



General Assembly

February Session, 2004

Amendment

LCO No. 3654

HB0543903654SD0

Offered by:

SEN. SULLIVAN, 5th Dist.

To: House Bill No. 5439

File No. 182

Cal. No. 380

"AN ACT CONCERNING THE CHIEF STATE'S ATTORNEY."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. (NEW) (*Effective July 1, 2004*) For purposes of sections 501
4 to 512, 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-138, 53a-147, as amended, 53a-148,
7 as amended, 53a-149, as amended, 53a-150, as amended, 53a-152, 53a-
8 153, 53a-154, 53a-158, 53a-159, 53a-160, as amended, 53a-161, as
9 amended, 53a-161a, 53a-161c, 53a-161d, 53a-215, 53a-252, 53a-276, 53a-
10 277 or 53a-291 of the general statutes or section 2, 3 or 4 of public act
11 03-156;

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

14 (3) "Prosecuting official" means the Chief State's Attorney, a deputy

15 Chief State's Attorney or a state's attorney; and

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

18 Sec. 502. (NEW) (*Effective July 1, 2004*) (a) In the investigation of
19 conduct that would constitute the commission of a crime, a
20 prosecuting official, in the performance of such official's duties during
21 such investigation, shall have the authority to compel by subpoena the
22 appearance and sworn testimony of witnesses and the production of
23 property concerning the matter under investigation. No prosecuting
24 official may issue a subpoena under this section to an attorney with
25 respect to a former or current client of such attorney, or to any person
26 who assists or assisted such attorney in representing such client, that
27 seeks testimony protected by the attorney-client privilege or property
28 constituting attorney work product. No prosecuting official may issue
29 a subpoena under this section that seeks to compel testimony or the
30 production of property, including, but not limited to, testimony or
31 property with respect to the psychiatric or substance abuse treatment
32 of a person, that is privileged under state or federal law. No
33 prosecuting official may issue a subpoena under this section unless
34 authorized by a judge of the Superior Court pursuant to section 503 of
35 this act.

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

41 Sec. 503. (NEW) (*Effective July 1, 2004*) (a) A prosecuting official who
42 seeks to issue a subpoena under section 502 of this act shall, by
43 personal presentation, submit an application to a judge of the Superior
44 Court. Such application shall include an affidavit sworn to by such
45 prosecuting official stating that such official:

46 (1) Has reasonable grounds to believe that a crime has been

47 committed, and the facts that form the basis for such belief;

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

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

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

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

79 official shall cause any application that is granted to be filed with the
80 clerk of the court where compliance with the subpoena is required.
81 Except as provided in subsection (c) of this section, the judge shall
82 order the court file, including the application and affidavit submitted
83 pursuant to subsection (a) of this section, be sealed as to the public and
84 not be subject to disclosure.

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

113 the prosecuting official may seek an extension of such period.

114 Sec. 504. (NEW) (*Effective July 1, 2004*) (a) Any subpoena issued
115 pursuant to sections 501 to 512, inclusive, of this act shall (1) compel
116 only the appearance and sworn testimony of witnesses and the
117 production of property relevant and necessary to the investigation
118 being conducted, (2) specify with reasonable particularity any property
119 to be produced, and (3) require only the production of documents or
120 records covering a reasonable period of time.

121 (b) Any subpoena issued pursuant to sections 501 to 512, inclusive,
122 of this act shall contain a notice advising the person summoned of the
123 following: (1) The purpose of the investigation, (2) whether such
124 person is a target or possible target of the investigation, (3) that such
125 person has the right not to be compelled to give evidence against
126 himself or herself, (4) that such person has the right to have counsel
127 present and to consult with such counsel and, if such person is
128 indigent, to have counsel appointed to represent him or her, (5) that, if
129 such person is under eighteen years of age, such person has the right
130 to have such person's parent or parents or guardian present unless the
131 judge presiding over the proceeding excludes such parent or parents
132 or guardian for good cause shown, and (6) that such person has the
133 right to file a motion to quash or modify the subpoena.

134 Sec. 505. (NEW) (*Effective July 1, 2004*) Any subpoena issued
135 pursuant to sections 501 to 512, inclusive, of this act shall compel the
136 witness to appear and testify or produce the property in the presence
137 of a judge at a specified location in a courthouse in the judicial district
138 where the incident or incidents subject to investigation are alleged to
139 have occurred or, if the investigation is being conducted by a
140 prosecuting official of a judicial district other than the judicial district
141 where the incident or incidents subject to investigation are alleged to
142 have occurred, in a courthouse in that judicial district.

143 Sec. 506. (NEW) (*Effective July 1, 2004*) (a) If any subpoena is issued
144 pursuant to sections 501 to 512, inclusive, of this act for the production

145 of the medical records, including psychiatric and substance abuse
146 treatment records, of a person, the prosecuting official shall give
147 written notice of the issuance of such subpoena to such person. Such
148 person shall have standing to file a motion to quash the subpoena in
149 accordance with section 509 of this act.

150 (b) All medical records, including psychiatric and substance abuse
151 treatment records, that are produced pursuant to a subpoena issued
152 pursuant to sections 501 to 512, inclusive, of this act, shall be
153 designated as confidential records and maintained in a confidential
154 manner at the office of the prosecuting official conducting the
155 investigation until an arrest is made as a result of the investigation.
156 Each prosecuting official shall establish procedures for the storage of
157 such records that will ensure the confidentiality of such records.

158 (c) All medical records, including psychiatric and substance abuse
159 treatment records, obtained by a prosecuting official as a result of the
160 issuance of a subpoena pursuant to sections 501 to 512, inclusive, of
161 this act may be used only for the purpose of the investigation of the
162 criminal conduct that is the subject of such subpoena.

163 Sec. 507. (NEW) (*Effective July 1, 2004*) (a) Whenever a subpoena is
164 issued pursuant to sections 501 to 512, inclusive, of this act, the
165 prosecuting official shall, not later than twenty-four hours after service
166 of the subpoena, excluding weekends and holidays, give written notice
167 of the issuance of the subpoena to the presiding judge for criminal
168 matters in the courthouse where compliance with the subpoena is
169 required. Such notice shall include the identity of the person and, if the
170 production of property is compelled, a description of the property.
171 Such notice shall be confidential and not subject to disclosure. The
172 failure to give such notice shall not invalidate the subpoena. Such
173 presiding judge shall assign a judge of the Superior Court to preside
174 over the proceeding. The assignment of such judge shall be
175 confidential and not subject to disclosure. The judge assigned to
176 preside over the proceeding shall be present at all times during the
177 proceeding. The proceeding shall not be open to the public. The judge

178 assigned to preside over the proceeding may, for good cause shown,
179 which may include a showing, after inquiry by such judge, that such
180 person has not had a reasonable opportunity to consult an attorney,
181 grant a continuance for such period as such judge deems necessary.

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

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

201 Sec. 508. (NEW) (*Effective July 1, 2004*) If any witness properly
202 summoned fails to appear or to produce any property specified in the
203 subpoena or, if having appeared, fails to answer any proper question,
204 the prosecuting official may apply to a judge of the Superior Court in
205 the judicial district as provided in section 505 of this act requesting the
206 issuance of a *capias* or an order of contempt, as appropriate, with
207 respect to such witness. The application of the prosecuting official and
208 the order of the court shall be sealed as to the public and not be subject
209 to disclosure. The hearing on the application shall not be open to the
210 public.

211 Sec. 509. (NEW) (*Effective July 1, 2004*) (a) Whenever a subpoena has
212 been issued to compel the appearance and testimony of a witness or
213 the production of property pursuant to sections 501 to 512, inclusive,
214 of this act, the person summoned may file a motion to quash the
215 subpoena with the clerk of the court for the judicial district as
216 provided in section 505 of this act. No fees or costs shall be assessed.

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

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

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

231 (e) A judge may quash or modify any subpoena issued pursuant to
232 sections 501 to 512, inclusive, of this act for any just cause as may be
233 found by such judge or in recognition of any privilege established
234 under law.

235 Sec. 510. (NEW) (*Effective July 1, 2004*) (a) In any investigation
236 conducted pursuant to sections 501 to 512, inclusive, of this act, a
237 prosecuting official may apply to a judge of the Superior Court for an
238 order granting immunity from prosecution to any person whom the
239 state calls or intends to call as a witness if the prosecuting official finds
240 that the testimony of the person is necessary to the investigation of the
241 case. Such immunity may provide that the person will not be
242 prosecuted or subjected to any penalty or forfeiture (1) for or on

243 account of any testimony given or evidence produced by such person,
244 or for or on account of any evidence discovered as a result of or
245 otherwise derived from testimony given or evidence produced by such
246 person, or (2) for or on account of any transaction, matter or thing
247 concerning which such person gives testimony or produces evidence.
248 A person who receives immunity under this subsection shall not be
249 immune from prosecution for perjury or contempt committed while
250 giving such testimony or producing such property.

251 (b) No person who has been properly served with a subpoena
252 pursuant to sections 501 to 512, inclusive, of this act and receives
253 immunity under subsection (a) of this section, shall be excused from
254 appearing and testifying or producing any property before the
255 prosecuting official concerning an investigation pursuant to sections
256 501 to 512, inclusive, of this act upon the ground or for the reason that
257 the testimony or property required of such person may tend to convict
258 such person of a crime or subject such person to a penalty or forfeiture.

259 Sec. 511. (NEW) (*Effective July 1, 2004*) All information and property
260 obtained by a prosecuting official as a result of the issuance of a
261 subpoena pursuant to sections 501 to 512, inclusive, of this act shall be
262 confidential and not subject to disclosure, except (1) such information
263 and property as should, in the opinion of such official, be used or
264 disclosed in the performance of the official duties of such official, or (2)
265 as otherwise required by law or court order. Any exculpatory
266 information obtained with respect to any person shall be disclosed to
267 such person as required by law.

268 Sec. 512. (NEW) (*Effective July 1, 2004*) All property produced as a
269 result of the issuance of a subpoena pursuant to sections 501 to 512,
270 inclusive, of this act shall be returned to the person from whom it was
271 received if no criminal prosecution is commenced involving the use of
272 such property or shall be otherwise disposed of as provided by law.

273 Sec. 513. Section 51-296 of the general statutes is repealed and the
274 following is substituted in lieu thereof (*Effective July 1, 2004*):

275 (a) In any criminal action, in any habeas corpus proceeding arising
276 from a criminal matter, in any extradition proceeding, [or] in any
277 delinquency matter or in any proceeding in which a witness has been
278 summoned by a subpoena issued pursuant to section 502 of this act,
279 the court before which the matter is pending shall, if it determines after
280 investigation by the public defender or [his] the public defender's
281 office that a defendant or a witness summoned by a subpoena issued
282 pursuant to section 502 of this act is indigent as defined under this
283 chapter, designate a public defender, assistant public defender or
284 deputy assistant public defender to represent such indigent defendant
285 or witness, unless, in a misdemeanor case, at the time of the
286 application for appointment of counsel, the court decides to dispose of
287 the pending charge without subjecting the defendant to a sentence
288 involving immediate incarceration or a suspended sentence of
289 incarceration with a period of probation or the court believes that the
290 disposition of the pending case at a later date will not result in a
291 sentence involving immediate incarceration or a suspended sentence
292 of incarceration with a period of probation and makes a statement to
293 that effect on the record. If it appears to the court at a later date that, if
294 convicted, the sentence of an indigent defendant for whom counsel has
295 not been appointed will involve immediate incarceration or a
296 suspended sentence of incarceration with a period of probation,
297 counsel shall be appointed prior to trial or the entry of a plea of guilty
298 or nolo contendere.

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

303 (c) Prior to [a defendant's appearance in court] the appearance in
304 court of a defendant in any matter specified in subsection (a) of this
305 section or of a witness summoned by subpoena issued pursuant to
306 section 502 of this act, a public defender, assistant public defender or
307 deputy assistant public defender, upon a determination that the
308 defendant or witness is indigent pursuant to subsection (a) of section

309 51-297, shall be authorized to represent the defendant or witness until
310 the court appoints counsel for such defendant or witness.

311 Sec. 514. (NEW) (*Effective July 1, 2004*) On October 1, 2005, and
312 annually thereafter, the Chief State's Attorney shall submit a report, in
313 accordance with the provisions of section 11-4a of the general statutes,
314 to the joint standing committee of the General Assembly having
315 cognizance of matters relating to criminal law and procedure
316 concerning the issuance of subpoenas pursuant to sections 501 to 512,
317 inclusive, of this act in the preceding year. The report shall include the
318 following information: (1) The number of applications submitted for
319 the issuance of a subpoena, and the number of applications granted or
320 denied, (2) the statutory offense or offenses allegedly committed that
321 were the subject of the investigation, (3) the number of motions to
322 quash a subpoena that were filed, and the number of motions granted
323 or denied, (4) the number of orders granting a witness immunity from
324 prosecution, (5) the number of investigations concluded and the final
325 result of such investigations, and (6) the status of any criminal
326 prosecution resulting from an investigation."