

By Mr. Brett of Boston, petition of L. Scott Harshbarger, James T. Brett and Joseph B. McIntyre relative to grand jury immunity. The Judiciary.

The Commonwealth of Massachusetts

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

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 1990 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, a witness shall not be excused from testifying
8 or from producing books, papers, or other evidence on the ground
9 that the testimony or evidence required of him may tend to
10 incriminate him or subject him to a penalty or forfeiture, if he
11 has been granted immunity by a justice of the Supreme Judicial
12 Court as provided in Section 20E.

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" line 17, the words,
3 "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 for
7 an investigation or proceeding before the grand jury or the
8 superior court provided that said justice finds that the testimony
9 or other information from such individual may be necessary to
10 the public interest. If he so finds, said justice shall order the
11 individual to answer the questions or produce the evidence
12 requested and, if he so orders, the order shall become effective
13 upon the individual's refusal, on the ground that the testimony
14 or evidence may tend to incriminate him, to answer any question
15 or produce any evidence requested. An application pursuant to
16 this Section shall act to stay any court proceedings, but not grand
17 jury proceedings, until such time as a justice of the Supreme
18 Judicial Court acts upon said application, provided that a justice
19 of the Supreme Judicial Court shall conduct an expedited hearing
20 when such application is brought after the impanelment of a jury
21 in the superior court.

22 The Attorney General or a district attorney may apply for an
23 order under this Section when, in his judgment, the testimony or
24 other evidence from such individual may be necessary to the public
25 interest and such individual has refused or is likely to refuse to
26 testify on the basis of his privilege against self-incrimination.
27 When the attorney general or a district attorney brings such appli-
28 cation, he shall, at least three days before the date fixed for hearing
29 on his application, send by certified mail or deliver a copy of such
30 application to the attorney general and each other district attorney
31 in the commonwealth. The attorney general and any of the district
32 attorneys may waive, either orally or in writing, his right to be
33 served with such application. The attorney general and any such
34 district attorney may file an appearance and have the right to be
35 heard at the hearing as herein provided. An affidavit of proof of
36 service, or, in the alternative, waiver of service, upon each district
37 attorney and the attorney general shall be filed with 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, said justice shall order the witness
42 to answer the questions or produce the evidence requested, and,
43 if he so orders, he shall also issue an order granting immunity;
44 otherwise, he shall deny a grant of immunity. The witness shall
45 be entitled to representation by an attorney at the hearing. The
46 court may appoint counsel for the witness.

47 A transcript shall be made of the proceedings at the hearing
48 and a certified copy of said transcript shall be transmitted to the
49 grand jury or the superior court.

1 SECTION 5. Said Chapter 233 is hereby further amended by
2 adding the words, "or any other Superior Court criminal
3 proceeding." at the end of Section 20F.

