

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 957 Crime Stoppers Organizations

SPONSOR(S): Judiciary Committee, Criminal Justice Subcommittee; Gruters and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 706

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Jones	Sumner
2) Justice Appropriations Subcommittee	10 Y, 0 N	Welty	Gusky
3) Judiciary Committee	14 Y, 0 N, As CS	Jones	Poche

SUMMARY ANALYSIS

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

Crime Stoppers organizations are nonprofit entities that partner with law enforcement and the community to fight crime. Crime Stoppers organizations receive information about alleged criminal activity through a designated hotline or through electronic means and then forward the information to appropriate law enforcement agencies.

CS/CS/HB 957 creates a new category of privileged communication in the Code. The bill provides that when a person reports alleged criminal activity to a Crime Stoppers organization, that communication and the reporting person's identity are privileged and cannot be disclosed, except on a limited basis in criminal proceedings where the information is constitutionally required to be disclosed.

The bill makes it a third-degree felony for any person to disclose privileged or protected information relating to a communication made to a Crime Stoppers organization. The bill excepts from the criminal penalty the person reporting the information and, when acting within the scope of their official duties, law enforcement officers, employees of a law enforcement agency, and employees of the Department of Legal Affairs.

To the extent that persons are arrested for, charged with, and convicted of, the criminal offense created in the bill, this bill will have an indeterminate fiscal impact on state and local governments as these cases are processed through the criminal justice system.

The Criminal Justice Impact Conference (CJIC) considered a previous version of this bill, which was substantially similar to the current version of the bill, on February 12, 2018, and determined the bill would increase the prison population by an insignificant amount.

The bill provides an effective date of October 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Crime Stoppers Organizations

Crime Stoppers organizations are nonprofit entities that partner with law enforcement and the community to fight crime.¹ Crime Stoppers organizations receive information about alleged criminal activity through a designated hotline or through electronic means and then forward the information to appropriate law enforcement agencies.² Such organizations often create incentives to report crimes by providing monetary rewards or by allowing the person reporting the crime to remain anonymous.³

Florida Evidence Code

The Florida Evidence Code (Code) specifies what types of evidence and testimony are admissible in court.⁴ The Code makes certain communications privileged, meaning their disclosure generally cannot be compelled, even in legal proceedings. Examples of generally privileged communications include communications between a lawyer and client,⁵ communications between a husband and wife,⁶ and communications between a psychotherapist and a patient.⁷

Criminal Punishment Code

The Criminal Punishment Code (Code) applies to all felony offenses, except capital felonies, committed on or after October 1, 1998.⁸ Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10), either by being specifically listed in the offense severity ranking chart⁹ or by default.¹⁰ Judges must use the Code worksheet to compute a sentence score for each felony offender.¹¹

Sentence points are assigned and accrue based on the level ranking assigned to the primary offense, additional offenses and prior offenses.¹² Sentence points increase as the offense severity level increases from Level 1 (least severe) to Level 10 (most severe). Sentence points are added for victim injury, and increase based on the type of injury and severity.¹³ Sentence points may also be added or multiplied for other factors including possession of a firearm or the commission of certain offenses, such as drug trafficking.¹⁴

If total sentence points equal or are less than 44 points, the lowest permissible sentence is any non-state prison sanction, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by

¹ <http://www.leoncountysoc.com/crime-stoppers> (last visited Feb. 21, 2018).

² Id.; <http://www.facsflorida.org/what-we-do/how-they-do-it/> (last visited Feb. 21, 2018).

³ Id.

⁴ Ch. 90, F.S.

⁵ S. 90.502, F.S.

⁶ S. 90.504, F.S.

⁷ S. 90.503, F.S.

⁸ S. 921.002, F.S.

⁹ S. 921.0022, F.S.

¹⁰ S. 921.0023, F.S. (addressing ranking unlisted felony offenses; ranking an unlisted felony of the third degree within offense level 1).

¹¹ S. 921.0024, F.S.

¹² Id.

¹³ Id.

¹⁴ Id.

subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.¹⁵ Absent mitigation,¹⁶ the permissible range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.¹⁷

Effect of Proposed Changes

CS/CS/HB 957 adds a new category of privileged communication to the Florida Evidence Code. Specifically, the bill provides that when a person reports alleged criminal activity to a Crime Stoppers organization, that communication and the reporting person's identity are privileged and cannot be disclosed, except on a limited basis in criminal proceedings where the information is constitutionally required to be disclosed.

Definitions

The bill defines:

- "Crime stoppers organization" as a private, not-for-profit organization that collects and expends donations for rewards to persons who report to the organization information concerning criminal activity and forwards that information to appropriate law enforcement agencies.
- "Privileged communication" as the act of providing information to a Crime Stoppers organization for the purpose of reporting alleged criminal activity.
- "Protected information" as the identity of a person who engages in privileged communication with a Crime Stoppers program and any records, recordings, oral or written statements, papers, documents, or other tangible things provided to or collected by:
 - A Crime Stoppers organization,
 - A law enforcement Crime Stoppers coordinator or his or her staff, or
 - A law enforcement agency in connection with such privileged communication.

Protection of Privileged Communication in Legal Proceedings

Under the bill, any person who engages in privileged communication—as well as any law enforcement officer or staff thereof, or any member of a Crime Stoppers organization's board of directors—cannot be compelled to:

- Disclose, by way of testimony or any other means, privileged communication or protected information unless failure to do so would infringe on the constitutional rights of an accused person.
- Produce, under subpoena, any records, documentary evidence, opinions, or decisions relating to privileged communication or protected information, whether in connection with a criminal case, criminal proceeding, or any administrative hearing; or by way of any discovery procedure.

In a criminal proceeding, upon the defendant's petition, a court may order the production and disclosure of all or a part of protected information if it finds that the privileged or protected information:

- May provide favorable evidence for the defendant,
- Is specifically related to the determination of the innocence or guilt of the defendant, and
- Is such that, if not disclosed, would deprive the defendant's constitutional rights.

In such a case, the court must, to the fullest extent possible, protect the identity of the persons who engaged in the privileged communication.

¹⁵ S. 921.0024(2), F.S.

¹⁶ The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. S. 921.0026, F.S.

¹⁷ S. 921.0024(2), F.S.

Criminal Penalty for Disclosure of Privileged Communication

The bill makes it an unranked third-degree felony for any person to disclose anything related to the privileged communication or protected information except for the person reporting the information or, when acting within the scope of his or her official duties:

- A law enforcement officer;
- An employee of a law enforcement agency; or
- An employee of the Department of Legal Affairs.

This means that when a person reports information about alleged criminal activity to a Crime Stoppers organization, any person, other than a person specifically excepted, who discloses the identity of the reporter or the reported information commits a third-degree felony.

An unranked third-degree felony is a descriptive term for a noncapital felony that is not specifically ranked in the offense severity ranking chart in s. 921.0022, F.S. If the felony is not ranked in the chart, it is ranked pursuant to s. 921.0023, F.S., based on its felony degree. An unranked third-degree felony is a Level 1 offense.

The bill provides an effective date of October 1, 2018.

B. SECTION DIRECTORY:

Section 1: Creates s. 90.595, F.S., relating to privileged communication with and the provision of protected information to crime stoppers organizations.

Section 2: Provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference, which provides the final official estimate of a bill's prison bed impact, met on February 12, 2018, and determined CS/HB 957 would have a positive insignificant prison bed impact, meaning an increase of 10 or fewer prison beds.¹⁸ CS/CS/HB 957 is substantially similar to CS/HB 957.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

¹⁸ Criminal Justice Impact Conference, Office of Economic and Demographic Research, Narrative Analysis of Adopted Impacts: CS/SB 706 – Crime Stoppers Organizations (Identical CS/HB 957), February 12, 2018.

D. FISCAL COMMENTS:

To the extent that persons are arrested for, charged with, and convicted of, the criminal offense created in the bill, this bill will have an indeterminate fiscal impact on state and local governments as these cases are processed through the criminal justice system.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

The First Amendment of the United States Constitution prevents the government from creating laws that restrict a citizen from communicating nonprotected opinions or information with other people. The bill could implicate the First Amendment right to free speech, since it makes it a crime for a person other than the reporter of the information to disclose any information related to privileged communication or protected information made to a Crime Stoppers organization.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 29, 2018, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarified that the criminal penalties do not apply to the person who reports information to a Crime Stoppers organization.

On February 21, 2018, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment made a technical correction and exempted law enforcement officers, employees of law enforcement agencies, and employees of the Department of Legal Affairs, when acting within the scope of their official duties from the criminal penalty for disclosure of privileged communication or protected information.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.