HOUSE
RESEARCH
ORGANIZATION bill analysis 5/5/2003

HB 1036
Ritter, et al.

SUBJECT: Providing civil immunity for people making tips to crime stoppers

COMMITTEE: Law Enforcement — favorable, with amendment

VOTE: 6 ayes — Driver, Garza, Hupp, Burnam, Hegar, Keel

0 nays

1 absent — Y. Davis

WITNESSES: For — Richard W. Carter; William L. Page

Against — None

BACKGROUND: Government Code, ch. 414 establishes a statewide Crime Stoppers Advisory Council, a five-member panel within the criminal justice division of the Governor's Office that encourages, advises, and assists in the creation and operations of private, nonprofit, or public organizations that pay rewards to people who report information about criminal activity to the appropriate law enforcement agency.

Sec. 414.008 provides that evidence of communication between a person and a crime stoppers organization is privileged and not admissible in a court or an administrative proceeding. The Court of Criminal Appeals ruled in *Thomas v. State,* 837 S.W.2d 106 (Tex.Crim.App. 1992), that the 1987 legislation creating the crime stoppers confidentiality privilege was unconstitutional and abridged due-process and Sixth Amendment rights unless the court could review the material to determine whether it contained exculpatory material. The 73rd Legislature in 1993 amended sec. 414.008 to codify the *Thomas* opinion's in-camera (behind closed doors) review procedure. Under the statute, a defendant may subpoena crime stoppers organization records or reports, and the court must conduct an in-camera inspection to determine if the materials contain evidence that is exculpatory to the defendant. If court finds the information to be exculpatory, the information must be provided to the defendant in a form that does not disclose the identity of the person who was the source of the information, unless the state or federal constitution requires the disclosure of that person's identity.

The Fort Worth Court of Appeals ruled in *In re Matthew T. Hinterlong* (Tex.App-Fort Worth 2002) that the lack of an exception to the crime stoppers privilege in civil cases renders the statute unconstitutional, just as the *Thomas* case made it unconstitutional in criminal cases.

Matthew T. Hinterlong, a senior at Arlington Martin High School, had appealed a trial court order denying his motion to compel discovery of the identity of the student who provided a crime stoppers tip to school officials that led to Hinterlong's expulsion and placement in an alternative school. The informant had told a teacher that Hinterlong had "either drugs or alcohol in the trunk of his vehicle." A search of Hinterlong's vehicle turned up an Ozarka water bottle with a small amount of brownish liquid that smelled like alcohol. Under the Arlington school's zero-tolerance policy, Hinterlong was expelled and placed in an alternative education program. Hinterlong was acquitted by a municipal court jury on the charge of minor in possession of alcohol. He filed suit against the Arlington Independent School District, the unknown informant, and the teacher who received the tip for malicious prosecution, defamation, and negligence. The trial court held that the school crime stoppers program was a valid crime stoppers organization and that the tip regarding Hinterlong was privileged under sec. 414.008.

DIGEST:

HB 1036, as amended, would provide that a plaintiff in a civil case may petition a court to claim that denial of access to crime stoppers records regarding criminal activity abrogates (annuls) any part of a common-law cause of action that can be tried or examined by that court. The plaintiff would have to demonstrate that he or she was charged with or convicted of a crime at least partially because of the crime stoppers report and that the charge was dismissed, the plaintiff was acquitted, or the conviction was overturned. The plaintiff also would have to establish a prima facie case — a case that would prevail unless contradicted and overcome by other evidence — that the plaintiff's injuries from the criminal charge or conviction were caused by the wrongful acts of those who made or received the report.

The crime stoppers organization would have to store records regarding tips for at least one year after the date of expiration of the time for direct appeals in a criminal case or at least one year after the date when a plaintiff's right to appeal in a civil case was exhausted.

A person who provided a tip leading to the arrest of, filing of charges against, or conviction of a person for a criminal offense would receive immunity from civil liability for damages resulting from that communication unless it was intentionally, willfully, or wantonly negligent or conducted with conscious indifference or reckless disregard for the safety of others. The same protection would apply to a person who, in the course of the person's duties or functions, received, forwarded, or acted on a report of criminal activity communicated to a crime stoppers organization, as long as that person did not act with intentional, willful, or wanton negligence or with conscious indifference or reckless disregard for the safety of others.

The bill would take effect September 1, 2003, and would apply only to civil causes of action filed on or after that date, regardless of when the alleged wrongful conduct occurred.

SUPPORTERS SAY:

HB 1036, as amended, would remedy a flaw in current law that makes the crime stoppers privilege unconstitutional as applied. It would help crime stoppers organizations continue their efforts to protect the safety of Texans. The bill would help codify the *Hinterlong* standard for review of information in civil cases, much as the Legislature amended the procedure in criminal cases after the *Thomas* decision.

The bill would remove the chilling effect of the threat of litigation that otherwise might deter good citizens from providing information in good faith to law enforcement agencies. The plaintiffs' bar has identified a fertile field for civil litigation in cases where criminal defendants identified by crime stoppers have been acquitted. These attorneys are filing open records requests with school districts and law enforcement agencies to gain access to information about crime stoppers tips.

HB 1036 would not protect people who knowingly provide false information to crime stoppers or people who in bad faith use information sent to crime stoppers to violate others' rights. The change would not bar civil action such as that filed by the Hinterlongs, who claimed that 13 Arlington Martin High School students had been ticketed for trespassing at their home and had reasons to be vindictive towards them. A person who gave a false tip knowingly would not receive immunity from civil liability.

The bill would strike an appropriate balance between a tipster's often legitimate concern about his or her safety and the need to protect the constitutional rights of those accused of crimes. Since 1981, crime stoppers have helped law enforcement bring thousands of criminals to justice, and any measure that strengthens this law would be in the public interest.

Permitting in-camera review of *Hinterlong*-type claims would allow judges to rule on the merits case by case. Judges have the training and expertise to determine when crime stoppers information should be disclosed.

OPPONENTS SAY:

By granting immunity from civil liability for a person who gives a false tip, HB 1036 could result in negating the effectiveness of the in-camera review. A standard of intentional, willful, or wanton negligence or performance with conscious indifference or reckless disregard for the safety of others would be too difficult to prove. The Hinterlongs alleged that the 13 Martin High School students had trespassed at their home, ordered a pornographic movie, caused more than $300 in damages to a swimming pool, and stolen keys to two vehicles, including the Chevy Blazer where the alcohol was discovered. Under HB 1036, the Hinterlongs might not have been able to pursue their claim that one of the students had had access to the vehicle and the motivation to "set up" their son by planting the alcohol and making the false claim.

Citizens with information about criminal activity generally make reports to law enforcement agencies. Anonymous tips, possibly from other criminals, made for cash rewards should not have special protections in the law.

OTHER OPPONENTS SAY:

HB 1036 would fail to address adequately the anomalous position of school crime stoppers organizations. Young people may be subject to school rules and status offenses that are not criminal offenses for adults. Schools have adopted "zero-tolerance" policies on drugs, alcohol, and weapons under which a mere report can lead to sanctions. Such policies did not exist when the statute was enacted in 1987. The state should clarify how to corroborate anonymous tips independently and should not reward illegitimate or set-up tips. The Legislature should adopt specific statutes to address school crime stoppers organizations. Schools also should protect crime stoppers informants by not accepting tips in person or requiring face-to-face encounters.

NOTES:

The committee amendment would to revise a provision in the original bill granting immunity from civil liability for those making or receiving crime stoppers tips. The original bill would have immunized those acting in good faith in making or receiving tips to a crime stoppers organization, regardless of whether the subject of the report later was exonerated of the offense.

The companion bill, SB 357 by Shapiro, is scheduled for a public hearing in the Senate Criminal Justice Committee on May 6.