

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 Rules

BILL: CS/CS/SB 1868

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

SUBJECT: Privileged Communications Made to Crime Stoppers Organizations

DATE: April 2, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
2.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u>Stokes</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1868 strengthens criminal prohibitions against the misuse or misappropriation of information reported to a crime stoppers organization. Additionally, the bill extends civil and criminal liability protections to persons, including employees, board members, and volunteers of a crime stoppers organization, who use information reported to a crime stoppers organization in the performance of their duties and functions.

Specifically, the bill amends the current third degree felony related to disclosure of privileged communications or protected information of a crime stoppers organization. The offense is expanded to add that a person who attempts to obtain or who obtains privileged communications or protected information commits the offense. The offense is limited by adding that the commission of the offense must be “knowingly and willfully” done. The bill adds that the offense does not apply to a crime stoppers employee, board member, or volunteer acting in the course and scope of the person’s duties or functions. The bill provides that privileged information or communication may only be used to direct a law enforcement investigation.

The bill also provides immunity from civil liability for a person who in the course and scope of his or her duties or functions, receives, forwards, or acts on a privileged communication, unless the act or omission was intentional or grossly negligent.

This bill is effective October 1, 2021.

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 having 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

Crime Stoppers in Florida

There are 27 crime stopper programs in Florida that operate collectively under the name Florida Association of Crime Stoppers, Inc. (FACS).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

In 2019, the Legislature created s. 16.557, F.S., to protect the identity of a person who engages in a privileged communication with a crime stoppers organization.⁶ Section 16.557, F.S., provides that a person who discloses a privileged communication or protected information or any information concerning a privileged communication or protected information commits a third degree felony.⁷ The offense is unranked on the Offense Severity Ranking Chart.⁸ The offense does not apply to:

- The person who provides the privileged communication or protected information;
- A law enforcement officer or an employee of a law enforcement agency or the DLA when he or she is acting within the scope of his or her employment; or
- Criminal discovery.⁹

¹ Crime Stoppers USA, *Profile*, available at <https://www.crimestoppersusa.org/profile/> (last visited March 15, 2021).

² Florida Association of Crime Stoppers, *Where it all started*, available at <https://dev.facsflorida.org/where-it-all-started/> (last visited March 15, 2021).

³ Florida Association of Crime Stoppers, *Our History*, available at <https://dev.facsflorida.org/who-we-are/our-history/> (last visited March 15, 2021).

⁴ Chapter 1991-205, s. 13, Laws of Fla.

⁵ Section 16.555, F.S.

⁶ Chapter 2019-167, s. 2, Laws of Fla.

⁷ A third degree felony is punishable by up to five years imprisonment, a \$5,000 fine, or enhanced penalties as a habitual felony offender. Sections 775.082, 775.083, and 775.084, F.S.

⁸ Section 921.0022, F.S. An unranked third degree felony defaults to be a Level 1 offense. Section 921.0023(1), F.S.

⁹ Section 16.557(2), F.S.

Section 16.557, F.S., 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 concerning criminal activity, and forwards that information to appropriate law enforcement agencies.¹⁰
- “Privileged communication,” means the act of providing information to a crime stoppers organization for the purpose of reporting alleged criminal activity.¹¹
- “Protected information,” includes 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, a law enforcement crime stoppers coordinator or his or her staff, or a law enforcement agency in connection with such privileged communication.¹²

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, the DLA’s spending authority, and money collected pursuant to financial consequences.¹³

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, less \$3 per assessment, must be deposited into the Fund.¹⁴ Such proceeds are placed in a separate account in the Fund and are designated according to the judicial circuit in which they were collected.¹⁵ A county may 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 FACS and in good standing.¹⁶

Money awarded from a grant to a county may only be used to support the FACS and its crime fighting programs.¹⁷ Only one crime stoppers program per county is eligible to receive funding. To be eligible to receive funds, a program must:

- Be a 501(c)(3) non-profit organization.
- Have endorsement from the county commission in the county they serve.
- Be a member in good standing of the FACS.¹⁸

Eligible programs must complete and submit a performance-based grant proposal outlining its annual operational plan, along with a budget based upon the certified funds previously authorized by the Florida Office of the Attorney General.¹⁹ A county that is awarded a grant may

¹⁰ Section 16.557(1)(a), F.S.

¹¹ Section 16.557(1)(b), F.S.

¹² Section 16.557(1)(c), F.S.

¹³ Fla. Admin. Code. R. 2A-9.003(2).

¹⁴ Section 938.06(1) and (2), F.S.

¹⁵ Section 16.555(4)(b), F.S.

¹⁶ Section 15.555(5)(b), F.S.

¹⁷ *Id.*

¹⁸ Florida Association of Crime Stoppers, *Funding*, available at <https://dev.facsflorida.org/who-we-are/62-2/> (last visited March 15, 2021).

¹⁹ *Id.*

use such funds to purchase items to assist in educating the public and increasing public awareness of FACS,²⁰ fund student crime watch programs,²¹ or used to reimburse programs for the payment of rewards.²² In order to obtain reimbursement from the Fund, the reward paid must have been for:

- An arrest.
- The recovery of stolen property.
- The recovery of illegal narcotics.
- The recovery of the body of a homicide victim.
- The recovery of a human trafficking victim or missing person connected to criminal activity.
- The recovery of an illegal firearm or an illegal weapon on a K-12 school campus.
- The prevention of a terrorist act.
- The solving and closing of a criminal case involving a homicide or other violent felony offense that remains unsolved for 1 year or more after being reported to a law enforcement agency and that has no viable and unexplored investigatory leads.²³

Crime Stoppers Privileged Communication in Other States

Other states have 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. Some of those states include: Arkansas,²⁴ Colorado,²⁵ Connecticut,²⁶ Kentucky,²⁷ Louisiana,²⁸ Michigan,²⁹ Mississippi,³⁰ New Mexico,³¹ Oklahoma,³² and Texas.³³

Additionally, some states have created criminal penalties for the prohibited disclosure of such protected information. These states include: Arkansas,³⁴ Colorado,³⁵ Kentucky,³⁶ Mississippi,³⁷

²⁰ Section 16.555(5)(c), F.S.

²¹ Section 16.555(5)(d), F.S.

²² Section 16.555(5)(e), F.S.

²³ Section 16.555(5)(e)1.-8., F.S.

²⁴ Section 16-90-1005, A.C.A.

²⁵ Section 16-15.7-104, C.R.S.A.

²⁶ Section 29-1d., C.G.S.A.

²⁷ Section 431.580, K.R.S.

²⁸ Section 15:477.1, L.A.R.S.

²⁹ Section 600.2157b, M.C.L.A.

³⁰ Section 45-39-7, M.C.A.

³¹ Section 29-12A-4, N.M.S.A.

³² Section 2510.1, O.S.A.

³³ Sections 414.008 and 414.009, V.T.C.A.

³⁴ Section 16-90-1006, A.C.A.

³⁵ Section 16-15.7-104, C.R.S.A.

³⁶ Section 431.585, K.R.S.

³⁷ Section 45-39-9, M.C.A.

New Mexico,³⁸ and Texas.³⁹ The criminal penalty is generally a misdemeanor,⁴⁰ rather than a felony.⁴¹

Privileged Communications in the Evidence Code

The Florida Evidence Code (Code) specifies what types of evidence and testimony are admissible in court.⁴² The Code makes certain communications privileged, meaning their disclosure generally cannot be compelled, even in legal proceedings.⁴³ Privileged communication is used to describe an interaction between two parties in which the law recognizes a private, protected relationship.⁴⁴ Some examples of generally privileged communications include communications between a lawyer and client,⁴⁵ a husband and wife,⁴⁶ and a psychotherapist and a patient.⁴⁷

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.⁴⁸

Tort Law - In General

A tort is a civil legal action to recover damages for a loss, injury, or death due to the conduct of another. Some have characterized a tort as a civil wrong, other than a claim for breach of contract, in which a remedy is provided through damages.⁴⁹ When a plaintiff files a tort claim, he or she alleges that the defendant's "negligence" caused the injury. According to the Florida Standard Jury Instructions, negligence means "doing something that a reasonably careful person would not do" in a similar situation or "failing to do something that a reasonably careful person would do" in a similar situation.⁵⁰

³⁸ Section 29-12A-5, N.M.S.A.

³⁹ Section 414.009, V.T.C.A.

⁴⁰ A misdemeanor is punishable by one year or less in jail, while a felony is punishable by more than a year in state prison. Section 775.082, F.S.

⁴¹ Of the states listed, 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. *See* s. 414.009, V.T.C.A.

⁴² Chapter 90, F.S.

⁴³ US Legal, *Privileged Communications Law and Legal Definition*, available at <https://definitions.uslegal.com/p/privileged-communications/> (last visited March 15, 2021).

⁴⁴ Will Kenton, Investopedia, *Privileged Communication*, (December 1, 2020), available at <https://www.investopedia.com/terms/p/privileged-communication.asp> (last visited March 15, 2021).

⁴⁵ Section 90.502, F.S.

⁴⁶ Section 90.504, F.S.

⁴⁷ Section 90.503, F.S.

⁴⁸ Section 90.507, F.S.

⁴⁹ BLACK'S LAW DICTIONARY (11th ed. 2019).

⁵⁰ Fla. Std. Jury Instr. Civil 401.3, *Negligence*.

When a plaintiff seeks to recover damages for a personal injury and alleges that the injury was caused by the defendant's negligence, the plaintiff bears the legal burden of proving that the defendant's alleged action was a breach of the duty that the defendant owed to the plaintiff.⁵¹

Four Elements of a Negligence Claim

To establish liability, the plaintiff must prove four elements:

- Duty – That the defendant owed a duty, or obligation, of care to the plaintiff;
- Breach – That the defendant breached that duty by not conforming to the standard required;
- Causation – That the breach of the duty was the legal cause of the plaintiff's injury; and
- Damages – That the plaintiff suffered actual harm or loss.

Standards of Care and Degrees of Negligence

Courts have developed general definitions for the degrees of negligence:

Slight Negligence

Slight negligence is generally defined to mean the failure to exercise a great amount of care.⁵²

Ordinary Negligence

Ordinary negligence, which is also referred to as simple negligence, is the standard of care applied to the vast majority of negligence cases. It is characterized as the conduct that a reasonable and prudent person would know could possibly cause injury to a person or property.⁵³

Gross Negligence and Intentional Misconduct

Gross negligence means the failure of a person to exercise slight care. Florida courts have defined gross negligence as the type of conduct that a "reasonably prudent person knows will probably and most likely result in injury to another" person.⁵⁴ In order for a plaintiff to succeed on a claim involving gross negligence, he or she must prove:

- Circumstances, which, when taken together, create a clear and present danger;
- Awareness that the danger exists; and
- A conscious, voluntary act or omission to act, that will likely result in an injury.⁵⁵

Intentional misconduct means that the defendant had actual knowledge of the wrongfulness of the conduct, that there was a high probability of injury or damage to the claimant and, despite that knowledge, the defendant intentionally pursued that course of conduct, resulting in injury or damage.⁵⁶

⁵¹ Florida is a comparative negligence jurisdiction as provided in s. 768.81(2), F.S. In lay terms, if a plaintiff and defendant are both at fault, a plaintiff may still recover damages, but those damages are reduced proportionately by the degree that the plaintiff's negligence caused the injury.

⁵² Sawaya, Thomas, 6 Fla. Prac., *Personal Injury & Practice With Wrongful Death Actions* § 1:2 – *Degrees of Negligence* (2020-2021 ed.).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* Culpable negligence is a fourth degree of negligence but is not discussed in this analysis.

⁵⁶ Fla. Std. Jury Instr. 503.1, *Punitive Damages - Bifurcated Procedure*.

III. Effect of Proposed Changes:

The bill amends s. 16.557, F.S., to provide that a person who knowingly and willfully attempts to obtain, obtains, or discloses privileged communications or protected information of a crime stoppers organization commits a third degree felony. Section 16.557, F.S., currently provides that only the person who discloses such information commits a third degree felony.

Currently, the offense of disclosure of such information does not apply to certain people. This bill adds that the offense does not apply to an employee, board member, or volunteer of a crime stoppers organization while acting in the course and scope of the person's duties or functions.

The bill provides that information obtained from an anonymous source contained in a crime stoppers organization records:

- May not be considered for probable cause to issue an arrest warrant or search warrant.
- Is not admissible or subject to discovery in civil or criminal court.
- May only be used to direct a law enforcement investigation.

The bill also provides that a person who, in the course and scope of his or her duties or functions, receives, forwards, or acts on a privileged communication, is immune from civil liability damages resulting from an act or omission in the performance of such duties or functions unless the act or omission was intentional or grossly negligent.

The bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 1 of the bill, in part, amends an existing felony offense. Those changes may result in indeterminate local fund expenditures for costs relating to criminal prosecution and confinement if a jail sentence is imposed. However, these provisions relate to the defense, prosecution, or punishment of criminal offenses, and criminal law and are thus exempt from the requirements of article VII, section 18(d) of the Florida Constitution, relating to unfunded mandates.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed CS/CS/SB 1868. The bill changes a felony offense related to privileged communications or protected information of a crime stoppers organization. To the extent that this provision may result in additional 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 16.557 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/CS by Judiciary on March 29, 2021:

The committee substitute removes requirements that a crime stoppers organization respond to criminal discovery, and adds that confidential information held by a crime stoppers organization is not admissible in court and may only be used to steer a law enforcement investigation.

CS by Criminal Justice on March 23, 2021:

The committee substitute:

- Provides that a person who knowingly and willfully attempts to obtain, obtains, or discloses a privileged communication, or protected information, or any information concerning a privileged communication or protected information commits a third degree felony.
- Provides that a person who is acting in the course and scope of his or her employment and receives, forwards, or acts on such communication is immune from civil liability unless the act or omission was intentional or grossly negligent.
- Removes language that provided that evidence of such communication may not be relied upon, or considered in determining whether probable cause exists to issue a warrant, or that evidence of such communication is admissible or subject to discovery in any court.

B. Amendments:

None.