



General Assembly

January Session, 2001

***Raised Bill No. 1115***

LCO No. 3627

Referred to Committee on Judiciary

Introduced by:  
(JUD)

***AN ACT CONCERNING INVESTIGATIVE SUBPOENAS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) For the purposes of sections 1 to 11, inclusive, of  
2 this act:

3 (1) "Prosecuting official" means the Chief State's Attorney, a deputy  
4 Chief State's Attorney, a state's attorney, an assistant state's attorney  
5 specifically designated by the Chief State's Attorney, or a special  
6 assistant state's attorney appointed by the Chief State's Attorney  
7 pursuant to subsection (b) of section 51-285 of the general statutes;

8 (2) "Subpoena" means a subpoena ad testificandum or a subpoena  
9 duces tecum, or both;

10 (3) "Property" includes, but is not limited to, documents, books,  
11 papers, records, films, recordings and other tangible things.

12 Sec. 2. (NEW) In the investigation of conduct that would constitute  
13 the commission of a class A or B felony, including the investigation of  
14 whether a defense or affirmative defense raised with respect to the  
15 commission of a class A or B felony constitutes a valid defense under

16 the law, a prosecuting official, in the performance of such official's  
17 duties during such investigation, shall have the authority to compel by  
18 subpoena the appearance and testimony of witnesses and the  
19 production of property concerning the matter under investigation. No  
20 prosecuting official may issue a subpoena under this section unless  
21 authorized by a judge of the Superior Court pursuant to section 3 of  
22 this act.

23 Sec. 3. (NEW) (a) A prosecuting official who seeks to issue a  
24 subpoena under section 2 of this act shall submit an application to a  
25 judge of the Superior Court. Such application shall include an affidavit  
26 sworn to by such prosecuting official stating that such official:

27 (1) Has reasonable grounds to believe that a class A or B felony has  
28 been committed or a defense or affirmative defense has been raised  
29 with respect to the commission of a class A or B felony, and the basis  
30 for such belief;

31 (2) Has reasonable grounds to believe that the person to be  
32 summoned to appear and give testimony or produce property has  
33 information relevant and necessary to the investigation concerning the  
34 alleged commission of a class A or B felony or the validity of a defense  
35 or affirmative defense raised with respect to the commission of a class  
36 A or B felony, and the basis for such belief;

37 (3) Has reasonable grounds to believe that the appearance and  
38 testimony of such person or the production of property by such person  
39 would not occur or be available without the issuance of a subpoena,  
40 and the basis for such belief; and

41 (4) Has made reasonable efforts to secure such appearance,  
42 testimony and property without recourse to a subpoena and those  
43 efforts have been unsuccessful.

44 (b) If the judge finds that the provisions of subsection (a) of this  
45 section have been satisfied, such judge may grant the application for

46 the issuance of a subpoena by such prosecuting official.

47 Sec. 4. (NEW) (a) Any subpoena issued pursuant to sections 1 to 11,  
48 inclusive, of this act shall (1) compel only the appearance of witnesses  
49 and the production of property relevant and necessary to the  
50 investigation being conducted, (2) specify with reasonable particularity  
51 any property to be produced, and (3) require only the production of  
52 documents or records covering a reasonable period of time.

53 (b) Any subpoena issued pursuant to sections 1 to 11, inclusive, of  
54 this act shall be served at least five working days prior to the date  
55 scheduled for the appearance of the witness, unless a judge of the  
56 Superior Court in the judicial district where compliance with the  
57 subpoena is sought, as provided in section 5 of this act, otherwise  
58 orders for good cause shown.

59 (c) Any subpoena issued pursuant to sections 1 to 11, inclusive, of  
60 this act shall contain a notice advising the person summoned of the  
61 following: (1) The purpose of the investigation, (2) whether such  
62 person is a target or possible target of the investigation, (3) that such  
63 person has the right not to be compelled to give evidence against  
64 himself or herself, (4) that such person has the right to have counsel  
65 present and to consult with such counsel and, if such person is  
66 indigent, to have counsel appointed to represent him or her, and (5)  
67 that such person has the right to file a motion to quash or modify the  
68 subpoena.

69 Sec. 5. (NEW) Any subpoena issued pursuant to sections 1 to 11,  
70 inclusive, of this act shall compel the witness to appear or produce the  
71 property in the presence of a judge at a specified location in a  
72 courthouse in the judicial district where the incident or incidents  
73 subject to investigation are alleged to have occurred or, if the  
74 investigation is being conducted by a prosecuting official of a judicial  
75 district other than the judicial district where the incident or incidents  
76 subject to investigation are alleged to have occurred, in a courthouse in  
77 that judicial district.

78       Sec. 6. (NEW) (a) Whenever a subpoena is issued pursuant to  
79 sections 1 to 11, inclusive, of this act, the prosecuting official shall, not  
80 later than forty-eight hours after service of the subpoena, excluding  
81 weekends and holidays, give written notice of the issuance of the  
82 subpoena to the presiding judge for criminal matters in the courthouse  
83 where compliance with the subpoena is required. Such notice shall  
84 include the identity of the person and, if the production of property is  
85 compelled, a description of the property. Such notice shall be  
86 confidential and not subject to disclosure. The failure to give such  
87 notice shall not invalidate the subpoena. Such presiding judge shall  
88 assign a judge of the Superior Court to preside over the proceeding.  
89 The assignment of such judge shall be confidential and not subject to  
90 disclosure. The proceeding shall not be open to the public.

91       (b) Prior to any witness being questioned, the prosecuting official  
92 shall advise such person of the following: (1) The purpose of the  
93 investigation, (2) whether such person is a target or possible target of  
94 the investigation, (3) that such person has the right not to be compelled  
95 to give evidence against himself or herself, and (4) that such person  
96 has the right to have counsel present and to consult with such counsel  
97 and, if such person is indigent, to have counsel appointed to represent  
98 him or her. The presiding judge shall assure that such rights are not  
99 infringed.

100       (c) A court reporter or assistant court reporter shall make a record of  
101 the proceeding. The record of the proceeding shall be sealed and not  
102 subject to disclosure, except that any witness who appeared and  
103 testified shall be allowed access, at all reasonable times, to the record  
104 of such witness' own testimony and shall have the right to receive a  
105 copy of the transcript of the record of such testimony.

106       Sec. 7. (NEW) If any witness properly summoned fails to appear or  
107 to produce any property specified in the subpoena or, if having  
108 appeared, fails to answer any proper question, the prosecuting official  
109 may apply to a judge of the Superior Court in the judicial district as

110 provided in section 5 of this act setting forth such failure and  
111 requesting an order requiring such person to appear and answer  
112 questions or produce such property, as the case may be. If the judge  
113 finds that reasonable cause exists, the judge shall issue a citation  
114 requiring the witness to appear before a judge of the Superior Court in  
115 camera to show cause why such witness should not appear or produce  
116 property or should not answer any proper question. If, after hearing,  
117 the judge finds that the witness has failed to show cause why such  
118 witness should not be required to comply with the subpoena, the judge  
119 shall enter an order requiring the witness to appear, to produce  
120 property or to answer any proper question, as the case may be. The  
121 failure to obey such order may be punished by the court as a contempt  
122 thereof. The application of the prosecuting official and the order of the  
123 court shall be sealed as to the public and not be subject to disclosure.  
124 The hearing on the application shall not be open to the public.

125       Sec. 8. (NEW) (a) Whenever a subpoena has been issued to compel  
126 the appearance and testimony of a witness or the production of  
127 property pursuant to sections 1 to 11, inclusive, of this act, the person  
128 summoned may file a motion to quash the subpoena with the chief  
129 clerk of the court for the judicial district as provided in section 5 of this  
130 act. No fees or costs shall be assessed.

131       (b) The party filing the motion to quash shall be designated as the  
132 plaintiff and the prosecuting official shall be designated as the  
133 defendant.

134       (c) The motion, upon its filing, shall be sealed as to the public. The  
135 motion shall be referred to the presiding criminal judge of the court for  
136 hearing or for assignment to another judge for hearing. Unless  
137 otherwise ordered by the judge conducting the hearing, the hearing  
138 shall be conducted in camera and the file on the motion shall be sealed  
139 as to the public, subject to further order of the court.

140       (d) The motion shall be expeditiously assigned and heard. The date  
141 and time of the hearing shall be established by the clerk after

142 consultation with the judge assigned to conduct the hearing. The clerk  
143 shall give notice to the parties of the hearing so scheduled.

144 (e) A judge may quash or modify any subpoena issued pursuant to  
145 sections 1 to 11, inclusive, of this act on the following grounds: (1) That  
146 the witness summoned does not have information relevant and  
147 necessary to the investigation, (2) that the testimony sought is  
148 protected by the attorney-client privilege or a statutory or  
149 constitutional privilege, (3) that the production of the property sought  
150 would be unreasonable or oppressive or that the property constitutes  
151 attorney-client work product, or (4) for any other just cause as may be  
152 found by the judge.

153 Sec. 9. (NEW) (a) In any investigation conducted pursuant to  
154 sections 1 to 11, inclusive, of this act, a state's attorney or, at the request  
155 of a special assistant state's attorney, the Chief State's Attorney, may  
156 apply to a judge of the Superior Court for an order granting immunity  
157 from prosecution to any person whom the state calls or intends to call  
158 as a witness if the prosecuting official finds that the testimony of the  
159 person is necessary to the investigation of the case. Such immunity  
160 may provide that the person will not be prosecuted or subjected to any  
161 penalty or forfeiture (1) for or on account of any testimony given or  
162 evidence produced by such person, or for or on account of any  
163 evidence discovered as a result of or otherwise derived from testimony  
164 given or evidence produced by such person, or (2) for or on account of  
165 any transaction, matter or thing concerning which such person gives  
166 testimony or produces evidence. A person who receives immunity  
167 under this subsection shall not be immune from prosecution for  
168 perjury or contempt committed while giving such testimony or  
169 producing such property.

170 (b) No person who has been properly served with a subpoena  
171 pursuant to sections 1 to 11, inclusive, of this act and receives  
172 immunity under subsection (a) of this section, shall be excused from  
173 appearing and testifying or producing any property before the

174 prosecuting official concerning an investigation pursuant to sections 1  
175 to 11, inclusive, of this act upon the ground or for the reason that the  
176 testimony or property required of such person may tend to convict  
177 such person of a crime or subject such person to a penalty or forfeiture.

178 Sec. 10. (NEW) All information and property obtained by a  
179 prosecuting official as a result of the issuance of a subpoena pursuant  
180 to sections 1 to 11, inclusive, of this act shall be confidential and not  
181 subject to disclosure, except such as should, in the opinion of such  
182 official, be used or disclosed in the performance of the official duties of  
183 such official.

184 Sec. 11. (NEW) All property produced as a result of the issuance of a  
185 subpoena pursuant to sections 1 to 11, inclusive, of this act shall be  
186 returned to the person from whom it was received if no criminal  
187 prosecution is commenced involving the use of such property or shall  
188 be otherwise disposed of as provided by law.

189 Sec. 12. Section 51-296 of the general statutes is repealed and the  
190 following is substituted in lieu thereof:

191 (a) In any criminal action, in any habeas corpus proceeding arising  
192 from a criminal matter, in any extradition proceeding, [or] in any  
193 delinquency matter or in any proceeding in which a witness has been  
194 summoned by a subpoena issued pursuant to section 2 of this act, the  
195 court before which the matter is pending shall, if it determines after  
196 investigation by the public defender or [his] the public defender's  
197 office that a defendant or a witness summoned by a subpoena issued  
198 pursuant to section 2 of this act is indigent as defined under this  
199 chapter, designate a public defender, assistant public defender or  
200 deputy assistant public defender to represent such indigent defendant  
201 or witness, unless, in a misdemeanor case, at the time of the  
202 application for appointment of counsel, the court decides to dispose of  
203 the pending charge without subjecting the defendant to a sentence  
204 involving immediate incarceration or a suspended sentence of  
205 incarceration with a period of probation or the court believes that the

206 disposition of the pending case at a later date will not result in a  
207 sentence involving immediate incarceration or a suspended sentence  
208 of incarceration with a period of probation and makes a statement to  
209 that effect on the record. If it appears to the court at a later date that, if  
210 convicted, the sentence of an indigent defendant for whom counsel has  
211 not been appointed will involve immediate incarceration or a  
212 suspended sentence of incarceration with a period of probation,  
213 counsel shall be appointed prior to trial or the entry of a plea of guilty  
214 or nolo contendere.

215 (b) In the case of codefendants, the court may appoint one or more  
216 public defenders, assistant public defenders or deputy assistant public  
217 defenders to represent such defendants or may appoint counsel from  
218 the trial list established under section 51-291.

219 (c) Prior to [a defendant's appearance in court] the appearance in  
220 court of a defendant in any matter specified in subsection (a) of this  
221 section or of a witness summoned by a subpoena issued pursuant to  
222 section 2 of this act, a public defender, assistant public defender or  
223 deputy assistant public defender, upon a determination that the  
224 defendant or witness is indigent pursuant to subsection (a) of section  
225 51-297, shall be authorized to represent the defendant or witness until  
226 the court appoints counsel for such defendant or witness.

***Statement of Purpose:***

To allow a prosecuting official, after authorization by a Superior Court judge, to subpoena a person to testify or produce property necessary and relevant to an investigation into the possible commission of a class A or B felony, including whether a raised defense is valid.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*