

1 H BILL NO. 498
2 INTRODUCED BY Sully

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
5 INVESTIGATIVE SUBPOENAS FOR COUNTY ATTORNEYS AND THE
6 ATTORNEY GENERAL; PROVIDING FOR PROCEDURES IN RELATION TO
7 SUCH SUBPOENAS AND THE INVESTIGATIVE INQUIRIES; AND
8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Investigative subpoena. (1) Whenever the
12 attorney general or a county attorney has a duty to
13 investigate criminal activity, any justice of the supreme
14 court or district court judge of this state may cause
15 subpoenas to be issued commanding the persons to whom they
16 are directed to appear before the attorney general or the
17 county attorney and give testimony and produce such books,
18 records, papers, documents, and other objects as may be
19 necessary and proper to the investigation. A subpoena may
20 issue only when it appears upon the affidavit of the
21 attorney general or the county attorney that the
22 administration of justice requires it to be issued.

23 (2) A person who, without just cause, fails to obey a
24 subpoena served on him pursuant to this act is punishable
25 for contempt of court.

1 (3) A person aggrieved by a subpoena issued pursuant
2 to this act may, within a reasonable time, file a motion to
3 dismiss the subpoena and, in the case of a subpoena duces
4 tecum, to limit its scope. The motion shall be granted if
5 the subpoena was improperly issued or, in the case of a
6 subpoena duces tecum, if it is overly broad in its scope.

7 Section 2. Conduct of investigative inquiry. (1) The
8 attorney general or the county attorney may examine under
9 oath all witnesses subpoenaed pursuant to this act.
10 Testimony may be recorded and transcribed in the manner
11 provided for grand jury proceedings.

12 (2) The secrecy and disclosure provisions relating to
13 grand jury proceedings apply to proceedings conducted under
14 subsection (1). A person who divulges the contents of the
15 application or the proceedings without legal privilege to do
16 so is punishable for contempt of court.

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

20 Section 3. Self-incrimination and immunity. (1) No
21 person subpoenaed to give testimony pursuant to this act may
22 be required to make any statement or produce any evidence
23 which may incriminate him. The attorney general or the
24 county attorney may, on behalf of the state, grant any
25 person subpoenaed immunity from prosecution or punishment

1 for or on account of any transaction or other matter
2 concerning which the person testifies or produces evidence
3 pursuant to the subpoena. After being granted such immunity,
4 no person may be excused from testifying on the grounds that
5 his testimony may incriminate him. The immunity may not
6 extend to prosecution or punishment for false statements
7 given pursuant to the subpoena.

8 (2) Nothing in this act requires a witness to divulge
9 the contents of a privileged communication unless the
10 privilege is waived as provided by law.

11 Section 4. Applicability of other laws -- costs. (1)
12 The fees and mileage of witnesses subpoenaed pursuant to
13 this act shall be the same as required in criminal actions.
14 The state shall bear all costs, including the cost of
15 service, when the application for the subpoena is made by
16 the attorney general, and the appropriate county shall bear
17 all costs, including the cost of service, when the
18 application for the subpoena is made by a county attorney.

19 (2) All provisions relating to subpoenas in criminal
20 actions apply to subpoenas issued pursuant to this act,
21 including the provisions of 95-1808 through 95-1811.

22 Section 5. Effective date. This act is effective on
23 its passage and approval.

-End-

Approved by Committee
on Judiciary

1 HOUSE BILL NO. 498
 2 INTRODUCED BY SCULLY
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
 5 INVESTIGATIVE SUBPOENAS FOR COUNTY ATTORNEYS AND THE
 6 ATTORNEY GENERAL; PROVIDING FOR PROCEDURES IN RELATION TO
 7 SUCH SUBPOENAS AND THE INVESTIGATIVE INQUIRIES; AND
 8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Investigative subpoena. (1) Whenever the
 12 attorney general or a county attorney has a duty to
 13 investigate ~~criminal activity~~ ALLEGED UNLAWFUL ACTIVITY, any
 14 justice of the supreme court or district court judge of this
 15 state may cause subpoenas to be issued commanding the
 16 persons to whom they are directed to appear before the
 17 attorney general or the county attorney and give testimony
 18 and produce such books, records, papers, documents, and
 19 other objects as may be necessary and proper to the
 20 investigation. A subpoena may issue only when it appears
 21 upon the affidavit of the attorney general or the county
 22 attorney that the administration of justice requires it to
 23 be issued.

24 (2) A person who, without just cause, fails to obey a
 25 subpoena served on him pursuant to this act is punishable

1 for contempt of court.

2 (3) A person aggrieved by a subpoena issued pursuant
 3 to this act may, within a reasonable time, file a motion to
 4 dismiss the subpoena and, in the case of a subpoena duces
 5 tecum, to limit its scope. The motion shall be granted if
 6 the subpoena was improperly issued or, in the case of a
 7 subpoena duces tecum, if it is overly broad in its scope.

8 Section 2. Conduct of investigative inquiry. (1) The
 9 attorney general or the county attorney may examine under
 10 oath all witnesses subpoenaed pursuant to this act.
 11 Testimony may be recorded and transcribed in the manner
 12 provided for grand jury proceedings.

13 (2) The secrecy and disclosure provisions relating to
 14 grand jury proceedings apply to proceedings conducted under
 15 subsection (1). A person who divulges the contents of the
 16 application or the proceedings without legal privilege to do
 17 so is punishable for contempt of court.

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

21 Section 3. Self-incrimination and immunity. (1) No
 22 person subpoenaed to give testimony pursuant to this act may
 23 be required to make any statement or produce any evidence
 24 which may incriminate him. The attorney general or the
 25 county attorney may, on behalf of the state, grant any

1 person subpoenaed immunity from prosecution or punishment
2 for or on account of any transaction or other matter
3 concerning which the person testifies or produces evidence
4 pursuant to the subpoena. After being granted such immunity,
5 no person may be excused from testifying on the grounds that
6 his testimony may incriminate him. The immunity may not
7 extend to prosecution or punishment for false statements
8 given pursuant to the subpoena.

9 (2) Nothing in this act requires a witness to divulge
10 the contents of a privileged communication unless the
11 privilege is waived as provided by law.

12 Section 4. Applicability of other laws -- costs. (1)
13 The fees and mileage of witnesses subpoenaed pursuant to
14 this act shall be the same as required in criminal actions.
15 The state shall bear all costs, including the cost of
16 service, when the application for the subpoena is made by
17 the attorney general, and the appropriate county shall bear
18 all costs, including the cost of service, when the
19 application for the subpoena is made by a county attorney.

20 (2) All provisions relating to subpoenas in criminal
21 actions apply to subpoenas issued pursuant to this act,
22 including the provisions of 95-1808 through 95-1811.

23 Section 5. Effective date. This act is effective on
24 its passage and approval.

-End-

HOUSE BILL NO. 498
INTRODUCED BY SCULLY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR INVESTIGATIVE SUBPOENAS FOR COUNTY ATTORNEYS AND THE ATTORNEY GENERAL; PROVIDING FOR PROCEDURES IN RELATION TO SUCH SUBPOENAS AND THE INVESTIGATIVE INQUIRIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Investigative subpoena. (1) Whenever the attorney general or a county attorney has a duty to investigate ~~criminal activity~~ ALLEGED UNLAWFUL ACTIVITY, any justice of the supreme court or district court judge of this state may cause subpoenas to be issued commanding the persons to whom they are directed to appear before the attorney general or the county attorney and give testimony and produce such books, records, papers, documents, and other objects as may be necessary and proper to the investigation. A subpoena may issue only when it appears upon the affidavit of the attorney general or the county attorney that the administration of justice requires it to be issued.

(2) A person who, without just cause, fails to obey a subpoena served on him pursuant to this act is punishable

for contempt of court.

(3) A person aggrieved by a subpoena issued pursuant to this act may, within a reasonable time, file a motion to dismiss the subpoena and, in the case of a subpoena duces tecum, to limit its scope. The motion shall be granted if the subpoena was improperly issued or, in the case of a subpoena duces tecum, if it is overly broad in its scope.

Section 2. Conduct of investigative inquiry. (1) The attorney general or the county attorney may examine under oath all witnesses subpoenaed pursuant to this act. Testimony may be recorded and transcribed in the manner provided for grand jury proceedings.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence 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

1 person subpoenaed immunity from prosecution or punishment
2 for or on account of any transaction or other matter
3 concerning which the person testifies or produces evidence
4 pursuant to the subpoena. After being granted such immunity,
5 no person may be excused from testifying on the grounds that
6 his testimony may incriminate him. The immunity may not
7 extend to prosecution or punishment for false statements
8 given pursuant to the subpoena.

9 (2) Nothing in this act requires a witness to divulge
10 the contents of a privileged communication unless the
11 privilege is waived as provided by law.

12 Section 4. Applicability of other laws -- costs. (1)
13 The fees and mileage of witnesses subpoenaed pursuant to
14 this act shall be the same as required in criminal actions.
15 The state shall bear all costs, including the cost of
16 service, when the application for the subpoena is made by
17 the attorney general, and the appropriate county shall bear
18 all costs, including the cost of service, when the
19 application for the subpoena is made by a county attorney.

20 (2) All provisions relating to subpoenas in criminal
21 actions apply to subpoenas issued pursuant to this act,
22 including the provisions of 95-1808 through 95-1811.

23 Section 5. Effective date. This act is effective on
24 its passage and approval.

-End-

April 4, 1977

SENATE
STANDING COMMITTEE REPORT
Judiciary Committee

That House Bill No. 498, third reading, be amended as follows:

1. Amend title, lines 5 and 6.

Following: "ATTORNEYS"

Strike: "AND THE ATTORNEY GENERAL"

2. Amend page 1, section 1, lines 11 and 12.

Following: "Whenever"

Strike: "the attorney general or"

3. Amend page 1, section 1, lines 16 and 17.

Following: "before"

Strike: "the attorney general or"

4. Amend page 1, section 1, line 21.

Following: "of"

Strike: "the attorney general or"

5. Amend page 1, section 1, line 23.

Following: "issued"

Insert: "and that there is a relevant connection to an existing criminal investigation"

6. Amend page 2, section 2, lines 8 and 9.

Following: "(1)"

Strike: "The attorney general or"

Insert: "Any examination by"

Following: "county attorney"

Strike: "may examine"

Insert: "under this act shall be conducted"

7. Amend page 2, section 2, line 10.

Following: "oath"

Insert: "before the justice or judge who authorized the issuance of the subpoena"

8. Amend page 2, section 2, line 10.

Following: "oath"

Strike: "all witnesses subpoenaed pursuant to this act"

9. Amend page 2, section 2, lines 11 and 12.

Following: "Testimony"

Strike: "may"

Insert: "shall"

Following: "recorded"

Strike: "and transcribed in the manner provided for grand jury proceedings"

Insert: ". The witness has the right to have counsel present at all times
If he does not have funds to obtain counsel, the judge or
justice shall appoint counsel for him"

10. Amend page 2, section 3, line 24.

Following: "The"

Strike: "attorney general or the"

11. Amend page 2, section 3, line 25.

Following: "may"

Insert: " with the approval of the justice or judge who authorized the issuance of the subpoena"

12. Amend page 3, section 4, lines 15 through 17.

Following: "The"

Strike: "state shall bear all costs, including the cost of service, when the application for the subpoena is made by the attorney general, and the"

13. Amend page 3, section 4, lines 18 and 19.

Following: "service"

Strike: ", when the application for the subpoena is made by a county attorney"

1 HOUSE BILL NO. 498
 2 INTRODUCED BY SCULLY
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
 5 INVESTIGATIVE SUBPOENAS FOR COUNTY ATTORNEYS ~~AND THE~~
 6 ~~ATTORNEY-GENERAL~~; PROVIDING FOR PROCEDURES IN RELATION TO
 7 SUCH SUBPOENAS AND THE INVESTIGATIVE INQUIRIES; AND
 8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Investigative subpoena. (1) Whenever ~~the~~
 12 ~~attorney-general~~ or a county attorney has a duty to
 13 investigate ~~criminal activity~~ ALLEGED UNLAWFUL ACTIVITY, any
 14 justice of the supreme court or district court judge of this
 15 state may cause subpoenas to be issued commanding the
 16 persons to whom they are directed to appear before ~~the~~
 17 ~~attorney-general~~ or the county attorney and give testimony
 18 and produce such books, records, papers, documents, and
 19 other objects as may be necessary and proper to the
 20 investigation. A subpoena may issue only when it appears
 21 upon the affidavit of ~~the attorney-general~~ or the county
 22 attorney that the administration of justice requires it to
 23 be issued AND THAT THERE IS RELEVANT CONNECTION TO AN
 24 EXISTING CRIMINAL INVESTIGATION.

25 (2) A person who, without just cause, fails to obey a

1 subpoena served on him pursuant to this act is punishable
2 for contempt of court.

3 (3) A person aggrieved by a subpoena issued pursuant
 4 to this act may, within a reasonable time, file a motion to
 5 dismiss the subpoena and, in the case of a subpoena duces
 6 tecum, to limit its scope. The motion shall be granted if
 7 the subpoena was improperly issued or, in the case of a
 8 subpoena duces tecum, if it is overly broad in its scope.

9 Section 2. Conduct of investigative inquiry. (1) ~~The~~
 10 ~~attorney-general~~ or ANY EXAMINATION BY the county attorney
 11 ~~may examine~~ UNDER THIS ACT SHALL BE CONDUCTED under oath ~~at~~
 12 ~~witnesses subpoenaed pursuant to this act~~ BEFORE THE JUSTICE
 13 OR JUDGE WHO AUTHORIZED THE ISSUANCE OF THE SUBPOENA.
 14 Testimony ~~may~~ SHALL be recorded ~~and transcribed in the~~
 15 ~~manner provided for grand jury proceedings.~~ THE WITNESS HAS
 16 THE RIGHT TO HAVE COUNSEL PRESENT AT ALL TIMES. IF HE DOES
 17 NOT HAVE FUNDS TO OBTAIN COUNSEL, THE JUDGE OR JUSTICE SHALL
 18 APPOINT COUNSEL FOR HIM.

19 (2) The secrecy and disclosure provisions relating to
 20 grand jury proceedings apply to proceedings conducted under
 21 subsection (1). A person who divulges the contents of the
 22 application or the proceedings without legal privilege to do
 23 so is punishable for contempt of court.

24 (3) All penalties for perjury or preparing,
25 submitting, or offering false evidence apply to proceedings

1 conducted under this act.

2 Section 3. Self-incrimination and immunity. (1) No
 3 person subpoenaed to give testimony pursuant to this act may
 4 be required to make any statement or produce any evidence
 5 which may incriminate him. The ~~attorney--general--or--the~~
 6 county attorney may, WITH THE APPROVAL OF THE JUSTICE OR
 7 JUDGE WHO AUTHORIZED THE ISSUANCE OF THE SUBPOENA on behalf
 8 of the state, grant any person subpoenaed immunity from
 9 prosecution or punishment for or on account of any
 10 transaction or other matter concerning which the person
 11 testifies or produces evidence pursuant to the subpoena.
 12 After being granted such immunity, no person may be excused
 13 from testifying on the grounds that his testimony may
 14 incriminate him. The immunity may not extend to prosecution
 15 or punishment for false statements given pursuant to the
 16 subpoena.

17 (2) Nothing in this act requires a witness to divulge
 18 the contents of a privileged communication unless the
 19 privilege is waived as provided by law.

20 Section 4. Applicability of other laws -- costs. (1)
 21 The fees and mileage of witnesses subpoenaed pursuant to
 22 this act shall be the same as required in criminal actions.
 23 ~~The state shall bear all costs, including the cost of~~
 24 ~~service when the application for the subpoena is made by~~
 25 ~~the attorney general, and the appropriate county shall bear~~

1 all costs, including the cost of service ~~when the~~
 2 ~~application for the subpoena is made by a county attorney.~~

3 (2) All provisions relating to subpoenas in criminal
 4 actions apply to subpoenas issued pursuant to this act,
 5 including the provisions of 95-1808 through 95-1811.

6 Section 5. Effective date. This act is effective on
 7 its passage and approval.

-End-

1 HOUSE BILL NO. 498

2 INTRODUCED BY SCULLY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
5 INVESTIGATIVE SUBPOENAS FOR COUNTY ATTORNEYS ~~AND THE~~
6 ~~ATTORNEY GENERAL AND THE ATTORNEY GENERAL~~; PROVIDING FOR
7 PROCEDURES IN RELATION TO SUCH SUBPOENAS AND THE
8 INVESTIGATIVE INQUIRIES; AND PROVIDING AN IMMEDIATE
9 EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Investigative subpoena. (1) Whenever ~~the~~
13 ~~attorney general or THE ATTORNEY GENERAL~~ OR a county
14 attorney has a duty to investigate ~~criminal activity~~ ALLEGED
15 UNLAWFUL ACTIVITY, any justice of the supreme court or
16 district court judge of this state may cause subpoenas to be
17 issued commanding the persons to whom they are directed to
18 appear before ~~the attorney general or THE ATTORNEY GENERAL~~
19 OR the county attorney and give testimony and produce such
20 books, records, papers, documents, and other objects as may
21 be necessary and proper to the investigation. A subpoena may
22 issue only when it appears upon the affidavit of ~~the~~
23 ~~attorney general or THE ATTORNEY GENERAL~~ OR the county
24 attorney that the administration of justice requires it to
25 be issued ~~AND THAT THERE IS RELEVANT CONNECTION TO AN~~

1 ~~EXISTING CRIMINAL INVESTIGATION.~~

2 (2) A person who, without just cause, fails to obey a
3 subpoena served on him pursuant to this act is punishable
4 for contempt of court.

5 (3) A person aggrieved by a subpoena issued pursuant
6 to this act may, within a reasonable time, file a motion to
7 dismiss the subpoena and, in the case of a subpoena duces
8 tecum, to limit its scope. The motion shall be granted if
9 the subpoena was improperly issued or, in the case of a
10 subpoena duces tecum, if it is overly broad in its scope.

11 Section 2. Conduct of investigative inquiry. (1) ~~The~~
12 ~~attorney general or ANY EXAMINATION BY THE ATTORNEY GENERAL~~
13 ~~OR the county attorney may examine~~ UNDER THIS ACT SHALL BE
14 CONDUCTED MAY EXAMINE under oath ~~all witnesses subpoenaed~~
15 ~~pursuant to this act BEFORE THE JUSTICE OR JUDGE WHO~~
16 ~~AUTHORIZED THE ISSUANCE OF THE SUBPOENA~~ ALL WITNESSES
17 SUBPOENAED PURSUANT TO THIS ACT. Testimony may ~~SHALL~~ be
18 recorded ~~and transcribed in the manner provided for grand~~
19 ~~jury proceedings.~~ THE WITNESS HAS THE RIGHT TO HAVE COUNSEL
20 PRESENT AT ALL TIMES. IF HE DOES NOT HAVE FUNDS TO OBTAIN
21 COUNSEL, THE JUDGE OR JUSTICE SHALL APPOINT COUNSEL FOR HIM.

22 (2) The secrecy and disclosure provisions relating to
23 grand jury proceedings apply to proceedings conducted under
24 subsection (1). A person who divulges the contents of the
25 application or the proceedings without legal privilege to do

FINAL PRINTING

ADOPTED BY
HOUSE OF REPRESENTATIVES
AND SENATE

1 so is punishable for contempt of court.

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

5 Section 3. Self-incrimination and immunity. (1) No
6 person subpoenaed to give testimony pursuant to this act may
7 be required to make any statement or produce any evidence
8 which may incriminate him. The ~~attorney-general or the~~
9 ATTORNEY GENERAL OR THE county attorney may, WITH THE
10 APPROVAL OF THE JUSTICE OR JUDGE WHO AUTHORIZED THE ISSUANCE
11 OF THE SUBPOENA on behalf of the state, grant any person
12 subpoenaed immunity from prosecution or punishment for or on
13 account of any transaction or other matter concerning which
14 the person testifies or produces evidence pursuant to the
15 subpoena. After being granted such immunity, no person may
16 be excused from testifying on the grounds that his testimony
17 may incriminate him. The immunity may not extend to
18 prosecution or punishment for false statements given
19 pursuant to the subpoena.

20 (2) Nothing in this act requires a witness to divulge
21 the contents of a privileged communication unless the
22 privilege is waived as provided by law.

23 Section 4. Applicability of other laws -- costs. (1)
24 The fees and mileage of witnesses subpoenaed pursuant to
25 this act shall be the same as required in criminal actions.

1 The ~~state shall bear all costs, including the cost of~~
2 ~~service, when the application for the subpoena is made by~~
3 ~~the attorney-general, and the STATE SHALL BEAR ALL COSTS,~~
4 INCLUDING THE COST OF SERVICE, WHEN THE APPLICATION FOR THE
5 SUBPOENA IS MADE BY THE ATTORNEY GENERAL, AND THE
6 appropriate county shall bear all costs, including the cost
7 of service, ~~when the application for the subpoena is made by~~
8 ~~a county attorney~~ WHEN THE APPLICATION FOR THE SUBPOENA IS
9 MADE BY A COUNTY ATTORNEY.

10 (2) All provisions relating to subpoenas in criminal
11 actions apply to subpoenas issued pursuant to this act,
12 including the provisions of 95-1808 through 95-1811.

13 Section 5. Effective date. This act is effective on
14 its passage and approval.

-End-