

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 234 (Senators Middleton and Raskin)
Judicial Proceedings

**Criminal Procedure - Reports to Crimesolvers/Crimestoppers Organization -
Inadmissibility and Confidentiality**

This bill renders inadmissible in a court proceeding evidence of a communication or information contained in a communication between an individual reporting alleged criminal activity to a “Crimesolvers/Crimestoppers” organization and the individual who accepts the report on behalf of the organization. The bill also prohibits a person who receives a report concerning alleged criminal activity from a Crimesolvers/Crimestoppers organization from intentionally, knowingly, and without the consent of the reporter, disclosing the contents of a report or the identity of the individual who made the report under a promise of anonymity to a person not employed by a law enforcement agency. Violators are guilty of a misdemeanor, punishable by imprisonment for up to six months and/or a fine of up to \$1,000.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances.

Local Effect: The bill is not expected to materially affect local finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill defines “Crimesolvers/Crimestoppers” organization as a private nonprofit Maryland corporation governed by a civilian volunteer board of directors operated on a local or statewide level that (1) offers anonymity to an individual who provides information to the corporation; (2) accepts and expends donations for cash

rewards to individuals who report information to the corporation concerning alleged criminal activity that the corporation forwards to appropriate law enforcement agencies; and (3) is established as part of a cooperative alliance between the news media, the community, and law enforcement officials.

Prohibition on Compelling Production of Report: The bill prohibits a record of a report to a “Crimesolvers/Crimestoppers” organization from being compelled to be produced before a court or other tribunal except on a motion meeting specified criteria.

Individuals Eligible to Make a Motion to Compel the Record of a Report: A motion to compel production of a record of a report to a “Crimesolvers/Crimestoppers” organization may be filed by the following individuals (“eligible movants”):

- a defendant in a criminal trial court who alleges that the record or report contains evidence that is exculpatory to the defendant in the trial of that offense; or
- a plaintiff in a civil case who alleges that denial of access to the record abrogates any part of a cognizable common law cause of action, if the plaintiff alleging abrogation (1) was charged with or convicted of a criminal offense based at least partially on the report and the charges were dismissed, the plaintiff was acquitted, or the conviction was overturned and (2) establishes in the motion a *prima facie* case that the plaintiff’s abrogated claim is based on injuries from the criminal charge or conviction caused by the wrongful acts of another performed in connection with the report.

Court’s Response to Motion: The court may subpoena the records or report on the motion of an eligible movant. The court must conduct an *in camera* inspection of the materials produced under subpoena to determine whether the materials contain (1) evidence that is exculpatory to the defendant or (2) information necessary to an eligible movant-plaintiff meeting the criteria mentioned above.

If the court determines that the materials produced contain evidence that is exculpatory to the eligible movant-defendant or information necessary to an eligible movant-plaintiff, the court must present the evidence to the movant in a form that does not disclose the identity of the person who was the source of the evidence, unless the U.S. or State constitutions require disclosure of that person’s identity.

The court must execute an affidavit accompanying the disclosed materials swearing that, in the opinion of the court, the materials disclosed represent the evidence the movant is entitled to receive.

The court must return the materials that are produced but not disclosed to the Crimesolvers/Crimestoppers organization, and the organization must store the materials at least until the first anniversary of (1) the date of the expiration of the time for all direct appeals in a criminal case or (2) the date a plaintiff's right to appeal in a civil case is exhausted.

Current Law: There are no provisions in State law that specifically exclude from evidence reports made to organizations that help law enforcement agencies solve crimes or the identities of individuals who provide tips to these organizations under a promise of anonymity.

Under the Public Information Act, a custodian may deny inspection of investigatory records if the inspection would disclose the identity of a confidential source, would endanger the life or physical safety of an individual, or would constitute an unwarranted invasion of personal privacy. (*See* State Government Article, § 10-618.)

In a criminal case, the prosecution has a duty to disclose material, exculpatory evidence to the defense. However, information pertaining to confidential informants not intending to testify is not discoverable.

The State may withhold the identity of an informant "to further and protect the public's interest in effective law enforcement." *Faulkner v. State*, 73 Md. App. 511, 519, 534 A.2d 1380, 1384 (1988) quoting *Howard v. Smith*, 66 Md. App. 273, 285-86, 503 A.2d 739 (1986). However, this privilege may be rebutted by a preponderance of the evidence showing that information concerning the informant is necessary and relevant to a fair defense. The court does not have to exercise this discretion unless the defense properly demands the disclosure of an informant's identity. Courts have also distinguished informants who actively participated in the crime or activities associated with the crime from tipsters who were removed from the crime and merely provided pertinent information to law enforcement or affiliated organizations.

Background: Several organizations exist in Maryland that fit the bill's definition of a "Crimesolvers/Crimestoppers" organization. These organizations solicit tips from the public on alleged crimes to assist law enforcement agencies. The organizations offer cash rewards if the information provided leads to a particular outcome, usually an arrest or indictment for the crime in question. One of the inducements for individuals to provide claims to these organizations is the promise of anonymity. Tipsters are not required to provide their names, and some organizations offer identification numbers to individuals who contact them. Typically, tips can be made by telephone, text messaging, or the Internet.

Additional Information

Prior Introductions: SB 169 of 2013 received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Baltimore, Carroll, Harford, Queen Anne's, and St. Mary's counties; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; Department of Legislative Services

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