



129704

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/17/2017	.	
	.	
	.	
	.	

---

The Committee on Criminal Justice (Rouson) recommended the following:

1           **Senate Amendment to Substitute Amendment (176364) (with**  
2 **title amendment)**

3  
4           Between lines 5 and 6  
5 insert:

6           Section 1. Section 775.211, Florida Statutes, is created to  
7 read:

8           775.211 Subpoenas in investigations of sexual offenses.—

9           (1) AUTHORIZATION FOR ISSUANCE OF SUBPOENA.—

10           (a)1. In an investigation of an offense involving the



129704

11 sexual exploitation or abuse of a child, an offense involving an  
12 unregistered sex offender, or an offense meeting the criteria  
13 specified for designation as a sexual predator under s. 775.21,  
14 a law enforcement agency may issue in writing and serve a  
15 subpoena requiring the production of records and things and  
16 testimony described in subparagraph 2.

17 2. Except as provided in subparagraph 3., a subpoena issued  
18 under subparagraph 1. may require the production by their  
19 custodian of any records or things relevant to the investigation  
20 and testimony concerning their production and authenticity.

21 3. A subpoena issued under subparagraph 1. to a provider of  
22 electronic communication services or remote computing services  
23 in the course of an investigation of an offense involving the  
24 sexual exploitation or abuse of a child may not extend beyond  
25 requiring the provider to disclose the information specified in  
26 s. 775.21, which may be relevant to an authorized law  
27 enforcement inquiry, or requiring the provider's custodian of  
28 the records to give testimony concerning the production and  
29 authentication of such records or information.

30 4. As used in this paragraph, the term "sex offender" means  
31 a person who has been convicted of committing, or attempting,  
32 soliciting, or conspiring to commit, any of the following  
33 criminal offenses in this state or similar offenses in another  
34 jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s.  
35 787.02, or s. 787.025(2)(c), when the victim is a minor; s.  
36 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.  
37 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;  
38 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.  
39 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.



129704

40 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court  
41 makes a written finding that the racketeering activity involved  
42 at least one sexual offense listed in this subparagraph or at  
43 least one offense listed in this subparagraph with sexual intent  
44 or motive; s. 916.1075(2); or s. 985.701(1).

45 (b) A subpoena issued under this subsection must describe  
46 the records or things required to be produced and prescribe a  
47 date by which the records or things must be made available.

48 (c) A witness subpoenaed under this subsection must be paid  
49 the same fees and mileage that are paid to a witness in the  
50 courts of this state.

51 (d) At any time before the return date specified in the  
52 summons, the person or entity summoned, in the court having  
53 jurisdiction over such person or investigation, may petition for  
54 an order modifying or setting aside the summons or a prohibition  
55 on disclosure under paragraph (e).

56 (e)1. If a subpoena issued under this subsection is  
57 accompanied by a certification under this subparagraph and  
58 notice of the right to judicial review under subparagraph 3.,  
59 the recipient of the subpoena may not disclose to any person for  
60 a period of 180 days that the law enforcement agency that issued  
61 the subpoena has sought or obtained access to information or  
62 records under this section. The law enforcement agency that  
63 issues the subpoena may request such certification by certifying  
64 to the court that the absence of a prohibition on disclosure may  
65 result in:

66 a. Endangering the life or physical safety of an  
67 individual;

68 b. Flight from prosecution;



129704

69       c. Destruction of or tampering with evidence;  
70       d. Intimidation of potential witnesses; or  
71       e. Seriously jeopardizing an investigation or unduly  
72 delaying a trial.

73       2.a. A recipient of a subpoena issued under this subsection  
74 may disclose information otherwise subject to any applicable  
75 nondisclosure requirement to persons as necessary to comply with  
76 the request, to an attorney in order to obtain legal advice or  
77 assistance regarding the request, or to other persons as allowed  
78 by the law enforcement agency that issued the subpoena.

79       b. A person to whom disclosure is made under sub-  
80 paragraph a. is subject to the nondisclosure requirements  
81 applicable to a person to whom a subpoena is issued under this  
82 subsection in the same manner as the person to whom the subpoena  
83 was issued.

84       c. Any recipient who discloses to a person described in  
85 sub-subparagraph a. information otherwise subject to a  
86 nondisclosure requirement shall notify that person of the  
87 applicable nondisclosure requirement.

88       d. At the request of the law enforcement agency that issued  
89 the subpoena, any person making or intending to make a  
90 disclosure under sub-subparagraph a. to a person other than an  
91 attorney shall identify to the law enforcement agency the person  
92 to whom such disclosure has been or will be made.

93       3. A nondisclosure requirement imposed under subparagraph  
94 1. is subject to judicial review under subsection (5). A  
95 subpoena issued under this subsection in connection with a  
96 nondisclosure requirement imposed under subparagraph 1. must  
97 include notice of the availability of such judicial review. Such



129704

98 nondisclosure requirement may be extended in accordance with  
99 subsection (5).

100 (f) A summons issued under this subsection may not compel  
101 the production of anything that would be protected from  
102 production under the standards applicable to a subpoena duces  
103 tecum issued by a court of this state.

104 (g) If a case or proceeding does not arise from the  
105 production of records or other things pursuant to this  
106 subsection within a reasonable time after those records or  
107 things are produced, the agency to which those records or things  
108 were delivered shall, upon written demand made by the person who  
109 produced them, return them to that person, unless the materials  
110 produced were copies rather than originals.

111 (h) A subpoena issued under paragraph (a) for an  
112 unregistered sex offender may require production as soon as  
113 possible, but must allow the recipient at least 24 hours after  
114 service of the subpoena to produce.

115 (2) SERVICE.—A subpoena issued under subsection (1) may be  
116 served by any person who is at least 18 years of age and  
117 designated in the subpoena to serve it. Service upon an  
118 individual may be made by personal delivery. Service may be made  
119 on a domestic or foreign corporation or on a partnership or  
120 other unincorporated association that is subject to suit under a  
121 common name by delivering the subpoena to an officer, a managing  
122 or general agent, or any other agent authorized by appointment  
123 or by law to receive service of process. The affidavit of the  
124 person serving the subpoena entered on a true copy of the  
125 subpoena is proof of service.

126 (3) ENFORCEMENT.—In the case of contumacy by or refusal to



129704

127 comply with a subpoena, the law enforcement agency that issued  
128 the subpoena may petition a court that has jurisdiction of the  
129 investigation or over the person subpoenaed, or in which he or  
130 she conducts business or may be found, to compel compliance. The  
131 court may issue an order requiring the subpoenaed person to  
132 appear before the law enforcement agency to produce records or  
133 to give testimony concerning the production and authentication  
134 of such records. Any failure to obey the order of the court may  
135 be punished by the court as contempt. All process in any such  
136 case may be served in any judicial district in which such person  
137 is located.

138 (4) IMMUNITY FROM CIVIL LIABILITY.—Notwithstanding any  
139 other law, a person subpoenaed under this section who complies  
140 in good faith with the subpoena and produces the materials  
141 sought is not liable in any court within the state to any  
142 customer or other person for such production or for  
143 nondisclosure of that production.

144 (5) JUDICIAL REVIEW OF NONDISCLOSURE REQUIREMENTS.—

145 (a) Nondisclosure order.—

146 1. If a recipient of a subpoena under this section wishes  
147 to have a court review a nondisclosure requirement imposed in  
148 connection with the subpoena, the recipient may notify the law  
149 enforcement agency or file a petition for judicial review with  
150 the issuing court.

151 2. No later than 30 days after the date of receipt of a  
152 notification under subparagraph 1., the law enforcement agency  
153 shall apply for an order prohibiting the disclosure of the  
154 existence or contents of the relevant subpoena. An application  
155 under this subparagraph may be filed with the district court of



129704

156 appeal for the judicial district in which the recipient of the  
157 subpoena is doing business or with the district court of appeal  
158 for any judicial district within which the authorized  
159 investigation that is the basis for the subpoena is being  
160 conducted. The applicable nondisclosure requirement shall remain  
161 in effect during the pendency of any related proceeding.

162 3. A district court of appeal that receives a petition  
163 under subparagraph 1. or an application under subparagraph 2.  
164 must rule expeditiously, and shall, in accordance with paragraph  
165 (c), issue a nondisclosure order that includes conditions  
166 appropriate to the circumstances.

167 (b) Application contents.—An application for a  
168 nondisclosure order, or an extension thereof, or a response to a  
169 petition must include the certification required under  
170 subparagraph (1)(e)1.

171 (c) Standard.—A district court of appeal shall issue a  
172 nondisclosure order, or an extension thereof, under this  
173 subsection if the court determines that there is reason to  
174 believe that disclosure of the information subject to the  
175 nondisclosure requirement during the applicable time period may  
176 result in:

177 1. Endangering the life or physical safety of an  
178 individual;

179 2. Flight from prosecution;

180 3. Destruction of or tampering with evidence;

181 4. Intimidation of potential witnesses; or

182 5. Seriously jeopardizing an investigation or unduly  
183 delaying a trial.

184 (d) Extension.—Upon a showing that a circumstance described



129704

185 in any of subparagraphs (c)1.-(c)5. continues to exist, a  
186 district court of appeal may issue an ex parte order extending a  
187 nondisclosure order imposed under this subsection for additional  
188 180-day periods or, if the court determines that the  
189 circumstances necessitate a longer period of nondisclosure, for  
190 additional periods that are longer than 180 days.

191 (e) Closed hearings.-In all proceedings under this  
192 subsection, subject to any right to an open hearing in a  
193 contempt proceeding, the court shall close any hearing to the  
194 extent necessary to prevent the unauthorized disclosure of a  
195 request for records, a report, or other information made to any  
196 person or entity under this section. Petitions, filings,  
197 records, orders, certifications, and subpoenas must be kept  
198 under seal to the extent and length of time necessary to prevent  
199 the unauthorized disclosure of a subpoena under this section.

200  
201 ===== T I T L E A M E N D M E N T =====

202 And the title is amended as follows:

203 Delete line 156

204 and insert:

205 An act relating to exploitation and abuse; creating s.  
206 775.211, F.S.; authorizing a law enforcement agency to  
207 issue and serve a subpoena in an investigation of an  
208 offense involving the sexual exploitation or abuse of  
209 a child, an offense involving an unregistered sex  
210 offender, or other specified offenses; specifying and  
211 limiting the scope of production under the subpoena;  
212 defining the term "sex offender"; requiring the  
213 payment of fees and mileage to a subpoenaed witness;





214 authorizing a person who is the subject of a summons  
215 to petition for an order modifying or setting aside  
216 the summons or a prohibition on disclosure  
217 accompanying the summons; prohibiting the recipient of  
218 a subpoena from disclosing its contents to another  
219 person under certain circumstances; providing  
220 exceptions; specifying requirements regarding the  
221 nondisclosure of information; providing that  
222 nondisclosure requirements are subject to judicial  
223 review and that subpoenas issued under a nondisclosure  
224 certification must include notice of the availability  
225 of judicial review; requiring the return of produced  
226 records under certain circumstances; requiring that  
227 certain recipients of such a subpoena be allowed at  
228 least a specified amount of time to produce records;  
229 specifying requirements for service of the subpoena;  
230 authorizing the issuer of the subpoena to seek  
231 enforcement of the subpoena in a court of competent  
232 jurisdiction; authorizing a court to punish  
233 noncompliance with an order as contempt; providing  
234 immunity from liability for the good faith compliance  
235 with such a subpoena; specifying the procedure for  
236 filing for judicial review of a nondisclosure  
237 requirement imposed in connection with a subpoena;  
238 requiring the law enforcement agency to apply for a  
239 nondisclosure order within a specified timeframe after  
240 receipt of notification of a filing for judicial  
241 review; requiring a district court of appeal to rule  
242 expeditiously on such filing; requiring an application



243 for a nondisclosure order to include the law  
244 enforcement agency's certification as to possible  
245 results of disclosure; requiring the district court of  
246 appeal to issue a nondisclosure order, or an extension  
247 thereof, under certain circumstances; specifying  
248 circumstances under which a district court of appeal  
249 may issue an extension for a specified period;  
250 requiring a court to close any hearing and seal  
251 records to prevent the disclosure of specified  
252 information or records;