



General Assembly

January Session, 2005

Raised Bill No. 6887

LCO No. 3910

03910_____JUD

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, 2005*) For purposes of sections
2 1 to 12, inclusive, of this act:

3 (1) "Crime" means a class A or B felony or a violation of chapter 949c
4 or section 36b-4, 36b-6, 36b-16, 53-153, 53-451, 53a-129c, 53a-129d, 53a-
5 129e, 53a-138, 53a-147, 53a-148, 53a-149, 53a-150, 53a-152, 53a-153, 53a-
6 154, 53a-158, 53a-159, 53a-160, 53a-161, 53a-161a, 53a-161c, 53a-161d,
7 53a-215 or 53a-277 of the general statutes;

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

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

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

14 Sec. 2. (NEW) (*Effective October 1, 2005*) (a) In the investigation of

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

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

37 Sec. 3. (NEW) (*Effective October 1, 2005*) (a) A prosecuting official
38 who seeks to issue a subpoena under section 2 of this act shall, by
39 personal presentation, submit an application to a judge of the Superior
40 Court. Such application shall include an affidavit sworn to by such
41 prosecuting official stating that such official:

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

44 (2) Has reasonable grounds to believe that the person to be
45 summoned to appear and give testimony or produce property has
46 information relevant and necessary to the investigation concerning the

47 alleged commission of a crime, and the facts that form the basis for
48 such belief;

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

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

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

79 pursuant to subsection (a) of this section, be sealed as to the public and
80 not be subject to disclosure.

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

110 Sec. 4. (NEW) (*Effective October 1, 2005*) (a) Any subpoena issued
111 pursuant to sections 1 to 12, inclusive, of this act shall (1) compel only

112 the appearance and sworn testimony of witnesses and the production
113 of property relevant and necessary to the investigation being
114 conducted, (2) specify with reasonable particularity any property to be
115 produced, and (3) require only the production of documents or records
116 covering a reasonable period of time.

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

130 Sec. 5. (NEW) (*Effective October 1, 2005*) Any subpoena issued
131 pursuant to sections 1 to 12, inclusive, of this act shall compel the
132 witness to appear and testify or produce the property in the presence
133 of a judge at a specified location in a courthouse in the judicial district
134 where the incident or incidents subject to investigation are alleged to
135 have occurred or, if the investigation is being conducted by a
136 prosecuting official of a judicial district other than the judicial district
137 where the incident or incidents subject to investigation are alleged to
138 have occurred, in a courthouse in that judicial district.

139 Sec. 6. (NEW) (*Effective October 1, 2005*) (a) If any subpoena is issued
140 pursuant to sections 1 to 12, inclusive, of this act for the production of
141 the medical records, including psychiatric and substance abuse
142 treatment records, of a person, the prosecuting official shall give
143 written notice of the issuance of such subpoena to such person. Such

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

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

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

159 Sec. 7. (NEW) (*Effective October 1, 2005*) (a) Whenever a subpoena is
160 issued pursuant to sections 1 to 12, inclusive, of this act, the
161 prosecuting official shall, not later than twenty-four hours after service
162 of the subpoena, excluding weekends and holidays, give written notice
163 of the issuance of the subpoena to the presiding judge for criminal
164 matters in the courthouse where compliance with the subpoena is
165 required. Such notice shall include the identity of the person and, if the
166 production of property is compelled, a description of the property.
167 Such notice shall be confidential and not subject to disclosure. The
168 failure to give such notice shall not invalidate the subpoena. Such
169 presiding judge shall assign a judge of the Superior Court to preside
170 over the proceeding. The assignment of such judge shall be
171 confidential and not subject to disclosure. The judge assigned to
172 preside over the proceeding shall be present at all times during the
173 proceeding. The proceeding shall not be open to the public. The judge
174 assigned to preside over the proceeding may, for good cause shown,
175 which may include a showing, after inquiry by such judge, that such

176 person has not had a reasonable opportunity to consult an attorney,
177 grant a continuance for such period as such judge deems necessary.

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

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

197 Sec. 8. (NEW) (*Effective October 1, 2005*) If any witness properly
198 summoned fails to appear or to produce any property specified in the
199 subpoena or, if having appeared, fails to answer any proper question,
200 the prosecuting official may apply to a judge of the Superior Court in
201 the judicial district as provided in section 5 of this act requesting the
202 issuance of a *capias* or an order of contempt, as appropriate, with
203 respect to such witness. The application of the prosecuting official and
204 the order of the court shall be sealed as to the public and not be subject
205 to disclosure. The hearing on the application shall not be open to the
206 public.

207 Sec. 9. (NEW) (*Effective October 1, 2005*) (a) Whenever a subpoena

208 has been issued to compel the appearance and testimony of a witness
209 or the production of property pursuant to sections 1 to 12, inclusive, of
210 this act, the person summoned may file a motion to quash the
211 subpoena with the clerk of the court for the judicial district as
212 provided in section 5 of this act. No fees or costs shall be assessed.

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

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

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

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

230 Sec. 10. (NEW) (*Effective October 1, 2005*) (a) In any investigation
231 conducted pursuant to sections 1 to 12, inclusive, of this act, a
232 prosecuting official may apply to a judge of the Superior Court for an
233 order granting immunity from prosecution to any person whom the
234 state calls or intends to call as a witness if the prosecuting official finds
235 that the testimony of the person is necessary to the investigation of the
236 case. Such immunity may provide that the person will not be
237 prosecuted or subjected to any penalty or forfeiture (1) for or on
238 account of any testimony given or evidence produced by such person,

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

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

254 Sec. 11. (NEW) (*Effective October 1, 2005*) All information and
255 property obtained by a prosecuting official as a result of the issuance
256 of a subpoena pursuant to sections 1 to 12, inclusive, of this act shall be
257 confidential and not subject to disclosure, except (1) such information
258 and property as should, in the opinion of such official, be used or
259 disclosed in the performance of the official duties of such official, or (2)
260 as otherwise required by law or court order. Any exculpatory
261 information obtained with respect to any person shall be disclosed to
262 such person as required by law.

263 Sec. 12. (NEW) (*Effective October 1, 2005*) All property produced as a
264 result of the issuance of a subpoena pursuant to sections 1 to 12,
265 inclusive, of this act shall be returned to the person from whom it was
266 received if no criminal prosecution is commenced involving the use of
267 such property or shall be otherwise disposed of as provided by law.

268 Sec. 13. Section 51-296 of the general statutes is repealed and the
269 following is substituted in lieu thereof (*Effective October 1, 2005*):

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

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

298 (c) Prior to [a defendant's appearance in court] the appearance in
299 court of a defendant in any matter specified in subsection (a) of this
300 section or of a witness summoned by subpoena issued pursuant to
301 section 2 of this act, a public defender, assistant public defender or
302 deputy assistant public defender, upon a determination that the

303 defendant or witness is indigent pursuant to subsection (a) of section
 304 51-297, shall be authorized to represent the defendant or witness until
 305 the court appoints counsel for such defendant or witness.

306 Sec. 14. (NEW) (*Effective October 1, 2005*) On October 1, 2006, and
 307 annually thereafter, the Chief State's Attorney shall submit a report, in
 308 accordance with the provisions of section 11-4a of the general statutes,
 309 to the joint standing committee of the General Assembly having
 310 cognizance of matters relating to criminal law and procedure
 311 concerning the issuance of subpoenas pursuant to sections 1 to 12,
 312 inclusive, of this act in the preceding year. The report shall include the
 313 following information: (1) The number of applications submitted for
 314 the issuance of a subpoena, and the number of applications granted or
 315 denied, (2) the statutory offense or offenses allegedly committed that
 316 were the subject of the investigation, (3) the number of motions to
 317 quash a subpoena that were filed, and the number of motions granted
 318 or denied, (4) the number of orders granting a witness immunity from
 319 prosecution, (5) the number of investigations concluded and the final
 320 result of such investigations, and (6) the status of any criminal
 321 prosecution resulting from an investigation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2005</i>	New section
Sec. 2	<i>October 1, 2005</i>	New section
Sec. 3	<i>October 1, 2005</i>	New section
Sec. 4	<i>October 1, 2005</i>	New section
Sec. 5	<i>October 1, 2005</i>	New section
Sec. 6	<i>October 1, 2005</i>	New section
Sec. 7	<i>October 1, 2005</i>	New section
Sec. 8	<i>October 1, 2005</i>	New section
Sec. 9	<i>October 1, 2005</i>	New section
Sec. 10	<i>October 1, 2005</i>	New section
Sec. 11	<i>October 1, 2005</i>	New section
Sec. 12	<i>October 1, 2005</i>	New section
Sec. 13	<i>October 1, 2005</i>	51-296

Sec. 14	October 1, 2005	New section
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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 certain crimes.

[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.]