



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB2671

Introduced 2/20/2009, by Rep. Susana A Mendoza

#### SYNOPSIS AS INTRODUCED:

See Index

Amends the Code of Criminal Procedure of 1963. Adds the State's Attorney's Investigative Subpoenas Article to the Code. Provides that at any time prior to the commencement of a prosecution and upon written application by the State's Attorney, the circuit court shall cause the clerk of the court to issue subpoenas ad testificandum or duces tecum directed to the sheriff or coroner of any county in the State for the purpose of obtaining the testimony of any person or any document or material relevant to a criminal matter being investigated by the State's Attorney. Establishes procedures under which the State's Attorney may apply for the issuance of such subpoenas. Provides that any person appearing before an issuing court in response to a State's Attorney's investigative subpoena shall have the right to be accompanied by counsel. Provides that any proceeding related to the issuance or enforceability of the subpoena, or to the disclosure of information obtained from such subpoena, shall take place in camera and in the presence of the State's Attorney, and at the party's request, the party subpoenaed and his or her counsel, and a court reporter who shall transcribe the proceedings. Provides that except for the State's Attorney's copy, such transcripts shall be sealed and in the event a prosecution is commenced, the transcript shall be disclosed to the accused as provided by law. Provides that the Attorney General, in cooperation with the Illinois State's Attorney Association, shall annually provide a course of training to the State's Attorneys, in the legal, ethical, and practical aspects of the provisions of the Article relating to investigation and prosecutorial functions. Effective immediately.

LRB096 04572 RLC 19271 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

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  
16 document or material relevant to a criminal matter being  
17 investigated by the State's Attorney. For the purposes of this  
18 Article 108C, a prosecution is commenced upon the filing of a  
19 complaint or information with the court or the return of a bill  
20 of indictment.

21 (725 ILCS 5/108C-5 new)

1       Sec. 108C-5. Application by the State's Attorney. The  
2       State's Attorney's application shall set forth the nature of  
3       the matter he or she is investigating and the relevancy of the  
4       testimony, documents, or materials he or she is seeking to the  
5       investigation and certify that the testimony, documents, or  
6       materials sought will be used solely in the exercise of the  
7       State's Attorney's duty to investigate.

8           (725 ILCS 5/108C-10 new)

9       Sec. 108C-10. Return of subpoena. Subpoenas issued  
10       pursuant to this Article shall be returnable to the circuit  
11       court or directly to the State's Attorney as ordered by the  
12       court. Rulings on relevance, materiality, and privilege shall  
13       be governed by the rules applicable to proceedings before the  
14       grand jury and not by the rules of evidence applicable at  
15       trial.

16           (725 ILCS 5/108C-15 new)

17       Sec. 108C-15. Sworn testimony.

18       (a) Testimony taken pursuant to this Article shall be under  
19       oath and take place at a time and location convenient to the  
20       State's Attorney as directed by the court. The State's Attorney  
21       shall swear all witnesses. The State's Attorney shall provide  
22       for a court reporter to attend the session who shall make a  
23       complete transcript of all proceedings unless the court  
24       authorizes testimony to be recorded electronically. Such

1 electronic recordings shall include a complete audio and video  
2 record of the entire interview. Before any testimony is given  
3 by such a person subpoenaed under this Article against whom the  
4 State's Attorney is considering criminal charges, the State's  
5 Attorney shall inform that person that he or she has the right  
6 to refuse to answer any question that will tend to incriminate  
7 him or her, that anything he or she says may be used against  
8 him or her in a court of law, that he or she has the right to be  
9 accompanied and advised of his or her rights by counsel, and  
10 that he or she will have counsel appointed for him or her if he  
11 or she cannot afford one. If a person is accompanied by  
12 counsel, such counsel shall advise him or her of his or her  
13 rights during the proceedings but may not participate in any  
14 way. Except for the State's Attorney's copy, transcripts or  
15 recordings of such proceedings shall be sealed and in the event  
16 a prosecution is commenced, such transcripts or recordings  
17 shall be disclosed to the accused as provided by law.  
18 Preservation of transcripts and recordings of testimony  
19 obtained pursuant to this Section shall be preserved in  
20 accordance with the record keeping practices applicable to  
21 grand juries.

22 (b) Only the State's Attorney, his or her reporter, the  
23 subject's attorney and any other person authorized by the court  
24 or by law may attend the session.

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

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

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

7           (2) such government personnel as are deemed necessary  
8 by the State's Attorney in the performance of such State's  
9 Attorney's duty to investigate criminal conduct and  
10 enforce State criminal law.

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

18       (c) Disclosure otherwise prohibited by this Section may  
19 also be made when the court directs such in the interest of  
20 justice.

21       (d) Any person who discloses, other than to his or her  
22 attorney, matters occurring before the issuing court, other  
23 than in accordance with the provisions of this Section, shall  
24 be punished as a contempt of court, subject to proceedings in  
25 accordance to law.

26       (e) Any investigative subpoena, documents, or other

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

8 (725 ILCS 5/108C-25 new)

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

19 (725 ILCS 5/108C-30 new)

20 Sec. 108C-30. Right to counsel. Any person appearing  
21 before an issuing court in response to a subpoena issued under  
22 this Article shall have the right to be accompanied by counsel.

23 (725 ILCS 5/108C-35 new)

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

4           (725 ILCS 5/108C-40 new)

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

11           (725 ILCS 5/108C-45 new)

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

16           (725 ILCS 5/108C-50 new)

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

23       Section 99. Effective date. This Act takes effect upon

1 becoming law.



1 INDEX

2 Statutes amended in order of appearance

3 725 ILCS 5/Art. 108C

4 heading new

5 725 ILCS 5/108C-1 new

6 725 ILCS 5/108C-5 new

7 725 ILCS 5/108C-10 new

8 725 ILCS 5/108C-15 new

9 725 ILCS 5/108C-20 new

10 725 ILCS 5/108C-25 new

11 725 ILCS 5/108C-30 new

12 725 ILCS 5/108C-35 new

13 725 ILCS 5/108C-40 new

14 725 ILCS 5/108C-45 new

15 725 ILCS 5/108C-50 new