

### **11B-27.0011 Moral Character.**

(1) For the purpose of certification, employment, or appointment, pursuant to procedures established by paragraph 11B-27.002(1)(g) and Rule 11B-27.00225, F.A.C., the employing agency is responsible for conducting a thorough background investigation to determine the moral character of an applicant, pursuant to Section 943.13(7), F.S.

(2) The unlawful use of any controlled substances pursuant to Rule 11B-27.00225, F.A.C., by an applicant for certification, employment, or appointment, at any time proximate to the submission of application for certification, employment, or appointment, conclusively establishes that the applicant is not of good moral character pursuant to Section 943.13(7), F.S. The unlawful use of any controlled substances specified in Rule 11B-27.00225, F.A.C., by an applicant may or may not conclusively establish that the applicant is not of good moral character pursuant to Section 943.13(7), F.S., depending upon the type of controlled substance used, the frequency of use, and the age of the applicant at the time of use. Nothing in this rule chapter is intended to restrict the requirements of Section 943.13(7), F.S., to controlled substance use only.

(3) Upon written request and submission of materials, the Commission shall evaluate the qualification of an applicant to determine compliance with "good moral character" pursuant to this rule section. Written materials submitted to the Commission upon request for reinstatement of certification shall include, if available, all prior Commission disciplinary records, agency disciplinary records, victim statement(s), or citizen input. The Notice of Petition for reinstatement shall be published in the Florida Administrative Register or in the jurisdiction of the petitioning agency.

(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, 784.046(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, 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.

(c) The perpetration by an officer of acts or conduct that constitute the following offenses:

1. Excessive use of force, defined as a use of force on a person by any officer that is not justified under Section 776.05 or 776.07, F.S., or a use of force on an inmate or prisoner by any correctional officer that would not be authorized under Section 944.35(1)(a), F.S. The Recommended Response to Resistance and Levels of Resistance, form CJSTC-85, revised February 7, 2002, hereby incorporated by reference, is a reference tool to evaluate use of force. Form CJSTC-85 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615.

2. Misuse of official position, defined by Section 112.313(6), F.S.

3. Having an unprofessional relationship with an inmate, detainee, probationer or parolee, or community controllee. An unprofessional relationship is defined as:

a. Having written or oral communication with an inmate, detainee, probationer or parolee, or community controllee that is intended to facilitate conduct prohibited by this rule section; or

b. Engaging in physical contact not required in the performance of official duties, and is defined as kissing, fondling of the genital area, buttocks, 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, which is defined in Section 944.35(3), F.S.

c. 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 an 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.

4. Sexual harassment pursuant to and consistent with decisions interpreting 29 C. F. R. 1604.11, including unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when the harassment involves physical contact or misuse of official position and when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
- b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

5. Engaging in oral, anal, or vaginal penetration by, or union with, the sexual organ of another person or engaging in anal or vaginal penetration by any other object while on duty, or at any time the officer is acting under the color of authority as a Commission-certified criminal justice officer, and not done for a bona fide medical purpose or in the lawful performance of the officer's duty.

6. False statements during the employment application process.

7. Conduct that subverts or attempts to subvert the State Officer Certification Examination process pursuant to Rule 11B-30.009, F.A.C.

8. Conduct that subverts or attempts to subvert the Basic Abilities Test process pursuant to subsection 11B-35.0011(1), F.A.C.

9. Conduct that subverts or attempts to subvert the examination process for Commission-approved training at a Commission-certified training school or an employing agency promotional examination process which shall include the following:

- a. Removing from the examination room any of the examination materials.
  - b. Reproducing or reconstructing any portion of the examination.
  - c. Aiding by any means in the reproduction of any portion of the examination.
  - d. Selling, distributing, buying, receiving, or having unauthorized possession of any portion of a past, current, or future examination.
  - e. Communication with any other examinee during the administration of the examination.
  - f. Copying answers from another examinee, or intentionally allowing one's answers to be copied by another examinee during the administration of the examination.
  - g. Having in one's possession during the administration of the examination, any books, notes, written or printed materials, or data of any kind, not supplied as part of, or required for, the test administration.
  - h. Falsifying or misrepresenting information required for admission to the examination.
  - i. Impersonating an examinee.
  - j. Having an impersonator take the examination on one's behalf.
  - k. Disrupting the test administration.
  - l. Revealing the test questions or other information that would compromise the integrity of the examination.
10. Any overt, conspicuous, or public act of a sexual or simulated sexual nature which is likely to be observed by others.
11. Any willful and offensive exposure or exhibition of his or her sexual organs in public or on the private premises of another or so near thereto as to likely be seen except in any place provided or set apart for that purpose.
12. 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.
13. Intentional abuse of a Temporary Employment Authorization, pursuant to Section 943.131(1), F.S.
14. Misuse of Electronic Database. Willfully and knowingly accessing an electronic database within the trust of an officer, by using said database to access restricted information for an illegitimate or personal purpose with bad intent. Bad intent may be evidenced by:

- a. A pattern of misuse that demonstrates improper accesses or violations.
  - b. If the violation occurred after the officer received agency or Commission discipline for improperly accessing a computer database, or after the officer received formal training on the database(s) that includes provisions on the improper use of said database(s).
  - c. The existence of a current or past non-amicable or otherwise contentious relationship between the officer and the subject of the query, or when the purpose of the query is to identify person(s) linked or associated to said relationship.
  - d. Pre-textual queries based on age, race, sex, gender, or other personal identifying characteristics.
  - e. Any additional action taken by the officer as a result of the information obtained from the query, for example, retaining, copying, or reproducing the information obtained from the query, or disseminating information not listed as confidential or exempt in Chapter 119, F.S., obtained as a result of the query.
- (d) A certified officer's unlawful injection, ingestion, inhalation, or other introduction of any controlled substance, as defined in Section 893.03, F.S., into his or her body as evidenced by a drug test in accordance with Sections 112.0455, 440.102 or 944.474, F.S.
- (5) A certified officer's failure to maintain good moral character as defined in subsection (4) of this rule section by committing a violation involving perjury or false statement in a court proceeding, shall not include a statement which was recanted. If the violation involving perjury or false statement is alleged to have occurred in the performance of regularly required work duties or the course of an administrative or disciplinary investigation, a certified officer's failure to maintain good moral character as defined in subsection (4) of this rule section shall not include a statement in which the officer making the statement conceded such statement to be false prior to the employing agency's conclusion of the internal affairs investigation in which the false statement related to a material fact. For purposes of this subsection, the employing agency's internal affairs investigation shall be deemed to be at a conclusion upon the investigator's execution of the statement required by Section 112.533(1)(a)2., F.S.
- (6) The employing agency shall forward to the Commission the agency's investigative report pursuant to procedures established in Rule 11B-27.003, F.A.C., when an allegation has been made that an officer has failed to maintain good moral character, as defined in subsection (4) of this rule section, and has been sustained by the employing agency, or an act of conduct by the officer has resulted in the officer's arrest. The report shall be forwarded immediately upon separation of the officer from employment, or, if the officer is not separated from employment, within 45 days from the date an allegation has been sustained, as set forth in this rule section.
- (7) Commission staff's decision to initiate presentation of a case for a Commission Probable Cause Determination shall be based upon the following conditions:
- (a) Whether the allegations against the officer constitute a violation of subsection (4) of this rule section or Section 943.13(4), F.S.;
  - (b) Whether there is evidence of probable cause to support the filing of a complaint; and
  - (c) Whether a Letter of Acknowledgement is warranted pursuant to subsections 11B-27.004(7)-(11), F.A.C.

*Rulemaking Authority 943.03(4), 943.12(1) FS. Law Implemented 943.13(7), 943.1395(7) FS. History—New 1-7-85, Formerly 11B-27.011, Amended 7-13-87, 10-25-88, 12-13-92, 9-5-93, 1-19-94, 8-7-94, 11-5-95, 1-2-97, 7-7-99, 8-22-00, 11-5-02, 4-11-04, 11-30-04, 3-27-06, 3-21-07, 6-9-08, 4-16-09, 6-3-10, 5-21-12, 3-13-13, 5-29-14.*