

No. 1978-168

AN ACT

SB 767

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, changing provisions relating to immunity of witnesses and changing the statute of limitations for certain offenses.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Subsection (c) of section 5552 and section 5947 of Title 42, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, section 5947 added April 28, 1978 (No.53), are amended to read:

§ 5552. Other offenses.

* * *

(c) Exceptions.—If the period prescribed in subsection (a) or subsection (b) has expired, a prosecution may nevertheless be commenced for:

(1) Any offense a material element of which is either fraud or a breach of fiduciary obligation within one year after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself not a party to the offense, but in no case shall this paragraph extend the period of limitation otherwise applicable by more than three years.

(2) Any offense committed by a public officer or employee in the course of or in connection with his office or employment at any time when the defendant is in public office or employment or within [two]five years thereafter, but in no case shall this paragraph extend the period of limitation otherwise applicable by more than [three] eight years.

* * *

[§ 5947. Order to testify in cases involving organized crime or racketeering.

(a) General rule.—If, in a proceeding relating to organized crime or racketeering before a court, grand jury or investigating body set up by legislative enactment or by order of the Governor, any person who shall refuse to testify or to produce evidence of any other kind on the ground that his testimony or evidence may tend to incriminate him, that person may be ordered to give such testimony. The order to testify shall not be given except upon an order of court after a hearing in which the Attorney General has established a need for the grant of immunity, as provided in this section.

(b) Petition for order.—The Attorney General may petition the court of the county in which such proceedings are being conducted for an order

requiring any person to testify or produce evidence, which petition may be joined in by the district attorney of the county where such proceedings are being conducted. Such petition shall set forth the nature of the investigation and the need for the immunization of the witness.

(c) **Immunity.**—No such witness shall be prosecuted or subjected to any penalty or forfeiture nor shall there be any liability on the part of and no cause of action of any nature shall arise against any such witness for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding against him in any court.

(d) **Perjury.**—No person, so ordered to testify or to produce evidence, shall be exempt from any punishment or forfeiture for perjury committed by him while so testifying. Such testimony shall be admissible against him in any criminal proceeding concerning such perjury.

(e) **Criminal contempt.**—Any person who shall refuse or decline to testify or produce evidence of any other kind after being granted immunity and ordered by the court, shall be guilty of criminal contempt, and upon conviction thereof, shall be sentenced to pay a fine of not more than \$1,000 or to undergo imprisonment for a period of not more than one year, or both.

(f) **Definition.**—As used in this section “organized crime” and “racketeering” include, but are not limited to, conspiracy to commit murder, bribery or extortion, narcotic or dangerous drug violations, prostitution, usury, subornation of perjury and lottery, bookmaking or other forms of organized gambling.]

§ 5947. *Immunity of witnesses.*

(a) **Definitions.**—*The following words and phrases when used in this section shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:*

“Designated court.”

(1) *In the case of proceedings before courts, countywide grand juries, countywide investigating grand juries and district justices: the court of common pleas of the judicial district in which the proceeding is taking place.*

(2) *In the case of proceedings before multicounty investigating grand juries: the judge of the court of common pleas designated as supervising judge of that grand jury.*

“Immunity order.” An order issued under this section by a designated court, directing a witness to testify or produce other information over a claim of privilege against self-incrimination.

(b) **Availability.**—*Immunity orders shall be available under this section in all proceedings before:*

(1) *Courts.*

(2) *Grand juries.*

(3) *Investigating grand juries.*

(4) *District justices, coroners or magistrates.*

(c) *Request and issuance.*—*The Attorney General or a district attorney may request an immunity order from any judge of a designated court, and that judge shall issue such an order, when in the judgment of the Attorney General or district attorney:*

(1) *the testimony or other information from a witness may be necessary to the public interest; and*

(2) *a witness has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.*

(d) *Order to testify.*—*Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding specified in subsection (b), and the person presiding at such proceeding communicates to the witness an immunity order, that witness may not refuse to testify based on his privilege against self-incrimination.*

(e) *Limitation on use.*—*No testimony or other information compelled under an immunity order, or any information directly or indirectly derived from such testimony or other information, may be used against a witness in any criminal case, except that such information may be used:*

(1) *in a prosecution under 18 Pa.C.S. § 4902 (relating to perjury) or under 18 Pa.C.S. § 4903 (relating to false swearing);*

(2) *in a contempt proceeding for failure to comply with an immunity order; or*

(3) *as evidence, where otherwise admissible, in any proceeding where the witness is not a criminal defendant.*

(f) *Civil contempt.*—*Any person who shall fail to comply with an immunity order may be adjudged in civil contempt and committed to the county jail until such time as he purges himself of contempt by complying with the order: Provided, That with regard to proceedings before grand juries or investigating grand juries, if the grand jury before which a person has been ordered to testify has been dissolved, he may then purge himself of contempt by complying before the designated court which issued the order.*

(g) *Criminal contempt.*—*In addition to civil contempt as provided in subsection (f), any person who shall fail to comply with an immunity order shall be guilty of criminal contempt, and upon conviction thereof, shall be sentenced to pay a fine of not more than \$1,000 or to undergo imprisonment for a period of not more than one year, or both.*

Section 2. This act shall take effect in 60 days.

APPROVED—The 4th day of October, A. D. 1978.

MILTON J. SHAPP