

By Mr. Haley of Weymouth, petition of the Massachusetts District Attorneys Association, Paul R. Haley and Carol A. Donovan for legislation to clarify the immunity laws of the Commonwealth. The Judiciary.

The Commonwealth of Massachusetts

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

AN ACT FURTHER STRENGTHENING AND CLARIFYING THE IMMUNITY LAWS OF THE COMMONWEALTH.

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 in
2 the 1992 Official Edition, is hereby amended by striking out
3 section 20C, and inserting in place thereof the following section:
4 Section 20C. In any investigation or proceeding before a grand
5 jury, or in a criminal proceeding in the superior court department
6 of the trial court, the appeals court or supreme judicial court,
7 involving any offense listed in section twenty D, a witness shall
8 not be excused from testifying or from producing books, papers,
9 or other evidence on the ground that the testimony or evidence
10 required of him may tend to incriminate him or subject him to a
11 penalty or forfeiture, if he has been granted immunity as provided
12 in section twenty E.

1 SECTION 2. Section 20D of said chapter 233 of the General
2 Laws is hereby amended by striking out in line 1 the words, "A
3 witness called to testify before a grand jury", and inserting in
4 place thereof the following words: An individual who is called or
5 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 of the General
2 Laws is hereby further amended by inserting after the word
3 “uttering” in line 18, the words: or any felony.

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

4 Section 20E. A justice of the supreme judicial court, the
5 appeals court or the superior court shall, at the request of the
6 attorney general or a district attorney, issue an order granting
7 immunity to an individual, provided that said justice finds the
8 investigation or proceeding before the grand jury or the superior
9 court involves an offense listed in section twenty D and that the
10 witness did or will refuse to answer questions or produce evidence
11 on the ground that such testimony or such evidence might tend to
12 incriminate him. If said justice so finds, said justice shall order the
13 individual to answer the questions or produce the evidence
14 requested and, if he so orders, the order shall become effective
15 upon the individual’s refusal, on the ground that the testimony or
16 evidence may tend to incriminate him, to answer any question or
17 produce any evidence requested.

18 An application pursuant to this section shall act to stay any
19 court proceedings, but not grand jury proceedings, until such time
20 as a justice of the supreme judicial court or appeals court acts
21 upon said application, provided that a justice of the supreme judi-
22 cial court, appeals court or superior court shall conduct an expe-
23 dited hearing when such application is brought after the
24 impanelment of a jury in the superior court.

25 The attorney general or a district attorney may apply for an
26 order under this section when, in his judgment, the testimony or
27 other evidence from such individual may be necessary to the
28 public interest and such individual has refused or is likely to
29 refuse to testify on the basis of his privilege against self-incrimi-
30 nation. When the attorney general or a district attorney brings
31 such application, he shall, at least three days before the date fixed
32 for hearing on his application, send by certified mail or deliver a
33 copy of such application to the attorney general and each other
34 district attorney in the commonwealth. The attorney general and
35 any of the district attorneys may waive, either orally or in writing,

36 his right to be served with such application. The attorney general
37 and any such district attorney may file an appearance and have the
38 right to be heard at the hearing as herein provided.

39 An affidavit of proof of service, or, in the alternative, waiver of
40 service, upon each district attorney and the attorney general shall
41 be filed with the court.

42 If, after a hearing, which shall not be public and to which the
43 witness shall not be entitled to attend, the justice finds the investi-
44 gation or proceeding before the grand jury or the superior court
45 department of the trial court involves an offense listed in section
46 twenty D, and that the witness has refused or is likely to refuse to
47 answer questions or produce evidence on the grounds that such
48 testimony or evidence may tend to incriminate him, said justice
49 shall order the witness to answer the questions or produce the evi-
50 dence requested, and if he so orders he shall also issue a written
51 order granting immunity; otherwise, he shall deny a grant of
52 immunity. The appeals court and a single justice of the supreme
53 judicial court shall hear petitions for review of the commonwealth
54 as speedily as practicable.

1 SECTION 5. Said chapter 233 of the General Laws is hereby
2 further amended by striking out section twenty F in its entirety.

1 SECTION 6. Section 20G of said chapter 233 of the General
2 Laws is hereby amended by striking out in line 2 the words "sec-
3 tions twenty E or twenty F" and inserting in place thereof the
4 following words:— section twenty E.

1 SECTION 7. Section 20G of said chapter 233 of the General
2 Laws is hereby amended by striking out in line 10 the words "sec-
3 tions twenty C, twenty E or twenty F." and inserting in place
4 thereof the following words: sections twenty C or twenty E.

1 SECTION 8. Section 20H of said chapter 233 of the General
2 Laws is hereby further amended by inserting the words "appeals
3 court" after the words "supreme judicial court" in line 3.

1 SECTION 9. Section 20H of said chapter 233 of the General
2 Laws is hereby further amended by striking out the words “or
3 twenty F” in line 2.