

U.S. CONST, amend. V

(AMENDMENT V)

(Rights of Accused in Criminal Proceedings)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

18 U.S.C. §6002 (1982)

§ 6002. Immunity generally

Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to—

- (1) a court or grand jury of the United States,
- (2) an agency of the United States, or
- (3) either House of Congress, a joint committee of the two Houses, or a committee or a subcommittee of either House,

and the person presiding over the proceeding communicates to the witness an order issued under this part, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

(Added Pub.L. 91-452, Title II, § 201(e), Oct. 13, 1970, 84 Stat. 927.)

MARYLAND RULES OF PROCEDURE, RULE 4-631 (1985 Replacement Vol.)

Rule 4-631. COMPELLING TESTIMONY ON THE CONDITION OF IMMUNITY

(a) **Requested by State.** — In any proceeding under this Title, before a grand jury, or pursuant to Code, Article 10 § 39A, if a witness lawfully refuses to answer or to provide other information on the basis of the privilege against self-incrimination, the court, when authorized by law, shall compel the witness to answer or otherwise provide information if:

(1) The State's Attorney requests in writing or on the record that the court order the witness to answer or otherwise provide information, notwithstanding the witness' claim of privilege; and

(2) The court informs the witness of the scope of the immunity the witness will receive as provided by the appropriate statute.

(b) **Order of Court.** — The court shall enter its order compelling testimony in writing or on the record.

MD. ANN. CODE art. 27, §262 (1982 Replacement Vol.)

§ 262. Persons compellable to testify; exemption from prosecution.

No person shall refuse to testify concerning any gaming or betting because his testimony would implicate himself and he shall be a competent witness and compellable to testify against any person or persons who may have committed any of the offenses set forth under this subtitle, provided that any person so compelled to testify in behalf of the State in any such case shall be exempt from prosecution, trial and punishment for any and all such crimes and offenses of which such person so testifying may have been guilty or a participant and about which he was so compelled to testify. (An. Code, 1961, § 326; 1939, § 304; 1924, § 258; 1912, § 228; 1904, § 214; 1888, § 131; 1853, ch. 265, § 8; 1856, ch. 195, § 9; 1937, ch. 438.)

MD. ANN. CODE art. 27, §258 (1924)

An. Code, sec. 228, 1904, sec. 214, 1888, sec. 131, 1853, ch. 265, sec. 8, 1856, ch. 195, sec. 9.

258. No person shall refuse to testify concerning any gaming or betting because his testimony would implicate himself; but when any such person is required to testify in behalf of the State, he shall not be prosecuted for any offense to which his testimony relates.

MD. ANN. CODE art. 27 § 23 (1982 Replacement Vol.)

§ 23. Offering bribe to or receiving bribe by public officer; witnesses in prosecution.

If any person shall bribe or attempt to bribe any executive officer of the State of Maryland, any judge, or other judicial officer of this State, any member or officer of the General Assembly of Maryland, any officer or employee of the State, or of any bi-county or multi-county agency in the State, or of any county, municipality or other political subdivision of the State, including members of the police force of Baltimore City and the State Police or any member or officer of any municipal corporation of this State, or any executive officer of such corporation, in order to influence any such officer or person in the performance of any of his official duties; and if the Governor or other executive officer of this State, any judge, or other judicial officer of this State, any member of the General Assembly of Maryland or officer thereof, any officer or any employee of the State, or of any bi-county or multi-county agency in the State, or of any county, municipality or other political subdivision of the State, including members of the police force of Baltimore City and the State Police or any member or officer of any municipal corporation, or mayor or other executive officer thereof in this State shall demand or receive any bribe, fee, reward or testimonial for the purpose of influencing him in the performance of his official duties, or for neglecting or failing to perform the same, every such person so bribing or attempting to bribe any of such officers or persons, and every such person so demanding or receiving any bribe, fee, reward, or testimonial shall be deemed guilty of bribery, and on being convicted thereof shall be fined not less than \$100 nor more than \$5,000, or, in the discretion of the court, shall be sentenced to be imprisoned in the penitentiary of this State for not less than two nor more than 12 years, or both fined and imprisoned, and shall also be forever disfranchised and disqualified from holding any office of trust or profit in this State; and any person so bribing or attempting to bribe or so demanding or receiving a bribe shall be a competent witness, and compellable to testify against any person or persons who may have committed any of the aforesaid offenses; provided, that any person so compelled to testify in behalf of the State

MD. ANN. CODE art. 27, § 23 (1982 Replacement Vol.)

in any such case shall be exempt from prosecution, trial and punishment for any such crime of which such person so testifying may have been guilty or a participant therein, and about which he was so compelled to testify. (An. Code, 1961, § 29; 1939, § 27; 1924, § 31; 1912, § 28; 1904, § 26; 1888, § 23; 1809, ch. 138, § 8; 1868, ch. 369; 1882, ch. 142; 1933, ch. 202; 1937, ch. 434; 1972, ch. 181, § 28; 1977, chs. 159, 260.)

1937 Md. Laws 853**CHAPTER 435.**

AN ACT to add a new section to Article 27 of the Annotated Code of Maryland (1924 Edition), title "Crimes and Punishments", sub-title "Lotteries", said new section to be known as Section 350½, and to follow immediately after Section 350 of said Article, to compel all persons when so ordered to testify in behalf of the State concerning any lotteries, even though such testimony be self-incriminating, but exempting from prosecution, trial and punishment all such persons so testifying.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That a new section be and it is hereby added to Article 27 of the Annotated Code of Maryland (1924 Edition), title "Crimes and Punishments", sub-title "Lotteries", said new section to be known as Section 350½, to follow immediately after Section 350 of said Article, and to read as follows:

350½. No person shall refuse to testify concerning any lotteries because his testimony would implicate himself and he shall be a competent witness and compellable to testify against any person or persons who may have committed any of the offenses set forth under the sub-title "Lotteries" of this Article, provided that any person so compelled to testify in behalf of the State in any such case shall be exempt from prosecution, trial and punishment for any and all such crimes and offenses of which such person so testifying may have been guilty of a participant therein and about which he was so compelled to testify.

Sec. 2. *And be it further enacted,* That this Act shall take effect June 1, 1937.

Approved May 16, 1937.

1937 Md. Laws 873**CHAPTER 438.**

AN ACT to repeal and re-enact with amendments Section 258 of Article 27 of the Annotated Code of Maryland (1924 Edition), title "Crimes and Punishments", sub-title "Gaming", said amendment compelling all persons when so ordered to testify in behalf of the State concerning any gaming or betting, even though such testimony be self-incriminating, but exempting from prosecution, trial and punishment all such persons so testifying.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That Section 258 of Article 27 of the Annotated Code of Maryland (1924 Edition), title "Crimes and Punishments", sub-title "Gaming", be and it is hereby repealed and re-enacted with amendments, to read as follows:

CONT'D

1937 Md. Laws 873

258. No person shall refuse to testify concerning any gambling or betting because his testimony would implicate himself and he shall be a competent witness and compellable to testify against any person or persons who may have committed any of the offenses set forth under this sub-title, provided that any person so compelled to testify in behalf of the State in any such case shall be exempt from prosecution, trial and punishment for any and all such crimes and offenses of which such person so testifying may have been guilty or a participant and about which he was so compelled to testify.

Sec. 2. *And be it further enacted, That this Act shall take effect June 1, 1937.*

Approved May 18, 1937.

1937 Md. Laws 851

CHAPTER 434.

AN ACT to repeal and re-enact with amendments Section 31 of Article 27 of the Annotated Code of Maryland (1936 Supplement), title "Crimes and Punishments", sub-title "Bribery", said amendment limiting the immunity provisions of said statute to witnesses called in behalf of the State and exempting said witnesses from prosecution, as well as from trial and punishment.

Section 1. *Be it enacted by the General Assembly of Maryland.* That Section 31 of Article 27 of the Annotated Code of Maryland (1936 Supplement), title "Crimes and Punishments", sub-title "Bribery", be and it is hereby repealed and re-enacted with amendments, to read as follows:

31. If any person shall bribe or attempt to bribe any executive officer of the State of Maryland, any judge, justice of the peace or other judicial officer of this State, any member or officer of the General Assembly of Maryland, any officer or employee of the State, or of any county, municipality or other political sub-division of the State, including members of the police force of Baltimore City and the motorcycle deputies (commonly known as State Police) under the Commissioner of Motor Vehicles, or any member or officer of any municipal corporation of this State, or any executive officer of such corporation, in order to influence any such officer or person in the performance of any of his official duties; and if the Governor or other executive officer of this State, any judge, justice of the peace or other judicial officer of this State, any member of the General Assembly of Maryland or officer thereof, any officer or any employee of the State, or of any county, municipality or other political sub-division of the State, including members of the police force of Baltimore City and the motorcycle deputies (commonly known as State Police) under the Commissioner of Motor Vehicles, or any member or officer of any municipal corporation, or Mayor or other executive officer thereof in this State shall demand or receive any bribe, fee, reward or testimonial for the purpose of influencing him in the performance of his official duties, or for neglecting or failing to perform the same, every such person so bribing or attempting to bribe any of such officers or persons, and every such person so demanding or receiving any bribe, fee, reward, or testimonial shall be deemed guilty of bribery, and on being convicted thereof shall be fined not less than one hundred dollars nor more than five thousand dollars, or, in the discretion of the court, shall be sentenced to be imprisoned in the penitentiary of this State for not less than two

E-6

1937 Md. Laws 851

nor more than twelve years, or both fined and imprisoned, and shall also be forever disfranchised and disqualified from holding any office of trust or profit in this State; and any person so bribing or attempting to bribe or so demanding or receiving a bribe shall be a competent witness, and compellable to testify against any person or persons who may have committed any of the aforesaid offenses; provided, that any person so compelled to testify in behalf of the State in any such case shall be exempt from prosecution, trial and punishment for any such crime of which such person so testifying may have been guilty or a participant therein, and about which he was so compelled to testify.

Sec. 2. *And be it further enacted, That this Act shall take effect June 1, 1937.*

Approved May 18, 1937.

CRIMINAL CODE §200.15 (Proposed Draft June 1, 1972) (State of Maryland Commission on Criminal Law)

**§200.15. Bribery and bribe receiving;
grant of immunity**

Any person who bribes, attempts to bribe, or conspires to bribe a public servant, or any public servant who receives, attempts to receive, or conspires to receive a bribe, fee, reward, or testimonial shall be a competent witness and compellable to testify against any person or persons who may have committed any of the aforesaid offenses concerning his participation or guilt therein; provided that any person so compelled to testify shall be exempt from prosecution, trial and punishment for conduct about which he is compelled to testify, including any conduct involving or pertaining to any such offense of which he may have been guilty or in which he may have participated.

COMMENT

Section 50 of Article III of the Maryland Constitution (quoted in the Commentary to §200.10) requires the legislature provide for a grant of immunity to compel testimony concerning bribery and attempted bribery involving public officials. §23 of Article 27 contains such a grant of immunity. §200.15 follows quite closely the wording of the present section and gives in full the immunity contemplated by the Constitution.

The added language in §200.15 which does not appear in §23 is intended to make clear the extent to which testimony may be compelled and immunity is conferred. A person may be required to testify concerning "his participation or guilt" in a bribery offense and receives immunity "for the conduct about which he is compelled to testify." Thus, if a public servant testifies that he accepted or demanded a bribe in such a manner that he is guilty not only of bribe receiving but also of extortion, he receives immunity for both offenses. §200.15 also provides for a grant of immunity to persons guilty of conspiring to bribe or to receive a bribe. The constitutional provision does not mention a grant of immunity for persons guilty of conspiracy, but §39 of Article 27 presently provides for a grant of immunity in such cases. Thus, §200.15 simply combines the provisions in §§23 and 39 of Article 27.

(2) THE INDIVIDUAL HAS REFUSED OR IS LIKELY TO REFUSE TO TESTIFY OR PROVIDE OTHER INFORMATION ON THE BASIS OF THE INDIVIDUAL'S PRIVILEGE AGAINST SELF-INCRIMINATION.

(E) IF A WITNESS REFUSES TO COMPLY WITH AN ORDER ISSUED UNDER SUBSECTION (C) OF THIS SECTION, ON WRITTEN MOTION OF THE PROSECUTOR AND ON ADMISSION INTO EVIDENCE OF THE TRANSCRIPT OF THE REFUSAL, IF THE REFUSAL WAS BEFORE A GRAND JURY, THE COURT SHALL TREAT THE REFUSAL AS A DIRECT CONTEMPT, NOTWITHSTANDING ANY LAW TO THE CONTRARY, AND PROCEED IN ACCORDANCE WITH SUBTITLE P. OF THE MARYLAND RULES.

SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 298(d) through (g), respectively, of Article 27 - Crimes and Punishments of the Annotated Code of Maryland be renumbered to be Section(s) 298(c) through (f), respectively.

SECTION 2 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1989.

Approved May 19, 1989.

CHAPTER 289

(House Bill 1311)

AN ACT concerning

Witness Immunity - Crimes of Violence -
Controlled Dangerous Substances

FOR the purpose of authorizing certain prosecutors in certain circumstances ~~involving--crimes--of--violence--and--certain controlled-dangerous-substance-offenses~~ to file a written motion for a court order compelling a witness to testify, produce evidence, or provide other information; specifying the effect of the order; prohibiting testimony or other evidence compelled under the order or certain information derived from the compelled testimony or evidence from being used against the witness except under certain circumstances; requiring a court under certain circumstances ~~involving crimes---of---violence---and---certain--controlled--dangerous substance-offenses~~ to issue an order requiring a witness to testify or provide other information upon request by a prosecutor; establishing procedures for enforcement of an order to testify or provide other information; defining certain terms; ~~making--technical--changes~~; and generally relating to immunity for witnesses in proceedings involving

~~crimes---of---violence---and---certain---controlled---dangerous
substance-offenses~~ before a court or grand jury.

BY repealing and reenacting, with amendments,

~~Article-27---Crimes-and-Punishments
Section-298(c)
Annotated-Code-of-Maryland
(1987-Replacement-Volume-and-1988-Supplement)
Article 27 - Crimes and Punishments
Section 24, 39, and 400
Annotated Code of Maryland
(1987 Replacement Volume and 1988 Supplement)~~

BY repealing

~~Article 27 - Crimes and Punishments
Section 262, 298(c), 371, and 540
Annotated Code of Maryland
(1987 Replacement Volume and 1988 Supplement)~~

BY repealing and reenacting, without amendments,

~~Article 27 - Crimes and Punishments
Section 23
Annotated Code of Maryland
(1987 Replacement Volume and 1988 Supplement)~~

BY repealing and reenacting, with amendments,

~~Article 33 - Election Code
Section 26-16(c)
Annotated Code of Maryland
(1986 Replacement Volume and 1988 Supplement)~~

BY renumbering

~~Article 27 - Crimes and Punishments
Section 298(d) through (g), respectively
to be Section 298(c) through (f), respectively
Annotated Code of Maryland
(1987 Replacement Volume and 1988 Supplement)~~

BY adding to

Article - Courts and Judicial Proceedings
Section 9-123
Annotated Code of Maryland

(1984 Replacement Volume and 1988 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article 27 - Crimes and Punishments

23.

If any person shall bribe or attempt to bribe any executive officer of the State of Maryland, any judge, or other judicial officer of this State, any member or officer of the General Assembly of Maryland, any officer or employee of the State, or of any bi-county or multi-county agency in the State, or of any county, municipality or other political subdivision of the State, including members of the police force of Baltimore City and the State Police or any member or officer of any municipal corporation of this State, or any executive officer of such corporation, in order to influence any such officer or person in the performance of any of his official duties; and if the Governor or other executive officer of this State, any judge, or other judicial officer of this State, any member of the General Assembly of Maryland or officer thereof, any officer or any employee of the State, or of any bi-county or multi-county agency in the State, or of any county, municipality or other political subdivision of the State, including members of the police force of Baltimore City and the State Police or any member or officer of any municipal corporation, or mayor or other executive officer thereof in this State shall demand or receive any bribe, fee, reward or testimonial for the purpose of influencing him in the performance of his official duties, or for neglecting or failing to perform the same, every such person so bribing or attempting to bribe any of such officers or persons, and every such person so demanding or receiving any bribe, fee, reward, or testimonial shall be deemed guilty of bribery, and on being convicted thereof shall be fined not less than \$100 nor more than \$5,000, or, in the discretion of the court, shall be sentenced to be imprisoned in the penitentiary of this State for not less than two nor more than 12 years, or both fined and imprisoned, and shall also be forever disfranchised and disqualified from holding any office of trust or profit in this State; and any person so bribing or attempting to bribe or so demanding or receiving a bribe shall be a competent witness, and compellable to testify against any person or persons who may have committed any of the aforesaid offenses; provided, that any person so compelled to testify in behalf of the State in any such case shall be exempt from prosecution, trial and punishment for any such crime of which such person so testifying may have been guilty or a participant therein, and about which he was so compelled to testify.

24.

Any person or persons who shall bribe or attempt to bribe any persons participating in or connected in any way with any athletic contest held in this State shall be deemed guilty of bribery, and on being convicted thereof shall be fined not less than one hundred dollars (\$100.00) nor more than five thousand (\$5,000.00), or, in the discretion of the court shall be sentenced to be imprisoned in the penitentiary of this State for not less than six months nor more than three years, or both fined and imprisoned; and any person so bribing or attempting to bribe or so demanding or receiving a bribe shall be a competent witness, and compellable to testify against any person or persons who may have committed any of the aforesaid offenses; provided, that any person so compelled to testify in any such case shall be exempt from trial and punishment for the crime of which such person so testifying may have been a participant].

39.

No person shall refuse to testify concerning the crime of conspiring to commit any of the offenses set forth in § 23 of this article, [subtitle "Bribery; Obstructing Justice", or set forth under the subtitle "Gaming" of this article or set forth under the subtitle "Lotteries" of this article,] and any person shall be a competent witness and compellable to testify against any person or persons who may have conspired to commit any of the aforesaid offenses, provided that any person so compelled to testify in behalf of the State in any such case, shall be exempt from prosecution, trial and punishment for any and all such crimes and offenses of which such person so testifying may have been guilty or a participant or a conspirator therein and about which he was so compelled to testify.

[262.

No person shall refuse to testify concerning any gaming or betting because his testimony would implicate himself and he shall be a competent witness and compellable to testify against any person or persons who may have committed any of the offenses set forth under this subtitle, provided that any person so compelled to testify in behalf of the State in any such case shall be exempt from prosecution, trial and punishment for any and all such crimes and offenses of which such person so testifying may have been guilty or a participant and about which he was so compelled to testify.]

298.

[(c) No person shall, upon pain of contempt of court, refuse to testify concerning any violations of the provisions of this subheading because his testimony might tend to incriminate him or implicate him in such violations -f-and every-}-> EVERY such person shall be a competent witness and compellable to testify against any person who may have committed any of the

offenses set forth under this subheading--~~EXCEPT-AS-OTHERWISE-PROVIDED-UNDER-§-9-123-OF-THE-COURTS-ARTICLE,~~ provided that--~~EXCEPT-AS-OTHERWISE-PROVIDED-UNDER-§-9-123-OF-THE-COURTS-ARTICLE,~~ any person so compelled to testify on behalf of the State in any such case shall be exempt from prosecution, trial, and punishment for any and all such crimes and offenses about which such person was so compelled to testify.]

[371.

No person shall refuse to testify concerning any lotteries because his testimony would implicate himself and he shall be a competent witness and compellable to testify against any person or persons who may have committed any of the offenses set forth under this subtitle, provided that any person so compelled to testify in behalf of the State in any such case shall be exempt from prosecution, trial and punishment for any and all such crimes and offenses of which such person so testifying may have been guilty as a participant therein and about which he was so compelled to testify.]

400.

[(a)] It is unlawful for any person under the age of 21 years to knowingly and willfully make any misrepresentation or false statement as to the person's age and, by reason of the misrepresentation or false statement, obtain any alcoholic beverages from any person licensed to sell alcoholic beverages under the laws of this State.

[(b) The testimony given by a person under 21 years of age in the prosecution of any person for unlawfully selling alcoholic beverages to persons under 21 years of age may not be used against the person giving the testimony in prosecuting that person for violations of this section.]

[540.

No person shall be excused from attending and testifying, or producing any books, papers, or other documents before any court, or grand jury upon any investigation, proceeding or trial, for or relating to or concerned with a violation of any section of this subtitle or attempt to commit such violation, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him by the State may tend to convict him of a crime or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him, upon any criminal investigation, proceeding or trial, except upon a prosecution for perjury or contempt of court based upon the giving or producing of such testimony.]

Article 33 - Election Code

26-16.

(c) It shall be the duty of the State's Attorney of Baltimore City and of the State's Attorney of each county of this State to prosecute, by the regular course of criminal procedure, any person whom he may believe to be guilty of having wilfully violated any of the provisions of this section within the city or county for which said State's Attorney may be acting as such. [In any criminal prosecution under this subtitle or for violation of any of the provisions thereof, no witness, except the person who is accused and on trial, shall be excused from answering any question or producing any book, paper or other thing on the ground or claim that his answer, or the thing produced or to be produced, by him may tend to incriminate or degrade him, or render him liable to a penalty, provided that any person answering such a question or so producing a thing shall be exempt from prosecution, trial and punishment for any offense of which that person may have been guilty or a participant therein, and about which he gives such an answer or so produces a thing, except in a prosecution for perjury in so testifying.]

Article - Courts and Judicial Proceedings

9-123.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

{2}--"COURT"--MEANS--A--CIRCUIT--COURT;

{3} (2) "OTHER INFORMATION" INCLUDES ANY BOOK, PAPER, DOCUMENT, RECORD, RECORDING, OR OTHER MATERIAL.

{4} (3) "PROSECUTOR" MEANS:

(I) THE STATE'S ATTORNEY FOR A COUNTY;

(II) A DEPUTY STATE'S ATTORNEY;

{III}--THE--STATE--PROSECUTOR--APPOINTED--UNDER ARTICLE 107, § 33 OF THE CODE;

{IV} (III) THE ATTORNEY GENERAL OF THE STATE;

OR

{V} (IV) A DEPUTY ATTORNEY GENERAL OR DESIGNATED ASSISTANT ATTORNEY GENERAL.

(B) (1) IF A WITNESS REFUSES, ON THE BASIS OF THE PRIVILEGE AGAINST SELF-INCRIMINATION, TO TESTIFY OR PROVIDE OTHER INFORMATION IN A CRIMINAL PROSECUTION OR A PROCEEDING BEFORE A

GRAND JURY OF THE STATE, INVOLVING--A--CRIME--OF--VIOLENCE,--AS DEFINED--IN--ARTICLE--27,--§--643B--OF--THE--CODE,--OR--AN--OFFENSE--UNDER ARTICLE--27,--§--286--OR--§--286A--OF--THE--CODE, AND THE COURT ISSUES AN ORDER TO TESTIFY OR PROVIDE OTHER INFORMATION UNDER SUBSECTION (C) OF THIS SECTION, THE WITNESS MAY NOT REFUSE TO COMPLY WITH THE ORDER ON THE BASIS OF THE PRIVILEGE AGAINST SELF-INCRIMINATION.

(2) NO TESTIMONY OR OTHER INFORMATION COMPELLED UNDER THE ORDER, AND NO INFORMATION DIRECTLY OR INDIRECTLY DERIVED FROM THE TESTIMONY OR OTHER INFORMATION, MAY BE USED AGAINST THE WITNESS IN ANY CRIMINAL CASE, EXCEPT IN A PROSECUTION FOR PERJURY, OBSTRUCTION OF JUSTICE, OR OTHERWISE FAILING TO COMPLY WITH THE ORDER.

(C) IF AN INDIVIDUAL HAS BEEN, OR MAY BE, CALLED TO TESTIFY OR PROVIDE OTHER INFORMATION IN A CRIMINAL PROSECUTION OR A PROCEEDING BEFORE A GRAND JURY OF THE STATE, INVOLVING-A-CRIME-OF-VIOLENCE,--AS--DEFINED--IN--ARTICLE--27,--§--643B--OF--THE--CODE,--OR--AN--OFFENSE--UNDER--ARTICLE--27,--§--286--OR--§--286A--OF--THE--CODE, THE COURT IN WHICH THE PROCEEDING IS OR MAY BE HELD SHALL ISSUE, ON THE REQUEST OF THE PROSECUTOR MADE IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION, AN ORDER REQUIRING THE INDIVIDUAL TO GIVE TESTIMONY OR PROVIDE OTHER INFORMATION WHICH THE INDIVIDUAL HAS REFUSED TO GIVE OR PROVIDE ON THE BASIS OF THE INDIVIDUAL'S PRIVILEGE AGAINST SELF-INCRIMINATION. THE ORDER SHALL HAVE THE EFFECT PROVIDED UNDER SUBSECTION (B) OF THIS SECTION.

(D) IF A PROSECUTOR SEEKS TO COMPEL AN INDIVIDUAL TO TESTIFY OR PROVIDE OTHER INFORMATION, THE PROSECUTOR SHALL REQUEST, BY WRITTEN MOTION, THE COURT TO ISSUE AN ORDER UNDER SUBSECTION (C) OF THIS SECTION WHEN THE PROSECUTOR DETERMINES THAT:

(1) THE TESTIMONY OR OTHER INFORMATION FROM THE INDIVIDUAL MAY BE NECESSARY TO THE PUBLIC INTEREST; AND

(2) THE INDIVIDUAL HAS REFUSED OR IS LIKELY TO REFUSE TO TESTIFY OR PROVIDE OTHER INFORMATION ON THE BASIS OF THE INDIVIDUAL'S PRIVILEGE AGAINST SELF-INCRIMINATION.

(E) IF A WITNESS REFUSES TO COMPLY WITH AN ORDER ISSUED UNDER SUBSECTION (C) OF THIS SECTION, ON WRITTEN MOTION OF THE PROSECUTOR AND ON ADMISSION INTO EVIDENCE OF THE TRANSCRIPT OF THE REFUSAL, IF THE REFUSAL WAS BEFORE A GRAND JURY, THE COURT SHALL TREAT THE REFUSAL AS A DIRECT CONTEMPT, NOTWITHSTANDING ANY LAW TO THE CONTRARY, AND PROCEED IN ACCORDANCE WITH SUBTITLE P. OF THE MARYLAND RULES.

SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 298(d) through (g), respectively, of Article 27 - Crimes and Punishments

Ch. 290

LAWS OF MARYLAND

of the Annotated Code of Maryland be renumbered to be Section(s) 298(c) through (f), respectively.

SECTION -2- 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1989.

Approved May 19, 1989.

CHAPTER 290

(House Bill 359)

AN ACT concerning

Motorcycles - Driver's License - Minors -
Motorcycle Safety Course

FOR the purpose of prohibiting the Motor Vehicle Administration from issuing to an individual under a certain age a license to drive a motorcycle unless the individual has completed satisfactorily a certain motorcycle safety course.

BY repealing and reenacting, with amendments,

Article - Transportation
Section 16-103
Annotated Code of Maryland
(1987 Replacement Volume and 1988 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Transportation

16-103.

(a) Except as provided in subsection (b) of this section, the Administration may not issue a driver's license to any individual who is not at least 18 years old.

(b) (1) [The] EXCEPT AS PROVIDED UNDER PARAGRAPH (3) OF THIS SUBSECTION, THE Administration may issue a Class B, D, or E license to an individual under the age of 18, if he is at least 16 years old and has completed satisfactorily a driver's education course approved under Subtitle 5 of this title.

POSITION PAPER
WITNESS IMMUNITY

From
AG's
office

1. INTRODUCTION

A. The Problem

There are basically two types of immunity: transactional and use and derivative use immunity (hereinafter "use immunity"). Transactional immunity means that once a witness has been compelled to testify about an incident, he may never be prosecuted for offenses arising out of that transaction even if independent evidence of the offense(s) -- from a source other than the witness -- comes to light. Use immunity, a shorthand term for use and derivative use immunity, means that once a witness has been compelled to testify about an offense, neither that testimony nor any evidence derived from that testimony may be used against the witness. If independent evidence is discovered, or has been preserved, the witness theoretically may still be prosecuted for the offense.

Obviously, in situations in which insider information about criminal activity is necessary in order to prosecute criminal activity, the prosecutor is faced with untenable alternatives when only transactional immunity is available.

For example, assume a scenario in which a narcotics network is functioning effectively with a hierarchy in which the first echelon leader is a prosperous, "white collar" professional who has never been convicted of a crime. That individual, who we can refer to as "Kingpin", provides the capital necessary to purchase the narcotics which is distributed to users. He never has his hand on the narcotics and enters only into cash transactions. Kingpin, however, relies upon a certified public accountant ("A") and an individual who monitors the actual narcotics trafficking network ("B").

Kingpin may never be successfully prosecuted without information from "A" or "B". There may not be enough evidence against "A" or "B" to prosecute them for their role in the

conspiracy.

A resourceful prosecutor, who could be investigating Kingpin for narcotics violations or criminal violations of the income tax code would subpoena "A" or "B" before the grand jury at which time "A" and "B" would invoke their privilege against self-incrimination. Under the present law, the prosecutor would then face the dilemma of having to give "A" or "B" transactional immunity or a total exemption from liability for their misdeeds. "A" or "B", then, could conceivably not be prosecuted for their role in the conspiracy on either the state or federal level. If granted transactional immunity, they also conceivably may not incur civil liability for their involvement. "A" or "B" conceivably may not incur civil tax liability in the form of penalties and "A" conceivably may not face professional discipline in the form of license suspension or revocation by his professional licensing authority. To permit "A" or "B" to walk away from their misdeeds would truly be a miscarriage of justice.

B. The Resolution

The resolution of the dilemma is to provide the prosecutor with use immunity to permit the prosecutor to build a tax prosecution case against Kingpin by immunizing "A" from the use of "A's" testimony against him, or a narcotics case by immunizing "B" from the use of his testimony against him. "A" and "B" could still be prosecuted for their involvement in the conspiracy, could still be forced to pay civil tax penalties and "A" could still be subject to discipline on a professional basis. Certainly, consideration of appropriate sanctions against "A" and "B" should and must include all possibilities given the magnitude of their involvement in the crime.

II. PROPOSED GENERAL IMMUNITY STATUTE

The proposed statute is based substantially on the federal immunity statutes: 18 U.S.C. §§6001-04 (1985). Changes made in the language are primarily those required by the differences

between the organizational structure of law enforcement agencies in the federal and state systems.

The proposed general immunity statute differs substantively from existing Maryland statutes in three ways:

1. It provides for use and derivative use instead of transactional immunity;
2. It is generally available rather than limited to specific crimes;
3. It has built-in procedural safeguards which must be complied with prior to its utilization. Generally, the present statutes operate automatically.

The proposed immunity statute would replace the immunity provisions for specific crimes. Presently, Maryland has separate immunity provisions for the following crimes: Article 27, §23, Bribery of Public Officials;^{1/} Article 27, §24, Bribery of Athletic Participants; Article 27, §39, Conspiracy to Commit Bribery;^{2/} Gambling or Lottery Violations; Article 27, §298, Controlled Dangerous Substances; Article 27, §262, Gambling; Article 27, §371, Lottery Violations; Article 27, §400, Selling Liquor to Minors; Article 27, §540, Sabotage Prevention; Article 33, §26-16, Election Irregularities; Financial Institutions §9-

^{1/}Article III, §50 of the Constitution of Maryland requires the General Assembly to adopt a bribery statute conferring transactional immunity. Article 27, §§23 and 39 are the response to the mandate. Consequently, absent a constitutional amendment, immunity for bribery must continue to be "transactional" as opposed to the more limited "use and derivative use" immunity.

^{2/}Transactional immunity for conspiracy to commit bribery also would not be affected since it has constitutional overtones.

910, Savings and Loan Prosecution.^{3/}

III. BASES FOR USE IMMUNITY

A. Legal Basis for Use Immunity

In 1892, the Supreme Court held unconstitutional a federal immunity statute which barred the introduction of compelled testimony but permitted it to be used to locate other evidence.^{4/} The Court reasoned -- correctly -- that such derivative use of the tainted evidence rendered the immunity meaningless. But rather than simply stating that the Constitution required derivative use immunity; i.e., immunity from both the introduction of compelled testimony and exploitation of the testimony to find leads, the opinion spoke in broad language which seemed to require transactional immunity. Consequently, Congress enacted a transactional immunity statute which was upheld by the Supreme Court,^{5/} and which became the model for state legislation. In 1970, Congress repealed the transactional immunity statutes and enacted a new use immunity statute, 18 U.S.C. §§6001-04 (1970). When the Supreme Court reviewed the new statute, it held that the transactional immunity language in Counselman which had been relied on for almost one hundred years was dicta. Thus, the Court held that the new statute which bars the use and derivative use of information obtained under a grant of immunity provides the protection required by the Fifth Amendment.^{6/}

Maryland's transactional immunity statutes, like the federal

^{3/}Immunity in the savings and loan situation would remain the same since the duration of the immunity accorded to the investigation of the pending matters would be limited to one more extension of the sunset provisions.

^{4/}Counselman v. Hitchcock, 142 U.S. 547 (1892).

^{5/}Brown v. Walker, 161 U.S. 591 (1896).

^{6/}Kastigar v. United States, 406 U.S. 441 (1972).

immunity statutes repealed in 1970, are based upon an incorrect interpretation of the 1892 decision. It is now clear that use immunity will meet constitutional requirements. Maryland's laws are, therefore, outdated.

B. Practical Bases for Use Immunity

In addition to providing the possibility that a witness given use immunity may be subject to subsequent prosecution for his criminal activity, i.e., the Oliver North prosecution, and would be subject to collateral consequences, use immunity provides for more complete disclosure of evidence than transactional immunity. As Professor G. Robert Blakely stated at the 1974 Seminar of the National Associations of Attorneys General:

With transactional immunity all the witness has to do is mention the transaction; he does not have to fill in the details. So his attorney can tell him to just mention it, and then say, "I don't remember." But with a "use" statute, a smart attorney advises his client to tell all he knows, because the more he tells, the less can be later used against him. So "use" statutes encourage fuller disclosure by witnesses, and that is what they are really all about.

As a result, individuals testifying under a grant of use immunity have greater reason to disclose their involvement.^{7/}

Further, a general immunity statute, instead of the present patchwork quilt of immunity statutes for particular crimes, would likewise be more conducive to full disclosure of evidence by an immunized witness. Often testimony about a drug transaction will encompass other crimes, such as violations of criminal tax statutes. Under the present system, a witness subpoenaed to testify pursuant to the immunity provisions of Article 27, §298

^{7/}Whether transactional or use witness immunity does not preclude prosecution for perjury or making false statements under oath.

(Controlled Dangerous Substances) may not refuse to testify because testimony regarding the controlled dangerous substances transaction would simultaneously implicate him in the commission of other crimes, e.g., tax perjury.^{8/} Yet this circumstance presents the possibility of a trap for the unwary prosecutor inquiring into drug violations and inadvertently granting transactional immunity for some previously unknown criminal activity.

Further, there are no procedural safeguards in the present immunity statutes and consequently their operation is triggered haphazardly, without identification of when a witness begins to receive immunity. The statutes also provide an "automatic immunity bath". Across the nation,^{9/} witnesses subpoenaed before the grand jury must either assert the privilege against self-incrimination or else notify the prosecutor that it is their intention to do so. The prosecutor then asks the court to order testimony and certifies that the immunity conferred thereby is in the public interest. This is the procedure set out in this proposed statute and is the procedure incorporated in the recently adopted savings and loan immunity legislation. In sharp contrast, most present Maryland statutes immunize everyone who answers questions in the grand jury.^{10/} No assertion of the privilege is required, nor is there any requirement of a certification that the immunity is in the public interest. The uncertainty of when the statute is applicable, coupled with the blanket automatic transactional immunity bath, makes Maryland immunity statutes both haphazard and dangerous. Unless a

^{8/} In re: Criminal Investigation No. 1-162, 307 Md. 622 (1987).

^{9/} Witness Immunity, National Association of Attorneys General, August, 1978.

^{10/} State v. Panagoulis, 253 Md. 699 (1969) (Witness who appeared voluntarily before grand jury to make statement and was then asked questions was "compelled" to testify within meaning of bribery immunity statutes).

prosecutor is very conversant in the vagaries of investigative grand jury law, he or she accidentally may immunize potential targets. As a consequence of the risks arising from the broad automatic immunity received by anyone subpoenaed before a grand jury investigating drugs, gambling and election laws, the grand jury frequently becomes unusable as an investigative tool in these areas. The result is that the financial aspects of large drug operations cannot be investigated by Maryland grand juries.

Finally, despite the broad brush immunization the present statutes provide, they may ironically deprive potential defendants of the opportunity to provide exculpatory evidence to a grand jury. A prosecutor who might otherwise consent to the appearance of a defendant who want to testify before an investigative grand jury or -- the more common occurrence -- a prosecutor who is willing to call a witness supportive of the defense, may decline to do so because he fears automatic immunization. There are no immunity waiver statutes and the question of whether the automatic immunity can be waived has yet to be resolved by the appellate courts.

IV. PROPOSED STATUTE

The proposed statute substitutes use for transactional immunity^{11/} because of the additional fact-finding utility that use immunity provides. It would automatically bring the Maryland law into accord with the Supreme Court's current view of the breadth of the Fifth Amendment.

The proposed statute is made generally applicable primarily for two reasons. It assures the compellability of the testimony regarding a transaction which may involve a variety of interrelated crimes and thus circumvents any constitutional

^{11/}Transactional immunity for the crime of bribery is retained because of its constitutional underpinning and for the savings and loan investigation because of its limited duration.

problem which may presently exist.^{12/} Secondly, it is now apparent that a grand jury may be an inappropriate forum for the investigation of a variety of crimes, particularly large scale drug operations, money laundering, and tax perjury. The existence of a generally available but limited immunity statute would remedy the dual problems of no immunity for most crimes and too much immunity for drugs, gambling and elections offenses.

By far the most significant changes provided by the proposed statute are procedural. Immunity would no longer be conferred automatically or accidentally, but rather only through court order. To ensure coordinated, responsible requests for immunity, the decision to seek a court order requires approval by the State's Attorney, Attorney General or State Prosecutor. The State's Attorney, the Attorney General or State Prosecutor will thereby have central control and ultimate responsibility for the issuance of grants of immunity.

The judicial role under this statute is ministerial. The judge verifies that:

1. The State's Attorney, the Attorney General, or State Prosecutor has approved the request for an immunity order;
2. The witness has refused or is likely to refuse to testify;
3. The prosecutor has determined that the witness's testimony may be necessary to be the public interest.

Once the judge concludes these three requirements are met, he issues a court order compelling testimony and immunizing the witness.

The Judge will not himself determine whether the witness'

^{12/}Cf. *In re Criminal Investigation No. 1-162*, supra. n.6. (witness must reasonably fear prosecution for one of enumerated offenses).

testimony may be necessary to the public interest. To do so would transform the Judge into a prosecutor and require him to make delicate prosecutorial judgments which are inappropriate. Furthermore, a particular immunity grant may be a very small aspect to a large scale investigation, making it impossible for the judge to make any meaningful evaluation of the public interest.

MARYLAND GENERAL ASSEMBLY
DEPARTMENT OF FISCAL SERVICES
DIVISION OF FISCAL RESEARCH
JOSEPH M. COBLE, DIRECTOR

FISCAL NOTE
REVISED

HB 1311

House Bill 1311 (The Speaker, et al) (Delegate Menes, Chairman, Special
Committee on Drug and Alcohol Abuse)

Judiciary

Referred to Judicial Proceedings

SUMMARY OF LEGISLATION: This amended bill provides for the granting of "use" immunity to witnesses compelled to testify regarding a criminal matter. Specifically, if a witness refuses to testify on a criminal matter, on the grounds of privilege against self-incrimination, the Court may compel the witness to testify or provide information by issuing a court order to that effect. The court order would only be granted upon the written request of the prosecutor, who has found that the testimony or information of a witness may be necessary to the public interest, and that the testimony or information would not be forthcoming absent the order.

Criminal prosecution would be allowed against the witness for the crimes that were testified about; such testimony, however, would not be "used" against the witness in any criminal case, except those involving the failure to comply with the Court's order.

STATE FISCAL IMPACT STATEMENT: No effect.

LOCAL FISCAL IMPACT STATEMENT: No effect.

STATE REVENUES: No effect.

STATE EXPENDITURES: The Administrative Office of the Courts advises that the cost of any additional Court orders necessary under this legislation could be absorbed within existing resources. State expenditures are not affected by this change in procedural requirements for compelling testimony from witnesses claiming self-incrimination privileges.

LOCAL REVENUES: No effect.

LOCAL EXPENDITURES: No effect.

INFORMATION SOURCE: Administrative Office of the Courts, Department of Public Safety and Correctional Services (Division of Correction), Department of Fiscal Services

ESTIMATE BY: Department of Fiscal Services

Fiscal Note History: First Reader - February 20, 1989
Revised - House Third Reader - April 4, 1989

Per: Camille Infussi Dobson
nir

William R. Miles, Supervising Analyst
Division of Fiscal Research

House Bill 1311
Page Two