



General Assembly

January Session, 2003

***Raised Bill No. 969***

LCO No. 3511

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) (*Effective October 1, 2003, and in effect until October*  
2 *1, 2005*) For the purposes of sections 1 to 12, inclusive, of 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; and

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

12 Sec. 2. (NEW) (*Effective October 1, 2003, and in effect until October 1,*  
13 *2005*) In the investigation of conduct that would constitute the  
14 commission of a class A or B felony, a prosecuting official, in the  
15 performance of such official's duties during such investigation, shall

16 have the authority to compel by subpoena the appearance and  
17 testimony of witnesses and the production of property concerning the  
18 matter under investigation. No prosecuting official may issue a  
19 subpoena under this section to an attorney in regard to a former or  
20 current client of such attorney. No prosecuting official may issue a  
21 subpoena under this section unless authorized by a judge of the  
22 Superior Court pursuant to section 3 of this act.

23 Sec. 3. (NEW) (*Effective October 1, 2003, and in effect until October 1,*  
24 *2005*) (a) A prosecuting official who seeks to issue a subpoena under  
25 section 2 of this act shall submit an application to a judge of the  
26 Superior Court. Such application shall include an affidavit sworn to by  
27 such prosecuting official stating that such official:

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

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

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

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

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

45 Sec. 4. (NEW) (*Effective October 1, 2003, and in effect until October 1,*

46 2005) (a) Any subpoena issued pursuant to sections 1 to 12, inclusive,  
47 of this act shall (1) compel only the appearance of witnesses and the  
48 production of property relevant and necessary to the investigation  
49 being conducted, (2) specify with reasonable particularity any property  
50 to be produced, and (3) require only the production of documents or  
51 records covering a reasonable period of time.

52 (b) Any subpoena issued pursuant to sections 1 to 12, inclusive, of  
53 this act shall be served at least five working days prior to the date  
54 scheduled for the appearance of the witness, unless a judge of the  
55 Superior Court in the judicial district where compliance with the  
56 subpoena is sought, as provided in section 5 of this act, otherwise  
57 orders for good cause shown.

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

68 Sec. 5. (NEW) (*Effective October 1, 2003, and in effect until October 1,*  
69 *2005*) Any subpoena issued pursuant to sections 1 to 12, inclusive, of  
70 this act shall compel the witness to appear or produce the property in  
71 the presence of a judge at a specified location in a courthouse in the  
72 judicial district where the incident or incidents subject to investigation  
73 are alleged to have occurred or, if the investigation is being conducted  
74 by a prosecuting official of a judicial district other than the judicial  
75 district where the incident or incidents subject to investigation are  
76 alleged to have occurred, in a courthouse in that judicial district.

77 Sec. 6. (NEW) (*Effective October 1, 2003, and in effect until October 1,*

78 2005) If any subpoena is issued pursuant to sections 1 to 12, inclusive,  
79 of this act for the production of the medical records, including  
80 psychiatric records, of a person, the prosecuting official shall give  
81 written notice of the issuance of such subpoena to such person. Such  
82 person shall have standing to file a motion to quash the subpoena in  
83 accordance with section 9 of this act. All medical records, including  
84 psychiatric records, that are produced pursuant to a subpoena issued  
85 pursuant to sections 1 to 12, inclusive, of this act, shall be designated as  
86 confidential records and maintained in a confidential manner at the  
87 office of the Chief State's Attorney until an arrest is made as a result of  
88 the investigation.

89 Sec. 7. (NEW) (*Effective October 1, 2003, and in effect until October 1,*  
90 *2005*) (a) Whenever a subpoena is issued pursuant to sections 1 to 12,  
91 inclusive, of this act, the prosecuting official shall, not later than forty-  
92 eight hours after service of the subpoena, excluding weekends and  
93 holidays, give written notice of the issuance of the subpoena to the  
94 presiding judge for criminal matters in the courthouse where  
95 compliance with the subpoena is required. Such notice shall include  
96 the identity of the person and, if the production of property is  
97 compelled, a description of the property. Such notice shall be  
98 confidential and not subject to disclosure. The failure to give such  
99 notice shall not invalidate the subpoena. Such presiding judge shall  
100 assign a judge of the Superior Court to preside over the proceeding.  
101 The assignment of such judge shall be confidential and not subject to  
102 disclosure. The proceeding shall not be open to the public.

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

111 infringed.

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

118 Sec. 8. (NEW) (*Effective October 1, 2003, and in effect until October 1,*  
119 *2005*) If any witness properly summoned fails to appear or to produce  
120 any property specified in the subpoena or, if having appeared, fails to  
121 answer any proper question, the prosecuting official may apply to a  
122 judge of the Superior Court in the judicial district as provided in  
123 section 5 of this act setting forth such failure and requesting an order  
124 requiring such person to appear and answer questions or produce such  
125 property, as the case may be. If the judge finds that reasonable cause  
126 exists, the judge shall issue a citation requiring the witness to appear  
127 before a judge of the Superior Court in camera to show cause why  
128 such witness should not appear or produce property or should not  
129 answer any proper question. If, after hearing, the judge finds that the  
130 witness has failed to show cause why such witness should not be  
131 required to comply with the subpoena, the judge shall enter an order  
132 requiring the witness to appear, to produce property or to answer any  
133 proper question, as the case may be. The failure to obey such order  
134 may be punished by the court as a contempt thereof. The application of  
135 the prosecuting official and the order of the court shall be sealed as to  
136 the public and not be subject to disclosure. The hearing on the  
137 application shall not be open to the public.

138 Sec. 9. (NEW) (*Effective October 1, 2003, and in effect until October 1,*  
139 *2005*) (a) Whenever a subpoena has been issued to compel the  
140 appearance and testimony of a witness or the production of property  
141 pursuant to sections 1 to 12, inclusive, of this act, the person  
142 summoned may file a motion to quash the subpoena with the chief

143 clerk of the court for the judicial district as provided in section 5 of this  
144 act. No fees or costs shall be assessed.

145 (b) The party filing the motion to quash shall be designated as the  
146 plaintiff and the prosecuting official shall be designated as the  
147 defendant.

148 (c) The motion, upon its filing, shall be sealed as to the public. The  
149 motion shall be referred to the presiding criminal judge of the court for  
150 hearing or for assignment to another judge for hearing. Unless  
151 otherwise ordered by the judge conducting the hearing, the hearing  
152 shall be conducted in camera and the file on the motion shall be sealed  
153 as to the public, subject to further order of the court.

154 (d) The motion shall be expeditiously assigned and heard. The date  
155 and time of the hearing shall be established by the clerk after  
156 consultation with the judge assigned to conduct the hearing. The clerk  
157 shall give notice to the parties of the hearing so scheduled.

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

167 Sec. 10. (NEW) (*Effective October 1, 2003, and in effect until October 1,*  
168 *2005*) (a) In any investigation conducted pursuant to sections 1 to 12,  
169 inclusive, of this act, a state's attorney or, at the request of a special  
170 assistant state's attorney, the Chief State's Attorney, may apply to a  
171 judge of the Superior Court for an order granting immunity from  
172 prosecution to any person whom the state calls or intends to call as a  
173 witness if the prosecuting official finds that the testimony of the person

174 is necessary to the investigation of the case. Such immunity may  
175 provide that the person will not be prosecuted or subjected to any  
176 penalty or forfeiture (1) for or on account of any testimony given or  
177 evidence produced by such person, or for or on account of any  
178 evidence discovered as a result of or otherwise derived from testimony  
179 given or evidence produced by such person, or (2) for or on account of  
180 any transaction, matter or thing concerning which such person gives  
181 testimony or produces evidence. A person who receives immunity  
182 under this subsection shall not be immune from prosecution for  
183 perjury or contempt committed while giving such testimony or  
184 producing such property.

185 (b) No person who has been properly served with a subpoena  
186 pursuant to sections 1 to 12, inclusive, of this act and receives  
187 immunity under subsection (a) of this section, shall be excused from  
188 appearing and testifying or producing any property before the  
189 prosecuting official concerning an investigation pursuant to sections 1  
190 to 12, inclusive, of this act upon the ground or for the reason that the  
191 testimony or property required of such person may tend to convict  
192 such person of a crime or subject such person to a penalty or forfeiture.

193 Sec. 11. (NEW) (*Effective October 1, 2003, and in effect until October 1,*  
194 *2005*) All information and property obtained by a prosecuting official  
195 as a result of the issuance of a subpoena pursuant to sections 1 to 12,  
196 inclusive, of this act shall be confidential and not subject to disclosure,  
197 except such as should, in the opinion of such official, be used or  
198 disclosed in the performance of the official duties of such official. Any  
199 exculpatory information obtained with respect to any person shall be  
200 disclosed to such person if such person is subsequently arrested.

201 Sec. 12. (NEW) (*Effective October 1, 2003, and in effect until October 1,*  
202 *2005*) All property produced as a result of the issuance of a subpoena  
203 pursuant to sections 1 to 12, inclusive, of this act shall be returned to  
204 the person from whom it was received if no criminal prosecution is  
205 commenced involving the use of such property or shall be otherwise

206 disposed of as provided by law.

207 Sec. 13. Section 51-296 of the general statutes is repealed and the  
208 following is substituted in lieu thereof (*Effective October 1, 2003*):

209 (a) In any criminal action, in any habeas corpus proceeding arising  
210 from a criminal matter, in any extradition proceeding, [or] in any  
211 delinquency matter or in any proceeding in which a witness has been  
212 summoned by a subpoena issued pursuant to section 2 of this act, the  
213 court before which the matter is pending shall, if it determines after  
214 investigation by the public defender or [his] the public defender's  
215 office that a defendant or a witness summoned by a subpoena issued  
216 pursuant to section 2 of this act is indigent as defined under this  
217 chapter, designate a public defender, assistant public defender or  
218 deputy assistant public defender to represent such indigent defendant  
219 or witness, unless, in a misdemeanor case, at the time of the  
220 application for appointment of counsel, the court decides to dispose of  
221 the pending charge without subjecting the defendant to a sentence  
222 involving immediate incarceration or a suspended sentence of  
223 incarceration with a period of probation or the court believes that the  
224 disposition of the pending case at a later date will not result in a  
225 sentence involving immediate incarceration or a suspended sentence  
226 of incarceration with a period of probation and makes a statement to  
227 that effect on the record. If it appears to the court at a later date that, if  
228 convicted, the sentence of an indigent defendant for whom counsel has  
229 not been appointed will involve immediate incarceration or a  
230 suspended sentence of incarceration with a period of probation,  
231 counsel shall be appointed prior to trial or the entry of a plea of guilty  
232 or nolo contendere.

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

237 (c) Prior to [a defendant's appearance in court] the appearance in

238 court of a defendant in any matter specified in subsection (a) of this  
 239 section or of a witness summoned by subpoena issued pursuant to  
 240 section 2 of this act, a public defender, assistant public defender or  
 241 deputy assistant public defender, upon a determination that the  
 242 defendant or witness is indigent pursuant to subsection (a) of section  
 243 51-297, shall be authorized to represent the defendant or witness until  
 244 the court appoints counsel for such defendant or witness.

245       Sec. 14. (*Effective October 1, 2003*) Not later than January 1, 2005, the  
 246 Chief State's Attorney shall submit a report to the Judiciary Committee  
 247 of the General Assembly concerning the issuance of subpoenas  
 248 pursuant to sections 1 to 12, inclusive, of this act including, but not  
 249 limited to, the number of applications submitted for the issuance of a  
 250 subpoena, the number of applications granted, the purpose of the  
 251 investigation, the offense or offenses allegedly committed that are the  
 252 subject of the investigation, the number of motions to quash a  
 253 subpoena that were filed and the rulings on such motions, the number  
 254 of applications for an order granting immunity from prosecution and  
 255 the rulings on such applications, the final results of the investigation  
 256 and the status of any criminal prosecutions resulting from such  
 257 investigation.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003, and in effect until October 1, 2005</i>
Sec. 2	<i>October 1, 2003, and in effect until October 1, 2005</i>
Sec. 3	<i>October 1, 2003, and in effect until October 1, 2005</i>
Sec. 4	<i>October 1, 2003, and in effect until October 1, 2005</i>
Sec. 5	<i>October 1, 2003, and in effect until October 1, 2005</i>
Sec. 6	<i>October 1, 2003, and in effect until October 1, 2005</i>
Sec. 7	<i>October 1, 2003, and in effect until October 1, 2005</i>
Sec. 8	<i>October 1, 2003, and in effect until October 1, 2005</i>
Sec. 9	<i>October 1, 2003, and in effect until October 1, 2005</i>
Sec. 10	<i>October 1, 2003, and in effect until October 1, 2005</i>
Sec. 11	<i>October 1, 2003, and in effect until October 1, 2005</i>
Sec. 12	<i>October 1, 2003, and in effect until October 1, 2005</i>
Sec. 13	<i>October 1, 2003</i>

Sec. 14

October 1, 2003

**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.

*[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.]*