

SENATE BILL 331

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1998 Regular Session
8r1390
CF 8r0950

By: **Senators Boozer, Derr, Craig, Ferguson, McCabe, Neall, Middlebrooks,
Jimeno, Haines, Green, and Colburn**

Introduced and read first time: February 5, 1998

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **State Prosecutor - Immunity and Subpoena Power**

3 FOR the purpose of authorizing the State Prosecutor to request a court to order an
4 individual to give testimony or provide information under certain
5 circumstances; authorizing the State Prosecutor the power to subpoena certain
6 information under certain circumstances; and generally relating to the powers
7 of the State Prosecutor.

8 BY repealing and reenacting, without amendments,
9 Article 10 - Legal Officials
10 Section 39A
11 Annotated Code of Maryland
12 (1996 Replacement Volume and 1997 Supplement)

13 BY repealing and reenacting, with amendments,
14 Article - Courts and Judicial Proceedings
15 Section 9-123
16 Annotated Code of Maryland
17 (1995 Replacement Volume and 1997 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article - State Government
20 Section 9-1206
21 Annotated Code of Maryland
22 (1995 Replacement Volume and 1997 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
24 MARYLAND, That the Laws of Maryland read as follows:

1

Article 10 - Legal Officials

2 39A.

3 (a) For the limited purpose of obtaining documents to further an ongoing
4 criminal investigation, the State's Attorney may issue, within the county served by
5 the State's Attorney, a subpoena to a person to require the production of telephone,
6 business, governmental, or corporate records or documents.

7 (b) (1) Such subpoena may be served in the same manner as if issued from a
8 circuit court.

9 (2) If any person fails to obey such subpoena lawfully served, the State's
10 Attorney may immediately report the disobedience and provide a copy of the
11 subpoena and proof of service to the circuit court of the county in which the State's
12 Attorney serves under § 34 of this article.

13 (3) The court shall conduct a hearing and may grant appropriate relief
14 after providing the person who allegedly failed to comply with a subpoena an
15 opportunity to be heard and be represented by counsel.

16 (c) (1) A person has the right to have counsel present during any contact
17 under this section with the State's Attorney or his agents.

18 (2) The State's Attorney shall advise a person of the right to counsel
19 when the subpoena is served.

20 (d) For the purpose of this section, "State's Attorney" means the person
21 holding that office under § 7 of Article V of the Maryland Constitution.

22 (e) The State's Attorney may designate in writing a deputy State's Attorney to
23 exercise the authority under subsection (a) of this section.

24 (f) Nothing contained in this section is intended to allow the contravention,
25 denial, or abrogation of any privilege or right recognized by law.

26

Article - Courts and Judicial Proceedings

27 9-123.

28 (a) (1) In this section the following words have the meanings indicated.

29 (2) "Other information" includes any book, paper, document, record,
30 recording, or other material.

31 (3) "Prosecutor" means:

32 (i) The State's Attorney for a county;

33 (ii) A Deputy State's Attorney;

- 1 (iii) The Attorney General of the State; [or]
2 (iv) A Deputy Attorney General or designated Assistant Attorney
3 General; OR
4 (V) THE STATE PROSECUTOR.

5 (b) (1) If a witness refuses, on the basis of the privilege against
6 self-incrimination, to testify or provide other information in a criminal prosecution or
7 a proceeding before a grand jury of the State, and the court issues an order to testify
8 or provide other information under subsection (c) of this section, the witness may not
9 refuse to comply with the order on the basis of the privilege against
10 self-incrimination.

11 (2) No testimony or other information compelled under the order, and no
12 information directly or indirectly derived from the testimony or other information,
13 may be used against the witness in any criminal case, except in a prosecution for
14 perjury, obstruction of justice, or otherwise failing to comply with the order.

15 (c) If an individual has been, or may be, called to testify or provide other
16 information in a criminal prosecution or a proceeding before a grand jury of the State,
17 the court in which the proceeding is or may be held shall issue, on the request of the
18 prosecutor made in accordance with subsection (d) of this section, an order requiring
19 the individual to give testimony or provide other information which the individual has
20 refused to give or provide on the basis of the individual's privilege against
21 self-incrimination. The order shall have the effect provided under subsection (b) of
22 this section.

23 (d) If a prosecutor seeks to compel an individual to testify or provide other
24 information, the prosecutor shall request, by written motion, the court to issue an
25 order under subsection (c) of this section when the prosecutor determines that:

26 (1) The testimony or other information from the individual may be
27 necessary to the public interest; and

28 (2) The individual has refused or is likely to refuse to testify or provide
29 other information on the basis of the individual's privilege against self-incrimination.

30 (e) If a witness refuses to comply with an order issued under subsection (c) of
31 this section, on written motion of the prosecutor and on admission into evidence of the
32 transcript of the refusal, if the refusal was before a grand jury, the court shall treat
33 the refusal as a direct contempt, notwithstanding any law to the contrary, and
34 proceed in accordance with Subtitle P. of the Maryland Rules.

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Article - State Government

2 9-1206.

3 In the investigation of any case as provided in § 9-1203 of this subtitle or the
4 prosecution of any case as provided in § 9-1205 of this subtitle, the State Prosecutor
5 has all the powers and duties of a State's Attorney, including:

6 (1) the use of the grand jury in any county or Baltimore City; AND

7 (2) THE SUBPOENA POWER UNDER ARTICLE 10, § 39A OF THE CODE.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 1998.