

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 870

(The President)(By Request - Office of the Attorney
General)

Judicial Proceedings

Criminal Procedure – Office of the Attorney General – Subpoena Power

This bill authorizes the Attorney General and specified officials at the Office of the Attorney General (OAG) to issue a subpoena in any county in the State to a person to compel the production of telephone, business, governmental, or corporate records or documents. This authority only applies for the limited purpose of furthering an ongoing investigation. The subpoena may be served in the same manner as a subpoena issued by a circuit court.

Fiscal Summary

State Effect: Although the bill does not materially affect State finances, it may result in operational efficiencies for OAG, as discussed below. Revenues are not affected.

Local Effect: The bill is procedural and can be implemented with existing local resources.

Small Business Effect: None.

Analysis

Bill Summary: If the Attorney General or other authorized OAG official issues a subpoena pursuant to the bill's provisions, the Attorney General/official must send a confidential notification to the State's Attorney of the county where the subpoena was issued. A person may have an attorney present during any contact made with the Attorney General or an agent of the Attorney General. The Attorney General must advise a person of the right to counsel when the subpoena is served. The Attorney General may immediately report the failure of a person to obey a lawfully served subpoena to the circuit

court with jurisdiction over the matter. The Attorney General must provide a copy of the subpoena and proof of service to the circuit court. The court may grant appropriate relief after conducting a hearing at which the person who allegedly failed to comply with the subpoena has an opportunity to be heard and be represented by counsel. The bill's provisions do not allow the contravention, denial, or abrogation of a privilege or right recognized by law.

Current Law: Under the Maryland Constitution, the Attorney General must investigate, commence, and prosecute or defend a criminal action in which the General Assembly, by law or resolution, or the Governor has directed the Attorney General to investigate, commence, and prosecute or defend. The Attorney General does not have specific broad authority under statute to issue a subpoena in an investigation but does have statutory authority to issue a subpoena in certain types of cases.

For example, in the course of any examination, investigation, or hearing conducted under the Maryland Consumer Protection Act, the Attorney General may subpoena witnesses, administer oaths, examine an individual under oath, and compel production of records, books, papers, contracts, and other documents. Information obtained through such a subpoena is not admissible in a later criminal proceeding against the person who provides the evidence.

The Attorney General is also required to represent the public interest in the protection of charitable assets. If the Attorney General has reason to believe an investigation is necessary to determine whether action may be advisable for this purpose, the Attorney General may conduct an investigation, including exercising subpoena power.

The Attorney General is authorized to investigate a complaint about the unauthorized practice of law and may issue a subpoena in the investigation of such a case.

Section 15-108 of the Criminal Procedure Article addresses subpoena power of a State's Attorney in an ongoing criminal investigation and contains provisions similar to those in the bill. However, § 15-108 grants a State's Attorney subpoena power only in the county served by the State's Attorney.

State Expenditures: The bill may result in operational efficiencies for OAG. OAG advises that its prosecutors currently have to wait for a grand jury to convene and then drive to each jurisdiction to request an investigative subpoena, which can delay an investigation.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, HB 1439 (The Speaker, *et al.* – By Request – Office of the Attorney General – Judiciary) is not identical.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Legislative Services

Fiscal Note History: First Reader - February 20, 2018
mm/kdm

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