

## 2008 Update:

# Questions and Answers Related To Florida Officers and Retired Officers and Implementation of HR 218 after the 2006 and 2007 Florida Legislative Sessions

Compiled by the FDLE Office of General Counsel 5/15/06  
Updated 02/07/08

**CJST Rule 11B-27.014, implementing HR 21,  
will be adopted on 2/12/08  
and will become effective March 3, 2008.**

## Special Notice to Agencies

**The FBI indicated to FDLE that a law enforcement agency running a fingerprint based criminal history check on its own retirees who are seeking to qualify under HR 218 is considered a valid criminal justice purpose.**

### What is the status of "qualified active" and "qualified-retired" officers after the 2006 Session?

The 2006 Legislative Session ended before either the Senate bill (CS/SB 2032) or House bill (HB 669) related to how Florida will implement Title 18, 44 USC, ss. 926B and 926C, "The Federal Law Enforcement Officers Safety Act of 2004" (a/k/a "HR 218") could be passed. The result was that there was no entity in Florida officially authorized to issue state cards verifying that retired officers had successfully completed the state's minimum firearms course as applied to active officers. The Florida Criminal Justice Standards and Training Commission did establish firearms qualification standards for active law enforcement officers, effective July 1, 2006. As a result, at the end of the 2006 Session, Florida had in place minimum firearms qualification standards for its active officers, but did not have a mechanism in place to deal with retired offices and their desire to demonstrate they could meet those standards for purposes of HR 218.

New FDLE Rule 11B-27.00212(15), Florida Administrative Code, related to (active) "Law Enforcement Officer Firearms Qualification Standard" became effective July 1, 2006. It requires meeting the firearms standards by active officers at least once every two years, and documenting same. Failure by an active officer to obtain the standard means the officer's certificate becomes inactive until the officer meets the standard. If an officer is not re-employed or reappointed within his/her two year reporting cycle after separation from employment or appointment, his/her certificate will become inactive and the officer will have to comply with the firearms qualification standard upon employment or appointment.

**Those dealing with ACTIVE Florida law enforcement officers remain responsible for assuring their active officers demonstrate their firearms proficiency and perform all documentation required by the new rule. Under the rule, only CJSTC certified firearms instructors can administer the new firearms regimen.**

### What is the status of retired law enforcement officers in Florida after the 2007 Session?

By reason of legislation passed by the 2007 session (H.B. 143, Chapter 2007-111, effective 7/1/2007), Florida has now authorized a process that will allow qualified retired law enforcement officers to satisfy the firearms proficiency portion of the federal law. This bill completes Florida's implementation of H.R. 218, the Federal Law Enforcement Officers Safety Act of 2004 (Title 18, 44 United States Code, Sections 926B and 926C). It authorizes the Florida Criminal Justice Standards and Training Commission (CJSTC) to issue a confirmation card to persons who pass the firing range testing component utilizing the firearms minimum standards required of all certified active Florida state and local law enforcement officers. The card may be issued only by CJSTC-certified firearms instructors.

Before the cards can be issued, CJSTC must have a final rule related to the process in place. The Notice of Rule Development, which includes a draft of the proposed rule was published the Florida Administrative Weekly on the September 21, 2007. The rulemaking process and implementation should be completed in early 2008.\*

**\*The Florida Cabinet has formally approved the proposed CJSTC rule regarding HR 218. It will be adopted on 2/12/08 and will become effective March 3, 2008. From that point forward, CJSTC-certified firearms instructors will have the authority and ability to issue the CJSTC-approved card verifying the successful completion of the firearms qualification as applied to active law enforcement officers.**

The law, creating F.S. 943.132, allows those who operate ranges to open their ranges to persons seeking to demonstrate they can pass the range testing component, as long as the testing is done by a CJSTC-certified firearms instructor. The law does not require the ranges be opened to others, but simply gives them the option to be opened to other persons "under terms and conditions established by the operating entity." The range may be opened to anyone, not just retired law enforcement officers. Any person utilizing the option must do so at his or her own cost, as established by the range.

Under H.R. 218, qualified retired law enforcement officers may carry a concealed firearm if they meet the criteria of the Federal law. One of the requirements is that a retired officer demonstrate firearms proficiency in the type of firearm being carried. This proficiency must have occurred within 12 months of the time the retiree is in possession of the firearm.

As of July 1, 2007, retired officers in Florida will have two ways to comply with this requirement. They can return yearly to the law enforcement agency from which they retired and successfully shoot the firearms component the agency utilizes for its active officers (if the agency voluntarily opens its range to its retirees); or they can attend a range in Florida that is opened under the new option and successfully shoot the Florida minimum proficiency firearms component. Upon obtaining a passing score, the retiree will receive the CJSTC-authorized card signed by the CJSTC-certified firearms instructor, indicating the date the passing score was obtained. No former employing agency or Florida firearms range has to open its range to retirees. It is at the agency's discretion to facilitate its own retirees, and it is at a range's discretion whether it wishes to open its range to retired law enforcement officers and/or others.

The card issued upon successful completion of the firearms regimen is not state proof that the person possessing it is a qualified retired law enforcement officer under the federal law. It simply confirms that the holder successfully shot the firearms component and the date of the event. Each retired officer must continually assure he or she meets the remaining requirements of the federal law.

Retired officers should remember that H.R. 218 does not vest them with any law enforcement powers! Since the laws related to a citizen's use of deadly force vary greatly from state to state, retired officers should assure they know the law where they are located. The determination of whether they meet all of H.R. 218's various requirements will be made at the time they are found to be in possession of a concealed firearm, so they must at any such time assure they conform with all the federal law's requirements.

#### How does a retired officer document his or her compliance with H.R. 218?

Each retired officer must establish his or her status under HR 218 requirements at the time he or she is encountered carrying a firearm. One requirement is that he or she has (at own expense) met the state's active officer firearms standards within the last 12 months. (This yearly requirement must be met notwithstanding the fact that active Florida-certified officers need qualify only once every two years.) *Retired officers are cautioned to assure they can document their present valid status under HR 218 any time they carry a concealed firearm under the alleged authority of HR 218. As part of this validation of status, retired officers will need to have with them the credentials required by HR 218 plus proof they have, within the last 12 months, met Florida's active officer firearms qualification standards, demonstrated by the CJSTC-authorized confirmation card issued by a CJSTC-certified firearms instructor.*

#### Who can "qualify" active or retired officers under the new standards?

Under the CJSTC rule, only CJSTC Certified firearms instructors can administer the state firearms proficiency exam to active officers. At the time the firearms standards were adopted by the CJSTC, they included the following restrictions:

*"The qualification course of fire must be administered by a CJSTC certified firearms instructor."  
"The qualification course of fire shall be conducted at either a CJSTC certified training school range, an agency range or a private range."*

CJSTC has advised all Florida law enforcement agencies that for purposes of meeting the new active officer state standard and qualifying retired officers, the officers must fire the qualification course as administered by a CJSTC certified firearms instructor. There is no option under the state standard for active officers to have the qualification course administered by anyone else.

FDLE believes that retirees must have the qualification course administered by a CJSTC certified firearms instructor. Since retirees must demonstrate they meet the state's active officer standards, and the active standards can be administered only by CJSTC certified firearms instructors, retirees are not meeting the state's standards if they fire a course administered by someone who is not a CJSTC certified firearm instructor. This FDLE position is provided "in an abundance of caution" because otherwise, there is a strong argument that the state standard is not being met since it specifically includes the CJSTC certified firearms instructor requirement. When one's ability to carry a concealed firearm is dependent upon meeting all the standards stated in HR 218, it is advisable to conform as closely as possible to the CJSTC rule's requirements and all requirements of HR 218.

#### Where can one shoot to "qualify" under the new standards?

As noted above, that CJSTC certified firearms instructor can conduct the course of fire at "either a CJSTC certified training school range, an agency range, or a private range."

Where the course of fire is administered is not as important as how the course is fired. Assuring that the course of fire is administered by a CJSTC certified firearms instructor is very important. For anyone attempting to become a qualified retired law enforcement officer under HR 218 who wants to avoid an "issue" about his or her compliance with Florida's active officer firearms regimen, documentation that the yearly firing of the qualification course of fire was administered by a CJSTC certified firearms instructor is essential. Any documentation issued to retirees indicating successful completion of the state's qualification firearms course should clearly identify the firearms instructor who issued the documentation as being a CJSTC certified firearms instructor. CJSTC has issued a standard card to be used for this purpose.

#### Can Florida agencies qualify their own retirees?

Agencies can qualify their own retirees if they choose to do so. Agencies can decide whether they will open their ranges to their agency retired law enforcement officers for the purpose of demonstrating they can successfully shoot the new state firearms minimum requirement applied to active officers. In fact, they can utilize any appropriate range venue, as long as they utilize a CJSTC certified firearms instructor. If they choose to do so, they can issue verification of passing that firearms firing course.

#### What Identification Must A Florida Retired Officer Carry Under H.R. 218?

Under H.R. 218, the identification required to be carried by qualified retired law enforcement officers can be either:

*"(1) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm"; (emphasis supplied)*

or

“(2) (A) a *photographic identification issued by the agency from which the individual retired from service as a law enforcement officer; and*

(B) a *certification issued by the State in which the individual resides* that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.” (The CJSTC-authorized card would be “certification issued by the State.”) (emphasis supplied)

Note that under the first option, the retiree must fire the firearms standards applicable to the agency’s active officers. Since agencies may require hold their officers to a higher firearms standard than the state’s minimum standards, an agency’s standards may be tougher than the state’s minimum standards.

### I Visit Florida Regularly—Can I Go To A Florida Range To Become HR 218 Firearms Certified?

As FDLE interprets HR 218, a retiree can return to his or her Florida employing agency from which he or she retired and meet the firearms standards under option (1), above, regardless of whether he or she resides in Florida. However, option (2) above is available only to those retirees who reside in Florida. Subsection B requires the certification to be issued by the State “in which the individual resides.”

### Ongoing considerations for the officer encountering a gun-carrying person who claims to be authorized under HR 218:

**\*Evaluate status at time of encounter:** Active officers encountering persons claiming to be under the authority of HR 218 will have to make an independent evaluation of the person's status at the time of the encounter. All factors related to "qualified active law enforcement officers" and "qualified retired law enforcement officers" must be met to be under HR 218 status.<sup>1</sup> Since the person carrying the firearm cannot be prohibited under federal law from receiving a firearm, a criminal history check to determine the person's status will likely be required. Federal firearms disqualifications include domestic violence matters.<sup>2</sup>

**\*Become familiar with the CJSTC-approved card.** While retirees who returned to their own agencies may have a different proof of meeting their former agency's firearms standard, all other retirees who have gone to a Florida range to demonstrate they can meet the state's minimum firearms standards will be issued the CJSTC-approved card. Its format will NOT vary. Officers encountering suspicious “agency-issued” cards may need to check with the alleged issuing agency to verify the identification's validity.

**\*Active officers from other states, and retirees from other states will present documentation other than the Florida documentation.** All tendered "proof" of HR 218 status must be carefully evaluated to guard against fraud or altered documentation. Double-check other I.D. to help guard against use of stolen credentials.

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<sup>1</sup> An active officer who has recently retired may not have returned to a range to do his or her yearly firearms qualification as a retired officer. Such an officer will likely produce his or her retired credentials bearing a retirement date that is within the past 12 months. As with all others, review of all the HR 218 criteria on a case-by-case basis should occur.

<sup>2</sup> There are two Federal disqualifications for owning firearms which relate to alleged domestic abuse. One disqualification makes it unlawful to be in possession of a gun if there is a domestic relations restraining order that has been issued after notice and hearing. The other makes it illegal to possess a gun if convicted of a misdemeanor crime of domestic violence as defined by federal law. Domestic restraining orders vary greatly from state to state in their scope as to who is protected. Clarification of the status of such an order may not be quickly forthcoming. Whether one has been convicted of a misdemeanor crime of domestic violence is also often a complex task. This means a decision as to whether a person encountered is or is not prohibited by federal law from possessing a firearm may have to be made after a follow-up investigation.

**\*Retired officers must have demonstrated firearms proficiency within 12 months of your encounter.** Retired officers relying on meeting Florida's active standards must still have "qualified" within 12 months notwithstanding the fact that active officers must "qualify" only once ever two years.

**\*Remember that the CJSTC-issued card is not an indication that the person carrying the card is otherwise qualified under HR 218 to carry a firearm.** All remaining requirements of HR 218 must be verified at the time of the encounter. Check with your agency legal advisor if you have questions regarding any of the additional elements.

**\*Arresting solely because a person does not appear to be legitimately under HR 218's concealed firearms exemption may be a risky call.** Unless the person clearly does not qualify under HR 218 (e.g. is obviously intoxicated by reason of alcoholic beverages), determining one's status under HR 218 may be difficult and time-consuming. Carefully evaluate tendered proof of one's alleged active or retired officer status and conformance with the state's active officer firearms qualifications. Be careful in concluding someone is prohibited under federal law from possessing or receiving a firearm. Seek assistance of supervisors and/or agency legal advisors when appropriate. Sometimes a charge based on possession of a concealed firearm by someone who is determined not to be authorized under HR 218 to carry the gun can be made after the incident and after you have had discussion with a prosecutor to confirm probable cause.

**\*Be alert to fraud.** Claims to be entitled to carry a firearm under HR 218 could be advanced by those who are not truly qualified active or qualified retired officers. False credentials and identification can be easily prepared by anyone with a good computer and color printer. Criminals and others who cannot legitimately carry a firearm may be inclined to produce documentation of active or retired status from an obscure or large police force, hoping follow-up inquiry will not occur.

In short, officers encountering persons claiming a right to carry a concealed firearm under HR 218 should use good judgment. Making an arrest solely on the basis of a determination that the person was not entitled under HR 218 to carry a concealed firearm is not always going to be an "easy call." Fortunately, other independent charges may be clearly established and form the basis for an arrest, giving the officer time to finish investigating the perpetrator's HR 218 status, and adding additional charges as needed.

**\*Be aware that as carrying under HR 218 increases, the chances of you encountering a plain clothes "good guy" with a gun will increase.** Never drop your guard, but on duty officers need to be aware that they may encounter other off-duty officers or retired officers with firearms attempting to intervene or assist in law enforcement efforts. As noted earlier, HR 218 does not vest active or retired officers with law enforcement authority. It simply authorizes the carrying of a concealed firearm. Any use of that firearm must conform with state law.

**Special Note: The information contained herein is NOT legal advice, and is not provided as binding legal opinion to individuals or agencies. The comments and interpretations herein are FDLE's interpretation of HR 218 and Florida state law. FDLE has no authority to issue a binding legal opinion to others on this matter and those reading this material are urged to discuss how to comply with HR 218 and Florida law with their agency legal advisors or their personal attorney.**



(CJSTC Seal)

**STATE OF FLORIDA**  
**Florida Criminal Justice Standards**  
**and Training Commission**

Firearms Proficiency Verification Card

This Certifies That:

has on \_\_\_\_\_, 20\_\_\_\_ achieved a passing score on the minimum firearms proficiency course of fire established under and applicable to law enforcement officers by Chapter 943, Florida Statutes.

In issuing this card, the Florida Criminal Justice Standards and Training Commission and the undersigned make no representation as to the current status of the named person as an active or retired law enforcement officer. That determination should be made at the time of an encounter with the person presenting this card.

Range Instructor's Signature:

Range Instructor's Printed Name: \_\_\_\_\_

Range Instructor's CJSTC Certification Expires: \_\_\_\_\_