CRIME STOPPERS LEGISLATIVE & FUNDRAISING SEMINAR

November 17, 2008
New Orleans, Louisiana

Hosted by New Orleans Crime Stoppers
Sponsored by *MCA Foundation, Inc.*
A 501 (c) (3) charity supporting Crime Stoppers training

CONTENTS

AGENDA

REGISTRATION FORM

CRIME STOPPERS LEGISLATIVE SEMINAR

Monday, November 17, 2008

9:00 a.m. to 4:00 p.m.

New Orleans, Louisiana

Name: _____

Address: _____

_____

_____

Employer: _____

Title or Position: _____

Best Telephone Number: (____) _____

E-Mail Address: _____

I am affiliated with the following Crime Stoppers program, if applicable:

_____

_____

_____

Enclosed is my Registration Fee of $25.00 (US), made payable to: "MCA Foundation, Inc."[1], which covers course materials (notebook and CD), coffee/doughnuts, and refreshments, and box lunch.

Return to:
Richard W. Carter, Director
MCA Foundation, Inc.
P.O. Box 171448
Arlington, Texas 76003-1448

[1] MCA Foundation, Inc. is a 501 (c) (3) charity that is committed to training Crime Stoppers.

Crime Stoppers Legislative Seminar Topics:

- **A Look At Existing Crime Stoppers Statutes**
- **Current Concerns & Threats to Crime Stoppers Funding Statutes & How to Address Them**
- **How to Get Good Legislation Enacted, Protect It from Repeal or Revision, and How to Defeat Bad Legislation**
- **Is Federal Legislation Needed by Crime Stoppers?**
- **How to Raise Funds If Court-Generated Funds Are Reduced or Lost**

TRAVEL, ACCOMMODATIONS, ETC.

AIRPORTS

New Orleans Airport (MSY) is the closest commercial airport.

HOTEL

Sheraton Metairie—New Orleans Hotel
Four Galleria Blvd.
Metairie, Louisiana 70001
(504) 837-6707

The block of rooms at the discounted "Crime Stoppers" rate of $89.00, plus 12.75 % tax, has been released as of November 9, 2008. Therefore, it is suggested that you seek any other available group discount rate such as AAA, AARP, etc.

Reservations may be made by telephoning the above number or by e-mail to: Erica.king@sheratonmetairie.com or Monique.alsaadi@sheratonmetairie.com

SEMINAR SITE

The seminar will be conducted across the street from the host hotel, at the ATF offices in Suite 1700, One Galleria Blvd.

CO-PRESENTERS AND DISCUSSION LEADERS INCLUDE:

JUDGE RICHARD W. CARTER (RET.), Director of Legal Services for Crime Stoppers USA
DARLENE CUSANZA, Executive Director of Crime Stoppers, New Orleans Crime Stoppers
CHARLEY WILKISON, Director of Governmental & Public Affairs for The Combined Law Enforcement Associations of Texas ("CLEAT"), Lobbyist
SUSAN ROGERS, Executive Director of Odessa (TX) Crime Stoppers, Fundraising Presenter
SIDNEY NEWMAN, Former President of Crime Stoppers International
RALPH CUNNINGHAM, Esq., Author of Crime Stoppers Legislation in Louisianna

PLUS OTHERS

SCHEDULE

8:30 a.m.	**Registration & Coffee**
9:00-9:10 a.m.	**Welcome and Seminar Overview (Darlene Cusanza)**
9:10-9:30 a.m.	**A Look At Existing Crime Stoppers Statutes (Richard W. Carter)**
9:30-10:00 a.m.	**Current Concerns & Threats to Crime Stoppers Funding Statutes and How to Address Them (Richard Carter & Ralph Cunningham)**
10:00-10:15 a.m.	**Break**
10:15-11:00 a.m.	**Continuation of Current Concerns, etc. (Discussion)**
11:00-11:50 a.m.	**How to Get Good Legislation Enacted, Protect It from Unwanted Repeal or Revision, and How to Defeat Bad Legislation (Charley Wilkison)**
11:50 a.m.-Noon	**Break**
Noon-12:50 p.m.	**Box Lunch Provided with Question & Answer Session with Charley Wilkison from 12:25 p.m. to 12:50 p.m.**
12:50-1:00 p.m.	**Break**
1:00-1:30 p.m.	**Is Federal Legislation Needed for Crime Stoppers? (Richard W. Carter)**
1:30-2:30 p.m.	**How to Raise Funds If Court-Generated Funds Are Reduced, Lost, or Unavailable (Susan Rogers)**
2:30-2:45 p.m.	**Break**
2:45-3:30 p.m.	**Breakout into Two Fundraising Discussion Groups (Large and Small populations)**
3:30-4:00 p.m.	**Q & A, and Closing Comments**

ROSTER OF PRE-REGISTERED ATTENDEES

ROSTER OF PARTICIPANTS

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SELECTED STATE AND US TERRITORIES CRIME STOPPERS STATUTES:

ALABAMA
FLORIDA
GUAM
LOUISIANA
MISSISSIPPI
NEW MEXICO
TEXAS

ALABAMA

ALABAMA

TITLE 15 Criminal Procedure
CHAPTER 9 Fugitives from Justice, Extradition and Detainers
Article 1 Rewards

Code of Ala. § 15-9-1 (2007)

§ 15-9-1. Governor; information regarding certain felonies.

When any of the following crimes have been committed:

(1) Kidnapping with the intent of obtaining money or property for release of the person kidnapped;

(2) Attempt to kidnap with the intent to obtain money or property for the release of the person attempted to be kidnapped;

(3) Arson in the first degree which produces death or maiming of any person;

(4) Arson in the second degree which produces death or maiming of any person;

(5) Burglary in the first degree;

(6) Sabotage or attempt to sabotage any property, facility or service that is being used in connection with national defense, with intent to injure the United States, the State of Alabama or any facilities or property used for national defense, where loss of life occurs by reason of such sabotage or attempt;

(7) Exploding or setting off dynamite or other explosives in certain places as described in Section 13-2-61;

(8) First degree murder;

(9) Rape;

(10) Carnal knowledge of a girl under 12 years of age;

(11) Carnal knowledge of a woman or girl by administering a drug, etc.;

(12) Robbery;

(13) Train robbery;

(14) Treason; or

(15) Any other crime which is punishable by death;

the Governor, upon application of the district attorney in the county in which it shall have been committed, may offer publicly a reward not exceeding $10,000.00 to the person who shall give information leading to the arrest and conviction of the guilty person; provided, however, that in cases involving murder, attempted murder, assassination or attempted assassination of any member of the judiciary, public or state official or any law enforcement officer, the Governor may increase the reward up to a maximum of $10,000.00. Any such reward shall be paid to the informer by the state by order of the court before which such conviction is had.

FLORIDA

FLORIDA
Section 938.06, Florida Statutes

Section 938.06 Additional cost for crime stoppers programs.

(1) In addition to any fine prescribed by law for any criminal offense, there is hereby assessed as a court cost an additional surcharge of $20 on such fine, which shall be imposed by all county and circuit courts and collected by the clerks of the courts together with such fine.

(2) The clerk of the court shall collect and forward, on a monthly basis, all costs assessed under this section, less $3 per assessment as a service charge to be retained by the clerk, to the Department of Revenue for deposit in the Crime Stoppers Trust Fund, to be used as provided in s. 16.555.

COMMENTARY

By collecting the money as "costs" rather than donations or discretionary court ordered assessments, assessment is automatic and non-discretionary.

FLORIDA
Section 16.555, Florida Statutes

Section 16.555. Crime Stoppers Trust Fund; rulemaking.

(1) As used in this section, the term:

(a) "Department" shall mean the Department of Legal Affairs.

(b) "Units of local government" shall mean the various city and county governments of the state.

(c) "Crime Stoppers" shall mean members of the Florida Association of Crime Stoppers, Incorporated, a Florida corporation.

(2) The department shall have all the powers necessary or appropriate to carry out the purposes and provisions of this act.

(3) The department shall establish a trust fund for the purpose of grant administration to fund Crime Stoppers and their crime fighting programs within the units of a local government of the state.

(4) (a) The department shall make applications for all federal and state or private grants which meet the purposes of advancing Crime Stoppers in the State of Florida. Upon securing such grants, the funds shall be deposited in the "Crime Stoppers Trust Fund."

(b) The proceeds of the court costs imposed by s. 938.06 shall be deposited in a separate account in the trust fund, and within that account the funds shall be designated according to the judicial circuit in which they were collected. The funds in this account shall be used as provided in paragraph (5) (b).

(5) (a) The department shall be the disbursing authority for distribution of funding to units of local government, upon their application to the department for funding assistance.

(b) Funds deposited in the trust fund pursuant to paragraph (4) (b) shall be disbursed as provided in this paragraph. Any county may apply to the department for a grant from the funds collected in the judicial circuit in which the county is located under s. 938.06. A grant may be awarded only to counties which are served by an official member of the Florida Association of Crime Stoppers, and may only be used to support Crime Stoppers and their crime fighting programs. Only one such official member shall be eligible for support within any county. In order to aid the department in determining eligibility, the secretary of the Florida

Association of Crime Stoppers shall furnish the department with a schedule of authorized crime stoppers programs and shall update the schedule as necessary. The department shall award grants to eligible counties from available funds and shall distribute funds as equitably as possible, based on amounts collected within each county, when more than one county is eligible within a judicial circuit.

(6) The department shall adopt and enforce rules to implement the provisions of this act. Such rules shall include, but shall not be limited to:

(a) Criteria for local governments to apply for funding from the "Crime Stoppers Trust Fund" in order to aid in local law enforcement as provided in this section.

(b) The limits of funding to be distributed to local government units based on a pro rata share of grants made available through the "Crime Stoppers Trust Fund" pursuant to paragraph (4) (a), and criteria for the equitable distribution of funds available pursuant to paragraph (4) (b).

(c) Provisions for the return of unused funds to be re-deposited in the "Crime Stoppers Trust Fund" if for any reason the unit of local government does not use the funds as intended within an agreed upon time.

(d) Provisions for the coordination with appropriate governmental agencies to support and enhance efforts to train the public in crime prevention methods and in personal safety principles, especially for citizens who live in, work at, or frequent locations having high crime rates.

COMMENTARY

The statute creates *de facto* "certification" by requiring membership in the Florida Association of Crime Stoppers as a prerequisite for eligibility for grants.

FLORIDA
Section 16.556 Florida Statutes

Section 16.556. Crime Stoppers Trust Fund.

The Crime Stoppers Trust Fund is created to be administered by the Department of Legal Affairs.

FLORIDA
Section 318.18, Subsection (11), Florida Statutes

Section 318.18 Amount of civil penalties. The penalties required for a non-criminal disposition pursuant to s. 318.14 are as follows:

(11) (a) In addition to the stated fine, court costs must be paid in the following amounts and shall be deposited by the clerk into the fine and forefeiture fund established pursuant to s. 142.01:

For pedestrian infractions.....$3.
For nonmoving traffic infractions.....$16.
For moving traffic infractions.....$30.

(b) In addition to the court cost required under paragraph (a), up to $3 for each infraction shall be collected and distributed by the clerk in those counties that have been authorized to establish a criminal justice selection center or a criminal justice access and assessment center pursuant to the following special acts of the Legislature:

1. Chapter 87-423, Laws of Florida, for Brevard County.
2. Chapter 89-521, Laws of Florida, for Bay County.
3. Chapter 94-444, Laws of Florida, for Alachua County.
4. Chapter 97-333, Laws of Florida, for Pinellas County.

Funds collected by the clerk pursuant to this paragraph shall be distributed to the centers authorized by those special acts.

(c) In addition to the court cost required under paragraph (a), a $2.50 court cost must be paid for each infraction to be distributed by the clerk to the county to help pay for criminal justice education and training programs pursuant to s. 938.15. Funds from the distribution to the county not directed by the county to fund these centers or programs shall be retained by the clerk and used for funding the court-related services of the clerk.

(d) In addition to the court cost required under paragraph (a), a $3 court cost must be paid for each infraction to be distributed as provided in s. 938.01 and a $2 court cost as provided in s. 938.15 when assessed by a municipality or county.

(12) Two hundred dollars for a violation of s. 316.520(1) or (2). If, at a hearing, the alleged offender is found to have committed this offense, the court shall impose a minimum civil penalty of $200. For a second or subsequent adjudication within a period of 5 years, the department shall suspend the driver's license of the person for not less than 1 year and not more than 2 years.

COMMENTARY

This civil penalty is another method of bringing more money to the Crime Stoppers program.

Florida Statute 938.06. Additional cost for crime stoppers programs

(1) In addition to any fine prescribed by law for any criminal offense, there is hereby assessed as a court cost an additional surcharge of $ 20 on such fine, which shall be imposed by all county and circuit courts and collected by the clerks of the courts together with such fine.

(2) The clerk of the court shall collect and forward, on a monthly basis, all costs assessed under this section, less $ 3 per assessment as a service charge to be retained by the clerk, to the Department of Revenue for deposit in the Crime Stoppers Trust Fund, to be used as provided in s. 16.555.

GUAM

GUAM

Title 6, Section 503.1, Guam Code Annotated

Section 504.1 Privileged communications and information to Crime Stoppers organizations.

(a) **Definitions**. For purposes of this section:

(1) *Crime Stoppers organizations* means a private, non-profit organization that accepts and expends donations for rewards to persons who report to the organization information concerning criminal activity and that forwards the information to the appropriate law enforcement agency;

(2) *Privileged communication* means information provided by any person, in any manner whatsoever, to a Crime Stoppers organization in reporting alleged criminal activity;

(3) *Protected information* means the identity of the person reporting criminal activity to a Crime Stoppers organization, any records, statements (oral, written or recorded), papers, documents or any materials whatsoever utilized by a Crime Stoppers organization in reporting criminal activity or in processing such information, whether such information is in the possession of a Crime Stoppers organization, a police "Crime Stoppers" coordinator or his staff, or a law enforcement agency receiving such information from a Crime Stoppers organization or a third party or entity that was a part of the process of gathering or transmitting such records, statements (oral, written or recorded), papers, documents or any materials or information that could individually or collectively be used, either directly or indirectly, to reveal the identity of the informant.

(b) **Nondisclosure of privileged communication or privileged information.** No person, police "Crime Stoppers" coordinator or his staff, or member of a Crime Stoppers organization's board of directors, crime stoppers volunteer, or any other person or entity who has such information or knowledge of such information shall be required to disclose, by way of testimony or any other means, privileged communication or privileged information unless such failure to disclose infringes on the constitutional rights of the accused. Nor shall such persons be required to produce, under subpoena, any records, documentary evidence, opinions or decisions relating to such privileged communication or information (i) in connection with any criminal case, criminal proceeding, civil case, civil proceeding or any administrative hearing of whatever nature, or (ii) by way of any discovery procedure.

(c) **Inspection of records**. Any person arrested or charged with a criminal offense may petition the court for an in camera inspection of the records of a privileged communication or information concerning such person made to a Crime Stoppers organization. The petition shall allege facts showing that such records would (i) provide evidence favorable to the accused, (ii) be relative to the issue of guilt, and (iii) cause a deprivation of a constitutional right if such communication or information is not disclosed. If the court determines that,

based on such criteria, the person is entitled to all or any part of such records, it may order production and disclosure as is necessary, protecting to the extent possible, the identity of the "Crime Stoppers" informant.

(d) **Penalty for disclosure.** Disclosure of a privileged communication or privileged information in violation of this section shall be a felony of the third degree.

(e) Although the Crime Stoppers organization is authorized to hire legal counsel to assure the enforcement of the provisions of this Section and to provide protection of information as set out in this section the Attorney General shall, to the extent possible, quash any subpoenas or other discovery efforts to obtain any protected information as defined in Subsection (a) above and shall to the extent authorized by law, take whatever action is necessary to assure anonymity of the Crime Stoppers informant and to protect said protected information.

COMMENTARY

On April 1, 1994, the Territory of Guam (a United States possession) enacted Bill Number 243, which was signed into law as Public Law 22-104. The law added a Section 503.1 to Title 6, Guam Code Annotated. Among the provisions are a definition of Crime Stoppers and privileged information; establishment of the privilege for Crime Stoppers information; an in camera procedure for seeking a limited exception to the privilege; and a third degree penalty for any violation of the Section.

In 2003, significant amendments were made to the statute. The term "protected" information, was added to supplement "privileged" communications. This is a brilliant move in that it avoids the legal arguments that a "privilege" belongs to a certain person. Instead, it can be argued that the information is to be "protected".

The 2003 amendments also extended the protection to information held by volunteers and others on behalf of Crime Stoppers. This can be used to keep Crime Stoppers telephone records, for example, from being disclosed by the telephone company.

The 2003 amendments extended the statute's scope by making it applicable to civil cases and civil proceedings.

Lastly, the 2003 amendments created a duty on the part of the Attorney General to affirmatively act to protect Crime Stoppers records and informant identity from involuntary disclosure. This unique provision could be a model for other jurisdictions.

LOUISIANA

LOUISIANA

Louisiana Statutes Annotated
15:477.1. Privileged communications to "crime stoppers" organizations

A. As used in this Section, the following terms shall have the following meanings unless the context clearly requires otherwise:

(1) "Crime Stoppers organization" means a private, nonprofit organization that accepts and expends donations for rewards to persons who report to the organization information concerning criminal activity and that forwards the information to the appropriate law enforcement agency.

(2) "Privileged communication" means a statement by any person, in any manner whatsoever, to a crime stoppers organization for the purpose of reporting alleged criminal activity.

B. No person shall be required to disclose, by way of testimony or otherwise, a privileged communication between a person who submits a report of alleged criminal activity to a crime stoppers organization and the person who accepts the report on behalf of a crime stoppers organization or to produce, under subpoena, any records, documentary evidence, opinions, or decisions relating to such privileged communication:

(1) In connection with any criminal case or proceeding.

(2) By way of any discovery procedure.

C. Any person arrested and charged with a criminal offense may petition the court for any in camera inspection of the records of a privileged communication concerning such person made to a crime stoppers organization. The petition shall allege facts showing that such records would provide evidence favorable to the defendant and relevant to the issue of guilt or punishment. If the court determines that the person is entitled to all or any part of such records, it may order production and disclosure as it deems appropriate.

COMMENTARY

House Bill No. 1055 came out of the 1985 Regular Session of the Louisiana Legislature, was enrolled as Act No. 790, and is now 15.477.1 of the Revised Statutes. The caption to the Bill reads: "...relative to privileged communication, to provide that a statement by any person to a crime stoppers organization for the purpose of reporting alleged criminal activity is privileged, to provide that no person shall be required to disclose such communication in a criminal proceeding or by way of discovery except upon court order in certain circumstances, and to provide for related matters."

In at least two appellate court decisions, the statute was interpreted to be sufficiently broad to protect all Crime Stoppers records. (See State v. Gibson, 505 So.2d 237 (La. App. 3rd Cir. 1987); and, State v. Collier, 522 So.2d 584 (La. App. 1st Cir. 1988.)

costs of administering the local criminal justice system.

B. As used in this Article, the following words shall have the following meanings ascribed to them:

(1) "Certified crime stoppers organization" means an organization which is certified as a certified crime stoppers organization by a certifying officer in accordance with the provisions of this Article.

COMMENTARY

The 1986 amendment to Louisiana statutes provides authority for the court to order a probationer to reimburse a Crime Stoppers corporation for any reasonable costs incurred in obtaining leads to arrest the defendant. One would assume that this would certainly include the amount of the reward paid to the tipster (if the reward is reasonable). It might also be a reasonable expense if the Crime Stoppers Corporation (board) spent money on printing reward posters, paying an employee to answer the hot line, etc.

This is one of the first statutes to expressly authorize such reimbursement by criminal defendants placed on probation.

LOUISIANA

Louisiana Revised Statutes

Title 32, Chapter 13, Section 1550, K (3)

Section 1550. REPEALED BY ACTS 1997, NO 1334;

K. The proceeds of all funds collected from any sale of contraband seized by a parish or municipal law enforcement agency, except as provided in Subsection E (2) above, shall be allocated and paid as follows:

(3) If the seizure results from information provided by a crime stoppers organization, that organization may be reimbursed the amount of the reward paid to the person providing the information.

COMMENTARY

In 1987, Louisiana statutes were amended to provide yet another method for reimbursing a Crime Stoppers organization (board/corporation) for the amount of the reward paid to a person who gives information leading to the seizure of contraband. The reimbursement money is to be taken from funds collected from the seizure and forfeiture sale. Technically, the funds would result only from a "sale of contraband seized". The statute is unclear as to whether Crime Stoppers could be reimbursed from cash money seized and forfeited. Perhaps a liberal interpretation, and the use of legislative intent, would allow cash seizures to be used to reimburse Crime Stoppers.

MISSISSIPPI

MISSISSIPPI

Mississippi Code of 1972

Section 45-39-1. Definitions.

As used in this chapter:

(a) "Council" means the Crime Stoppers Advisory Council.

(b) "Local crime stoppers program" means the acceptance and spending of donations by a private, nonprofit organization for the awarding of rewards to persons who report information concerning criminal activity to the organization if the organization:

(i) Operates less than statewide; and

(ii) Forwards reported information to the appropriate law enforcement agency.

Section 45-39-3. Creation.

There is hereby created within the Department of Public Safety the Crime Stoppers Advisory Council. The council shall be composed of five (5) persons appointed by the Governor with the advice and consent of the Senate. At least three (3) of the foregoing appointees shall be persons who have participated in a local crime stoppers program. Each member of the council shall serve for a term of two (2) years or until his successor is appointed and qualifies. At the first meeting of the council, which shall be called by the Governor, and at the first meeting after the beginning of each new state fiscal hear, the council shall elect from among its members a chairman and such other officers as the council deems necessary. Each member of the council shall receive per diem in the amount established un Section 25-3-69, Mississippi Code of 1972, for each day or portion thereof spent discharging his duties under this chapter and shall receive mileage and expenses as proceed in Section 25-3-41, Mississippi Code of 1972.

Expenses of the council shall be paid by the Department of Public Safety out of the State Crime Stoppers Fund, created in Section 45-39-5(4).

Section 45-39-5. Powers and duties

(1) The council ma contract with a person to serve as its director or, with the concurrence of the Commissioner of Public Safety, may employ an individual within the Department of Public Safety to serve as director. The council shall establish the authority and responsibilities of the director.

(2) The council shall:

(a) Advise and assist in the creation of local crime stoppers programs;

(b) Foster the detection of crime and encourage persons to report information about criminal acts;

(c) Encourage news and other media to promote local crime stoppers programs and to inform the public of the functions of the council;

(d) Assist local crime stoppers programs in forwarding information about criminal acts to the appropriate law enforcement agencies; and

(e) Help law enforcement agencies detect and combat crime by increasing the flow of information to and between law enforcement agencies.

(3) The council may adopt rules to carry out its duties under this chapter.

(4) The assessments collected under subsection (5) of Section 99-19-73, Mississippi Code of 1972, and any other funds as may be made available through contributions from private or public sources, shall be deposited in a special fund that is hereby created in the State Treasury and designated the State Crime Stoppers Fund. Monies deposited in the fund shall be expended by the council, pursuant to appropriation therefore by the Legislature, for the authorized purposes of the State Crime Stoppers Program established under this chapter, including, but not limited to, providing reward monies for individuals who legitimately report crime activity. Any such funds paid to such individuals shall be kept confidential by the council, and any audit of the fund and the expenditures of the council shall provide for the confidentiality of any expenditures to such individuals. The Department of Public Safety shall have the authority to accept, budget and expend for any proper expenses of the Crime Stoppers Advisory Council any special source funds made available to the Crime Stoppers Program subject to the approval of the Department of Finance and Administration and in accordance with procedures for federal fund escalations as established in Section 27-104-21.

Section 45-39-7 Confidentiality of records

(1) Council records relating to reports of criminal acts are confidential.

(2) Evidence of a communication between a person submitting a report of a criminal act to the council or a local crime stoppers program and the person who accepted the report on behalf of the council or local crime stoppers program is not admissible in a court or an administrative proceeding whether the evidence is held by the council or a local crime stoppers program or is held by a telecommunication service provider.

(3) Records of the council or a local crime stoppers program concerning a report of criminal activity and records of a telecommunication service provider relating to a report made to the council or to a local crime stoppers program may not be compelled to be produced before a court or other tribunal except on the motion of a criminal defendant to the court in which the offense is being tried that the records or report contain evidence that is exculpatory to the defendant in the trial of that offense. On motion of a defendant under this subsection, the court may subpoena the records or report. The court shall conduct an in-camera inspection of materials produced under subpoena to determine whether the materials contain evidence that is exculpatory to the defendant. If the court determines that the materials produced contain evidence that is exculpatory to the defendant, the court shall present the evidence to the defendant in a form that does not disclose the identity of the person who was the source of the evidence, unless the state or federal constitution requires the disclosure of that person's identity. The court shall execute an affidavit accompanying the disclosed materials swearing that, in the opinion of the court, the materials disclosed represent the exculpatory evidence the defendant is entitled to receive under this section. The court shall return to the council or to the local crime stoppers program materials that are produced under this section but not disclosed to the defendant. The council or local crime stoppers program shall store the materials until the conclusion of the criminal trial and the expiration of the time for all direct appeals in the case..

Section 45-39-9. Crime and punishment

A person who is a member or employee of the council or who accepts a report of criminal activity on behalf of a local crime stoppers program is guilty of a misdemeanor if the person intentionally or knowingly divulges to a person not employed by a law enforcement agency the content of a report of a criminal act or the identity of the person who made the report without the consent of the person who made the report.

A person convicted of an offense under this section shall be punished as provided in Section 99-19-31, Mississippi Code of 1972, and is not eligible for state employment during the five-year period following the date that the conviction becomes final.

Section 45-39-11. Toll-free telephone service

The council shall establish and operate a toll-free telephone service and make the service accessible to persons residing in areas of the state not served by a local crime stoppers program for reporting to the council information about criminal acts. The toll-free service must be available between the hours of 5:00 p.m. and 8:00 a.m. Monday through Thursday and from 5:00 p.m. Friday until 8:00 a.m. Monday. The council shall forward the information received to appropriate law enforcement agencies or local crime stoppers programs.

Section 45-39-13. Other laws

The establishment of any Crime Stoppers Advisory Council shall not impede the intent or process of the Vulnerable Adults Acts of 1986 as provided in Section 43-47-1 et seq.

Section 45-39-15. County and municipal programs

The board of supervisors of a county and the governing authority of a municipality are authorized to contribute funds to a local crime stoppers program from the general fund of the county or municipality or any other available source if the local crime stoppers program is established to operate in whole or in part, within the boundaries of that county or municipality.

This chapter shall not repeal or affect any local and private act establishing a county or local crime stoppers program providing for the operation and funding of such program.

Section 45-39-17. Surcharges

In addition to any other monetary penalties and other penalties imposed by law, any county or municipality by ordinance may assess an additional surcharge in an amount not to exceed Two Dollars ($2.00) on each person upon whom a county, justice or municipal court imposes a fine or other penalty for any misdemeanor other than offenses relating to vehicular parking or registration if there is established to the benefit of the citizens of the county or municipality a local crime stoppers program which is not authorized to receive funds under local and private legislation. The proceeds from the surcharge may be used by a county or municipality only to fund that county's or municipality's support of the local crime stoppers program as authorized by Section 45-39-15, Mississippi Code of 1972. The proceeds from the surcharge imposed by this subsection shall be deposited into a special fund in the Department of Public Safety's Office of Public Safety Planning which shall promulgate rules and procedures relating to the administration of the special fund and the disbursement of monies in the fund to participating counties and municipalities. The maximum amount that a county or municipality may receive from the special fund shall be an amount equal to the deposits made into the fund by that entity, less one percent (1%) to be retained by the Office of Public Safety Planning to defray the costs of administering the special fund. Interest earned on the special fund shall remain in the fund and shall be used by the Office of Public Safety Planning to further defray the costs of administering the special fund.

House Bill 1672

AN ACT TO AUTHORIZE THE BOARD OF SUPERVISORS OF MADISON COUNTY, MISSISSIPPI, TO LEVY ADDITIONAL COURT COSTS FOR EACH MISDEMEANOR CASE FILED IN ITS JUSTICE COURT; TO PROVIDE THAT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE PAID TO METRO JACKSON CRIME STOPPERS INCORPORATED; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. www (1) The Board of Supervisors of Madison County, Mississippi, is hereby authorized and empowered, in its discretion, by resolution duly adopted and entered on the minutes of the board of supervisors, to levy additional court costs in an amount not to exceed One Dollar ($1.00) per case for each misdemeanor case filed in the justice court of such county;

(2) The avails of any additional court costs imposed pursuant to subsection (1) of this section shall be paid monthly by the county to Metro Jackson Crime Stoppers, Inc., for use in procuring information which will lead to the capture and conviction of persons committing crimes and in support of good law enforcement.

(3) The provisions of this section shall be repealed from and after its passage.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: March 29, 2001 by the Governor.

MISSISSIPPI

House Bill 1675

AN ACT TO AUTHORIZE THE GOVERNING AUTHORITIES OF THE CITY OF FLOWOOD, MISSISSIPPI, TO LEVY ADDITIONAL COURT COSTS FOR EACH MISDEMEANOR CASE FILED IN ITS MUNICIPAL COURT; TO PROVIDE THAT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE PAID TO METRO JACKSON CRIME STOPPERS, INCORPORTED; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The governing authorities of the City of Flowood are hereby authorized and empowered, in their discretion, by resolution duly adopted and entered on the minutes of the governing authorities, to levy additional court costs in an amount not to exceed One Dollar ($1.00) per case for each misdemeanor case filed in the municipal court of such municipality.

(2) The avails of any additional court costs imposed pursuant to subsection (1) of this section shall be paid monthly by the municipality to Metro Jackson Crime Stoppers, Inc., for use in procuring information which will lead to the capture and conviction of persons committing crimes and in support of good law enforcement.

(3) The provisions of this section shall be repealed from and after July 1, 2002.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: March 29, 2001 by the Governor

MISSISSIPPI

House Bill 1676

AN ACT TO AUTHORIZE THE GOVERNING AUTHORITIES OF THE CITY OF PEARL, MISSISSIPPI, TO LEVY ADDITIONAL COURT COSTS FOR EACH MISDEMEANOR CASE FILED IN ITS MUNICIPAL COURT; TO PROVIDE THAT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE PAID TO METRO JACKSON CRIME STOPPERS, INCORPORTED; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The governing authorities of the City of Pearl are hereby authorized and empowered, in their discretion, by resolution duly adopted and entered on the minutes of the governing authorities, to levy additional court costs in an amount not to exceed One Dollar ($1.00) per case for each misdemeanor case filed in the municipal court of such municipality.

(2) The avails of any additional court costs imposed pursuant to subsection (1) of this section shall be paid monthly by the municipality to Metro Jackson Crime Stoppers, Inc., for use in procuring information which will lead to the capture and conviction of persons committing crimes and in support of good law enforcement.

(3) The provisions of this section shall be repealed from and after July 1, 2002.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: March 29, 2001 by the Governor

MISSISSIPPI

House Bill 1677

AN ACT TO AUTHORIZE THE BOARD OF SUPERVISORS OF RANKIN COUNTY, MISSISSIPPI, TO LEVY ADDITIONAL COURT COSTS FOR EACH TRAFFIC VIOLATION AND MISDEMEANOR CASE FILED IN THE JUSTICE AND COUNTY COURTS OF THE COUNTY; TO PROVIDE THT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE PAID TO METRO JACKSON CRIME STOPPERS INCORPORATED; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The Board of Supervisors of Rankin County, Mississippi, in its discretion, by resolution duly adopted and entered on its minutes, may levy an assessment, in addition to other assessments and court costs, not to exceed One Dollar ($1.00) per case, for each traffic violation and misdemeanor case filed in the justice and county courts of Rankin County;

(2) The avails of any additional assessment imposed pursuant to subsection (1) of this section shall be expended by the county to fund Metro Jackson Crime Stoppers, Incorporated, for use in crime prevention and procuring information to aid authorities in the capture of persons committing crimes in the county.

(3) The provisions of this section shall be repealed from and after its passage.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: March 29, 2001 by the Governor.

MISSISSIPPI

House Bill 1686

AN ACT TO AUTHORIZE THE BOARD OF SUPERVISORS OF LAWRENCE COUNTY, MISSISSIPPI, TO LEVY AN ASSESSMENT, IN ADDITION TO ANY OTHER ASSESSMENTS AND COURT COSTS, FOR EACH MISDEMEANOR CASE PROCESSED THROUGH THE LAWRENCE COUNTY JUSTICE COURT; TO PROVIDE THAT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE USED TO FUND THE PINE BELT CRIME STOPPERS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The Board of Supervisors of Lawrence County, Mississippi, in its discretion, is authorized, by resolution duly adopted and entered on its minutes, to levy an assessment, in addition to other assessments and court costs, in the amount of One Dollar ($1.00) per case, for each misdemeanor case processed through the justice court of such County.

(2) The avails of any additional assessment imposed under subsection (1) of this section shall be distributed by the county to Pine Belt Crime Stoppers for use in procuring information to aid authorities in the capture and conviction of persons committing crimes in Lawrence County.

(3) The provisions of this section shall be repealed from and after July 1, 2002.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: April 7, 2001 by the Governor.

MISSISSIPPI

House Bill 1687

AN ACT TO AUTHORIZE THE GOVERNING AUTHORITIES OF THE TOWN OF MONTICELLO, MISSISSIPPI, TO LEVY AN ASSESSMENT, IN ADDITION TO ANY OTHER ASSESSMENTS AND COURT COSTS, FOR EACH MISDEMEANOR CASE PROCESSED THROUGH THE MUNICIPAL COURT; TO PROVIDE THAT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE USED TO FUND THE PINE BELT CRIME STOPPERS, AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The governing authorities of the Town of Monticello, Mississippi, in the discretion, by resolution duly adopted and entered on the minutes, are authorized to levy an assessment, in addition to any other assessments and court costs, in the amount of One Dollar ($1.00) per case for each misdemeanor case processed through the municipal court of such city.

(2) The avails of any additional court costs imposed under subsection (1) of this section shall be paid, on a monthly basis, by the town to the Pine Belt Crime Stoppers, for use in procuring information to aid authorities in the capture and conviction of persons committing crimes in Monticello, Mississippi.

(3) The provisions of this section shall be repealed from and after July 1, 2002.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: April 7, 2001 by the Governor

MISSISSIPPI

House Bill 3179

AN ACT TO AUTHORIZE THE GOVERNING AUTHORITIES OF THE CITY OF COLUMBIA, MISSISSIPPI, TO LEVY AN ASSESSMENT, IN ADDITION TO ANY OTHER ASSESSMENTS AND COURT COSTS, FOR EACH MISDEMEANOR CASE FILED THROUGH ITS MUNICIPAL COURT; TO PROVIDE THAT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE USED TO SUPPORT THE PINE BELT CRIME STOPPERS PROGRAM OF THE MUNICIPALITY; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The governing authorities of the City of Columbia, Mississippi, in their discretion, are authorized, by resolution duly adopted and entered on the minutes of the governing authorities, to levy an assessment, in addition to any other assessments and court costs, not to exceed One Dollar ($1.00) per case, for each misdemeanor case filed in the municipal court of the City of Columbia.

(2) The avails of any additional assessment imposed pursuant to subsection (1) of this section shall be paid monthly by the City of Columbia to the Pine Belt Crime Stoppers for use in procuring information to aid authorities in the capture and conviction of persons committing crimes and in support of good law enforcement.

(3) The provisions of this section shall be repealed from and after July 1, 2002.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: April 16, 2001 by the Governor.

MISSISSIPPI

Senate Bill 3181

AN ACT TO AUTHORIZE THE GOVERNING AUTHORITIES OF THE TOWN OF PRENTISS, MISSISSIPPI, TO LEVY AN ASSESSMENT, IN ADDITION TO ANY OTHER ASSESSMENTS AND COURT COSTS, FOR EACH MISDEMEANOR CASE FILED IN ITS MUNICIPAL COURT; TO PROVIDE THAT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE USED TO SUPPORT THE PINE BELT CRIME STOPPERS PROGRAM; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The governing authorities of the Town of Prentiss, Mississippi, in their discretion, are authorized, by resolution duly adopted and entered on the minutes of the governing authorities, to levy an assessment, in addition to any other assessments and court costs, not to exceed One Dollar ($1.00) per case, for each misdemeanor case filed in the municipal court of the Town of Prentiss.

(2) The avails of any additional assessment imposed pursuant to subsection (1) of this section shall be paid monthly by the Town of Prentiss to Pine Belt Crime Stoppers for use in procuring information to aid authorities in the capture and conviction of persons committing crimes and in support of good law enforcement.

The provisions of this section shall be repealed from and after July 1, 2002.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: April 16, 2001 by the Governor.

MISSISSIPPI

Senate Bill 3203

AN ACT TO AUTHORIZE THE BOARD OF SUPERVISORS OF COVINGTON COUNTY, MISSISIPPI, TO LEVY AN ASSESSMENT, IN ADDITION TO ANY OTHER ASSESSMENTS AND COURT COSTS, FOR EACH MISDEMEANOR CASE PROCESSED THROUGH THE JUSTICE COURT OF COVINGTON COUNTY; TO PROVIDE THAT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE USED TO SUPPORT THE PINE BELT CRIME STOPPERS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The Board of Supervisors of Covington County, Mississippi, in its discretion, is authorized, by resolution duly adopted and entered on its minutes, to levy an assessment, in addition to any other assessments and court costs, in the amount of One Dollar ($1.00) per case, for each misdemeanor case processed through the justice court of the such county.

(2) The avails of any additional assessment imposed under to subsection (1) of this section shall be distributed by the county to Pine Belt Crime Stoppers for use in procuring information to aid authorities in the capture and conviction of persons committing crimes and in the five-county area covered by Pine Belt Crime Stoppers.

(3) The provisions of this section shall be repealed from and after July 1, 2002.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: April 16, 2001 by the Governor.

MISSISSIPPI

Senate Bill 3204

AN ACT TO AUTHORIZE THE BOARD OF SUPERVISORS OF SIMPSON COUNTY, MISSISSIPPI, TO LEVY AN ASSESSMENT, IN ADDITION TO ANY OTHER ASSESSMENTS AND COURT COSTS, FOR EACH MISDEMEANOR CASE PROCESSED THROUGH THE JUSTICE COURT OF SIMPSON COUNTY; TO PROVIDE THAT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE USED TO SUPPORT THE PINE BELT CRIME STOPPERS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The Board of Supervisors of Simpson County, Mississippi, in its discretion, is authorized, by resolution duly adopted and entered on its minutes, to levy an assessment, in addition to any other assessments and court costs, in the amount of One Dollar ($1.00) per case, for each misdemeanor case processed through the justice court of the such county.

(2) The avails of any additional assessment imposed under to subsection (1) of this section shall be distributed by the county to Pine Belt Crime Stoppers for use in procuring information to aid authorities in the capture and conviction of persons committing crimes and in the five-county area covered by Pine Belt Crime Stoppers.

(3) The provisions of this section shall be repealed from and after July 1, 2002.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: April 16, 2001 by the Governor.

MISSISSIPPI

Senate Bill 3205

AN ACT TO AUTHORIZE THE GOVERNING AUTHORITIES OF THE TOWN OF BASSFIELD, MISSISSIPPI, TO LEVY AN ASSESSMENT, IN ADDITION TO ANY OTHER ASSESSMENTS AND COURT COSTS, FOR EACH MISDEMEANOR CASE FILED IN ITS MUNICIPAL COURT; TO PROVIDE THAT THE AVAILS OF SUCH ADDITIONAL ASSESSMENT SHALL BE USED TO SUPPORT THE PINE BELT CRIME STOPPERS PROGRAM; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The governing authorities of the Town of Bassfield, Mississippi, in their discretion, are authorized, by resolution duly adopted and entered on the minutes of the governing authorities, to levy an assessment, in addition to any other assessments and court costs, not to exceed One Dollar ($1.00) per case, for each misdemeanor case filed in the Municipal Court of the Town of Bassfield.

(2) The avails of any additional assessment imposed pursuant to subsection (1) of this section shall be distributed by the Town of Bassfield to Pine Belt Crime Stoppers for use in procuring information to aid authorities in the capture and conviction of persons committing crimes and in the five-county area covered by Pine Belt Crime Stoppers.

(3) The provisions of this section shall be repealed from and after July 1, 2002.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: April 16, 2001 by the Governor.

MISSISSIPPI

Section 99-19-73, Mississippi Code of 1972

99-19-73. (1) **Traffic Violations.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any violation in Title 63, Mississippi Code of 1972, except offenses relating to the Mississippi Implied Consent Law (Section 63-11-1 et seq.) and offenses relating to vehicular parking or registration:

FUND	AMOUNT
State Court Education Fund	$ 1.50
State Prosecutor Education Fund	1.00
Vulnerable Adults Training, Investigation and Prosecution Trust Fund	.50
Child Support Prosecution Trust Fund	.50
Driver Training Penalty Assessment Fund	7.00
Law Enforcement Officers Training Fund	5.00
Spinal Cord and Head Injury Trust Fund (for all moving violations)	6.00
Emergency Medical Services Operating Fund	15.00
Mississippi Leadership Council on Aging Fund	1.00
Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund	.50
Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund	1.00
State Prosecutor Compensation Fund for the purpose of providing additional compensation for legal assistants to district attorneys	1.50
Crisis Intervention Mental Health Fund	10.00
Drug Court Fund	10.00
Capital Defense Fund	2.89
Indigent Appeals Fund	2.29
Capital Post-Conviction Counsel Fund	2.33
Victims of Domestic Violence Fund	.49
Public Defenders Education Fund	1.00
TOTAL STATE ASSESSMENT	$ 69.50

(2) **Implied Consent law Violations.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or any other penalty for any violation of the Mississippi Implied Consent Law (Section 63-11-1 et seq.):

FUND	AMOUNT
Crime Victims' Compensation Fund	$ 10.00
State Court Education Fund	1.50
State Prosecutor Education Fund	1.00

Vulnerable Adults Training, Investigation and Prosecution Trust Fund..... .50
Child Support Prosecution Trust Fund..... .50
Driver Training Penalty Assessment Fund..... 22.00
Law Enforcement Officers Training Fund..... 11.00
Emergency Medical Services Operating Fund..... 15.00
Mississippi Alcohol Safety Education Program Fund..... 5.00
Federal-State Alcohol Program Fund..... 10.00
Mississippi Crime Laboratory
Implied Consent Law Fund..... 25.00
Spinal Cord and Head Injury Trust Fund..... 25.00
Capital Defense Counsel Fund..... 2.89
Indigent Appeals Fund..... 2.29
Capital Post-Conviction Counsel Fund..... 2.33
Victims of Domestic Violence Fund..... .49
State General Fund..... 35.00
Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund..... .50
State Prosecutor Compensation Fund for the purpose of providing additional
Compensation for legal assistants to district attorneys..... 1.50
Crisis Intervention Mental Health Fund..... 10.00
Drug Court Fund..... 10.00
Statewide Victims' Information and Notification System Fund..... 6.00
Public Defenders Education Fund..... 1.00
TOTAL STATE ASSESSMENT..... $199.50

(3) **Game and Fish Law Violations.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any violation of the game and fish statutes or regulations of this state:

FUND	AMOUNT
State Court Education Fund.....	$ 1.50
State Prosecutor Education Fund.....	1.00
Law Enforcement Officers Training Fund.....	5.00
Hunter Education and Training Program Fund.....	5.00
State General Fund.....	30.00
Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund.....	.50
Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund....	1.00
State Prosecutor Compensation Fund for the purpose of providing additional compensation for legal assistants to district attorneys.....	1.00
Crisis Intervention Mental Health Fund.....	10.00
Drug Court Fund.....	10.00
Capital Defense Counsel Fund.....	2.89
Indigent Appeals Fund.....	2.29
Capital Post-Conviction Counsel Fund.....	2.33

Victims of Domestic Violence Fund	.49
Public Defenders Education Fund	1.00
TOTAL STATE ASSESSMENT	$ 74.00

(4) **Litter Law Violations.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any violation of Section 97-15-29 or 97-15-30:

FUND	AMOUNT
Statewide Litter Prevention Fund	$ 25.00
TOTAL STATE ASSESSMENT	$ 25.00

(5) **Other Misdemeanors.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any misdemeanor violation not specified in subsection (1), (2) or (3) of this section, except offenses relating to vehicular parking or registration:

FUND	AMOUNT
Crime Victims' Compensation Fund	$ 10.00
State Court Education Fund	1.50
State Prosecutor Education Fund	1.00
Vulnerable Adult's Training, Investigation and Prosecution Trust Fund	.50
Child Support Prosecution Trust Fund	.50
Law Enforcement Officers Training Fund	5.00
Capital Defense Counsel Fund	2.89
Indigent Appeals Fund	2.29
Capital Post-Conviction Counsel Fund	2.33
Victims of Domestic Violence Fund	.49
State General Fund	30.00
State Crime Stoppers Fund	**1.50**
Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund	.50
Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund	1.00
State Prosecutor Compensation Fund for the purpose of providing additional compensation for legal assistants to district attorneys	1.50
Crisis Intervention Mental Health Fund	10.00
Drug Court Fund	8.00
Judicial Performance Fund	2.00
Statewide Victims'' Information and Notification System Fund	6.00

Public Defenders Education fund	1.00
TOTAL STATE ASSESSMENT	$ 88.00

(6) **Other Felonies.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any felony violation not specified in subsection (1), (2) or (3) of this section:

FUND	AMOUNT
Crime Victims' Compensation Fund	$ 10.00
State Court Education Fund	1.50
State Prosecutor Education Fund	1.00
Vulnerable Adults Training, Investigation and Prosecution Trust Fund	.50
Child Support Prosecution Trust Fund	.50
Law Enforcement Officers Training Fund	5.00
Capital Defense Counsel Fund	2.89
Indigent Appeals Fund	2.29
Capital Post-Conviction Counsel Fund	2.33
Victims of Domestic Violence Fund	.49
State General Fund	60.00
Criminal Justice Fund	50.00
Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund	.50
Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund	1.00
State Prosecutor Compensation Fund for the purpose of providing additional compensation for legal assistants to district attorneys	1.50
Crisis Intervention Mental Health Fund	10.00
Drug Court Fund	10.00
Statewide Victims' Information and Notification System Fund	6.00
Public Defenders Education Fund	1.00
TOTAL STATE ASSESSMENT	$166.50

(7) If a fine or other penalty imposed is suspended, in whole or in part, such suspension shall not affect the state assessment under this section. No state assessment imposed under the provisions of this section may be suspended or reduced by the court.

(8) After a determination by the court of the amount due, it shall be the duty of the clerk of the court to promptly collect all state assessments imposed under the provisions of this section. The state assessments imposed under the provisions of this section may not be paid by personal

check. It shall be the duty of the chancery clerk of each county to deposit all such state assessments collected in the circuit, county and justice courts in such county on a monthly basis with the State Treasurer pursuant to appropriate procedures established by the State Auditor. The chancery clerk shall make a monthly lump-sum deposit of the total state assessments collected in the circuit, county and justice courts in such county under this section, and shall report to the Department of Finance and Administration the total number of violations under each subsection for which state assessments were collected in the circuit, county and justice courts in such county during such month. It shall be the duty of the municipal clerk of each municipality to deposit all such state assessments collected in the municipal court in such municipality on a monthly basis with the State Treasurer pursuant to appropriate procedures established by the State Auditor. The municipal clerk shall make a monthly lump-sum deposit of the total state assessments collected in the municipal court in such municipality under this section, and shall report to the Department of Finance and Administration the total number of violations under each subsection for which state assessments were collected in the municipal court in such municipality during such month.

(9) It shall be the duty of the Department of Finance and Administration to deposit on a monthly basis all such state assessments into the proper special fund in the State Treasury. The monthly deposit shall be based upon the number of violations reported under each subsection and the pro rata amount of such assessment due to the appropriate special fund. The Department of Finance and Administration shall issue regulations providing for the proper allocation of these special funds.

(10) The State Auditor shall establish by regulation procedures for refunds of state assessments, including refunds associated with assessments imposed before July 1, 1990, and refunds after appeals in which the defendant's conviction is reversed. The Auditor shall provide in such regulations for certification of eligibility for refunds and may require the defendant seeking a refund to submit a verified copy of a court order or abstract by which such defendant is entitled to a refund. All refunds of state assessments shall be made in accordance with the procedures established by the Auditor.

COMMENTARY

Many changes made to amounts in tables in 2007 legislature. No change to amount for crime stoppers.

This is yet another of the excellent comprehensive state statutes enhancing the Crime Stoppers program. It has many of the best features of the Texas legislation. The state Council is considered to be one of the better ones currently in existence.

The Mississippi Legislature made significant changes with amendments in 2001. Most significant was the provision which allowed for more special funding of Crime Stoppers programs by the county and municipal governments. Additionally, the 2001 amendments included the most specific legislation to date which protected Crime Stoppers records in the hands of "telecommunications service" providers. Such legislation was in the aftermath of a much-publicized case in Quincy, Illinois in which the telephone records of a local Crime Stoppers program were subpoenaed by a criminal defendant.

NEW MEXICO

NEW MEXICO

General Statutes of New Mexico

Chapter 29, Article 12A

29-12A-1. Short Title

This act may be cited as the "Crime Stoppers Act".

29-12A-2. Advisory council; composition; vacancies; payment

A. The "crime stoppers advisory council" is created. The council shall consist of five members from local crime stoppers programs, four of whom shall be from the four quadrants of the state and one from Albuquerque. All members of the council shall be appointed by the governor for two-year terms.

B. A vacancy on the council shall be filled by gubernatorial appointment for the remainder of the unexpired term. A vacancy on the council shall not impair the right of the remaining members to exercise all the powers and duties of the council.

C. Members of the council shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation or allowance.

29-12A-3. Powers and duties of commission; surety bonds.

A. The powers and duties of the crime stoppers commission are to:

(1) advise and assist in the creation and maintenance of local crime stoppers programs;

(2) certify local crime stoppers programs for the purposes of confidentiality of records, privileges and immunities set forth in the Crime Stoppers Act;

(3) encourage the media to promote the functions of local crime stoppers programs; and

(4) facilitate training for local crime stoppers programs.

B. The council shall not take part in the receipt of reports or tips regarding criminal activity.

29-12A-4. Confidentiality of records

A. Evidence of a communication between a person submitting a report to a local crime stoppers program and the person accepting the report on behalf of the program is not admissible in a court or an administrative proceeding, except as provided in Subsection B of this section.

B. Records and reports of a local crime stoppers program are confidential and shall not be produced before a court or other tribunal, except on a motion by:

(1) a criminal defendant claiming that a record or report contains specific evidence that is exculpatory to the defendant on trial for that offense; or

(2) a person in civil court who has been exonerated of a criminal charge that was filed as a result of a report to a local crime stoppers program, and denial of access to a record or report would leave the person without the ability to offer prima facie proof that a legal injury was suffered through the wrongful acts of another.

C. Upon motion made pursuant to Subsection B of this section, a court may subpoena a record or report, but shall conduct an in camera inspection of the materials produced to determine whether disclosure pursuant to Subsection B of this section. If the courts finds evidence to disclose and whether the identity of the person who submitted the report to the local crime stoppers program must be disclosed.

D. The court shall protect the identity of a person who submits a report to a local crime stoppers program as it would protect the identity of a confidential police informer.

E. A local crime stoppers program shall be certified by the crime stoppers advisory council before it can claim confidentiality under this section.

COMMENTARY

(this is a new statute – previously was 29-12, which expired July 2000). I deleted the old, do we need to keep it in? This is the first Crime Stoppers statute ever enacted. It became law in 1978, in the state where Crime Stoppers originated, in Albuquerque, by Detective Greg MacAleese, in September, 1976. MacAleese was honored as the "Police Officer of the Year" by the *International Association of Chiefs of Police* and *Parade* Magazine in 1977.

The statute created a state commission to promote Crime Stoppers. The statute protects records of the state commission, but fails to protect records of local Crime Stoppers programs. A criminal penalty can be imposed for violation of the confidentiality of state commission information.

A *sunset law* provision will end the effectiveness of the statute on July 1, 2000, unless other legislation extends the life of the statute. It is the editor's understanding that the Crime Stoppers program and the statutes will be extended and will not fall victim to the *sunset law*. **Update: The New Mexico legislation above was NOT re-enacted, and therefore was repealed automatically on July 1, 2000. It was replaced two years later with new legislation. Rather than remove the original, now repealed, statute from this book, it is left so that all can study what was the very first Crime Stoppers statute in history.**

29-12A-5. Confidentiality; penalty

A. It is unlawful for any member, officer or employee of a local crime stoppers program to reveal to an individual, other than the proper law enforcement agencies:

(1) information gained through the program relating to criminal activity; or

(2) the contents of records and reports that are confidential.

B. A person who violates Subsection A of this section is guilty of a misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978.

HISTORY: Laws 2003, ch. 249, § 5.

§ 29-12A-6. Immunity from liability

A person who in good faith communicates a report of criminal activity to a crime stoppers program or who in good faith receives, forwards or acts upon such a report is immune from civil liability for any act or omission resulting in the arrest, filing of criminal charges or trial of a person who is later exonerated or acquitted of a criminal charge.

HISTORY: Laws 2003, ch. 249, § 6.

NEW MEXICO

General Statutes of New Mexico

Chapter 31, Article 18

31-18-15.

A. If a person is convicted of a non-capital felony, the basic sentence of imprisonment is as follows:

(1) for a first degree felony resulting in the death of a child, life imprisonment;
(2) for a first degree felony for aggravated criminal sexual penetration, life imprisonment;
(3) for a first degree felony, eighteen years imprisonment;
(4) for a second degree felony resulting in the death of a human being, fifteen years imprisonment;
(5) for a second degree felony for a sexual offense against a child, fifteen years imprisonment;
(6) for a second degree felony, nine years imprisonment;
(7) for a third degree felony resulting in the death of a human being, six years imprisonment;
(8) for a third degree felony for a sexual offense against a child, six years imprisonment;
(9) for a third degree felony, three years imprisonment; or
(10) for a fourth degree felony, eighteen months imprisonment.

B. The appropriate basic sentence of imprisonment shall be imposed upon a person convicted and sentenced pursuant to Subsection A of this section, unless the court alters the sentence pursuant to the provisions of the Criminal Sentencing Act.

C. The court shall include in the judgment and sentence of each person convicted and sentenced to imprisonment in a corrections facility designated by the corrections department authority for a period of parole to be served in accordance with the provisions of Section 31-21-10 NMSA 1978 after the completion of any actual time of imprisonment and authority to require, as a condition of parole, the payment of the costs of parole services and reimbursement to a law enforcement agency or local crime stopper program in accordance with the provisions of that section. The period of parole shall be deemed to be part of the sentence of the convicted person in addition to the basic sentence imposed pursuant to Subsection A of this section together with alterations, if any, pursuant to the provisions of the Criminal Sentencing Act.

D. When a court imposes a sentence of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the basic sentence of imprisonment provided pursuant to the provisions of Subsection A of this section, the period of parole shall be served in accordance with the provisions of Section 31-21-10 NMSA 1978 for the degree of felony for the basic sentence for which the inmate was convicted. For the

purpose of designating a period of parole, a court shall not consider that the basic sentence of imprisonment was suspended or deferred and that the inmate served a period of imprisonment pursuant to the provisions of the Criminal Sentencing Act.

E. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed:

(1) for a first degree felony resulting in the death of a child, seventeen thousand five hundred dollars ($17,500);
(2) for a first degree felony for aggravated criminal sexual penetration, seventeen thousand five hundred dollars ($17,500);
(3) for a first degree felony, fifteen thousand dollars ($15,000);
(4) for a second degree felony resulting in the death of a human being, twelve thousand five hundred dollars ($12,500);
(5) for a second degree felony for a sexual offense against a child, twelve thousand five hundred dollars ($12,500);
(6) for a second degree felony, ten thousand dollars ($10,000);
(7) for a third degree felony resulting in the death of a human being, five thousand dollars ($5,000);
(8) for a third degree felony for a sexual offense against a child, five thousand dollars ($5,000); or
(9) for a third or fourth degree felony, five thousand dollars ($5,000).

F. When the court imposes a sentence of imprisonment for a felony offense, the court shall indicate whether or not the offense is a serious violent offense, as defined in Section 33-2-34 NMSA 1978. The court shall inform an offender that the offender's sentence of imprisonment is subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. If the court fails to inform an offender that the offender's sentence is subject to those provisions or if the court provides the offender with erroneous information regarding those provisions, the failure to inform or the error shall not provide a basis for a writ of habeas corpus.

G. No later than October 31 of each year, the New Mexico sentencing commission shall provide a written report to the secretary of corrections, all New Mexico criminal court judges, the administrative office of the district attorneys and the chief public defender. The report shall specify the average reduction in the sentence of imprisonment for serious violent offenses and nonviolent offenses, as defined in Section 33-2-34 NMSA 1978, due to meritorious deductions earned by prisoners during the previous fiscal year pursuant to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. The corrections department shall allow the commission access to documents used by the department to determine earned meritorious deductions for prisoners.

NEW MEXICO

General Statutes of New Mexico

Chapter 31, Article 21

***31-21-10.* Parole authority and procedure.**

A. An inmate of an institution who was sentenced to life imprisonment as the result of the commission of a capital felony, who was sentenced to life imprisonment as the result of a conviction for a first degree felony resulting in the death of a child, who was convicted of three violent felonies and sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978 or who was convicted of two violent sexual offenses and sentenced pursuant to Subsection A of Section 31-18-25 NMSA 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a parole hearing after he has served thirty years of his sentence. Before ordering the parole of an inmate sentenced to life imprisonment, the board shall:

(1) interview the inmate at the institution where he is committed;
(2) consider all pertinent information concerning the inmate, including:
  (a) the circumstances of the offense;
  (b) mitigating and aggravating circumstances;
  (c) whether a deadly weapon was used in the commission of the offense;
  (d) whether the inmate is a habitual offender;
  (e) the reports filed under Section 31-21-9 NMSA 1978; and
  (f) the reports of such physical and mental examinations as have been made while in an institution;
(3) make a finding that a parole is in the best interest of society and the inmate; and
(4) make a finding that the inmate is able and willing to fulfill the obligations of a law-abiding citizen.

If parole is denied, the inmate sentenced to life imprisonment shall again become entitled to a parole hearing at two-year intervals. The board may, on its own motion, reopen any case in which a hearing has already been granted and parole denied.

B. Unless the board finds that it is in the best interest of society and the parolee to reduce the period of parole, a person who was convicted of a capital felony shall be required to undergo a minimum period of parole of five years. During the period of parole, the person shall be under the guidance and supervision of the board.

C. Except for sex offenders as provided in Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a first, second or third degree felony and who has served the sentence of

imprisonment imposed by the court in an institution designated by the corrections department shall be required to undergo a two-year period of parole. An inmate who was convicted of a fourth degree felony and who has served the sentence of imprisonment imposed by the court in an institution designated by the corrections department shall be required to undergo a one-year period of parole. During the period of parole, the person shall be under the guidance and supervision of the board.

D. Every person while on parole shall remain in the legal custody of the institution from which he was released, but shall be subject to the orders of the board. The board shall furnish to each inmate as a prerequisite to his release under its supervision a written statement of the conditions of parole that shall be accepted and agreed to by the inmate as evidenced by his signature affixed to a duplicate copy to be retained in the files of the board. The board shall also require as a prerequisite to release the submission and approval of a parole plan. If an inmate refuses to affix his signature to the written statement of the conditions of his parole or does not have an approved parole plan, he shall not be released and shall remain in the custody of the institution in which he has served his sentence, excepting parole, until such time as the period of parole he was required to serve, less meritorious deductions, if any, expires, at which time he shall be released from that institution without parole, or until such time that he evidences his acceptance and agreement to the conditions of parole as required or receives approval for his parole plan or both. Time served from the date that an inmate refuses to accept and agree to the conditions of parole or fails to receive approval for his parole plan shall reduce the period, if any, to be served under parole at a later date. If the district court has ordered that the inmate make restitution to a victim as provided in Section 31-17-1 NMSA 1978, the board shall include restitution as a condition of parole. The board shall also personally apprise the inmate of the conditions of parole and his duties relating thereto.

E. When a person on parole has performed the obligations of his release for the period of parole provided in this section, the board shall make a final order of discharge and issue him a certificate of discharge.

F. Pursuant to the provisions of Section 31-18-15 NMSA 1978, the board shall require the inmate as a condition of parole:

(1) to pay the actual costs of his parole services to the adult probation and parole division of the corrections department for deposit to the corrections department intensive supervision fund not exceeding one thousand eight hundred dollars ($1,800) annually to be paid in monthly installments of not less than twenty-five dollars ($25.00) and not more than one hundred fifty dollars ($150), as set by the appropriate district supervisor of the adult probation and parole division, based upon the financial circumstances of the defendant. The defendant's payment of the supervised parole costs shall not be waived unless the board holds an evidentiary hearing and finds that the defendant is unable to pay the costs. If the board waives the defendant's payment of the supervised parole costs and the defendant's financial circumstances subsequently change so that the defendant is able to pay the costs, the appropriate district supervisor of the adult probation and parole division shall advise the board and the board shall hold an evidentiary hearing to determine whether the waiver should be rescinded; and

(2) to reimburse a law enforcement agency or local crime stopper program for the amount of any reward paid by the agency or program for information leading to his arrest, prosecution or conviction.

G. The provisions of this section shall apply to all inmates except geriatric, permanently incapacitated and terminally ill inmates eligible for the medical and geriatric parole program as provided by the Parole Board Act.

COMMENTARY

The State of New Mexico, although it allowed the original Crime Stoppers legislation to be repealed under a Sunset Act, did not repeal this statute which provides the court with the authority to order a defendant to repay the amount that was paid as a Crime Stoppers reward if his case was solved by Crime Stoppers.

NEW MEXICO

General Statutes of New Mexico

Chapter 31, Article 20

31-20-6.

The magistrate, metropolitan or district court shall attach to its order deferring or suspending sentence reasonable conditions as it may deem necessary to ensure that the defendant will observe the laws of the United States and the various states and the ordinances of any municipality. The defendant upon conviction shall be required to reimburse a law enforcement agency or **local crime stopper program** for the amount of any reward paid by the agency or program for information leading to the defendant's arrest, prosecution or conviction, but in no event shall reimbursement to the crime stopper program preempt restitution to victims pursuant to the provisions of Section 31-17-1 NMSA 1978. The defendant upon conviction shall be required to pay the actual costs of the defendant's supervised probation service to the adult probation and parole division of the corrections department or appropriate responsible agency for deposit to the corrections department intensive supervision fund not exceeding one thousand eight hundred dollars ($1,800) annually to be paid in monthly installments of not less than twenty-five dollars ($25.00) and not more than one hundred fifty dollars ($150), as set by the appropriate district supervisor of the adult probation and parole division, based upon the financial circumstances of the defendant. The defendant's payment of the supervised probation costs shall not be waived unless the court holds an evidentiary hearing and finds that the defendant is unable to pay the costs. If the court waives the defendant's payment of the supervised probation costs and the defendant's financial circumstances subsequently change so that the defendant is able to pay the costs, the appropriate district supervisor of the adult probation and parole division shall advise the court and the court shall hold an evidentiary hearing to determine whether the waiver should be rescinded. The court may also require the defendant to:

A. provide for the support of persons for whose support the defendant is legally responsible;

B. undergo available medical or psychiatric treatment and enter and remain in a specified institution when required for that purpose;

C. be placed on probation under the supervision, guidance or direction of the adult probation and parole division for a term not to exceed five years;

D. serve a period of time in volunteer labor to be known as "community service". The type of labor and period of service shall be at the sole discretion of the court; provided that a person receiving community service shall be immune from any civil liability other than gross negligence arising out of the community service, and a person who performs community service pursuant to court order or a criminal diversion program shall not be entitled to wages, shall not be considered an employee and shall not be entitled to workers' compensation, unemployment benefits or any other benefits otherwise provided by law. As used in this subsection, "community service" means labor that benefits the public at large or a public, charitable or educational entity or institution;

E. make a contribution of not less than ten dollars ($10.00) and not more than one hundred dollars ($100), to be paid in monthly installments of not less than five dollars ($5.00), to a local crime stopper program, a local domestic violence prevention or treatment program or a local drug abuse resistance education program that operates in the territorial jurisdiction of the court; and

F. satisfy any other conditions reasonably related to the defendant's rehabilitation.

COMMENTARY

This statute makes it clear that a court order requiring a defendant to repay a Crime Stoppers reward does not prohibit the court from also ordering the defendant to compensate other victims of his or her crime.

TEXAS

TEXAS
GOVERNMENT CODE
TITLE 2. JUDICIAL BRANCH
SUBTITLE I. COURT FEES AND COSTS
CHAPTER 103. ADDITIONAL COURT FEES AND COSTS
SUBCHAPTER B. MISCELLANEOUS FEES AND COSTS

§ 103.021. Additional Fees and Costs in Criminal or Civil Cases

An accused or defendant, or a party to a civil suit, as applicable, shall pay the following fees and costs if ordered by the court or otherwise required:

4) repayment of reward paid by a crime stoppers organization on conviction of a felony (Art. 37.073, Code of Criminal Procedure) . . . amount ordered;

(6) payment to a crime stoppers organization as condition of community supervision (Art. 42.12, Code of Criminal Procedure) . . . not to exceed $ 50;

Texas Government Code

Chapter 414. Crime Stoppers Advisory Council

Section 414.001. Definitions. In this chapter:

(1) "Council" means the Crime Stoppers Advisory Council.

(2) "Crime stoppers organization" means:

(A) a private, nonprofit organization that is operated on a local or statewide level, that accepts and expends donations for rewards to persons who report to the organization information about criminal activity and that forwards the information to the appropriate law enforcement agency; or

(B) A public organization that is operated on a local or statewide level, that pays rewards to persons who report to the organization information about criminal activity and that forwards the information to the appropriate law enforcement agency.

Section 414.002. Organization of Council.

(a) The Crime Stoppers Advisory Council is within the criminal justice division of the Governor's office.

(1) evidence that is exculpatory to the defendant; or

(2) information necessary to a plaintiff as described by Subsection (b)(2).

(d) If the court determines that the materials produced contain evidence that is exculpatory to the defendant or information necessary to a plaintiff as described by Subsection (b)(2), the court shall 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 state or federal constitution requires the disclosure of that person's identity. The court shall 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 under this section.

(e) The court shall return to the council or crime stoppers organization the materials that are produced under this section but not disclosed to the movant. The council or crime stoppers organization shall store the materials at least until the first anniversary of the following appropriate date:

(1) the date of 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.

Section 414.009. Misuse of Information.

(a) A person who is a member or employee of the council or who accepts a report of criminal activity on behalf of a crime stoppers organization commits an offense if the person intentionally or knowingly divulges to a person not employed by a law enforcement agency the content of a report of a criminal act or the identity of the person who made the report without the consent of the person who made the report.

(b) An offense under this section is a Class A misdemeanor, except that an offense under this section is a third degree felony if the offense is committed with intent to obtain monetary gain or other benefit.

(c) A person convicted of an offense under this section is not eligible for state employment during the five-year period following the date that the conviction becomes final.

Section 414.010. Payments From Defendants on Community Supervision; Reward Repayments.

(a) Except as provided by Subsection (d), a crime stoppers organization certified by the council to receive money in the form of payments from defendants placed on community supervision under Article 42.12, Code of Criminal Procedure, or money in the form of repayments of

rewards under Articles 37.073 and 42.152, Code of Criminal Procedure, may use not more than 20 percent of the money annually received to pay costs incurred in administering the organization and shall use the remainder of the money, including any interest earned on the money, only to reward persons who report information concerning criminal activity. Not later than January 31 of each year, a crime stoppers organization that receives or expends money under this section shall file a detailed report with the council.

(b) A crime stoppers organization shall establish a separate reward account for money received under this section.

(c) Not later than the 60th day after the date of dissolution or decertification of a crime stoppers organization, a dissolved or decertified organization shall forward all unexpended money received under this section to the comptroller. The comptroller shall deposit the money in the crime stoppers assistance account in the general revenue fund.

(d) If the amount of funds received by a crime stoppers organization under this section exceeds three times the amount of funds that the organization uses to pay rewards during a fiscal year based on the average amount of funds used to pay rewards during each of the preceding three fiscal years, the organization may deposit the excess amount of funds in a separate interest-bearing account to be used by the organization for law enforcement purposes relating to crime stoppers or juvenile justice, including intervention, apprehension, and adjudication. An organization that deposits excess funds in an account as provided by this subsection may use any interest earned on the funds to pay costs incurred in administering the organization.

Section 414.011. Certification of Organizations to Receive Payments and Reward Repayments.

(a) The council shall, on application by a crime stoppers organization, determine whether the organization is qualified to receive repayments of rewards under Article 37.073 and 42.152, Code of Criminal Procedure, or payments from a defendant under Article 42.12, Code of Criminal Procedure. The council shall certify a crime stoppers organization to receive those repayments or payments if, considering the organization, continuity, leadership, community support, and general conduct of the crime stoppers organization, the council determines that the repayments or payments will be spent to further the crime prevention purposes of the organization.

(b) Each crime stoppers organization certified by the council to receive repayments under Articles 37.073 and 42.152, Code of Criminal Procedure, or payments from a defendant under Article 42.12, Code of Criminal Procedure, is subject to a review or audit, including financial and programmatic reviews or audits, or finances or programs, at the direction of the criminal justice division of the governor's office or its designee. A copy of the review or audit report shall be submitted to the criminal justice division.

(c) The criminal justice division of the governor's office or its designee shall draft rules for adoption by the council relating to a review or audit requested pursuant to subsection (b).

(d) A certification issued by the council is valid for a period of two years. During this two-year period, the council shall decertify a crime stoppers organization if it determines that the organization no longer meets the certification requirements.

(e) The council shall approve a crime stoppers organization for the purposes of Subsection (a) of this section even if a judge has not requested a determination for that organization and shall maintain a current list of organizations approved for that purpose.

Section 414.012. Toll-Free Telephone Service.

The council shall establish and operate a toll-free telephone service and make the service accessible to persons residing in areas of the state not served by a crime stoppers organization for reporting to the council information about criminal acts. The toll-free service must be available between the hours of 5 p.m. and 8 a.m. Monday through Thursday and from 5 p.m. Friday until 8 a.m. Monday. The council shall forward the information received to appropriate law enforcement agencies or crime stoppers organization.

Section 414.013. Immunity From Civil Liability.

(a) A person who communicates to the council or a crime stoppers organization a report of criminal activity that leads to the arrest of, the filing of charges against, or the conviction of a person for a criminal offense is immune from civil liability for damages resulting from the communication unless the communication was intentionally, willfully, or wantonly negligent or done with conscious indifference or reckless disregard for the safety of others.

(b) A person who in the course and scope of the person's duties or functions receives, forwards, or acts on a report of criminal activity communicated to the council or a crime stoppers organization is immune from civil liability for damages resulting from an act or omission in the performance of the person's duties or functions unless the act or omission was intentional, willfully or wantonly negligent, or done with conscious indifference or reckless disregard for the safety of others.

COMMENTARY

The main body of Crime Stoppers legislation in Texas is found in Chapter 414 of the Texas Government Code. This is a codification of former Article 4413(50), Vernon's Annotated Texas Civil Statutes. The original statute went into effect on September 1, 1981, and it was codified on September 1, 1987.

The original Texas statute was copied, in large part, from the New Mexico statute of 1978. However, the Texas statute went much further than the New Mexico statute by protecting local Crime Stoppers records, rather than just those of the state council. The Texas statute also created a specific procedure which must be followed in order to obtain Crime Stoppers communication records.

Later amendments (Section 414.010 and 414.011 in 1989) expanded the law by allowing payments from probationers to "certified" local Crime Stoppers programs.

The provisions relating to probationers making contributions to Crime Stoppers were considered necessary after Attorney General Opinion No. JM-853 (February 8, 1988) declared that Texas judges could not order probationers to contribute money to Crime Stoppers, and that such contribution could not be considered *community service.*

Certification of local Crime Stoppers programs, prior to receiving court-generated funds, was deemed necessary to prevent fraud by any individual or group wishing to simply declare themselves a "Crime Stoppers" program and be entitled to receive funds. Additionally safeguards were needed to see that money was not used by the local programs for political and other inappropriate activities.

There have been no known criminal charges ever filed against anyone for violating the "Misuse of Information" provision of Section 414.009. However, there have been a few cases where charges were filed against peace officers under other statutes for attempting to collect rewards they were not eligible to receive.

Under the statute, prior to the *in camera* procedures, all applications for disclosure had to be made to the Supreme Court of Texas. There were believed to have been four (4) applications to the Supreme Court of Texas for the disclosure of Crime Stoppers records of communications. With the exception of the first application (which revealed nothing in an "in camera" examination), applicants have been unsuccessful in convincing the Texas Supreme Court to order disclosure. See: In re Joe Cecil Smith, No. C-1699 (December 15, 1982); Meitzen v. Fort Bend County Crime Stoppers, Inc. , No. C-4580 (December 4, 1985); Thomas v. Kinkeade, No. C-6189 (February 23, 1987); and, Ex Parte: George Hendon, No. C-6624 (August 24, 1987).

House Bill No. 2397 was enacted in 1999 to expand the terms of council members from two (2) years to four (4) years, so as to create staggered terms of office and promote a degree of continuity and experience. Section 2 of the Bill stated: "At their first meeting after this Act takes effect, the members of the Crime Stoppers Advisory Council shall draw for three terms expiring September 1, 2000, and two terms expiring September 1, 2001."

During the 2001 Legislative Session, Section 414.010(a) was amended to increase from 10% to 20% the amount of funds which may be used to defray administrative expenses.

Significant changes were made to the statute in 2003. An *in camera* procedure was created for civil actions, similar to the one in criminal cases. This was as a result of the *Hinterlong* decision rendered by the Texas Court of Appeals (Fort Worth) in 2002 and the *Hinterlong II* decision in 2003. In *Hinterlong*, the Court ruled that the old statute was unconstitutional, as applied, because it did not allow access to the courts should someone need information about an informant in order to file suit for civil damages in cases where a person had been falsely accused in a malicious manner and already acquitted in the criminal courts. Thus, the 2003 amendment was a remedial response to the ruling.

Perhaps the most welcome provision is the new *civil immunity* law, created by Section 414.013. This provision was prompted by the concerns following the *Hinterlong* decision(s) in 2002 and 2003. The State of New Mexico, using the first draft of this provision as a guide, also now has a civil immunity provision in their Crime Stoppers statute.

The statutory revisions contained in Sections 414.008 and 414.013 are effective September 1, 2003.

The addition of subsection (6) to Section 414.005, creating a new duty of the Council regarding registered sex offenders, is ill-advised as Crime Stoppers already covers the matter generically. At least one other State has now enacted a similar duty upon its State council's duties. Please confer with the author of these Commentaries before joining an effort to so revise your State's legislation pertaining to Crime Stoppers.

TEXAS

LOCAL GOVERNMENT CODE
TITLE 4. FINANCES
SUBTITLE C. FINANCIAL PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT
CHAPTER 133. CRIMINAL AND CIVIL FEES PAYABLE TO THE COMPTROLLER
SUBCHAPTER C. CRIMINAL FEES

§ 133.102. Consolidated Fees on Conviction

(a) A person convicted of an offense shall pay as a court cost, in addition to all other costs:

(1) $ 133 on conviction of a felony;

(2) $ 83 on conviction of a Class A or Class B misdemeanor; or

(3) $ 40 on conviction of a nonjailable misdemeanor offense, including a criminal violation of a municipal ordinance, other than a conviction of an offense relating to a pedestrian or the parking of a motor vehicle.

(b) The court costs under Subsection (a) shall be collected and remitted to the comptroller in the manner provided by Subchapter B.

(c) The money collected under this section as court costs imposed on offenses committed on or after January 1, 2004, shall be allocated according to the percentages provided in Subsection (e).

(d) The money collected as court costs imposed on offenses committed before January 1, 2004, shall be distributed using historical data so that each account or fund receives the same amount of money the account or fund would have received if the court costs for the accounts and funds had been collected and reported separately.

(e) The comptroller shall allocate the court costs received under this section to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the court costs for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

(1) abused children's counseling #40 0.0088 percent;

(2) **crime stoppers** assistance #40 0.2581 percent;

(3) breath alcohol testing #40 0.5507 percent;

(4) Bill Blackwood Law Enforcement Management Institute #40 2.1683 percent;

(5) law enforcement officers standards and education #40 5.0034 percent;

(6) comprehensive rehabilitation #40 5.3218 percent;

(7) operator's and chauffeur's license #40 11.1426 percent;

(8) criminal justice planning #40 12.5537 percent;

(9) an account in the state treasury to be used only for the establishment and operation of the Center for the Study and Prevention of Juvenile Crime and Delinquency at Prairie View A&M University #40 1.2090 percent;

(10) compensation to victims of crime fund #40 37.6338 percent;

(11) fugitive apprehension account #40 12.0904 percent;

(12) judicial and court personnel training fund #40 4.8362 percent;

(13) an account in the state treasury to be used for the establishment and operation of the Correctional Management Institute of Texas and Criminal Justice Center Account #40 1.2090 percent; and

(14) fair defense account #40 6.0143 percent.

(f) Of each dollar credited to the law enforcement officers standards and education account under Subsection (e)(5):

(1) 33.3 cents may be used only to pay administrative expenses; and

(2) the remainder may be used only to pay expenses related to continuing education for persons licensed under Chapter 1701, Occupations Code.

Texas Local Government Code

Subchapter Z, Section 351.901

Section 351.901. Donation to Certain Crime Stoppers and Crime Prevention Organizations.

(a) In this section:

(1) "Crime stoppers organization" means a private, nonprofit organization that:

(A) is operated on a local or statewide level;

(B) accepts and expends donations for rewards to persons who report to the organization information about criminal activity; and

(C) forwards the information to the appropriate law enforcement agency.

(2) "Crime prevention organization" means an organization with an advisory council consisting of local law enforcement officers and volunteers from the community that:

(A) is operated on a local or statewide level;

(B) identifies crime-related issues relevant to a segment of society particularly prone to victimization, including the elderly population; and

(C) provides assistance to the community in the form of crime prevention and education and provides training for law enforcement officers in dealing effectively with the segment of society prone to victimization.

(b) The commissioners court of a county by contract may donate money to one or more crime stoppers or crime prevention organizations for expenditure by the organizations to meet the goals identified in Subsection (a). The total amount of all donations made in a calendar year may not exceed $25,000.00.

COMMENTARY

This is the codification of what was formerly Article 2372bb, Vernon's Annotated Texas Civil Statutes. It allows the County Commissioners Court to contribute money to Crime Stoppers. The "County Judge" (who does not have to be an attorney) presides over the county's governing body consisting of the County Judge and four (4) "Commissioners." Texas has 254 counties, each having a Commissioners Court. Thus, a potential $6,350,000.00 per year could be legally derived from this funding source.

In practice, however, only a small percentage of Commissioners Courts donate money to Crime Stoppers for rewards. Perhaps this is because of a lack of funds and/or the counties adhering to the original intent of Crime Stoppers to assist law enforcement without using tax revenues or

government funds. Those that do use Section 351.901 usually donate the money by "Resolution" or budget request, and fail to actually enter into a "contract" as required by statute.

In 1999, House Bill No. 88 added "Crime prevention organizations" to join Crime Stoppers organizations as being eligible for such funds, thus creating a competition for funds under the section.

LOCAL GOVERNMENT CODE
TITLE 11. PUBLIC SAFETY
SUBTITLE C. PUBLIC SAFETY PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT
CHAPTER 363. CRIME CONTROL AND PREVENTION DISTRICTS
SUBCHAPTER D. POWERS AND DUTIES

§ 363.151. District Responsibilities; Limitations on Expenditures

(a) The district may finance all the costs of a crime control and crime prevention program, including the costs for personnel, administration, expansion, enhancement, and capital expenditures.

(b) The program may include police and law enforcement related programs, including:

(3) countywide **crime stoppers** telephone lines;

TEXAS

Texas Code of Criminal Procedure

Article 42.12, Section 11, (a) (21)

Sec. 11. (a) The judge of the court having jurisdiction of the case shall determine the conditions of community supervision and may, at any time, during the period of community supervision alter or modify the conditions. The judge may impose any reasonable condition that is designed to protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform the defendant. Conditions of community supervision may include, but shall not be limited to, the conditions that the defendant shall:

> (21) Make one payment in an amount not to exceed $50 to a crime stoppers organization as defined by Section 414.001, Government Code, and as certified by the Crime Stoppers Advisory Council;

COMMENTARY

This 1989 amendment to the Texas Code of Criminal Procedure allows the court to order a probationer (person on "community service") to make a one-time payment to a local Crime Stoppers program. Only "certified" programs can be the recipient.

TEXAS

Texas Code of Criminal Procedure

Article 42.01, Section 1, 24

Section 1. A judgment is the written declaration of the court signed by the trial judge and entered of record showing the conviction or acquittal of the defendant. The sentence served shall be based on the information contained in the judgment. The judgment should reflect:

24. In the event that the judge orders the defendant to repay a reward or part of a reward under Articles 37.073 and 42.152 of this code, a statement of the amount of the payment or payments required to be made.

COMMENARY

This provision simply directs that the judge must write into the judgment a "record" or "statement" of the amount of payments to be made to Crime Stoppers. This seems to be common sense put into law.

TEXAS

Texas Code of Criminal Procedure

Article 42.152

Article 42.152. Repayment of Reward.

(a) If a judge orders a defendant to repay a reward or part of a reward under Article 37.073 of this code, the court shall assess this cost against the defendant in the same manner as other costs of prosecution are assessed against a defendant. The court may order the defendant to:

(1) pay the entire amount required when sentenced is pronounced;

(2) pay the entire amount required at a later date specified by the court; or

(3) pay specified portions of the required amount at designated intervals;

(b) After receiving a payment from a person ordered to make the payment under this article, the clerk of the court or fee officer shall:

(1) make a record of the payment;

(2) deduct a one-time $7 processing fee from the reward repayment;

(3) forward the payment to the designated crime stoppers organization; and

(4) make a record of the forwarding of the payment.

COMMENTARY

Article 42.152 is self-explanatory. There is a $7 processing fee which goes to the court clerk in order to compensate the clerk's office for its time in handling the repayment of rewards.

TEXAS

Texas Code of Criminal Procedure

Article 102.013

Article 102.013. Court Costs: Crime Stoppers Assistance Account.

(a) The legislature shall appropriate funds from the crime stoppers assistance account to the Criminal Justice Division of the Governor's Office. The Criminal Justice Division may use 10 percent of the funds for the operation of the toll-free telephone service under Section 414.012, Government Code, and shall distribute the remainder of the funds only to crime stoppers organizations. The Criminal Justice Division may adopt a budget and rules to implement the distribution of these funds.

(b) All funds distributed by the Criminal Justice Division under Subsection (a) of this article are subject to audit by the state auditor. All funds collected or distributed are subject to audit by the Governor's Division of Planning Coordination.

(c) In this article, "crime stoppers organization" has the meaning assigned by Section 414.001, Government Code.

COMMENTARY

Article 102.013 outlines the manner in which the funds in the Crime Stoppers Assistance Account are distributed. These funds amount to several hundred thousand dollars and will be used for training (including travel), supplies and operating expenses (printing, stationery, etc.), and equipment (fax machines, file cabinets, etc.)

The idea is to allow the *criminal* to help pay for a system that assist in the criminal's apprehension, rather than use tax revenues or state monies.

TEXAS

Texas Code of Criminal Procedure

Article 102.75. Court Costs for Special Services. – Repealed.

UNITED STATES OF AMERICA

Treasury Regulation

UNITED STATES OF AMERICA

Department of the Treasury, Internal Revenue Service, Regulations

26 CFR, Part 1, Paragraph 2, Section 1, 6041-3(n)

26 CFR, Part 1, Paragraph 2, Section l, 6041-3(n)*

A payment to an informer as an award, fee, or reward for information relating to criminal activity, but only if such payment is made by the United States, a State, Territory, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, or, with respect to payments made after December 31, 1987, by an organization that is described in Section 501(c)(3) and that makes such payments in furtherance of a charitable purpose to lessen the burdens of government within the meaning of Section 1, 501(c)(3)-1(d)(2)."

*Payments for which no return or information is required under Section 6041 (of the Internal Revenue Code).

COMMENTARY

Section 6041 requires a person engaged in a trade or business, who pays compensation of $600 or more to another person, to provide an information return to the Internal Revenue Service describing the transaction and amount. The 1988 amendment, published in the April 13, 1988, issue of the Federal Register, extended the government-paid reward reporting exemption to include private rewards paid by Section 501(c)(3) organizations such as Crime Stoppers. It was felt that the revision allows informants to maintain confidentiality, to enhance the effectiveness of informant programs, and remove the possibility of tax penalties being assessed Crime Stoppers for failure to file Form 1099 reports. The private organizations paying rewards were found to directly aid governmental law enforcement agencies by securing crime tips and paying rewards with private funds rather than government money. Congressman Dick Armey (R. Texas) led the successful efforts to change the regulation. It should be noted that the recipient of the reward is still receiving "income" which may be subject to taxation. However, it is the sole responsibility of the recipient to declare income and pay any taxes due.

(See the Indiana Statute which actually exempts from state taxation any Crime Stoppers reward that does not exceed $1,000.)

FEDERAL LEGISLATION:

VOLUNTER PROTECTION ACT OF 1997

And Texas State Statute as example of State counterpart to Federal Statute

VOLUNTER PROTECTION ACT OF 1997

VOLUNTEER PROTECTION ACT OF 1997

Public Law 105–19
105th Congress

An Act

June 18, 1997
[S. 543]

To provide certain protections to volunteers, nonprofit organizations, and governmental entities in lawsuits based on the activities of volunteers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Volunteer Protection Act of 1997.
42 USC 14501 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Volunteer Protection Act of 1997".

42 USC 14501.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares that—

(1) the willingness of volunteers to offer their services is deterred by the potential for liability actions against them;

(2) as a result, many nonprofit public and private organizations and governmental entities, including voluntary associations, social service agencies, educational institutions, and other civic programs, have been adversely affected by the withdrawal of volunteers from boards of directors and service in other capacities;

(3) the contribution of these programs to their communities is thereby diminished, resulting in fewer and higher cost programs than would be obtainable if volunteers were participating;

(4) because Federal funds are expended on useful and cost-effective social service programs, many of which are national in scope, depend heavily on volunteer participation, and represent some of the most successful public-private partnerships, protection of volunteerism through clarification and limitation of the personal liability risks assumed by the volunteer in connection with such participation is an appropriate subject for Federal legislation;

(5) services and goods provided by volunteers and nonprofit organizations would often otherwise be provided by private entities that operate in interstate commerce;

(6) due to high liability costs and unwarranted litigation costs, volunteers and nonprofit organizations face higher costs in purchasing insurance, through interstate insurance markets, to cover their activities; and

(7) clarifying and limiting the liability risk assumed by volunteers is an appropriate subject for Federal legislation because—

(A) of the national scope of the problems created by the legitimate fears of volunteers about frivolous, arbitrary, or capricious lawsuits;

(B) the citizens of the United States depend on, and the Federal Government expends funds on, and provides tax exemptions and other consideration to, numerous social programs that depend on the services of volunteers;

(C) it is in the interest of the Federal Government to encourage the continued operation of volunteer service organizations and contributions of volunteers because the Federal Government lacks the capacity to carry out all of the services provided by such organizations and volunteers; and

(D)(i) liability reform for volunteers, will promote the free flow of goods and services, lessen burdens on interstate commerce and uphold constitutionally protected due process rights; and

(ii) therefore, liability reform is an appropriate use of the powers contained in article 1, section 8, clause 3 of the United States Constitution, and the fourteenth amendment to the United States Constitution.

(b) PURPOSE.—The purpose of this Act is to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs, nonprofit organizations, and governmental entities that depend on volunteer contributions by reforming the laws to provide certain protections from liability abuses related to volunteers serving nonprofit organizations and governmental entities.

SEC. 3. PREEMPTION AND ELECTION OF STATE NONAPPLICABILITY. 42 USC 14502.

(a) PREEMPTION.—This Act preempts the laws of any State to the extent that such laws are inconsistent with this Act, except that this Act shall not preempt any State law that provides additional protection from liability relating to volunteers or to any category of volunteers in the performance of services for a nonprofit organization or governmental entity.

(b) ELECTION OF STATE REGARDING NONAPPLICABILITY.—This Act shall not apply to any civil action in a State court against a volunteer in which all parties are citizens of the State if such State enacts a statute in accordance with State requirements for enacting legislation—

(1) citing the authority of this subsection;

(2) declaring the election of such State that this Act shall not apply, as of a date certain, to such civil action in the State; and

(3) containing no other provisions.

SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS. 42 USC 14503.

(a) LIABILITY PROTECTION FOR VOLUNTEERS.—Except as provided in subsections (b) and (d), no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if—

(1) the volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;

(2) if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken

within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;

(3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; and

(4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to—

(A) possess an operator's license; or

(B) maintain insurance.

(b) CONCERNING RESPONSIBILITY OF VOLUNTEERS TO ORGANIZATIONS AND ENTITIES.—Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of such organization or entity.

(c) NO EFFECT ON LIABILITY OF ORGANIZATION OR ENTITY.—Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to harm caused to any person.

(d) EXCEPTIONS TO VOLUNTEER LIABILITY PROTECTION.—If the laws of a State limit volunteer liability subject to one or more of the following conditions, such conditions shall not be construed as inconsistent with this section:

(1) A State law that requires a nonprofit organization or governmental entity to adhere to risk management procedures, including mandatory training of volunteers.

(2) A State law that makes the organization or entity liable for the acts or omissions of its volunteers to the same extent as an employer is liable for the acts or omissions of its employees.

(3) A State law that makes a limitation of liability inapplicable if the civil action was brought by an officer of a State or local government pursuant to State or local law.

(4) A State law that makes a limitation of liability applicable only if the nonprofit organization or governmental entity provides a financially secure source of recovery for individuals who suffer harm as a result of actions taken by a volunteer on behalf of the organization or entity. A financially secure source of recovery may be an insurance policy within specified limits, comparable coverage from a risk pooling mechanism, equivalent assets, or alternative arrangements that satisfy the State that the organization or entity will be able to pay for losses up to a specified amount. Separate standards for different types of liability exposure may be specified.

(e) LIMITATION ON PUNITIVE DAMAGES BASED ON THE ACTIONS OF VOLUNTEERS.—

(1) GENERAL RULE.—Punitive damages may not be awarded against a volunteer in an action brought for harm based on the action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by an action of such volunteer which constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.

(2) CONSTRUCTION.—Paragraph (1) does not create a cause of action for punitive damages and does not preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages.

(f) EXCEPTIONS TO LIMITATIONS ON LIABILITY.—

(1) IN GENERAL.—The limitations on the liability of a volunteer under this Act shall not apply to any misconduct that—

(A) constitutes a crime of violence (as that term is defined in section 16 of title 18, United States Code) or act of international terrorism (as that term is defined in section 2331 of title 18) for which the defendant has been convicted in any court;

(B) constitutes a hate crime (as that term is used in the Hate Crime Statistics Act (28 U.S.C. 534 note));

(C) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court;

(D) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law; or

(E) where the defendant was under the influence (as determined pursuant to applicable State law) of intoxicating alcohol or any drug at the time of the misconduct.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to effect subsection (a)(3) or (e).

SEC. 5. LIABILITY FOR NONECONOMIC LOSS. 42 USC 14504.

(a) GENERAL RULE.—In any civil action against a volunteer, based on an action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity, the liability of the volunteer for noneconomic loss shall be determined in accordance with subsection (b).

(b) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—Each defendant who is a volunteer, shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which that defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant who is a volunteer under this section, the trier of fact shall determine the percentage of responsibility of that defendant for the claimant's harm.

SEC. 6. DEFINITIONS. 42 USC 14505.

For purposes of this Act:

(1) ECONOMIC LOSS.—The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(2) HARM.—The term "harm" includes physical, nonphysical, economic, and noneconomic losses.

(3) NONECONOMIC LOSSES.—The term "noneconomic losses" means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other nonpecuniary losses of any kind or nature.

(4) NONPROFIT ORGANIZATION.—The term "nonprofit organization" means—

(A) any organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note); or

(B) any not-for-profit organization which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note).

(5) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

(6) VOLUNTEER.—The term "volunteer" means an individual performing services for a nonprofit organization or a governmental entity who does not receive—

(A) compensation (other than reasonable reimbursement or allowance for expenses actually incurred); or

(B) any other thing of value in lieu of compensation, in excess of $500 per year, and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

SEC. 7. EFFECTIVE DATE.

(a) IN GENERAL.—This Act shall take effect 90 days after the date of enactment of this Act.

(b) APPLICATION.—This Act applies to any claim for harm caused by an act or omission of a volunteer where that claim is filed on or after the effective date of this Act but only if the harm that is the subject of the claim or the conduct that caused such harm occurred after such effective date.

Approved June 18, 1997.

LEGISLATIVE HISTORY—S. 543 (H.R. 911):

HOUSE REPORTS: No. 105–101, Pt. 1 (Comm. on the Judiciary) accompanying H.R. 911.

CONGRESSIONAL RECORD, Vol. 143 (1997):

May 1, considered and passed Senate.

May 21, considered and passed House, amended, in lieu of H.R. 911. Senate concurred in House amendment.

○

CHARITABLE IMMUNITY AND LIABILITY ACT OF 1987

Texas

(Example of State Counterpart to Federal Statute)

V.T.C.A., Civil Practice & Remedies Code § 84.001

Vernon's Texas Statutes and Codes Annotated Currentness
Civil Practice and Remedies Code (Refs & Annos)
Title 4. Liability in Tort
Chapter 84. Charitable Immunity and Liability (Refs & Annos)
§ 84.001. Name of Act

This Act may be cited as the Charitable Immunity and Liability Act of 1987.

CREDIT(S)

Added by Acts 1987, 70th Leg., ch. 370, § 1, eff. Sept. 1, 1987.

HISTORICAL AND STATUTORY NOTES

2005 Main Volume

Section 2 of Acts 1987, 70th Leg., ch. 370 provides:

"This Act takes effect September 1, 1987, and applies only to causes of action that accrue on or after that date. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for this purpose."

LAW REVIEW COMMENTARIES

Constitutionality of the Charitable Immunity and Liability Act of 1987. Note, 40 Baylor L.Rev. 657 (1988).

RESEARCH REFERENCES

2008 Electronic Update

Encyclopedias

TX Jur. 3d Charities § 36, Generally; Historical Background.

TX Jur. 3d Charities § 37, Law Applicable.

TX Jur. 3d Charities § 42, Exceptions to Limitations on Liability.

TX Jur. 3d Druggists § 64, Return of Unused Drugs.

TX Jur. 3d Negligence § 4, Statutory Exemptions and Limitations.

Forms

Texas Forms Legal and Business § 28:7, Contract and Tort Liability of Unincorporated Association.

Texas Forms Legal and Business § 28:14, Charitable Immunity and Liability.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 61:1, Introductory COMMENTs.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 61:7, Introductory COMMENTs.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 63:1, Introductory COMMENTs.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 135:3, Rights and Liabilities in General.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 215:3, Immunity from Tort Liability.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 61:35, Response--Allegation--Charitable Organization Excepted from Limited Liability.

Treatises and Practice Aids

Bogert - the Law of Trusts and Trustees § 394, Duties of Charitable Trustees--Standard of Care--Liabilities for Breach.

Bogert - the Law of Trusts and Trustees § 402, Tort Liability of Charitable Corporation and of Trustees for Charity.

Hamilton, 20 Tex. Prac. Series § 25.8, Liability in Tort and Contract Under Texas Uniform Unincorporated Nonprofit Association Act.

V. T. C. A., Civil Practice & Remedies Code § 84.001, TX CIV PRAC & REM § 84.001

Current through the end of the 2007 Regular Session of the 80th Legislature

END OF DOCUMENT

V.T.C.A., Civil Practice & Remedies Code § 84.002

Vernon's Texas Statutes and Codes Annotated Currentness
Civil Practice and Remedies Code (Refs & Annos)
Title 4. Liability in Tort
Chapter 84. Charitable Immunity and Liability (Refs & Annos)
§ 84.002. Findings and Purposes

The Legislature of the State of Texas finds that:

(1) robust, active, bona fide, and well-supported charitable organizations are needed within Texas to perform essential and needed services;

(2) the willingness of volunteers to offer their services to these organizations is deterred by the perception of personal liability arising out of the services rendered to these organizations;

(3) because of these concerns over personal liability, volunteers are withdrawing from services in all capacities;

(4) these same organizations have a further problem in obtaining and affording liability insurance for the organization and its employees and volunteers;

(5) these problems combine to diminish the services being provided to Texas and local communities because of higher costs and fewer programs;

(6) the citizens of this state have an overriding interest in the continued and increased delivery of these services that must be balanced with other policy considerations; and

(7) because of the above conditions and policy considerations, it is the purpose of this Act to reduce the liability exposure and insurance costs of these organizations and their employees and volunteers in order to encourage volunteer services and maximize the resources devoted to delivering these services.

CREDIT(S)

Added by Acts 1987, 70th Leg., ch. 370, § 1, eff. Sept. 1, 1987.

HISTORICAL AND STATUTORY NOTES

2005 Main Volume

Section 2 of Acts 1987, 70th Leg., ch. 370 provides:

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LIBRARY REFERENCES

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Charities ⇐48(2).
Westlaw Topic No. 75.
C.J.S. Charities §§ 33 to 34.

V.T.C.A., Civil Practice & Remedies Code § 84.003

Vernon's Texas Statutes and Codes Annotated Currentness
Civil Practice and Remedies Code (Refs & Annos)
Title 4. Liability in Tort
Chapter 84. Charitable Immunity and Liability (Refs & Annos)
§ 84.003. Definitions

In this chapter:

(1) "Charitable organization" means:

(A) any organization exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 [FN1] by being listed as an exempt organization in Section 501(c)(3) or 501(c)(4) of the code, [FN2] if it is a nonprofit corporation, foundation, community chest, or fund organized and operated exclusively for charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, fire protection or prevention, emergency medical or hazardous material response services, or educational purposes, including private primary or secondary schools if accredited by a member association of the Texas Private School Accreditation Commission but excluding fraternities, sororities, and secret societies, or is organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community;

(B) any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization, excluding fraternities, sororities, and secret societies, or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community, and that:

(i) is organized and operated exclusively for one or more of the above purposes;

(ii) does not engage in activities which in themselves are not in furtherance of the purpose or purposes;

(iii) does not directly or indirectly participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office;

(iv) dedicates its assets to achieving the stated purpose or purposes of the organization;

(v) does not allow any part of its net assets on dissolution of the organization to inure to the benefit of any group, shareholder, or individual; and

(vi) normally receives more than one-third of its support in any year from private or public gifts, grants, contributions, or membership fees;

(C) a homeowners association as defined by Section 528(c) of the Internal Revenue Code of 1986 [FN3] or which is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(4) of the code;

(D) a volunteer center, as that term is defined by Section 411.126, Government Code; or

(E) a local chamber of commerce that:

(i) is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of

1986 by being listed as an exempt organization in Section 501(c)(6) of the code [FN4];

(ii) does not directly or indirectly participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office; and

(iii) does not directly or indirectly contribute to a political action committee that makes expenditures to any candidates for public office.

(2) "Volunteer" means a person rendering services for or on behalf of a charitable organization who does not receive compensation in excess of reimbursement for expenses incurred. The term includes a person serving as a director, officer, trustee, or direct service volunteer, including a volunteer health care provider.

(3) "Employee" means any person, including an officer or director, who is in the paid service of a charitable organization, but does not include an independent contractor.

(4) Repealed by Acts 2003, 78th Leg., ch. 204, § 18.03(1).

(5) "Volunteer health care provider" means an individual who voluntarily provides health care services without compensation or expectation of compensation and who is:

(A) an individual who is licensed to practice medicine under Subtitle B, Title 3, Occupations Code;

(B) a retired physician who is eligible to provide health care services, including a retired physician who is licensed but exempt from paying the required annual registration fee under Section 156.002, Occupations Code;

(C) a physician assistant licensed under Chapter 204, Occupations Code, or a retired physician assistant who is eligible to provide health care services under the law of this state;

(D) a registered nurse, including an advanced nurse practitioner, or vocational nurse, licensed under Chapter 301, Occupations Code, or a retired vocational nurse or registered nurse, including a retired advanced nurse practitioner, who is eligible to provide health care services under the law of this state;

(E) a pharmacist licensed under Subtitle J, Title 3, Occupations Code, [FN5] or a retired pharmacist who is eligible to provide health care services under the law of this state;

(F) a podiatrist licensed under Chapter 202, Occupations Code, or a retired podiatrist who is eligible to provide health care services under the law of this state;

(G) a dentist licensed under Subtitle D, Title 3, Occupations Code, [FN6] or a retired dentist who is eligible to provide health care services under the law of this state;

(H) a dental hygienist licensed under Subtitle D, Title 3, Occupations Code, or a retired dental hygienist who is eligible to provide health care services under the law of this state;

(I) an optometrist or therapeutic optometrist licensed under Chapter 351, Occupations Code, or a retired optometrist or therapeutic optometrist who is eligible to provide health care services under the law of this state;

(J) a physical therapist or physical therapist assistant licensed under Chapter 453, Occupations Code, or a retired physical therapist or physical therapist assistant who is eligible to provide health care services under the law of this state; or

(K) an occupational therapist or occupational therapy assistant licensed under Chapter 454, Occupations Code, or a retired occupational therapist or occupational therapy assistant who is eligible to provide health care services under the law of this state.

(6) "Hospital system" means a system of hospitals and other health care providers located in this state that are under the common governance or control of a corporate parent.

(7) "Person responsible for the patient" means:

(A) the patient's parent, managing conservator, or guardian;

(B) the patient's grandparent;

(C) the patient's adult brother or sister;

(D) another adult who has actual care, control, and possession of the patient and has written authorization to consent for the patient from the parent, managing conservator, or guardian of the patient;

(E) an educational institution in which the patient is enrolled that has written authorization to consent for the patient from the parent, managing conservator, or guardian of the patient; or

(F) any other person with legal responsibility for the care of the patient.

CREDIT(S)

Added by Acts 1987, 70th Leg., ch. 370, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 634, § 1, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 403, § 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 400, § 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 77, § 1, eff. May 14, 2001; Acts 2001, 77th Leg., ch. 538, § 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, § 14.732, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 93, § 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 204, §§ 10.02, 10.03, 10.04, 18.03(1) eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 553, § 2.001, eff. Feb. 1, 2004; Acts 2003, 78th Leg., ch. 895, § 1, eff. Sept. 1, 2003; Acts 2007, 80th Leg., ch. 239, § 1, eff. Sept. 1, 2007.

[FN1] 26 U.S.C.A. § 501(a).

[FN2] 26 U.S.C.A. §§ 501(c)(3), 501(c)(4).

[FN3] 26 U.S.C.A. § 528(c).

[FN4] 26 U.S.C.A. § 501(c)(6).

[FN5] V.T.C.A. Occupations Code § 551.001 et seq.

[FN6] V.T.C.A. Occupations Code § 251.001 et seq.

HISTORICAL AND STATUTORY NOTES

2008 Electronic Update

2007 Legislation
Acts 2007, 80th Leg., ch. 239 added subsec. (5)(J) and (K) as well as made other nonsubstantive changes.

Section 2 of Acts 2005, 79th Leg., ch. 239 provides:

"This Act applies only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law in effect when the

action accrued, and the former law is continued in effect for that purpose."

2005 Main Volume

Section 2 of Acts 1987, 70th Leg., ch. 370 provides:

"This Act takes effect September 1, 1987, and applies only to causes of action that accrue on or after that date. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for this purpose."

Acts 1989, 71st Leg., ch. 634 inserted par. (1)(C).

Section 2 of Acts 1989, 71st Leg., ch. 634 provides:

"This Act takes effect September 1, 1989, and applies only to a cause of action that accrues on or after that date. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for that purpose."

Acts 1997, 75th Leg., ch. 403, in the definition of "charitable organization", in both par. (A) and the introductory paragraph of par. (B), inserted "neighborhood crime prevention or patrol,".

Section 2 of Acts 1997, 75th Leg., ch. 403 provides:

"This Act takes effect September 1, 1997, and applies only to a cause of action that accrues on or after that date. An action that accrued before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose."

Acts 1999, 76th Leg., ch. 400, in subd. (2) substituted "incurred. The" for "incurred, and such" and added to the resulting second sentence ", including a volunteer health care provider"; and added subd. (5).

Section 3 of Acts 1999, 76th Leg., ch. 400 provides:

"This Act takes effect September 1, 1999, and applies only to a cause of action that accrues on or after that date. An action that accrued before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose."

Acts 2001, 77th Leg., ch. 77, in subd. (1), added par. (D).

Section 2 of Acts 2001, 77th Leg., ch. 77 provides:

"This Act applies only to a cause of action that accrues on or after the effective date [May 14, 2001] of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose."

Acts 2001, 77th Leg., ch. 538, in subd. (1)(A), following "crime prevention or patrol,", inserted "fire protection or prevention, emergency medical or hazardous material response services,"; and in subd. (1)(C), following "Internal Revenue Code of 1986", inserted "or which is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(4) of the code".

Section 2 of Acts 2001, 77th Leg., ch. 538 provides:

"This Act takes effect September 1, 2001, and applies only to a cause of action that accrues on or

after that date. An action that accrued before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose."

Acts 2001, 77th Leg., ch. 1420, in subsec. (5), corrected cite references throughout the subsection to cites to the Occupations Code.

Acts 2003, 78th Leg., ch. 93, added subsec. (1)(E) and made other nonsubstantive changes.

Section 3 of Acts 2003, 78th Leg., ch. 93 provides:

"This Act takes effect September 1, 2003, and applies only to a cause of action that accrues on or after that date. An action that accrues before the effective date of this Act is governed by the law in effect when the action accrues, and the former law is continued in effect for that purpose."

Acts 2003, 78th Leg., ch. 204, in subd. (1)(A), substituted "including private primary or secondary schools if accredited by a member association of the Texas Private School Accreditation Commission but excluding fraternities, sororities, and secret societies" for "excluding private primary or secondary schools, alumni associations and related on-campus organizations,"; in subd. (1)(B), substituted "fraternities, sororities, and secret societies" for "alumni associations and related on-campus organizations; repealed subd. (4); and added subds. (6) and (7). Prior to repeal, subd. (4) read:

> "(4) 'Good faith' means the honest, conscientious pursuit of activities and purposes that the organization is organized and operated to provide."

Acts 2003, 78th Leg., ch. 553, in subd. (5)(D), inserted "or vocational nurse,", and inserted "vocational nurse or"; deleted subd. (5)(E); and redesignated subds. (5)(F) to (5)(J) as (5)(E) to (5)(I), respectively. Prior to deletion, subd. (5)(E) read:

> "(E) a licensed vocational nurse licensed under Chapter 302, Occupations Code, or a retired licensed vocational nurse who is eligible to provide health care services under the law of this state;"

Section 3.005 of Acts 2003, 78th Leg., ch. 553 provides:

"In the event of a conflict between a provision of this Act and another Act passed by the 78th Legislature, Regular Session, 2003, that becomes law, this Act prevails and controls regardless of the relative dates of enactment."

Acts 2003, 78th Leg., ch. 895, in subds. (1)(A) and (1)(B), made changes identical to those made by Acts 2003, 78th Leg., ch. 204.

Section 2 of Acts 2003, 78th Leg., ch. 895 provides:

"This Act takes effect September 1, 2003, and applies only to a cause of action that accrues on or after that date. A cause of action that accrued before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose."

RESEARCH REFERENCES

2008 Electronic Update

Encyclopedias

TX Jur. 3d Charities § 1, Generally; Definition of Charity.

TX Jur. 3d Charities § 38, Organization Liability.

TX Jur. 3d Charities § 39, Volunteer Liability.

TX Jur. 3d Charities § 41, Employee Liability.

TX Jur. 3d Employer & Employee § 67, Child Labor--Hazardous and Other Restricted Occupations.

Forms

Texas Forms Legal and Business § 28:14, Charitable Immunity and Liability.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 61:8, Scope of Act.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 61:9, Scope of Volunteer Liability.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 215:3, Immunity from Tort Liability.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 61:10, Liability of Employees and Organizations.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 61:34, Answer--Affirmative Defense--By Direct Service Volunteer of Charitable Organization--Charitable Immunity from Suit.

Treatises and Practice Aids

Bogert - the Law of Trusts and Trustees § 394, Duties of Charitable Trustees--Standard of Care--Liabilities for Breach.

Penick, 44A Tex. Prac. Series App. O, House Bill 4.

NOTES OF DECISIONS

1. Charitable organization

The American Legion, Department of Texas, may be considered a charitable organization under this section if the legion's purposes are consistent with the purposes a "bona fide charitable" organization or an "organization organized and operated exclusively for the promotion of social welfare" must serve under, and if the legion otherwise meets the requirements of subd. (1)(B) of this section. Op.Atty.Gen.1997, No. LO 97-098.

The Charitable Immunity and Liability Act of 1987, Chapter 84 of the Civil Practice and Remedies Code, does not apply to a chamber of commerce. Op.Atty.Gen. 1990, No. JM-1257.

2. Volunteer

Texas court did not have specific jurisdiction over nonresident aircraft association for purposes of personal injury action brought by pilot who was injured during air show and spouse, even though air show was put on by association's employees and volunteers, other pilot was Texas resident, and association paid other pilot's expenses incurred in connection with performance, where there was no evidence that aircraft association reimbursed other pilot for any expense except fuel utilized during show itself, other pilot was volunteer, and association had no employment contract with other pilot. Experimental Aircraft Ass'n, Inc. v. Doctor (App. 14 Dist. 2002) 76 S.W.3d 496. Courts 12(2.25)

V. T. C. A., Civil Practice & Remedies Code § 84.003, TX CIV PRAC & REM § 84.003

Current through the end of the 2007 Regular Session of the 80th Legislature

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V.T.C.A., Civil Practice & Remedies Code § 84.004

Vernon's Texas Statutes and Codes Annotated Currentness
Civil Practice and Remedies Code (Refs & Annos)
Title 4. Liability in Tort
Chapter 84. Charitable Immunity and Liability (Refs & Annos)
§ 84.004. Volunteer Liability

(a) Except as provided by Subsection (d) and Section 84.007, a volunteer of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury if the volunteer was acting in the course and scope of the volunteer's duties or functions, including as an officer, director, or trustee within the organization.

(b) Repealed by Acts 2003, 78th Leg., ch. 204, § 18.03(2).

(c) Except as provided by Subsection (d) and Section 84.007, a volunteer health care provider who is serving as a direct service volunteer of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury to a patient if:

(1) the volunteer commits the act or omission in the course of providing health care services to the patient;

(2) the services provided are within the scope of the license of the volunteer; and

(3) before the volunteer provides health care services, the patient or, if the patient is a minor or is otherwise legally incompetent, the person responsible for the patient signs a written statement that acknowledges:

(A) that the volunteer is providing care that is not administered for or in expectation of compensation; and

(B) the limitations on the recovery of damages from the volunteer in exchange for receiving the health care services.

(d) A volunteer of a charitable organization is liable to a person for death, damage, or injury to the person or his property proximately caused by any act or omission arising from the operation or use of any motor-driven equipment, including an airplane, to the extent insurance coverage is required by Chapter 601, Transportation Code, and to the extent of any existing insurance coverage applicable to the act or omission.

(e) The provisions of this section apply only to the liability of volunteers and do not apply to the liability of the organization for acts or omissions of volunteers.

(f) Subsection (c) applies even if:

(1) the patient is incapacitated due to illness or injury and cannot sign the acknowledgment statement required by that subsection; or

(2) the patient is a minor or is otherwise legally incompetent and the person responsible for the patient is not reasonably available to sign the acknowledgment statement required by that subsection.

CREDIT(S)

Added by Acts 1987, 70th Leg., ch. 370, § 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg.,

ch. 165, § 30.179, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 400, § 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 204, §§ 10.05, 18.01, 18.03(2), eff. Sept. 1, 2003.

HISTORICAL AND STATUTORY NOTES

2005 Main Volume

Section 2 of Acts 1987, 70th Leg., ch. 370 provides:

"This Act takes effect September 1, 1987, and applies only to causes of action that accrue on or after that date. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for this purpose."

Acts 1997, 75th Leg., ch. 165, to conform to changes in the law made by Acts 1995, 74th Leg., ch. 165, in subsec. (a), substituted "Chapter 601, Transportation Code" for "Section 1A, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes)".

Acts 1999, 76th Leg., ch. 400, in subsec. (a), substituted "(d) and Section 84.007 " for "(c) of this section and Section 84.007 of this Act"; in subsec. (b), substituted "or (d) and Section 84.007 " for "of this section and Section 84.007 of this Act"; relettered former subsecs. (c) and (d) as subsecs. (d) and (e); and inserted new subsec. (c).

Section 3 of Acts 1999, 76th Leg., ch. 400 provides:

"This Act takes effect September 1, 1999, and applies only to a cause of action that accrues on or after that date. An action that accrued before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose."

Acts 2003, 78th Leg., ch. 204 rewrote subsec. (a), repealed subsec. (b), rewrote subsec. (c) and added subsec. (f). Subsecs. (a) to (c) formerly read:

"(a) Except as provided by Subsection (d) and Section 84.007, a volunteer who is serving as an officer, director, or trustee of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury if the volunteer was acting in the course and scope of his duties or functions as an officer, director, or trustee within the organization.

"(b) Except as provided by Subsection (c) or (d) and Section 84.007, a volunteer who is serving as a direct service volunteer of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury if the volunteer was acting in good faith and in the course and scope of his duties or functions within the organization.

"(c) Except as provided by Subsection (d) and Section 84.007, a volunteer health care provider who is serving as a direct service volunteer of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury to a patient if:

"(1) the volunteer was acting in good faith and in the course and scope of the volunteer's duties or functions within the organization;

"(2) the volunteer commits the act or omission in the course of providing health care services to the patient;

"(3) the services provided are within the scope of the license of the volunteer; and

"(4) before the volunteer provides health care services, the patient or, if the patient is a minor or is otherwise legally incompetent, the patient's parent, managing conservator, legal guardian, or other person with legal responsibility for the care of the patient signs a written statement that acknowledges:

"(A) that the volunteer is providing care that is not administered for or in expectation of compensation; and

"(B) the limitations on the recovery of damages from the volunteer in exchange for receiving the health care services."

LAW REVIEW COMMENTARIES

Texas tort law--2003; It was a very year. Michael D. Morrison, 56 Baylor L.Rev. 423 (2004).

LIBRARY REFERENCES

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Charities ⚿48(2).
Westlaw Topic No. 75.
C.J.S. Charities §§ 33 to 34.

RESEARCH REFERENCES

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ALR Library

25 ALR 4th 517, Tort Immunity of Nongovernmental Charities--Modern Status.

Encyclopedias

TX Jur. 3d Charities § 39, Volunteer Liability.

TX Jur. 3d Charities § 40, Volunteer Liability--Volunteer Health Care Provider.

Forms

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 61:1, Introductory COMMENTs.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 61:9, Scope of Volunteer Liability.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 215:3, Immunity from Tort Liability.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 61:33, Answer--Affirmative Defense--By Volunteer Officer, Director, or Trustee of Charitable Organization--Charitable Immunity from Suit.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 61:34, Answer--Affirmative Defense--By Direct Service Volunteer of Charitable Organization--Charitable Immunity from Suit.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 200B:95, Volunteer Immunity.

Treatises and Practice Aids

Bogert - the Law of Trusts and Trustees § 394, Duties of Charitable Trustees--Standard of Care--Liabilities for Breach.

Penick, 44A Tex. Prac. Series App. O, House Bill 4.

NOTES OF DECISIONS

1/2 . Immunity

Volunteer head coach of girls softball team was not grossly negligent when bat slipped from his hand during a softball drill and struck assistant coach in the face, and thus head coach was entitled to immunity as a volunteer of a charitable organization; head coach was hitting ground balls in a routine way, and the incident was purely accidental. Chrismon v. Brown (App. 14 Dist. 2007) 246 S.W.3d 102. Charities ⇐ 46

For purposes of exception to statutory immunity for a volunteer of a charitable organization, a finding that an act or omission is "wilfully negligent" or done with "conscious indifference" or "reckless disregard" for the safety of others requires a showing of "gross negligence," i.e., an act or omission: (1) which, when viewed objectively from the standpoint of the actor at the time of occurrence, involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and (2) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others. Chrismon v. Brown (App. 14 Dist. 2007) 246 S.W.3d 102. Charities ⇐ 46

1. Public broadcasters

This chapter may provide for immunity to volunteers serving as members of the boards of directors of public broadcasters; whether this chapter applies to a public broadcasting station, its employees, and volunteers is a question of fact. Op.Atty.Gen.1988, No. JM-951.

2. Chambers of commerce

The Charitable Immunity and Liability Act of 1987, Chapter 84 of the Civil Practice and Remedies Code, does not apply to a chamber of commerce. Op.Atty.Gen.1990, No. JM-1257.

3. Limited liability

Whatever pre-flight negligence may have occurred, injuries to plaintiff pilot at air show in fact arose from collision between plaintiff's airplane and airplane operated by defendant pilot, who was acting as a volunteer on behalf of air museum, a Texas charitable organization, and therefore under the Texas Charitable Immunity and Liability Act (TCILA), liability of defendant pilot was not subject of absolute immunity but was limited to extent to which he possessed any applicable insurance coverage. Doctor v. Pardue (App. 1 Dist. 2005) 178 S.W.3d 355, withdrawn from bound volume, republished at 186 S.W.3d 4, rehearing overruled, review denied, rehearing of petition for review denied. Charities ⇐ 45 (2)

4. Choice of law

For choice of law purposes, personal injury suit against Wisconsin charitable corporation arising from aviation accident in that state presented underlying "particular substantive issue" of limitation of corporation's liability, that is, charitable immunity, under the Texas Charitable Immunity and Liability Act (TCILA), not of whether certain types of damages were recoverable. Doctor v. Pardue (App. 1 Dist. 2005) 178 S.W.3d 355, withdrawn from bound volume, republished at 186 S.W.3d 4, rehearing overruled, review denied, rehearing of petition for review denied. Charities ⇐ 2

V. T. C. A., Civil Practice & Remedies Code § 84.004, TX CIV PRAC & REM § 84.004

V.T.C.A., Civil Practice & Remedies Code § 84.005

Vernon's Texas Statutes and Codes Annotated Currentness
Civil Practice and Remedies Code (Refs & Annos)
Title 4. Liability in Tort
Chapter 84. Charitable Immunity and Liability (Refs & Annos)
§ 84.005. Employee Liability

Except as provided in Section 84.007 of this Act, in any civil action brought against an employee of a nonhospital charitable organization for damages based on an act or omission by the person in the course and scope of the person's employment, the liability of the employee is limited to money damages in a maximum amount of $500,000 for each person and $1,000,000 for each single occurrence of bodily injury or death and $100,000 for each single occurrence for injury to or destruction of property.

CREDIT(S)

Added by Acts 1987, 70th Leg., ch. 370, § 1, eff. Sept. 1, 1987.

HISTORICAL AND STATUTORY NOTES

2005 Main Volume

Section 2 of Acts 1987, 70th Leg., ch. 370 provides:

"This Act takes effect September 1, 1987, and applies only to causes of action that accrue on or after that date. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for this purpose."

LIBRARY REFERENCES

2005 Main Volume

Charities ⚷48(2).
Westlaw Topic No. 75.
C.J.S. Charities §§ 33 to 34.

RESEARCH REFERENCES

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TX Jur. 3d Charities § 41, Employee Liability.

TX Jur. 3d Healing Arts & Institutions § 294, Construction and Application of Statute.

Forms

Texas Forms Legal and Business § 28:14, Charitable Immunity and Liability.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 215:3, Immunity from Tort Liability.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 61:10, Liability of Employees and Organizations.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 61:30, Petition--Against Nonhospital, Nonreligious Charitable Corporation and Employee--For Personal Injuries--Pedestrian Struck by Automobile Operated by Employee.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 215:22, Petition--Against Religious Charitable Corporation and Employee--For Personal Injuries--Pedestrian Struck by Automobile Operated by Employee.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 200B:94, Employee Liability.

V. T. C. A., Civil Practice & Remedies Code § 84.005, TX CIV PRAC & REM § 84.005

Current through the end of the 2007 Regular Session of the 80th Legislature

END OF DOCUMENT

V.T.C.A., Civil Practice & Remedies Code § 84.006

Vernon's Texas Statutes and Codes Annotated Currentness
Civil Practice and Remedies Code (Refs & Annos)
Title 4. Liability in Tort
Chapter 84. Charitable Immunity and Liability (Refs & Annos)
§ 84.006. Organization Liability

Except as provided in Section 84.007 of this Act, in any civil action brought against a nonhospital charitable organization for damages based on an act or omission by the organization or its employees or volunteers, the liability of the organization is limited to money damages in a maximum amount of $500,000 for each person and $1,000,000 for each single occurrence of bodily injury or death and $100,000 for each single occurrence for injury to or destruction of property.

CREDIT(S)

Added by Acts 1987, 70th Leg., ch. 370, § 1, eff. Sept. 1, 1987.

HISTORICAL AND STATUTORY NOTES

2005 Main Volume

Section 2 of Acts 1987, 70th Leg., ch. 370 provides:

"This Act takes effect September 1, 1987, and applies only to causes of action that accrue on or after that date. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for this purpose."

LIBRARY REFERENCES

2005 Main Volume

Charities ⚷48(2).
Westlaw Topic No. 75.
C.J.S. Charities §§ 33 to 34.

RESEARCH REFERENCES

2008 Electronic Update

Encyclopedias

TX Jur. 3d Charities § 38, Organization Liability.

TX Jur. 3d Healing Arts & Institutions § 294, Construction and Application of Statute.

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Texas Forms Legal and Business § 28:14, Charitable Immunity and Liability.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 215:3, Immunity from Tort Liability.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 61:10, Liability of Employees and Organizations.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 61:30, Petition--Against Nonhospital, Nonreligious Charitable Corporation and Employee--For Personal Injuries--Pedestrian Struck by Automobile Operated by Employee.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 61:31, Petition--Against Charitable Organization--By Employee--For Personal Injuries Sustained at Work.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 215:22, Petition--Against Religious Charitable Corporation and Employee--For Personal Injuries--Pedestrian Struck by Automobile Operated by Employee.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 200B:93, Organization Liability.

NOTES OF DECISIONS

Private hospitals 1

1. Private hospitals

Private hospital was not entitled to have damages awarded against it in medical malpractice action capped under statutory limits of liability in Health and Safety Code and Charitable Immunity and Liability Act, as statutory limits applied only to public or nonprofit hospitals or nonhospital organizations. St. Joseph Hosp. v. Wolff (App. 3 Dist. 1999) 999 S.W.2d 579, rehearing overruled, review granted, reversed 94 S.W.3d 513. Health ⇐ 834(1)

V. T. C. A., Civil Practice & Remedies Code § 84.006, TX CIV PRAC & REM § 84.006

Current through the end of the 2007 Regular Session of the 80th Legislature

END OF DOCUMENT

V.T.C.A., Civil Practice & Remedies Code § 84.007

Vernon's Texas Statutes and Codes Annotated Currentness
Civil Practice and Remedies Code (Refs & Annos)
Title 4. Liability in Tort
Chapter 84. Charitable Immunity and Liability (Refs & Annos)
§ 84.007. Applicability

(a) This chapter does not apply to an act or omission that is intentional, wilfully negligent, or done with conscious indifference or reckless disregard for the safety of others.

(b) This chapter does not limit or modify the duties or **liabilities** of a member of the board of **directors** or an officer to the organization or its members and shareholders.

(c) This chapter does not limit the **liability** of an organization or its employees or **volunteers** if the organization was formed substantially to limit its **liability** under this chapter.

(d) This chapter does not apply to organizations formed to dispose, remove, or store hazardous waste, industrial solid waste, radioactive waste, municipal solid waste, garbage, or sludge as those terms are defined under applicable state and federal law. This subsection shall be liberally construed to effectuate its purpose.

(e) Sections 84.005 and 84.006 of this chapter do not apply to a health care provider as defined in Section 74.001, unless the provider is a federally funded migrant or community health center under the Public Health Service Act (42 U.S.C.A. Sections 254b and 254c) or is a nonprofit health maintenance organization created and operated by a community center under Section 534.101, Health and Safety Code, or unless the provider usually provides discounted services at or below costs based on the ability of the beneficiary to pay. Acceptance of Medicare or Medicaid payments will not disqualify a health care provider under this section. In no event shall Sections 84.005 and 84.006 of this chapter apply to a general hospital or special hospital as defined in Chapter 241, Health and Safety Code, or a facility or institution licensed under Subtitle C, Title 7, Health and Safety Code, [FN1] or Chapter 242, Health and Safety Code, or to any health maintenance organization created and operating under Chapter 843, Insurance Code, except for a nonprofit health maintenance organization created under Section 534.101, Health and Safety Code.

(f) This chapter does not apply to a governmental unit or employee of a governmental unit as defined in the Texas Tort Claims Act (Subchapter A, Chapter 101, Civil Practice and Remedies Code).

(g) Sections 84.005 and 84.006 of this Act do not apply to any charitable organization that does not have **liability** insurance coverage in effect on any act or omission to which this chapter applies. The coverage shall apply to the acts or omissions of the organization and its employees and **volunteers** and be in the amount of at least $500,000 for each person and $1,000,000 for each single occurrence for death or bodily injury and $100,000 for each single occurrence for injury to or destruction of property. The coverage may be provided under a contract of insurance or other plan of insurance authorized by statute and may be satisfied by the purchase of a $1,000,000 bodily injury and property damage combined single limit policy. Nothing in this chapter shall limit liability of any insurer or insurance plan in an action under Chapter 21, Insurance Code, or in an action for bad faith conduct, breach of fiduciary duty, or negligent failure to settle a claim.

(h) This chapter does not apply to:

(1) a statewide trade association that represents local chambers of commerce; or

(2) a cosponsor of an event or activity with a local chamber of commerce unless the cosponsor is a charitable organization under this chapter.

CREDIT(S)

Added by Acts 1987, 70th Leg., ch. 370, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 14, § 284(14), (20), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 76, § 6, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 835, § 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1297, § 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 93, § 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 204, § 18.02, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, § 10A.507, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 133, § 1, eff. Sept. 1, 2005.

[FN1] V.T.C.A., Health and Safety Code § 571.001 et seq.

HISTORICAL AND STATUTORY NOTES

2008 Electronic Update

2005 Legislation
Acts 2005, 79th Leg., ch. 133 made citation changes in the text of subsec. (e).

Section 2 of Acts 2005, 79th Leg., ch. 133 provides:

"This Act applies only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose."

2005 Main Volume

Section 2 of Acts 1987, 70th Leg., ch. 370 provides:

"This Act takes effect September 1, 1987, and applies only to causes of action that accrue on or after that date. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for this purpose."

Acts 1991, 72nd Leg., ch. 14 and Acts 1991, 72nd Leg., ch. 76 made identical amendments, in subsec. (e), in the last sentence, substituting references to the Health and Safety Code for references to the Texas Hospital Licensing Law and the Texas Mental Health Code.

Acts 1997, 75th Leg., ch. 835, in subsec. (e), in the first sentence, inserted "or is a nonprofit health maintenance organization created and operated by a community center under Section 534.101, Health and Safety Code,", and in the third sentence, added ", or to any health maintenance organization created and operating under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code), except for a nonprofit health maintenance organization created under Section 534.101, Health and Safety Code".

Acts 1997, 75th Leg., ch. 1297, in subsec. (g), inserted "and may be satisfied by the purchase of a $1,000,000 bodily injury and property damage combined single limit policy".

Acts 2003, 78th Leg., ch. 93 added subsec. (h).

Section 3 of Acts 2003, 78th Leg., ch. 93 provides:

"This Act takes effect September 1, 2003, and applies only to a cause of action that accrues on or after that date. An action that accrues before the effective date of this Act is governed by the law in effect when the action accrues, and the former law is continued in effect for that purpose."

Acts 2003, 78th Leg., ch. 204, in subsec. (a) following "wilfully", deleted "or wantonly".

Acts 2003, 78th Leg., ch. 1276, in subsec. (e), in the third sentence, substituted "Chapter 843, Insurance Code" for "the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code)".

RESEARCH REFERENCES

2008 Electronic Update

Encyclopedias

TX Jur. 3d Charities § 42, Exceptions to Limitations on Liability.

TX Jur. 3d Charities § 44, Medical Devices Donors.

Forms

Texas Forms Legal and Business § 28:14, Charitable Immunity and Liability.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 135:3, Rights and Liabilities in General.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 215:3, Immunity from Tort Liability.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 61:10, Liability of Employees and Organizations.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 61:12, Exceptions to Statutory Immunity.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 61:30, Petition--Against Nonhospital, Nonreligious Charitable Corporation and Employee--For Personal Injuries--Pedestrian Struck by Automobile Operated by Employee.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 61:32, Petition--Allegation--Injury Caused by **Volunteer's** Intentional or Wantonly and Willfully Negligent Acts.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 61:35, Response--Allegation--Charitable Organization Excepted from Limited **Liability**.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 215:22, Petition--Against Religious Charitable Corporation and Employee--For Personal Injuries--Pedestrian Struck by Automobile Operated by Employee.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 200B:94, Employee Liability.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 200B:96, Exceptions to Limitation of Liability.

Treatises and Practice Aids

Bogert - the Law of Trusts and Trustees § 394, Duties of Charitable Trustees--Standard of Care--Liabilities for Breach.

Penick, 44A Tex. Prac. Series App. O, House Bill 4.

NOTES OF DECISIONS

1. Defamation

Defamation is a character of injury subject to this chapter. Op.Atty.Gen.1988, No. JM-951.

2. Gross negligence

Volunteer head coach of girls softball team was not grossly negligent when bat slipped from his hand during a softball drill and struck assistant coach in the face, and thus head coach was entitled to immunity as a **volunteer** of a charitable organization; head coach was hitting ground balls in a routine way, and the incident was purely accidental. Chrismon v. Brown (App. 14 Dist. 2007) 246 S.W.3d 102. Charities ⇐ 46

For purposes of exception to statutory immunity for a **volunteer** of a charitable organization, a finding that an act or omission is "wilfully negligent" or done with "conscious indifference" or "reckless disregard" for the safety of others requires a showing of "gross negligence," i.e., an act or omission: (1) which, when viewed objectively from the standpoint of the actor at the time of occurrence, involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and (2) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others. Chrismon v. Brown (App. 14 Dist. 2007) 246 S.W.3d 102. Charities ⇐ 46

V. T. C. A., Civil Practice & Remedies Code § 84.007, TX CIV PRAC & REM § 84.007

Current through the end of the 2007 Regular Session of the 80th Legislature

END OF DOCUMENT

See also:
New Mexico
&
Texas
Statutes for
Examples of
Civil Immunity for
Crime Stoppers
participants

THREATS TO CRIME STOPPERS LEGISLATION

WISCONSIN STATUTE REPEALED 2008

LOSS OF FUNDS

MADISON, WISCONSIN

Fines can't go to crime fighters

New law bans prosecutors and judges from requiring defendants to pay fines to crime-prevention organizations.

By DEE J. HALL
dhall@madison.com
608-252-6132

Dozens of nonprofit and anti-crime organizations around Wisconsin that rely on court-imposed fines for much of their bread and butter will lose hundreds of thousands of dollars in funding because of a law enacted in March.

The law prohibits prosecutors and judges from requiring defendants to pay fines to crime-prevention organizations such as DARE (Drug Abuse Resistance Education) and Crime Stoppers. Other organizations, including those helping domestic-violence victims and young people at risk of committing crimes, also will feel the pinch.

The Legislature passed the ban after the Wisconsin State Journal revealed in 2003 that former Outagamie County District Attorney Vince Biskupic had struck secret deals with criminal defendants allowing them to avoid prosecution if they donated money to favored groups.

Jim Rider, treasurer of the Crawford County Children's Advisory Board, said the court-ordered money will be sorely missed. His organization, based in Prairie du Chien, received $8,869 this year and $9,281 in 2007 for programs benefitting troubled youth in the southwestern Wisconsin county. The Children's Advisory Board has used the funding to pay for scholarships, skateboard ramps and, recently, a post-prom party.

The court-ordered fines constituted at least half of the money the group raised, Rider said. "It was a major source of

Please see **FINES,** Page A5

Fines

Continued from Page A1

funding, so we're going to have to find another source of funding. It'll be tough to replace."

The problem is less pronounced for other groups, for whom the money made up a smaller part of their budgets.

Court official pleased

While the fines have been used to fund some worthy programs, a top state court official said she's happy to see the ban.

"I wanted to get rid of it 15 years ago," said Sheryl Gervasi, deputy director of the Wisconsin Court System, who said the "potential for abuse" under the system is too great.

In the early 1990s, the state court system studied the practice of allowing defendants in civil and criminal cases face lesser penalties if they contributed to crime-prevention organizations, Gervasi said. The results were disturbing.

"Police officers ... were accepting money on the road in lieu of (writing) a ticket," Gervasi said.

The study found that judges, prosecutors and the police used the donations to support groups the officials favored. In some cases, judges even served on the boards of the groups that got the funding, which she called "not permissible."

"You can't just pick out some good organization and start directing money to them," Gervasi said.

Dane County Circuit Judge Daniel Moeser is one of the judges who's pushed to eliminate the program since the 1990s. During his term as chief judge for the district including Dane County, Moeser along

Banned program still disbursing money

A snapshot of the crime prevention accounts maintained by the state court system as of March 27 and the amounts collected in court-ordered fees. Beginning in March, state law bans the collection of such fees.

Balance *is the amount remaining in state accounts to be disbursed to groups.*

Due *is the amount of fines that have been levied but not yet paid.*

County	Account Description	Balance*	Due
Adams	Adams County Crime Stoppers	$652.55	$6,794.48
Calumet	Crime Stoppers	$25.00	$175.00
	Drug Task Force	$100.00	$6,536.09
Chippewa	Chippewa County Dare	$0	$980.00
	City of Chippewa Falls Dare	$0	$0
	Family Support Center	$0	$0
Crawford	Crawford County Crime Stoppers	$200.00	$1,645.51
	Domestic Abuse Task Force	$0	$998.22
Fond du Lac	City Fond du Lac Dare	$0	$1,080.00
	City FDL Crime Prevention	$0	$830.00
	Ripon Crime Prevention	$0	$500.00
Grant	Grant County Crime Stoppers	$181.82	$49,742.29
	Grant Sheriff Dare Contrib	$0	$2,659.77
Green	Crime Stopppers	$0	$1,615.00
	County Dare Contribution	$0	$780.85
Jefferson	Drug Ed Fund Contribution	$84.00	$9,519.77
Kenosha	Kenosha Area Crime Stoppers	$149.14	$4,346.95
	Kenosha Sheriff DARE Contrib.	$500.00	$3,635.51
	Women & Children's Horizons	$50.00	$2,020.72
Lafayette	Lafayette County Crime Stopper	$0	$250.00
	Lafayette County Dare	$0	$2,500.00
Manitowoc	TRPD Crime Prevention	$232.97	$1,785.80
	Manitowoc PD Crime Prevent	$721.77	$6,056.43
	MC Sheriff's Crime Prevention	$778.31	$5,897.37
Marinette	Crime Stoppers of Marinette Co	$395.64	$4,088.91
Marquette	Crimestoppers	$163.13	$2,556.93
	D.A.R.E. Contributions	$50.00	$2,497.74
Milwaukee	Howard Fuller Ed Foundation	$91,509.67	$0
	Latino Community Center	$11,353.00	$0
	SE Youth & Family Services	$19,260.00	$0
	Former pooled account	$24,787.89	$0
Monroe	Crime Stoppers	$0	$4,965.00
	Monroe Cty Domestic Abuse	$0	$4,923.34
	Monroe Cty Dare Program	$0	$1,642.28
Oconto	Crime Stoppers	$159.47	$3,255.53
Polk	Dare - City St. Croix Falls	$0	$299.00
	Dare - Village Milltown	$0	$61.50

with the nine other chief judges asked the Legislature to ban the practice.

"The main reason the chief judges and the Dane County judges have not been in favor of crime-prevention organizations is we felt that people with money got treated differently than people without money," Moeser said.

Moeser said many of the programs were "well-intended and did a good job," but he added there were "inherent potential problems when money is spent to affect charges and affect dispositions."

Because of such concerns, the Legislature voted to ban prosecutors from reducing or dismissing charges in exchange for defendants donating to such organizations. The law, which took effect in 2000, also required groups to report how they used the funds.

Biskupic got around the ban, however, by promising not to even file charges if defendants donated money to pet projects, including a fund he administered. In one secret deal identified by the State Journal, a prominent Green Bay business owner who denied committing any crime agreed to donate $8,000 to an agency for domestic violence victims to avoid criminal charges.

Biskupic, who was Outagamie County's top prosecutor for eight years, received a warning from the state Ethics Board for improperly using his public position to benefit the fund he controlled.

Some won't like it

The new law bans prosecutors from striking the types of deals Biskupic made. It also slams the door on judges who have been imposing such donations as a part of a sentence. In a letter to judges, A. John Voelker, the director of the state court system, acknowledged the change won't be popular with everyone.

"Although the organizations that receive the funds are often valuable to the community, this funding mechanism creates the potential for inappropriate prosecutorial charging decisions, the appearance of fundraising or favoritism by the judges and a general perception by the public that favorable outcomes in criminal cases can be bought by defendants who can afford them," Voelker said.

Gervasi said judges in most circuit courts in Wisconsin already had stopped ordering the payments, including those in Dane County.

A snapshot of the accounts maintained by the state court system in late March showed that organizations in 27 of the state's 72 counties still had $179,457 waiting to be disbursed, along with $335,150 in fines that were imposed but still hadn't been paid.

The largest recipient is the Howard L. Fuller Education Foundation in Milwaukee, which is slated to get $91,509 from Milwaukee County Circuit Court fines. The foundation offers services to children, including an Operation Fresh Start program and the 3rd District Community Justice Court, whose mission is to "reduce crime by providing the highest quality of human services."

	Dare - Village of Osceola	$0	$300.00
Racine	City Burlington PD DARE	$0	$485.25
	Crime Stoppers of Racine County, Inc.	$0	$7,465.67
	Caledonia Neighborhood Watch	$100.00	$3,842.35
	Racine Sheriff Dare Contrib	$0	$838.00
	Racine Neighborhood Watch	$0	$1,162.68
	Racine SD Deputy Friendly	$0	$500.00
Rock	Crime Stoppers Beloit	$220.22	$7,759.29
	Crime Stoppers Janesville	$0	$2,733.88
	Beloit Dare Program	$0	$200.00
Sawyer	Sawyer Sheriff Dare Contrib	$0	$1,524.12
Sheboygan	Sheboygan Co Crime Stoppers	$0	$150.00
	Elkhart Lake PD Crime Pre	$150.00	$150.00
	Kohler PD Crime Prevention	$300.00	$0
	Plymouth PD Crime Prevention	$837.53	$512.47
	Sheriff Dept Drug Crime Pre	$15,430.31	$19,990.96
	Sheboygan Falls PD Crime Pre	$965.62	$1,683.38
	Sheboygan Police Dept DARE	$8,427.63	$15,300.33
Trempealeau	Trempealeau Co Crime Stoppers	$0	$1,300.00
	Tremp Co Dom Abuse Task Force	$0	$1,635.03
Walworth	Assoc. Prevention Fam Violence	$594.71	$21,963.19
	CounterACT Whitewater PD	$159.80	$6,584.60
	Walworth Co Crime Stoppers	$0	$1,400.00
	Walworth Sheriff Dare Contrib	$9.25	$1,791.19
	Wal Co Crime Prevention Program	$766.55	$39,928.81
Waukesha	Crime Stoppers of Waukesha Co	$20.00	$10,702.06
	FACT-DARE	$121.38	$50,607.38
Total		**$179,457.36**	**$335,150.63**

* Balance as of March 27

RECENT DEVELOPMENTS IN LOUISIANA REGARDING COURT COSTS

RECENT DEVELOPMENTS WITH REGARD TO THE COLLECTION OF COURT COSTS

I. BACKGROUND

A. In 1992, the Louisiana Legislature enacted La. R. S. 13:1906. That statute contained the following provisions:

(1) It applied to the city courts of New Iberia and Jeanerette and to the municipal courts of Delcambre and Loreauville.

(2) It required an additional filing fee of three dollars for each filing in each civil suit or proceeding.

(3) It imposed an additional fee of three dollars in each criminal proceeding in which a fine was imposed or court costs were ordered to be paid.

(4) The funds from both additional fees were to be transmitted to Safety Net for Abused Person, Inc., a private non-profit corporation, to be expended at the discretion of the board of directors of that corporation.

B. In 1997, the Louisiana Supreme Court decided *Safety Net for Abused Persons v. Segura*, 692 So.2d 1038 (La. 1997)

In *Safety Net*, the Court decided the constitutionality of the statute discussed in Subsection A, above. The Court held that the additional filing fee in civil proceedings violated both La. Const. Art. I, which guarantees access to the courts, and La. Const. art. II, which establishes the doctrine of separation of powers. The Court also held that the additional fee imposed in criminal proceedings violated La. Const. art. II. (692 So.2d, at 1042)

The Court noted that La. Const. art. II, §2 prohibits any one of the three branches of state government from exercising power belonging to another branch. (692 So.2d, at 1041)

The Court declared that "... the separation of powers doctrine mandates a reasonable relationship between the fee imposed and the costs of the administration of justice. A fee that is unrelated to the administration of justice necessarily impinges upon the efficient administration of justice." (692 So.2d, at 1042)

The Court declared a part of its holding as follows:

> "Following the trend restricting the imposition of court fees to instances where they fund functional of the judicial system, we

justice to be a legitimate court cost;

-because finding the fee to be constitutional would start the Court down a "slippery slope" which would and with all of the expenses of the police department being funded by "court costs," which would infringe (sic) on the Courts' administration of the judicial system;

-and because the funding of police salaries and equipment expenses is the responsibility of the local tax collection agencies, not the judiciary. (see pages 15 and 16, slip opinion)

G. On April 8th, 2008, the Times-Picayune published an article about the *Lanclos* decision. the reporter who wrote that article stated that the *Lanclos* decision could affect the fee imposed to fund the rewards which are paid by crimestoppers organizations. The reporter went into some detail about the two judges in First Parish Court (Jefferson Parish) who refused to collect the fee and the actions taken by Sheriff Harry Lee to cause those judges to collect that fee. The reporter quoted Soren Gisleson as saying: "I would say the circumstances are close enough that the crimestoppers fee would have to fall and similarly be held unconstitutional. Its not related to the administration of justice. "Soren Gisleson was the attorney for Kenneth Lanclos, who was the defendant in the *Lanclos* decision.

II. OBSERVATIONS

A. The Court appears to be serious about restricting filing fees and about requiring fees to be related to the administration of justice.

B. The requirement that court costs be reasonably related to the costs of the administration of justice appears in both *Safety Net* and the Guidelines.

C. The Court in *Lanclos* stated that its findings were based on *Safety Net* and the Guidelines.

D. C.Cr. P. Art. 895.4 (A) declares, at some length, that the fee which funds the rewards that are paid by crimestoppers organizations is directly related to the costs of administering the criminal justice system.

E. Crimestoppers organizations exist for the purpose of encouraging citizens to provide information in criminal investigations and criminal prosecutions. the encouragement takes the form of the payment of rewards for information which leads to the arrest of a suspect or to the initiation of prosecution against a suspect. The rewards which are paid by crimestoppers organizations are funded by a cost of court in the amount of two dollars which is assessed on each person who is convicted of a criminal or traffic offense.

F. Citizens who provide information in criminal investigations and prosecutions are called witnesses. Witnesses are an essential element in criminal investigations and prosecutions. Criminal investigations and prosecutions cannot proceed without witnesses. For those reasons, it appears that the use of a court cost to encourage the participation of witnesses in criminal investigations and prosecutions is reasonably related to the administration of the criminal justice system.

G. *Safety Net* noted with approval the Florida Supreme Court case of *State v. Young*, 238 So.2d 509 (Fla. 1970). In that case, the court held that a statute imposing a one dollar charge for law enforcement on every person convicted of a crime is not a violation of the separation of powers doctrine because it is reasonable that one who is convicted of a crime "should be made to share in the improvement of agencies that society has had to employ in defense against the very acts for which he has been convicted." 692 So.2d, at 1044

H. In our society, criminals go to great lengths to intimidate witnesses in order to avoid arrest or prosecution. it appears to be reasonably related to the costs of the administration of the criminal justice system to assess a court cost against criminals, including persons who commit traffic crimes, to fund the payment of rewards to encourage witnesses to provide information in criminal investigations and prosecutions.

I. The Guidelines suggest that appropriate purposes for a court cost include: "...(2) supporting an activity in which there is a reasonable relationship between the fee or court cost imposed and the costs of the administration of justice." Based on the holding of *State v. Young*, discussed in Subsection G above, and on the observations set forth in Subsection H above, the use of a court cost to fund the payment of rewards for information which leads to the arrest of, or the initiation of prosecution against, a suspect appears to be the use of a court cost to support an activity in which there is a reasonable relationship between the fee or court cost and the costs of the administration of justice.

J. In *Lanclos* the court cost was used to supplement police salaries. At least one crimestoppers organization has contracted with answering service to answer calls to the "hot line." On the surface, the payments to the answering service, which are used to pay the salaries of the employees of the answering service, may appear to be analogous to the supplementing of police salaries. But, contracting with an answering service can be distinguished from supplementing police salaries because the court cost is not used to pay any of the salaries of the crimestoppers organization employees, and while the court cost does pay the salaries of the answering service employees, the use of the answering service serves two purposes which are related to obtaining information through the program: the answering service provides a trained operator who knows how to receive and

record information and knows how to ask questions without influencing the answer; and the answering service provides an extra layer of insulation for witnesses who wish to remain anonymous.

K. In *Lanclos*, the Court refused to start down a "slippery slope." The court cost which is used to fund the crimestoppers reward program cannot be the start of a "slippery slope" because the only activities in which crimestoppers organizations are engaged are paying rewards for information which leads to arrests or prosecutions and activities which are directly related to the rewards program, such as operating the hot line and advertising the existence of the program.

L. In *Lanclos,* the Court found that a court cost which was used to supplement police salaries and to pay for police equipment was unconstitutional because supplementing police salaries and paying for police equipment is the responsibility of local tax collection agencies. No local tax collection agency is responsible for funding the crimestoppers reward program.

RECENT COURT DECISION IN LOUISIANA REGARDING COURT COSTS [NON-CRIME STOPPERS]

04/08/08

SUPREME COURT OF LOUISIANA

No. 07-OK-0082
c/w 07-KA-0716

STATE OF LOUISIANA

VERSUS

KENNETH W. LANCLOS

ON APPEAL FROM THE FIRST PARISH COURT,
PARISH OF JEFFERSON

JOHNSON, Justice

This is a direct appeal by the State of Louisiana pursuant to La. Const. art. V § 5(D), contesting the trial court's finding that the $5.00 court cost assessed pursuant to La. R.S. 32:57(G) is an unconstitutional tax to be levied improperly through the judicial system, and thus a violation of the separation of powers doctrine of La. Const. art. II § 2. For the following reasons, we affirm the decision of the trial court.

FACTS AND PROCEDURAL HISTORY

The Greater New Orleans Expressway Commission ("GNOEC") polices the Huey P. Long Bridge and operates, polices, and maintains the Lake Pontchartrain Causeway Bridge. La. R.S. 32:57(G), which became effective on July 10, 1997, provides for imposition of an additional $5.00 cost when any person pleads nolo contendere, pleads guilty, or is found guilty of a motor vehicle offense occurring on either of the two bridges or their respective approaches when the citation is issued by a police officer employed by the GNOEC. The fees are to be deposited into the state treasury, then credited to a special fund which is used by the GNOEC to supplement

the salaries of its police officers and for the acquisition and upkeep of police equipment.

La. R.S. 32:57(G) expressly provides:

> (1) Notwithstanding any provision of law to the contrary, any person who is found guilty, pleads guilty, or pleads nolo contendere to any motor vehicle offense when the citation was issued for a violation on the Huey P. Long Bridge or the Lake Pontchartrain Causeway Bridge or approaches to and from such bridges by police employed by the Greater New Orleans Expressway Commission shall pay an additional cost of five dollars.
>
> (2) All proceeds generated by this additional cost shall be deposited into the state treasury. After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and prior to monies being placed in the state general fund, an amount equal to that deposited as required in this Subsection shall be credited to a special fund hereby created in the state treasury to be known as the Greater New Orleans Expressway Commission Additional Cost Fund. The monies in this fund shall be appropriated by the legislature to the Greater New Orleans Expressway Commission and shall be used by the commission to supplement the salaries of P.O.S.T. certified officers and for the acquisition or upkeep of police equipment. All unexpended and unencumbered monies in this fund at the end of the fiscal year shall remain in such fund. The monies in this fund shall be invested by the state treasurer in the same manner as monies in the state general fund and interest earned on the investment of monies shall be credited to this fund, again, following compliance with the requirements of Article VII, Section 9(B) of the Constitution, relative to the Bond Security and Redemption Fund. The monies appropriated by the legislature pursuant to this Paragraph shall not displace, replace, or supplant appropriations otherwise made from the general fund for the Greater New Orleans Expressway Commission.

On March 21, 2006, while driving southbound on the Causeway Expressway, the defendant, Kenneth Lanclos, was pulled over by a GNOEC officer and issued a citation for speeding in violation of La. R.S. 32:63(A).[1] On July 21, 2006, the

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[1] La. R.S. 32:63(A): provides:

> Whenever the department shall determine upon the basis of an engineering and traffic investigation that any maximum speed set

defendant appeared in First Parish Court for the Parish of Jefferson, and agreed to plead guilty to a violation of improper equipment pursuant to La. R.S. 32:53(A).[2] The defendant was issued a "Fee and Fine Slip" which assessed, and ordered him to pay, $129.75 in court costs in addition to the $65.00 fine for the offense. Included in the $129.75 court costs was a $5.00 cost designated as a "Causeway Citation" (hereinafter "GNOEC cost").

After receiving the Fee and Fine Slip, defense counsel immediately made a hand written notation on the printed slip indicating that the defendant moved to strike "as unconstitutional the Causeway cost of $5.00" because the assessment "violates separation of powers as constitutes an unconstitutional tax to be assessed and collected by the court. . . ." Defense counsel then appeared in court before the Traffic Hearing Officer ("THO") and orally moved to strike the $5.00 GNOEC cost as unconstitutional, specifically urging that "the GNOEC court cost violates the Separation of Powers guarantee in the Louisiana Constitution as it constitutes a tax that is being collected by the Courts." The THO denied the motion.

On July 28, 2006, the defendant timely filed a "Motion for New Trial and Appeal from Decision of Traffic Hearing Officer," in First Parish Court for the Parish

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> forth in this Chapter is greater or less than is reasonable or safe under the conditions found to exist upon any highway of this state, or any part thereof, the department may determine and declare a reasonable and safe maximum speed limit thereat, which, when appropriate signs giving notice thereof are erected, shall be effective at all times or at such specific times as may be determined by the department.

[2] La. R.S. 32:53(A) provides:

> No person shall drive or move, nor cause or knowingly permit any vehicle owned or controlled by him to be driven or moved, on any highway of this state, at any time, any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person or property, or which does not contain those parts or is not at all times equipped with such lamps and other equipment, in proper condition and adjustment, as required in this Chapter, or which is constructed or equipped in any manner in violation of this Chapter, and no person shall do any act forbidden or fail to perform any act required under this Chapter.

of Jefferson, challenging the THO's denial of the motion to strike the $5.00 GNOEC cost as unconstitutional. The defendant mailed a copy of the motion and supporting memorandum to the Jefferson Parish District Attorney's Office and to the Louisiana Attorney General's Office. Counsel also requested formal service of the motion on the District Attorney's Office and the Attorney General.

The First Parish Court set the motion for hearing on October 5, 2006, before the Honorable Niles Hellmers, presiding *ad hoc*. Defense counsel made clear at the outset of the proceedings that defendant was contesting only the $5.00 GNOEC cost assessment, and not appealing his conviction. Neither the District Attorney nor the Attorney General were present for the hearing, but defense counsel informed the court that "my understanding is that speaking with the DA, that the DA's Office has no position on the issue on . . . the sole legal issue that we're really here on, which is whether this provision of [R.S.] 32:57 is constitutional or not." Judge Hellmers granted the defendant's motion, holding that the GNOEC cost imposes an unconstitutional tax to be levied improperly through the judicial system, and that La. R.S. 32:57(G) is, thus, unconstitutional because it violates the separation of powers doctrine. The State filed this instant appeal.[3]

DISCUSSION

The issue before this Court is whether La. R.S. 32:57(G), requiring Courts to assess an additional $5.00 cost on defendants who receive a traffic citation from an officer of the GNOEC, is unconstitutional as a violation of the separation of powers doctrine of the Louisiana Constitution.[4]

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[3] In addition to this appeal, the State also filed a writ application in the Fifth Circuit Court of Appeal. The Fifth Circuit transferred the appeal (07-KA-0716) to this Court pursuant to La. Const. art. V, § 5(D), which gives this Court exclusive appellate jurisdiction in cases in which a statute or ordinance has been declared unconstitutional. The appeal and writ application have been consolidated in this Court.

[4] There have been previous failed attempts to challenge the constitutionality of the GNOEC cost. In December 2001, the GNOEC filed a petition for writ of mandamus against two

Before addressing the trial court's holding that La. R.S. 32:57(G) is unconstitutional, we must first determine whether the constitutional issue is properly before this Court. In *Ring v. State, Dept. of Transp. and Development*, 2002-1367 (La. 1/14/03), 835 So.2d 423, this Court stated:

> We have repeatedly and consistently held that courts should refrain from reaching or determining the constitutionality of legislation unless, in the context of a particular case, the resolution of the constitutional issue is essential to the decision of the case or controversy. *State v. Fleming*, 2001-2799 (La.6/21/02), 820 So.2d 467, 470; *Cat's Meow, Inc. v. City of New Orleans Through Dept. of Finance*, 98-0601 (La.10/20/98), 720 So.2d 1186, 1199; *Louisiana Associated Gen. Contractors, Inc. v. New Orleans Aviation Bd.*, 97-0752 (La.10/31/97), 701 So.2d 130, 132; *Cameron Parish Sch. Bd. v. AcandS, Inc.*, 96-0895 (La.1/14/97), 687 So.2d 84, 87; *White v. West Carroll Hosp., Inc.*, 613 So.2d 150, 157 (La.1992). Further, our jurisprudence counsels that the practice of courts is "never to anticipate a question of constitutional law in advance of the necessity of deciding it." *Matherne v. Gray Ins. Co.*, 95-0975 (La.10/16/95), 661 So.2d 432, 434; *Communist Party of U.S. v. Subversive Activities Control Bd.*, 367 U.S. 1, 81 S.Ct. 1357, 6 L.Ed.2d 625 (1961) (citing *Liverpool, New York & Philadelphia S.S. Co. v. Commissioners*, 113 U.S. 33, 5 S.Ct. 352, 28 L.Ed. 899 (1885)); *Arizona v. California*, 283 U.S. 423, 51 S.Ct. 522, 75 L.Ed. 1154 (1931). Courts should avoid constitutional rulings when the case can be disposed of on non-constitutional grounds. *Blanchard v. State Through Parks and Recreation Commission*, 96-0053 (La.5/21/96), 673 So.2d 1000, 1002.

Ring, 835 So. 2d at 426-427. In *Matherne v. Gray Ins. Co.*, 661 So.2d 432, 95-0975 (La. 10/16/95), we explained that "...the ripeness doctrine is a tool designed to determine when judicial review is appropriate" and that the rationale behind the doctrine is that "most courts would rather avoid speculative cases, defer to finders of fact with greater subject matter expertise, decide cases with fully-developed records,

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First Parish Court judges, in an attempt to compel them to collect costs from certain traffic violators, as required by La. R.S. 32:57(G). The First Parish Court judges had refused to collect the GNOEC cost on grounds that the statute is unconstitutional. The district court denied the GNOEC's petition for mandamus, finding that the defendants had standing to question the constitutionality of the statute, and that the statute violated several provisions of the constitution. The GNOEC then appealed to this Court, challenging the standing of the defendants, and arguing that the district court erred by granting the petition for writ of mandamus and holding the statute unconstitutional. This Court held that the parish court judges, as parties to a mandamus proceeding which sought to compel them to collect the GNOEC cost, lacked the standing to challenge the constitutionality of the statute. This Court therefore vacated the district court's judgment without considering the merits of the constitutional issue. *Greater New Orleans Expressway Commission v. Olivier, et al*, 04-2147 (La. 1/19/05), 892 So.2d 570.

and avoid overly broad opinions, even if these courts might constitutionally hear a dispute." *Matherne*, 661 So. 2d at 435.

The State argues that the constitutional issue is not ripe for review because there are procedural defaults which bar consideration of the merits. The State first argues that the defendant did not comply with the contemporaneous objection rule of La.C.Cr.P. art. 841 at the THO level because he made his written and oral motions to strike the GNOEC cost assessment with the THO after he received the Fee and Fine Slip.

Defendant argues that the fact that he did not place the objection on the record until after agreeing to plead guilty to a lesser offense does not amount to a waiver of the objection. Defendant argues that the pretrial conference between the district attorney and his counsel, during which the plea agreement was reached, took place outside of the presence of the THO, and that defense counsel made the objection to the GNOEC cost at his very first appearance before the THO.

La. C. Cr. P. Art. 841(A), the contemporaneous objection rule, provides:

> An irregularity or error cannot be availed of after verdict unless it was objected to at the time of occurrence. A bill of exceptions to rulings or orders is unnecessary. It is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take, or of his objections to the action of the court, and the grounds therefor.

There are two purposes to this rule: to put the trial court on notice of the alleged irregularity or error, so that the trial judge can cure the error, and to prevent a party from gambling for a favorable outcome and then appealing on errors that could have been addressed by an objection if the outcome is not as hoped. *State v. Knott*, 05-2252 (La. 5/5/06), 928 So. 2d 534; *State v. Thomas*, 427 So. 2d 428 (La. 1982).

We find that the defendant sufficiently complied with the contemporaneous objection rule in this case. The defendant raised the constitutional issue before the

THO at the first opportunity to do so - immediately after inspecting the Fee and Fine Slip and determining that the $5.00 GNOEC cost had been assessed. The objection was made in writing and orally at his first and only appearance before the THO. Defense counsel thereby provided the THO with the opportunity to rule on the merits of the motion during the same proceedings that led to the defendant's conviction for the traffic violation.

The State also argues that the defendant's guilty plea before the THO waived, at any level of review, all non-jurisdictional defects, including the challenge to the GNOEC cost assessment, because he did not reserve review of that question as part of the guilty plea colloquy. Defendant argues that his plea was not conditioned on a particular sentence, or on him waiving any constitutional challenge to the court costs assessed in connection with a traffic offense. We agree with the defendant. The defendant's challenge did not address the merits of the prosecution. As the defendant points out, in the absence of a specific sentencing provision in a plea agreement, a defendant who pleads guilty is not precluded from challenging the sentence imposed as a result of that guilty plea. See: La. C. Cr. P. art. 881.2(A).[5]

The State also asserts that the defendant's use of a motion for new trial, incorporated as part of the notice of appeal from the THO, was improper because La.C.Cr.P. art. 851, setting forth the grounds for such motions, does not provide for

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[5] La. C. Cr. P. art. 881.2 (A) provides:

> (1) The defendant may appeal or seek review of a sentence based on any ground asserted in a motion to reconsider sentence. The defendant also may seek review of a sentence which exceeds the maximum sentence authorized by the statute under which the defendant was convicted and any applicable statutory enhancement provisions.
>
> (2) The defendant cannot appeal or seek review of a sentence imposed in conformity with a plea agreement which was set forth in the record at the time of the plea.

attacking cost assessments imposed as part of a sentencing following conviction.[6] The State argues that the motion for a new trial presupposes that there was actually a trial. The State suggests that the proper procedural pleading is a motion to quash pursuant to La. C.Cr. P. Art 532(1).[7]

Defendant argues that he filed a "Motion for New Trial and Appeal from Decision of Traffic Hearing Officer" pursuant to La. R.S. 13:1452.1, which provides for appeals from decisions of traffic hearing officers.[8] Defendant notes that La. C. Cr. P. art. 532(1) provides that a motion to quash can be brought to challenge the statute pursuant to which the charge is brought. Defendant argues that he did not challenge

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[6] La. C. Cr. P. art. 851 provides:

> The motion for a new trial is based on the supposition that injustice has been done the defendant, and, unless such is shown to have been the case the motion shall be denied, no matter upon what allegations it is grounded.
>
> The court, on motion of the defendant, shall grant a new trial whenever:
>
> (1) The verdict is contrary to the law and the evidence;
> (2) The court's ruling on a written motion, or an objection made during the proceedings, shows prejudicial error;
> (3) New and material evidence that, notwithstanding the exercise of reasonable diligence by the defendant, was not discovered before or during the trial, is available, and if the evidence had been introduced at the trial it would probably have changed the verdict or judgment of guilty;
> (4) The defendant has discovered, since the verdict or judgment of guilty, a prejudicial error or defect in the proceedings that, notwithstanding the exercise of reasonable diligence by the defendant, was not discovered before the verdict or judgment; or
> (5) The court is of the opinion that the ends of justice would be served by the granting of a new trial, although the defendant may not be entitled to a new trial as a matter of strict legal right.

[7] La. C. Cr. P. art. 532(1) provides:

> A motion to quash may be based on one or more of the following grounds: (1) The indictment fails to charge an offense which is punishable under a valid statute.

[8] La. R.S. 32:1452.1 provides:

> In any parish court having a traffic hearing officer, an appeal may be taken from any determination by the officer that a person is in violation of any traffic law or ordinance of the state, parish, or municipality within the court's jurisdiction. The appeal shall be taken to the judge of the parish court by filing a motion with the clerk of court for the parish along with payment of a reasonable fee not to exceed twenty-five dollars. The delay for filing an appeal shall be five days from the date of the determination by the traffic hearing officer. On appeal, the case shall be tried *de novo*.

the statute upon which his speeding citation was based, and, thus, the article is inapplicable.

We reject the State's argument. Although the motion for a new trial incorporated in the motion for an appeal from the THO to the First Parish Court may have been a misnomer, it did raise the issue for Judge Hellmers to consider in his *de novo* review of the proceedings conducted before the THO.[9]

Finally, the State argues that even if a motion for new trial did provide a proper vehicle for raising the issue, the failure of either the District Attorney or the Attorney General to appear at the proceedings, a result of defects in service of the motion, meant that the motion was not tried contradictorily with the State, as contemplated by La.C.Cr.P. art. 852.[10] Defendant argues that he properly served a copy of the motion on the District Attorney's Office by mail, which was proper pursuant to Rules for Criminal Proceedings in District Courts, Rule 15.1.[11] The record reflects that although defendant requested that the notice of hearing be served on the district attorney, service was improperly made on a private attorney who is unrelated to the case. The defendant also placed the State Attorney General's Office on notice of the challenge by serving it with copies of the pleadings. Defendant asserts that on the day of the

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[9] See: La.C.Cr.P. art. 3 ("Where no procedure is specifically prescribed by this Code or by statute, the court may proceed in a manner consistent with the spirit of the provisions of this Code and other applicable statutory and constitutional provisions.").

[10] La. C. Cr. P. art. 852 provides:

> A motion for a new trial shall be in writing, shall state the grounds upon which it is based, and shall be tried contradictorily with the district attorney.

[11] Louisiana District Court Rules, Rule 15.1 provides in part:

> All motions, *ex parte* or otherwise, must be filed with the clerk of court and served on all opposing parties, except as otherwise provided by law. Service on the district attorney shall be accomplished by mailing a copy to the district attorney, unless the court has adopted an alternate method of service. Those courts that have adopted an alternative method of service on the district attorney are listed in Appendix 15.

hearing, defense counsel met with the assistant district attorney assigned to court on that day, who advised defense counsel that his office had no position on the legal question presented by the appeal, and would not be making an appearance during the hearing on the motion.

Considering the fact that the State was aware of defendant's challenge to the constitutionality of the statute, and the fact that the State has admitted that it would not have introduced any evidence at the hearing, we do not find that any lack of official service to be a prohibition to this Court addressing the issue, especially considering the fact that we will review the issue *de novo.*[12] The State has admitted that this is strictly a legal issue which did not require any evidence to be submitted. Thus, the State was not denied an opportunity to introduce any relevant evidence on the issue of constitutionality. While the State may have been technically deprived of the opportunity to argue against defendant's motion in the parish court because of defects in service, the present appeal provided the State with a forum to make its substantive response.

For these reasons, we find that the merits of the constitutional issue are ripe for review.

Constitutional Issue

The issue presented in this case is whether the $5.00 fee assessed pursuant to La. R.S. 32:57(G) is a tax collected by the courts, and thus a violation of the separation of powers doctrine found in La. Const. art. II. The separation of powers doctrine prohibits any one of the three branches of government from exercising power belonging to another branch. La. Const. art. II, §§ 1 and 2 divide governmental power into three separate branches and provide that no one branch shall exercise powers

[12] We also note that the attorney for the State admitted at oral argument that the improper service was not a main issue on which the State was relying.

belonging to the others. These sections establish the basis for the recognition of inherent powers in the judicial branch which the legislative and the executive branches cannot abridge. *Konrad v. Jefferson Parish Council*, 520 So.2d 393, 397 (La.1988); *Singer Hutner Levine Seeman & Stuart v. Louisiana State Bar Association*, 378 So.2d 423, 426 (La.1979). Under the doctrine of inherent powers, courts have the power (other than those powers expressly enumerated in the constitution and the statutes) to do all things reasonably necessary for the exercise of their functions as courts. The inherent powers of the judicial branch necessarily encompass the authority to administer the business of the courts. *Konrad*, 520 So.2d at 397.

In *Safety Net for Abused Persons v. Segura*, 96-1978 (La. 4/8/97), 692 So.2d 1038, this Court considered the constitutionality of La. R.S. 13:1906, which directed the clerk of the city courts of New Iberia and Jeanerette, and the municipal courts of Delcambre and Loreauville, to collect an additional fee in civil and criminal cases to support a program to aid victims of domestic violence. Specifically, the statute directed that the money collected be deposited in a special fund to benefit SNAP, a domestic violence program and shelter serving Iberia Parish.

This Court stated that "[f]ollowing the trend restricting the imposition of court fees to instances where they fund functions of the judicial system, we hold that court filing fees may be imposed only for purposes relating to the administration of justice. This requirement is inherent in our constitutional right of access to the courts and the constitutional separation of powers doctrine. Moreover, our clerks of court should not be made tax collectors for our state, nor should the threshold to our justice system be used as a toll booth to collect money for random programs created by the legislature." Based on this holding, we went on to determine whether the fee imposed by La. R.S. 13:1906 was sufficiently related to the administration of justice to pass constitutional muster.

After examining the statute, we found that the money collected did not go to court services, or to any other entity associated with the judicial system. Instead, the money went to a private, nonprofit corporation to be used at its discretion for domestic violence programs. Because the "fee" was not assessed to defray the expenses of litigation or to support the court system, and was a revenue raising measure designed to fund a particular social program, we found that the "fee" imposed by the statute was, in reality, a tax. *Safety Net*, 692 So. 2d at 1041. We noted that "[a] charge that has as its primary purpose the raising of revenue, as opposed to the regulation of public order, is a tax. *Id.* Moreover, a tax is a charge that is unrelated to or materially exceeds the special benefits conferred upon those assessed." *Id.* [citing *Audubon Insurance Co. v. Bernard*, 434 So.2d 1072, 1074 (La.1983); 4 Cooley, *The Law of Taxation*, Ch. 29, § 1784 (4th ed.1924)].

This Court held that La. R.S. 13:1906 imposed an unconstitutional filing fee in violation of the right of access to the courts and of the separation of powers doctrine because its purpose - to fund domestic abuse services - was unrelated to the administration of justice. *Id.* at 1043. We noted that "[w]hile domestic abuse programs are indisputably worthy and necessary in society today, they are essentially social welfare programs that cannot be funded with filing fees that are imposed on all civil suits and collected by the judiciary as mandated by La. R.S. 13:1906." *Id.*

In reaching this conclusion, we noted that while SNAP provides a myriad of laudable services for victims of domestic abuse, the primary ones being shelter, counseling and information for abuse victims, these services have no logical connection to the judicial system. SNAP is not a part of the judicial branch, it serves no judicial or even quasi-judicial function, it is not a program administered by the judiciary, and it is not a link in the chain of the justice system. *Id.* at 1043-1044.

Guided by our decision in *Safety Net*, the question that we must answer in this

case is whether the fee imposed by La. R.S. 32:57(G) is sufficiently related to the administration of justice to pass constitutional muster. Once collected, the $5.00 assessment imposed by La. R.S. 32:57(G) is deposited in the state's general treasury. Later, an equal amount is allocated by the Legislature to a special fund to be used by the GNOEC "to supplement the salaries of P.O.S.T. certified officers and for the acquisition or upkeep of police equipment." La. R.S. 32:57(G)(2). Therefore, the question before this court is whether the funding of salaries and equipment of the GNOEC is a function of the "judicial system."

The State asserts that the $5.00 fee in this case has a logical connection to the judicial system because it benefits a link in the chain of the judicial system. The State argues that law enforcement operates in the realm of the criminal justice system, presided over by the judiciary. The State asserts that law enforcement agencies are related in a material way to the criminal justice system and that they are part of the traditional institutions that constituted the criminal justice system. Further, the State points out that the GNOEC cost is assessed only to those who are convicted of offenses cited by the Causeway Police. Thus, the relation between the cost, who pays it, and where it goes, is evident.

The defendant argues that the GNOEC cost is actually a tax. The defendant argues that, as in *Safety Net*, this cost, although for a laudable purpose, is not assessed to defray the expenses of litigation or to support the court system; rather, it is imposed in order to raise revenue to pay the Commission's police officers and maintain police equipment. The defendant further argues that the fact that this cost is an impermissible tax is highlighted by the fact that all funds collected are deposited in the State's Bond Security and Redemption Fund. Thus, regardless of the possible end allocation of the monies, to the extent that the proceeds collected from the GNOEC costs are first used to pay general state debts as part of the state treasury, the fund

unquestionably represent general tax revenues that are being used to fund the obligations of the State.

The defendant also argues that the GNOEC cost is not sufficiently related to the court system as required by *Safety Net*. Defendant argues that the GNOEC cost does not alleviate any costs related to the criminal courts; rather, the statute's purpose is to help fund the GNOEC's police department, thereby defraying the GNOEC's costs, which is an executive branch function. Defendant argues that despite the fact that there is some logical connection between police departments and the criminal judicial system, law enforcement agencies and the courts are separate and distinct entities with different roles and functions that belong to different branches of government, and costs and fees related to one do not necessarily relate to the other. Defendant argues that the cost imposted by La. R.S. 32:57(G) bears no relation to an individual's particular offense and does not help defray the costs of prosecuting that particular individual.

The defendant also points out that if the GNOEC cost was proposed today, it would not satisfy the Judicial Council's General Guidelines Regarding the Evaluation of Requests for Court Costs and Fees, which were promulgated on December 31, 2004. The Guidelines define a "court cost" as a cost "used to defray the operational costs of courts and the court-related operational costs of law enforcement, clerks of court, district attorneys, and indigent defense system, state and local probation and parole functions, and other court-related functions...." Guidelines at 2(a). "Court-related operational costs" are those costs that are in "direct support" of the pre-adjudicative, adjudicative, and post-adjudicative functions of a court, including but not limited to: training; data sharing; law enforcement service of process; court reporting; pro se assistance; certain treatment programs sponsored or closely affiliated with the courts; bailiff services; short-term detention; probation legal representation;

prosecution; legal research; court-related technologies; informal adjudicative programs such as diversion, alternative dispute resolution, restorative justice, pre-trial and such other programs that are either sponsored by or closely affiliated with the courts. Guidelines at 2(b). Further, defendant argues that the stated purposes of the GNOEC cost are not compatible with the Guidelines' standards for appropriate purposes for court costs. Particularly, the Guidelines suggest that appropriate purposes for a court cost include: (1) defraying the costs of court-related operational costs of other agencies; and (2) supporting an activity "in which there is a reasonable relationship between the fee or court cost imposed and the costs of the administration of justice." Guidelines at 7.

This Court reiterated in *Safety Net* that "[t]he nature of a charge is determined not by its title, but by its incidents, attributes and operation effect. Thus, the nature of a charge must be determined by its substance and realities, not its form." *Safety Net*, 692 So. 2d at 1041(citing *Gallaspy v. Washington Parish Police Jury*, 94-1434, p. 3 (La. 11/30/94); 645 So.2d 1139, 1141; *Reed v. City of New Orleans*, 593 So.2d 368, 371 (La. 1992). Based upon this Court's decision in *Safety Net* and the Judicial Council's Guidelines,[13] we find merit in defendant's argument that La. R.S. 32:57, in so far as it imposes an additional $5.00 fee used to supplement police officer salaries and to purchase or maintain police equipment, violates the doctrine of separation of powers.

In *Safety Net*, we distinguished a penalty assessed by statute as a "court cost" from a tax. We defined "tax" as a charge that has as its primary purpose the raising of revenue, as opposed to the regulation of public order." *Safety Net*, 692 So.2d at 1041. We agree with the defendant that La. R.S. 32:57(G) is a charge that has as its

[13] Although we are not solely relying on the provisions of these Guidelines, as they were promulgated after La. R.S. 32:57 was enacted, we find that they provide us with a tool to aid us in our decision in this case.

primary purpose the raising of revenue, and is, therefore, a "tax." As provided in the statute, the $5.00 cost is collected for the purpose of supplementing police salaries and acquisition and maintenance of police equipment. Funding police salaries and the maintenance of police equipment are the responsibility of the local tax collection authorities, not the judiciary.

Although a police department may be considered to be a "link in the chain" of the criminal justice system, and there is some logical connection between a police department and the criminal justice system, we find that police salaries and uniform equipment and maintenance is too far attenuated from the "administration of justice," to be considered a legitimate court cost. To hold otherwise would start us down a slippery slope, and we must draw the line at some point. Every expense incurred by the police department in its role in enforcing the laws of this state cannot be funded through "court costs." To do so would overly burden and unduly infringe on the court's administration of the judicial court system.

Accordingly, we affirm the trial court's finding that the $5.00 assessment provided in La. R.S. 32:57(G) is a "tax" funded through the judiciary in violation of the doctrine of separation of powers.

DECREE

For the above reasons, we affirm the judgment of the First Parish Court finding that R.S. 13:57(G) is unconstitutional.

FOR IMMEDIATE NEWS RELEASE

NEWS RELEASE # 26

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **8th day of April, 2008**, are as follows:

BY JOHNSON, J.:

2007-OK-0082 C/W 2007-KA-0716	STATE OF LOUISIANA v. KENNETH LANCLOS (Parish of Jefferson) For the above reasons, we affirm the judgment of the First Parish Court finding that R.S. 13:57(G) is unconstitutional.

LAW CLERK'S MEMORANDUM REGARDING COURT COSTS IN STATES OF:

WISCONSIN
LOUISIANA
TEXAS

MEMORANDUM

To: Richard Carter
From: Michelle Aurzada
Date: July 28, 2008
Re: Crime Stoppers Funding

QUESTIONS PRESENTED

1. What is the status of Assembly Bill 577?

2. Are the Louisiana statutes which provide for court-generated funds to Crime Stoppers organizations vulnerable to an attack upon its constitutionality, after the ruling in *Louisiana v. Lanclos*?

3. Are the Texas statutes which provide for court-generated funds to Crime Stoppers organizations vulnerable to an attack upon its constitutionality?

SHORT ANSWERS

1. Wisconsin statutes §§973.09 (1x), 973.06 (1)(f), which provided funding to Crime Stoppers through restitution has been repealed. Nonprofit organizations such as Crime Stoppers will no longer receive money through court imposed contribution surcharges.

2. No. Louisiana requires that a fee imposed by the courts be sufficiently related to the administration of justice to keep from violating the constitution. In *Lanclos,* the court ruled that an additional fee issued by the court violates the state's constitution if the fee funds internal operations of law enforcement agencies. The fee was held to be a tax and not a fine. However, the Louisiana legislature has declared "Crime Stoppers" to be an organization that is sufficiently related to the administration of justice. Crime Stoppers will not be affected by this ruling.

3. Possibly. The largest risk to the Texas Crime Stopper's organizations is the way in which they receive their funding. If any of the court collected funds appear to be paying state obligations, the fee may be a tax. State obligations may be the subsidizing of law enforcement agencies with funds for new equipment or the paying of police salaries.

DISCUSSION

Wisconsin

The Wisconsin legislature repealed Wis. Stat. §§973.09 (1x), 973.06 (1)(f), thus eliminating the court's authority to require a probationer to make a contribution surcharge to an organization or agency such as crime stoppers. 2007 Wisconsin Laws 84. Prior to the enactment, the following statutes authorized the funding of crime prevention programs. Wisconsin Stat. 973.06(1) authorizes a trial court to tax costs, fees and contribution surcharges against a defendant. Wis. Stat. § 973.06 (2007). If the court taxes a contribution surcharge against a defendant, 973.06(1)(f) requires the court to determine that the defendant has the financial ability to pay the surcharge and identifies the kind of organization or agency that qualifies to receive the contribution. *Id.* Wisconsin Stat. 973.09(1x) authorized a trial court to impose a contribution surcharge to an organization or agency specified in 973.06(1)(f). Wis. Stat. §973.09 (2007). Under 973.06(1)(f), crime prevention programs, whether run by a private nonprofit organization or by a law enforcement agency could receive the contribution surcharge. *Id.*

The State of Wisconsin has consistently eroded the strength of the statutes authorizing funding to crime prevention programs. A timeline of events include; first, the *Bizzle* case, in which the court of appeals narrows the definition of a crime prevention organization, secondly, the 2000 decision by the legislature to ban prosecutors and judges from reducing or dismissing charges for a donation to a crime prevention program and lastly, the repealing of the statutes authorizing funding. *Wisconsin v. Bizzle*, 222 Wis. 2d 100; 585 N.W.2d 900 (Wis. App. 1998); Wis. Stat. § 967.057 (2007); 2007 Wis. Laws

84. In *Bizzle,* the court narrowed the scope of §973.06(1)(f) with their holding that a law enforcement agency was not a crime prevention organization. *Id.* at 903. The underlying policy in this decision was that "a defendant cannot be ordered to reimburse the internal operating expenses of law enforcement agencies." *Id.*

At this time, the only source reporting on the reasoning behind repealing the statute is a newspaper article citing various court personnel, and legislators. The Wisconsin State Journal lists an example of secret deals between the district attorney and criminal defendants, allowing them to avoid prosecution if they donated money to favored groups. Dee J. Hall, *Fines Can't Go to Nonprofit and Anti-Crime Groups,* Wis. S. J., May 4, 2008, available at, http://www.madison.com/wsj/topstories/index.php?ntid =284707. A court official claimed that the potential for abuse was too great; such as police officers accepting money on the street in lieu of writing a ticket, and that judges prosecutors and police used the donations to support groups that officials favored. *Id.* Most importantly various judges claimed that they felt that people with money received different treatment. *Id.* Due to the repealed law, fees as part of a court imposed sentence, which fund nonprofit organizations and crime prevention programs will no longer be in effect. *Id.*

Louisiana

The Crime Stoppers organization in Louisiana at this time is not at risk for a constitutional challenge. The *Lanclos* case is analyzing the constitutionality of court imposed surcharges and the qualifications of organizations that receive funding from court ordered fees. *Louisiana v. Lanclos*, 980 So.2d 643 (La. 2008). To receive the court

imposed surcharges the organization must be sufficiently related to the administration of justice. *Id.* The legislature has codified Crime Stoppers as sufficiently related to the administration of justice. La. Code Crim. Proc. Ann. art. 895.4 (LexisNexis 2007).

The court in *Lanclos*, held that an additional cost of $5.00 generated by the court imposes an unconstitutional tax to be levied improperly through the judicial system, and thus is unconstitutional because it violates the separation of powers doctrine. *Id.* The issue in *Lanclos* was whether the $5.00 fee assessed pursuant to a Louisiana statute was a tax collected by the courts, and thus a violation of the separation of powers doctrine found in the Louisiana Constitution. *Id.* at 651. Governmental power in Louisiana is shared by three separate branches of government, as Article II, §1 of the 1974 Louisiana Constitution provides: The powers of government of the state are divided into three separate branches: legislative, executive, and judicial. The constitutionally mandated separation of governmental power places limitations on the authority of each branch as respects the power of the others. In this regard, Article II, §2 of the 1974 Louisiana Constitution states:

> Except as otherwise provided by this constitution, no one of these branches, nor any person holding office in one of them, shall exercise power belonging to either of the others.

In *Lanclos,* the Greater New Orleans Expressway Commission ("GNOEC") polices two bridges and maintains and operates one of them, a statute provides for an additional $5.00 cost when any person pleads guilty, no contest or is found guilty of a motor vehicle offense on one of the bridges, when the citation is given by a police officer employed by the GNOEC. *Id.* at 645. The fees were deposited in a special treasury and

credited to a fund which was used by the GNOEC. *Id.* The fees would supplement the salaries of its police officers and for the acquisition and upkeep of police equipment. *Id.*

In *Lanclos*, while driving on the Expressway, Kenneth Lanclos, was pulled over by a GNOEC officer and issued a citation for speeding. *Id.* at 646. Lanclos was issued a citation which assessed and ordered him to pay, $129.75 in court costs in addition to the $65.00 fine for the offense. *Id.* Included in the court costs was the $5.00 cost designated for the GNOEC. *Id.* Lanclos argued that the "GNOEC court cost violates the Separation of Powers guarantee in Louisiana Constitution as it constitutes a tax that is being collected by the courts. *Id.* The court agreed. *Id.* at 647.

The court's trend in Louisiana is to restrict the "imposition of court fees to instances where they fund functions of the judicial system." *Id.* To determine if the fee was constitutional, the court analyzed whether the fee imposed was sufficiently related to the administration of justice. *Id.* In that case, the court held that the fee was not sufficiently related to the administration of justice. *Id.* However, money collected for court services, or to any other "entity associated with the judicial system" is sufficiently related to the administration of justice. *Id.* One factor the court considered was that all the funds collected were deposited in the State's Bond Security and Redemption Fund, thus it was shown that the revenue first pays state debts, representing general tax revenues that were being used to "fund the obligations of the state." *Id.* at 652. Secondly, the GNOEC cost did not alleviate any court costs related to the criminal courts, rather the statute's purpose funded the police department defraying the GNOEC's costs, "which is an executive branch function." *Id.*

Of importance to Crime Stoppers is that the court in *Lanclos* specifically identified a "private, nonprofit corporation" which determined how to use the money at their discretion as not being sufficiently related to the administration of justice. However, the program was a domestic violence program that offered services for victims of domestic abuse, such as shelter, counseling and information for abuse victims. *Id.* The court determined that the program is not a part of the judicial branch, it serves no judicial or even quasi-judicial function, is not administered by the judiciary, and it is not even a part of the justice system. *Id.* According to the court, because the fee was not used to defray the costs of litigation or to support the court system, and was a "revenue raising measure designed to fund a particular social program" the fee was actually a tax. *Id.* at 651. The court found that the assessment of the $5.00 to fund the police salaries and police equipment was a violation of the separation of powers as required by the Louisiana Constitution.

Crime Stoppers will not be at risk for a constitutional challenge. The legislature codified the Crime Stopper's activities as "directly related to the administration of the criminal justice system." La. Code Crim. Proc. Ann. art. 895.4 (LexisNexis 2007). The legislature specifically recognized activities such as, "paying rewards, of operating hotlines, and of obtaining information on criminal activities" as directly related to the administration of justice. *Id.* Unlike the fee in the *Lanclos* case, the additional fee used to fund Crime Stoppers in Louisiana is constitutional, in addition, the funding for Crime Stoppers is not deposited into a state revenue account; and the money is not used for law

enforcement salaries or equipment. *Id.* At this time, Louisiana's Crime Stopper organization will not be at risk from the ruling in *Lanclos.*

TEXAS

Following the events in Wisconsin and Louisiana, the Texas Crime Stoppers organization may face challenges in three areas. First, if the additional court costs and fees assessed are considered taxes and not fees, the fee or cost may be considered unconstitutional as a violation of the constitution's separation of powers clause. *Lanclos* at 646. Secondly, both states were adamant in their policies that the funding of police departments is a state obligation and not the responsibility of a defendant. *Bizzel* at 903; *Lanclos* at 652. Lastly, the Wisconsin legislators were concerned with the abuse of discretion by the judges and prosecutors in choosing to allocate the fees collected in lieu of prosecution to their preferred organizations.

A "crime stoppers' organization" is a private, nonprofit organization that is operated at a local or statewide level, that accepts and expends donations for rewards to persons who report to the organization information concerning criminal activity, and that forwards that information to the appropriate law enforcement authorities; or a public organization that is operated on a local or statewide level, that pays rewards to persons who report to the organization information about criminal activity, and that forwards the information to the appropriate law enforcement agency. Tex. Gov't Code §414.001 (Vernon 2007). The largest threat to the Texas Crime Stoppers organization appears to be the issue of taxation as a violation of the separation of powers in the Texas constitution.

For purposes of this analysis it should be noted that the separation of powers in the Tex. Const. Art. II, § 1, is the same requirement as stated above for Louisiana.

In Texas, "Tax" means a tax, fee, assessment, charge, or other amount that the comptroller is authorized to administer. Tex. Tax Code §101.003(13) (Vernon 2007). The comptroller is responsible for public accounts. *Id.* Funds can be collected through a citation authorized as Consolidated Fees on Conviction or the court can assess Miscellaneous Fees and Costs. Tex. Loc. Gov't Code Ann. §133.102 (Vernon 2007), Tex. Gov't. Code Ann. §103.021 (Vernon 2007).

Under §133.102, the court costs collected shall be collected and remitted to the comptroller upon conviction. Tex. Loc. Gov't Code Ann. §133.102 (Vernon 2007). The funds are then distributed by a predetermined percentage to fourteen separate accounts, one of which is the crime stoppers assistance, which receives .2581 percent. *Id.* A significant difference between the Louisiana collection of court fees and the Texas collection of court fees exists in the manner of collection. In Louisiana, the fees collected were deposited into a fund labeled "State's Bond Security and Redemption Fund" that was used to pay multiple state debts. In Texas, the account is designated as a "Crime Assistance" account. *Id.* Article 102.013 states in part that,

> "The legislature shall appropriate funds from the crime stoppers assistance account to the Criminal Justice Division of the Governor's Office. The Criminal Justice Division may use 10 percent of the funds for the operation of the toll-free telephone service under *Section 414.012, Government Code*, and shall distribute the remainder of the funds only to crime stoppers organizations. The Criminal Justice Division may adopt a budget and rules to implement the

> distribution of these funds." Tex. Code Crim. Proc. art. 102.013 (Vernon 2007)

As long as the Criminal Justice Division is not paying state obligations or funding new equipment or law enforcement salaries, the comptroller's account will likely be constitutional.

The second method of collecting funds for the Crime Assistance account is through court fees and costs. Under §103.021 an accused or defendant, or a party to a civil suit, as applicable shall pay the following fees and costs as determined by the judge. Tex. Gov't Code Ann. §103.021 (Vernon 2007). Notably a judge may issue a fee up to $50 to a crime stoppers' organization, after determining the ability of the defendant to pay. *Id.* at §103.021(6).

Unlike Wisconsin, in Texas a judge may require a defendant as a condition of felony probation to make a one time contribution to an organization such as crime stoppers, but not in lieu of prosecution. Under the Texas *Code of Criminal Procedure, article 42.12, §6(a),* a judge may require a one time contribution to crime stoppers if the condition has a reasonable relationship to his treatment and rehabilitation and to the protection of the public. 1985 Tex. AG Lexis at 121. However, a judge's authority to order a defendant to contribute to an organization of choice is limited. 1999 Tex. AG Lexis 41. Under *article 42.12, §11(b),* a judge may not order a defendant to make any payments as a condition of community supervision unless expressly authorized by law. Unlike Wisconsin, Texas prosecutors may not "require an offender to contribute money to a public or private entity in consideration of the prosecutor's decision not to prosecute." 1999 Tex. AG Lexis 41.

In contrast, Wisconsin allowed a judge or prosecutor to select any organization of their choosing without limitation, the judges were on occasion board members for the organization that they ordered a contribution to. Unlike Texas, Wisconsin suffered from an abuse of authority by judges and prosecutors in determining gifts and contributions to organizations of their choice. Texas crime stoppers' organizations would be at risk if judges were found to be violating the strict limitations set upon the ability to order a contribution to a charitable or government organization.

However, one statute appears to leave open a possibility that funding could be used to pay for state obligations, thus converting the funds into a tax collection. The problem arises with § 414.010(d) which states in part;

> If the amount of funds received by a crime stoppers organization under this section exceeds three times the amount of funds that the organization uses to pay rewards during a fiscal year based on the average amount of funds used to pay rewards during each of the preceding three fiscal years, the organization may deposit the excess amount of funds in a separate interest-bearing account to be used by the organization for law enforcement purposes relating to crime stoppers or juvenile justice, including intervention, apprehension, and adjudication. An organization that deposits excess funds in an account as provided by this subsection may use any interest earned on the funds to pay costs incurred in administering the organization.
> Tex. Gov't Code § 414.010 (Vernon 2007).

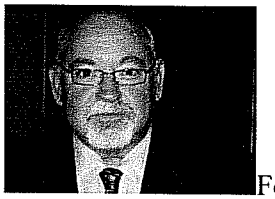
This section of the code appears to leave open the possibility that the excess funds could be used to supplement the funding of law enforcement agencies, similar to the problems faced by the Wisconsin and Louisiana crime stoppers programs.

Lastly, Texas does allow under article 42.12, section 11(a), "placing wholly within the state courts the responsibility for determining the conditions of community supervision." Tex. Crim. Proc. Code art. 42.12 (Vernon 2007). Both Wisconsin and Texas allow the individual judges to determine where the allocation of funds collected from fees and costs would go. Dissimilar to Wisconsin is that the courts in Texas do not appear to be authorized to require contributions to nonprofit organizations of their choice in lieu reducing or dismissing charges.

LOBBYING THE LEGISLATURE

Presentation by Charley Wilkison

Charley Wilkison

 For the past 25 years, Charley Wilkison has served as a political and media strategist in numerous campaigns, including races for Presidential campaign committees, U.S. Senate, Governor, Texas Supreme Court Justice, Congressional races, Texas House and Senate races and various down-ballot races.

His career has included stints as a staff member in the Texas House of Representatives, Texas Senate, and the U.S. Congress.

Currently, he serves as Public & Governmental Affairs Director for the Combined Law Enforcement Associations of Texas (CLEAT) www.cleat.org and the Peace Officers Memorial Foundation, www.pomf.org

As the Union's political director, Mr. Wilkison also develops and directs political campaigns for the one hundred local law enforcement groups across Texas. He has won elections for collective bargaining, civil service, pay increases, city charter referendums and other special election issues.

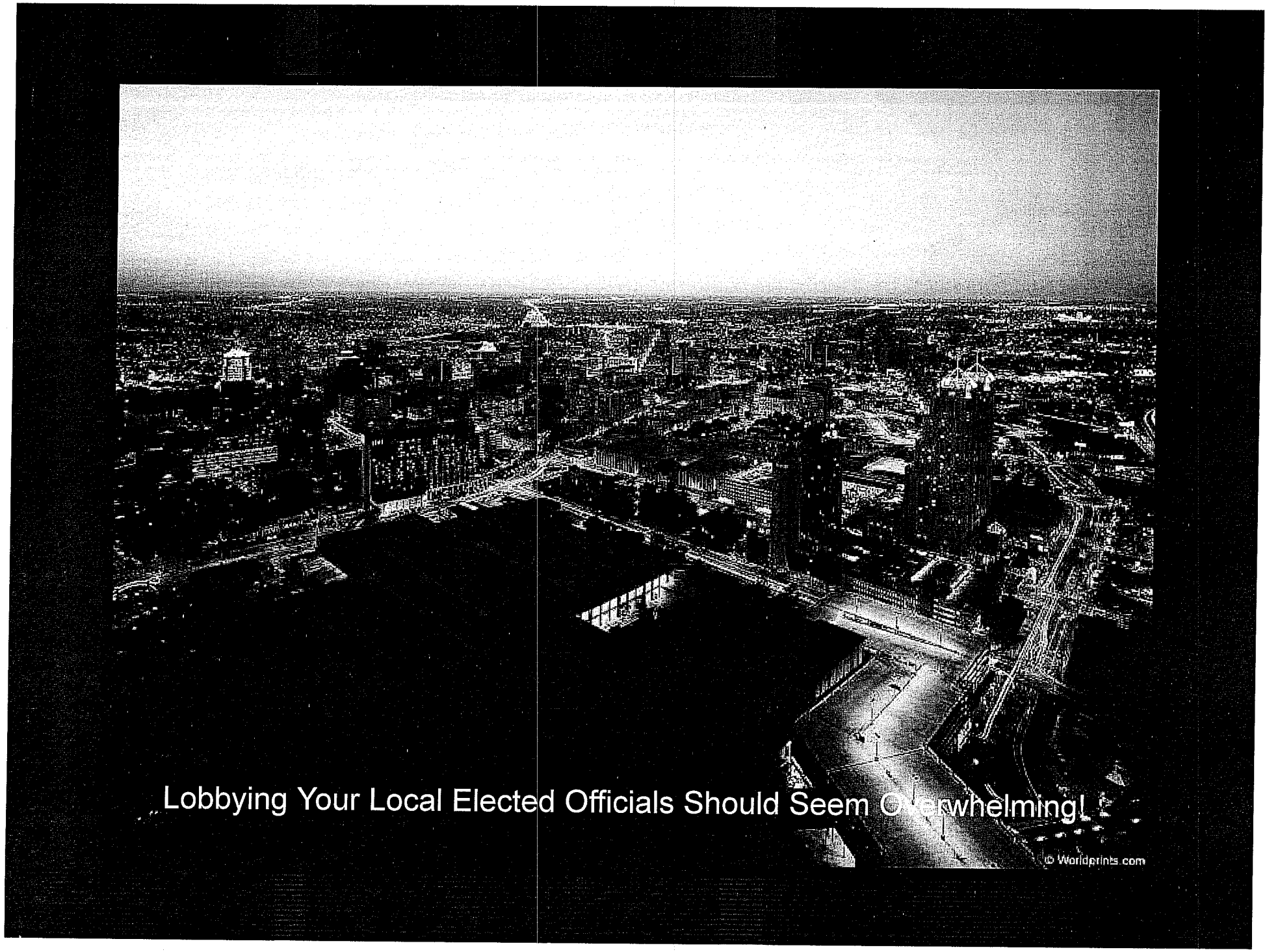
As the lobbyist and legislative strategist, Mr. Wilkison has won passage of issues such as state-wide police bargaining rights, officer job protection rights and benefit protections for officers and their families.

Charley has fought many public battles with the ACLU, municipal and county governments, defense attorneys and other enemies of law enforcement officers.

He is the only lobbyist in America to successfully kill civilian oversight in two states during the calendar year: Louisiana and Texas.

Charley has worked for additional police organizations across the country including, but not limited to, The Honolulu Police Officers Association, AZCOPS, West Virginia State Troopers Association, MOSTA (Missouri State Troopers Association), the Shreveport Police Officers Association and the Shreveport Fire Fighters Association.

He is counted as an unofficial confidant and advisor by numerous elected officials in Texas regardless of political party or affiliation. Charley holds a degree in political science from Texas A & M University, Commerce.


Lobbying Your Local Elected Officials Should Seem Overwhelming!
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Enhancing Your Local Lobbying Skills to Better Serve Your Community

Today we will cover discovering opportunities, reminding you of old techniques, hopefully learning some new ideas, trouble shooting, how much pressure to bring to bear, working through times of political crisis, when to bring in outside pressure and discovering how your natural abilities that you possess right now-today-are your best assets when you need help from your local elected officials.

Viewpoint Survey

Q: When is the best time to make the acquaintance of a legislator, member of the local city council or county commissioner's court?

a. Years before when they were a private citizen from your neighborhood
b. Years ago when they were just a worker on my shift
c. During the political campaign
d. Right after the election when they have more time
e. Right before they are sworn into office so they will remember

Viewpoint Survey

Q: Who Should your Organization Send to Speak with the Elected Official?

a. A member who lives right down the street from the elected official
b. A high ranking member of the local police administration who is respected by the politicians
c. The leader of your organization or a designated representative
d. A representative from MADD

Viewpoint Survey

Q: When looking to recruit a candidate for local office the association should look for:

a. Someone who has high name ID and is popular and well liked by everyone in your area
b. Someone who is very wealthy and well funded
c. Both A & B
d. A retired officer or spouse or someone your organization can control
e. Someone who seems fair and open minded about your issues

Viewpoint Survey

Q: When Interviewing Candidates for Elected Office, You Should Ask:

a. Do you support law and order issues?
b. How many victims of criminals acts do you know personally?
c. Will you support our issues for neighborhood watch groups, citizens on patrol, national night out?
d. Will you do something about kids driving too fast through the neighborhoods?

Viewpoint Survey

Q: An Elected Official Just Voted the Wrong Way on Your Issue. Now, while the issue is fresh on everyone's mind you Should:

a. Call a news conference and say you are looking for an opponent to run against them in the next election cycle?
b. Quietly leave the event and plan to get them voted out of office?
c. Go see them and ask them what happened?
d. Tell his or her peers that they are in big trouble?

Viewpoint Survey

Q: When your Organization has a Large Issue Before the Deliberative Body You Should:

a. Remind the honorable members about the PAC contribution you gave them last year?
b. Ask them if they still support crime and punishment?
c. Just chat with them about neighborhood stuff, their kids and local school sports?
d. Ask them directly to support the item on the agenda?

Viewpoint Survey

Q: After years of work the Majority of the Legislature or local governmental body say they will support your issue. You should:

a. Be grateful and leave them alone since you don't want to screw anything up?
b. Ask your strongest supporter to make the motion to place the issue on the agenda and find another elected official to second the motion?
c. Trust your elected leaders to do the right thing?
d. Tell the media that it's a done deal?

Viewpoint Survey

Q: The President of a Neighborhood Association says that he just learned that the Mayor has changed his mind about supporting your issues. Your next move should be:

a. Call an emergency meeting to discuss the mayor?
b. Call the media and tell them what has happened?
c. Call your significant other and tell them you are moving?
d. Call the Mayor and ask him if anything has changed ?

Viewpoint Survey

Q: After weeks of not returning calls your alleged political FRIEND on the city council tells you to your face that she is not going to support your issue and that you should just grow up.

a. Call a news conference and say she needs to grow up?
b. Take out a newspaper ad saying she is a liar?
c. Immediately go to the other members on the council and shore up your support with them?
d. Use this time to go ahead and tell your close contacts with the media 'off the record' that she has been having an affair with her pastor?

Viewpoint Survey

Q: You've Hit the Jackpot, Your Local City Council has Approved the your entire funding request. Your Chapter Should immediately:

a. Send each elected official a PAC Check?
b. Remind the association to do something nice for them someday soon?
c. Immediately touch base and thank them and tell them you are planning to present them with an award during the next campaign season—they pick the date and location?
d. Buy a newspaper ad thanking them for supporting your issue?

Lobbying is About Issues

Regardless of how many meals you buy, how many PAC checks you hand out or how 'close' you think you have become to the elected officials—it's about the issues.

How you develop those issues defines your local chapter, your leadership and whether or not you actually succeed.

Lobbying is About the Message

If the message turns out to be that you are a nice guy and you represent a bunch of good guys then you will fail.

If the message turns out to be that you want a personal relationship with the important people—you will get it and your organization will get nothing.

What is it that you need?

Notice the use of the word 'need'. Elected officials deal with large and small issues everyday. If they are good at what they do then they are constantly moving items mentally from one column to another.

Before you even begin working on relationships and techniques you better figure out what it is that your organization needs.

First, Adjust your Member's Expectations First

You cannot be successful if the local chapter wants something unreasonable, and you cannot be successful if you cannot bring your members something that they can see.

You must iron it all out in your house –first- before even attempting to bring it to the forefront of a deliberate body of government. Your organization's needs should be become so simple and so relevant that all members understand and embrace the cause.

Less is Always More

If you were to go on television and give ten things that your organization wanted—you would sound delusional. The same goes with elected officials. You must narrow and sharpen your issues so that you can deliver your 'needs' in a three point plan or less.

1-2-3

You must know what you need and be able to say it to people who are busy and always need the condensed version.

The Voice comes First

Before the relationship, before the techniques, before you throw the political moves at anyone your organization should have already decided what it needs. The next step is to determine who delivers the message?

It should be the President or a PAC Chair but it has to be a decision maker.

Too Many Cooks

It is impossible for large committees to lobby. There is no way to keep the message intact. If you have too many members lobbying directly with the elected officials then the message will become diluted.

Keep the circle lean and tight. Lobby teams must have complete trust in one another and the message has to stay crisp, and on target.

You Cannot be Friends

Regardless of how long you have known the person, the relationship changes the moment they announce for office. That moment is the end of whatever relationship you had. It is over at that moment. If things remain the same, you are not going to be successful in lobbying that person.

You cannot have real friendships with politicians. As long as you understand this you won't be disappointed or assign negative qualities to one another.

If you are lucky and successful, you can gain a new relationship. This one will be the real one, the one that matters.

The Real Relationship

Politics, like baseball is played in the moment. Innings change, teams change, players change...

Politicians come and go and the thing that has to remain the same is your ability to have a relationship with people who have the power at the moment.

The real relationship has to center around the politician and their needs. Your organization's needs come second. If you get this wrong you will fail. If you force the politico to think of you first, you will eventually fail in a big way because the people in power will resent you.

When is the best time to begin?

The campaign season is the most ideal time to begin building a relationship. When a politician is most vulnerable is when he or she is facing the voters. That is the moment when your organization is most equal to all other concerns. That is when the your issues are at their symbolic peak. This is when cash and sweat equity are often equal in investment quality.

Timing is critical in relationship building and political foreplay

Early investments in time, cash, endorsements and shoe leather capital are well remembered by politicians who think everyone should support them.

The person who bankrolls the campaign will always get his call returned by the mayor but a citizen who loaded his truck with signs and went door to door with the candidate will get his call returned with a smile.

5 Things to do before you campaign

1. Research the viability of the candidate to see if they have a real chance.
2. Check the negatives of your candidate so your organization wont be surprised
3. Take a real gut check of your members to make sure they are willing to work
4. Make sure your candidate has a general idea of what you need down the road.
5. Endorse

What can one organization do?

1. Make sure your endorsement gets media
2. Host a fundraiser in your neighborhood
3. Host a sign building party
4. Create sign routes to keep the signs up
5. Create block-walk Saturday for members
6. Create phone bank to make sure all your members get to the polls
7. Have your PAC buy a newspaper ad
8. Provide transportation during early voting
9. Provide poll workers on election day
10. Be visible to your candidate, let him see you working

On election Night

If you've followed even part of a plan like this no doubt your candidate will win...

*Remember election night is all about the candidate

*Remember election night is a time to share the candidate with the other stakeholders

*Remember election night is also a private time for the candidate and his/her family

*When speaking to the press, the victory belongs to the candidate

When Your Candidate Loses

If your organization plays the game long enough you will be caught in a situation where you are forced to endorse and support a losing candidacy.

How you publicly handle the loss will determine the ability of you and your members to continue working towards and accomplishing goals .

What NOT to do when you lose

1. Do not make negative statements about the other candidate
2. Do not sound flippant or say that it doesn't really matter (it matters)
3. Do not question the election results (that is for others to do)
4. Do not allow your members to believe that your organization's success hinged on the election of one candidate
5. Do not shy away from your original decision to back the candidate that was best for you and your members

What TO do when you lose

1. Thank the losing candidate for running
2. Immediately call the other camp to congratulate in person or by phone
3. Be gracious in comments to the media
4. Remind your members this is a democracy and the union lives to fight another day
5. Remind the winner of issues of joint interest and promise to help work with them in the future
6. Do not hide or go underground, stay strong and take your medicine
7. Find out if the winner has campaign debt and offer to contribute in a lunch meeting where you reiterate the things your union needs
8. Formalize your congratulations in a letter to the winner so they will know you were really serious
9. Seek out common friends of the winner and seek a go-between if things are truly strained
10. Go help the loser take down all those signs

Win or lose, you must go lobby

1. Never mail a check, give it in person
2. Never gang up on an elected official, one or two are much better than five or six
3. Never lobby over the phone unless its an emergency
4. Never settle for talking to a staff person, you are important enough for a personal visit from the elected official
5. Never assume very much, if it's not stated directly then it's probably not understood and certainly not very likely to happen

Enhancing the Relationship (reaching a little higher)

Politics is not all food, drinks, golf, gifts etc.

1. Ferret out the elected official's top priorities
2. Ask if you can help on their pet project
3. Think like it's campaign time again and endorse his or her issues (as long as they are compatible to your organization's)
4. Don't be afraid of moving beyond your usual strata of issues (bring along your members)
5. Make sure the candidate understands why you are helping him

When to talk

Elected officials are not your friends so strategizing to wind up at the hot tub party will cause you to fail

1. Talk when you are offering to help them
2. Talk when there is a need to share info
3. Talk when there is a public crisis
4. Talk when it is appropriate to be personal
5. Talk when you need their help

When not to talk

Elected officials are just people so they will gossip, lie, wrongly use you and your organization for any or no apparent reason

1. Do not engage in idle gossip, you will be quoted
2. Do not engage in long personal stories—they don't care
3. Do not attempt to use your superior personal investigative tools to garner information—they will figure it out
4. Do not attempt to be personal friends—you will become a laughing stock
5. Do not pry into their personal lives—they will call you if they need you

The Meeting

Every lobbyist has a different strategy and a private success/failure rate.

1. Ideal meetings are where both parties are free to exchange thoughts
2. Politicians are busy people so planning to sit around for half the day is mostly unrealistic
3. Making too many time consuming plans for them will result in your disappointment
4. Less is more, remember getting your message to them is the mission
5. Learn to be flexible, if meeting in the hallway outside city council chambers is the best he or she can offer then take it and do your best

Body language

Politicians smell fear, they devour people who are afraid. They even smell it when you spray on arrogance and defensiveness

1. Thank them for seeing you and shake hands
2. Look them in the eye, let them be the first to look away
3. Tell them EXACTLY what you need, not sort of
4. Do not touch them (you don't know them like that)
5. Do not try to entertain them, they pay their staff to be funny

The Sin of the Oversell

Staying too long is much worse than leaving too soon

1. Be cognizant that their time is valuable
2. Its best to always be simple and brief
3. By being very specific you can cut down on the idle talk and get down to business
4. Tell them you need their help, ask for a commitment
5. Go away!

The failure of the undersell

- The greatest failure is to have that big meeting and work to bring schedules together and then get in front of a decision maker and not be specific enough and leave without knowing where you stand.
- You must say exactly what it is that you need. You must think like a child and ask for help in reaching for each item.
- You and your organization do not have a seat in the legislature so you need EVERYTHING: the item placed on the agenda, the motion, the second, and every single vote to win a majority
- You must ask for each of these things before you part ways

Using Inside Leverage

When the vote is tight and you are looking for one more elected official to see it your way, then it may be time to use the inside leverage that only one politician can use on another.

Regardless of political party, gender, race or creed, politicians cover one another all the time and owe one another large favors. This technique will only work in the crunch and should be used sparingly.

Have your guy go see the go-ahead vote and see if she will change her mind. This may be the only way you pass your issue. Don't expect a move like that to be cheap. You will owe both parties immensely and you should look forward to helping them both get re-elected.

When Politicians Need Political Cover

- It may be possible to persuade someone to come over to your side but they come from an area of town where your organization is disliked, or they have a public position of being opposed to some of your issues...
- You should be prepared to bring them political cover. Lay down a public firing line in the press that explains why your issue was so important that they had no choice but to break with political protocol and support your issue.

When You Need the Press

Reporters, like politicians, are not your friends so the press should be used sparingly for your issues:

1. Send a message and warn a potential enemy to reign it in.
2. Send a message to the public that an issue important to them is in danger.
3. Send a message to voters in support of those who have supported you.

The Press

The press moves the public, the public moves the politicians, the politicians move the issues.

1. Take reporters to lunch but remember every thing eventually is on the record.
2. Reporters are after the story, their double-edged sword cuts both ways.
3. Diligently fear your organization's over exposure to the media.

Grassroots

The public, once awakened, can move mountains but awakening them can be very costly. When should you make the effort?

1. When your union is on the ropes
2. When nobody in the governing body is listening
3. When all other means of communication have been exhausted

Communicating Directly to the Voters

This is lobbying too. Here's some examples:

1. Your organization's president is guest – talk radio
2. Letters to the editor
3. Full page newspaper advertisement
4. Direct mail
5. Commercials, radio, TV,

It Can't Always be About Needing Something From the Public

Just as the politicians will grow weary if all they ever hear is you, you, you...the public needs to hear that your organization is doing good things. Positive PR is just lobbying in advance.

1. Whenever your organization is involved in a good cause (kids, senior citizens, Santa etc.)
2. Whenever one of your members does something extraordinary
3. Your members do good things in their neighborhood besides report crimes, make sure those stories are told

12 Steps to Better Lobbying

1. Develop one message
2. Remember, campaigning comes first
3. Enhance the relationship
4. Keep it Issues, not friendships
5. Win or lose, you must lobby
6. Know when to talk, when to be quiet
7. Meetings matter but the message matters more
8. Body language-being yourself is important
9. Insider leverage can get you that go-ahead vote
10. Politicians need cover too
11. Watch the press, watch your back
12. Know when to go grassroots

LOBBYING BY NON-PROFIT ORGANIZATIONS:

WHAT IS PROHIBITED?
&
WHAT IS PERMISSIBLE?

UNDER FEDERAL TAX LAWS

Internal Revenue Service
United States Department of the Treasury

The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations

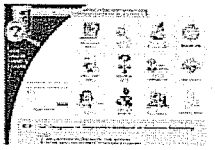
Under the Internal Revenue Code, all section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity. Violating this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.

Certain activities or expenditures may not be prohibited depending on the facts and circumstances. For example, certain voter education activities (including presenting public forums and publishing voter education guides) conducted in a non-partisan manner do not constitute prohibited political campaign activity. In addition, other activities intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives, would not be prohibited political campaign activity if conducted in a non-partisan manner.

On the other hand, voter education or registration activities with evidence of bias that (a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favoring a candidate or group of candidates, will constitute prohibited participation or intervention.

The Internal Revenue Service provides resources to exempt organizations and the public to help them understand the prohibition. As part of its examination program, the IRS also monitors whether organizations are complying with the prohibition.

Updated: April 17, 2008



Permissible Lobbying for 501(c)(3) Nonprofit Organizations: Three Key Questions

Published: 10/01/2000

This fact sheet answers three questions that nonprofits often ask:

Is Lobbying by Nonprofits Permitted?
Is Discussion of Policy Matters Considered Lobbying?
Can Nonprofits that Receive Federal Grants Lobby?

1. IS LOBBYING BY NONPROFITS PERMITTED?

Lobbying by nonprofits is perfectly legal and supported by IRS regulations. There are several categories of nonprofits, including those exempt under 501(c)(3) (charitable, scientific, educational groups) and 501(c)(4) (social welfare or action groups). 501(c)(4)s have no limit on the amount of lobbying they can conduct. Under IRS regulations, 501(c)(3)s do have limitations.

501(c)(3) groups can choose between two sets of guidelines for measuring lobbying: a measure based purely on expenditures, and a general "insubstantial" test. The expenditure test is generally more favorable to nonprofit advocacy. These guidelines are set out under the Internal Revenue Code, Sections 501(h) and 4911.

Under the expenditure test, lobbying only occurs when there is an expenditure of money. 501(c)(3)s that choose to be covered by the expenditure test can spend up to 20% of their exempt purpose budget, up to $1 million, on legislative lobbying. (*see the sliding scale below*). Only 25% of this total lobbying allocation can be spent on grassroots or indirect lobbying. To use this test a group must file a one-page form (IRS Form 5768) notifying the IRS that they have "elected" to use the expenditure test.

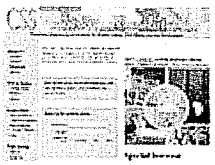
Sliding Scale for Nonprofit Lobbying Expenditures

Exempt Purpose Budget	Permissible Lobbying Expenditures	Total Allowable Grassroots Lobbying
Up to $500,000	20% of budget	25% of lobby limit
$500K - $1 million	$100K + 15% of excess over $500K	$25K + 3.75% of excess over $500K
$1 - $1.5 million	$175K + 10% of excess over $1 million	$43,750 + 2.5% of excess over $1 million
$1.5 - $17 million	$225K + 5% of excess over $1.5 million	$56,250 + 1.25% of excess over $1.5 million
Over $17 million	$1 million	$250,000

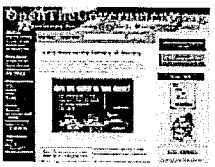
Direct lobbying refers to direct communications with legislators (or communications with your members to encourage them to communicate with legislators) to influence the outcome of legislation at the local, state, or federal level. **Grassroots lobbying** is an attempt to influence legislation through appeals to the public. To be considered grassroots lobbying, the communication must meet a three-part test. It must: (a) refer to specific legislation; (b) reflect a view on that legislation (e.g., oppose or support the bill); and (c) contain a "call to action" with respect to that legislation (e.g., "contact your legislator").

Groups that do not "elect" the expenditure test fall under a "substantial part" test, in which lobbying may not constitute more than an insubstantial part of a charity's activities. However, the term "substantial part" has never been fully defined. The definition of lobbying under the substantial part

Working Group on Community Right-to-Know



Citizens for Sensible Safeguards



Open the Government

test, moreover, does not require an expenditure of money. For example, activities of volunteers to influence legislation must be counted as lobbying.

501(c)(3) groups, excluding churches and private foundations, are eligible to utilize the expenditure test-- which in most instances is more favorable to nonprofit lobbying.

2. IS DISCUSSION OF POLICY MATTERS CONSIDERED LOBBYING?

Only those activities associated with attempts to influence legislation would be considered lobbying under tax law and IRS definitions of lobbying. Taking a position on, or discussing a specific piece of legislation, for example, is considered lobbying. There are, however, several types of communications that are excluded from tax law definitions of "lobbying", including:

1. nonpartisan analyses, which need **not** be neutral or objective, but which present facts fully and fairly, be widely available, and not include a direct call to action (such as requesting that the reader contact his or her legislator)
2. responses to written requests for information and/or technical assistance from legislators
3. discussion with government officials concerning legislation impacting an organization's existence, powers, duties, tax-exempt status, or right to receive tax-deductible contributions
4. discussion of broad policy matters with the general public and government officials-- such as the digital divide-- even if legislation is pending

3. CAN NONPROFITS THAT RECEIVE FEDERAL GRANTS LOBBY?

Nonprofits that receive federal grants **cannot** use any portion of their *federal* funds to lobby. 501(c)(3)s **can** use *private* resources to lobby, under IRS rules (see #1 above). 501(c)(4) organization that receive federal funds may establish an affiliated organization, also exempt under section 501(c)(4), to engage in privately-funded lobbying activities.

OMB Circular A-122, which is a component of grant agreements, places restrictions on lobbying and electioneering. The federal government will not reimburse direct lobbying expenses. Additionally, the grant rules require that no share of the overhead cost pool (used to calculate indirect cost rate) can be spent on lobbying activities. This includes advocating on behalf of a specific awarding and/or renewal of a federal grant.

The definitions of lobbying under Circular A-122 differ slightly from IRS lobbying restrictions that must be followed for any 501(c)(3) organization. Generally, Circular A-122 prohibits lobbying for or against legislation at the federal and state levels. Circular A-122 does not restrict lobbying at the local level, but such activities will only be permitted if they are consistent with the purposes of the grant. There are exceptions to this rule that allow some communications with legislators to be paid for with federal grant funds. (See #2 above).

For more information and assistance, please visit:

Alliance for Justice
http://www.afj.org

Charity Lobbying in the Public Interest
http://www.independentsector.org/clpi

OMB Watch
http://www.ombwatch.org

Tax.org
http://www.taxanalysts.com

1742 Connecticut Avenue, N.W., Washington, D.C. 20009
202-234-8494 (phone)
202-234-8584 (fax)

Combined Federal Campaign #10201

THE NEED FOR FEDERAL LEGISLATION

MATERIAL NOT SCANNED

HANDOUTS, IF ANY, WILL BE PROVIDED AT THE SEMINAR

RELEVANT CASE LAW & ATTORNEY GENERAL OPINIONS

Office of the Attorney General of the State of Alabama, Opinion Number 88-00051 (November 9, 1987)

Alabama Attorney General, Don Siegelman, by way of Phillip C. Davis, Assistant Attorney General, issued the following opinion to Jefferson County Sheriff Melvin Bailey of Birmingham:

"You have requested of this office an opinion as to whether or not you may put money seized in drug cases and assigned to your department into the Crime Stoppers program to pay rewards for information leading to the apprehension and conviction of criminals.

"One of the principle (sic) duties of sheriffs enumerated in *Section 36-22-3, Code of Alabama 1975*, is to ferret out crime, to apprehend and arrest criminals and, insofar as within their poser, to secure evidence of crimes in their counties. .... As we understand it, the Crime Stoppers program provides information regarding unsolved crimes through the media and solicits, through that publicity, information which might lead to the solution of those crimes, including the apprehension and conviction of the perpetrators thereof. In furtherance of its efforts, the Crime Stoppers program offers rewards for such information.

"It is the opinion of this office that the sheriff may use any funds which are under his discretionary control to further the essential purpose of his office as noted above, which would include offering rewards for information leading to the apprehension and/or conviction of the perpetrators of crime through a program such as the Crime Stoppers program."

Copies of the opinion can be obtained/purchased from:

Office of the Attorney General
State of Alabama
Montgomery, Alabama 36130
205/261-7400

SHERIFF MAY GIVE SEIZED FUNDS TO CRIME STOPPERS FOR USE AS REWARD MONEY

Office of the Attorney General of the State of Alaska, File Number 663-88-0508 (June 28, 1988)

This case regards to the protection of the identity of informants who report fraud,

"....we conclude that it is probably permissible for the department to protect the identity of its informants. However, it is a close question, and you may want to consider proposing regulations or even legislation to clarify that the names of such informants are not public information and will be kept confidential."

"Another alternative is the establishment of a *Crime Line* type program,..."

ATTORNEY GENERAL OPINION

PROTECTION OF INFORMANT

State v. Collier, 522 So.2d 584 (La. App. 1st Cir. 1988)

The defendant was convicted of armed robbery in the 19th Judicial District Court of East Baton Rouge. The appellate court ruled that the Louisiana Crime Stoppers statute was not unconstitutional as applied to the defendant. The Crime Stoppers information did not provide any evidence which was used at trial against the defendant, nor did the informant testify against him. The informant simply provided information to police which resulted in the inclusion of the defendant's photograph in a photographic lineup. Thus, the informant was not a 'witness' and the defendant had no constitutional right to confront the informant.

The appeals court cited *Cooper v. California, 386 U.S. 58 (1967)*, in which the United States Supreme Court noted that a criminal defendant is not deprived of his right to confrontation when the prosecution does not call an informant as a witness to testify against him. The Louisiana Appeal Court also cited several federal cases which held that, generally, the accused may not confront an informant who neither testifies nor provides evidence at trial. Those federal cases are:

U.S. v. Porter, 764 F.2d 1 (1st Cir. 1985)
U.S. v. Francesco, 725 F.2d 817 (1st Cir. 1984)
McAllister v. Brown, 555 F.2d 1277 (5th Cir. 1977)

CRIME STOPPERS STATE STATUTE NOT UNCONSTITUTIONAL

Office of the Attorney General of the State of Mississippi
(October 17, 1985)

Mississippi Attorney General Edwin Lloyd Pittman's opinion approved the legality of the DeSoto County Sheriff's Department hiring a full-time staff member whose main duty would be to coordinate the activities of the Crime Stoppers unit and act as liaison between the unit and the Sheriff's Department. The staff member would be paid by DeSoto County and work under the sheriff.

The opinion had been requested by State Representative John Grisham, Jr., of Southhaven. Representative Grisham served on the original board of the local Crime Stoppers program, and later went on to become one of the best-selling authors of crime novels in the United States, several of which became movies ("A Time To Kill", "The Pelican Brief", etc.).

COUNTY SHERIFF MAY LAWFULLY BUDGET FUNDS FOR A FULL-TIME STAFF MEMBER TO SERVE AS COORDINATOR OF CRIME STOPPERS

State v. LoVato, 91 N.M. 712, 580 P.2d 138 (N.M. App. 1978)

The first Crime Stoppers case ever to reach the appellate courts, including *Officer MacAleese* as a key witness. Payments of reward money to a witness who testified at a murder trial were not in violation of Code of Professional Responsibility, Canon 7-109 (c), because there was no evidence that the district attorney had anything to do with the Crime Stoppers program. Cross-examination was allowed to go into the motives of the witness who was paid $1,000 after testifying before a grand jury and another $1,000 after trial testimony. Prosecutors "shall not pay offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his testimony or the outcome of the case."

PAYMENTS TO WITNESSES

NON-INVOLVEMENT OF PROSECUTOR IN REWARD PROGRAM

State v. Padilla, 98 N.M. 349, 648 P.2d 807 (N.M. App. 1982)

A defendant was ordered to pay $500 to Crime Stoppers as a part of his plea bargained probation. Although the appellate court sent the case back to the trial court to have the length of probation and the length of the community service reduced, the payment to Crime Stoppers was approved.

The court at 648 P.2d 812, said:

> "When an attorney agrees in open court that the court may proceed, in fashion suggested by counsel and in harmony with the apparently mutual intention of the court, client, and counsel, without regard to technicalities, that agreement is binding on the client."

The court also states:

> "Having requested the court's exercise of discretion, and having waived all objections to .... defendant may not now challenge either the amount or method of payment order."

PROBATIONER'S PAYMENT TO CRIME STOPPERS

Office of the Attorney General of the State of New Mexico, Opinion Number 87-09 (October 5, 1987)

This is an Attorney General Opinion, issued to the Executive Director of the Judicial Standards Commission of the State of New Mexico, requested by this body that oversees the judges in the State of New Mexico. The question asked was:

"Does a New Mexico judge have power to require, as a condition to suspension of execution of a fine or as condition of probation, that a defendant pay money to a charitable or other non-governmental organization in no way aggrieved by the defendant's offense?"

The Attorney General stated:

"Overwhelming judicial discomfort with the concept of forced charitable contributions by probationers support our conclusion that such conditions cannot be considered relevant to rehabilitation. Absent a clear legislative determination to the contrary, we do not believe state judges have the power to require a defendant to pay money to a charitable organization unaggrieved by the defendant's offense."

In analysis of the question, the Attorney General said that "writing a check to a charity has none of the rehabilitative aspects seen in performing work for a charity." The AG went on to cite that "Absent explicit statutory authorization for requiring such contributions, courts generally refuse to allow their imposition of the United States Courts of Appeals (3rd, 4th, 5th, 8th and 10th Circuits,) and cases from the States of Louisiana, New York, and Washington."

It thus appears that there is a growing tendency on the part of judges and the courts to find that, without express statutory authorization to do so, they will not be able to order probationers to contribute money to charitable organizations such as Crime Stoppers. It is important to note this reference in this opinion to the 'judicial discomfort.'

The two-page opinion can be purchased from: Office of the Attorney General of New Mexico, P.O. Box Drawer 1508, Sante Fe, New Mexico, 87504, 505/827-6000.

NEW MEXICO JUDGES HAVE NO STATUTORY AUTHORITY TO ORDER PROBATIONERS TO CONTRIBUTE MONEY TO CHARITABLE ORGANIZATIONS

In the Matter of Phillip W. Steere, 110 N.M. 405, 796 P.2d 1101 (N.M. 1990)

The Supreme Court of New Mexico held that misconduct of an attorney, including offering witnesses in criminal cases money in exchange for executing an affidavit of non-prosecution, warrants public censure.

The court specifically noted:

> "it also was suggested that the cash could be used to pay substantial fines and court costs, including the fees of the special prosecutor, and to make a substantial contribution to Crime Stoppers or some charitable organization."

Figures of between $15,000 and $50,000 were discussed.

ETHICS

PAYMENTS TO CRIME STOPPERS

State v. Porter, No. 57830, Court of Appeals of Ohio, Cuyahoga County, Slip Opinion (January 4, 1990)

The defendant's probation for two counts of aggravated arson was revised upon appeal. The defendant had been fined $750, but given the opportunity to contribute $500 to Crime Stoppers. Because the statutory punishment was a fine of "not more than $250," the requirement of a suspended $750 fine and an actual payment of $500 to Crime Stoppers was deemed excessive.

PAYMENT TO CRIME STOPPERS IMPROPER

Commonwealth v. One 1988 Ford Coupe, 393 Pa. Super. 320, 574 A.2d 631 (Super. Pa. 1990)

Jorge Echevarria appealed the order of forfeiture which took away an automobile and real property with a dwelling upon it. The forfeiture was the result of a drug seizure. Crime Stoppers initiated the case with an anonymous telephone call that was followed-up by police surveillance and two controlled buys. The forfeiture was affirmed upon appeal.

FORFEITURE RESULTED FROM TIP

Commonwealth v. Anderson, 394 Pa. Super. 299, 575 A.2d 639 (Super. Pa. 1990)

The trial court had ordered Terry Anderson to pay Crime Stoppers for the cost it had incurred using an informant to target Anderson's drug activity. The Court of Common Pleas' ruling (by Trial Judge Robert L. Wolfe) was reversed here by Judges Del Sole, Cavanaugh, and Hudock. The superior court held that Crime Stoppers was a volunteer organization of people and businesses who *willingly* gave their money to pay people who have information about criminal activity of others, and is not a *victim* of crime, and thus may not recoup such funds by restitution from a defendant.

The appeals court noted that in the absence of legislative authority (such as in Texas) to order restitution, courts have denied such, citing the Wisconsin case of State v. Miller. (See WI-01 in this Digest.)

CRIME STOPPERS NOT ENTITLED TO RESTITUTION

Office of the Attorney General of the State of South Carolina, Opinion (July 21, 1987)

Under South Carolina law, there is no authority for a municipal court judge to impose a sentence of *probation*. However, the authority does exist for him to "suspend the imposition or execution of a sentence upon such terms and conditions as he may deem appropriate."

Thus, the opinion states that

> "While a municipal court judge would not be authorized to require a contribution or reimbursement to Crime Stoppers as a condition of probation....it appears that a municipal court judge could suspend a sentence upon the payment of a contribution or reimbursement to Crime Stoppers."

Even though South Carolina's municipal court judges will call it a suspended sentence and not probation, they can, nevertheless, require contributions and/or reimbursement to Crime Stoppers.

The four-page opinion was prepared by Charles H. Richardson, Assistant Attorney General, at the request of J. Stephen Schmutz, Deputy Solicitor for the Ninth Judicial Circuit in Charleston. The Attorney General's Office mailing address is P.O. Box 22549, Columbia, South Carolina, 29211, 803/734-3970.

CRIME STOPPERS CONTRIBUTIONS AND REIMBURSEMENT AS CONDITION FOR SUSPENDED SENTENCE

In re Joe Cecil Smith, Jr., No. C-1699, Supreme Court of Texas, Order (December 15, 1982)

The Texas Supreme Court, pursuant to Article 4413 (50) of the Texas Revised Civil Statutes (Crime Stoppers statute,) considered for the first time whether Crime Stoppers records should be produced in a criminal case. The court ruled that the Dallas Area Crime Stoppers, Incorporated, must seal and produce for an *in camera* inspection by the trial court judge all its written records pertaining to its informant Number 633. The trial judge was then to disclose the defense "only those portions of the Crime Stoppers records that disclose what Informant No. 633 related..." The opinion did not rule on whether any such information disclosed was admissible in any trial.

The defendant claimed that he participated in a series of robberies under duress, and that he was Informant No. 633 and had reported his co-actors to Crime Stoppers. Thus, this was not an attempt to learn the identity of an informant.

DISCLOSURE OF CRIME STOPPERS RECORDS *IN CAMERA* GRANTED ACTION AGAINST CRIME STOPPERS PROGRAM.

State v. $50,000 U.S. Currency, No. 2252, 124th District Court, Gregg County, Texas, Order (March 20, 1984)

Judge Alvin G. Khoury entered a "judgment of forfeiture" which awarded $40,000 to the Texas Department of Public Safety's Narcotics Service, $5,000 to the Gregg County, Texas Sheriff's Department "for use in the Crime Stoppers' program," and $5,000 to the City of Longview, Texas Police Department "for use in the Crime Stoppers' program." This was an "agreed" judgment where money was seized which was related to drug trafficking.

SEIZED DRUG MONEY FORFEITED TO CRIME STOPPERS BY COURT ORDER

Office of the Attorney General of the State of Texas, Opinion Number JM-307 (April 9, 1985)

The Texas statutes allow a judge to require a probationer, as a condition of probation, to donate money to Crime Stoppers, where such condition has a reasonable relationship to the treatment of the accused and the protection of the public.

The Texas statutes also allow a judge to require, as a condition of probation, that a probationer repay a Crime Stoppers program for the reward it paid an informant in his case where this is a reasonable condition of probation.

The nine-page opinion interprets general statutes which allow judges a wide area of discretion in establishing terms and conditions of probation. Many cases are cited which are both pro and con on the issue. The opinion cautions judges on ethical considerations involved.

The opinion can be obtained from the Texas Attorney General, P.O. Box 12548, Austin, Texas, 78711, 512/475-5059.

Note: The statutes interpreted in the Attorney General Opinion were amended effective September 1, 1987. See TX-23 in this digest for Opinion JM-853, issued February 8, 1988. JM-853 interprets the new statute as prohibition probation orders that compel contributions to Crime Stoppers. However, Texas statutes were subsequently amended to allow this.

PROBATIONERS MAY BE REQUIRED TO CONTRIBUTE TO CRIME STOPPERS

PROBATIONERS MAY BE REQUIRED TO REPAY CRIME STOPPERS FOR REWARD

ETHICAL CONSIDERATIONS OF JUDGES IN CRIME STOPPERS

Washington v. State, 731 S.W.2d 648 (Tex. App. - Houston 1st Dist. 1987)

Defendant was unsuccessful in appealing his revocation of probation. Washington had failed to pay $5 per month to Crime Stoppers for the entire period of his probation. He was revoked for "failing to pay restitution to Crime Stoppers." He also failed to pay his fine and other probation fees.

Office of the Attorney General of the State of Texas, Opinion Number JM-853 (February 8, 1988)

This Attorney General's Opinion supersedes JM-307 issued in 1985 by the same Texas Attorney General, Mr. Jim Mattox. (See this Digest, TX-07.) It is now confirmed that House Bill 83, a 1987 amendment to the Texas probation statute, prohibits Texas judges from ordering probationers to make payments to Crime Stoppers as a condition of probation. The law, which took effect September 1, 1987, amended Texas Code of Criminal Procedure, Article 42.12, Section 6(a) to read:

> "A court may not order a probationer to make any payments as term and condition of probation, except for fines, court costs, restitution of the victim, and other terms and conditions expressly authorized by statute."

The attorney general said that the new law does not usurp judges' authority to set the terms of probation, and is thus constitutional. The opinion also held that payments to Crime Stoppers could not be considered as "community service."

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TEXAS JUDGES CANNOT ORDER PROBATIONERS TO CONTRIBUTE MONEY TO CRIME STOPPERS

PROBATIONER CONTRIBUTIONS OF MONEY TO CRIME STOPPERS IS NOT COMMUNITY SERVICE

Office of the Attorney General of the State of Texas, Letter Opinion 88-36 (March 31, 1988)

In the wake of formal Attorney General Opinions Numbers JM-307 (1985) and JM-853 (1987), a letter opinion was written for District Attorney Charles D. Houston of Bellville. (See Digest, Pages TX-07 and TX-22, respectively.)

The Texas Attorney General concluded that a Texas....

"judge has no authority to order a probationer to reimburse a Crime Stoppers organization or any other private party for a reward paid for information leading to the arrest or conviction of the probationer."

The logic being that Crime Stoppers is not a 'victim.'

"We do not think the words 'restitution' and 'reparation' can be read to authorize payments to volunteers who have made expenditures in attempting to solve a particular crime."

CRIME STOPPERS IS NOT A *VICTIM* ENTITLED TO RESTITUTION FROM PROBATIONER IN CASE WHERE CRIME STOPPERS PAID REWARD

Cross v. State, No. 01-87-00790-CR, (Tex. App. - Houston 1st Dist.) Slip Opinion (May 19, 1988)

Defendant Ronnie Cross appealed the trial court's order revoking his probation and sentencing him to five years of aggravated robbery. The state alleged Cross violated his probation by failing to (1) avoid injurious or vicious habits by using marijuana and cocaine; (2) report to the probation office for the months of January, March, and April, 1987; (3) participate in a community service program; (4) pay a supervision fee; (5) pay restitution to the victim and to Crime Stoppers; and (6) reimburse Harris County for his attorney's fees.

The appellate court reviewed the case and found no abuse of the trial judge's discretion. Items 2, 3, and 4 above were sufficiently proved, according to the court of appeals (without commenting on the Crime Stoppers reimbursement provision.)

PROBATIONER REQUIRED TO MAKE RESTITUTION TO CRIME STOPPERS

Thomas v. State, 837 S.W.2d 106 (Tex. Crim. App. 1992)

In this procedurally bizarre case, the Texas Court of Criminal Appeals ordered the trial court to have subpoenas issued by the clerk and certain Crime Stoppers records brought to the trial judge for a determination as to whether any of the materials are exculpatory and have to be revealed to the capital murder defendant. The Criminal Appeals Court ignored the statutory provisions of the Texas Crime Stoppers law and did not mention that the materials had already been denied to the defendant by the Texas Supreme Court on February 23, 1987. (See TX-13.)

This June 3, 1992, order was not appealed by the Dallas County District Attorney because the primary item sought, a tape recording, never existed, nor did any other exculpatory evidence. The Crime Stoppers informant, Kathy Johnson, a voluntary witness in the trial, and had no objections to being disclosed, was the cousin of the defendant, and had actually helped dispose of some of the items taken from the murder victims.

The appeals court did, however, state that the Texas Crime Stoppers statute *is* constitutional on its face.

CRIME STOPPER STATUTE CONSTITUTIONAL

COURT-ORDERED EXAMINATION OF EXCULPATORY EVIDENCE

Juan Manuel Martinez v. The Crime Stoppers Advisory Council, and Crime Stoppers of El Paso, Inc., No. D-3251 (Tex. Sup. January 8, 1993)

Murder defendant, Martinez, petitioned the Texas Supreme Court seeking a delay of his trial and disclosure of Crime Stoppers records. The supreme Court denied the delay, but ordered that respondents...

> "produce the information...to the 171st District Court of El Paso County, Texas, for in camera inspection. The trial court shall, upon such inspection, release to petitioner any Brady material contained therein pursuant to the standards announced in Thomas v. State, 837 S.W.2d 106, 112-114 (Tex. Crim. App. 1992.) All the requested information shall be sealed and made part of the trial record at the conclusion of the trial. Id. at 114.

This single-page Order of the Texas Supreme Court had made it clear that the new trend is to attempt to circumvent the *informer's privilege* by seeking "exculpatory material" (Brady.) Fortunately, in this case, no exculpatory evidence was found by the trial judge on January 11, 1993. No Crime Stoppers records were revealed to the defense.

State v. Miller, No. 85-9551-CR, Court of Appeals - 4th District, Slip Opinion (January 9, 1986)

A trial court judge cannot, under Wisconsin statutes, order a probationer to reimburse a Crime Stoppers program for a reward for information which led to his arrest. If an item of cost is not included in the statute, it cannot be used as a condition of probation.

The appellate court in its first decision (September 19, 1985) ruled that the Crime Stoppers program "was not a victim." Thus, the repayment of the reward could not fall under the category of "restitution."

NOTE: In 1987, Assembly Bill 577 was enacted to correct the problem. Section 973.09 (1x) was created, which reads:

"If the court places a person on probation, the court may require that the probationer make a contribution to a crime prevention organization if the court determines that the probationer has the financial ability to make the contribution."

PROBATIONERS MAY NOT BE REQUIRED TO REPAY CRIME STOPPERS FOR REWARD

STATE v. BIZZLE, 222 Wis.2d 100 (Ct.App. 1998), 585 N.W.2d 899

A word is not ambiguous merely because it is general enough to encompass more than one set of circumstances. *See Wilke v. First Fed. Sav. & Loan Ass'n*, 108 Wis.2d 650, 654, 323 N.W.2d 179, 181 (Ct. App. 1982). However, in this case, "crime prevention organization" encompasses multiple sets of circumstances and leaves the reasonable person confused. Without a definition in the statute, a reasonable person could include organizations that are clearly dedicated to preventing crimes, such as "Crime≥ ≤Stoppers≥" or neighborhood watch groups. The same reasonable person could include groups that provide social services, such as literacy training organizations. Groups that target children and provide after-school activities, such as Boys and Girls Clubs, Boy and Girl Scouts, or YMCA and YWCA, could easily be included within "crime prevention organizations." Likewise, a reasonable person could include law enforcement agencies, from a local police department to the FBI, within the definition of a "crime prevention organization." Because the term "crime prevention organization" is so broad, it is left to the reader to determine what groups would qualify as a "crime prevention organization." Thus, we conclude that the term is ambiguous.

The bill drafting file does not support the State's argument that a police department is to be considered a "crime prevention organization." Section 973.06(1)(f), STATS., was created by 1987 WISCONSIN ACT 347, § 1, which originated in 1987 Assembly Bill 577. The first draft of the bill created a section that specifically authorized courts to order a defendant to make a "charitable contribution" as a condition of probation. The drafting file contains two letters. The first letter is from the La Crosse county district attorney who expressed concerns over the validity of requiring charitable contributions. As an alternative, he suggested that the bill allow "as costs reimbursement either to ≤Crime≥ ≤Stoppers≥ specifically or, more generally, for reasonable rewards paid by the State or any third party for information resulting in the arrest and conviction of the defendant for any offense being considered at the time of sentencing."

[fn3] Also included in the bill drafting file is an April 9, 1985 opinion from the Texas attorney general concluding that a sentencing court could order a defendant to reimburse a private ≤Crime≥ ≤Stoppers program for reasonable costs incurred in the defendant's case.

In this case, we reach the conclusion that the City of Racine Police Department Street Crimes Unit is not a crime prevention organization as contemplated by §

973.06(1)(f), STATS. Therefore, the sentencing court erred when it ordered Crystal L. Bizzle to make a contribution of $3091 to the Street Crimes Unit and we reverse that part of the judgment of conviction and remand to the sentencing court with directions. We affirm that portion of the judgment imposing an eight-year prison term because the court acted reasonably and had a basis in the record for the sentence imposed.

City of Racine Police Department Street Crimes Unit is not a crime prevention organization as contemplated by § 973.06(1)(f), STATS.

Sentencing court erred when it ordered Crystal L. Bizzle to make a contribution of $3091 to the Street Crimes Unit

Appellant moved the property to the residence of another cousin, and on March 18 Kathy Johnson saw the same property at that residence. Several articles of Finch's clothes had been monogrammed, and when Kathy Johnson, who had heard about the Finchs' murders, saw the initials "FF" on these clothes, she decided that they belonged to Mr. Finch. She helped move the clothing to a dump site, where the items were subsequently recovered by the police. On March 18 she called the Dallas Crime> <Stoppers> Program and talked with someone there for 10 to 15 minutes. The conversation was recorded. Johnson was referred to a police officer with whom she spoke and to whom she gave two statements. On the evening of March 18 appellant and his mother were watching television when a report was aired concerning the murders. At this time appellant admitted to family members present that he had committed the murders. Appellant was arrested that evening.

This appeal is from the conviction and death sentence assessed for the capital murder of Mrs. Finch.[fn1] Prior to the trial appellant applied to the District Court for a subpoena duces tecum to compel the production from Dallas <Crime> <Stoppers> of any information pertaining to the deaths of Mr. and Mrs. Finch, including the names of informants and the tape recording of Kathy Johnson.[fn2] Appellant's application was quashed on the ground that the requested information was deemed confidential and could not be released without a specific court order from the supreme court pursuant to Tex.Rev.Civ.Stat.Ann., Article 4413 GOV'T(50), Sections 6 and 11 (now V.T.C.A., Government Code, Sections 414.007 and 414.008, for which see below). Appellant sought extraordinary relief in our Court and the Texas Supreme Court. Relief was denied, even though Johnson expressly waived any right to nondisclosure. During trial, after the examination of witness Johnson, appellant properly moved for the production of the tape recording,[fn3] but the court denied his motion, ruling that the governing statute prohibited production. It appears from the context of appellant's remarks to the court that appellant urged the Court to declare the statute unconstitutional. The Court refused.

In points of error one, two, and three, appellant complains of the actions of the trial court summarized above and asks us to find the <Crime> <Stoppers> statute unconstitutional. He argues that he has been denied several rights of constitutional dimension, including the right to effective representation, the right to confront and cross-examine witnesses, and the right to due process of law. The statutes to which appellant refers us, V.T.C.A., Government Code, Sections 414.007 Gov't and 414.008, provide as follows:

Section 414.007. Confidentiality of Council Records Council records relating to reports of criminal acts are confidential.

Section 414.008. Privileged Information

(a) Evidence of a communication between a person submitting a report of a criminal act to the council or a local <crime> <stoppers> program and the person who accepted the report on behalf of the council or local <crime> <stoppers> program is not admissible in a court or an administrative proceeding.

(b) Records of the council or a local <crime> <stoppers> program concerning a report of criminal activity may not be compelled to be produced before a court or other tribunal except on the order of the supreme court.

The council to which the statute refers is the <Crime> <Stoppers> Advisory Council, a division of the executive branch whose primary function is to promote and assist local <crime> <stoppers> programs. A "local <crime> <stoppers> program" is defined[fn4] as a private, nonprofit organization which accepts donations and pays rewards for the report of information concerning criminal activity. A local program operates less than statewide and forwards the reported information to an appropriate law enforcement agency.

Appellant has three primary contentions. First, he claims that the statute is unconstitutional in that it denies him a right to effectively cross-examine Kathy Johnson. Possession of the <Crime> <Stoppers> tape-recording would, he avers, allow him to completely discredit her trial testimony. Second, appellant claims that access to the names of other informants who contacted <Crime> <Stoppers> with information about the Finch's murders might lead to unspecified exculpatory or impeachment material. He claims that failure to release the requested information violates his due process rights. Third, appellant contends that the refusal of <Crime> <Stoppers> to release the tape-recording of Johnson vitiates his right to meaningful review of his claims because a copy of the recording was not available for inclusion in the record which was transmitted to this Court.

In reply, the State contends that appellant's right to confront and cross-examine Johnson was not violated because appellant had the unrestricted opportunity to cross-examine the witness at trial. In addition, the State points out that two prior

statements of the witness given to the police were available to appellant for purposes of impeachment. If there was a constitutional error, the State contends that it was harmless because major portions of her testimony were corroborated by the undisputed recovery of the property to which she testified and because she was, in fact, available for impeachment through her prior statements to the police.

An examination of the record in this case convinces us that there was no violation of appellant's right to confrontation. Among the various motions filed with the trial court was the state's motion in limine relating to <crime> <stoppers> information. The court granted the motion, which prevented the defendant from mentioning any matter regarding the inability of the defense to obtain <crime> <stoppers> records. Defendant did not object to the granting of the motion, for the obvious reason that it did not limit defendant's questioning with respect to the <crime> <stoppers> information.[fn8] During trial, other than routine evidentiary rulings, the trial court placed no limitation on counsel's examination of Kathy Johnson. It is evident from the record, and appellant admits,[fn9] that he was successful in impeaching the witness despite the lack of the crimestoppers information. Appellant complains that he could have been more successful if he had access to the material; however, in our view, "the Confrontation Clause only guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Fensterer,* 474 U.S. at 20, 106 S.Ct. at 294 (emphasis in original). In short, appellant has not shown a Confrontation Clause violation.

Appellant's due process complaint amounts to a claim that because he was denied access to the information obtained by Dallas <Crime> <Stoppers> he was denied a fair trial. A majority of the *Ritchie* court observed that the "Fourteenth Amendment precedents addressing the fundamental fairness of trials establish a clear framework for review, [and] we adopt a due process analysis for purposes of this case." *Id.* 480 U.S. at 56, 107 S.Ct. at 1001. A review of those precedents leads us to a conclusion substantially the same as that reached by the *Ritchie* court under the facts of that case.[fn10]

Of course, at this point, it is impossible to say whether or not the information in the possession of the Dallas <Crime> <Stoppers> program or the Dallas Police Department rises to the level of being material. The State asserts that the District Attorney's office never had in its possession the tape recording of Kathy Johnson,[fn11] and, therefore, neither the attorneys for the State, defense counsel, nor the trial court heard the tape recording. We presume from the trial court's

ruling on appellant's pretrial motion that other information pertaining to informants was not seen by the trial parties or the court.

The State contends that the <crime> <stoppers> statute serves a compelling state purpose which justifies the infringement on appellant's fundamental right to a fair trial. The purpose served is to "foster the detection of crime and encourage persons to report information about criminal acts. . . ." V.T.C.A., Government Code, Section 414.005 Gov't (2). See also *People v. Brown,* 151 Ill. App.3d 446, 104 Ill.Dec. 353, 502 N.E.2d 850, 853 (Ill.App. 2 Dist. 1986). Administrative rules adopted by the <Crime> <Stoppers> Advisory Council further illuminate the purpose and methods of local <crime> <stoppers> programs.

> 1 Tex.Admin.Code Section 3.721(b). Local <crime> <stoppers> programs have been highly effective and successful due to their reliance on local initiative and local citizen participation.
>
> . . . . .
>
> 1 Tex.Admin.Code Section 3.722. The <Crime> <Stoppers> Advisory Council will assist local <crime> <stoppers> programs by: (2) encouraging persons to come forward with information about criminal activity[.]
>
> . . . . .
>
> 1 Tex.Admin.Code Section 7.741(c). The Council recognizes that, under ideal conditions, all citizens would report information about crimes to the proper authorities. It also recognizes, that for a variety of reasons — fear of involvement and apathy being paramount among them — many citizens do not come forth with such information. Programs which preserve the anonymity of the caller and also provide financial rewards go far to counteract these reasons.

As to the former contention of appellant, we cannot agree. The State's interest in law enforcement is, indeed, quite compelling. We find that such interest is sufficient to justify both State and local <crime> <stoppers> programs, and, further, that such interest justifies the confidentiality provisions of the current statute, although we limit their applicability in our holding today. As to appellant's latter contention, appellant recognizes that the Legislature has chosen not to allow

for waiver of nondisclosure of information given to a local <crime> <stoppers> program, and we see no constitutional infirmity in that decision.

The problem, as we see it, is that the confidentiality provisions of the <crime> <stoppers> statute, as interpreted by the trial court and as applied to appellant, reach too far. They operate to totally bar a defendant access to information that may be material, whether in the possession of the State or any other person. Denial of access to information which would have a reasonable probability of affecting the outcome of a defendant's trial abridges a defendant's due process rights and undermines the court's duty to vindicate Sixth Amendment rights. There is no interest that could be asserted by the Legislature that would be compelling enough to justify such a result.

In fact, the language of the <crime> <stoppers> statute indicates that the Legislature intended otherwise. As the United States Supreme Court observed about the Pennsylvania statute in *Ritchie*,[fn12] and as we observe about the Texas statute under consideration here, by allowing for production of <crime> <stoppers> records pursuant to a court order, the Legislature clearly contemplates that the confidentiality provisions must yield in some cases. We find that under the narrow circumstance of this case production is constitutionally required.

We find that Kenneth Thomas has the right to *production* of <crime> <stoppers> information in possession of the local Dallas <Crime> <Stoppers> program, the <Crime> <Stoppers> Advisory Council, or the Dallas County District Attorney's Office.

However, to allow a defendant unlimited *access* to the information would unnecessarily compromise the State's interest in fostering law enforcement and its efforts to do so by protecting the identity of <crime> <stoppers> informants. We believe that both the State's interest and the defendant's interest can be served by providing that <crime> <stoppers> information should be inspected by the trial court *in camera.* Neither the attorneys for the State or defendant should be present. It will be the responsibility of the court to determine if the produced information contains Brady evidence. The court must, in its sound discretion, take steps to ensure that, to the extent possible, the information remains confidential. If information is deemed material at the time it is inspected or at any future stage of the trial, it must be released to the defendant pursuant to well-settled precedent.[fn13] At the conclusion of trial, the information shall be sealed and made part of the record.

We realize that the procedure set forth today is not available in the case before us. However, we believe that appellant's due process concerns can be properly dealt with in the following manner. This appeal is abated and the cause remanded to the trial court. The trial court is instructed to direct the District Clerk to issue a subpoena duces tecum or otherwise summon the current supervisor of the Dallas <Crime> <Stoppers> program, and the custodian of records for the both the <Crime> <Stoppers> Advisory Council and the Dallas County District Attorney's Office directing such persons to bring and produce to the court those items that have been previously requested for production by appellant in his motion for an order for production filed with the District Clerk of Dallas County on July 21, 1987. After the parties to whom the subpoenas are directed respond, the trial court shall make findings of fact regarding the availability of the information and its materiality. The information shall then be sealed and forwarded to the clerk of this court, at which time we will review the findings of the trial court and take any other further action that is necessary for a disposition of this appeal.

IT IS SO ORDERED.

[fn8] In fact, the court informed the defendant that he could ask a witness if the witness had called "`<Crimestoppers>' and report this — and that sort of thing." Statement of Facts, Vol. 27, p. 4

[fn11] In its brief, pp. 52-53, the State suggests two additional issues: first, that with respect to appellant's trial motion, the State may not have been in possession of the Kathy Johnson tape recording, as the term "possession" is used in Tex.R.Ev. 614; and, second, that with respect to appellant's pretrial motion, Dallas Crimestoppers may not be an agency of the State as that term is used in Article 39.14, V.A.C.C.P. We find each issue to be inadequately briefed and refuse to address them except to observe that even if the State were correct, appellant would be entitled to have a subpoena duces tecum issued to the Dallas <Crime> <Stoppers local program in accordance with the procedure we have set out below, *infra,* pp. 113-114. See Tex.R.App.Proc.R. 74(f) and Articles 24.01 and Article 24.02, V.A.C.C.P.

Defendant has the right to *production* of <crime> <stoppers> information in possession of the local Dallas <Crime> <Stoppers> program, the <Crime> <Stoppers> Advisory Council, or the Dallas County District Attorney's Office

Defendant's interest can be served by providing that <crime> <stoppers> information should be inspected

by the trial court *in camera*

At the conclusion of trial, the information shall be sealed and made part of the record

by the trial court *in camera*

At the conclusion of trial, the information shall be sealed and made part of the record

LAFLEUR v. STATE, 848 S.W.2d 266 (Tex.App.-Beaumont 1993), 848 S.W.2d 266

Appellant argues that in 1987 the relevant section was amended to the effect that a trial court may not order a probationer to make payments as a term or a condition of probation except for fines, court costs, and restitution to the victim. We determine his contention is too narrow. Act of May 15, 1987, 70th Leg., R.S., ch. 939, § 3, 1987 Tex.Gen. Laws 3132, 3133 (amended 1989). The amendment of 1989 tracks the identical language adding only that a payment to a local crime≥ ≤stoppers≥ program may be ordered. Act of February 28, 1989, 71st Leg., R.S., ch. 86, § 1, 1989 Tex.Gen. Laws 413, *amended by* Act of June 5, 1990, 71st Leg., 6th C.S., ch. 25, § 8, 1990 Tex.Gen. Laws 108, 110. Section 6 of Article 42.12 was renumbered as § 11 of Art. 42.12 by Acts of May 4, 1989, 71st Leg., R.S., ch. 785, § 4.17, 1989 Tex.Gen. Laws 3471, 3504.

In sum, construing the relevant, governing statutes harmoniously and giving pragmatic, practical effect to the legislative intent, we hold that the trial court may order terms and conditions of probation, that the probationer shall make restitution or reparation in any sum that the court shall determine and are just. TEX.CODE CRIM.PROC.ANN. art.42.12 Code Crim.P. s 11(a)(8), (b).

Article 42.12 § 11(e) merely provides for payment to a local ≤crime≥ ≤stoppers program; this subsection (e) does not vitiate § 11(a)(8), (b). Subsection (e) by its own terms does not limit or restrict § 11(a)(8), (b). Section 11, subsections (a)(8) and (b) are obviously express authorizations by statute. The appellant does not complain that the district judge failed to take into account his ability or inability to make the ordered payments.

The trial court may order terms and conditions of probation, that the probationer shall make restitution or reparation in any sum that the court shall determine and are just

The State argues that all the investors named in the restitution order[fn14] "are so closely linked and integral to the offense charged that it would be consistent with justice and fairness to permit them to receive restitution for their losses." We think it more compelling that notions of "justice and fairness" dictate that a defendant be punished only for the crime of which he was convicted. *See Gordon,* 707 S.W.2d at 629 (would be denial of due process to order defendant to pay for costs associated with an offense for which he was found not criminally responsible). Even if we were to adopt the State's argument, appellant was not convicted of engaging in a "scheme to defraud", but rather was convicted of defrauding a single investor by failing to disclose certain material information.[fn15] Accordingly, the trial court erred by ordering over objection the payment of restitution to persons other than just the victim of the crime for which appellant was convicted — that is the offense of defrauding Mr. Broome of $3,717.19 by failing to disclose to him certain material information.[fn16]

For the foregoing reasons, the judgment of the Court of Appeals is reversed and this cause is remanded to the trial court to reform the order of restitution in a manner not inconsistent with this opinion.

[fn6] This section first appeared in 1987 as section 6(e), but was renumbered in 1989 as section 11(b). The same language also appears in section 11(e), which was added in 1989:

A court may not order a probationer to make any payment[s] [sic] as a term and condition of probation, except for fines, court costs, restitution to the victim, payment to a local crime≥ ≤stoppers≥ program under Subsection (h) of this section, and other terms and conditions expressly authorized by statute.

TEX.CODE CRIM.PROC.ANN. art. 42.12 Code Crim. P. § 11(e). Subsection (e) was deleted by the 73rd Legislature, Acts 1993, 73rd Leg., Ch. 900, § 4.01, p. 3726, but subsection (b) continues to provide for "restitution to the victim".

Trial court erred by ordering over objection the payment of restitution to persons other than just the victim of the crime

ALEXANDER v. STATE, 879 S.W.2d 338 (Tex.App.-Hous. (14 Dist.) 1994), 879 S.W.2d 338

The State's motion to adjudicate guilt alleges that appellant violated the terms and conditions of his probation by:

> (3) failing to pay Crime≥ ≤Stoppers as ordered by the court, and as of June 1992 the defendant is $50.00 in arrears.

PRESTON v. STATE, 934 S.W.2d 901 (Tex.App.-Hous. (14 Dist.) 1996), 934 S.W.2d 901

In point of error five, appellant contends the trial court erred in ordering restitution to an entity not named in the indictment in this cause. Specifically, he argues that appellant was ordered to pay, as restitution, $2,000.00 to Metsco and, if the company cannot accept payment, then the money is to be paid to crime≥ ≤stoppers≥ in Houston. Appellant contends this order violates state law and should be deleted from the judgment. Appellant cites *Martin v. State,* 874 S.W.2d 674 (Tex.Crim.App. 1994) as authority for his argument that Metsco was not a "victim of the offense of conviction" since Metsco was not the named victim in the indictment. We agree.

Martin construed Article 42.12, section 11(b), Texas Code of Criminal Procedure, which provided:

> (b) A court may not order a probationer to make any payment as a term and condition of probation, except for fines, court costs, *restitution to the victim,* and other terms or conditions related personally to the rehabilitation of the probationer or otherwise expressly authorized by law.

Id. at 676.

In *Martin,* the court of criminal appeals held that this limitation of restitution to "the victim" refers to the victim of the crime for which the defendant has been charged, convicted and sentenced. *Id.* at 677. The court did not define who would be a "victim" and stated: "We see no evidence in the language of article 42.12 § 11 or otherwise to indicate that the legislature intended that restitution may be ordered payable to persons other than the victim of the offense of conviction, who also suffered as a result of a scheme of which the offense of conviction was a part." *Id.* at 679. In this case, Kassing was named in the indictment as the person who paid money to appellant to influence appellant's conduct with appellant's company. Kassing was the agent, *partner* and *part-owner* of Metsco. Kassing used Metsco's money to buy the conduct of appellant and signed the check to appellant. There is no evidence in the record to show that Metsco was a willing participant, knew anything about the $2,000.00 payment, or claimed it was defrauded by its partner, Kassing. Kassing was never charged or indicted for any crime. There is nothing in the record that would establish Metsco as a "victim" of the crime. The evidence tends to show Metsco participated in the crime by furnishing the bribe money to

appellant. Accordingly, the condition of probation requiring restitution to Metsco of the $2,000.00 bribe is invalid; Metsco was not a "victim." *Martin,* 874 S.W.2d at 679. At best, Metsco's partners, other than Kassing, "also suffered as a result of a scheme of which the offense of conviction was a part." *Id.* Furthermore, the designation of <crime> <stoppers> Houston as an alternative recipient of the $2,000.00 restitution should Metsco not accept it, is likewise invalid. <Crime> <stoppers> is likewise not a "victim" entitled to restitution. <Crime> <stoppers> is entitled to only one payment in an amount not to exceed $50.00 pursuant to article 42.12, section 11(a)(23), Texas Code of Criminal Procedure. The <crime> <stoppers> payment can be made a condition of probation, but we find no authority whereby <crime> <stoppers> can be the recipient of a victim's restitution pursuant to article 42.12, section 11(b), Texas Code of Criminal Procedure, which specifically directs *restitution to the victim* only. *Id.* at 676.

Where a trial court imposes an invalid condition of probation, the proper remedy is to reform the judgment by deleting the invalid condition. *Ex parte Pena,* 739 S.W.2d 50, 51 (Tex.Crim.App. 1987). Accordingly, we reform the judgment by deleting the requirement that appellant pay $2,000.00 to Metsco or to <crime> <stoppers Houston, as an alternative recipient. We find the remaining conditions of probation to be valid. Appellant's point of error five is sustained as to his complaint about the restitution provision only. Appellant's point of error five as to the remaining conditions of his probation is overruled. *See also Martinez v. State,* 874 S.W.2d 267, 268 (Tex.App. — Houston [14th Dist.] 1994, pet. ref'd).

The judgment of the trial court is affirmed as modified.

We find no authority whereby <crime> <stoppers> can be the recipient of a victim's restitution pursuant to article 42.12, section 11(b), Texas Code of Criminal Procedure, which specifically directs *restitution to the victim* only

MARTIN v. DARNELL, 960 S.W.2d 838 (Tex.App.-Amarillo 1997), 960 S.W.2d 838

In *Thomas v. State,* 837 S.W.2d 106 (Tex.Crim.App. 1992), the court was presented with a similar question. In that case, the defendant had been denied access to a recording from a local "crime> <stoppers>" program because of a statute which deemed such records confidential. As relevant here, on appeal the Court of Criminal Appeals considered whether the failure to allow access to the records violated Thomas' Sixth and Fourteenth amendment rights.

In considering the question, the *Thomas* court quoted extensively from Justice Blackmun's concurring opinion in *Ritchie,* in which he opined that denial of discovery could violate a defendant's rights of confrontation if it limited the effectiveness of cross-examination. The Court then held that denial of discovery, either during or before trial, could violate a defendant's due process rights. *Thomas v.State,* 837 S.W.2d at 111, 112 n. 10. With relation to Thomas, and even though he conceded that he effectively impeached the State's witness even without the <crime> <stoppers> recording, the court held that the trial court's application of the confidentiality statute to totally bar Thomas's access to the information violated his due process rights. *Id.* at 113.

However, even so, rather than provide Thomas with unlimited access to the <crime> <stoppers> records, the court considered the legislative intent in encouraging reporting of crime by protecting the confidentiality of those who provide information to <crime> <stoppers programs. As the Supreme Court did in *Ritchie,* the Court of Criminal Appeals held that a proper balance of the defendant's due process rights against the government's interest would be met by an *in camera* review by the trial court without the presence of attorneys from either the defense or the State. *Thomas v. State,* 837 S.W.2d at 114. The trial court would then be under a continuing obligation to determine if the produced information contained *Brady* material which should be revealed to the defendant. *Id.*

Consideration of these authorities convinces us that the information at issue here is not declared confidential by statute nor is it necessarily constitutionally protected by a right to privacy. However, we believe the government has an interest in protecting witnesses from undue hardship or possible harassment arising from their participation in judicial proceedings that merits an analysis similar to that used by the *Ritchie* and *Thomas* courts. For example, such an interest is recognized in the

well established rule granting witnesses immunity from civil liability for statements made in a judicial proceeding. *See e.g., Hurlbut v. Gulf Atlantic Life Ins. Co.,* 749 S.W.2d 762, 767 (Tex. 1987); Restatement (Second) of Torts § 588 (1977). It is based on the public policy that the benefits flowing from the uninhibited disclosure of information outweighs the harm which may result from false information. *Hurlbut v. Gulf Atlantic Life Ins. Co.,* 749 S.W.2d at 768.

There is nothing to indicate that Stangel seeks Martin's financial records for any improper purpose, such as to harass or intimidate her; however, as an appellate court, we must be mindful of the effect of our holding on other cases. We believe that an *in camera* review procedure as adopted in the *Ritchie* and *Thomas* cases would satisfy the government's interest in protecting its witnesses while satisfying Stangel's Sixth Amendment rights of confrontation and compulsory process and would properly be applicable here. However, those opinions do not specify what, if any, burden a defendant must bear to show his entitlement to an *in camera* review. Considering the burden placed on the witness and the trial court, the mere assertion that the documents are material to the defense is insufficient. In order to be entitled to an *in camera* review, the defendant must allege with specificity, how he believes the evidence is relevant to the proceeding. As a cautionary note, because the Court of Criminal Appeals has addressed the standard to be applied in attempts to subpoena records at trial, we express no opinion whether Stangel may or may not be entitled to subpoena Martin's records at trial. *See Coleman v. State,* No. 491-96, ___ S.W.2d ___ (Tex.Crim.App. April 30, 1997).

Under the authorities we have discussed, and for the reasons we have stated, Martin's petition must be, and is, conditionally granted. Respondent is directed to issue an order quashing the subpoenas duces tecum. We are confident he will comply with that directive and the writ of mandamus will issue only if he fails to do so.

Authorities convinces us that the information at issue here is not declared confidential by statute nor is it necessarily constitutionally protected by a right to privacy

An *in camera* review procedure as adopted in the *Ritchie* and *Thomas* cases would satisfy the government's interest in protecting its witnesses while satisfying Stangel's Sixth Amendment rights of confrontation and compulsory process and would properly be applicable here

The mere assertion that the documents are material to the defense is insufficient In order to be entitled to an *in camera* review, the defendant must allege with specificity, how he believes the evidence is relevant to the proceeding

BUSHNELL v. STATE, 975 S.W.2d 641 (Tex.App.-Houston [14th Dist.] 1998), 975 S.W.2d 641

The prosecutor outlined the agreement for the court, Bushnell confirmed the terms of the agreement, and the court imposed punishment in accordance therewith:

> MS. WEBB [State's attorney]: In exchange for the defense's agreement not to appeal, the State recommends probation, five years, fine, 350 hours of community service and random urinalysis throughout the term of probation, $150 fine.
>
> THE COURT: How many community service hours?
>
> MS. WEBB: 350.
>
> THE COURT: Okay. Then — was that your agreement, Mr. Bushnell?
>
> THE DEFENDANT: Yes, ma'am, it was.
>
> THE COURT: YOU understand when I follow that agreement you're not going to be able to appeal this cause?
>
> DEFENDANT: Yes, ma'am.
>
> THE COURT: Then, Mr. Bushnell, the jury having found you guilty of robbery, it now becomes my duty, because you've elected to have me go forward with it, to assess the punishment in this case, and I will assess your punishment at five years in the Institutional Division to be probated for five years, $150 fine, 350 hours of community service, random urinalysis and $50 to Crime> <Stoppers>.
>
> * * *
>
> Anything further, Mr. Hennigan?
>
> MR HENNIGAN [appellant's attorney]: Nothing, your Honor.

MS. WEBB: Nothing further from the State, Judge.

At this point, the jury was released.

Bushnell contends that his waiver of appeal is not binding for two reasons. First, he argues the trial court did not follow the punishment agreement because it added a $50.00 payment to <Crime> <Stoppers>. We do not believe this alters the agreement in a manner that would keep appellant from knowingly, voluntarily and intelligently waiving his right of appeal. First, the additional payment to <Crime> <Stoppers> does not constitute a meaningful departure from the agreement. *See Washington v. McSpadden,* 676 S.W.2d 420 (Tex.Crim.App. 1984) (recognizing that a trial judge has discretion to add conditions to the sentence agreed to in a plea bargain); *Grodis v. State,* 921 S.W.2d 502, 504-05 (Tex.App. — Fort Worth 1996, pet. ref'd) (imposing a condition of counseling upheld). "Because a trial court retains continuing jurisdiction over a defendant's probation, it has almost unlimited authority as a matter of law to alter or modify any conditions of probation during the probationary period." *Stevens v. State,* 938 S.W.2d 517, 520 (Tex.App. — Fort Worth 1997, pet. ref'd). Even if the <Crime> <Stoppers payment violated the terms of the agreement, we note that appellant made no objection to the condition nor did he seek to withdraw from the agreement.[fn1]

[fn1] *See Fielder v. State,* 834 S.W.2d 509, 511 (Tex.App. — Fort Worth 1992, pet. ref'd) (holding that if the judge does not intend to follow the agreement, defendant must be allowed to withdraw his plea).

Additional payment to <Crime> <Stoppers> does not constitute a meaningful departure from the agreement

Even if the <Crime> <Stoppers payment violated the terms of the agreement, we note that appellant made no objection to the condition nor did he seek to withdraw from the agreement

COMMONWEALTH v. RUNION, 541 Pa. 202 (1995), 662 A.2d 617

We granted review in this matter to address whether the Department of Public Welfare may be considered a "victim" under 18 Pa.C.S.A. § 1106 so as to be entitled to restitution for the expenses it incurred in covering the medical expenses of a person who was on public assistance at the time she was injured by appellant. We conclude that a governmental agency of this Commonwealth may not be a victim for the purposes of restitution under the Crimes Code because such agencies are presently excluded from the definition of a "person" under the Statutory Construction Act and thus, may not be considered as a victim.

For over a decade the courts of this Commonwealth have struggled with the issue of whether parties other than the "direct" victim of the crime are entitled to restitution under 18 Pa.C.S.A. § 1106. For example, in *Commonwealth v. Galloway,* 302 Pa. Super. 145, 448 A.2d 568 (1982), the Superior Court vacated an order of the lower court directing the defendant to pay restitution to an insurance company which paid for damages caused by defendant's arson of his own home. The court vacated the sentencing court's order reasoning that the insurance company was not a "victim" because payment under the insurance contract was not a loss but merely a contractual obligation.

Furthermore, in *Commonwealth v. Balisteri,* 329 Pa. Super. 148, 478 A.2d 5 (1984), the Superior Court vacated an order compelling the defendant to pay restitution to a psychiatric institution for the expenses it incurred for the psychological treatment of two minor victims of sexual harassment arguing that its decision in *Galloway* stood for the proposition that payment of restitution should be limited to the direct victim and not to third parties who shoulder the financial burden of the victim's losses. *Balisteri,* 329 Pa.Super. at 158, 478 A.2d at 10. *Cf. Commonwealth v. Anderson,* 394 Pa. Super. 299, 300-302, 575 A.2d 639-640 (1990) (individuals who volunteer time and money to the organization "Crime≥ ≤Stoppers" cannot be considered victims).

On the other hand, in *Commonwealth v. Mourar,* 349 Pa. Super. 583, 504 A.2d 197 (1986), *vacated on other grounds,* 517 Pa. 83, 534 A.2d 1050 (1987), the Superior Court considered whether the Pennsylvania Bureau of Drug Control and the Chester County Detectives Office could be considered "victims" within the meaning of the restitution statute where the trial court ordered the offender to make restitution for the money used by an undercover agent to purchase drugs which eventually led to his conviction. In holding that a governmental agency could be a

"victim" under § 1106, the Superior Court reasoned that the agencies in question had in fact suffered a loss of real or personal property as a direct result of the crime. *Mourar,* 349 Pa.Super. at 599, 504 A.2d at 206.

Governmental agency of this Commonwealth may not be a victim for the purposes of restitution under the Crimes Code because such agencies are presently excluded from the definition of a "person" under the Statutory Construction Act and thus, may not be considered as a victim

PENNSYLVANIA

COMMONWEALTH v. KLINE, 695 A.2d 872 (Pa. Super. 1997), 695 A.2d 872

On April 8, 1995, the day appellant assaulted Craig Knepp, restitution for injuries to person or property was controlled by the version of 18 Pa. C.S.A. § 1106 effective August 17, 1976. At that time, subsection (h) of section 1106 defined victim as "[a]ny person, except an offender, who suffered injuries to his person or property as a direct result of the crime."

The statutory definition of victim had been subject to various interpretations. *See Commonwealth v. Runion,* 541 Pa. 202, 662 A.2d 617 (1995). However, it had been clearly held that restitution could not be awarded under that definition to an insurance company which insured against the loss suffered by the direct victim of the crime. *Commonwealth v. Galloway,* 302 Pa. Super. 145, 448 A.2d 568 (1982). In *Galloway,* we vacated an order awarding restitution to an insurance company which paid for damages caused by an arson. We reasoned that the insurance company was not a victim since its payment under the insurance policy was not a loss but a contractual obligation. *See also Commonwealth v. Anderson,* 394 Pa. Super. 299, 575 A.2d 639 (1990) (individuals contributing to "Crime≥ ≤Stoppers" are not victims under 18 Pa. C.S. § 1106); *Commonwealth v. Balisteri,* 329 Pa. Super. 148, 478 A.2d 5 (1984) (restitution can be awarded only to direct victim and not someone who shouldered financial loss in connection with the crime); *Commonwealth v. Mathis,* 317 Pa. Super 362, 464 A.2d 362 (1983) (restitution award vacated to the extent it awarded restitution to insurance companies). *But see Commonwealth v. Layhue,* 455 Pa. Super. 89, 687 A.2d 382 (1996) (*Galloway* distinguished and restitution award to insurer upheld where crime involved charges that defendant committed arson to defraud insurer and collect insurance proceeds); *Commonwealth v. Kerr,* 298 Pa. Super. 257, 444 A.2d 758 (1982) (we affirmed award of restitution to owner of property in the full amount of value of property taken and damaged in theft even though restitution award included amounts for which victim already had received compensation by insurer).

Effective July 1, 1995, the legislature expanded the definition of victim as follows: "The term [victim] includes the Crime Victim's Compensation Fund if compensation has been paid by the Crime Victim's Compensation Fund to the victim and any insurance company that has compensated the victim for loss under an insurance contract." Thus, it is clear that the amendment increased the amount of restitution that was allowed to be awarded in this case. Appellant maintains that

due to the ex post facto clause, the sentencing court lacked authority to award restitution to the insurer under the statutory revisions.

David S. Kline appeals from the April 2, 1996 judgment of sentence imposed by the Centre County Court of Common Pleas following his plea of guilty to simple assault. Appellant maintains the sentencing court violated the ex post facto clause of the United States Constitution by imposing restitution under the revisions to 18 Pa.C.S.A. § 1106 which allow an award of restitution in favor of an insurance company. We conclude that restitution is not punishment within the meaning of the ex post facto clause. Therefore, we affirm the restitution award even though the permissible amount was increased by the statutory revisions.

Restitution is not punishment within the meaning of the ex post facto clause

STATE v. DOMINGUEZ, 115 N.M. 445 (App. 1993), 853 P.2d 147

The state concedes that charitable contributions unauthorized by statute have not been upheld. *See United States v. Wright Contracting Co.,* 728 F.2d 648 (4th Cir. 1984). At least one court has also struck down a condition of a sentence involving possible reduction of a fine in return for the defendant's contribution to an authorized charity. *See United States v. Haile,* 795 F.2d 489, 491 (5th Cir. 1986). Section 31-20-6 does not authorize trial courts to order charitable contributions to law enforcement agencies other than local crime≥ ≤stopper programs. § 31-20-6(E). We also cannot agree that the condition was reasonably related to Ortega's rehabilitation since the Sheriff's Office was unaggrieved by Ortega's actions. *Cf.* NMSA 1978, § 31-17-1 (Repl.Pamp. 1990) (restitution to be made to victims of defendant's criminal activities). We conclude that the trial court's condition of probation requiring Ortega to contribute $500 to the Taos County Sheriff's Office was unauthorized. Thus, we need not reach Ortega's constitutional argument.

Section 31-20-6 does not authorize trial courts to order charitable contributions to law enforcement agencies other than local crime≥ ≤stopper programs

STATE v. HARWELL, 515 N.W.2d 105 (Minn.App. 1994)

Restitution may be aimed at either rehabilitation of the defendant or compensation to the victim. *See State v. Fader,* 358 N.W.2d 42, 48 (Minn. 1984). Where the goal of restitution is to rehabilitate the defendant, as we suspect it was here, the amount should be set according to the defendant's ability to pay and need not appropriately compensate the victim. *Id.* Regardless of its purpose, however, only the victim is entitled to receive restitution. *See* Minn.Stat. § 611A.04, subd. 1 (1992); *Commonwealth v. Anderson,* 394 Pa.Super 299, 575 A.2d 639, 640 (1990) (a volunteer organization such as "Crime≥ ≤Stoppers" is not a victim of the crime and may not receive funds by restitution from the defendant). We acknowledge our supreme court's sentiment in *Fader:*

> If the legislature intended the term (restitution) to be used more loosely, as a form of punitive damages, it should have used some other word or made its particular use of the word clearer.

Fader, 358 N.W.2d at 48. Because the Missing Children's Fund is not a victim of appellant's crime, it is not entitled to restitution.

Crime≥ ≤Stoppers" is not a victim of the crime
and may not receive funds by restitution from the defendant

UNITED STATES v. SINGLETON, 144 F.3d 1343 (10th Cir. 1998)

[25] Because of our duty to harmonize apparently conflicting statutes whenever possible, see Chemical Weapons Working Group, Inc. v. Department of the Army, 111 F.3d 1485, 1490 (10th Cir. 1997), we consider whether applying § 201(c)(2) to federal prosecutors works an absurdity in view of the federal immunity statute, 18 U.S.C. § 6001-6005. Although it could be argued that §§ 6001-6005 authorize federal prosecutors to give immunity for testimony while § 201(c)(2) criminalizes offering anything of value for testimony, we believe the statutes operate in sufficiently separate spheres to avoid both conflict and absurdity. The immunity statute allows removal of a witness's Fifth Amendment privilege so that a silent> <witness may be forced to speak. Under §§ 6001-6005 the government does not give immunity directly for the witness's testimony; the government may move the court to grant immunity, which in turn removes the witness's testimonial privilege so the ordinary compulsion may be brought to bear to require the witness to testify. Both statutes can operate fully and independently; together they manifest a Congressional intent to allow testimony obtained by the court's grant of immunity, but to criminalize the gift, offer, or promise of any other thing of value for or because of testimony. It is not necessary to our decision to further explore the interplay between §§ 6001-6005 and § 201(c)(2), and we leave for other courts the "classic judicial task of reconciling many laws enacted over time, and getting them to `make sense' in combination . . . ." United States v. Fausto, 484 U.S. 439, 453 (1988).

Immunity statute allows removal of a witness's Fifth Amendment privilege so that a silent> <witness may be forced to speak

[54] The Media Relations Sergeants, however, do not satisfy the short test for administrative employment. These officers spent half their time on the "crime> <line>," answering the phone, taking tips, and passing them on the right department. The remainder of their time was spent on various responsibilities including screening calls to the Chief of Police, responding to impromptu questions by the press, determining what information should be released to the press regarding ongoing investigations, and developing an ongoing news broadcast called "Crime of the Week."

[55] Under the regulations, these are not administrative duties. The sergeants' work on the "<crime> <line" was production work, not work related to the administrative operations of the police department. *See* 29 C.F.R. § 541.205(a); *Bratt v. County of Los Angeles.* 912 F.2d 1066, 1070 (9th Cir. 1990) (activities must be directly related to "the running of a business and not merely the day-to-day carrying out of its affairs"), *cert. denied,* 498 U.S. 1086, 111 S.Ct. 962, 112 L.Ed.2d 1049 (1991). The work with the media generally lacked the discretion necessary under the regulations. In screening the Chief of Police's calls, only pre-approved questions were asked, and only pre-approved answers were given. The information the sergeants released to the public was determined according to state law and highly detailed guidelines. The Sergeants had discretion in the preparation of the "Crime of the Week" broadcast, but nothing in the record indicates that preparing the broadcast was significant relative to their other duties. We find no basis in the record for concluding that the Media Relations Sergeants' primary duty consisted of work involving discretion and "directly related to management policies or general business operations" of the police department. 29 C.F.R. § 541.2(a)(1) & (e)(2). Accordingly, we reverse the district court's finding that the Media Relations Sergeants were exempt from FLSA overtime requirements.

[60] ***Conclusion***

[61] For the foregoing reasons, we affirm the district court's finding that the officers were not exempt from FLSA regulation and therefore were entitled to overtime pay prior to September 6, 1991. With the exception of the Media Relations Sergeants, the Patrol Lieutenants, and the Crime Analysis Sergeants, we affirm the court's finding that the Officers were exempt from regulation for the period following September 6, 1991. We remand for calculation of damages with

regard to the Media Relations Sergeants and for further factual findings with regard to the Patrol Lieutenants and the Crime Analysis Sergeants.

[62] ***AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.***

Officers were not exempt from FLSA regulation
Officers entitled to overtime pay

FUNDRAISING IDEAS

MATERIAL NOT SCANNED

HANDOUTS, IF ANY, WILL BE PROVIDED AT THE SEMINAR