

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WITHDRAWN _____ (Y/N)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: Criminal Justice
2 Subcommittee

3 Representative Latvala offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 934.255, Florida Statutes, is created
8 to read:

9 934.255 Subpoenas in investigations of sexual offenses.-

10 (1) As used in this section, the term:

11 (a) "Child" means a person under 18 years of age.

12 (b) "Deliver" is construed in accordance with completed
13 delivery, as provided for in Rule 1.080(b) of the Florida Rules
14 of Civil Procedure.

15 (c) "Sexual abuse of a child" means a criminal offense
16 based on any conduct described in s. 39.01(71).

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17 (d) "Supervisory official" means the person in charge of
18 an investigating or law enforcement agency's or entity's
19 headquarters or regional office; the state attorney of the
20 circuit from which the subpoena has been issued; the statewide
21 prosecutor; or an assistant state attorney or assistant
22 statewide prosecutor specifically designated by the state
23 attorney or statewide prosecutor to make such written
24 certification.

25 (2) An investigative or law enforcement officer who is
26 conducting an investigation into:

27 (a) Allegations of the sexual abuse of a child or an
28 individual's suspected commission of a crime listed in s.
29 943.0435(1)(h)1.a.(I) may use a subpoena to compel the
30 production of records, documents, or other tangible objects and
31 the testimony of the subpoena recipient concerning the
32 production and authenticity of such records, documents, or
33 objects, except as provided in paragraphs (b) and (c).

34 (b) Allegations of the sexual abuse of a child may use a
35 subpoena to require a provider of electronic communication
36 services or remote computing services to disclose a record or
37 other information pertaining to a subscriber or customer of such
38 service as described in 934.23(4)(b), not including the contents
39 of a communication. An investigative or law enforcement officer
40 who receives records or information from a provider of
41 electronic communication services or remote computing services

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42 under this paragraph is not required to provide notice to a
43 subscriber or customer of that provider.

44 (c) Allegations of the sexual abuse of a child may use a
45 subpoena to require a provider of remote computing services to
46 disclose the contents of any wire or electronic communication
47 that has been in electronic storage in an electronic
48 communications system for more than 180 days and to which this
49 paragraph is made applicable by paragraph (d), with prior
50 notice, or with delayed notice pursuant to subsection (6), from
51 the investigative or law enforcement officer to the subscriber
52 or customer.

53 (d) Paragraph (c) applies to any electronic communication
54 that is held or maintained on a remote computing service:

55 1. On behalf of a subscriber or customer of such service
56 and received by means of electronic transmission from, or
57 created by means of computer processing of communications
58 received by means of electronic transmission from, a subscriber
59 or customer of such service.

60 2. Solely for the purposes of providing storage or
61 computer processing services to a subscriber or customer, if the
62 provider is not authorized to access the contents of any such
63 communication for purposes of providing any service other than
64 storage or computer processing.

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66 A subpoena issued under this subsection must describe the
67 records, documents, or other tangible objects required to be
68 produced, and must prescribe a date by which such records,
69 documents, or other tangible objects must be produced.

70 (3) At any time before the date prescribed in the subpoena
71 by which records, documents, or other tangible objects must be
72 produced, a person or entity receiving a subpoena issued
73 pursuant to subsection (2) may, before a judge of competent
74 jurisdiction, petition for an order modifying or setting aside
75 the subpoena or a prohibition of disclosure issued under
76 subsection (5) or subsection (9).

77 (4) An investigative or law enforcement officer who uses a
78 subpoena issued under subsection (2) to obtain any record,
79 document, or other tangible object may retain such items for use
80 in any ongoing criminal investigation or a closed investigation
81 with the intent that the investigation may later be reopened.

82 (5) If a subpoena issued under subsection (2) is served
83 upon a recipient and accompanied by a written certification of a
84 supervisory official that there is reason to believe that
85 notification of the existence of the subpoena may have an
86 adverse result, as described in subsection (7), the subpoena
87 recipient is prohibited from disclosing to any person for a
88 period of 180 days the existence of the subpoena.

89 (a) A recipient of a subpoena issued under subsection (2)
90 that is accompanied by a written certification issued pursuant

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91 to this subsection is authorized to disclose information
92 otherwise subject to any applicable nondisclosure requirement to
93 persons as is necessary to comply with the subpoena, to an
94 attorney in order to obtain legal advice or assistance regarding
95 compliance with the subpoena, or to any other person as allowed
96 and specifically authorized by the investigative or law
97 enforcement officer who obtained the subpoena or the supervisory
98 official who issued the written certification. The subpoena
99 recipient shall notify any person to whom disclosure of the
100 subpoena is made pursuant to this paragraph of the existence of,
101 and length of time associated with, the nondisclosure
102 requirement.

103 (b) A person to whom disclosure of the subpoena is made
104 under paragraph (a) is subject to the nondisclosure requirements
105 of this subsection in the same manner as the subpoena recipient.

106 (c) At the request of the investigative or law enforcement
107 officer who obtained the subpoena or the supervisory official
108 who issued the written certification, the subpoena recipient
109 shall identify to the investigative or law enforcement officer
110 or supervisory official, before or at the time of compliance
111 with the subpoena, the name of any person to whom disclosure was
112 made under paragraph (a). If the investigative or law
113 enforcement officer or supervisory official makes such a
114 request, the subpoena recipient has an ongoing duty to disclose

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115 the identity of any individuals notified of the subpoena's
116 existence throughout the nondisclosure period.

117 (6) An investigative or law enforcement officer who
118 obtains a subpoena pursuant to paragraph (2)(c) may delay the
119 notification required under that paragraph for a period not to
120 exceed 180 days upon the execution of a written certification of
121 a supervisory official that there is reason to believe that that
122 notification of the existence of the subpoena may have an
123 adverse result described in subsection (7).

124 (7) Any of the following acts constitute an adverse
125 result:

126 (a) Endangering the life or physical safety of an
127 individual.

128 (b) Fleeing from prosecution.

129 (c) Destroying or tampering with evidence.

130 (d) Intimidating potential witnesses.

131 (e) Seriously jeopardizing an investigation or unduly
132 delaying a trial.

133 (8) The investigative or law enforcement officer shall
134 maintain a true copy of a written certification obtained under
135 subsection (5) or subsection (6).

136 (9) The court may grant extensions of the nondisclosure
137 period provided in subsection (5) or the delay of notification
138 provided in subsection (6) of up to 90 days each upon

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139 application by an investigative or law enforcement officer, but
140 only in accordance with subsection (11).

141 (10) Upon the expiration of the period of delay of
142 notification in subsection (6) or subsection (9), an
143 investigative or law enforcement officer who receives records or
144 information pursuant to a subpoena issued under paragraph (2)(c)
145 must serve upon or deliver by registered or first-class mail to
146 the subscriber or customer a copy of the process or request,
147 together with notice that:

148 (a) States with reasonable specificity the nature of the
149 law enforcement inquiry; and

150 (b) Informs the subscriber or customer of all of the
151 following:

152 1. That information maintained for such subscriber or
153 customer by the service provider named in the process or request
154 was supplied to or requested by the investigative or law
155 enforcement officer and the date on which such information was
156 so supplied or requested.

157 2. That notification of such subscriber or customer was
158 delayed.

159 3. What investigative or law enforcement officer or what
160 court made the written certification or determination pursuant
161 to which that delay was made.

162 4. Which provision of ss. 934.21-934.28 allowed such a
163 delay.

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164 (11) An investigative or law enforcement officer acting
165 under paragraph (2)(b), when not required to notify the
166 subscriber or customer, or to the extent that such notice may be
167 delayed pursuant to subsection (6), may apply to a court for an
168 order prohibiting a provider of electronic communication
169 services or remote computing services to whom the subpoena is
170 directed, for such period as the court deems appropriate, from
171 notifying any other person of the existence of such subpoena
172 except as specifically authorized in subsection (5). The court
173 shall enter such order if it determines that there is reason to
174 believe that notification of the existence of the subpoena will
175 result in an adverse result, as specified under subsection (7).

176 (12) In the case of contumacy by a person served a
177 subpoena issued under subsection (2), or his or her refusal to
178 comply with such a subpoena, the investigative or law
179 enforcement officer who sought the subpoena may petition a court
180 of competent jurisdiction to compel compliance. The court may
181 address the matter as indirect criminal contempt pursuant to
182 Rule 3.840 of the Florida Rules of Criminal Procedure. Any
183 prohibited disclosure of a subpoena issued under subsection (2)
184 for which a period of prohibition of disclosure provided in
185 subsection (5), a delay of notification in subsection (6), or an
186 extension thereof under subsection (9) is in effect is
187 punishable as provided in s. 934.43.

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188 (13) No cause of action shall lie in any court against any
189 provider of wire or electronic communication service, its
190 officers, employees, agents, or other specified persons for
191 providing information, facilities, or assistance in accordance
192 with the terms of a subpoena under this section.

193 (14) (a) A provider of wire or electronic communication
194 services or a remote computing service, upon the request of an
195 investigative or law enforcement officer, shall take all
196 necessary steps to preserve records and other evidence in its
197 possession pending the issuance of a court order or other
198 process.

199 (b) Records referred to in paragraph (a) shall be retained
200 for a period of 90 days, which shall be extended for an
201 additional 90 days upon a renewed request by an investigative or
202 law enforcement officer.

203 (15) A provider of electronic communication service, a
204 remote computing service, or any other person who furnished
205 assistance pursuant to this section shall be held harmless from
206 any claim and civil liability resulting from the disclosure of
207 information pursuant to this section and shall be reasonably
208 compensated for reasonable expenses incurred in providing such
209 assistance. A witness who is subpoenaed to appear to testify
210 under subsection (2) and who complies with the subpoena must be
211 paid the same fees and mileage rate paid to a witness appearing
212 before a court of competent jurisdiction in this state.

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213 Section 2. This act shall take effect October 1, 2018.

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216 **T I T L E A M E N D M E N T**

217 Remove everything before the enacting clause and insert:

218
219 A bill to be entitled

220 An act relating to subpoenas in investigations of
221 sexual offenses; creating s. 934.255, F.S.; defining
222 terms; authorizing an investigative or law enforcement
223 officer conducting an investigation into specified
224 matters to subpoena certain persons or entities for
225 the production of records, documents, or other
226 tangible things and testimony; specifying requirements
227 for the issuance of a subpoena; authorizing a
228 subpoenaed person to petition a court for an order
229 modifying or setting aside the subpoena or a
230 prohibition on disclosure; authorizing an
231 investigative or law enforcement officer to retain
232 subpoenaed records, documents, or other tangible
233 objects under certain circumstances; prohibiting the
234 disclosure of a subpoena for a specified period if the
235 disclosure might result in an adverse result;
236 providing exceptions; specifying the acts that
237 constitute an adverse result; requiring the

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238 | investigative or law enforcement officer to maintain a
239 | true copy of a written certification; authorizing a
240 | court to grant extension of certain periods under
241 | certain circumstances; requiring an investigative or
242 | law enforcement officer to serve or deliver a copy of
243 | the process along with specified information upon the
244 | expiration of a nondisclosure period or delay of
245 | notification; authorizing an investigative or law
246 | enforcement officer to apply to a court for an order
247 | prohibiting certain entities from notifying any person
248 | of the existence of a subpoena under certain
249 | circumstances; authorizing an investigative or law
250 | enforcement officer to petition a court to compel
251 | compliance; authorizing a court to punish a person who
252 | does not comply with a subpoena as indirect criminal
253 | contempt; providing criminal penalties; precluding a
254 | cause of action against certain entities or persons
255 | for providing information, facilities, or assistance
256 | in accordance with terms of a subpoena; providing for
257 | preservation of evidence pending issuance of process;
258 | providing that certain entities or persons shall be
259 | held harmless from any claim and civil liability
260 | resulting from disclosure of specified information;
261 | providing for reasonable compensation for reasonable
262 | expenses incurred in providing assistance; requiring

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263 | that a subpoenaed witness be paid certain fees and
264 | mileage; providing an effective date.