

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 Criminal Justice

BILL: CS/SB 706

INTRODUCER: Criminal Justice Committee and Senator Steube

SUBJECT: Crime Stoppers Organizations

DATE: February 6, 2018 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 706 amends s. 90.595, F.S., creating a new category of privileged communication to the Florida Evidence Code.

The bill provides the communication that relays a tip of alleged criminal activity to a crime stoppers organization is considered privileged communication under the Code. The bill also provides that specified entities involved in the communication of a tip of alleged criminal activity may not be required to:

- Disclose a privileged communication or protected information unless such failure to disclose would infringe on the constitutional rights of an accused person.
- Produce, under subpoena, any records or other evidence 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 authorizes a person charged with a criminal offense as a result of a tip being provided to a crime stoppers organization to petition the court for an in camera inspection of the protected information and authorizes the court to, in the event it determines that all of the specified criteria are satisfied, order the production and disclosure of all or any part of the protected information.

The bill makes it a third-degree felony offense for a person, other than the person who provides the privileged communication, to disclose any information related to privileged communication or protected information.

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

The bill is effective October 1, 2018.

II. Present Situation:

Crime Stoppers – Overview

Local crime stoppers programs authenticate tips about criminal activity and act as liaisons between citizens and law enforcement agencies.¹ Such organizations allow citizens to anonymously report individuals who are known or suspected of committing criminal acts within the community and offer cash rewards for any tips that lead to an arrest.²

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 over 1,200 crime stoppers programs worldwide.³

Today there are 27 programs in Florida operating under the name Florida Association of Crime Stoppers, Inc.⁴

A crime stoppers organization may receive tips through a variety of mediums, including phone calls, online submissions, text message submissions, and tips through the mobile application.⁵ 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.⁶

¹ Crime Stoppers of Broward County website, “What is Crime Stoppers?,” available at <http://www.browardcrimestoppers.org/about-us/> (last visited January 31, 2018).

² Florida Association of Crime Stoppers, *Home page*, available at <http://www.facsflorida.org/> (last visited January 31, 2018).

³ Florida Association of Crime Stoppers, *Where It All Started*, available at <http://www.facsflorida.org/where-it-all-started/> (last visited January 31, 2018).

⁴ Florida Association of Crime Stoppers, *Who We Are*, available at <http://www.facsflorida.org/who-we-are/> (last visited January 31, 2018).

⁵ Florida Association of Crime Stoppers, *How’s It Done*, available at <http://www.facsflorida.org/what-we-do/how-they-do-it/> (last visited January 31, 2018).

⁶ *See Id.*

Privileged Communications Provided for in the Evidence Code

The Florida Evidence Code (Code) specifies what types of evidence and testimony are admissible in court.⁷ 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,⁸ communications between a husband and wife,⁹ and communications between a psychotherapist and a patient.¹⁰

Crime Stoppers Privileged Communication in Other States

There are a number of other states that protect the identity of a person who provides a crime tip to a crime stoppers organization and provide that the communication of the tip and any documents created as a result of a tip received by a crime stoppers organization are privileged. Examples of these states include:

- Arkansas;¹¹
- Colorado;¹²
- Kentucky;¹³
- Louisiana;¹⁴
- New Mexico;¹⁵
- Oklahoma;¹⁶ and
- Texas.¹⁷

Further, five states have created criminal penalties for the prohibited disclosure of such protected information. However, the criminal penalty is generally classified as a misdemeanor, rather than a felony.¹⁸

III. Effect of Proposed Changes:

The bill amends s. 90.595, F.S., creating a new category of privileged communication to the Code. The bill provides the following definitions:

- “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

⁷ Chapter 90, F.S.

⁸ Section 90.502, F.S.

⁹ Section 90.504, F.S.

¹⁰ Section 90.503, F.S.

¹¹ Section 16-90-1005, AR.ST.

¹² Section 16-15.7-104, C.R.S.A.

¹³ Section 431.580, K.R.S.

¹⁴ Section 15:477.1, LA.R.S.

¹⁵ Section 29-12A-4, N.M.S.A.

¹⁶ Section 414.008, V.T.C.A.

¹⁷ Section 414.009, T.G.C.

¹⁸ The five states Senate staff found that assign criminal penalties include Arkansas, Colorado, Kentucky, New Mexico, and Texas. *See* s. 16-90-1006, AR.ST.; s. 16-15.7-104, C.R.S.A.; s. 431.585, K.R.S.; 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 misdemeanor unless the person divulged the information to obtain a monetary benefit.

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.

The bill provides the communication that relays a report or tip of alleged criminal activity to a crime stoppers organization is considered privileged communication under the Code.

Additionally, the bill provides that a person reporting the alleged criminal activity, a law enforcement crime stoppers coordinator or his or her staff, or a member of a crime stopper’s organization board of directors, may not be required to:

- Disclose, by way of testimony or any other means, a privileged communication or protected information unless such failure to disclose would infringe on the constitutional rights of an accused person.
- 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 authorizes a person charged with a criminal offense as a result of a tip being provided to a crime stoppers organization to petition the court for an in camera inspection of the protected information. A petition filed in accordance with this provision must allege that the protected information:

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

If the court determines that all of the criteria described above are satisfied, the court may order the production and disclosure of all or any part of the protected information. However, even in the disclosure, the court must, to the fullest extent possible, protect the identity of the persons who engaged in privileged communication.

The bill makes it a third-degree felony offense¹⁹ for a person, other than the person who provides the privileged communication, to disclose any information related to privileged communication or protected information.

The bill is effective on October 1, 2018.

¹⁹ 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.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

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.²⁰ The bill makes it a crime for a person to disclose any information made in 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. 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.

²⁰ U.S. Const. amend. I.

VIII. Statutes Affected:

This bill substantially amends 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 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.
