

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 890

INTRODUCER: Criminal Justice Committee and Senator Hooper

SUBJECT: Use of Electronic Databases

DATE: March 16, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Proctor</u>	<u>Vickers</u>	<u>TR</u>	<u>Favorable</u>
3.	<u>Stokes</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 890 amends s. 119.10, F.S., increasing the maximum fine from \$500 to \$2000, for a public officer who violates any provision of ch. 119, F.S., relating to public records.

This bill amends s. 943.125, F.S., providing that the law enforcement accreditation program must address access to and use of personal identification information, as defined in s. 817.568(1)(f), F.S., contained in electronic databases.

This bill creates ss. 943.1719 and 943.17191, F.S., requiring the Criminal Justice Standards and Training Commission (CJSTC) to provide training on the authorized access to and use of personal identification information contained in electronic databases used by a law enforcement officer (LEO) in his or her official capacity. This training must be part of the curriculum required for initial certification of a LEO, and as part of the 40 hours of required instruction for continued employment or appointment as an officer. The training under ss. 943.1719 and 943.17191, F.S., must at minimum include:

- The proper use and limitations on use of electronic databases in a LEO's official capacity.
- The penalties associated with the misuse of such electronic databases.

This bill may have a negative fiscal impact on the Florida Department of Law Enforcement (FDLE). See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2021.

II. Present Situation:

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). The 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). The DPPA provides that government agencies, including any court or law enforcement agency, may 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 he was talking to 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

It is state policy that 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.

Section 119.10, F.S., provides that any public 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. A public officer who knowingly violates s. 119.07(1), F.S.,⁶ is subject to suspension and removal or impeachment and commits a first degree misdemeanor.⁷

¹ Florida Highway Safety and Motor Vehicles, *Driver and Vehicle Information Database (DAVID)*, available at [Driver And Vehicle Information Database \(DAVID\) - Florida Department of Highway Safety and Motor Vehicles \(flhsmv.gov\)](https://www.flhsmv.gov) (last visited February 10, 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, available at [Florida government workers abuse access to your private info | wtsp.com](https://www.wtsp.com) (last visited February 10, 2021).

⁴ *Id.*

⁵ Section 119.01(1), F.S.

⁶ Section 119.07(1), F.S., relates to the responsibilities of custodians of public records.

⁷ Section 119.10(1)(a) and (b), F.S.

Additionally, any person who willfully and knowingly violates any provisions of ch. 119, F.S., commits a first degree misdemeanor.⁸ Any person who willfully and knowingly violates s. 119.105, F.S.⁹ commits a third degree felony.^{10, 11}

Misuse of an Electronic Database

Misuse of an electronic database is a violation of an officer's good moral character.¹² 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.
- If the violation occurred after the officer received agency or the Criminal Justice Standards and Training Commission (CJSTC) 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 a database.
- 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 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.¹³

Misuse of an electronic database, such as DAVID, may result in disciplinary action. The recommended penalty the CJSTC should impose for misuse of an electronic database ranges from probation to suspension.¹⁴ Additionally, misuse of an electronic database may subject an officer to the penalties in s. 119.10, F.S., including being charged with a first degree misdemeanor.¹⁵

⁸ Section 119.10(2)(a), F.S.

⁹ Section 119.105, F.S., provides that police reports are public records unless otherwise made confidential and exempt. Nonexempt or nonconfidential police reports may be examined by any person. However, any person who has possession of exempt or confidential information in a police report may not commercially solicit the victims or relatives of the victims in the report and may not knowingly disclose such information for the purpose of solicitation. This does not apply to publication by any news media legally entitled to possess the information.

¹⁰ Section 119.10(2)(b), F.S.

¹¹ A third degree felony is punishable by up to five years imprisonment, a \$5,000 fine, or enhanced penalties as a habitual felony offender. Sections 775.082, 775.083, and 775.084, F.S.

¹² Rule 11B-27.0011, F.A.C.

¹³ Rule 11B-27.0011(4)(c)(14), F.A.C.

¹⁴ Rule 11B-27.005(5)(c), F.A.C.

¹⁵ A first degree misdemeanor is punishable by up to one year in jail and up to a \$1,000 fine. Sections 775.082 and 775.083, F.S.

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.¹⁶ The CJSTC is comprised of:

- Three sheriffs.
- Three chiefs of police.
- Five LEOs 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 designated proxy.
- The Secretary of Department of Corrections or designated proxy.
- The Director of the Florida Highway Patrol.¹⁷

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 ch. 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.¹⁸

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.¹⁹

¹⁶ Florida Department of Law Enforcement, *Criminal Justice Standards & Training Commission (CJSTC)*, available at <https://www.fdle.state.fl.us/CJSTC/Commission/CJSTC-Home.aspx> (last visited February 9, 2021).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Florida Accreditation, *Introduction to Florida Accreditation*, available at <http://www.flaccreditation.org/> (last visited February 9, 2021).

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.²⁰ 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.²¹

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.²²

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.²³ 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

²⁰ Section 943.125(1) and (2), F.S.

²¹ Section 943.125(3), F.S.

²² Section 942.125(4)(a)-(n), F.S.

²³ Florida Department of Law Enforcement, *Florida Accreditation Office*, available at <https://www.fdle.state.fl.us/Accreditation/Accreditation> (last visited February 9, 2021).

- One representative from the Office of Inspector General either CFA accredited or with a signed agreement to pursue accreditation.²⁴

The commission meets three times a year to oversee the accreditation program and to officially accredit agencies that have passed the review process.²⁵

III. Effect of Proposed Changes:

The bill amends s. 119.10, F.S., increasing the maximum fine from \$500 to \$2000, for a public officer who violates any provision of ch. 119, F.S., relating to public records.

This bill amends s. 943.125, F.S., providing that the law enforcement accreditation program must address access to and use of personal identification information contained in electronic databases.

The bill defines personal identification information as it is defined in s. 817.568(1)(f), F.S. Section 817.568(1)(f), F.S., 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 U.S. 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.

This bill creates s. 943.1719, F.S., requiring the commission to provide training on the authorized access to and use of personal identification information contained in electronic databases used by a LEO in his or her official capacity. This training must be part of the curriculum required for initial certification of a LEO.

The bill creates s. 943.17191, F.S., providing that the commission must require by rule that each LEO 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 LEO in his or her official capacity.

²⁴ Email from Ronald Draa, Chief of Staff, FDLE, RE: SB 890 Use of Electronic Databases (Email on file with Committee on Criminal Justice) (February 10, 2021).

²⁵ Florida Department of Law Enforcement, *Florida Accreditation Office*, available at <https://www.fdle.state.fl.us/Accreditation/Accreditation> (last visited February 9, 2021).

The training under ss. 943.1719 and 943.17191, F.S., must at a minimum include:

- The proper use and limitations on use of electronic databases in a LEO's official capacity.
- The penalties associated with the misuse of such electronic databases.

This bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FDLE has indicated the department will need \$37,663 in non-recurring funds to implement the provisions of the bill. Specifically, the FDLE estimated 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 also provided that the technological costs of the bill, with approximately 3 months of IT work (analysis, design, programming, and testing), will cost the department approximately \$30,000.²⁶

²⁶ Department of Law Enforcement, *2021 Legislative Bill Analysis for SB 890*, (February 10, 2021), p. 3-5 (on file with the Senate Committee on Criminal Justice).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.10 and 943.125.

This bill creates the following sections of the Florida Statutes: 943.1719, and 943.17191.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 16, 2021:

The committee substitute adds a reference to s. 817.568(1)(f), F.S., defining personal identification information. Additionally, the amendment changes the effective date to October 1, 2021.

- B. **Amendments:**

None.