



General Assembly

February Session, 2010

**Raised Bill No. 5503**

LCO No. 2316

\*02316\_\_\_\_\_JUD\*

Referred to Committee on Judiciary

Introduced by:  
(JUD)

**AN ACT CONCERNING SUBPOENAS FOR PROPERTY.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2010*) For the purposes of this  
2 section and sections 2 to 7, inclusive, of this act:

3 (1) "Crime" means a violation of chapter 949c or section 36b-4, 36b-6,  
4 36b-16, 53-153, 53-451, 53a-122, 53a-123, 53a-129b, 53a-129c, 53a-129d,  
5 53a-129e, 53a-138, 53a-147, 53a-148, 53a-149, 53a-150, 53a-152, 53a-153,  
6 53a-154, 53a-158, 53a-159, 53a-160, 53a-161, 53a-161a, 53a-161c, 53a-  
7 161d, 53a-215, 53a-252, 53a-253, 53a-276, 53a-277, 53a-291, 53a-292 or  
8 53a-293 of the general statutes;

9 (2) "Person" means any individual, firm, partnership, limited  
10 partnership, limited liability partnership, limited liability company,  
11 trust, syndicate, estate, association, corporation, custodian, nominee,  
12 municipality, agency or political or administrative subdivision of the  
13 state, or other legal entity of any kind;

14 (3) "Property" includes, but is not limited to, documents, books,  
15 papers, records, films, recordings and other tangible things; and

16 (4) "Prosecuting official" means the Chief State's Attorney, a deputy  
17 Chief State's Attorney or a state's attorney.

18 Sec. 2. (NEW) (*Effective October 1, 2010*) 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, may issue a subpoena to compel the production of  
22 property relevant to the matter under investigation.

23 Sec. 3. (NEW) (*Effective October 1, 2010*) (a) Any subpoena issued  
24 pursuant to section 2 of this act shall compel the person to produce the  
25 property at the office of the prosecuting official.

26 (b) Any subpoena issued pursuant to section 2 of this act shall (1)  
27 compel only the production of property relevant to the investigation  
28 being conducted, (2) specify with reasonable particularity the property  
29 to be produced, (3) allow a reasonable period of time for compliance,  
30 and (4) require only the production of property covering a reasonable  
31 period of time.

32 Sec. 4. (NEW) (*Effective October 1, 2010*) (a) In complying with any  
33 subpoena issued pursuant to section 2 of this act, the person to whom  
34 the subpoena has been issued shall designate a custodian who is  
35 authorized to authenticate the property and affirm full compliance  
36 with the subpoena by swearing, under oath, in a notarized affidavit  
37 that: (1) He or she is the duly authorized property custodian of the  
38 person to whom the subpoena has been issued, (2) he or she has  
39 conducted, or has caused to be conducted, a thorough search for all  
40 property responsive to the subpoena within the care, custody or  
41 control of the person to whom the subpoena has been issued, (3) he or  
42 she avers to the authenticity of any property produced in response to  
43 the subpoena, and (4) the property produced in response to the  
44 subpoena constitutes, to the best of his or her knowledge, all  
45 responsive property in the possession of the person to whom the  
46 subpoena has been issued at the time the subpoena was served.

47 (b) If any person to whom a subpoena has been issued pursuant to  
48 section 2 of this act fails to designate a custodian in accordance with  
49 subsection (a) of this section, or if any such custodian fails to supply a  
50 sworn, notarized affidavit in accordance with said subsection, the  
51 prosecuting official may submit an application to a judge of the  
52 Superior Court for the issuance of a subpoena ad testificandum by the  
53 prosecuting official to be directed to any owner, director, officer or  
54 agent for service of the person to whom the subpoena has been issued,  
55 or to such custodian. Such application shall include an affidavit sworn  
56 to by the prosecuting official stating that:

57 (1) The official reasonably suspects that a crime has been committed;

58 (2) The official reasonably suspects that the property sought is  
59 relevant to the investigation concerning the alleged commission of a  
60 crime;

61 (3) The official has issued a subpoena for the production of property  
62 pursuant to section 2 of this act; and

63 (4) The person to whom the subpoena has been issued has failed to  
64 designate a custodian or the custodian has failed to supply a sworn,  
65 notarized affidavit in accordance with subsection (a) of this section.

66 (c) If the judge finds that the provisions of subsection (b) of this  
67 section have been satisfied, such judge may grant the application for  
68 the issuance of a subpoena ad testificandum by the prosecuting  
69 official.

70 (d) Testimony taken pursuant to such subpoena ad testificandum  
71 shall be limited to determining: (1) Whether the person has conducted,  
72 or has caused to be conducted, a thorough search for all property  
73 responsive to the subpoena within the care, custody or control of such  
74 person, (2) the authenticity of any property produced in response to  
75 the subpoena, and (3) whether the property produced in response to  
76 the subpoena constitutes, to the best of the witness' knowledge, all

77 responsive property in the possession of the person at the time the  
78 subpoena was served.

79 (e) A court reporter, assistant court reporter or monitor shall make a  
80 record of the proceeding in which testimony is taken. The record of the  
81 proceeding shall be sealed and not subject to disclosure, except that  
82 any witness who appeared and testified shall be allowed access, at all  
83 reasonable times, to the record of such witness' own testimony and  
84 shall have the right to receive a copy of the transcript of the record of  
85 such testimony.

86 Sec. 5. (NEW) (*Effective October 1, 2010*) (a) In conducting any  
87 investigation in which a subpoena is issued pursuant to sections 1 to 7,  
88 inclusive, of this act, a prosecuting official may apply to a judge of the  
89 Superior Court for an order granting immunity from prosecution to  
90 any person whom the state calls or intends to call as a witness to  
91 authenticate property or to establish full compliance with the  
92 subpoena. Such immunity may provide that the person will not be  
93 prosecuted or subjected to any penalty or forfeiture (1) for or on  
94 account of any testimony given or property produced by such person,  
95 or for or on account of any evidence discovered as a result of or  
96 otherwise derived from testimony given or property produced by such  
97 person, or (2) for or on account of any transaction, matter or thing  
98 concerning which such person gives testimony or produces property.  
99 A person who receives immunity under this subsection shall not be  
100 immune from prosecution for perjury or contempt committed while  
101 giving such testimony or producing such property.

102 (b) No person who has been properly served with a subpoena  
103 pursuant to sections 1 to 7, inclusive, of this act and receives immunity  
104 under subsection (a) of this section shall be excused from appearing  
105 and testifying or producing any property before the prosecuting  
106 official concerning an investigation on the ground or for the reason  
107 that the testimony or property required may tend to incriminate such  
108 person or subject such person to a penalty or forfeiture.

109 Sec. 6. (NEW) (*Effective October 1, 2010*) If any subpoena is issued  
110 pursuant to section 2 of this act for the production of the medical  
111 records, including psychiatric and substance abuse treatment records,  
112 of a person, the prosecuting official shall give written notice of the  
113 issuance of such subpoena to such person. Such person shall have  
114 standing to file a motion to quash the subpoena in accordance with  
115 section 7 of this act.

116 Sec. 7. (NEW) (*Effective October 1, 2010*) (a) Whenever a subpoena  
117 has been issued to compel the production of property pursuant to  
118 section 2 of this act or to compel testimony pursuant to section 4 of this  
119 act, the person summoned may file a motion to quash the subpoena.  
120 No fees or costs shall be assessed.

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

124 (c) The motion, upon its filing, shall be sealed as to the public. The  
125 motion shall be referred to the presiding criminal judge of the court for  
126 hearing or for assignment to another judge for hearing. Unless  
127 otherwise ordered by the judge conducting the hearing, the hearing  
128 shall be conducted in camera and the file on the motion shall be sealed  
129 as to the public, subject to further order of the court.

130 (d) The motion shall be expeditiously assigned and heard. The date  
131 and time of the hearing shall be established by the clerk after  
132 consultation with the judge assigned to conduct the hearing. The clerk  
133 shall give notice to the parties of the hearing so scheduled.

134 (e) A judge may quash or modify any subpoena issued pursuant to  
135 sections 1 to 6, inclusive, of this act for just cause or in recognition of  
136 any privilege established under law.

This act shall take effect as follows and shall amend the following sections:

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Section 1	<i>October 1, 2010</i>	New section
Sec. 2	<i>October 1, 2010</i>	New section
Sec. 3	<i>October 1, 2010</i>	New section
Sec. 4	<i>October 1, 2010</i>	New section
Sec. 5	<i>October 1, 2010</i>	New section
Sec. 6	<i>October 1, 2010</i>	New section
Sec. 7	<i>October 1, 2010</i>	New section

**Statement of Purpose:**

To give state prosecutors the tools necessary to protect state residents and government funds and programs from fraud.

*[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.]*