

1                   A bill to be entitled  
2           An act relating to child predators; creating s.  
3           794.10, F.S.; providing definitions; authorizing  
4           subpoenas in certain investigations of sexual offenses  
5           involving child victims and specifying requirements  
6           therefor; providing for specified reimbursement of  
7           witnesses; authorizing certain motions; requiring  
8           nondisclosure of specified information in certain  
9           circumstances; providing exceptions to such  
10          nondisclosure requirement; providing for judicial  
11          review and extension of such nondisclosure requirement  
12          and specifying requirements therefor; exempting  
13          certain records and objects from production; providing  
14          for return of records and objects produced; specifying  
15          time periods within which records and objects must be  
16          returned; providing for service and enforcement of  
17          subpoenas; providing immunity for certain persons  
18          complying with subpoenas in certain circumstances;  
19          providing an effective date.

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21   Be It Enacted by the Legislature of the State of Florida:

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23           Section 1.   Section 794.10, Florida Statutes, is created to  
24   read:

25           794.10 Investigative subpoenas in certain cases involving

26 child victims.-

27 (1) DEFINITIONS.-As used in this section, the term:

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

30 (b) "Sexual offender" means a person who meets the  
 31 criteria provided in s. 943.0435(1)(h)1.a.(I) and was convicted  
 32 of at least one qualifying offense that involved a victim who  
 33 was a minor at the time of the offense.

34 (2)(a) AUTHORIZATION.-In any investigation of:

35 1. An offense involving the sexual exploitation or abuse  
 36 of a child;

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

39 3. An offense under chapter 847 involving a minor victim  
 40 that is not otherwise included in subparagraph 1. or  
 41 subparagraph 2.,

42  
 43 a law enforcement agency may issue in writing and cause to be  
 44 served a subpoena requiring the production of any record or  
 45 object or testimony described in paragraph (b).

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

47 1. The production of any record or object relevant to the  
 48 investigation.

49 2. Testimony by the custodian of the record or object  
 50 concerning its production and authenticity.

51 (c) A subpoena issued under this section with respect to a  
52 provider of electronic communications services or remote  
53 computing services shall not extend beyond:

54 1. Requiring the provider to disclose any record, object,  
55 or other information that may be relevant to the law enforcement  
56 agency investigation; or

57 2. Requiring a custodian of the record or object of such  
58 provider to testify concerning its production and authenticity.

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

64 (4) WITNESS EXPENSES.—Witnesses subpoenaed under this  
65 section shall be reimbursed for fees and mileage at the same  
66 rate at which witnesses in the courts of this state are  
67 reimbursed.

68 (5) PETITIONS BEFORE RETURN DATE.—At any time before the  
69 return date specified in the subpoena, the person or entity  
70 summoned may, in the circuit court of the county in which that  
71 person or entity conducts business or resides, petition for an  
72 order modifying or setting aside the subpoena or prohibiting the  
73 disclosure of certain information under subsection (6).

74 (6) NONDISCLOSURE.—

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

76 accompanied by a written certification under subparagraph 2. and  
 77 notice of the right to judicial review under paragraph (c), the  
 78 recipient of the subpoena shall not disclose, for a period of  
 79 180 days, to any person that the state official who issued the  
 80 subpoena has sought or obtained access to any record or object  
 81 under this section.

82 2. The requirement in subparagraph 1. applies if the state  
 83 official who issued the subpoena certifies in writing that the  
 84 disclosure may result in:

- 85 a. Endangering a person's life or physical safety;
- 86 b. Encouraging a person's flight from prosecution;
- 87 c. Destruction of or tampering with evidence;
- 88 d. Intimidation of potential witnesses; or
- 89 e. Otherwise seriously jeopardizing an investigation or  
 90 unduly delaying a trial.

91 (b)1. A recipient of a subpoena may disclose information  
 92 subject to the nondisclosure requirement in subparagraph (a)1.  
 93 to:

- 94 a. A person to whom disclosure is necessary in order to  
 95 comply with the subpoena;
- 96 b. An attorney in order to obtain legal advice or  
 97 assistance regarding the subpoena; or
- 98 c. Any other person as permitted by the state official who  
 99 issued the subpoena.

100 2. A person to whom information is disclosed under

101 subparagraph 1. is subject to the nondisclosure requirement in  
102 subparagraph (a)1.

103 3. A recipient of a subpoena who discloses to a person  
104 described in subparagraph 1. information subject to the  
105 nondisclosure requirement shall notify such person of the  
106 nondisclosure requirement.

107 4. At the request of the state official who issued the  
108 subpoena, a recipient of a subpoena who discloses or intends to  
109 disclose to a person described in sub-subparagraph 1.a. or sub-  
110 subparagraph 1.b. information subject to the nondisclosure  
111 requirement shall provide to the state official the identity of  
112 the person to whom such disclosure was or will be made.

113 (c)1. The nondisclosure requirement imposed under  
114 paragraph (a) is subject to judicial review under subsection  
115 (13).

116 2. A subpoena issued under this section, in connection  
117 with which a nondisclosure requirement under paragraph (a) is  
118 imposed, shall include notice of the availability of judicial  
119 review.

120 (d) The nondisclosure requirement in (a) may be extended  
121 under subsection (13).

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

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

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

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

140       (11) ENFORCEMENT.—If a recipient of a subpoena under this  
141 section refuses to comply with the subpoena, the state official  
142 may invoke the aid of any circuit court described in subsection  
143 (5) or in the circuit court of the county in which the  
144 authorized investigation is being conducted. Such court may  
145 issue an order requiring the recipient of a subpoena to appear  
146 before the state official who issued the subpoena to produce any  
147 record or object or testify concerning the production and  
148 authenticity of the record or object. Any failure to comply with  
149 such order may be punished by the court as a contempt of court.  
150 All process in any such case may be served in any county in

151 which such person may be found.

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

158 (13) JUDICIAL REVIEW OF NONDISCLOSURE REQUIREMENT.—

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

164 b. Within 30 days after the date on which the state  
165 official receives the notification under sub-subparagraph a.,  
166 the state official shall apply for an order prohibiting the  
167 disclosure of the existence or contents of the subpoena. An  
168 application under this sub-subparagraph may be filed in the  
169 circuit court described in subsection (5) or in the circuit  
170 court of the county in which the authorized investigation is  
171 being conducted. The nondisclosure requirement shall remain in  
172 effect during the pendency of proceedings relating to the  
173 requirement.

174 c. A circuit court that receives a petition under sub-  
175 paragraph a. or an application under sub-subparagraph b.

176 shall rule on such petition or application as expeditiously as  
177 possible.

178 2. An application for a nondisclosure order or extension  
179 thereof or a response to a petition filed under this paragraph  
180 must include a certification from the state official who issued  
181 the subpoena indicating that the disclosure of such information  
182 may result in:

- 183 a. Endangering a person's life or physical safety;
- 184 b. Encouraging a person's flight from prosecution;
- 185 c. Destruction of or tampering with evidence;
- 186 d. Intimidation of potential witnesses; or
- 187 e. Otherwise seriously jeopardizing an investigation or  
188 unduly delaying a trial.

189 3. A circuit court shall issue a nondisclosure order or  
190 extension thereof under this paragraph if it determines that  
191 there is reason to believe that disclosure of such information  
192 may result in:

- 193 a. Endangering a person's life or physical safety;
- 194 b. Encouraging a person's flight from prosecution;
- 195 c. Destruction of or tampering with evidence;
- 196 d. Intimidation of potential witnesses; or
- 197 e. Otherwise seriously jeopardizing an investigation or  
198 unduly delaying a trial.

199 4. Upon a showing that any of the circumstances described  
200 in subparagraph 3. continue to exist, a circuit court may issue

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201 an ex parte order extending a nondisclosure order imposed under  
202 this section for an additional 180 days. There is no limit on  
203 the number of nondisclosure extensions that may be granted under  
204 this subparagraph.

205 (b) In all proceedings under this subsection, subject to  
206 any right to an open hearing in a contempt proceeding, a circuit  
207 court must close any hearing to the extent necessary to prevent  
208 the unauthorized disclosure of a request for records, a report,  
209 or other information made to any person or entity under this  
210 section. Petitions, filings, records, orders, certifications,  
211 and subpoenas must also be kept under seal to the extent and as  
212 long as necessary to prevent the unauthorized disclosure of any  
213 information under this section.

214 Section 2. This act shall take effect July 1, 2017.