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LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

934.255 Subpoenas in investigations of sexual offenses.—

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

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

(b) "Deliver" is construed in accordance with completed



968614

11 delivery, as provided for in Rule 1.080(b) of the Florida Rules
12 of Civil Procedure.

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

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

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

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

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



968614

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

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

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

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

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

63
64 A subpoena issued under this subsection must describe the
65 records, documents, or other tangible objects required to be
66 produced, and must prescribe a date by which such records,
67 documents, or other tangible objects must be produced.

68 (3) At any time before the date prescribed in the subpoena



968614

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

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

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

87 (a) A recipient of a subpoena issued under subsection (2)
88 that is accompanied by a written certification issued pursuant
89 to this subsection is authorized to disclose information
90 otherwise subject to any applicable nondisclosure requirement to
91 persons as is necessary to comply with the subpoena, to an
92 attorney in order to obtain legal advice or assistance regarding
93 compliance with the subpoena, or to any other person as allowed
94 and specifically authorized by the investigative or law
95 enforcement officer who obtained the subpoena or the supervisory
96 official who issued the written certification. The subpoena
97 recipient shall notify any person to whom disclosure of the



968614

98 subpoena is made pursuant to this paragraph of the existence of,
99 and length of time associated with, the nondisclosure
100 requirement.

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

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

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

122 (7) Any of the following acts by a subpoena recipient
123 constitute an adverse result:

124 (a) Endangering the life or physical safety of an
125 individual.

126 (b) Fleeing from prosecution.



968614

- 127 (c) Destroying or tampering with evidence.
- 128 (d) Intimidating potential witnesses.
- 129 (e) Seriously jeopardizing an investigation or unduly
130 delaying a trial.
- 131 (8) The investigative or law enforcement officer shall
132 maintain a true copy of a written certification obtained under
133 subsection (5) or subsection (6).
- 134 (9) The court may grant extensions of the nondisclosure
135 period provided in subsection (5) or the delay of notification
136 provided in subsection (6) of up to 90 days each upon
137 application by an investigative or law enforcement officer, but
138 only in accordance with subsection (11).
- 139 (10) Upon the expiration of the period of delay of
140 notification in subsection (6) or subsection (9), an
141 investigative or law enforcement officer who receives records or
142 information pursuant to a subpoena issued under paragraph (2)(c)
143 must serve upon or deliver by registered or first-class mail to
144 the subscriber or customer a copy of the process or request,
145 together with notice that:
- 146 (a) States with reasonable specificity the nature of the
147 law enforcement inquiry; and
- 148 (b) Informs the subscriber or customer of all of the
149 following:
- 150 1. That information maintained for such subscriber or
151 customer by the service provider named in the process or request
152 was supplied to or requested by the investigative or law
153 enforcement officer and the date on which such information was
154 so supplied or requested.
- 155 2. That notification of such subscriber or customer was



968614

156 delayed.

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

160 4. Which provision of ss. 934.21-934.28 allowed such a
161 delay.

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

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



968614

185 punishable as provided in s. 934.43.

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

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

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

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

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

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213 ===== T I T L E A M E N D M E N T =====



968614

214 And the title is amended as follows:

215 Delete everything before the enacting clause
216 and insert:

217 A bill to be entitled

218 An act relating to subpoenas in investigations of
219 sexual offenses; creating s. 934.255, F.S.; defining
220 terms; authorizing an investigative or law enforcement
221 officer conducting an investigation into specified
222 matters to subpoena certain persons or entities for
223 the production of records, documents, or other
224 tangible things and testimony; specifying requirements
225 for the issuance of a subpoena; authorizing a
226 subpoenaed person to petition a court for an order
227 modifying or setting aside the subpoena or a
228 prohibition on disclosure; authorizing an
229 investigative or law enforcement officer to retain
230 subpoenaed records, documents, or other tangible
231 objects under certain circumstances; prohibiting the
232 disclosure of a subpoena for a specified period if the
233 disclosure might result in an adverse result;
234 providing exceptions; specifying the acts that
235 constitute an adverse result; requiring the
236 investigative or law enforcement officer to maintain a
237 true copy of a written certification; authorizing a
238 court to grant extension of certain periods under
239 certain circumstances; requiring an investigative or
240 law enforcement officer to serve or deliver a copy of
241 the process along with specified information upon the
242 expiration of a nondisclosure period or delay of



968614

243 notification; authorizing an investigative or law
244 enforcement officer to apply to a court for an order
245 prohibiting certain entities from notifying the
246 existence of a subpoena under certain circumstances;
247 authorizing an investigative or law enforcement
248 officer to petition a court to compel compliance;
249 authorizing a court to punish a person who does not
250 comply with a subpoena as indirect criminal contempt;
251 providing criminal penalties; precluding a cause of
252 action against certain entities or persons for
253 providing information, facilities, or assistance in
254 accordance with terms of a subpoena; providing for
255 preservation of evidence pending issuance of process;
256 providing that certain entities or persons shall be
257 held harmless from any claim and civil liability
258 resulting from disclosure of specified information;
259 providing for reasonable compensation for reasonable
260 expenses incurred in providing assistance; requiring
261 that a subpoenaed witness be paid certain fees and
262 mileage; providing an effective date.