



General Assembly

Amendment

January Session, 2003

LCO No. 6559

SB0096906559SD0

Offered by:

SEN. MCDONALD, 27th Dist.

SEN. FASANO, 34th Dist.

To: Subst. Senate Bill No. 969

File No. 634

Cal. No. 410

"AN ACT CONCERNING INVESTIGATIVE SUBPOENAS."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective October 1, 2003*) For the purposes of
4 sections 1 to 12, inclusive, of this act:

5 (1) "Crime" means a violation of chapter 949c or section 36b-4, 36b-6,
6 36b-16, 53-153, 53-451, 53a-122, 53a-129a, 53a-138, 53a-147, 53a-148,
7 53a-149, 53a-150, 53a-152, 53a-153, 53a-154, 53a-158, 53a-159, 53a-160,
8 53a-161, 53a-161a, 53a-161c, 53a-161d, 53a-215, 53a-252, 53a-276, 53a-
9 277 or 53a-291 of the general statutes;

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

12 (3) "Prosecuting official" means the Chief State's Attorney, a deputy
13 Chief State's Attorney or a state's attorney; and

14 (4) "Subpoena" means a subpoena ad testificandum or a subpoena
15 duces tecum, or both.

16 Sec. 2. (NEW) (*Effective October 1, 2003*) (a) In the investigation of
17 conduct that would constitute the commission of a crime, a
18 prosecuting official, in the performance of such official's duties during
19 such investigation, shall have the authority to compel by subpoena the
20 appearance and sworn testimony of witnesses and the production of
21 property concerning the matter under investigation. No prosecuting
22 official may issue a subpoena under this section to an attorney with
23 respect to a former or current client of such attorney, or to any person
24 who assists or assisted such attorney in representing such client, that
25 seeks testimony protected by the attorney-client privilege or property
26 constituting attorney work product. No prosecuting official may issue
27 a subpoena under this section that seeks to compel testimony or the
28 production of property, including, but not limited to, testimony or
29 property with respect to the psychiatric or substance abuse treatment
30 of a person, that is privileged under state or federal law. No
31 prosecuting official may issue a subpoena under this section unless
32 authorized by a judge of the Superior Court pursuant to section 3 of
33 this act.

34 (b) In any matter in which a person has been arrested and criminal
35 charges are pending against such person, the appearance and
36 testimony of witnesses and the production of property shall be
37 governed by the court pursuant to the rules of discovery and shall not
38 be subject to the issuance of a subpoena under this section.

39 Sec. 3. (NEW) (*Effective October 1, 2003*) (a) A prosecuting official
40 who seeks to issue a subpoena under section 2 of this act shall, by
41 personal presentation, submit an application to a judge of the Superior
42 Court. Such application shall include an affidavit sworn to by such
43 prosecuting official stating that such official:

44 (1) Has reasonable grounds to believe that a crime has been
45 committed, and the facts that form the basis for such belief;

46 (2) Has reasonable grounds to believe that the person to be
47 summoned to appear and give testimony or produce property has
48 information relevant and necessary to the investigation concerning the
49 alleged commission of a crime, and the facts that form the basis for
50 such belief;

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

55 (4) (A) Has made reasonable efforts, which efforts shall be set forth
56 and described in such affidavit, to secure such appearance, testimony
57 and property without recourse to a subpoena and those efforts have
58 been unsuccessful, or (B) has not made reasonable efforts to secure
59 such appearance, testimony and property without recourse to a
60 subpoena because making such reasonable efforts would significantly
61 hinder the investigation and the facts that form the basis for believing
62 that making such reasonable efforts would significantly hinder the
63 investigation.

64 (b) The judge shall review such application and affidavit and, in
65 determining whether the provisions of subsection (a) of this section
66 have been satisfied, shall not consider any evidence extrinsic to such
67 documents. If the judge finds that the provisions of subsection (a) of
68 this section have been satisfied, such judge may grant the application
69 for the issuance of a subpoena by such prosecuting official. The
70 subpoena shall be served upon the person not less than twenty-four
71 hours, excluding weekends and holidays, prior to the time scheduled
72 for such person's appearance, except that the judge may specify the
73 date or time that such subpoena shall be served upon the person,
74 which date or time shall be not less than twenty-four hours nor more
75 than seven days, excluding weekends and holidays, prior to the date
76 and time scheduled for such person's appearance. The prosecuting
77 official shall cause any application that is granted to be filed with the
78 clerk of the court where compliance with the subpoena is required.

79 Except as provided in subsection (c) of this section, the judge shall
80 order the court file, including the application and affidavit submitted
81 pursuant to subsection (a) of this section, be sealed as to the public and
82 not be subject to disclosure.

83 (c) Not later than twenty-four hours after the service of such
84 subpoena, a copy of the application and affidavit submitted by the
85 prosecuting official pursuant to subsection (a) of this section shall be
86 given to the person summoned. The judge may, by order, dispense
87 with the requirement of giving a copy of the application and affidavit
88 to such person at such time if the prosecuting official files a detailed
89 affidavit with the judge that demonstrates to the judge that (1) the
90 personal safety of a confidential informant would be jeopardized by
91 the giving of a copy of the application and affidavit at such time, (2)
92 the issuance of the subpoena is part of a continuing investigation that
93 would be adversely affected by the giving of a copy of the application
94 and affidavit at such time, or (3) the giving of such application and
95 affidavit at such time would require disclosure of information or
96 material prohibited from being disclosed by chapter 959a of the
97 general statutes. If the judge dispenses with the requirement of giving
98 a copy of the application and affidavit at such time, such order shall
99 not affect the right of the person summoned to obtain such copy at any
100 subsequent time. No such order shall limit the disclosure of such
101 application and affidavit to the attorney for a person arrested in
102 connection with or subsequent to the issuance of the subpoena unless,
103 upon motion of the prosecuting official within two weeks of such
104 person's arraignment, the court finds that the state's interest in
105 continuing nondisclosure substantially outweighs the defendant's
106 right to disclosure. Any order dispensing with the requirement of
107 giving a copy of the application and accompanying affidavit to the
108 person summoned not later than twenty-four hours after the issuance
109 of the subpoena shall be for a specific period of time, not to exceed two
110 weeks beyond the date the subpoena is issued. Within that time period
111 the prosecuting official may seek an extension of such period.

112 Sec. 4. (NEW) (*Effective October 1, 2003*) (a) Any subpoena issued

113 pursuant to sections 1 to 12, inclusive, of this act shall (1) compel only
114 the appearance and sworn testimony of witnesses and the production
115 of property relevant and necessary to the investigation being
116 conducted, (2) specify with reasonable particularity any property to be
117 produced, and (3) require only the production of documents or records
118 covering a reasonable period of time.

119 (b) Any subpoena issued pursuant to sections 1 to 12, inclusive, of
120 this act shall contain a notice advising the person summoned of the
121 following: (1) The purpose of the investigation, (2) whether such
122 person is a target or possible target of the investigation, (3) that such
123 person has the right not to be compelled to give evidence against
124 himself or herself, (4) that such person has the right to have counsel
125 present and to consult with such counsel and, if such person is
126 indigent, to have counsel appointed to represent him or her, (5) that, if
127 such person is under eighteen years of age, such person has the right
128 to have such person's parent or parents or guardian present unless the
129 judge presiding over the proceeding excludes such parent or parents
130 or guardian for good cause shown, and (6) that such person has the
131 right to file a motion to quash or modify the subpoena.

132 Sec. 5. (NEW) (*Effective October 1, 2003*) Any subpoena issued
133 pursuant to sections 1 to 12, inclusive, of this act shall compel the
134 witness to appear and testify or produce the property in the presence
135 of a judge at a specified location in a courthouse in the judicial district
136 where the incident or incidents subject to investigation are alleged to
137 have occurred or, if the investigation is being conducted by a
138 prosecuting official of a judicial district other than the judicial district
139 where the incident or incidents subject to investigation are alleged to
140 have occurred, in a courthouse in that judicial district.

141 Sec. 6. (NEW) (*Effective October 1, 2003*) (a) If any subpoena is issued
142 pursuant to sections 1 to 12, inclusive, of this act for the production of
143 the medical records, including psychiatric and substance abuse
144 treatment records, of a person, the prosecuting official shall give
145 written notice of the issuance of such subpoena to such person. Such

146 person shall have standing to file a motion to quash the subpoena in
147 accordance with section 9 of this act.

148 (b) All medical records, including psychiatric and substance abuse
149 treatment records, that are produced pursuant to a subpoena issued
150 pursuant to sections 1 to 12, inclusive, of this act, shall be designated as
151 confidential records and maintained in a confidential manner at the
152 office of the prosecuting official conducting the investigation until an
153 arrest is made as a result of the investigation. Each prosecuting official
154 shall establish procedures for the storage of such records that will
155 ensure the confidentiality of such records.

156 (c) All medical records, including psychiatric and substance abuse
157 treatment records, obtained by a prosecuting official as a result of the
158 issuance of a subpoena pursuant to sections 1 to 12, inclusive, of this
159 act may be used only for the purpose of the investigation of the
160 criminal conduct that is the subject of such subpoena.

161 Sec. 7. (NEW) (*Effective October 1, 2003*) (a) Whenever a subpoena is
162 issued pursuant to sections 1 to 12, inclusive, of this act, the
163 prosecuting official shall, not later than twenty-four hours after service
164 of the subpoena, excluding weekends and holidays, give written notice
165 of the issuance of the subpoena to the presiding judge for criminal
166 matters in the courthouse where compliance with the subpoena is
167 required. Such notice shall include the identity of the person and, if the
168 production of property is compelled, a description of the property.
169 Such notice shall be confidential and not subject to disclosure. The
170 failure to give such notice shall not invalidate the subpoena. Such
171 presiding judge shall assign a judge of the Superior Court to preside
172 over the proceeding. The assignment of such judge shall be
173 confidential and not subject to disclosure. The judge assigned to
174 preside over the proceeding shall be present at all times during the
175 proceeding. The proceeding shall not be open to the public. The judge
176 assigned to preside over the proceeding may, for good cause shown,
177 which may include a showing, after inquiry by such judge, that such
178 person has not had a reasonable opportunity to consult an attorney,

179 grant a continuance for such period as such judge deems necessary.

180 (b) Prior to any witness being questioned, the prosecuting official
181 shall, on the record, advise such person of the following: (1) The
182 purpose of the investigation, (2) whether such person is a target or
183 possible target of the investigation, (3) that such person has the right
184 not to be compelled to give evidence against himself or herself, (4) that
185 such person has the right to have counsel present and to consult with
186 such counsel and, if such person is indigent, to have counsel appointed
187 to represent him or her, and (5) that, if such person is under eighteen
188 years of age, such person has the right to have such person's parent or
189 parents or guardian present unless the judge presiding over the
190 proceeding excludes such parent or parents or guardian for good cause
191 shown. The presiding judge shall assure that such rights are not
192 infringed.

193 (c) A court reporter or assistant court reporter shall make a record of
194 the proceeding. The record of the proceeding shall be sealed and not
195 subject to disclosure, except that any witness who appeared and
196 testified shall be allowed access, at all reasonable times, to the record
197 of such witness' own testimony and shall have the right to receive a
198 copy of the transcript of the record of such testimony.

199 Sec. 8. (NEW) (*Effective October 1, 2003*) If any witness properly
200 summoned fails to appear or to produce any property specified in the
201 subpoena or, if having appeared, fails to answer any proper question,
202 the prosecuting official may apply to a judge of the Superior Court in
203 the judicial district as provided in section 5 of this act requesting the
204 issuance of a *habeas corpus* or an order of contempt, as appropriate, with
205 respect to such witness. The application of the prosecuting official and
206 the order of the court shall be sealed as to the public and not be subject
207 to disclosure. The hearing on the application shall not be open to the
208 public.

209 Sec. 9. (NEW) (*Effective October 1, 2003*) (a) Whenever a subpoena
210 has been issued to compel the appearance and testimony of a witness

211 or the production of property pursuant to sections 1 to 12, inclusive, of
212 this act, the person summoned may file a motion to quash the
213 subpoena with the clerk of the court for the judicial district as
214 provided in section 5 of this act. No fees or costs shall be assessed.

215 (b) The party filing the motion to quash shall be designated as the
216 plaintiff, and shall be described as "John Doe", "Jane Doe" or some
217 other alias, and the prosecuting official shall be designated as the
218 defendant.

219 (c) The motion, upon its filing, shall be sealed as to the public. The
220 motion shall be referred to the presiding criminal judge of the court for
221 hearing or for assignment to another judge for hearing. Unless
222 otherwise ordered by the judge conducting the hearing, the hearing
223 shall be conducted in camera and the file on the motion shall be sealed
224 as to the public, subject to further order of the court.

225 (d) The motion shall be expeditiously assigned and heard. The date
226 and time of the hearing shall be established by the clerk after
227 consultation with the judge assigned to conduct the hearing. The clerk
228 shall give notice to the parties of the hearing so scheduled.

229 (e) A judge may quash or modify any subpoena issued pursuant to
230 sections 1 to 12, inclusive, of this act for any just cause as may be found
231 by such judge or in recognition of any privilege established under law.

232 Sec. 10. (NEW) (*Effective October 1, 2003*) (a) In any investigation
233 conducted pursuant to sections 1 to 12, inclusive, of this act, a
234 prosecuting official may apply to a judge of the Superior Court for an
235 order granting immunity from prosecution to any person whom the
236 state calls or intends to call as a witness if the prosecuting official finds
237 that the testimony of the person is necessary to the investigation of the
238 case. Such immunity may provide that the person will not be
239 prosecuted or subjected to any penalty or forfeiture (1) for or on
240 account of any testimony given or evidence produced by such person,
241 or for or on account of any evidence discovered as a result of or
242 otherwise derived from testimony given or evidence produced by such

243 person, or (2) for or on account of any transaction, matter or thing
244 concerning which such person gives testimony or produces evidence.
245 A person who receives immunity under this subsection shall not be
246 immune from prosecution for perjury or contempt committed while
247 giving such testimony or producing such property.

248 (b) No person who has been properly served with a subpoena
249 pursuant to sections 1 to 12, inclusive, of this act and receives
250 immunity under subsection (a) of this section, shall be excused from
251 appearing and testifying or producing any property before the
252 prosecuting official concerning an investigation pursuant to sections 1
253 to 12, inclusive, of this act upon the ground or for the reason that the
254 testimony or property required of such person may tend to convict
255 such person of a crime or subject such person to a penalty or forfeiture.

256 Sec. 11. (NEW) (*Effective October 1, 2003*) All information and
257 property obtained by a prosecuting official as a result of the issuance
258 of a subpoena pursuant to sections 1 to 12, inclusive, of this act shall be
259 confidential and not subject to disclosure, except (1) such information
260 and property as should, in the opinion of such official, be used or
261 disclosed in the performance of the official duties of such official, or (2)
262 as otherwise required by law or court order. Any exculpatory
263 information obtained with respect to any person shall be disclosed to
264 such person as required by law.

265 Sec. 12. (NEW) (*Effective October 1, 2003*) All property produced as a
266 result of the issuance of a subpoena pursuant to sections 1 to 12,
267 inclusive, of this act shall be returned to the person from whom it was
268 received if no criminal prosecution is commenced involving the use of
269 such property or shall be otherwise disposed of as provided by law.

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

272 (a) In any criminal action, in any habeas corpus proceeding arising
273 from a criminal matter, in any extradition proceeding, [or] in any
274 delinquency matter or in any proceeding in which a witness has been

275 summoned by a subpoena issued pursuant to section 2 of this act, the
276 court before which the matter is pending shall, if it determines after
277 investigation by the public defender or [his] the public defender's
278 office that a defendant or a witness summoned by a subpoena issued
279 pursuant to section 2 of this act is indigent as defined under this
280 chapter, designate a public defender, assistant public defender or
281 deputy assistant public defender to represent such indigent defendant
282 or witness, unless, in a misdemeanor case, at the time of the
283 application for appointment of counsel, the court decides to dispose of
284 the pending charge without subjecting the defendant to a sentence
285 involving immediate incarceration or a suspended sentence of
286 incarceration with a period of probation or the court believes that the
287 disposition of the pending case at a later date will not result in a
288 sentence involving immediate incarceration or a suspended sentence
289 of incarceration with a period of probation and makes a statement to
290 that effect on the record. If it appears to the court at a later date that, if
291 convicted, the sentence of an indigent defendant for whom counsel has
292 not been appointed will involve immediate incarceration or a
293 suspended sentence of incarceration with a period of probation,
294 counsel shall be appointed prior to trial or the entry of a plea of guilty
295 or nolo contendere.

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

300 (c) Prior to [a defendant's appearance in court] the appearance in
301 court of a defendant in any matter specified in subsection (a) of this
302 section or of a witness summoned by subpoena issued pursuant to
303 section 2 of this act, a public defender, assistant public defender or
304 deputy assistant public defender, upon a determination that the
305 defendant or witness is indigent pursuant to subsection (a) of section
306 51-297, shall be authorized to represent the defendant or witness until
307 the court appoints counsel for such defendant or witness.

308 Sec. 14. (NEW) (*Effective October 1, 2003*) On October 1, 2004, and
 309 annually thereafter, the Chief State's Attorney shall submit a report to
 310 the joint standing committee of the General Assembly having
 311 cognizance of matters relating to criminal law and procedure
 312 concerning the issuance of subpoenas pursuant to sections 1 to 12,
 313 inclusive, of this act in the preceding year. The report shall include the
 314 following information: (1) The number of applications submitted for
 315 the issuance of a subpoena, and the number of applications granted or
 316 denied, (2) the statutory offense or offenses allegedly committed that
 317 were the subject of the investigation, (3) the number of motions to
 318 quash a subpoena that were filed, and the number of motions granted
 319 or denied, (4) the number of orders granting a witness immunity from
 320 prosecution, (5) the number of investigations concluded and the final
 321 result of such investigations, and (6) the status of any criminal
 322 prosecution resulting from an investigation."

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>October 1, 2003</i>
Sec. 6	<i>October 1, 2003</i>
Sec. 7	<i>October 1, 2003</i>
Sec. 8	<i>October 1, 2003</i>
Sec. 9	<i>October 1, 2003</i>
Sec. 10	<i>October 1, 2003</i>
Sec. 11	<i>October 1, 2003</i>
Sec. 12	<i>October 1, 2003</i>
Sec. 13	<i>October 1, 2003</i>
Sec. 14	<i>October 1, 2003</i>