



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3778

Introduced 2/10/2012, by Sen. William R. Haine

SYNOPSIS AS INTRODUCED:

See Index

Amends the Code of Criminal Procedure of 1963. Adds the State's Attorney's Investigative Subpoenas Article to the Code. Provides that at any time prior to the commencement of a prosecution and upon written application by the State's Attorney, the circuit court shall cause the clerk of the court to issue subpoenas ad testificandum or duces tecum directed to the sheriff or coroner of any county in the State for the purpose of obtaining the testimony of any person or any document or material relevant to a criminal matter being investigated by the State's Attorney. Establishes procedures under which the State's Attorney may apply for the issuance of such subpoenas. Provides that the State's Attorney shall promptly provide a complete transcript or electronic recording of all testimony taken pursuant to a subpoena issued under this Article to the court that issued the subpoena. Provides for disclosure of the existence of the subpoena issued or materials obtained pursuant to the Article to an attorney representing a person or other entity subpoenaed. Provides that the Attorney General, in cooperation with the Illinois State's Attorney Association, shall annually provide a course of training to the State's Attorneys, in the legal, ethical, and practical aspects of the provisions of the Article relating to investigation and prosecutorial functions. Effective immediately.

LRB097 17712 RLC 62926 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Criminal Procedure of 1963 is
5 amended by adding Article 108C as follows:

6 (725 ILCS 5/Art. 108C heading new)

7 ARTICLE 108C. STATE'S ATTORNEY'S INVESTIGATIVE SUBPOENAS

8 (725 ILCS 5/108C-1 new)

9 Sec. 108C-1. State's Attorney's investigative subpoenas.

10 At any time prior to the commencement of a prosecution and upon
11 written application by the State's Attorney as provided in
12 Section 108C-5, the circuit court shall cause the clerk of the
13 court to issue subpoenas ad testificandum or duces tecum
14 directed to the sheriff or coroner of any county in this State
15 for the purpose of obtaining the testimony of any person or any
16 document or material relevant to a criminal matter being
17 investigated by the State's Attorney. For the purposes of this
18 Article 108C, a prosecution is commenced upon the filing of a
19 complaint or information with the court or the return of a bill
20 of indictment.

21 (725 ILCS 5/108C-5 new)

1 Sec. 108C-5. Application by the State's Attorney. The
2 State's Attorney's application shall set forth the nature of
3 the matter he or she is investigating and the relevancy of the
4 testimony, documents, or materials he or she is seeking to the
5 investigation and certify that the testimony, documents, or
6 materials sought will be used solely in the exercise of the
7 State's Attorney's duty to investigate. In counties where a
8 grand jury is presently convened, impaneled, sworn, and
9 sitting, such application shall also include a showing of cause
10 by the State's Attorney as to why the court should authorize
11 the subpoena.

12 (725 ILCS 5/108C-10 new)

13 Sec. 108C-10. Return of subpoenaed materials. Materials
14 subpoenaed pursuant to this Article shall be returnable to the
15 circuit court for the purpose of an in camera inspection prior
16 to the delivery of the materials to the State's Attorney,
17 unless the court specifically finds that no issues of
18 relevance, privilege, or materiality precludes their return
19 directly to the State's Attorney. Rulings on relevance,
20 materiality, and privilege shall be governed by the rules
21 applicable to proceedings before the grand jury and not by the
22 rules of evidence applicable at trial.

23 (725 ILCS 5/108C-15 new)

24 Sec. 108C-15. Sworn testimony.

1 (a) Testimony taken pursuant to this Article shall be under
2 oath and take place at a time and location convenient to the
3 State's Attorney as directed by the court. The State's Attorney
4 shall swear all witnesses. The State's Attorney shall provide
5 for a court reporter to attend the session who shall make a
6 complete transcript of all proceedings unless the court
7 authorizes testimony to be recorded electronically. Such
8 electronic recordings shall include a complete audio and video
9 record of the entire interview. Before any testimony is given
10 by such a person subpoenaed under this Article against whom the
11 State's Attorney is considering criminal charges, the State's
12 Attorney shall inform that person that he or she has the right
13 to refuse to answer any question that will tend to incriminate
14 him or her, that anything he or she says may be used against
15 him or her in a court of law, that he or she has the right to be
16 accompanied and advised of his or her rights by counsel, and
17 that he or she will have counsel appointed for him or her if he
18 or she cannot afford one. If a person is accompanied by
19 counsel, such counsel shall advise him or her of his or her
20 rights during the proceedings but may not participate in any
21 way. Except for the State's Attorney's copy, transcripts or
22 recordings of such proceedings shall be sealed and in the event
23 a prosecution is commenced, such transcripts or recordings
24 shall be disclosed to the accused as provided by law.
25 Preservation of transcripts and recordings of testimony
26 obtained pursuant to this Section shall be preserved in

1 accordance with the record keeping practices applicable to
2 grand juries.

3 (b) Only the State's Attorney, his or her reporter, the
4 individual providing testimony and his or her attorney, and any
5 other person authorized by the court or by law may attend the
6 session.

7 (c) All subpoenas testificandum issued pursuant to this
8 Article shall on their face advise the responding party that he
9 or she has the right to be represented by an attorney, that if
10 the person is a target of the investigation, he or she has the
11 right to have an attorney present during all sessions in which
12 he or she is to provide testimony pursuant to the subpoena, and
13 that if he or she cannot afford an attorney, the court will
14 appoint an attorney to act on his or her behalf.

15 (d) The State's Attorney shall promptly provide a complete
16 transcript or electronic recording of all testimony taken
17 pursuant to a subpoena issued under this Article to the court
18 that issued the subpoena.

19 (725 ILCS 5/108C-20 new)

20 Sec. 108C-20. Secrecy of subpoenas.

21 (a) No person, except as provided in this Section, may
22 disclose the existence of a subpoena issued or materials
23 obtained pursuant to this Article. Disclosure may be made to:

24 (1) a State's Attorney for use in such State's
25 Attorney's duty; and

1 (2) an attorney representing a person or other entity
2 subpoenaed; and

3 (3) such government personnel as are deemed necessary
4 by the State's Attorney in the performance of such State's
5 Attorney's duty to investigate criminal conduct and
6 enforce State criminal law.

7 (b) Any person to whom matters are disclosed under this
8 Section shall not use the subpoenaed material for any purpose
9 other than assisting the State's Attorney in the performance of
10 such State's Attorney's duty to investigate criminal conduct
11 and enforce the law. The State's Attorney shall promptly
12 provide the court with the names of the persons to whom such
13 disclosure has been made.

14 (c) Disclosure otherwise prohibited by this Section may
15 also be made when the court directs such in the interest of
16 justice.

17 (d) Any person who discloses, other than to his or her
18 attorney, matters occurring before the issuing court, other
19 than in accordance with the provisions of this Section, shall
20 be punished as a contempt of court, subject to proceedings in
21 accordance to law.

22 (e) Any investigative subpoena, documents, or other
23 materials, and transcripts or electronic recordings of any
24 testimony made by an individual pursuant to a subpoena obtained
25 pursuant to this Article, shall be confidential and exempt from
26 public inspection and copying, as provided under Section 7 of

1 the Freedom of Information Act, and the information shall not
2 be transmitted to anyone except as needed to comply with this
3 Article.

4 (725 ILCS 5/108C-25 new)

5 Sec. 108C-25. Record of proceedings. Any proceeding
6 related to the issuance or enforceability of a subpoena issued
7 pursuant to this Article, or to the disclosure of information
8 obtained from such subpoena, shall take place in camera and in
9 the presence of the State's Attorney, and at the party's
10 request, the party subpoenaed and his or her counsel, and a
11 court reporter who shall transcribe the proceedings. Except for
12 the State's Attorney's copy, such transcripts shall be sealed
13 and in the event a prosecution is commenced, the transcript
14 shall be disclosed to the accused as provided by law.

15 (725 ILCS 5/108C-30 new)

16 Sec. 108C-30. Right to counsel. Any person appearing
17 before an issuing court in response to a subpoena issued under
18 this Article shall have the right to be accompanied by counsel.

19 (725 ILCS 5/108C-35 new)

20 Sec. 108C-35. Duties of others. The clerk of the court
21 shall keep records of subpoenas issued pursuant to this Article
22 as may be prescribed by the Rules of the Supreme Court.

1 (725 ILCS 5/108C-40 new)

2 Sec. 108C-40. Destroyed documents or materials. When
3 documents or materials that are the subject of a subpoena
4 issued pursuant to this Article have been destroyed or
5 withheld, in addition to criminal prosecution, any person
6 responsible for such conduct shall be punished as a contempt of
7 court subject to proceedings in accordance with law.

8 (725 ILCS 5/108C-45 new)

9 Sec. 108C-45. Person defined. As used in this Article
10 "person" means an individual, public or private corporation,
11 government or any subdivision of government, partnership, or
12 unincorporated association.

13 (725 ILCS 5/108C-50 new)

14 Sec. 108C-50. Training sessions. The Attorney General, in
15 cooperation with the Illinois State's Attorney Association,
16 shall annually provide a course of training to the State's
17 Attorneys, in the legal, ethical, and practical aspects of the
18 provisions of this Article relating to investigation and
19 prosecutorial functions.

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 725 ILCS 5/Art. 108C

4 heading new

5 725 ILCS 5/108C-1 new

6 725 ILCS 5/108C-5 new

7 725 ILCS 5/108C-10 new

8 725 ILCS 5/108C-15 new

9 725 ILCS 5/108C-20 new

10 725 ILCS 5/108C-25 new

11 725 ILCS 5/108C-30 new

12 725 ILCS 5/108C-35 new

13 725 ILCS 5/108C-40 new

14 725 ILCS 5/108C-45 new

15 725 ILCS 5/108C-50 new