

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 1766

INTRODUCER: Senators Gruters, Pizzo and Gainer

SUBJECT: Crime Stoppers Programs

DATE: April 3, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Storch</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Dale</u>	<u>Jameson</u>	<u>ACJ</u>	Recommend: Favorable
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1766 creates section 90.595, Florida Statutes, which establishes that communication between a person and a crime stoppers organization is *privileged* under the Florida Evidence Code (Code).

The bill defines “privileged communication” as the act of providing information to a crime stoppers organization for the purpose of reporting alleged criminal activity and provides that a person who engages in privileged communication with a crime stoppers organization, a law enforcement crime stoppers coordinator or his or her staff, or a member of a crime stoppers organization’s board of directors may not be required to disclose such communication or protected information, subject to exceptions.

However, a person charged with a criminal offense may petition the court to compel the disclosure of the protected information collected in connection with the privileged communication. Such information must be disclosed if the lack of disclosure would infringe on the accused’s constitutional right.

The bill provides that a person who discloses any information related to privileged communication or protected information commits a third degree felony, unless the disclosure is made pursuant to a court order.

The bill also establishes additional authorized uses of a grant awarded to a county from the Crime Stoppers Trust Fund.

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

The bill is effective July 1, 2019.

II. Present Situation:

Crime Stoppers

Crime Stoppers programs are non-profit organizations led by citizens against crime, founded on the concept that someone other than the criminal has information that can help solve a crime. These programs offer anonymity to anyone who can provide information about crimes and subsequently pay rewards when such information leads to an arrest.¹

The idea of providing a reward to someone with information about a crime originated in Albuquerque, New Mexico, when a detective was tasked with solving a homicide with no leads. He thought to make a video re-enactment of the murder and guarantee anonymity for anyone who was willing to call with information about the crime. After receiving calls following the re-enactment, one of which allowed police to solve a different crime, the detective persuaded the Albuquerque Police Department to permit citizens to establish the first Crime Stoppers program. Today, there are over 1,200 crime stopper organizations throughout the world.²

There are 27 crime stopper programs in Florida that operate collectively under the name Florida Association of Crime Stoppers, Inc. (Association).³ In order to expand the model of these programs by providing more stable funding, the Crime Stoppers Trust Fund (Fund) was created for the purpose of grant administration.⁴ The Department of Legal Affairs (DLA) administers the Fund and is tasked with establishing criteria for local governments to apply for funding.⁵

Crime Stoppers Trust Fund

The amount of funding available for a crime stoppers organization or a county is based upon all money deposited pursuant to s. 938.06, F.S., available unused funds, and money collected pursuant to financial consequences.⁶ Section 938.06, F.S., provides that, in addition to other fines that may be imposed, a court must assess a \$20 fee for any person convicted of any criminal offense, the proceeds of which are then deposited into the Fund.⁷ Such proceeds are placed in a separate account in the Fund and are designated according to the judicial circuit in which they were collected.⁸ A county may then apply to the DLA for a grant from the funds collected in the judicial circuit in which the county is located. However, such grants are awarded only to counties that are served by an organization that is an official member of the Association and in good standing.⁹

¹ Crime Stoppers USA, *Profile*, available at <https://www.crimestoppersusa.org/profile/> (last visited April 1, 2019).

² Florida Association of Crime Stoppers, *Where it all started*, available at <http://www.facsflorida.org/where-it-all-started> (last visited April 1, 2019).

³ Florida Association of Crime Stoppers, *Our History*, available at <http://www.facsflorida.org/who-we-are/our-history/> (last visited April 1, 2019).

⁴ Ch. 91-205, s. 13, Laws of Fla. (1991).

⁵ Section 16.555, F.S.

⁶ Fla. Admin. Code R. 2A-9.003(2) (2018).

⁷ Section 938.06, F.S.

⁸ Section 16.555(4)(b), F.S.

⁹ Fla. Admin. Code R. 2A-9.003(5)(c) (2018).

Money awarded from a grant to a county may only be used to support Crime Stoppers and its crime fighting programs.¹⁰ There is one crime stoppers program per county eligible to receive funding and eligible programs must complete and submit a performance-based grant proposal outlining its annual operational plan.¹¹ A county that is awarded a grant may use such funds to purchase items to assist in educating the public and increasing public awareness of Crime Stoppers.¹² The Fund is also used to reimburse programs for the payment of rewards. In order to obtain reimbursement from the Fund, the reward paid must have been for a tip that lead to an arrest, arrest warrant, or recovery of stolen property or drugs.¹³

Privileged Communications in the Evidence Code

The Florida Evidence Code (Code) specifies what types of evidence and testimony are admissible in court.¹⁴ The Code makes certain communications privileged, meaning their disclosure generally cannot be compelled, even in legal proceedings.¹⁵ Privileged communication is used to describe an interaction between two parties in which the law recognizes a private, protected relationship.¹⁶ Some examples of generally privileged communications include communications between a lawyer and client;¹⁷ a husband and wife;¹⁸ and a psychotherapist and a patient.¹⁹

Typically, such communication only loses its privileged status if the person who made the original disclosure of such information waives the privilege, thus permitting the communication to be subject to general rules of evidence. A person is deemed to have waived the privilege if he or she voluntarily discloses or makes the communication when he or she does not have a reasonable expectation of privacy, or consents to the disclosure of any significant part of the communication.²⁰

Crime Stoppers Privileged Communication in Other States

Other states have already implemented laws that both protect the identity of a person who provides a tip to a crime stoppers organization and provide that the communication of the tip and any documents created as a result of the tip are privileged. Those states are:

- Arkansas;²¹
- Colorado;²²

¹⁰ Section 16.555(5)(b), F.S.

¹¹ Florida Association of Crime Stoppers, *Funding*, available at <https://www.facsflorida.org/who-we-are/62-2/> (last visited April 1, 2019).

¹² Section 16.555(5)(b), F.S.

¹³ Fla. Admin. Code. R. 2A-9.006(7)(d) (2018).

¹⁴ Chapter 90, F.S.

¹⁵ US Legal, *Privileged Communications Law and Legal Definition*, available at <https://definitions.uslegal.com/p/privileged-communications/> (last visited April 1, 2019).

¹⁶ Will Kenton, Investopedia, *Privileged Communication*, (February 21, 2018), available at <https://www.investopedia.com/terms/p/privileged-communication.asp> (last visited April 1, 2019).

¹⁷ Section 90.502, F.S.

¹⁸ Section 90.504, F.S.

¹⁹ Section 90.503, F.S.

²⁰ Section 90.507, F.S.

²¹ Section 16-90-1005, A.C.A. (1995).

²² Section 16-15.7-104, C.R.S.A. (1994).

- Connecticut;²³
- Kentucky;²⁴
- Louisiana;²⁵
- Michigan;²⁶
- Mississippi;²⁷
- New Mexico;²⁸
- Oklahoma;²⁹ and
- Texas.³⁰

Furthermore, six states have created criminal penalties for the prohibited disclosure of such protected information. However, the criminal penalty is generally a misdemeanor, rather than a felony.³¹

III. Effect of Proposed Changes:

The bill establishes that communication between a person and a crime stoppers organization is *privileged* within the Code.

Privileged Communication with a Crime Stoppers Organization

The bill defines the following terms:

- “Crime stoppers organization” means 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” means the act of providing information to a crime stoppers organization for the purpose of reporting alleged criminal activity.
- “Protected information” includes 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.

²³ Section 29-1d., C.G.S.A. (1984).

²⁴ Section 431.580, KRS. (1992).

²⁵ Section 15:477.1, L.A.R.S. (1985).

²⁶ Section 600.2157b, M.C.L.A. (2006).

²⁷ Section 45-39-7, Miss. Code Ann. (1996).

²⁸ Section 29-12A-4, N.M.S.A. (1978).

²⁹ Section 2510.1, Okl.St.Ann. (2002).

³⁰ Sections 414.008 and 414.009, V.T.C.A. (1987).

³¹ The six states that assign criminal penalties are Arkansas, Colorado, Kentucky, Mississippi, New Mexico, and Texas. *See* s. 16-90-1006, A.C.A., s. 16-15.7-104, C.R.S.A., s. 431.585, KRS., s. 45-39-9, Miss. Code Ann., s. 29-12A-5, N.M.S.A., and s. 414.009, V.T.C.A. The exception to the offense being classified as a misdemeanor is in Texas where the offense is a felony if the person divulged the information for the purposes of obtaining a monetary benefit.

The bill provides that a person who engages in privileged communication with a crime stoppers organization, a law enforcement crime stoppers coordinator or his or her staff, or a member of a crime stoppers organization's board of directors may not be required:

- To disclose, by testimony or other means, a privileged communication or protected information unless such failure to disclose would infringe on the accused person's constitutional rights;³²
- To produce, under subpoena, any records, documentary evidence, opinions, or decisions relating to such privileged communication or protected information:
 - In connection with a criminal case, criminal proceeding, or any administrative hearing; or
 - By way of any discovery procedure.

The bill permits a person charged with a criminal offense to petition the court for inspection in camera³³ of the protected information. The petition must allege that the protected information meets the following criteria:

- Provides evidence favorable to the defendant;
- Is specifically related to the determination of the innocence or guilt of the petitioner; and
- Will cause a deprivation of a constitutional right of the petitioner if it is not disclosed.

Upon a determination that the above criteria is met, the court may order the production and disclosure of all or any part of the protected information while, to the fullest extent possible, protecting the identity of the persons who engaged in privileged communication.

The bill provides that a person who discloses any information related to privileged communication or protected information commits a third degree felony,³⁴ unless the disclosure is made pursuant to a court order. However, the following people cannot face penalty for disclosure of such communication or information:

- The person who provides the privileged communication;
- A law enforcement officer acting within the scope of his or her official duties; or
- An employee of a law enforcement agency or the DLA when acting within the scope of his or her official duties.

³² In *Thomas v. State*, the issue before the court was whether a crime stopper statute that prohibited the disclosure of privileged communication in *all circumstances* was unconstitutional because the statute infringed on the appellant's fundamental right to a fair trial. The court found that while the state's interest in law enforcement is sufficient to justify crime stoppers programs and the confidentiality provisions of the statute, the fact that the statute operated to totally bar a defendant's access to information that may be material was problematic. The court concluded that the denial of access to information which would have a reasonable probability of affecting the outcome of a defendant's trial abridges a defendant's due process rights and undermines the court's duty to vindicate Sixth Amendment rights. *See* 837 S.W. 2d 106, 113. (Tex. Crim. App. 1992).

³³ "In camera" refers to a hearing or discussions with the judge in the privacy of his chambers or when spectators and jurors have been excluded from the courtroom. *See* US Legal, *In Camera Law and Legal Definition*, available at <https://definitions.uslegal.com/i/in-camera/> (last visited April 1, 2019).

³⁴ A third degree felony is punishable by a term of imprisonment not exceeding 5 years, a fine of \$5,000, or both. Sections 775.082 and 775.083, F.S.

Crime Stoppers Trust Fund

The bill also establishes additional authorized uses of a grant awarded to a county from the Fund. Specifically, a county may use such funds to pay rewards for tips that result in any of the following:

- An arrest;
- Recovery of stolen property;
- Recovery of illegal narcotics;
- Recovery of the body of a homicide victim;
- Recovery of a human trafficking victim or a missing person connected to criminal activity;
- Recovery of an illegal firearm or an illegal weapon on a K-12 school campus;
- Prevention of a terrorist act; or
- Solving and closing a homicide or other violent felony offense that remains unsolved for one year or more after being reported to a law enforcement agency and that has no viable and unexplored investigatory leads.

Current law permits a county to apply for a grant from the funds collected in the judicial circuit in which the county is located. The bill provides that the DLA and the Association may reallocate up to 50 percent of any unused funds that were returned to the Fund following the initial distribution to the judicial circuit in which they were collected. Such unused funds may be distributed to other judicial circuits for the subsequent grant year to fund Crime Stoppers initiatives or other Association programs.

The bill is effective July 1, 2019.

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:

The First Amendment of the United States Constitution prohibits the government from creating laws that restrict a citizen's ability to communicate nonprotected opinions or

information with other people.³⁵ The bill makes it a crime for a person to disclose any protected information made in connection to the privileged communication. To the extent that this prohibition restricts a person's right to communicate nonprotected speech, the bill may implicate the First Amendment.

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 pertaining to a tip provided to a crime stoppers organization. Although the Criminal Justice Estimating Conference has not forecasted the prison bed impact of this bill, to the extent that this provision 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 substantially amends section 16.555 of the Florida Statutes.

This bill creates section 90.595 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

³⁵ U.S. Const. amend. I.

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