

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

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## What is the status of active Florida-certified 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 failure of this legislation to pass the 2006 Session has NO effect on the CJSTC firearms standards being implemented for active Florida-certified law enforcement officers.** The Criminal Justice Standards and Training Commission currently possesses the authority to establish firearms qualification standards for active law enforcement officers. The firearms qualification standards for active Florida-certified law enforcement officers become effective July 1, 2006.

New FDLE Rule 11B-27.00212(15), Florida Administrative Code, related to (active) "Law Enforcement Officer Firearms Qualification Standard" will continue and will become 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 will be 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 after the 2006 Session?

As of July 1, 2006 Florida will have a statewide firearms standard for its active officers. From that date forward, all retired officers seeking to meet the requirements of HR 218 in Florida will, as a minimum, have to demonstrate they meet those standards on a yearly basis. This is based on requirements stated in HR 218.

Legislation proposed during the 2006 Session would have specifically authorized facilities operating firing ranges on which firearms instructors certified by the Commission administer the active officer firearms qualification course to (at their option) open their ranges to "other persons for purposes of allowing such persons to demonstrate their ability to achieve a passing score on the firing range testing component of the minimum firearms proficiency course." Absent the passage of this legislation, there is no direct statutory authorization for facilities to open their ranges to other persons (including retired officers). As a result, the decision whether to open a range or not will fall solely within the discretion of the facility operating the range.

Additionally, the proposed legislation would have authorized the issuance of a CJSTC proficiency verification card to "persons who achieve a passing score." The card would have been issued to retired officers or others who passed the firearms qualification course. However, absent the passage of enabling legislation, the CJSTC has no authority to issue the cards to anyone. The CJSTC card with the CJSTC seal must not to be issued to anyone. Each entity choosing to open its range to retired officers and others should issue some sort of card or document to those successfully completing the firearms regimen. To promote statewide uniformity, FDLE recommends that each entity utilize the format of the CJSTC-designed card, substituting the entity's seal in the upper left hand corner for the CJSTC seal and inserting the agency's name on the card instead of CJSTC. The card will not be a CJSTC-issued card, but will reflect the CJSTC-designed format. If future enabling legislation is enacted, the CJSTC-designed card will likely be implemented with no changes. Thus using this format now will promote consistency and statewide uniformity.

## 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. They 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.*

## 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 state standard, their 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 advice is provided "in an abundance of caution" since 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 seems advisable to conform as closely as possible to the CJSTC rule's requirements.

## 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.

## 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, but cannot issue retired officers the CJSTC firearms proficiency verification card bearing CJSTC's seal. As mentioned earlier, FDLE suggests that agencies issue retired officers (or others) who pass the firearms qualification a card with the agency's seal that duplicates the format of the CJSTC-developed verification card.

## 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>

**\*For now, no CJSTC confirmation card with the CJSTC seal on it will be issued.** As discussed above, currently there is no statutory authority for the use of a CJSTC issued card, therefore, agencies will issue their own card or documentation. In the least, it should indicate when the person fired the qualifications course and should indicate who administered the course.

**\*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.

**\*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.

Other HR 218 requirements as stated in the federal law must also be met at the time of the encounter. Check with your agency legal advisor for 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. Carefully evaluate tendered proof of one's retired officer status and conformance with the state's active officer firearms qualifications. Be careful in concluding someone is prohibited under federal

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<sup>1</sup> An active officer who has just 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. This may mean 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.

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.

On the other hand, recognize that claims to be entitled to carry a firearm under HR 218 could be advanced by those who are not truly active or 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 could 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.

**Special Note: The information contained herein is NOT a binding legal opinion and is not provided as legal advice to individuals or agencies. It is an interpretation of HR 218 and how Florida will implement the provision as provided by the Florida Department of Law Enforcement Office of General Counsel. 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.**

**The CJSTC's suggested Florida firearms proficiency card format:**

<b>Agency Seal</b>	<b>STATE OF FLORIDA</b>
	<b>Agency Name</b>
<b>Firearms Proficiency Verification Card</b>	
<b>This Certifies That:</b>	
_____	
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 (AGENCY NAME) 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: _____	