



Rep. Dennis M. Reboletti

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1 AMENDMENT TO HOUSE BILL 2671

2 AMENDMENT NO. _____. Amend House Bill 2671 by replacing
3 everything after the enacting clause with the following:

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

1 document or material relevant to a criminal matter being
2 investigated by the State's Attorney. For the purposes of this
3 Article 108C, a prosecution is commenced upon the filing of a
4 complaint or information with the court or the return of a bill
5 of indictment.

6 (725 ILCS 5/108C-5 new)

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

18 (725 ILCS 5/108C-10 new)

19 Sec. 108C-10. Return of subpoenaed materials. Materials
20 subpoenaed pursuant to this Article shall be returnable to the
21 circuit court for the purpose of an in camera inspection prior
22 to the delivery of the materials to the State's Attorney,
23 unless the court specifically finds that no issues of
24 relevance, privilege, or materiality precludes their return

1 directly to the State's Attorney. Rulings on relevance,
2 materiality, and privilege shall be governed by the rules
3 applicable to proceedings before the grand jury and not by the
4 rules of evidence applicable at trial.

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

6 Sec. 108C-15. Sworn testimony.

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

1 rights during the proceedings but may not participate in any
2 way. Except for the State's Attorney's copy, transcripts or
3 recordings of such proceedings shall be sealed and in the event
4 a prosecution is commenced, such transcripts or recordings
5 shall be disclosed to the accused as provided by law.
6 Preservation of transcripts and recordings of testimony
7 obtained pursuant to this Section shall be preserved in
8 accordance with the record keeping practices applicable to
9 grand juries.

10 (b) Only the State's Attorney, his or her reporter, the
11 individual providing testimony and his or her attorney, and any
12 other person authorized by the court or by law may attend the
13 session.

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

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

1 (725 ILCS 5/108C-20 new)

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

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

6 (1) a State's Attorney for use in such State's
7 Attorney's duty; and

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

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

14 (b) Any person to whom matters are disclosed under this
15 Section shall not use the subpoenaed material for any purpose
16 other than assisting the State's Attorney in the performance of
17 such State's Attorney's duty to investigate criminal conduct
18 and enforce the law. The State's Attorney shall promptly
19 provide the court with the names of the persons to whom such
20 disclosure has been made.

21 (c) Disclosure otherwise prohibited by this Section may
22 also be made when the court directs such in the interest of
23 justice.

24 (d) Any person who discloses, other than to his or her
25 attorney, matters occurring before the issuing court, other
26 than in accordance with the provisions of this Section, shall

1 be punished as a contempt of court, subject to proceedings in
2 accordance to law.

3 (e) Any investigative subpoena, documents, or other
4 materials, and transcripts or electronic recordings of any
5 testimony made by an individual pursuant to a subpoena obtained
6 pursuant to this Article, shall be confidential and exempt from
7 public inspection and copying, as provided under Section 7 of
8 the Freedom of Information Act, and the information shall not
9 be transmitted to anyone except as needed to comply with this
10 Article.

11 (725 ILCS 5/108C-25 new)

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

22 (725 ILCS 5/108C-30 new)

23 Sec. 108C-30. Right to counsel. Any person appearing
24 before an issuing court in response to a subpoena issued under

1 this Article shall have the right to be accompanied by counsel.

2 (725 ILCS 5/108C-35 new)

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

6 (725 ILCS 5/108C-40 new)

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

13 (725 ILCS 5/108C-45 new)

14 Sec. 108C-45. Person defined. As used in this Article
15 "person" means an individual, public or private corporation,
16 government or any subdivision of government, partnership, or
17 unincorporated association.

18 (725 ILCS 5/108C-50 new)

19 Sec. 108C-50. Training sessions. The Attorney General, in
20 cooperation with the Illinois State's Attorney Association,
21 shall annually provide a course of training to the State's
22 Attorneys, in the legal, ethical, and practical aspects of the

1 provisions of this Article relating to investigation and
2 prosecutorial functions.

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.".