

Original sponsors: Cowper and Dankworth

Offered: 4/14/77  
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 143

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to immunity and protection of wit-  
7 nesses; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 12.50 is amended by adding new sections to read:

10 ARTICLE 3. IMMUNITY OF WITNESSES.

11 Sec. 12.50.110. DECLARATION OF PURPOSE. The purpose of secs.  
12 110 - 140 of this chapter is to provide a means to solve serious felony  
13 offenses committed with a high degree of secrecy, through the mechanism  
14 of witness immunity and, when necessary, the issuance of a court order  
15 compelling testimony or the production of other evidence or information  
16 in a criminal proceeding or investigation under specified standards  
17 consistent with an individual's guarantee under the Constitution of the  
18 United States and the Constitution of the State of Alaska not to be  
19 compelled to incriminate himself. Immunity should not be extended to a  
20 witness under an order compelling testimony or the production of other  
21 evidence or information unless a compelling state interest has been  
22 demonstrated within the context of a criminal proceeding or investiga-  
23 tion in which the public interest in prosecuting the offense which is  
24 the subject of a criminal proceeding or investigation is of a nature  
25 sufficient to outweigh the individual privacy interests of the witness  
26 as specified in sec. 130(a) of this chapter.

27 Sec. 12.50.120. PROSECUTORIAL IMMUNITY. (a) Whenever a person  
28 has been or may be called to testify in a criminal proceeding or in-  
29 vestigation before or ancillary to a court or a grand jury of the

1 State of Alaska, a state prosecuting attorney may, with the written  
2 concurrence of the attorney general, execute in writing a grant of  
3 immunity from prosecution to him upon terms that may be agreed upon  
4 between the prosecution and the prospective witness.

5 (b) Whenever a person is called to testify in a proceeding under  
6 a grant of immunity under (a) of this section, the grant of immunity  
7 shall be made a part of the record of the proceeding.

8 Sec. 12.50.130. ORDER COMPELLING TESTIMONY OR OTHER EVIDENCE;  
9 IMMUNITY OF WITNESS FROM PROSECUTION. (a) In the case of a person who  
10 has been or may be called to testify or provide other evidence or  
11 information in a criminal proceeding or investigation before or ancil-  
12 lary to a court or a grand jury of the State of Alaska, the superior  
13 court for the judicial district in which the proceeding is or may be  
14 held shall issue, upon the in camera, ex parte application of a state  
15 prosecuting attorney with the written concurrence of the attorney  
16 general, an order requiring the person to testify or provide other  
17 evidence or information as requested whenever the court finds that it  
18 has first been demonstrated by affidavit or otherwise through clear and  
19 convincing evidence that

20 (1) the testimony or other evidence or information sought to  
21 be compelled relates to and is likely to be material to an inquiry into  
22 criminal activity which constitutes a felony offense or offenses, the  
23 commission or attempted commission of which involves

24 (A) violence, threats of violence or a high potential  
25 for violence;

26 (B) property loss or illegally obtained property of an  
27 aggregate value in excess of \$10,000;

28 (C) blackmail under AS 11.15.300;

29 (D) extortion under AS 11.20.345;

1 (E) obtaining money or property by false pretenses under  
2 AS 11.20.360;

3 (F) perjury or subordination of perjury under AS 11.30.-  
4 010;

5 (G) bribery under AS 11.30.040 or accepting a bribe  
6 under AS 11.30.050; or

7 (H) influencing witnesses, judges or jurors or obstruc-  
8 ting the administration of justice under AS 11.30.320;

9 (2) the person who is the subject of the application has  
10 refused or is likely to refuse to testify or provide other evidence or  
11 information on the basis of his privilege against self-incrimination;  
12 and

13 (3) all evidence, which the state may seek to introduce in a  
14 criminal proceeding brought against a witness who is compelled to tes-  
15 tify under this section, which relates to any transaction about which he  
16 is compelled to testify, has been filed in sealed form in the superior  
17 court.

18 (b) Whenever a witness refuses, on the basis of his privilege  
19 against self-incrimination, to testify or provide other evidence or  
20 information in a criminal proceeding or investigation before or ancil-  
21 lary to a court or a grand jury of the State of Alaska and the person  
22 presiding over the proceeding communicates to the witness an order  
23 issued under (a) of this section, the witness may not refuse to comply  
24 with the order and may not be excused from testifying or from providing  
25 other evidence or information on the grounds that the testimony or other  
26 evidence or information required of him may tend to incriminate him or  
27 subject him to any penalty or forfeiture.

28 (c) No testimony or other evidence or information compelled under  
29 (b) of this section which is responsive to an order issued under (a) of

1 this section, nor any evidence directly or indirectly derived from the  
2 testimony or other evidence or information compelled, may be used in any  
3 criminal proceeding brought against the witness nor may he be subjected  
4 to any penalty or forfeiture for, or on account of, testimony or other  
5 evidence of information compelled and responsive to the order, or any  
6 evidence directly or indirectly derived from it; except that no witness  
7 is immune or exempt under this subsection from prosecution, penalty, or  
8 forfeiture for perjury, false swearing, giving a false statement, or  
9 contempt committed while testifying or providing other evidence or  
10 information, or failing or refusing to do so, under compulsion as pro-  
11 vided in this section.

12 (d) Except in a prosecution authorized under (c) of this section,  
13 only evidence filed with the superior court under (a)(3) of this section  
14 may be admitted into evidence in any proceeding brought against a wit-  
15 ness who has been compelled to testify or provide other evidence or  
16 information.

17 (e) Before issuance of an order under (a) of this section, the  
18 court shall require an assurance that necessary steps have been or will  
19 be taken to provide the person who is the subject of the application and  
20 members of his immediate family and household with adequate protection  
21 from retribution, under sec. 150 of this chapter.

22 (f) No person other than the witness himself may question the  
23 validity or otherwise challenge an order issued under (a) of this  
24 section.

25 (g) For purposes of this section, "other evidence or information"  
26 means any physical object, book, paper, document, record, recording, or  
27 other material.

28 Sec. 12.50.140. WILFUL FAILURE OR REFUSAL TO COMPLY WITH AN ORDER  
29 COMPELLING TESTIMONY OR OTHER EVIDENCE. (a) During the time it is

1 within the power of a witness to comply with an order issued under sec.  
2 130(a) of this chapter, a wilful failure or refusal to comply, without a  
3 lawful excuse for not complying, constitutes civil contempt. After  
4 notice and a hearing before the court sitting without a jury at which  
5 the witness is afforded an opportunity to show cause why he should not  
6 be found in contempt, a witness who fails to establish a lawful excuse  
7 for not complying and who persists in his failure or refusal to comply  
8 shall be imprisoned until he complies or until it is no longer within  
9 his power to comply.

10 (b) A person who has wilfully failed or refused to comply with an  
11 order issued under sec. 130(a) of this chapter without a lawful excuse  
12 for not complying, who has been found in contempt under (a) of this  
13 section, who has been afforded a further opportunity to comply, and who  
14 no longer has it within his power to comply, is guilty of criminal  
15 contempt and upon conviction is punishable by imprisonment for a period  
16 of not more than three years or by a fine of not more than \$10,000,  
17 or by both.

#### 18 ARTICLE 4. PROTECTION OF WITNESSES.

##### 19 Sec. 12.50.150. AUTHORITY TO PROVIDE FOR PROTECTION OF WITNESSES.

20 (a) The attorney general, in cooperation with the commissioner of  
21 public safety, is authorized to provide for the general safety and  
22 security of a witness in a criminal proceeding or investigation and  
23 members of the witness' immediate family and household whenever, in the  
24 attorney general's judgment, testimony from, or a willingness to testify  
25 by, such a witness would place the witness' life or person, or the life  
26 or person of a member of his family or household, in jeopardy.

27 (b) The authority under (a) of this section includes, but is not  
28 limited to, the authority to rent, purchase, modify, or remodel pro-  
29 tected housing facilities and to otherwise offer to provide for the

1 health, safety and welfare of witnesses and persons intended to be  
2 called as witnesses, and members of their immediate families and house-  
3 holds.

4 (c) Any person availing himself of an offer of protection under  
5 this section may do so for as long as the attorney general determines  
6 the jeopardy to the witness' life or person or that of his family or  
7 household continues, subject to the conditions and restrictions that may  
8 from time to time be required.

9 (d) In this section, "witness" includes a potential witness.

10 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-  
11 070(c).