

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Justice Appropriations
2 Subcommittee

3 Representative Spano offered the following:
4

5 **Amendment (with title amendment)**

6 Between lines 1095 and 1096, insert:
7

8 Section 27. Section 794.10, Florida Statutes, is created
9 to read:

10 794.10 Investigative subpoenas in certain cases involving
11 child victims.—

12 (1) DEFINITIONS.—As used in this section, the term:

13 (a) "Child" means a person who is less than 18 years of
14 age.

15 (b) "Criminal justice agency" means a law enforcement
16 agency, court, or prosecutor in this state.

Amendment No.

17 (c) "Sexual exploitation or abuse of a child" means a
18 criminal offense based on any conduct described in s. 39.01(70).

19 (d) "Sexual offender" means a person who meets the
20 criteria provided in s. 943.0435(1)(h)1.a.(I) and was convicted
21 of at least one qualifying offense that involved a victim who
22 was a child at the time of the offense.

23 (2)(a) AUTHORIZATION.—In any investigation of:

24 1. An offense involving the sexual exploitation or abuse
25 of a child;

26 2. A sexual offense allegedly committed by a sexual
27 offender who has not registered as required under s. 775.21; or

28 3. An offense under chapter 847 involving a child victim
29 that is not otherwise included in subparagraph 1. or
30 subparagraph 2.,

31
32 a criminal justice agency may issue in writing and cause to be
33 served a subpoena requiring the production of any record,
34 object, or other information or testimony described in paragraph
35 (b).

36 (b) A subpoena issued under this section may require:

37 1. The production of any record, object, or other
38 information relevant to the investigation.

39 2. Testimony by the custodian of the record, object, or
40 other information concerning its production and authenticity.

41 (c) A subpoena issued under this section with respect to a

Amendment No.

42 provider of electronic communications services or remote
43 computing services shall not extend beyond:

44 1. Requiring the provider to disclose any record, object,
45 or other information that may be relevant to the investigation;
46 or

47 2. Requiring a custodian of the record, object, or other
48 information of such provider to testify concerning its
49 production and authenticity.

50 (3) CONTENTS OF SUBPOENAS.—A subpoena issued under this
51 section shall describe any record, object, or other information
52 required to be produced and prescribe a reasonable return date
53 within which the record, object, or other information can be
54 assembled and made available.

55 (4) WITNESS EXPENSES.—Witnesses subpoenaed under this
56 section shall be reimbursed for fees and mileage at the same
57 rate at which witnesses in the courts of this state are
58 reimbursed.

59 (5) PETITIONS BEFORE RETURN DATE.—At any time before the
60 return date specified in the subpoena, the person or entity
61 summoned may, in the circuit court of the county in which that
62 person or entity conducts business or resides, petition for an
63 order modifying or setting aside the subpoena or the requirement
64 for nondisclosure of certain information under subsection (6).

65 (6) NONDISCLOSURE.—

66 (a)1. If a subpoena issued under this section is

Amendment No.

67 accompanied by a written certification under subparagraph 2. and
68 notice under paragraph (c), the recipient of the subpoena shall
69 not disclose, for a period of 180 days, to any person the
70 existence or contents of the subpoena.

71 2. The requirement in subparagraph 1. applies if the
72 criminal justice agency that issued the subpoena certifies in
73 writing that the disclosure may result in one or more of the
74 following circumstances:

- 75 a. Endangering a person's life or physical safety;
76 b. Encouraging a person's flight from prosecution;
77 c. Destruction of or tampering with evidence;
78 d. Intimidation of potential witnesses; or
79 e. Otherwise seriously jeopardizing an investigation or
80 unduly delaying a trial.

81 (b)1. A recipient of a subpoena may disclose information
82 subject to the nondisclosure requirement in subparagraph (a)1.
83 to:

- 84 a. A person to whom disclosure is necessary in order to
85 comply with the subpoena;
86 b. An attorney in order to obtain legal advice or
87 assistance regarding the subpoena; or
88 c. Any other person as authorized by the criminal justice
89 agency that issued the subpoena.

90 2. A recipient of a subpoena who discloses to a person
91 described in subparagraph 1. information subject to the

Amendment No.

92 nondisclosure requirement shall notify such person of the
93 nondisclosure requirement by providing the person with a copy of
94 the subpoena. A person to whom information is disclosed under
95 subparagraph 1. is subject to the nondisclosure requirement in
96 subparagraph (a)1.

97 3. At the request of the criminal justice agency that
98 issued the subpoena, a recipient of a subpoena who discloses or
99 intends to disclose to a person described in sub-subparagraph
100 1.a. or sub-subparagraph 1.b. information subject to the
101 nondisclosure requirement shall provide to the criminal justice
102 agency the identity of the person to whom such disclosure was or
103 will be made.

104 (c)1. The nondisclosure requirement imposed under
105 paragraph (a) is subject to judicial review under subsection
106 (13).

107 2. A subpoena issued under this section, in connection
108 with which a nondisclosure requirement under paragraph (a) is
109 imposed, shall include:

110 a. Notice of the nondisclosure requirement and the
111 availability of judicial review.

112 b. Notice that the nondisclosure requirement may subject
113 the recipient or any person to whom the subpoena is disclosed
114 under subparagraph (b)1. to contempt of court under subsection
115 (11) for a violation of the requirement.

116 (d) The nondisclosure requirement in paragraph (a) may be

Amendment No.

117 extended under subsection (13).

118 (7) EXCEPTIONS TO PRODUCTION.—A subpoena issued under this
119 section shall not require the production of anything that is
120 protected from production under the standards applicable to a
121 subpoena duces tecum issued by a court of this state.

122 (8) RETURN OF RECORDS AND OBJECTS.—If a case or proceeding
123 resulting from the production of any record, object, or other
124 information under this section does not arise within a
125 reasonable period of time after such production, the criminal
126 justice agency to which it was delivered shall, upon written
127 demand made by the person producing it, return the record,
128 object, or other information to such person, unless the record
129 was a copy and not an original.

130 (9) TIME OF PRODUCTION.—A subpoena issued under this
131 section may require production of any record, object, or other
132 information as soon as possible, but the recipient of the
133 subpoena must have at least 24 hours after he or she is served
134 to produce the record, object, or other information.

135 (10) SERVICE.—A subpoena issued under this section may be
136 served as provided in chapter 48.

137 (11) ENFORCEMENT.—

138 (a) If a recipient of a subpoena under this section
139 refuses to comply with the subpoena, the criminal justice agency
140 may invoke the aid of any circuit court described in subsection
141 (5) or of the circuit court of the county in which the

Amendment No.

142 authorized investigation is being conducted. Such court may
143 issue an order requiring the recipient of a subpoena to appear
144 before the criminal justice agency that issued the subpoena to
145 produce any record, object, or other information or to testify
146 concerning the production and authenticity of the record,
147 object, or other information.

148 (b) Any failure to comply with an order under paragraph
149 (a) or with a nondisclosure requirement under subsection (6) may
150 be punished by the court as a contempt of court. All process in
151 any such case may be served in any county in which such person
152 may be found.

153 (12) IMMUNITY.—Notwithstanding any other law, any person,
154 including any officer, agent, or employee, receiving a subpoena
155 under this section who complies in good faith with the subpoena
156 and produces or discloses any record, object, or other
157 information sought is not liable in any court in this state to
158 any customer or other person for such production or disclosure.

159 (13) JUDICIAL REVIEW OF NONDISCLOSURE REQUIREMENT.—

160 (a)1.a. If a recipient of a subpoena under this section
161 wishes to have a court review a nondisclosure requirement under
162 subsection (6), the recipient may notify the criminal justice
163 agency issuing the subpoena or file a petition for judicial
164 review in the circuit court described in subsection (5).

165 b. Within 30 days after the date on which the criminal
166 justice agency receives the notification under sub-subparagraph

Amendment No.

167 a., the criminal justice agency shall apply for an order
168 prohibiting the disclosure of the existence or contents of the
169 subpoena. An application under this sub-subparagraph may be
170 filed in the circuit court described in subsection (5) or in the
171 circuit court of the county in which the authorized
172 investigation is being conducted.

173 c. The nondisclosure requirement shall remain in effect
174 during the pendency of proceedings relating to the requirement.

175 d. A circuit court that receives a petition under sub-
176 paragraph a. or an application under sub-subparagraph b.
177 shall rule on such petition or application as expeditiously as
178 possible.

179 2. An application for a nondisclosure order or extension
180 thereof or a response to a petition filed under this paragraph
181 must include a certification from the criminal justice agency
182 that issued the subpoena indicating that the disclosure of such
183 information may result in one or more of the circumstances
184 described in subparagraph (6) (a)2.

185 3. A circuit court shall issue a nondisclosure order or
186 extension thereof under this paragraph if it determines that
187 there is reason to believe that disclosure of such information
188 may result in one or more of the circumstances described in
189 subparagraph (6) (a)2.

190 4. Upon a showing that any of the circumstances described
191 in subparagraph (6) (a)2. continue to exist, a circuit court may

Amendment No.

192 issue an ex parte order extending a nondisclosure order imposed
193 under this section for an additional 180 days. There is no limit
194 on the number of nondisclosure extensions that may be granted
195 under this subparagraph.

196 (b) In all proceedings under this subsection, subject to
197 any right to an open hearing in a contempt proceeding, a circuit
198 court must close any hearing to the extent necessary to prevent
199 the unauthorized disclosure of a request for records, objects,
200 or other information made to any person or entity under this
201 section. Petitions, filings, records, orders, certifications,
202 and subpoenas must also be kept under seal to the extent and as
203 long as necessary to prevent the unauthorized disclosure of any
204 information under this section.

205 -----
206
207 **T I T L E A M E N D M E N T**

208 Remove line 59 and insert:

209 the act; amending s. 794.056, F.S.; conforming provisions to
210 changes made by the act; creating s. 794.10, F.S.; providing
211 definitions; authorizing subpoenas in certain investigations of
212 sexual offenses involving child victims and specifying
213 requirements therefor; providing for specified reimbursement of
214 witnesses; authorizing certain motions; requiring nondisclosure
215 of specified information in certain circumstances; providing
216 exceptions to such nondisclosure requirement; providing for

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7049 (2017)

Amendment No.

217 | judicial review and extension of such nondisclosure requirement
218 | and specifying requirements therefor; exempting certain records,
219 | objects, and other information from production; providing for
220 | the return of records, objects, and other information produced;
221 | specifying time periods within which records, objects, and other
222 | information must be returned; providing for service and
223 | enforcement of subpoenas; providing immunity for certain persons
224 | complying with subpoenas in certain circumstances; amending s.
225 | 796.001, F.S.;