

Frequently Asked Questions
Regarding the Future of Crime Stoppers Operations
Following the *Hinterlong* Decision

By Richard W. Carter

The Texas Court of Appeals said that the Texas Crime Stoppers statute in Chapter 414 of the *Texas Government Code* was “unconstitutional as applied”. What does this mean?

*It means that the statute, as used in the *Hinterlong* case is contrary to and violates the Constitution of the State of Texas. Though constitutional on its face, it was unconstitutional as applied because of its discriminatory effect, i.e. it was used to deny *Hinterlong* effective access to the civil courts because it did not provide a discovery process for him to attempt to obtain information and records.*

Does the Texas statute need to be amended by the Texas Legislature?

*While the statute can still be used by the courts, the trial courts will be included to follow the same in-camera process ordered by the appellate court in *Hinterlong*. This is similar to the process used by the criminal courts in Texas in the interim period between the time of the *Thomas* decision and the amending of the Crime Stoppers statute to provide for an in-camera process. A legislative Bill should be drafted, sponsors found for the Bill, the Bill introduced, and legislation enacted which corrects the problem by creating an in-camera process applicable in both criminal and CIVIL cases. Additionally, an effort should be made to provide immunity to those who in good faith communicate or act upon reports of criminal activity to the Texas Crime Stoppers Advisory Council or a Crime Stoppers organization. A draft of such a Bill has been prepared for distribution, consideration, possible revision, and submission to legislative sponsors.*

Did *Hinterlong* win his case?

**Hinterlong* won the right to examine the tip information through an in-camera process. A trial has not been conducted yet to determine whether there is any civil liability on the part of the school district and/or its employees, the unidentified tipster, or any other parties.*

Was the *Hinterlong* case really a “Crime stoppers” case?

*It is questionable, at best, that the tip was a “Crime Stoppers” tip. In any event, the trial court and appellate court treated the case as though it were a Crime Stoppers tip, and rendered their respective decisions interpreting and applying the Crime Stoppers statutes. Any and all attorneys and judges will likely cite and rely upon the *Hinterlong* decision in future Crime Stoppers cases, adult or student, when it is faced with the issue of discovery of Crime Stoppers records in civil cases.*

What has been the initial reaction of plaintiffs’ attorneys to the *Hinterlong* case?

The plaintiffs’ bar is elated at the fertile field that has now been plowed for civil litigation in cases where tips result in acquittals for criminal defendants. Attorneys are now filing open records requests with school districts, law enforcement agencies, et al, and preparing for other possible litigation.

Other than remedial legislation, is there anything else that can be done to protect Crime Stoppers programs being operated in the schools?

*Yes. It is also suggested that Crime Stoppers tips not be given in a face-to-face or in-person manner. The Crime Stoppers and informer’s “privilege” is not absolute, and there are a few rare occasions when a court will order the disclosure of an informant’s identity. Now that the *Hinterlong* decision also provides a procedure in civil cases, there is a greater possibility that if a tipster’s identity is known, it may later be involuntarily disclosed. Our children should not be exposed to such risks, no matter how remote, when there are alternative methods of communicating the information.*

Is everyone in agreement that Crime Stoppers school programs should cease taking tips in-person, face-to-face, or under circumstances where either the law enforcement officer or the school official knows the identity of the informant?

Experienced Crime Stoppers practitioners, including the Founder of Crime Stoppers, Greg MacAleese, concur in the opinion that Crime Stoppers programs in the schools should be operated like the adult Crime Stoppers program which can better protect Crime Stoppers informants by not accepting tips in-person or having face-to-face encounters.

If Crime Stoppers programs are to continue in the schools, what methods of communicating information are available?

There are several methods, which include, but are not limited to:

- *Allowing informants to telephone their tips to a designated tippline, which may or may not be the same tippline as used by the adult Crime Stoppers program in the area (some tips may involve misdemeanors or violations of school rules rather than felonies and matters the adult program seeks)*
- *Establish a website where student informants can safely and anonymously communicate tips*
- *Provide a facsimile/telecopier to securely receive tips*
- *Provide a lock-box where written tips can be deposited*
- *Other*

What other recommendations are there to improve a Crime Stoppers program being operated in the schools?

The following are some suggestions which have been offered for consideration:

- *Re-examine the current policies and procedures of your campus or school Crime Stoppers program.*
- *Revise policies and procedures as necessary.*
- *Conduct training sessions for all who are going to participate in the Crime Stoppers program in the school.*
- *Do not allow fictitious records to be created or false information to be entered onto tip sheets for any reason. (This could be a criminal offense in some jurisdictions.)*
- *In-person tips should only be permissible in situations where there is imminent danger, and where the informant clearly understands that there can be no guarantee of anonymity (only an effort to keep the informant as a confidential informant, subject to court-offered disclosure).*
- *Identify the owner of the records created and kept by the Crime Stoppers program. Is it the school district, a law enforcement agency, or a Crime Stoppers corporation? The answer may be determine whether the information and records are available through or exempt from the Texas Public Information Act, or to whom subpoenas in civil and criminal cases are to be directed.*
- *Be prepared to, and defend against, Public Information Requests and Subpoenas Duces Tecum filed which seeks information about a Crime Stoppers informant.*
- *Prepare all witnesses who may be called to testify in Court.*
- *Understand that not every tip, or communication, regarding a crime is necessarily a "Crime Stoppers" tip, and do not attempt to make a tip appear to be a Crime Stoppers tip when it is not.*
- *When there are problems with a Crime Stoppers case, make full disclosure to the Crime Stoppers board of directors at the earliest opportunity.*
- *Criminal cases coming from a Crime Stoppers school program should be "tracked" in the courts by the Crime Stoppers board of directors.*
- *Insurance coverage should be obtained which protects all participants in a school Crime Stoppers program.*
- *An action plan should be formulated for situations when a Crime Stoppers case from the school results in an acquittal. The plan should include news releases in the event that comments to the media are appropriate, and the mitigation of damages or harm.*
- *Join and support the TEXAS CRIME STOPPERS ASSOCIATION today, and support the organization that supports Crime Stoppers programs throughout the State of Texas.*

Copyright 2002 Texas Crime Stoppers Association, Inc.
Used with permission.