

## THE CODE OF CRIMINAL PROCEDURE (EXCERPT)

### Act 175 of 1927

#### CHAPTER VIIIA

##### **767A.1 "Prosecuting attorney" defined.**

Sec. 1. As used in this chapter, "prosecuting attorney" means the attorney general or the prosecuting attorney for a county, or his or her designee.

**History:** Add. 1995, Act 148, Eff. Oct. 1, 1995.

##### **767A.2 Investigative subpoenas; petition for authorization; contents; filing; application for immunity; confidentiality of application; exemption from disclosure.**

Sec. 2. (1) A prosecuting attorney may petition the district court, the circuit court, or the recorder's court in writing for authorization to issue 1 or more subpoenas to investigate the commission of a felony as provided in this chapter.

(2) A petition for authorization to issue 1 or more investigative subpoenas under subsection (1) shall contain all of the following:

(a) A brief description of each felony being investigated.

(b) The name of each person who will be questioned or who will be required to produce material described under subdivision (c).

(c) A general description of any records, documents, or physical evidence to be examined.

(d) A brief statement of the facts establishing the basis for the prosecuting attorney's belief that the testimony of the person or examination of the records, documents, or physical evidence is relevant to the investigation of a felony described in the petition.

(3) The petition for authorization to issue 1 or more investigative subpoenas may be filed by the prosecuting attorney with any of the following:

(a) The circuit court of the judicial circuit in which the felony or a portion of the felony is alleged to have been committed or of any judicial circuit in which the prosecuting attorney lawfully maintains an office.

(b) The recorder's court if the felony or a portion of the felony is alleged to have been committed in the city of Detroit or if the prosecuting attorney lawfully maintains an office in the city of Detroit.

(c) The district court of the judicial district in which the felony or a portion of the felony is alleged to have been committed or of any judicial district in which the prosecuting attorney lawfully maintains an office.

(4) A prosecuting attorney may file an application for immunity under section 7 at the time he or she files a petition for authorization to issue 1 or more investigative subpoenas under this section.

(5) An application under this section is confidential and shall not be available for public inspection or copying or divulged to any person except as otherwise provided in this chapter. An application under this section is exempt for disclosure under the freedom of information act, Act No. 422 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**History:** Add. 1995, Act 148, Eff. Oct. 1, 1995.

##### **767A.3 Investigative subpoenas; issuance; circumstances; contents and scope of order; additional subpoenas; supplemental petitions; filing.**

Sec. 3. (1) A judge may authorize a prosecuting attorney in writing to issue 1 or more investigative subpoenas under this chapter if all of the following circumstances exist:

(a) A petition is properly filed under section 2.

(b) The judge determines there is reasonable cause to believe a felony has been committed.

(c) The judge determines there is reasonable cause to believe that either of the following circumstances exists:

(i) The person who is the subject of the investigative subpoena may have knowledge regarding the commission of the felony.

(ii) The records, documents, or physical evidence are relevant to investigate the commission of a felony described in the petition.

(2) An order issued by the judge authorizing a prosecuting attorney to issue 1 or more investigative subpoenas under this chapter shall contain all of the following:

(a) A statement identifying each felony to be investigated.

(b) A statement listing each person to whom an investigative subpoena may be issued.

(c) A statement listing the records, documents, or physical evidence subject to production under an investigative subpoena. The statement shall describe the records, documents, or physical evidence with

sufficient definiteness to permit those records, documents, or physical evidence to be fairly identified.

(3) A prosecuting attorney may issue investigative subpoenas to the extent authorized by the judge in the authorization order.

(4) If additional investigative subpoenas are required to conduct the investigation, the prosecuting attorney may file 1 or more supplemental petitions with the judge who issued the authorization to conduct the investigation requesting those additional investigative subpoenas. A supplemental petition under this subsection may incorporate the original petition for an investigative subpoena by reference. The petition shall be filed in the same manner that an original petition is filed under section 2.

**History:** Add. 1995, Act 148, Eff. Oct. 1, 1995.

#### **767A.4 Investigative subpoenas; contents; service of process.**

Sec. 4. (1) An investigative subpoena issued by a prosecuting attorney under this chapter shall contain all of the following information:

(a) The name of the person to whom it is directed and his or her address, if known. If the name of the person is not known, the investigative subpoena shall give a general description sufficient to identify the person.

(b) The time and place for taking the person's testimony or for the person to produce the required documents or physical evidence.

(c) A statement that the investigative subpoena is issued pursuant to this section.

(d) A statement identifying the criminal activity being investigated.

(e) A statement describing the records, documents, or physical evidence to be produced. The statement shall describe the records, documents, or physical evidence with sufficient definiteness to permit those records, documents, or physical evidence to be fairly identified.

(f) A statement that the person may object to the investigative subpoena or file reasons for not complying with the investigative subpoena by filing a written statement of objection or noncompliance with the prosecuting attorney on or before the date scheduled for the questioning or the production of the records, documents, or physical evidence. A statement under this subdivision shall also inform the person that the prosecuting attorney may seek an order compelling compliance with the investigative subpoena as provided in this chapter.

(g) A statement that the person may have legal counsel present at all times he or she is being questioned and during the examination of any records, documents, or physical evidence that he or she is required to produce.

(2) The court rules that apply to service of process in civil actions apply to service of investigative subpoenas under this chapter. However, an investigative subpoena shall be served not less than 7 days before the date set for the taking of testimony or examination of records, documents, or physical evidence unless the judge who issued the authorization for that investigative subpoena has shortened that period of time for good cause shown.

**History:** Add. 1995, Act 148, Eff. Oct. 1, 1995.

#### **767A.5 Appearance before prosecuting attorney; administration of oaths and affirmations; right to legal counsel; testimony with respect to records, documents or physical evidence; informing person of rights against self-incrimination; furnishing copy of testimony to defendant; effect of failure to provide copy of testimony; furnishing copy of testimony after direct examination of witness.**

Sec. 5. (1) A person properly served with an investigative subpoena under this chapter shall appear before the prosecuting attorney and answer questions concerning the felony being investigated or produce any records, documents, or physical evidence he or she is required to produce.

(2) The prosecuting attorney may administer oaths and affirmations in the manner prescribed by law to implement this chapter.

(3) Any person may have legal counsel present in the room in which the inquiry is held. The person may discuss fully with his or her legal counsel any matter relating to the person's part in the inquiry without being subject to citation for contempt.

(4) The prosecuting attorney may require a person having knowledge of any records, documents, or physical evidence subpoenaed under this chapter to testify under oath or acknowledgment with respect to those records, documents, or physical evidence.

(5) The prosecuting attorney shall inform the person of his or her constitutional rights regarding compulsory self-incrimination before asking any questions under an investigative subpoena. This subsection does not apply if the person is granted immunity under section 7.

(6) If a criminal charge is filed by the prosecuting attorney based upon information obtained pursuant to this chapter, upon the defendant's motion made not later than 21 days after the defendant is arraigned on the charge, the trial judge shall direct the prosecuting attorney to furnish to the defendant the testimony the defendant gave regarding the crime with which he or she is charged and may direct the prosecuting attorney to furnish to the defendant the testimony any witness who will testify at the trial gave the prosecuting attorney pursuant to this chapter regarding that crime except those portions that are irrelevant or immaterial, or that are excluded for other good cause shown. If the defendant requests the testimony of a witness pursuant to this section and the trial judge directs the prosecuting attorney to furnish to the defendant a copy of that witness's testimony, the prosecuting attorney shall furnish a copy of the testimony not later than 14 days before trial. If the prosecuting attorney fails or refuses to furnish a copy of the testimony to the defendant pursuant to this subsection, the prosecuting attorney may be barred from calling that witness to testify at the defendant's trial.

(7) If the trial judge has not directed the prosecuting attorney to furnish a copy of a witness's testimony to the defendant before trial, the prosecuting attorney shall, upon the defendant's request, furnish a copy of that testimony to the defendant after direct examination of that witness at trial has been completed.

**History:** Add. 1995, Act 148, Eff. Oct. 1, 1995.

#### **767A.6 Motion to order compliance with subpoena; filing; notice; hearing; court order; order violating statutory privilege or constitutional right prohibited; further protections; disclosure by reporter of informant or related information; circumstances.**

Sec. 6. (1) If a person files an objection to, or fails or refuses to answer any question or to produce any record, document, or physical evidence set forth in an investigative subpoena, the prosecuting attorney may file a motion with the judge who authorized the prosecuting attorney to issue the subpoena for an order compelling the person to comply with that subpoena. The prosecuting attorney shall serve notice of the motion under applicable court rules.

(2) If the prosecuting attorney files a motion with the court for an order under subsection (1), the court shall hold a hearing on the motion. The person has the right to appear and be heard regarding the motion and to have legal counsel present.

(3) If the court determines the question or evidentiary request of the prosecuting attorney is appropriate and within the scope of the authorization, the court shall order the person to answer the question or to produce the record, document, or physical evidence.

(4) If the court determines the question or request is inappropriate or outside the scope of the authorization, the court may order the prosecuting attorney to modify the question or the request or may disallow the question or the request.

(5) The court shall not compel the person to answer a question or produce any record, document, or physical evidence if answering that question or producing that record, document, or physical evidence would violate a statutory privilege or a constitutional right. Upon motion by the person and for good cause shown, the court may make any further order in the proceedings that justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense.

(6) A reporter or other person who is involved in the gathering or preparation of news for broadcast or publication is not required to disclose the identity of an informant, any unpublished information obtained from an informant, or any unpublished matter or documentation, in whatever manner recorded, relating to a communication with an informant, in any inquiry conducted under this chapter. A reporter or other person who is involved in the gathering or preparation of news for broadcast or publication is subject to an inquiry under this chapter only under the following circumstances:

(a) To obtain information that has been disseminated to the public by media broadcast or print publication.

(b) If the reporter or other person is the subject of the inquiry.

**History:** Add. 1995, Act 148, Eff. Oct. 1, 1995.

#### **767A.7 Order granting immunity.**

Sec. 7. (1) The prosecuting attorney may apply to the court for an order granting immunity to any person, designated by name and address in the application, whom the prosecuting attorney intends to require to give testimony concerning any matter investigated under this chapter. The application shall be accompanied by the prosecuting attorney's verified petition setting forth the facts upon which the application is based. If the judge determines it is in the interest of justice to grant immunity, the judge shall enter an order granting immunity to the person if the person appears before the prosecuting attorney and testifies under oath concerning the felony set forth in the petition of the prosecuting attorney. The order granting immunity shall extend to all related questions asked of the person.

(2) The prosecuting attorney shall provide the person with a true copy of the order issued under subsection

(1) before the prosecuting attorney asks the person any questions. No testimony or other information compelled under the order, or any information directly or indirectly derived from that testimony or other information, may be used against the person in any criminal case, except for impeachment purposes, in a prosecution for perjury, or for otherwise failing to comply with the order granting immunity.

(3) An order issued under this section that grants immunity to a person continues in effect until the judge or his or her successor, in his or her discretion and upon application by the prosecuting attorney, enters an order terminating the order granting immunity and the prosecuting attorney notifies the witness of the order of termination.

(4) Any person granted immunity under this section may have legal counsel present at all times at which he or she is being questioned concerning any matter included within the order granting immunity.

**History:** Add. 1995, Act 148, Eff. Oct. 1, 1995.

#### **767A.8 Confidentiality of certain material and information.**

Sec. 8. Petitions for immunity, orders of immunity, transcripts of testimony delivered to witnesses pursuant to grants of immunity, and records, documents, and physical evidence obtained by the prosecuting attorney pursuant to an investigation under this chapter are confidential and shall not be available for public inspection or copying or divulged to any person except as otherwise provided in this chapter. Material and information obtained under this act are exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**History:** Add. 1995, Act 148, Eff. Oct. 1, 1995.

#### **767A.9 Knowingly making false statement as perjury; penalty; neglect or refusal to comply with subpoena as contempt; determination that witness has purged himself or herself of contempt; commutation of sentence.**

Sec. 9. (1) A person who makes a false statement under oath in an examination conducted under this chapter knowing the statement is false is guilty of perjury punishable as follows:

(a) Except as provided in subdivision (b), by imprisonment for not more than 15 years.

(b) If the false statement was made during the investigation of a crime punishable by imprisonment for life, by imprisonment for life or for any term of years.

(2) A person who neglects or refuses to comply with an investigative subpoena in violation of a court order is guilty of contempt punishable by imprisonment for not more than 1 year or by a fine of not more than \$10,000.00, or both. If the witness appears before the court to purge himself or herself of that contempt, he or she shall be allowed to appear before the prosecuting attorney to answer any proper question concerning the matter under investigation, and after the witness appears before the prosecuting attorney, upon transcript of the testimony, the witness shall be brought before the court and after examination, the court shall determine whether the witness has purged himself or herself of the contempt. The court shall commute the sentence if the court finds the witness has purged himself or herself of that contempt.

**History:** Add. 1995, Act 148, Eff. Oct. 1, 1995.