

Legislative Analysis



CRIME STOPPERS ORGS: CONFIDENTIALITY & DRUG FORFEITURE CONTRIBUTIONS

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House Bill 6348 as enrolled
Public Act 557 of 2006
Sponsor: Rep. William Van Regenmorter

House Bill 6416 as enrolled
Public Act 558 of 2006
Sponsor: Rep. Dave Hildenbrand
House Committee: Judiciary
Senate Committee: Judiciary (HB 6348)
Referred directly to floor (HB 6416)

Second Analysis (2-21-07)

BRIEF SUMMARY: House Bill 6348 would provide confidentiality for communications to crime stoppers organizations and establish procedures for exceptions. House Bill 6416 would allow law enforcement entities to donate money received from the sale of property forfeited in drug raids to crime stoppers organizations.

FISCAL IMPACT: Neither bill would have a fiscal impact on state or local governments.

THE APPARENT PROBLEM:

Two issues concerning crime stopper organizations have surfaced recently. One concerns the confidentiality of tipsters. Organizations like Crime Stoppers and Silent Observer rely on members of the public to phone in anonymous information about crimes. If the information leads to an arrest and conviction, the caller may receive a reward of up to \$1,000. Callers are told that their identity will be kept confidential (i.e., the phone lines do not have caller ID), and instead of leaving their name, callers are given an ID number to use when collecting a reward.

In June of 2005, a Grosse Pointe bookkeeper was murdered. A subsequent anonymous call to Crime Stoppers of Michigan resulted in the arrests and convictions of the perpetrators. During the discovery phase of the trial, a defense attorney tried to subpoena records from the tip line, a disclosure which could have inadvertently revealed the tipster's identity. In addition, police have at times turned the tip sheets over to prosecutors, who then have passed the records on to defense attorneys. Even though the tipster's name is not on the tip sheet, information provided by the person may be sufficient to reveal his or her identity to the suspect. Therefore, without the guarantee of anonymity, some fear the public will stop providing information on crimes via the tip lines. Reportedly, 22 states have laws that protect the information from and identity of tipsters. Some feel that Michigan would do well to adopt similar statutory protections.

Another area of concern is the issue of funding crime stopper organizations. Like many nonprofit organizations that rely on charitable donations, these organizations often struggle to find the revenue needed to fund their programs. Some law enforcement agencies have expressed a desire to donate money seized and later forfeited in drug cases to their local crime stopper organizations. Currently, the statute regulating the use of such money allows it to be used to enhance law enforcement efforts pertaining to violations involving controlled substances; however, the statute does not specifically allow any of this revenue to be given to crime stoppers organizations. Since a significant number of the tips each year pertain to drug crimes, supporters of the proposal believe that such use would be consistent with the intent of the law.

Legislation has been introduced to address these concerns.

THE CONTENT OF THE BILLS:

House Bill 6348 would amend the Revised Judicature Act (MCL 600.2157b) to provide confidentiality for disclosures to "crime stoppers" organizations and establish procedures for exceptions. Under the bill, "confidential communication to a crime stoppers organization" means a statement by any person, in any manner whatsoever, to a crime stoppers organization for the purpose of reporting alleged criminal activity. "Crime stoppers organization" means a private, nonprofit organization that distributes rewards to persons who report to the organization information concerning criminal activity and that forwards the information to the appropriate law enforcement agency.

More specifically, a person would not be required to do either of the following in a civil or criminal proceeding:

- Disclose, by way of testimony or otherwise, a confidential communication to a crime stoppers organization.
- Produce under subpoena, any records, documentary evidence, opinions, or decisions relating to a confidential communication to a crime stopper organization, by way of any discovery procedure.

However, under the bill, an individual arrested and charged with a criminal offense, or an individual who was a party in a civil proceeding, could petition the court for an inspection conducted *in camera* (in the judge's chambers, in private rather than in open court) of the records of a confidential communication to a crime stoppers organization. The petition would have to allege facts showing that the records would provide evidence favorable to the defendant or the party in a civil proceeding, and relevant to the issue of guilt or punishment, or liability. If the court determined that the person was entitled to all or any part of those records, the court could order production and disclosure, as it deemed appropriate.

Further, the prosecution could petition the court for an inspection conducted *in camera*, of the records of a confidential communication to a crime stoppers organization that the

prosecution contended was made by the defendant, or by another individual acting on behalf of the defendant, for the purpose of providing false or misleading information to the crime stoppers organization. The petition would have to allege facts showing that the records would provide evidence supporting the prosecution's contention and would be relevant to the issue of guilt or punishment. If the court determined that the prosecution was entitled to all or any part of those records, the court could order production and disclosure as it deemed appropriate.

House Bill 6416. Article 7 of the Public Health Code regulates the use of controlled substances and establishes penalties for violations. In addition to penalties, property seized in drug raids and criminal investigations may be subject to forfeiture—meaning that the local government that seized the property may retain it for official use, sell that which is not required to be destroyed by law and is not harmful to the public, and require the Michigan Board of Pharmacy to take custody of the seized property and remove it for lawful disposition, or forward it to the federal Drug Enforcement Administration. When a local government sells seized property, the money must be used to pay the expenses incurred by the sale (i.e., advertising costs), with the balance going to the entities involved in the seizure. Currently, a seizing agency is required to use this money to enhance law enforcement efforts pertaining to violations involving controlled substances.

The bill would amend Part 75 of Article 7 of the Public Health Code (MCL 333.7524), entitled "Enforcement and Administration," to allow a seizing agency to give all or part of the funds received from the sale of forfeited property to nonprofit organizations whose primary activity is to assist law enforcement agencies with drug-related criminal investigations and obtaining information for solving crimes. (Property subject to seizure and forfeiture sales may include money, negotiable instruments, cars, planes, boats, houses, and land.)

The bill would also delete a reference to Section 17766a, which was repealed by Public Act 236 of 2001.

BACKGROUND INFORMATION:

According to information supplied by Crime Stoppers International on its website (www.c-s-i.org), the organization is a "partnership of the community, the media and law enforcement designed to combat crime and keep our streets safe." By providing a place whereby a person can provide information anonymously, crime stopper organizations break through the barriers of fear of reprisals, apathy, and reluctance to get involved. Information can be provided without directly speaking to police or having to testify in court.

First started in Albuquerque, New Mexico, in 1976, there are now approximately 1,200 Crime Stoppers programs worldwide taking tips to solve crimes that include homicides, sexual assaults, drug trafficking operations, and robberies. Reportedly, programs have also received information that has prevented school shootings and criminal acts by terrorist organizations.

Rewards are paid for tips that lead to the arrest and indictment of people charged with felony offenses. The organization reports that its statistics show a conviction rate of some 95 percent, with tips since 1976 being responsible for the arrests of about 600,000 individuals and the seizure of close to \$7 billion in stolen property and illicit drugs.

Closer to home, Crime Stoppers of Mid-Michigan, Inc. reports that since its inception in 1989, over 2,100 tips have been received leading to more than 357 arrests, the recovery of more than \$317,385 in property and narcotics, and as much as \$15,000 per year in rewards. Arrests include a subject from the U.S. Marshall's "top 15" wanted for the shooting of a police officer, and several murderers, grave robbers, and a rapist/murderer.

ARGUMENTS:

For:

The police need the help and support of community members to solve crimes, and Crime Stoppers, Silent Observer, and similar organizations play a crucial role in generating tips that lead to a significant number of arrests and convictions. A key element in the success of these organizations is that the promise of anonymity, as well as a possible reward, enables people with information to overcome their fears of reprisal, feelings of apathy, or reluctance to get involved. Without remaining anonymous, tipsters could be subjected to intimidation or retaliation by a suspect—some of the same reasons why witnesses are often reluctant to testify in open court. Recently, a defense attorney tried to obtain tip sheets that implicated his client, but that may have inadvertently exposed the identity of the tipster. The state must, therefore, adopt a law to protect the identities of those who phone in crime information by limiting access to the tip sheets.

House Bill 6348 would address this concern by protecting anyone from being compelled to disclose information contained in a communication made to a crime stoppers organization. Similarly, a subpoena could not be used in the discovery phase of a trial to obtain any information related to the communication. The provision should clarify to police and prosecutors that the tip sheets are not to be shared with others absent a judge's examination and ruling on whether information contained in it should be disclosed.

Additionally, there was some concern that a person may phone in false information to a tip line that would implicate an innocent person in order to throw the police off the trail of the guilty party. It was acknowledged that in such instances, a defense attorney, or prosecutor in a criminal case, may need to know the information contained in a tip sheet either to exculpate the defendant (clear of guilt or blame) or to support a prosecutor's contention that false information had deliberately been phoned in. The bill, therefore, includes a procedure for exceptions by which a judge can examine the information provided on the tip sheet, and, depending on how the information contained in the communication affected issues of innocence or guilt, allow all or a part of the communication to be disclosed to the defense attorney or prosecutor.

For:

House Bill 6416 would provide an important new revenue stream for crime stoppers organizations that is not available now. These organizations rely on charitable donations,

and like other non-profit organizations, often struggle to obtain the funds necessary to run their programs. In addition to offering a \$1,000 reward for information leading to an arrest and conviction in a crime, these organizations support additional programs that may target school violence or suicide prevention. For example, the Silent Observer program in Kent County sponsors a "Fast \$50 Program" whereby students can call in information about drugs, weapons, etc. and receive \$50 if the tip leads to an arrest and conviction. So far, tips made to the tip line have stopped at least two crimes and prevented several suicides. However, it does take money to run such programs and to provide the promised monetary rewards.

Many of the tips made to the hotlines pertain to drug crimes. In fact, 1,100 of the 1,800 tips received in 2005 by the Silent Observer program related to criminal activity involving drugs. These tips actually save law enforcement agencies investigation dollars. Many feel, therefore, that it would be appropriate, and within the intent of the law, to allow law enforcement agencies to donate to crime stopper organizations some of the revenue received from money and property seized and later forfeited in drug-related prosecutions. Reportedly, several other states, including Louisiana, South Carolina, and Ohio, allow, by statute, the use of forfeitures to benefit crime stopper organizations.

Response:

Some are concerned that the current wording of the bill would lock in Crime Stoppers and Silent Observer as being the only crime stopper organizations that could benefit under the bill and suggest that the bill be amended so that any successor organizations could also be included.

Rebuttal:

The bill was amended on the floor of the Senate to broaden the types of organizations that could receive donated funds from forfeited property obtained in drug raids to include any nonprofit organization whose primary activity was to assist law enforcement agencies with drug-related criminal investigations and obtaining information for solving crimes.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.