

Committee on Criminal Justice

CS/HB 581 — Subpoenas in Investigations of Sexual Offenses

by Criminal Justice Subcommittee and Rep. Latvala and others (CS/CS/SB 618 by Judiciary Committee; Criminal Justice Committee; and Senators Baxley, Steube, Book, Rouson, and Mayfield)

The bill addresses use of a subpoena in an investigation involving allegations of sexual abuse of a child or the suspected commission of certain sex crimes.

The bill defines the terms “child,” “deliver,” “sexual abuse of a child,” “supervisory official,” and “adverse result.”

In an investigation involving allegations of sexual abuse of a child or the suspected commission of certain sex crimes, an investigative or law enforcement officer may use a subpoena to obtain records, documents, or other tangible objects, and testimony to authenticate such materials or objects. The bill specifies requirements for this subpoena. This subpoena does not apply to noncontent basic information regarding a subscriber or customer of a provider of an electronic communication service or remote computing service or to the contents of a wire or electronic communication that has been in electronic storage in an electronic communications system for more than 180 days.

In investigations involving sexual abuse of a child, an investigative or law enforcement officer may:

- Without notice to the subscriber or customer of a provider of an electronic communication service or remote computing service, use a subpoena to obtain noncontent basic subscriber or customer information; and
- With prior notice or delayed notice, use a subpoena to obtain contents of a wire or electronic communication that has been in electronic storage in an electronic communications system for more than 180 days.

An investigative or law enforcement officer may prohibit a subpoena recipient from disclosing to any person for 180 days the existence of the subpoena or delay required notification for 180 days, if the subpoena is accompanied by a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result. Limited disclosure is authorized. A court may grant extensions of the nondisclosure period or delay of notification if certain findings are made. The bill specifies requirements for providing notification to the customer or subscriber upon expiration of the delay of notification.

An investigative or law enforcement officer who uses a subpoena to obtain any record, document, or other tangible object may retain such items for use in any ongoing criminal investigation or a closed investigation with the intent that the investigation may later be reopened.

The bill also authorizes a petition to modify or set aside a subpoena or disclosure prohibition, specifies what subscriber or customer notification is required upon expiration of the delay of notification, specifies procedures for retention of records, provides for compensation of a subpoenaed witness and others, provides legal protections for subpoena compliance, and authorizes a court to compel compliance with a subpoena and to sanction refusal to comply.

If approved by the Governor, these provisions take effect October 1, 2018.

Vote: Senate 37-0; House 115-0