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INTRODUCED BY Senate Flynn BILL NO. 80

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR AN INVESTIGATIVE SUBPOENA FOR COUNTY ATTORNEYS AND THE ATTORNEY GENERAL, PROVIDING PROCEDURES THEREFOR, AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Investigative subpoena -- issuance. (1) In all cases where the attorney general or the county attorney has a duty to investigate criminal activity, any judge of this state may cause subpoenas to be issued commanding each person to whom directed to appear before the attorney general or the county attorney and give testimony under oath and produce such books, records, papers, documents, and other objects as may be necessary and proper to the investigation. A subpoena shall issue only when it appears upon the affidavit of the attorney general or the county attorney that the administration of justice requires the subpoena to be issued.

(2) Failure by any person without adequate excuse to obey a subpoena served upon him pursuant to this act is a contempt of the court from which the subpoena issued.

(3) A person aggrieved by a subpoena issued pursuant

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to this act may file a motion to dismiss the subpoena. The motion shall be granted if there were insufficient grounds for the issuance of the subpoena or if the subpoena was improperly issued.

Section 2. Conduct of investigative inquiry.

(1) The attorney general or the county attorney shall examine all witnesses subpoenaed pursuant to this act and testimony may be recorded and transcribed in the manner provided for grand jury proceedings.

(2) All proceedings conducted pursuant to this act shall be closed to the public and the secrecy and disclosure provisions relating to grand jury proceedings shall apply. Any person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt.

(3) All penalties for perjury or preparing, submitting or offering false evidence shall apply to proceedings conducted under this act.

Section 3. Self-incrimination and immunity. (1) No person subpoenaed to give testimony pursuant to this act may be required to make any statement or produce any evidence which may incriminate him. The attorney general or the county attorney may, on behalf of the state, grant any person subpoenaed immunity from prosecution or punishment based in whole or in part on the use or derivative of the

1 testimony or evidence given by that person pursuant to
2 subpoena. This immunity shall not extend to prosecution or
3 punishment for false statements given pursuant to the
4 subpoena. After being granted such immunity, no person may
5 be excluded from testifying on the grounds that his
6 testimony may incriminate him.

7 Section 4. Service, witness fees and costs. The
8 method of service of subpoenas issued pursuant to this act,
9 witness fees, and mileage shall be the same as required in
10 other criminal actions in this state. The state shall bear
11 all costs when application for subpoenas is made by the
12 attorney general and each county shall bear all costs when
13 application for subpoenas is made by its county attorney.

14 Section 5. This act is effective on its passage and
15 approval.

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