



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 12, 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, a prosecuting official, in the
14 performance of such official's duties during such investigation, shall
15 have the authority to compel by subpoena the appearance and
16 testimony of witnesses and the production of property concerning the
17 matter under investigation. No prosecuting official may issue a
18 subpoena under this section to an attorney in regard to a former or
19 current client of such attorney. No prosecuting official may issue a

20 subpoena under this section unless authorized by a judge of the
21 Superior Court pursuant to section 3 of this act.

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

26 (1) Has reasonable grounds to believe that a class A or B felony has
27 been committed, and the facts that form the basis for such belief;

28 (2) Has reasonable grounds to believe that the person to be
29 summoned to appear and give testimony or produce property has
30 information relevant and necessary to the investigation concerning the
31 alleged commission of a class A or B felony, and the facts that form the
32 basis for such belief;

33 (3) Has reasonable grounds to believe that the appearance and
34 testimony of such person or the production of property by such person
35 would not occur or be available without the issuance of a subpoena,
36 and the facts that form the basis for such belief; and

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

40 (b) If the judge finds that the provisions of subsection (a) of this
41 section have been satisfied, such judge may grant the application for
42 the issuance of a subpoena by such prosecuting official.

43 Sec. 4. (NEW) (a) Any subpoena issued pursuant to sections 1 to 12,
44 inclusive, of this act shall (1) compel only the appearance of witnesses
45 and the production of property relevant and necessary to the
46 investigation being conducted, (2) specify with reasonable particularity
47 any property to be produced, and (3) require only the production of
48 documents or records covering a reasonable period of time.

49 (b) Any subpoena issued pursuant to sections 1 to 12, inclusive, of

50 this act shall be served at least five working days prior to the date
51 scheduled for the appearance of the witness, unless a judge of the
52 Superior Court in the judicial district where compliance with the
53 subpoena is sought, as provided in section 5 of this act, otherwise
54 orders for good cause shown.

55 (c) Any subpoena issued pursuant to sections 1 to 12, inclusive, of
56 this act shall contain a notice advising the person summoned of the
57 following: (1) The purpose of the investigation, (2) whether such
58 person is a target or possible target of the investigation, (3) that such
59 person has the right not to be compelled to give evidence against
60 himself or herself, (4) that such person has the right to have counsel
61 present and to consult with such counsel and, if such person is
62 indigent, to have counsel appointed to represent him or her, and (5)
63 that such person has the right to file a motion to quash or modify the
64 subpoena.

65 Sec. 5. (NEW) Any subpoena issued pursuant to sections 1 to 12,
66 inclusive, of this act shall compel the witness to appear or produce the
67 property in the presence of a judge at a specified location in a
68 courthouse in the judicial district where the incident or incidents
69 subject to investigation are alleged to have occurred or, if the
70 investigation is being conducted by a prosecuting official of a judicial
71 district other than the judicial district where the incident or incidents
72 subject to investigation are alleged to have occurred, in a courthouse in
73 that judicial district.

74 Sec. 6. (NEW) If any subpoena is issued pursuant to sections 1 to 12,
75 inclusive, of this act for the production of the medical records,
76 including psychiatric records, of a person, the prosecuting official shall
77 give written notice of the issuance of such subpoena to such person.
78 Such person shall have standing to file a motion to quash the subpoena
79 in accordance with section 9 of this act. All medical records, including
80 psychiatric records, that are produced pursuant to a subpoena issued
81 pursuant to sections 1 to 12, inclusive, of this act, shall be designated as
82 confidential records and maintained in a confidential manner at the

83 office of the Chief State's Attorney until an arrest is made as a result of
84 the investigation.

85 Sec. 7. (NEW) (a) Whenever a subpoena is issued pursuant to
86 sections 1 to 12, inclusive, of this act, the prosecuting official shall, not
87 later than forty-eight hours after service of the subpoena, excluding
88 weekends and holidays, give written notice of the issuance of the
89 subpoena to the presiding judge for criminal matters in the courthouse
90 where compliance with the subpoena is required. Such notice shall
91 include the identity of the person and, if the production of property is
92 compelled, a description of the property. Such notice shall be
93 confidential and not subject to disclosure. The failure to give such
94 notice shall not invalidate the subpoena. Such presiding judge shall
95 assign a judge of the Superior Court to preside over the proceeding.
96 The assignment of such judge shall be confidential and not subject to
97 disclosure. The proceeding shall not be open to the public.

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

107 (c) A court reporter or assistant court reporter shall make a record of
108 the proceeding. The record of the proceeding shall be sealed and not
109 subject to disclosure, except that any witness who appeared and
110 testified shall be allowed access, at all reasonable times, to the record
111 of such witness' own testimony and shall have the right to receive a
112 copy of the transcript of the record of such testimony.

113 Sec. 8. (NEW) If any witness properly summoned fails to appear or
114 to produce any property specified in the subpoena or, if having

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

132 Sec. 9. (NEW) (a) Whenever a subpoena has been issued to compel
133 the appearance and testimony of a witness or the production of
134 property pursuant to sections 1 to 12, inclusive, of this act, the person
135 summoned may file a motion to quash the subpoena with the chief
136 clerk of the court for the judicial district as provided in section 5 of this
137 act. No fees or costs shall be assessed.

138 (b) The party filing the motion to quash shall be designated as the
139 plaintiff and the prosecuting official shall be designated as the
140 defendant.

141 (c) The motion, upon its filing, shall be sealed as to the public. The
142 motion shall be referred to the presiding criminal judge of the court for
143 hearing or for assignment to another judge for hearing. Unless
144 otherwise ordered by the judge conducting the hearing, the hearing
145 shall be conducted in camera and the file on the motion shall be sealed
146 as to the public, subject to further order of the court.

147 (d) The motion shall be expeditiously assigned and heard. The date
148 and time of the hearing shall be established by the clerk after
149 consultation with the judge assigned to conduct the hearing. The clerk
150 shall give notice to the parties of the hearing so scheduled.

151 (e) A judge may quash or modify any subpoena issued pursuant to
152 sections 1 to 12, inclusive, of this act for any just cause as may be found
153 by such judge, and shall quash or modify any such subpoena on the
154 following grounds: (1) That the witness summoned does not have
155 information relevant and necessary to the investigation, (2) that the
156 testimony sought is protected by the attorney-client privilege or a
157 statutory or constitutional privilege, or (3) that the production of the
158 property sought would be unreasonable or oppressive or that the
159 property constitutes attorney-client work product.

160 Sec. 10. (NEW) (a) In any investigation conducted pursuant to
161 sections 1 to 12, inclusive, of this act, a state's attorney or, at the request
162 of a special assistant state's attorney, the Chief State's Attorney, may
163 apply to a judge of the Superior Court for an order granting immunity
164 from prosecution to any person whom the state calls or intends to call
165 as a witness if the prosecuting official finds that the testimony of the
166 person is necessary to the investigation of the case. Such immunity
167 may provide that the person will not be prosecuted or subjected to any
168 penalty or forfeiture (1) for or on account of any testimony given or
169 evidence produced by such person, or for or on account of any
170 evidence discovered as a result of or otherwise derived from testimony
171 given or evidence produced by such person, or (2) for or on account of
172 any transaction, matter or thing concerning which such person gives
173 testimony or produces evidence. A person who receives immunity
174 under this subsection shall not be immune from prosecution for
175 perjury or contempt committed while giving such testimony or
176 producing such property.

177 (b) No person who has been properly served with a subpoena
178 pursuant to sections 1 to 12, inclusive, of this act and receives
179 immunity under subsection (a) of this section, shall be excused from

180 appearing and testifying or producing any property before the
181 prosecuting official concerning an investigation pursuant to sections 1
182 to 12, inclusive, of this act upon the ground or for the reason that the
183 testimony or property required of such person may tend to convict
184 such person of a crime or subject such person to a penalty or forfeiture.

185 Sec. 11. (NEW) All information and property obtained by a
186 prosecuting official as a result of the issuance of a subpoena pursuant
187 to sections 1 to 12, inclusive, of this act shall be confidential and not
188 subject to disclosure, except such as should, in the opinion of such
189 official, be used or disclosed in the performance of the official duties of
190 such official. Any exculpatory information obtained with respect to
191 any person shall be disclosed to such person if such person is
192 subsequently arrested.

193 Sec. 12. (NEW) All property produced as a result of the issuance of a
194 subpoena pursuant to sections 1 to 12, inclusive, of this act shall be
195 returned to the person from whom it was received if no criminal
196 prosecution is commenced involving the use of such property or shall
197 be otherwise disposed of as provided by law.

198 Sec. 13. Section 51-296 of the general statutes is repealed and the
199 following is substituted in lieu thereof:

200 (a) In any criminal action, in any habeas corpus proceeding arising
201 from a criminal matter, in any extradition proceeding, [or] in any
202 delinquency matter or in any proceeding in which a witness has been
203 summoned by a subpoena issued pursuant to section 2 of this act, the
204 court before which the matter is pending shall, if it determines after
205 investigation by the public defender or [his] the public defender's
206 office that a defendant or a witness summoned by a subpoena issued
207 pursuant to section 2 of this act is indigent as defined under this
208 chapter, designate a public defender, assistant public defender or
209 deputy assistant public defender to represent such indigent defendant
210 or witness, unless, in a misdemeanor case, at the time of the
211 application for appointment of counsel, the court decides to dispose of

212 the pending charge without subjecting the defendant to a sentence
213 involving immediate incarceration or a suspended sentence of
214 incarceration with a period of probation or the court believes that the
215 disposition of the pending case at a later date will not result in a
216 sentence involving immediate incarceration or a suspended sentence
217 of incarceration with a period of probation and makes a statement to
218 that effect on the record. If it appears to the court at a later date that, if
219 convicted, the sentence of an indigent defendant for whom counsel has
220 not been appointed will involve immediate incarceration or a
221 suspended sentence of incarceration with a period of probation,
222 counsel shall be appointed prior to trial or the entry of a plea of guilty
223 or nolo contendere.

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

228 (c) Prior to [a defendant's appearance in court] the appearance in
229 court of a defendant in any matter specified in subsection (a) of this
230 section or of a witness summoned by a subpoena issued pursuant to
231 section 2 of this act, a public defender, assistant public defender or
232 deputy assistant public defender, upon a determination that the
233 defendant or witness is indigent pursuant to subsection (a) of section
234 51-297, shall be authorized to represent the defendant or witness until
235 the court appoints counsel for such defendant or witness.

236 Sec. 14. Not later than January 1, 2003, the Chief State's Attorney
237 shall submit a report to the Judiciary Committee of the General
238 Assembly concerning the issuance of subpoenas pursuant to sections 1
239 to 12, inclusive, of this act including, but not limited to, the number of
240 applications submitted for the issuance of a subpoena, the number of
241 applications granted, the purpose of the investigation, the offense or
242 offenses allegedly committed that are the subject of the investigation,
243 the number of motions to quash a subpoena that were filed and the
244 rulings on such motions, the number of applications for an order

245 granting immunity from prosecution and the rulings on such
246 applications, the final results of the investigation and the status of any
247 criminal prosecutions resulting from such investigation.

248 Sec. 15. This act shall take effect October 1, 2001, and shall be in
249 effect until October 1, 2003.

JUD *JOINT FAVORABLE SUBST.*