful discrimination;
- Any behavior constituting “domestic violence” as defined by Section 741.28(1), F.S.
- Whether the certified officer has previously received a Letter of Acknowledgement within the preceding three years.
- The certified officer has not filed any answer to the Administrative Complaint or otherwise responded to the allegations of misconduct alleged by the Commission.

Mitigating Circumstances

- The officer’s employment status in a position requiring Criminal Justice Standards and Training Commission certification at the time of the final hearing before the Commission;
- The recommendations of character or employment references;
- The lack of severity of the misconduct;
- The length of time the officer has been certified;
- Any effort of rehabilitation by the officer;
- The effect of disciplinary or remedial action taken by the employing agency and /or recommendations of employing agency administrator.
- The recommendation of a Probable Cause Panel to impose a penalty below the penalty guideline.
- Effort of the officer to retract a false statement prior to the close of the disciplinary or criminal investigation.

(For additional information refer to Rule 11B-27.005(6), F.A.C.)

COMMISSION ACKNOWLEDGEMENT OF AGENCY DISCIPLINE

When an employing agency has disciplined an officer consistent with the Commission's penalty guidelines, and certain preconditions have been met, the Commission will recognize the agency discipline and not impose any additional discipline on the officer.

When Commission staff determines that the respondent has been **retained by the employing agency**, Commission staff shall issue a **Letter of Acknowledgment** of agency action providing the employing agency has taken significant agency action as defined in Rule 11B-27.005, F.A.C.

When Commission staff determines that the respondent **has not been retained by the employing agency**, Commission staff shall issue a **Letter of Acknowledgment** providing the employing agency has taken significant agency action as defined in Rule 11B-27.005, F.A.C.

A Letter of Acknowledgment establishes an understanding by the Commission that the officer's act constituted a violation of good moral character and that the agency's discipline was consistent with the Commission guidelines.

(For additional information refer to Rule 11B-27.004(7),(8), F.A.C.)

SUMMARY

Criminal justice officers (law enforcement, correctional, and correctional probation) are vested through their certification with important powers and responsibilities that play an intricate and very significant role in society. Under the constant scrutiny of the public eye, they must attempt to preserve the peace and enforce Florida's laws while maintaining an unprecedented level of professionalism. The Criminal Justice Standards and Training Commission has been authorized by the Florida Legislature through the Florida Statutes to ensure that criminal justice officers maintain good moral character and abide by the same laws they are required to enforce. Through the Commission's Officer Discipline Process, the State of Florida will maintain the highest standards of professionalism for its criminal justice personnel.

The preceding information is an overview of statutory and administrative law and is provided as a guide to Florida's criminal justice officers. If additional information is required, the reader is requested to reference the applicable Florida Statute or Florida Administrative Code Rule.

THE COMMISSION

The Criminal Justice Standards and Training Commission is composed of nineteen members. The three standing members of the Commission include the Attorney General or designee, Secretary of the Department of Corrections (or their proxy), and the Director of the Florida Highway Patrol. The remaining members are appointed by the Governor and include three sheriffs, three chiefs of police, five law enforcement officers, two state correctional officers, a training center director, one county corrections administrator, and one resident that falls into none of the previous categories. The Commission meets on a quarterly basis and depends on Staff in Criminal Justice Professionalism at the Florida Department of Law Enforcement, for research, reporting, and implementation of its programs.

The 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.” In pursuit of this mission the Commission is committed to delivering quality training, ensuring job related employment and training standards, and increasing the professionalism of officers throughout the state.

For additional information, please refer to our website at:

<http://www.fdle.state.fl.us>

- OR - contact us at:

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