



General Assembly

February Session, 2004

**Amendment**

LCO No. 3835

\*HB0543903835SR0\*

Offered by:

SEN. RORABACK, 30<sup>th</sup> Dist.

To: House Bill No. 5439

File No. 182

Cal. No. 380

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

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

3 "Section 1. Subsection (d) of section 51-277 of the general statutes is  
4 repealed and the following is substituted in lieu thereof (*Effective*  
5 *October 1, 2004*):

6 (d) (1) The Chief State's Attorney and each deputy chief state's  
7 attorney may sign any warrants, information, applications for grand  
8 jury investigations and applications for extradition. [; and (1) upon  
9 application made by a state's attorney, and for good cause shown, after  
10 showing no other state's attorney is available, the Chief State's  
11 Attorney may be appointed by the Criminal Justice Commission to  
12 represent the state in criminal trials in lieu of any state's attorney,  
13 assistant state's attorney or deputy assistant state's attorney in any  
14 judicial district, and (2) whenever the interest of the state will be  
15 furthered by so doing, the]

16       (2) The Chief State's Attorney may, with the prior consent of the  
17 state's attorney for the judicial district, appear in court to represent the  
18 state.

19       (3) The Chief State's Attorney may represent the state in lieu of a  
20 state's attorney for a judicial district in any investigation, criminal  
21 action or proceeding if the Chief State's Attorney finds by clear and  
22 convincing evidence, misconduct, conflict of interest or malfeasance of  
23 a state's attorney, provided, upon request of such state's attorney, the  
24 Criminal Justice Commission, pursuant to regulations adopted in  
25 accordance with chapter 54, and after notice and hearing and good  
26 cause shown, may designate such state's attorney to represent the state  
27 in such investigation, criminal action or proceeding. In any case where  
28 the Chief State's Attorney indicates his intent to represent the state in  
29 lieu of a state's attorney under this [subsection] subdivision, and such  
30 state's attorney objects to such representation, upon the request of such  
31 state's attorney the Chief State's Attorney and the state's attorney shall  
32 each prepare a written statement of their claims relative to such  
33 representation. Both statements shall be submitted to the commission  
34 to be considered by it at such hearing and shall become a permanent  
35 record which may be reviewed by the commission and used at the  
36 time of reappointment of the Chief State's Attorney or such state's  
37 attorney.

38       Sec. 2. (NEW) (*Effective July 1, 2004*) For purposes of sections 2 to 12,  
39 inclusive, of this act:

40       (1) "Crime" means a violation of chapter 949c or section 36b-4, 36b-6,  
41 36b-16, 53-153, 53-451, 53a-122, 53a-138, 53a-147, as amended, 53a-148,  
42 as amended, 53a-149, as amended, 53a-150, as amended, 53a-152, 53a-  
43 153, 53a-154, 53a-158, 53a-159, 53a-160, as amended, 53a-161, as  
44 amended, 53a-161a, 53a-161c, 53a-161d, 53a-215, 53a-252, 53a-276, 53a-  
45 277 or 53a-291 of the general statutes or section 2, 3 or 4 of public act  
46 03-156;

47       (2) "Property" includes, but is not limited to, documents, books,

48 papers, records, films, recordings and other tangible things, but  
49 expressly does not include medical records of a patient's diagnosis,  
50 treatment and prognosis and other health records described in section  
51 19a-490b and subsection (b) of section 20-7c of the general statutes;

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

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

56 Sec. 3. (NEW) (*Effective July 1, 2004*) (a) In the investigation of  
57 conduct that would constitute the commission of a crime, a  
58 prosecuting official, in the performance of such official's duties during  
59 such investigation, shall have the authority to compel by subpoena the  
60 appearance and sworn testimony of witnesses and the production of  
61 property concerning the matter under investigation. No prosecuting  
62 official may issue a subpoena under this section to an attorney with  
63 respect to a former or current client of such attorney, or to any person  
64 who assists or assisted such attorney in representing such client, that  
65 seeks testimony protected by the attorney-client privilege or property  
66 constituting attorney work product. No prosecuting official may issue  
67 a subpoena to a provider, as defined in section 20-7b of the general  
68 statutes, which seeks testimony about any communication made to the  
69 provider or information obtained by the provider from a patient or the  
70 conservator or guardian of a patient with respect to any actual or  
71 supposed physical or mental disease or disorder or information  
72 obtained by the personal examination of the patient. No prosecuting  
73 official may issue a subpoena under this section that seeks to compel  
74 testimony or the production of property, including, but not limited to,  
75 testimony or property with respect to the psychiatric or substance  
76 abuse treatment of a person, that is privileged under state or federal  
77 law. No prosecuting official may issue a subpoena under this section  
78 unless authorized by a judge of the Superior Court pursuant to section  
79 4 of this act.

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

85 Sec. 4. (NEW) (*Effective July 1, 2004*) (a) A prosecuting official who  
86 seeks to issue a subpoena under section 3 of this act shall, by personal  
87 presentation, submit an application to a judge of the Superior Court.  
88 Such application shall include an affidavit sworn to by such  
89 prosecuting official stating that such official:

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

92 (2) Has reasonable grounds to believe that the person to be  
93 summoned to appear and give testimony or produce property has  
94 information relevant and necessary to the investigation concerning the  
95 alleged commission of a crime, and the facts that form the basis for  
96 such belief;

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

101 (4) (A) Has made reasonable efforts, which efforts shall be set forth  
102 and described in such affidavit, to secure such appearance, testimony  
103 and property without recourse to a subpoena and those efforts have  
104 been unsuccessful, or (B) has not made reasonable efforts to secure  
105 such appearance, testimony and property without recourse to a  
106 subpoena because making such reasonable efforts would significantly  
107 hinder the investigation and the facts that form the basis for believing  
108 that making such reasonable efforts would significantly hinder the  
109 investigation.

110 (b) The judge shall review such application and affidavit and, in

111 determining whether the provisions of subsection (a) of this section  
112 have been satisfied, shall not consider any evidence extrinsic to such  
113 documents. If the judge finds that the provisions of subsection (a) of  
114 this section have been satisfied, such judge may grant the application  
115 for the issuance of a subpoena by such prosecuting official. The  
116 subpoena shall be served upon the person not less than twenty-four  
117 hours, excluding weekends and holidays, prior to the time scheduled  
118 for such person's appearance, except that the judge may specify the  
119 date or time that such subpoena shall be served upon the person,  
120 which date or time shall be not less than twenty-four hours nor more  
121 than seven days, excluding weekends and holidays, prior to the date  
122 and time scheduled for such person's appearance. The prosecuting  
123 official shall cause any application that is granted to be filed with the  
124 clerk of the court where compliance with the subpoena is required.  
125 Except as provided in subsection (c) of this section, the judge shall  
126 order the court file, including the application and affidavit submitted  
127 pursuant to subsection (a) of this section, be sealed as to the public and  
128 not be subject to disclosure.

129 (c) Not later than twenty-four hours after the service of such  
130 subpoena, a copy of the application and affidavit submitted by the  
131 prosecuting official pursuant to subsection (a) of this section shall be  
132 given to the person summoned. The judge may, by order, dispense  
133 with the requirement of giving a copy of the application and affidavit  
134 to such person at such time if the prosecuting official files a detailed  
135 affidavit with the judge that demonstrates to the judge that (1) the  
136 personal safety of a confidential informant would be jeopardized by  
137 the giving of a copy of the application and affidavit at such time, (2)  
138 the issuance of the subpoena is part of a continuing investigation that  
139 would be adversely affected by the giving of a copy of the application  
140 and affidavit at such time, or (3) the giving of such application and  
141 affidavit at such time would require disclosure of information or  
142 material prohibited from being disclosed by chapter 959a of the  
143 general statutes. If the judge dispenses with the requirement of giving  
144 a copy of the application and affidavit at such time, such order shall

145 not affect the right of the person summoned to obtain such copy at any  
146 subsequent time. No such order shall limit the disclosure of such  
147 application and affidavit to the attorney for a person arrested in  
148 connection with or subsequent to the issuance of the subpoena unless,  
149 upon motion of the prosecuting official within two weeks of such  
150 person's arraignment, the court finds that the state's interest in  
151 continuing nondisclosure substantially outweighs the defendant's  
152 right to disclosure. Any order dispensing with the requirement of  
153 giving a copy of the application and accompanying affidavit to the  
154 person summoned not later than twenty-four hours after the issuance  
155 of the subpoena shall be for a specific period of time, not to exceed two  
156 weeks beyond the date the subpoena is issued. Within that time period  
157 the prosecuting official may seek an extension of such period.

158 Sec. 5. (NEW) (*Effective July 1, 2004*) (a) Any subpoena issued  
159 pursuant to sections 2 to 12, inclusive, of this act shall (1) compel only  
160 the appearance and sworn testimony of witnesses and the production  
161 of property relevant and necessary to the investigation being  
162 conducted, (2) specify with reasonable particularity any property to be  
163 produced, and (3) require only the production of documents or records  
164 covering a reasonable period of time.

165 (b) Any subpoena issued pursuant to sections 2 to 12, inclusive, of  
166 this act shall contain a notice advising the person summoned of the  
167 following: (1) The purpose of the investigation, (2) whether such  
168 person is a target or possible target of the investigation, (3) that such  
169 person has the right not to be compelled to give evidence against  
170 himself or herself, (4) that such person has the right to have counsel  
171 present and to consult with such counsel and, if such person is  
172 indigent, to have counsel appointed to represent him or her, (5) that, if  
173 such person is under eighteen years of age, such person has the right  
174 to have such person's parent or parents or guardian present unless the  
175 judge presiding over the proceeding excludes such parent or parents  
176 or guardian for good cause shown, and (6) that such person has the  
177 right to file a motion to quash or modify the subpoena.

178 Sec. 6. (NEW) (*Effective July 1, 2004*) Any subpoena issued pursuant  
179 to sections 2 to 12, inclusive, of this act shall compel the witness to  
180 appear and testify or produce the property in the presence of a judge at  
181 a specified location in a courthouse in the judicial district where the  
182 incident or incidents subject to investigation are alleged to have  
183 occurred or, if the investigation is being conducted by a prosecuting  
184 official of a judicial district other than the judicial district where the  
185 incident or incidents subject to investigation are alleged to have  
186 occurred, in a courthouse in that judicial district.

187 Sec. 7. (NEW) (*Effective July 1, 2004*) (a) Whenever a subpoena is  
188 issued pursuant to sections 2 to 12, inclusive, of this act, the  
189 prosecuting official shall, not later than twenty-four hours after service  
190 of the subpoena, excluding weekends and holidays, give written notice  
191 of the issuance of the subpoena to the presiding judge for criminal  
192 matters in the courthouse where compliance with the subpoena is  
193 required. Such notice shall include the identity of the person and, if the  
194 production of property is compelled, a description of the property.  
195 Such notice shall be confidential and not subject to disclosure. The  
196 failure to give such notice shall not invalidate the subpoena. Such  
197 presiding judge shall assign a judge of the Superior Court to preside  
198 over the proceeding. The assignment of such judge shall be  
199 confidential and not subject to disclosure. The judge assigned to  
200 preside over the proceeding shall be present at all times during the  
201 proceeding. The proceeding shall not be open to the public. The judge  
202 assigned to preside over the proceeding may, for good cause shown,  
203 which may include a showing, after inquiry by such judge, that such  
204 person has not had a reasonable opportunity to consult an attorney,  
205 grant a continuance for such period as such judge deems necessary.

206 (b) Prior to any witness being questioned, the prosecuting official  
207 shall, on the record, advise such person of the following: (1) The  
208 purpose of the investigation, (2) whether such person is a target or  
209 possible target of the investigation, (3) that such person has the right  
210 not to be compelled to give evidence against himself or herself, (4) that  
211 such person has the right to have counsel present and to consult with

212 such counsel and, if such person is indigent, to have counsel appointed  
213 to represent him or her, and (5) that, if such person is under eighteen  
214 years of age, such person has the right to have such person's parent or  
215 parents or guardian present unless the judge presiding over the  
216 proceeding excludes such parent or parents or guardian for good cause  
217 shown. The presiding judge shall assure that such rights are not  
218 infringed.

219 (c) A court reporter or assistant court reporter shall make a record of  
220 the proceeding. The record of the proceeding shall be sealed and not  
221 subject to disclosure, except that any witness who appeared and  
222 testified shall be allowed access, at all reasonable times, to the record  
223 of such witness' own testimony and shall have the right to receive a  
224 copy of the transcript of the record of such testimony.

225 Sec. 8. (NEW) (*Effective July 1, 2004*) If any witness properly  
226 summoned fails to appear or to produce any property specified in the  
227 subpoena or, if having appeared, fails to answer any proper question,  
228 the prosecuting official may apply to a judge of the Superior Court in  
229 the judicial district as provided in section 6 of this act requesting the  
230 issuance of a *capias* or an order of contempt, as appropriate, with  
231 respect to such witness. The application of the prosecuting official and  
232 the order of the court shall be sealed as to the public and not be subject  
233 to disclosure. The hearing on the application shall not be open to the  
234 public.

235 Sec. 9. (NEW) (*Effective July 1, 2004*) (a) Whenever a subpoena has  
236 been issued to compel the appearance and testimony of a witness or  
237 the production of property pursuant to sections 2 to 12, inclusive, of  
238 this act, the person summoned may file a motion to quash the  
239 subpoena with the clerk of the court for the judicial district as  
240 provided in section 6 of this act. No fees or costs shall be assessed.

241 (b) The party filing the motion to quash shall be designated as the  
242 plaintiff, and shall be described as "John Doe", "Jane Doe" or some  
243 other alias, and the prosecuting official shall be designated as the

244 defendant.

245 (c) The motion, upon its filing, shall be sealed as to the public. The  
246 motion shall be referred to the presiding criminal judge of the court for  
247 hearing or for assignment to another judge for hearing. Unless  
248 otherwise ordered by the judge conducting the hearing, the hearing  
249 shall be conducted in camera and the file on the motion shall be sealed  
250 as to the public, subject to further order of the court.

251 (d) The motion shall be expeditiously assigned and heard. The date  
252 and time of the hearing shall be established by the clerk after  
253 consultation with the judge assigned to conduct the hearing. The clerk  
254 shall give notice to the parties of the hearing so scheduled.

255 (e) A judge may quash or modify any subpoena issued pursuant to  
256 sections 2 to 12, inclusive, of this act for any just cause as may be found  
257 by such judge or in recognition of any privilege established under law.

258 Sec. 10. (NEW) (*Effective July 1, 2004*) (a) In any investigation  
259 conducted pursuant to sections 2 to 12, inclusive, of this act, a  
260 prosecuting official may apply to a judge of the Superior Court for an  
261 order granting immunity from prosecution to any person whom the  
262 state calls or intends to call as a witness if the prosecuting official finds  
263 that the testimony of the person is necessary to the investigation of the  
264 case. Such immunity may provide that the person will not be  
265 prosecuted or subjected to any penalty or forfeiture (1) for or on  
266 account of any testimony given or evidence produced by such person,  
267 or for or on account of any evidence discovered as a result of or  
268 otherwise derived from testimony given or evidence produced by such  
269 person, or (2) for or on account of any transaction, matter or thing  
270 concerning which such person gives testimony or produces evidence.  
271 A person who receives immunity under this subsection shall not be  
272 immune from prosecution for perjury or contempt committed while  
273 giving such testimony or producing such property.

274 (b) No person who has been properly served with a subpoena  
275 pursuant to sections 2 to 12, inclusive, of this act and receives

276 immunity under subsection (a) of this section, shall be excused from  
277 appearing and testifying or producing any property before the  
278 prosecuting official concerning an investigation pursuant to sections 2  
279 to 12, inclusive, of this act upon the ground or for the reason that the  
280 testimony or property required of such person may tend to convict  
281 such person of a crime or subject such person to a penalty or forfeiture.

282 Sec. 11. (NEW) (*Effective July 1, 2004*) All information and property  
283 obtained by a prosecuting official as a result of the issuance of a  
284 subpoena pursuant to sections 2 to 12, inclusive, of this act shall be  
285 confidential and not subject to disclosure, except (1) such information  
286 and property as should, in the opinion of such official, be used or  
287 disclosed in the performance of the official duties of such official, or (2)  
288 as otherwise required by law or court order. Any exculpatory  
289 information obtained with respect to any person shall be disclosed to  
290 such person as required by law.

291 Sec. 12. (NEW) (*Effective July 1, 2004*) All property produced as a  
292 result of the issuance of a subpoena pursuant to sections 2 to 12,  
293 inclusive, of this act shall be returned to the person from whom it was  
294 received if no criminal prosecution is commenced involving the use of  
295 such property or shall be otherwise disposed of as provided by law.

296 Sec. 13. Section 51-296 of the general statutes is repealed and the  
297 following is substituted in lieu thereof (*Effective July 1, 2004*):

298 (a) In any criminal action, in any habeas corpus proceeding arising  
299 from a criminal matter, in any extradition proceeding, [or] in any  
300 delinquency matter or in any proceeding in which a witness has been  
301 summoned by a subpoena issued pursuant to section 3 of this act, the  
302 court before which the matter is pending shall, if it determines after  
303 investigation by the public defender or [his] the public defender's  
304 office that a defendant or a witness summoned by a subpoena issued  
305 pursuant to section 3 of this act is indigent as defined under this  
306 chapter, designate a public defender, assistant public defender or  
307 deputy assistant public defender to represent such indigent defendant

308 or witness, unless, in a misdemeanor case, at the time of the  
309 application for appointment of counsel, the court decides to dispose of  
310 the pending charge without subjecting the defendant to a sentence  
311 involving immediate incarceration or a suspended sentence of  
312 incarceration with a period of probation or the court believes that the  
313 disposition of the pending case at a later date will not result in a  
314 sentence involving immediate incarceration or a suspended sentence  
315 of incarceration with a period of probation and makes a statement to  
316 that effect on the record. If it appears to the court at a later date that, if  
317 convicted, the sentence of an indigent defendant for whom counsel has  
318 not been appointed will involve immediate incarceration or a  
319 suspended sentence of incarceration with a period of probation,  
320 counsel shall be appointed prior to trial or the entry of a plea of guilty  
321 or nolo contendere.

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

326 (c) Prior to [a defendant's appearance in court] the appearance in  
327 court of a defendant in any matter specified in subsection (a) of this  
328 section or of a witness summoned by subpoena issued pursuant to  
329 section 3 of this act, a public defender, assistant public defender or  
330 deputy assistant public defender, upon a determination that the  
331 defendant or witness is indigent pursuant to subsection (a) of section  
332 51-297, shall be authorized to represent the defendant or witness until  
333 the court appoints counsel for such defendant or witness.

334 Sec. 14. (NEW) (*Effective July 1, 2004*) On October 1, 2005, and  
335 annually thereafter, the Chief State's Attorney shall submit a report, in  
336 accordance with the provisions of section 11-4a of the general statutes,  
337 to the joint standing committee of the General Assembly having  
338 cognizance of matters relating to criminal law and procedure  
339 concerning the issuance of subpoenas pursuant to sections 2 to 12,  
340 inclusive, of this act in the preceding year. The report shall include the

341 following information: (1) The number of applications submitted for  
 342 the issuance of a subpoena, and the number of applications granted or  
 343 denied, (2) the statutory offense or offenses allegedly committed that  
 344 were the subject of the investigation, (3) the number of motions to  
 345 quash a subpoena that were filed, and the number of motions granted  
 346 or denied, (4) the number of orders granting a witness immunity from  
 347 prosecution, (5) the number of investigations concluded and the final  
 348 result of such investigations, and (6) the status of any criminal  
 349 prosecution resulting from an investigation."

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>July 1, 2004</i>
Sec. 3	<i>July 1, 2004</i>
Sec. 4	<i>July 1, 2004</i>
Sec. 5	<i>July 1, 2004</i>
Sec. 6	<i>July 1, 2004</i>
Sec. 7	<i>July 1, 2004</i>
Sec. 8	<i>July 1, 2004</i>
Sec. 9	<i>July 1, 2004</i>
Sec. 10	<i>July 1, 2004</i>
Sec. 11	<i>July 1, 2004</i>
Sec. 12	<i>July 1, 2004</i>
Sec. 13	<i>July 1, 2004</i>
Sec. 14	<i>July 1, 2004</i>