

By Mr. Brett of Boston, petition of James T. Brett, Robert A. Antonioni and Robert Kraus for legislation to establish the Massachusetts narcotics enforcement law. Criminal Justice.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-One.

AN ACT RELATIVE TO GRAND JURY IMMUNITY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 233 of the General Laws, as appearing
2 in the 1988 Official Edition, shall be amended by striking out
3 section 20C, and inserting in place thereof the following
4 section: —

5 Section 20C. In any investigation or proceeding before a grand
6 jury, or in a criminal proceeding in the superior court department
7 of the trial court, involving any offense listed in section twenty D,
8 a witness shall not be excused from testifying or from producing
9 books, papers, or other evidence on the ground that the testimony
10 or evidence required of him may tend to incriminate him or subject
11 him to a penalty or forfeiture, if he has been granted immunity
12 by a justice of the Supreme Judicial Court as provided in section
13 twenty E.

1 SECTION 2. Section 20D of said chapter 233 of the General
2 Laws, is hereby amended by striking out the words, "A witness
3 called to testify before a grand jury", in line 1, and inserting in
4 place thereof the following words: "An individual who is called
5 or who may be called to testify before a grand jury or in a criminal
6 proceeding in the superior court."

1 SECTION 3. Section 20D of said chapter 233 is hereby further
2 amended by inserting after the words "uttering" in line 17, the
3 words, "or any felony.".

1 SECTION 4. Said chapter 233 is hereby further amended by
2 striking out section 20E, and inserting in place thereof the
3 following new section: —

4 Section 20E. A justice of the Supreme Judicial Court shall,
5 only upon application of the Attorney General or a district
6 attorney, issue an order granting immunity to an individual,
7 provided that said justice finds the investigation or proceeding
8 before the grand jury or the superior court involves an offense
9 listed in section twenty D. If he so finds, said justice shall order
10 the individual to answer the questions or produce the evidence
11 requested and, if he so orders, the order shall become effective
12 upon the individual's refusal, on the ground that the testimony
13 or evidence may tend to incriminate him, to answer any question
14 or produce any evidence requested.

15 An application pursuant to this section shall act to stay any
16 court proceedings, but not grand jury proceedings, until such time
17 as a justice of the Supreme Judicial Court acts upon said
18 application, provided that a justice of the Supreme Judicial Court
19 shall conduct an expedited hearing when such application is
20 brought after the impanelment of a jury in the superior court.

21 The Attorney General or a district attorney may apply for an
22 order under this section when, in his judgment, the testimony or
23 other evidence from such individual may be necessary to the public
24 interest and such individual has refused or is likely to refuse to
25 testify on the basis of his privilege against self-incrimination.
26 When the attorney general or a district attorney brings such
27 application, he shall, at least three days before the date fixed for
28 hearing on his application, send by certified mail or deliver a copy
29 of such application to the attorney general and each other district
30 attorney in the commonwealth. The attorney general and any of
31 the district attorneys may waive, either orally or in writing, his
32 right to be served with such application. The attorney general and
33 any such district attorney may file an appearance and have the
34 right to be heard at the hearing as herein provided. An affidavit
35 of proof of service, or, in the alternative, waiver of service, upon
36 each district attorney and the attorney general shall be filed with
37 the court.

38 If, after a hearing, which shall not be public, the justice finds
39 that the witness did validly refuse to answer questions or produce

40 evidence on the grounds that such testimony or such evidence
41 might tend to incriminate him, and that the investigation or
42 proceeding before the grand jury or the superior court department
43 of the trial court involves an offense listed in section twenty D,
44 said justice shall order the witness to answer the questions or
45 produce the evidence requested, and, if he so orders, he shall also
46 issue an order granting immunity; otherwise, he shall deny a grant
47 of immunity. The witness shall be entitled to representation by
48 an attorney at the hearing. The court may appoint counsel for
49 the witness.

50 A transcript shall be made of the proceedings at the hearing
51 and a certified copy of said transcript shall be transmitted to the
52 grand jury or the superior court.

53 Said chapter 233 is hereby further amended by adding the
54 words, "or any other Superior Court criminal proceeding." at the
55 end of the section.

