

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 363 Privileged Communications Made to Crime Stoppers Organizations

**SPONSOR(S):** Criminal Justice & Public Safety Subcommittee, Chambliss and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1868

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N, As CS	Frost	Hall
2) Judiciary Committee	21 Y, 0 N	Frost	Hall

### SUMMARY ANALYSIS

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

The Florida Evidence Code (Code) specifies what types of evidence and testimony are admissible in court. Generally, unless the Code, Florida law, or the U.S. Constitution provides an exception, a person in a legal proceeding may not refuse to be a witness, to disclose any matter, or to produce any object or writing. The Code designates certain communications as privileged, meaning disclosure of such communications generally cannot be compelled, even in legal proceedings. Examples of generally privileged communications include communications between a lawyer and client, communications between a husband and wife, and communications between a psychotherapist and a patient.

In 2019, the Legislature created a more limited privilege for communication with and information provided to a crime stoppers organization. Unless the disclosure of such information is made pursuant to criminal discovery, a person who discloses a privileged communication or protected information originally provided to a crime stoppers organization, or any information relating to such privileged communication or protected information, commits a third degree felony.

CS/HB 363 creates the crime of obtaining or attempting to obtain protected information or a privileged communication provided to a crime stoppers organization. A person who obtains or attempts to obtain such information commits a third degree felony. Under the bill, a person who illegally discloses, obtains, or attempts to obtain protected information or a privileged communication provided to a crime stoppers organization must do so knowingly and willfully to be guilty of an offense. The bill extends criminal immunity from knowingly and willfully disclosing, obtaining, or attempting to obtain a privileged communication or protected information to include immunity for a crime stoppers employee, board member, or volunteer acting in the course and scope of his or her duties or functions.

The bill also protects a crime stoppers employee, board member, or volunteer from civil liability for damages caused by an act or omission when receiving, forwarding, or acting on protected information or privileged communication in the course of his or her duties, unless his or her act or omission is intentional or grossly negligent.

The bill may have an insignificant positive impact on the number of prison beds by creating the new felony offense of knowingly and willfully obtaining or attempting to obtain crime stoppers protected information or privileged communication.

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

# 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.<sup>1</sup> Crime Stoppers organizations receive anonymous information about alleged criminal activity through a designated hotline or through electronic means and then forward the information to appropriate law enforcement agencies.<sup>2</sup> Crime Stoppers organizations provide incentives by allowing a person reporting a crime to remain anonymous and providing monetary rewards.<sup>3</sup>

In Florida, Crime Stoppers refers to members of the Florida Association of Crime Stoppers, Inc.<sup>4</sup> In FY 2019-20, more than 55,700 tips were received by the 26 Crime Stoppers organizations which serve 60 of the state's 67 counties, resulting in 2,159 arrests, including the following:<sup>5</sup>

- An anonymous tip to First Coast Crime Stoppers allowed investigators with the Jacksonville Sheriff's Office to identify the suspect of a recent homicide. The anonymous tipster received a \$3,000 cash reward.
- In Central Florida an anonymous tip assisted the capture of a fugitive wanted for escaping a Georgia correctional facility. The tip provided the fugitive's exact location in Osceola County.
- An anonymous tip to Emerald Coast Crime Stoppers led to a narcotics investigation that resulted in eight arrests, three recovered stolen firearms, and the seizure of more than \$25,000 in narcotics including fentanyl, heroin and methamphetamine.<sup>6</sup>

##### Privileged Communications in the Florida Evidence Code

The Florida Evidence Code (Code) specifies what types of evidence and testimony are admissible in court.<sup>7</sup> Generally, unless the Code, Florida law, or the U.S. Constitution provides an exception, a person in a legal proceeding may not refuse to be a witness, to disclose any matter, or to produce any object or writing.<sup>8</sup> The Code designates certain communications as privileged, meaning disclosure of such communications generally cannot be compelled, even in legal proceedings. Examples of generally privileged communications include communications between a lawyer and client,<sup>9</sup> communications between a husband and wife,<sup>10</sup> and communications between a psychotherapist and a patient.<sup>11</sup>

Typically, a privileged 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.<sup>12</sup>

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<sup>1</sup> See Florida Association of Crime Stoppers, <https://www.facsflorida.org> (last visited Mar. 29, 2021).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*; Such rewards are paid through the Crime Stoppers Trust Fund which is funded in part by a surcharge of \$20 on fines for criminal offenses which must be collected by the clerks of the courts for all county and circuit courts. S. 938.06, F.S.

<sup>4</sup> S. 16.555(1)(c), F.S.

<sup>5</sup> Office of Attorney General/Department of Legal Affairs, *Division of Victim Services and Criminal Justice Programs Annual Report 2019-2020*, p. 10–11, [http://myfloridalegal.com/webfiles.nsf/WF/RMAS-BWSNYD/\\$file/FINAL+2019-20+Annual+Report.pdf](http://myfloridalegal.com/webfiles.nsf/WF/RMAS-BWSNYD/$file/FINAL+2019-20+Annual+Report.pdf) (last visited Mar. 29, 2021).

<sup>6</sup> *Id.* at p. 10.

<sup>7</sup> Ch. 90, F.S.

<sup>8</sup> S. 90.501, F.S.

<sup>9</sup> S. 90.502, F.S.

<sup>10</sup> S. 90.504, F.S.

<sup>11</sup> S. 90.503, F.S.

<sup>12</sup> S. 90.507, F.S.

## Privileged Communications or Protected Information

In 2019, the Legislature created a more limited privilege for communication with and information provided to a crime stoppers organization.<sup>13</sup> Unless the disclosure of such information is made pursuant to criminal discovery, a person who discloses a privileged communication or protected information originally provided to a crime stoppers organization, or any information relating to such privileged communication or protected information, commits a third degree felony.<sup>14</sup> Under s. 16.557, F.S., a “privileged communication”<sup>15</sup> is the act of providing information to a crime stoppers organization for the purpose of reporting alleged criminal activity and “protected information”<sup>16</sup> is the identity of a person who engages in privileged communication with a crime stoppers organization and any records, recordings, oral or written statements, papers, documents, or other tangible items provided to or collected by a:

- Crime stoppers organization;
- Law enforcement crime stoppers coordinator or his or her staff; or
- Law enforcement agency in connection with such privileged communication.

The criminal penalty for disclosing such communication or information does not apply to:

- The person who provides the privileged communication or protected information; or
- A law enforcement officer, law enforcement agency employee, or Department of Legal Affairs employee when he or she is acting within the scope of his or her official duties.<sup>17</sup>

## Anonymous Tips

In general, an anonymous tip, without more, cannot constitute probable cause. Both state and federal case law establishes that the reliability of a tip alleging illegal activity varies based upon whether the tip is truly anonymous, like an anonymous tip provided to a crime stoppers organization, or whether the tip is offered by a “citizen informant” who approaches a law enforcement officer in person to report suspected criminal activity.<sup>18</sup> A tip from a citizen informant is considered more reliable, based on the following:

- A citizen informant may be motivated by the desire to further justice, rather than pecuniary gain.<sup>19</sup>
- Unlike an anonymous tipster, a person who has an in-person interaction with a law enforcement officer may be held accountable for making a false statement or may subject himself or herself to potential retaliation from the alleged criminal.<sup>20</sup>
- When a tip is provided in-person, the law enforcement officer receiving the tip has the opportunity to observe the tipster’s demeanor and evaluate his or her credibility.<sup>21</sup>

As such, law enforcement must investigate further to confirm the information provided in an anonymous tip and find independent information establishing probable cause for an arrest or search warrant.<sup>22</sup>

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<sup>13</sup> Ch. 2019-167, Laws of Fla.

<sup>14</sup> A third degree felony is punishable by up to five years in state prison and a fine of \$5,000. Ss. 775.082 and 775.083, F.S.

<sup>15</sup> S. 16.557(1)(b), F.S.

<sup>16</sup> S. 16.557(1)(c), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983); *Sheppard v. State*, 521 So.2d 288 (Fla. 1st DCA 1988); *Baptiste v. State*, 995 So.2d 285, 290 (Fla. 2008).

<sup>19</sup> *State v. Maynard*, 783 So.2d 226, 228-230 (Fla. 2001).

<sup>20</sup> *See United States v. Christmas*, 222 F.3d 141, 144 (4th Cir. 2000).

<sup>21</sup> *See United States v. Heard*, 367 F.3d 1275, 1279 (11th Cir. 2004).

<sup>22</sup> *Simms v. State*, 51 So.3d, 1264 (Fla. 2d DCA 2011). *See also T.L.F. v. State*, 536 So.2d 371, 372 (Fla. 2d DCA 1988) (holding officers could not properly consider bystander’s identification of appellant as burglary suspect in determining whether probable cause existed to arrest him for loitering or prowling). In order for an anonymous tip to provide probable cause for an investigative stop, the tip must be corroborated by independent police investigation so as to create a reasonable suspicion that a suspect is engaged in criminal activity. However, in order for a subsequent arrest or search to be valid, there must be independent evidence of criminal activity apart from the otherwise verified anonymous tip. *Cunningham v. State*, 591 So.2d 1058, (Fla.2d DCA 1991).

## Effect of Proposed Changes

CS/HB 363 amends s. 16.557, F.S., to create the crime of obtaining or attempting to obtain a privileged communication or protected information provided to a crime stoppers organization. Under the bill, a person who illegally discloses, obtains, or attempts to obtain a crime stoppers tip must do so knowingly and willfully to be guilty of an offense. The bill also extends criminal immunity for such actions to include a crime stoppers employee, board member, or volunteer acting in the course and scope of his or her duties or functions.

The bill protects a crime stoppers employee, board member, or volunteer from civil liability for damages caused by an act or omission when receiving, forwarding, or acting on a crime stoppers tip in the course of his or her duties, unless his or her act or omission is intentional or grossly negligent.<sup>23</sup>

The bill may have an insignificant positive impact on the number of prison beds by creating the felony offense of obtaining or attempting to obtain protected information or a privileged communication provided to a crime stoppers organization.

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

### B. SECTION DIRECTORY:

**Section 1:** Amends s. 16.557, F.S., relating to crime stopper organizations; disclosure of privileged communications or protected information.

**Section 2:** Provides an effective date of October 1, 2021.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill may have an insignificant positive impact on the number of prison beds by creating the new felony offense of obtaining or attempting to obtain protected information or a privileged communication provided to a crime stoppers organization.

### 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 may protect an employee, a board member, or a volunteer of a crime stoppers organization from civil liability for damages resulting from an act or omission during the performance of his or her duties or functions, unless such act or omission was intentional or grossly negligent.

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<sup>23</sup> "Gross negligence" means that a person's conduct was so reckless or wanting in care that the conduct constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct. S. 400.0237, F.S.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to impact county or municipal governments.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

Not applicable.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2021, the Criminal Justice and Public Safety Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that a person who illegally discloses, obtains, or attempts to obtain a crime stoppers tip must do so knowingly and willfully to be guilty of an offense.
- Removed the portion of the bill:
  - Prohibiting a crime stoppers tip from being used to determine probable cause.
  - Prohibiting a crime stoppers tip from being admissible or subject to discovery in any court proceeding.
  - Indicating that an anonymous tip may only be used to assist with a law enforcement agency's investigation of a crime.
- Required a person's act or omission to be intentional or grossly negligent for him or her to be liable for civil damages.
- Made other technical changes to clarify the language of current law.

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