

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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Senate Bills 468 through 471 (as introduced 3-24-99)
Sponsor: Senator Mike Rogers (Senate Bills 468 & 469)
Senator Shirley Johnson (Senate Bills 470 & 471)
Committee: Judiciary

Date Completed: 4-13-99

CONTENT

The bills would amend various acts to delete provisions under which a witness may not be *prosecuted* for crimes about which he or she testifies, if the witness has been granted immunity (i.e., immunity from prosecution, which also is called transactional immunity). Instead, the bills provide that if a witness were granted immunity, his or her testimony and any information derived from it could not be *used* against the witness in a criminal case (i.e., the witness would be granted use immunity, and still could be prosecuted). The testimony could be used, however, for impeachment purposes or in a prosecution for perjury or otherwise failing to comply with the immunity order. Senate Bill 468 also provides that a public official or agency could apply to a court for an immunity order, if the official or agency had statutory authority to issue a subpoena or compel testimony.

Senate Bill 468 would amend Public Act 289 of 1968, which authorizes circuit courts to grant immunity. Senate Bill 469 would amend Chapter 7 of the Code of Criminal Procedure to replace immunity from prosecution with use immunity, in provisions concerning pretrial proceedings and grand juries. Senate Bill 470 would amend provisions of the Michigan Penal Code pertaining to prosecutions for bribery, conspiracy, prize fights, and prostitution. Senate Bill 471 would amend the Fire Prevention Code in regard to State Fire Marshal investigations.

A more detailed description of [Senate Bill 468](#) follows.

Use Immunity

Currently, Public Act 289 of 1968 provides that in the case of any felony or a circuit court misdemeanor, the prosecuting attorney may apply at the preliminary examination or at the trial for an order granting immunity to any person who might give testimony concerning the violation charged. The bill provides, instead, that a prosecuting attorney could apply to the following, as applicable, for an order granting immunity to a person who might give testimony concerning the violation charged or alleged in the petition:

- The examining magistrate at a preliminary examination.
- The trial judge at a trial for a felony or misdemeanor.
- The judge at an adjudication for a juvenile alleged to have committed a violation of the law, or a probable cause hearing or trial in a case in which the juvenile was to be tried as an adult for committing a specified juvenile offense.

Like current law, the bill would require the prosecutor's application to be accompanied by a verified statement setting forth the facts upon which the application was based. The bill also would retain the current provision that, if the judge determines that it is in the interest of justice to grant immunity, he or she must enter an order granting immunity to the witness if the witness appears before the court and testifies. In addition, as currently required, a true copy of the immunity order would have to be delivered to the witness before he or she answered any questions; all questions of the witness and his or her answers would have to be transcribed at the judge's discretion; and a copy of the transcript would have to be delivered to the witness as soon as practicable after transcription.

Under the Act, a person who has been granted immunity and is required to answer questions may not be prosecuted for any offense about which the answers may have tended to incriminate the witness. The bill would

delete that provision.

Under the bill, testimony or other information compelled under the order granting immunity and any information derived directly or indirectly from that testimony or other information could not be used against the witness in a criminal case, except for impeachment purposes or in a prosecution for perjury or otherwise failing to comply with the order.

As currently provided, a witness who failed or refused to testify after being served with the immunity order would be guilty of contempt.

Application by Agency or Official

The bill provides that a public official or agency authorized by a State statute to issue a subpoena or otherwise compel the testimony of a witness or the production of evidence in an investigation or proceeding authorized by the statute, or authorized to seek a subpoena or compelled testimony or production of evidence from a court, could apply to the court required to issue the subpoena or compel the testimony or production of evidence or otherwise to the circuit court of the county in which the investigation or proceeding was conducted, for an order granting immunity to a person who might give testimony or produce evidence concerning the investigation or subject of the proceeding.

The application would have to designate the person by name and address. The public official or agency would have to include a verified statement setting forth the facts upon which the application was based.

If the court determined that granting immunity was in the interests of justice, the court would have to enter an order granting immunity to the witness if he or she testified or produced evidence in the investigation or proceeding concerning the investigation or subject of the proceeding. A true copy of the immunity order would have to be delivered to the witness before he or she answered any questions subsequently asked at the investigation or proceeding or was required to produce any evidence. The order would apply until the court informed the witness that the immunity no longer applied.

All questions of the witness and his or her answers would have to be transcribed. A true and certified copy of the transcript would have to be delivered to the witness as soon as practicable after transcription.

Testimony, evidence, or other information compelled under the immunity order and any information derived directly or indirectly from that testimony, evidence, or information could not be used against the witness in a criminal case, except for impeachment purposes or in a prosecution for perjury or otherwise failing to comply with the order.

If the statute authorizing the public official or agency to issue a subpoena or compel testimony granted or permitted immunity to a witness that was different in nature from the immunity authorized under the bill, the public official or agency could apply for an order granting immunity under the bill as an alternative to the immunity granted or permitted under that statute.

MCL 780.701 et al. (S.B. 468)
767.6 & 767.19b (S.B. 469)
750.125 et al. (S.B. 470)
29.7 (S.B. 471)

Legislative Analyst: S. Lowe

FISCAL IMPACT

The bills would have an indeterminate impact on the criminal justice system. The extent to which the bills would affect convictions cannot be estimated.

Fiscal Analyst: B. Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

