

Introduced: 1/29/79
Referred: Judiciary

BY DANKWORTH, BRADLEY, FAHRENKAMP
AND HACKNEY

1 IN THE SENATE

2 SENATE BILL NO. 78

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to immunity and protection of
7 witnesses; 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 AS 12.50.-
12 110 - 12.50.140 is to provide a means to solve serious felony offenses
13 committed with a high degree of secrecy, through the mechanism of wit-
14 ness immunity and, when necessary, the issuance of a court order com-
15 pelling testimony or the production of other evidence or information in
16 a criminal proceeding or investigation under specified standards con-
17 sistent 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 AS 12.50.130(a).

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 a
6 grant of immunity under (a) of this section, the grant of immunity shall
7 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 infor-
11 mation in a criminal proceeding or investigation before or ancillary to
12 a court or a grand jury of the State of Alaska, the superior court for
13 the judicial district in which the proceeding is or may be held shall
14 issue, upon the in camera, ex parte application of a state prosecuting
15 attorney with the written concurrence of the attorney general, an order
16 requiring the person to testify or provide other evidence or information
17 as requested whenever the court finds that it has first been demon-
18 strated by affidavit or otherwise through clear and convincing evidence
19 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) extortion under AS 11.41.520;

29 (D) coercion under AS 11.41.530;

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(E) theft by deception under AS 11.46.180 sufficient to constitute theft in the first degree under AS 11.46.120 or theft in the second degree under AS 11.46.130;

(F) bribery under AS 11.56.100 or receiving a bribe under AS 11.56.110;

(G) perjury under AS 11.56.200;

(H) interference with official proceedings under AS 11.56.510;

(I) receiving a bribe by a witness or juror under AS 11.56.520;

(J) jury tampering under AS 11.56.590; or

(K) misconduct by a juror under AS 11.56.600;

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

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

(b) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other evidence or information in a criminal proceeding or investigation before or ancillary to a court or a grand jury of the State of Alaska and the person presiding over the proceeding communicates to the witness an order issued under (a) of this section, the witness may not refuse to comply with the order and may not be excused from testifying or from providing other evidence or information on the grounds that the testimony or other

1 evidence or information required of him may tend to incriminate him or
2 subject him to any penalty or forfeiture.

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

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

21 (e) Before issuance of an order under (a) of this section, the
22 court shall require an assurance that necessary steps have been or will
23 be taken to provide the person who is the subject of the application and
24 members of his immediate family and household with adequate protection
25 from retribution, under AS 12.50.150.

26 (f) No person other than the witness himself may question the va-
27 lidity or otherwise challenge an order issued under (a) of this section.

28 (g) For purposes of this section, "other evidence or information"
29 means any physical object, book, paper, document, record, recording, or

1 other material.

2 Sec. 12.50.140. WILFUL FAILURE OR REFUSAL TO COMPLY WITH AN ORDER
3 COMPELLING TESTIMONY OR OTHER EVIDENCE. (a) During the time it is with-
4 in the power of a witness to comply with an order issued under AS 12.50.
5 130(a), a wilful failure or refusal to comply, without lawful excuse for
6 not complying, constitutes civil contempt. After notice and a hearing
7 before the court sitting without a jury at which the witness is afforded
8 an opportunity to show cause why he should not be found in contempt, a
9 witness who fails to establish a lawful excuse for not complying and who
10 persists in his failure or refusal to comply shall be imprisoned until he
11 complies or until it is no longer within his power to comply.

12 (b) A person who has wilfully failed or refused to comply with an
13 order issued under AS 12.50.130(a) without a lawful excuse for not
14 complying, who has been found in contempt under (a) of this section, who
15 has been afforded a further opportunity to comply, and who no longer has
16 it within his power to comply, is guilty of criminal contempt and upon
17 conviction is punishable by imprisonment for a period of not more than
18 three years or by a fine of not more than \$10,000, or by both.

19 * Sec. 2. AS 12.50 is amended by adding a new section to read:

20 ARTICLE 4. PROTECTION OF WITNESSES.

21 Sec. 12.50.150. AUTHORITY TO PROVIDE FOR PROTECTION OF WITNESSES.

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

29 (b) The authority under (a) of this section includes, but is not

1 limited to, the authority to rent, purchase, modify, or remodel pro-
2 tected housing facilities and to otherwise offer to provide for the
3 health, safety and welfare of witnesses and persons intended to be
4 called as witnesses, and members of their immediate families and house-
5 holds.

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

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

12 * Sec. 3. DECLARATION OF PURPOSE. The purpose of secs. 3 - 6 of this Act
13 is to provide a means to solve serious felony offenses committed with a high
14 degree of secrecy, through the mechanism of witness immunity and, when neces-
15 sary, the issuance of a court order compelling testimony or the production of
16 other evidence or information in a criminal proceeding or investigation under
17 specified standards consistent with an individual's guarantee under the
18 Constitution of the United States and the Constitution of the State of Alaska
19 not to be compelled to incriminate himself. Immunity should not be extended
20 to a witness under an order compelling testimony or the production of other
21 evidence or information unless a compelling state interest has been demon-
22 strated within the context of a criminal proceeding or investigation in which
23 the public interest in prosecuting the offense which is the subject of a
24 criminal proceeding or investigation is of a nature sufficient to outweigh
25 the individual privacy interests of the witness as specified in sec. 5(a) of
26 this Act.

27 * Sec. 4. PROSECUTORIAL IMMUNITY. (a) Whenever a person has been or may
28 be called to testify in a criminal proceeding or investigation before or
29 ancillary to a court or a grand jury of the State of Alaska, a state prose-

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

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

7 * Sec. 5. ORDER COMPELLING TESTIMONY OR OTHER EVIDENCE; IMMUNITY OF
8 WITNESS FROM PROSECUTION. (a) In the case of a person who has been or may
9 be called to testify or provide other evidence or information in a criminal
10 proceeding or investigation before or ancillary to a court or a grand jury of
11 the State of Alaska, the superior court for the judicial district in which
12 the proceeding is or may be held shall issue, upon the in camera, ex parte
13 application of a state prosecuting attorney with the written concurrence of
14 the attorney general, an order requiring the person to testify or provide
15 other evidence or information as requested whenever the court finds that it
16 has first been demonstrated by affidavit or otherwise through clear and
17 convincing evidence that

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

22 (A) violence, threats of violence or a high potential for
23 violence;

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

26 (C) blackmail under AS 11.15.300;

27 (D) extortion under AS 11.20.345;

28 (E) obtaining money or property by false pretenses under
29 AS 11.20.360;

1 (F) perjury or subornation of perjury under AS 11.30.010;
2 (G) bribery under AS 11.30.040 or accepting a bribe under AS
3 11.30.050; or
4 (H) influencing witnesses, judges or jurors or obstructing
5 the administration of justice under AS 11.30.320;

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

9 (3) all evidence, which the state may seek to introduce in a
10 criminal proceeding brought against a witness who is compelled to testify
11 under this section, which relates to any transaction about which he is com-
12 pelled to testify, has been filed in sealed form in the superior court.

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

22 (c) No testimony or other evidence or information compelled under (b)
23 of this section which is responsive to an order issued under (a) of this sec-
24 tion, nor any evidence directly or indirectly derived from the testimony or
25 other evidence or information compelled, may be used in any criminal proceed-
26 ing brought against the witness nor may he be subjected to any penalty or
27 forfeiture for, or on account of, testimony or other evidence of information
28 compelled and responsive to the order, or any evidence directly or indirectly
29 derived from it; except that no witness is immune or exempt under this sub-

1 section from prosecution, penalty, or forfeiture for perjury, false swearing,
2 giving a false statement, or contempt committed while testifying or providing
3 other evidence or information, or failing or refusing to do so, under compul-
4 sion as provided in this section.

5 (d) Except in a prosecution authorized under (c) of this section, only
6 evidence filed with the superior court under (a)(3) of this section may be
7 admitted into evidence in any proceeding brought against a witness who has
8 been compelled to testify or provide other evidence or information.

9 (e) Before issuance of an order under (a) of this section, the court
10 shall require an assurance that necessary steps have been or will be taken to
11 provide the person who is the subject of the application and members of his
12 immediate family and household with adequate protection from retribution,
13 under AS 12.50.150.

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

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

19 * Sec. 6. WILFUL FAILURE OR REFUSAL TO COMPLY WITH AN ORDER COMPELLING
20 TESTIMONY OR OTHER EVIDENCE. (a) During the time it is within the power of
21 a witness to comply with an order issued under sec. 5(a) of this Act, a
22 wilful failure or refusal to comply, without lawful excuse for not complying,
23 constitutes civil contempt. After notice and a hearing before the court
24 sitting without a jury at which the witness is afforded an opportunity to
25 show cause why he should not be found in contempt, a witness who fails to
26 establish a lawful excuse for not complying and who persists in his failure
27 or refusal to comply shall be imprisoned until he complies or until it is no
28 longer within his power to comply.

29 (b) A person who has wilfully failed or refused to comply with an

1 order issued under sec. 5(a) of this Act without a lawful excuse for not
2 complying, who has been found in contempt under (a) of this section, who
3 has been afforded a further opportunity to comply, and who no longer has
4 it within his power to comply, is guilty of criminal contempt and upon
5 conviction is punishable by imprisonment for a period of not more than
6 three years or by a fine of not more than \$10,000, or by both.

7 * Sec. 7. Sections 3 - 6 of this Act terminate on December 31, 1979.

8 * Sec. 8. Section 1 of this Act takes effect January 1, 1980. The re-
9 mainder of this Act takes effect immediately in accordance with AS 01.10.-
10 070(c).

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