

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1541 Use of Electronic Databases
SPONSOR(S): Criminal Justice & Public Safety Subcommittee, Truenow
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 890

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	15 Y, 0 N, As CS	Padgett	Hall
2) Justice Appropriations Subcommittee	14 Y, 0 N	Jones	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

Government employees have access to various electronic databases. One database frequently accessed by government employees, including law enforcement, is the Driver and Vehicle Information Database (DAVID). DAVID is a multifaceted database that affords immediate retrieval of driver and motor vehicle information that is indispensable for law enforcement and criminal justice officials. Information contained in DAVID is confidential and protected under the federal Driver's Privacy Protection Act (DPPA). DPPA authorizes government agencies, including any court or law enforcement agency, to access this information in their official capacity to carry out their duties.

There have been recent reports of government employees abusing their access to electronic databases. One government employee admitted to searching both his ex-wife and ex-girlfriend. Other examples of misuse of electronic databases include an officer who was suspended for two days after using DAVID to access addresses for Christmas cards, an officer who was fired for using DAVID to access information on a teen girl and her parents, and an officer who resigned after being accused of using DAVID to search personal information of young women he met while on duty.

CS/HB 1541 makes several statutory changes to address the use of electronic databases by a law enforcement officer. The bill:

- Increases the maximum fine from \$500 to \$2,000 for a public officer, including a law enforcement officer, who violates any provision of ch. 119, F.S., relating to public records.
- Provides that the law enforcement accreditation program must address access to and use of personal identification information contained in electronic databases.
- Requires a law enforcement officer to receive basic skills training on the authorized access to, and use of, personal identification information contained in electronic databases used by a law enforcement officer in his or her official capacity.
- Requires each law enforcement officer to receive, as part of the 40 hours of required instruction for continued employment or appointment as an officer, training on the authorized access to and use of personal identification information contained in electronic databases used by a law enforcement officer in his or her official capacity.

The bill has a negative, yet insignificant fiscal impact to expenditures of the Florida Department of Law Enforcement (FDLE). See *Fiscal Analysis & Economic Impact Statement*.

The bill provides an effective date of October 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Electronic Databases

Government employees have access to various electronic databases. One database frequently accessed by government employees, including law enforcement, is the Driver and Vehicle Information Database (DAVID). DAVID is a multifaceted database that affords immediate retrieval of driver and motor vehicle information that is indispensable for law enforcement and criminal justice officials.¹ Information contained in DAVID is confidential and protected under the federal Driver's Privacy Protection Act (DPPA). DPPA authorizes government agencies, including any court or law enforcement agency, to access this information in their official capacity to carry out their duties.²

There have been recent reports of government employees abusing their access to electronic databases.³ One government employee admitted to searching both his ex-wife and ex-girlfriend. Other examples of misuse of electronic databases include an officer who was suspended for two days after using DAVID to access addresses for Christmas cards, an officer who was fired for using DAVID to access information on a teen girl and her parents, and an officer who resigned after being accused of using DAVID to search personal information of young women he met while on duty.⁴

Violation of Public Records Laws

In Florida, all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵ Chapter 119, F.S., provides various laws regarding public records and public record exemptions.

A public officer, including a law enforcement officer, who violates any provision of ch. 119, F.S., relating to public records, commits a noncriminal infraction, punishable by a fine of up to \$500.⁶ A person who knowingly and willfully violates any provision of ch. 119, F.S., commits a first degree misdemeanor.^{7,8} If the person who knowingly and willfully violated a provision of ch. 119, F.S., is a public officer, the public officer is subject to suspension and removal or impeachment.⁹

Misuse of an Electronic Database

Misuse of an electronic database is a violation of an officer's good moral character.¹⁰ An officer misuses an electronic database when he or she willfully and knowingly accesses an electronic database and uses the database to access restricted information for an illegitimate or personal purpose with bad intent. Bad intent may be demonstrated by:

- A pattern of misuse that demonstrates improper access or violations.

¹ Florida Highway Safety and Motor Vehicles, *Driver and Vehicle Information Database (DAVID)*, <https://www.flhsmv.gov/courts-enforcement/david/> (last visited Mar. 11, 2021).

² 18 U.S.C. s. 2721.

³ 10 Tampa Bay, *10 Investigates: Government workers abusing access to your private info face few consequences*, November 25, 2020, <https://www.wtsp.com/article/news/investigations/10-investigates/government-private-information-abuse/67-2ddb412-a70b-4cf7-ae28-22484aab6205> (last visited Mar. 11, 2021).

⁴ *Id.*

⁵ S. 119.01(1), F.S.

⁶ S. 119.10, F.S.

⁷ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

⁸ S. 119.10(1)(b) and 119.10(2)(a), F.S.

⁹ S. 119.10(1)(b), F.S.

¹⁰ R. 11B-27.0011, F.A.C.

- Improperly accessing an electronic database after the officer received training on database usage, or has been disciplined for improper database usage by a law enforcement agency or the Criminal Justice Standards and Training Commission (CJSTC).
- 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 to or associated with the relationship.
- Pre-textual queries based on age, race, sex, gender, or other personal identifying characteristics.
- 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 ch. 119, F.S., obtained as a result of the query.¹¹

Misuse of an electronic database, such as DAVID, may result in disciplinary action. The recommended penalty that can be imposed by the CJSTC for misuse of an electronic database ranges from probation to suspension.¹² Additionally, misuse of an electronic database may subject an officer to the penalties for violating the public records laws in s. 119.10, F.S., including a first degree misdemeanor.

The Criminal Justice Standards and Training Commission

The CJSTC's mission is to ensure that all citizens of Florida are served by criminal justice officers who are ethical, qualified, and well-trained.¹³ The CJSTC is comprised of:

- Three sheriffs.
- Three chiefs of police.
- Five law enforcement officers who are neither sheriffs nor chiefs, who are the rank of Sergeant or below.
- Two correctional officers, one of which is an administrator of a state correctional institution and one who is of the rank of sergeant or below.
- One Florida resident who falls into none of the above categories.
- The Attorney General or his or her designated proxy.
- The Secretary of Department of Corrections or his or her designated proxy.
- The Director of the Florida Highway Patrol.¹⁴

The primary responsibilities of the CJSTC are to:

- Establish uniform minimum standards for employment and training of full-time, part-time, and auxiliary law enforcement, and correctional and correctional probation officers.
- Establish and maintain officer training programs, curricula requirements, and certification of training schools and training school instructors.
- Certify officers who complete a Florida Basic Recruit Training Program, or who are diversely qualified through experience and training, and who meet minimum employment standards.
- Review and administer appropriate administrative sanctions in instances when an officer, a training school instructor, or a training school is found in violation of Florida Statutes and CJSTC standards.
- Promulgate rules and procedures to administer the requirements of ss. 943.085–943.257, F.S.
- Conduct studies of compensation, education, and training for the correctional, correctional probation, and law enforcement disciplines.
- Maintain a central repository of records of all certified officers.
- Conduct quarterly meetings to discuss issues and approve rules that relate to officer standards and training.
- Develop, maintain, and administer the State Officer Certification Examination for criminal justice officers.¹⁵

¹¹ R. 11B-27.0011(4)(c)(14), F.A.C.

¹² R. 11B-27.005(5)(c), F.A.C.

¹³ Florida Department of Law Enforcement, *Criminal Justice Standards & Training Commission*, <https://www.fdle.state.fl.us/CJSTC/Commission/CJSTC-Home.aspx> (last visited Mar. 11, 2021).

¹⁴ S. 943.11, F.S.

Accreditation

An accreditation program has long been recognized as a means of maintaining the highest standards of professionalism. Accreditation is the certification by an independent reviewing authority that an entity has met specific requirements and prescribed standards.¹⁶

Section 943.125, F.S., provides legislative intent that law enforcement agencies voluntarily adopt meaningful standards of operation designed to promote enhanced professionalism and to maximize the capability of law enforcement agencies to enforce the law and prevent and control criminal activity.¹⁷ The statute further encourages the continuation of a voluntary state accreditation program to facilitate enhanced professionalism. The accreditation program must be independent of any law enforcement agency, the Department of Corrections, the Florida Sheriff's Association, or the Florida Police Chiefs Association.¹⁸

The law enforcement accreditation program must address, at minimum, the following aspects of law enforcement:

- Vehicle pursuits.
- Seizure and forfeiture of contraband articles.
- Recording and processing citizens' complaints.
- Use of force.
- Traffic stops.
- Handling natural and manmade disasters.
- Special operations.
- Prisoner transfer.
- Collection and preservation of evidence.
- Recruitment and selection.
- Officer training.
- Performance evaluations.
- Law enforcement disciplinary procedures and rights.
- Use of criminal investigative funds.¹⁹

Commission for Florida Law Enforcement Accreditation, Inc.

The Commission for Florida Law Enforcement Accreditation, Inc. (CFA) was originally formed in 1993 as a response to s. 943.125, F.S.²⁰ The CFA is comprised of:

- Five police chiefs, from agencies either CFA accredited or with a signed agreement to pursue accreditation;
- Five sheriffs from agencies either CFA accredited or with a signed agreement to pursue accreditation;
- One mayor, city commissioner, city manager, or other member appointed by the Florida League of Cities;
- One county commissioner or other member appointed by the Florida Association of Counties;
- One appellate or circuit court judge appointed by the Florida Supreme Court;
- One law enforcement executive from a state law enforcement agency either CFA accredited or with a signed agreement to pursue accreditation; and
- One representative from the Office of Inspector General either CFA accredited or with a signed agreement to pursue accreditation.²¹

¹⁵ *Id.*

¹⁶ Florida Accreditation, *Introduction to Florida Accreditation*, <http://www.flaccreditation.org/> (last visited Mar. 11, 2021).

¹⁷ S. 943.125(1) and (2), F.S.

¹⁸ S. 943.125(3), F.S.

¹⁹ S. 942.125(4)(a)–(n), F.S.

²⁰ Florida Department of Law Enforcement, *Florida Accreditation Office*, <https://www.fdle.state.fl.us/Accreditation/Accreditation> (last visited Mar. 11, 2021).

²¹ Email from Ronald Draa, Chief of Staff, FDLE, RE: SB 890 Use of Electronic Databases (Feb. 10, 2021).

The commission meets three times a year to oversee the accreditation program and to officially accredit agencies that have passed the review process.²²

Effect of Proposed Changes

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The bill defines “personal identification information” as any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any:

- Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
- Unique electronic identification number, address, or routing code;
- Medical records;
- Telecommunication identifying information or access device; or,
- Other number or information that can be used to access a person's financial resources.

The bill provides an effective date of October 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 119.10, F.S., relating to violation of chapter; penalties.

Section 2: Amends s. 943.125, F.S., relating to accreditation of state and local law enforcement agencies, correctional facilities, public agency offices of inspectors general, and certain pretrial diversion programs; intent.

Section 3: Creates s. 943.1719, F.S., relating to basic skills training relating to the use of electronic databases.

Section 4: Creates s. 943.17191, F.S., relating to continued employment training relating to the use of electronic databases.

Section 5: Provides an effective date of October 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

²² Florida Department of Law Enforcement, *Florida Accreditation Office*, <https://www.fdle.state.fl.us/Accreditation/Accreditation> (last visited Mar. 11, 2021).

None.

2. Expenditures:

The FDLE indicates it will need \$37,663 in non-recurring funds to implement the bill. Specifically, the FDLE estimates the cost to update the law enforcement basic recruit training program and to develop a new post-basic training course is approximately \$7,663. The FDLE estimates the technological costs of the bill, with approximately 3 months of IT work (analysis, design, programming, and testing), will cost the department approximately \$30,000.²³ However, any technology and training impacts as a result of provisions in the bill can likely be absorbed within existing FDLE resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill increases the fine for a public officer who violates any provision of ch. 119, F.S., from \$500 to \$2,000.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The commission will need to amend its rules to reflect changes made by the bill. It appears the commission has adequate rule-making authority to make the necessary changes.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill relates to electronic databases; however, the bill increases the penalty for public record violations for any violation of ch. 119, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 11, 2021, the Criminal Justice & Public Safety Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

²³ Florida Department of Law Enforcement, Agency Analysis of 2021 Senate Bill 890, p.3-5 (Feb. 10, 2021).

- Defined the term “personal identification information.”
- Changed the effective date to October 1, 2021.

This analysis is drafted to the committee substitute as passed by the Criminal Justice & Public Safety Subcommittee.