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MEMORANDUM

DATE: March 11, 2003  
TO: Assemblyman Bernie Anderson, Chairman, and Members of the Assembly Committee on Judiciary  
FROM: Allison Combs, Principal Research Analyst *AC*  
Research Division  
SUBJECT: Immunity for Witnesses - Assembly Bill 61

On behalf of the members of the Assembly Committee on Judiciary, you requested information on the laws in other states regarding witness immunity and whether other states offer "transactional" or "derivative use" immunity.

As explained during testimony before the Committee on Assembly Bill 61, "transactional" immunity generally provides that a witness cannot be prosecuted for the crime concerning which the witness is testifying. "Use" or "derivative use" immunity generally allows the government to prosecute the witness using evidence obtained independently of the witness's immunized testimony.

Unfortunately, there do not appear to be any summaries available concerning the laws in other states regarding the type of immunity authorized. Based upon the research, the laws in other states depend not only upon statutory law, but also upon the case law in each state regarding the state constitutional protections against self-incrimination. A summary of the laws in other states was located in a 1995 Pennsylvania court decision (*Commonwealth v. Patricia Swinehart*, 664 A.2d 957). However, the Legal Division of the Legislative Counsel Bureau has not reviewed this decision or its case law citations. For a complete review of the case law in other states concerning this issue, the Committee may wish to consult the Legal Division.

Quoting from the Pennsylvania summary, following is an overview of the laws in 41 other states:

- Eleven jurisdictions provide for transactional immunity through legislation. These include California, Idaho, Illinois, Maine, Michigan,

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SUBMITTED BY: Allison Combs

Nevada, New Hampshire, Rhode Island, Utah, Washington, and West Virginia. (Additional notes: Iowa also authorizes transactional immunity by statute. In 1997, Missouri approved legislation authorizing the use of "transactional" immunity. However, Utah, which is included in the Pennsylvania list as having transactional immunity, adopted a law in 1997 authorizing "use/derivative use" immunity.)

- The six states that have found their constitutions to require transactional immunity are Alaska, Hawaii, Massachusetts, Mississippi, Oregon, and South Carolina.
- Eighteen jurisdictions have provided for use/derivative use immunity. These include Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Iowa, Kansas, Louisiana, Minnesota, Montana, Nebraska, New Mexico, North Carolina, North Dakota, South Dakota, Vermont, and Wisconsin. (Additional notes: In 1997, Utah adopted a law authorizing use/derivative use immunity.)
- The six states which have found use and derivative use immunity consistent with the self-incrimination clauses in their state constitutions are Arizona, Indiana, Maryland, New Jersey, New York, and Texas. (However, New York has specifically authorized transactional immunity in statute.)

#### States that Offer Both "Transactional" and "Use/Derivative Use" Immunity

At least three states, offer both "transactional" and "use/derivative use" immunity by statute: California, Illinois, and Kansas.

#### Concluding Remarks

I hope this information is helpful. Please feel free to contact me if you have any questions.

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