

HOUSE BILL 612

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E2
HB 171/98 - JUD

1999 Regular Session
9lr0480

By: **Delegate Getty**

Introduced and read first time: February 11, 1999

Assigned to: Judiciary

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(a) and (b)
11 Annotated Code of Maryland
12 (1998 Replacement Volume and 1998 Supplement)

13 BY repealing and reenacting, with amendments,
14 Article - Courts and Judicial Proceedings
15 Section 9-123
16 Annotated Code of Maryland
17 (1998 Replacement Volume)

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 1998 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

Article - Courts and Judicial Proceedings

17 9-123.

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

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

21 (3) "Prosecutor" means:

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

23 (ii) A Deputy State's Attorney;

24 (iii) The Attorney General of the State; [or]

25 (iv) A Deputy Attorney General or designated Assistant Attorney
26 General; OR

27 (V) THE STATE PROSECUTOR.

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

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

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

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

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

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

20 (e) If a witness refuses to comply with an order issued under subsection (c) of
21 this section, on written motion of the prosecutor and on admission into evidence of the
22 transcript of the refusal, if the refusal was before a grand jury, the court shall treat
23 the refusal as a direct contempt, notwithstanding any law to the contrary, and
24 proceed in accordance with Title 15, Chapter 200 of the Maryland Rules.

25 **Article - State Government**

26 9-1206.

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

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

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

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 1999.