

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 Judiciary

BILL: CS/CS/SB 706

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senator Steube

SUBJECT: Crime Stoppers Organizations

DATE: February 14, 2018

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|---------------|
| 1. | <u>Cox</u> | <u>Jones</u> | <u>CJ</u> | Fav/CS |
| 2. | <u>Stallard</u> | <u>Cibula</u> | <u>JU</u> | Fav/CS |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 706 includes several measures to protect the anonymity and safety of persons who provide tips to crime stoppers organizations. These groups encourage persons who have information regarding a crime to share this information by offering them anonymity and the possibility of financial awards.

The bill states that a communication to a crime stoppers organization for the purpose of reporting alleged criminal activity is privileged. Once the information is received by a crime stoppers organization, the tipster's identity and the privileged communication, as well as evidence, opinions, or decisions relating to the communication are protected information that generally may not be disclosed through discovery procedures or otherwise.

However, a person charged with a crime may petition the court to compel the disclosure of protected information. And the protected information or privileged communication must be disclosed if the lack of disclosure would infringe on the criminal defendant's constitutional right.

Finally, the bill provides that a person, other than the tipster, who discloses any "information related to privileged communication or protected information" to anyone other than law enforcement personnel commits a third degree felony, punishable by up to 5 years in prison and a fine not to exceed \$5,000.

To the extent that the felony created in the bill results in persons being convicted of a felony, the bill may result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase of prison beds).

II. Present Situation:

Crime Stoppers – Overview

This state's crime stoppers organizations encourage the reporting of information regarding a crime by offering tipsters anonymity and the prospect of financial reward for tips that lead to an arrest.¹ There are various local crime stoppers organizations throughout the state, and they receive funding from the Crime Stoppers Trust Fund,² which is administered by the Department of Legal Affairs.³

Crime stoppers began in Albuquerque, New Mexico in 1976. A homicide detective with the Albuquerque Police asked a local television station to broadcast a re-enactment of an unsolved murder on its newscast. A reward was offered and a caller contacted the police the next day with a tip that led the police to the two men who were responsible. The success of this concept launched a program which is now internationally known as "Crime Stoppers." There are now more than 1,200 crime stoppers programs worldwide.⁴

Today there are 27 programs in Florida operating under the name Florida Association of Crime Stoppers, Inc.⁵

A crime stoppers organization may receive tips in various ways, including phone calls, online submissions, text messages, or through the Crime Stoppers' mobile application.⁶ The crime stoppers staff member receiving the information completes a tip information form, makes initial inquiries, and then passes the information to the investigating law enforcement agency.⁷

Privileged Communications Provided for in the Evidence Code

The Florida Evidence Code (Code) specifies what types of evidence and testimony are admissible in court.⁸ The Code makes certain communications privileged, meaning their disclosure generally cannot be compelled, even in legal proceedings. Examples of privileged

¹ Florida Association of Crime Stoppers, *Home page*, available at <http://www.facsflorida.org/> (last visited February 12, 2018).

² *See* s. 16.555, F.S.

³ *See* s. 16.555 and 16.556, F.S.

⁴ Florida Association of Crime Stoppers, *Where It All Started*, available at <http://www.facsflorida.org/where-it-all-started/> (last visited February 12, 2018).

⁵ Florida Association of Crime Stoppers, *Who We Are*, available at <http://www.facsflorida.org/who-we-are/> (last visited February 12, 2018).

⁶ Florida Association of Crime Stoppers, *How's It Done*, available at <http://www.facsflorida.org/what-we-do/how-they-do-it/> (last visited February 12, 2018).

⁷ *See id.*

⁸ Chapter 90, F.S.

communications include communications between a lawyer and client,⁹ a husband and wife,¹⁰ and a psychotherapist and his or her patient.¹¹

Crime Stoppers Privileged Communication in Other States

Several other states have statutes to provide that communications with a crime stoppers organization are privileged, as is the identity of the tipster and any information or tangible things collected from tipsters by crime stoppers organizations. Examples of these states include:

- Arkansas;¹²
- Colorado;¹³
- Kentucky;¹⁴
- Louisiana;¹⁵
- New Mexico;¹⁶
- Oklahoma;¹⁷ and
- Texas.¹⁸

Further, at least five states criminalize the disclosure of this protected crime stopper information. These crimes are generally classified as misdemeanors.¹⁹

III. Effect of Proposed Changes:

Under the bill, a person's communication to a crime stoppers organization for the purpose of reporting alleged criminal activity is a privileged. Once the information is received by a crime stoppers organization, the tipster's identity and the privileged communication, as well as the evidence, opinions, or decisions relating to the communication are protected information that generally may not be disclosed through discovery procedures or otherwise.

Specifically, a tipster or law enforcement crime stoppers coordinator, as well as a director, officer, or employee of a crime stoppers organization generally may not be compelled to give testimony or produce documents under subpoena regarding a privileged communication, protected information or specified materials²⁰ relating to these items:

- In connection with a criminal case or proceeding, or administrative hearing; or

⁹ Section 90.502, F.S.

¹⁰ Section 90.504, F.S.

¹¹ Section 90.503, F.S.

¹² ARK. CODE § 16-90-1005.

¹³ COLO. REV. STAT. § 16-15.7-104.

¹⁴ KY. REV. STAT. § 431.580.

¹⁵ LA. REV. STAT. § 15:477.1.

¹⁶ N.M. STAT. § 29-12A-4, 5.

¹⁷ OKLA. STAT. 12 § 2510.1.

¹⁸ TEX. GOV. CODE § 414.009.

¹⁹ The five states Senate staff found that assign criminal penalties include Arkansas, Colorado, Kentucky, New Mexico, and Texas. *See* ARK. CODE § 16-90-1006; COLO. REV. STAT. § 16-15.7-104; KY. REV. STAT. § s. 431.585; N.M. STAT. § 29-12A-4, 5; and TEX. GOV. CODE § 414.009. The exception to the offense being classified as a misdemeanor is in Texas where the offense becomes a felony instead of a misdemeanor if the information is divulged to obtain a monetary benefit.

²⁰ The specified materials are "any records, documentary evidence, opinions, or decisions related to such privileged communications or protected information."

- By way of any discovery procedure.

However, a person accused of a crime may petition the court to compel the disclosure of protected information. The petition must allege that the information:

- Provides evidence favorable to the defendant;
- Is specifically related to the determination of the innocence or guilt of the defendant; and
- Is such that, if it is not disclosed, the defendant will be deprived of a constitutional right.

If the court determines that each of these criteria are satisfied, it may order production and disclosure of all or any part of the protected information. However, if the court chooses to order production and disclosure, it must do so “while, to the fullest extent possible, protecting the identity of the persons who engaged in privileged communication.”

In a separate provision, the bill strongly implies that a court is authorized to also compel the disclosure, “by way of testimony or any other means,” of protected information or a privileged communication. As such, the bill implies that the court, in an appropriate case, may compel testimony from the tipster, a law enforcement crime stoppers coordinator or his or her staff, or a member of a crime stoppers organization.

Finally, the bill provides that a person, other than the tipster, who discloses any “information related to privileged communication or protected information” to anyone other than law enforcement personnel commits a third degree felony.²¹

The bill is effective on October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²¹ A third-degree felony offense is punishable by not more than five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates a new felony offense related to a person disclosing any information related to privileged communication or protected information to anyone other than law enforcement personnel. To the extent that this provision of the bill results in offenders being convicted for this felony offense, the bill may result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase in prison beds).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 90.595 of the Florida Statutes.

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 Judiciary on February 13, 2018:

The committee substitute classifies the content of a communication made to a crime stoppers organization as a privileged communication. The underlying bill, on the other hand, classified only the act of this communication as privileged. The committee substitute also protects additional members of crime stoppers organizations from having to disclose or produce protected information or privileged communications. Finally, though the underlying bill generally makes it a felony to disclose information related to protected information or privileged communication, the committee substitute clarifies that criminal penalties do not apply to disclosures to law enforcement personnel.

CS by Criminal Justice on February 6, 2018:

The committee substitute exempts the person who provides the privileged communication from the criminal penalty created in the bill.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
