

HOUSE BILL No. 5998

July 8, 1992, Introduced by Rep. Strand and referred to the Committee on Judiciary.

A bill to amend Act No. 175 of the Public Acts of 1927, entitled as amended

"The code of criminal procedure,"

as amended, being sections 760.1 to 776.21 of the Michigan Compiled Laws, by adding chapter VIIA.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 175 of the Public Acts of 1927, as
2 amended, being sections 760.1 to 776.21 of the Michigan Compiled
3 Laws, is amended by adding chapter VIIA to read as follows:

4 CHAPTER VIIA

5 SEC. 1. AS USED IN THIS CHAPTER, "PROSECUTING ATTORNEY"
6 MEANS THE ATTORNEY GENERAL OR THE PROSECUTING ATTORNEY FOR A
7 COUNTY.

8 SEC. 2. (1) A PROSECUTING ATTORNEY MAY ISSUE AN
9 INVESTIGATIVE DEMAND FOR A PERSON TO APPEAR AND TESTIFY UNDER

1 OATH BEFORE THE PROSECUTING ATTORNEY IF THE PROSECUTING ATTORNEY
2 IS INVESTIGATING A CRIME PUNISHABLE BY IMPRISONMENT FOR LIFE
3 WITHIN HIS OR HER JURISDICTION AND HAS PROBABLE CAUSE TO BELIEVE
4 THE PERSON MAY BE ABLE TO PROVIDE RELEVANT EVIDENCE REGARDING
5 THAT CRIME. A PERSON SERVED WITH AN INVESTIGATIVE DEMAND SHALL
6 APPEAR BEFORE THE PROSECUTING ATTORNEY AND ANSWER QUESTIONS CON-
7 CERNING THE CRIME UNDER INVESTIGATION. THE INVESTIGATIVE DEMAND
8 MAY ALSO REQUIRE THE PERSON TO PRODUCE ANY BOOK, RECORD, PAPER,
9 DOCUMENT, OR THING RELATED TO THE INVESTIGATION. DURING THE
10 EXAMINATION OF DOCUMENTARY MATERIAL PURSUANT TO AN INVESTIGATIVE
11 DEMAND, THE PROSECUTING ATTORNEY MAY REQUIRE ANY PERSON HAVING
12 KNOWLEDGE OF THE DOCUMENTARY MATERIAL OR ANY MATTER CONTAINED IN
13 THAT DOCUMENTARY MATERIAL TO ATTEND AND GIVE TESTIMONY UNDER OATH
14 OR ACKNOWLEDGMENT WITH RESPECT TO THE DOCUMENTARY MATERIAL.

15 (2) AN INVESTIGATIVE DEMAND ISSUED UNDER THIS SECTION HAS
16 THE SAME FORCE AND SHALL BE OBEYED IN THE SAME MANNER AS A SUB-
17 POENA ISSUED BY THE CLERK OF THE COURT OR BY A MAGISTRATE.

18 (3) AN INVESTIGATIVE DEMAND SHALL DO ALL OF THE FOLLOWING:

19 (A) STATE THE TIME AND PLACE FOR THE TAKING OF TESTIMONY OR
20 THE EXAMINATION AND THE NAME AND, IF KNOWN, THE ADDRESS OF THE
21 PERSON TO BE EXAMINED. IF THE NAME OF THE PERSON IS NOT KNOWN,
22 THE NOTICE SHALL GIVE A GENERAL DESCRIPTION SUFFICIENT TO IDEN-
23 TIFY THE PERSON OR THE PARTICULAR CLASS OR GROUP TO WHICH THE
24 PERSON BELONGS.

25 (B) REFER TO THIS SECTION AND THE GENERAL SUBJECT MATTER
26 UNDER INVESTIGATION.

1 (C) DESCRIBE ANY DOCUMENTARY MATERIAL TO BE PRODUCED WITH
2 REASONABLE SPECIFICITY SO AS TO INDICATE FAIRLY THE MATERIAL
3 DEMANDED.

4 (D) PRESCRIBE A RETURN DATE WITHIN WHICH THE DOCUMENTARY
5 MATERIAL SHALL BE PRODUCED.

6 (E) IDENTIFY THE MEMBERS OF THE PROSECUTING ATTORNEY'S STAFF
7 TO WHOM THE DOCUMENTARY MATERIAL SHALL BE MADE AVAILABLE.

8 (4) SERVICE OF THE INVESTIGATIVE DEMAND SHALL BE IN THE
9 MANNER PROVIDED AND SUBJECT TO THE PROVISIONS THAT APPLY TO SERV-
10 ICE OF PROCESS UPON A DEFENDANT IN A CIVIL ACTION COMMENCED IN
11 THE CIRCUIT COURT. THE INVESTIGATIVE DEMAND SHALL BE SERVED NOT
12 LESS THAN 5 DAYS BEFORE THE DATE OF THE TAKING OF TESTIMONY OR
13 EXAMINATION, UNLESS FOR GOOD CAUSE SHOWN, THE CIRCUIT COURT
14 SHORTENS THE PERIOD OF TIME.

15 (5) THE PROSECUTING ATTORNEY MAY FILE A PETITION IN THE CIR-
16 CUIT COURT OF THE COUNTY HAVING JURISDICTION OVER THE CRIME UNDER
17 INVESTIGATION FOR AN ORDER TO FORCE COMPLIANCE WITH AN INVESTIGA-
18 TIVE DEMAND AND NOTICE SERVED PURSUANT TO THIS CHAPTER.

19 (6) AT ANY TIME BEFORE THE DATE SPECIFIED IN THE SUBPOENA
20 AND NOTICE, UPON MOTION AND FOR GOOD CAUSE SHOWN, THE CHIEF JUDGE
21 OF THE CIRCUIT COURT MAY EXTEND THE REPORTING DATE OR MODIFY OR
22 SET ASIDE THE NOTICE AND INVESTIGATIVE DEMAND.

23 SEC. 3. (1) A PROSECUTING ATTORNEY MAY ADMINISTER OATHS AND
24 AFFIRMATIONS, IN THE MANNER PRESCRIBED BY LAW, TO WITNESSES WHO
25 APPEAR BEFORE HIM OR HER TO TESTIFY IN A MATTER BEING INVESTI-
26 GATED PURSUANT TO THIS CHAPTER.

1 (2) A WITNESS IS AT ALL TIMES ENTITLED TO LEGAL COUNSEL NOT
2 INVOLVING DELAY. THE WITNESS MAY DISCUSS FULLY WITH HIS OR HER
3 LEGAL COUNSEL ANY MATTER RELATING TO THE WITNESS'S PART IN THE
4 INQUIRY WITHOUT BEING SUBJECT TO CITATION FOR CONTEMPT. THE WIT-
5 NESS HAS THE RIGHT TO HAVE LEGAL COUNSEL PRESENT IN THE ROOM IN
6 WHICH THE INQUIRY IS HELD.

7 (3) DURING EXAMINATION OF DOCUMENTARY MATERIAL PRODUCED
8 UNDER AN INVESTIGATIVE DEMAND, THE PROSECUTING ATTORNEY MAY
9 REQUIRE A PERSON HAVING KNOWLEDGE OF THE DOCUMENTARY MATERIAL OR
10 ANY MATTER CONTAINED IN THAT DOCUMENTARY MATERIAL TO ATTEND AND
11 GIVE TESTIMONY UNDER OATH OR ACKNOWLEDGMENT WITH RESPECT TO THE
12 DOCUMENTARY MATERIAL.

13 (4) IF A CRIMINAL CHARGE IS FILED BY THE PROSECUTING ATTOR-
14 NEY BASED UPON INFORMATION OBTAINED PURSUANT TO THIS CHAPTER,
15 UPON MOTION OF THE DEFENDANT MADE NOT LATER THAN 20 DAYS AFTER
16 THE DEFENDANT IS ARRAIGNED ON THE CHARGE, THE TRIAL JUDGE SHALL
17 DIRECT THE PROSECUTING ATTORNEY TO FURNISH TO THE DEFENDANT THE
18 TESTIMONY THE DEFENDANT GAVE REGARDING THE CRIME WITH WHICH HE OR
19 SHE IS CHARGED AND MAY DIRECT THE PROSECUTING ATTORNEY TO FURNISH
20 TO THE DEFENDANT THE TESTIMONY ANY WITNESS WHO WILL TESTIFY AT
21 THE TRIAL GAVE THE PROSECUTING ATTORNEY PURSUANT TO THIS CHAPTER
22 REGARDING THAT CRIME EXCEPT THOSE PORTIONS THAT ARE IRRELEVANT OR
23 IMMATERIAL, OR THAT ARE EXCLUDED FOR OTHER GOOD CAUSE SHOWN. IF
24 THE DEFENDANT REQUESTS THE TESTIMONY OF A WITNESS PURSUANT TO
25 THIS SECTION AND THE TRIAL JUDGE DIRECTS THE PROSECUTING ATTORNEY
26 TO FURNISH TO THE DEFENDANT A COPY OF THAT WITNESS'S TESTIMONY,
27 THE PROSECUTING ATTORNEY SHALL FURNISH A COPY OF THE TESTIMONY

1 NOT LATER THAN 10 DAYS BEFORE THE TIME OF TRIAL. IF THE
2 PROSECUTING ATTORNEY FAILS OR REFUSES TO FURNISH A COPY OF THE
3 TESTIMONY TO THE DEFENDANT PURSUANT TO THIS SUBSECTION, THE PROS-
4 ECUTING ATTORNEY SHALL BE BARRED FROM CALLING THAT WITNESS TO
5 TESTIFY AT THE DEFENDANT'S TRIAL.

6 (5) IF THE TRIAL JUDGE HAS NOT DIRECTED THE PROSECUTING
7 ATTORNEY TO FURNISH A COPY OF A WITNESS'S TESTIMONY TO THE
8 DEFENDANT PRIOR TO TRIAL, THE PROSECUTING ATTORNEY SHALL, UPON
9 REQUEST OF THE DEFENDANT, FURNISH A COPY OF THAT TESTIMONY TO THE
10 DEFENDANT AFTER DIRECT EXAMINATION OF THAT WITNESS AT TRIAL HAS
11 BEEN COMPLETED.

12 SEC. 4. (1) THE PROSECUTING ATTORNEY MAY APPLY TO THE CHIEF
13 JUDGE OF THE CIRCUIT COURT FOR AN ORDER GRANTING IMMUNITY TO ANY
14 PERSON, DESIGNATED BY NAME AND ADDRESS IN THE APPLICATION, WHOM
15 THE PROSECUTING ATTORNEY INTENDS TO REQUIRE TO GIVE TESTIMONY
16 CONCERNING ANY MATTER UNDER INVESTIGATION PURSUANT TO THIS
17 CHAPTER. THE APPLICATION SHALL BE ACCOMPANIED BY A VERIFIED
18 PETITION OF THE PROSECUTING ATTORNEY SETTING FORTH THE FACTS UPON
19 WHICH THE APPLICATION IS BASED. IF THE JUDGE IS SATISFIED THAT
20 IT IS IN THE INTEREST OF JUSTICE THAT IMMUNITY BE GRANTED, HE OR
21 SHE SHALL ENTER AN ORDER GRANTING IMMUNITY TO THE PERSON IF THE
22 PERSON APPEARS BEFORE THE PROSECUTING ATTORNEY AND TESTIFIES
23 UNDER OATH CONCERNING ANY MATTER UNDER INVESTIGATION AND SET
24 FORTH IN THE PETITION OF THE PROSECUTING ATTORNEY.

25 (2) A TRUE COPY OF AN ORDER ISSUED UNDER SUBSECTION (1) THAT
26 GRANTS IMMUNITY TO A PERSON SHALL BE DELIVERED TO THE PERSON
27 BEFORE HE OR SHE ANSWERS ANY QUESTIONS ASKED BY THE PROSECUTING

1 ATTORNEY. THE ORDER GRANTING IMMUNITY SHALL EXTEND TO ALL
2 RELATED QUESTIONS ASKED OF THE PERSON. THE PERSON SHALL NOT BE
3 PROSECUTED FOR ANY CRIME THAT IS DISCOVERED AS A RESULT OF AN
4 ANSWER TO A QUESTION ASKED OF HIM OR HER REGARDLESS OF THE DEGREE
5 OF KNOWLEDGE PROVIDED TO THE QUESTIONING AUTHORITY. THE PROSE-
6 CUTING ATTORNEY SHALL REDUCE ALL QUESTIONS AND ANSWERS TO
7 WRITING. A PERSON REQUIRED TO ANSWER A QUESTION ASKED BY THE
8 PROSECUTING ATTORNEY SHALL NOT SUBSEQUENTLY BE PROSECUTED FOR A
9 CRIME CONCERNING WHICH AN ANSWER MAY HAVE TENDED TO INCRIMINATE
10 HIM OR HER. IF A PERSON WHO HAS BEEN GRANTED IMMUNITY IS PROSE-
11 CUTED FOR AN OFFENSE THAT HE OR SHE ALLEGES WAS SUBJECT TO A
12 GRANT OF IMMUNITY, THE PROSECUTING ATTORNEY SHALL DELIVER A CER-
13 TIFIED-TRUE COPY OF THE TRANSCRIPT OF THE QUESTIONS AND ANSWERS
14 TO THE PERSON AS SOON AS PRACTICABLE.

15 (3) AN ORDER ISSUED UNDER THIS SECTION THAT GRANTS IMMUNITY
16 TO A PERSON SHALL CONTINUE IN EFFECT UNTIL THE JUDGE OR HIS OR
17 HER SUCCESSOR, IN HIS OR HER DISCRETION AND UPON APPLICATION BY
18 THE PROSECUTING ATTORNEY, ENTERS AN ORDER TERMINATING THE ORDER
19 GRANTING IMMUNITY AS TO QUESTIONS THAT ARE ASKED OF THE PERSON
20 AND THE PROSECUTING ATTORNEY ADVISES THE WITNESS OF THE ORDER OF
21 TERMINATION.

22 (4) A PERSON GRANTED IMMUNITY PURSUANT TO THIS SECTION MAY
23 HAVE LEGAL COUNSEL PRESENT AT HIS OR HER SIDE AT ALL TIMES AT
24 WHICH HE OR SHE IS BEING QUESTIONED CONCERNING ANY MATTER
25 INCLUDED WITHIN THE ORDER GRANTING IMMUNITY.

26 SEC. 5. (1) EXCEPT AS OTHERWISE PROVIDED BY LAW, A PERSON
27 SHALL NOT DISCLOSE TO ANY OTHER PERSON ANY TESTIMONY OR EXHIBIT

1 OBTAINED OR USED, OR ANY PROCEEDING CONDUCTED, IN CONNECTION WITH
2 AN INQUIRY CONDUCTED UNDER THIS CHAPTER. A PERSON WHO VIOLATES
3 THIS SECTION IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISON-
4 MENT FOR NOT MORE THAN 1 YEAR OR BY A FINE OF NOT MORE THAN
5 \$1,000.00, OR BOTH. THE PROVISIONS OF THIS SECTION REGARDING
6 SECRECY DO NOT APPLY TO COMMUNICATIONS BETWEEN PROSECUTING
7 AUTHORITIES FOR THE PURPOSE OF REVIEWING EVIDENCE FOR PROSPECTIVE
8 PROSECUTION OR BETWEEN PROSECUTING AUTHORITIES AND OTHER LAW
9 ENFORCEMENT AGENCIES FOR ANY OTHER PURPOSE INVOLVING THE EXECU-
10 TION OF A PUBLIC DUTY. THIS SECTION APPLIES TO AN APPLICATION OR
11 PETITION FOR IMMUNITY, AN ORDER OF IMMUNITY, AND TO A TRANSCRIPT
12 OF TESTIMONY DELIVERED TO A WITNESS PURSUANT TO A GRANT OF IMMU-
13 NITY, EXCEPT THAT THE WITNESS MAY DISCLOSE THE APPLICATION, PETI-
14 TION, ORDER, OR TRANSCRIPT TO HIS OR HER ATTORNEY.

15 (2) DOCUMENTARY MATERIAL AND OTHER INFORMATION OBTAINED BY
16 THE PROSECUTING ATTORNEY PURSUANT TO AN INVESTIGATION UNDER THIS
17 CHAPTER IS CONFIDENTIAL AND SHALL NOT BE AVAILABLE FOR PUBLIC
18 INSPECTION OR COPYING OR DIVULGED TO ANY PERSON EXCEPT AS OTHER-
19 WISE PROVIDED IN THIS CHAPTER. MATERIAL AND INFORMATION OBTAINED
20 UNDER THIS ACT ARE EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF
21 INFORMATION ACT, ACT NO. 442 OF THE PUBLIC ACTS OF 1976, BEING
22 SECTIONS 15.231 TO 15.246 OF THE MICHIGAN COMPILED LAWS.

23 (3) A REPORTER OR OTHER PERSON WHO IS INVOLVED IN THE GATH-
24 ERING OR PREPARATION OF NEWS FOR BROADCAST OR PUBLICATION IS NOT
25 REQUIRED TO DISCLOSE THE IDENTITY OF AN INFORMANT, ANY UNPUB-
26 LISHED INFORMATION OBTAINED FROM AN INFORMANT, OR ANY UNPUBLISHED
27 MATTER OR DOCUMENTATION, IN WHATEVER MANNER RECORDED, RELATING TO

1 A COMMUNICATION WITH AN INFORMANT, IN ANY INQUIRY CONDUCTED UNDER
2 THIS CHAPTER, UNLESS ALL OF THE FOLLOWING CIRCUMSTANCES EXIST:

3 (A) THE INQUIRY IS FOR A CRIME PUNISHABLE BY IMPRISONMENT
4 FOR LIFE.

5 (B) THE PROSECUTING ATTORNEY ESTABLISHES THAT THE INFORMA-
6 TION IS ESSENTIAL TO THE PURPOSE OF THE INQUIRY.

7 (C) OTHER AVAILABLE SOURCES FOR THE INFORMATION HAVE BEEN
8 EXHAUSTED.

9 (4) A COMMUNICATION BETWEEN AN ATTORNEY AND HIS OR HER
10 CLIENT, BETWEEN A MEMBER OF THE CLERGY AND A MEMBER OF HIS OR HER
11 RESPECTIVE CHURCH, OR BETWEEN A PHYSICIAN AND HIS OR HER PATIENT
12 IS PRIVILEGED AND CONFIDENTIAL IF THE COMMUNICATION WAS NECESSARY
13 TO ENABLE THE ATTORNEY, MEMBER OF THE CLERGY, OR PHYSICIAN TO
14 SERVE AS AN ATTORNEY, MEMBER OF THE CLERGY, OR PHYSICIAN.

15 SEC. 6. (1) A WITNESS WHO NEGLECTS OR REFUSES TO APPEAR OR
16 TESTIFY IN RESPONSE TO AN INVESTIGATIVE DEMAND ISSUED BY THE
17 PROSECUTING ATTORNEY, OR TO ANSWER ANY QUESTION CONCERNING ANY
18 MATTER OR THING OF WHICH THE WITNESS HAS KNOWLEDGE CONCERNING A
19 MATTER UNDER INVESTIGATION AFTER A SERVICE OF A TRUE COPY OF AN
20 ORDER GRANTING THE WITNESS IMMUNITY AS TO THAT MATTER IS GUILTY
21 OF CONTEMPT, PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR
22 OR A FINE OF NOT MORE THAN \$10,000.00, OR BOTH. IF THE WITNESS
23 APPEARS BEFORE THE COURT TO PURGE HIMSELF OR HERSELF OF THAT CON-
24 TEMPT, HE OR SHE SHALL BE ALLOWED TO APPEAR BEFORE THE PROSECUT-
25 ING ATTORNEY TO ANSWER ANY PROPER QUESTION CONCERNING THE MATTER
26 UNDER INVESTIGATION, AND AFTER THE WITNESS APPEARS BEFORE THE
27 PROSECUTING ATTORNEY, UPON TRANSCRIPT OF THE TESTIMONY, THE

1 WITNESS SHALL BE BROUGHT BEFORE THE COURT AND AFTER EXAMINATION,
2 THE COURT SHALL DETERMINE WHETHER THE WITNESS HAS PURGED HIMSELF
3 OR HERSELF OF THE CONTEMPT. THE COURT SHALL COMMUTE THE SENTENCE
4 IF THE COURT FINDS THE WITNESS HAS PURGED HIMSELF OR HERSELF OF
5 THAT CONTEMPT.

6 (2) A WITNESS WHO NEGLECTS OR REFUSES TO APPEAR IN RESPONSE
7 TO A SUBPOENA AND NOTICE OR TO ANSWER ANY PROPER QUESTION THE
8 CHIEF JUDGE OF THE CIRCUIT COURT CONSIDERS RELEVANT TO AN INQUIRY
9 UNDER THIS CHAPTER IS GUILTY OF CONTEMPT, PUNISHABLE BY IMPRISON-
10 MENT FOR NOT MORE THAN 1 YEAR OR BY A FINE OF NOT MORE THAN
11 \$10,000.00, OR BOTH. IF THE WITNESS APPEARS BEFORE THE COURT TO
12 PURGE HIMSELF OR HERSELF OF THAT CONTEMPT, HE OR SHE SHALL BE
13 ALLOWED TO APPEAR BEFORE THE PROSECUTING ATTORNEY TO ANSWER ANY
14 PROPER QUESTION CONCERNING THE MATTER UNDER INVESTIGATION, AND
15 AFTER THE WITNESS APPEARS BEFORE THE PROSECUTING ATTORNEY, UPON
16 TRANSCRIPT OF THE TESTIMONY, THE WITNESS SHALL BE BROUGHT BEFORE
17 THE COURT AND AFTER EXAMINATION, THE COURT SHALL DETERMINE
18 WHETHER THE WITNESS HAS PURGED HIMSELF OR HERSELF OF THE
19 CONTEMPT. THE COURT SHALL COMMUTE THE SENTENCE IF THE COURT
20 FINDS THE WITNESS HAS PURGED HIMSELF OR HERSELF OF THAT
21 CONTEMPT.

22 (3) A PERSON WHO WILLFULLY SWEARS FALSELY UNDER OATH IN AN
23 EXAMINATION CONDUCTED PURSUANT TO THIS CHAPTER IS GUILTY OF PER-
24 JURY, PUNISHABLE AS FOLLOWS:

25 (A) IF THE PERJURY WAS COMMITTED DURING THE INVESTIGATION OF
26 A CRIME PUNISHABLE BY IMPRISONMENT FOR LIFE, BY IMPRISONMENT FOR
27 LIFE OR FOR ANY TERM OF YEARS.

1 (B) IF THE PERJURY WAS COMMITTED IN A CASE OTHER THAN AS
2 PROVIDED IN SUBDIVISION (A), BY IMPRISONMENT IN THE STATE PRISON
3 FOR NOT MORE THAN 15 YEARS.