

By Senator Steube

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1 A bill to be entitled
2 An act relating to subpoenas in investigations of
3 sexual offenses; creating s. 775.211, F.S.;
4 authorizing a law enforcement agency to issue and
5 serve a subpoena in an investigation of an offense
6 involving the sexual exploitation or abuse of a child,
7 an offense involving an unregistered sex offender, or
8 other specified offenses; specifying and limiting the
9 scope of production under the subpoena; defining the
10 term "sex offender"; requiring the payment of fees and
11 mileage to a subpoenaed witness; authorizing a person
12 who is the subject of a summons to petition for an
13 order modifying or setting aside the summons or a
14 prohibition accompanying the summons; prohibiting the
15 recipient of a subpoena from disclosing its contents
16 to another person under certain circumstances;
17 providing exceptions; specifying requirements
18 regarding the nondisclosure of information; providing
19 that nondisclosure requirements are subject to
20 judicial review and that subpoenas issued under a
21 nondisclosure certification must include notice of the
22 option of judicial review; requiring the return of
23 produced records under certain circumstances;
24 requiring that certain recipients of such a subpoena
25 be allowed at least a specified amount of time to
26 produce records; specifying requirements for service
27 of the subpoena; authorizing the issuer of the
28 subpoena to seek enforcement of the subpoena in a
29 court of competent jurisdiction; authorizing a court

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30 to punish noncompliance with an order with contempt;
31 providing immunity from liability for the good faith
32 compliance with such a subpoena; specifying the
33 procedure for filing for judicial review of a
34 nondisclosure requirement imposed in connection with a
35 subpoena; requiring the law enforcement agency to
36 apply for a nondisclosure order within a specified
37 timeframe after receipt of notification of a filing
38 for judicial review; requiring a district court of
39 appeal to rule expeditiously on such filing; requiring
40 an application for a nondisclosure order to include
41 the law enforcement agency's certification as to
42 possible results of disclosure; requiring the district
43 court of appeal to issue a nondisclosure order, or an
44 extension thereof, under certain circumstances;
45 specifying circumstances under which a district court
46 of appeal may issue an extension for a specified
47 period; requiring a court to close any hearing and
48 seal records to prevent the disclosure of specified
49 information or records; providing an effective date.
50

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

52
53 Section 1. Section 775.211, Florida Statutes, is created to
54 read:

55 775.211 Subpoenas in investigations of sexual offenses.-

56 (1) AUTHORIZATION FOR ISSUANCE OF SUBPOENA.-

57 (a)1. In an investigation of an offense involving the
58 sexual exploitation or abuse of a child, an offense involving an

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59 unregistered sex offender, or an offense meeting the criteria
60 specified for designation as a sexual predator under s. 775.21,
61 a law enforcement agency may issue in writing and serve a
62 subpoena requiring the production of records and things and
63 testimony described in subparagraph 2.

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

68 3. A subpoena issued under subparagraph 1. to a provider of
69 electronic communication services or remote computing services
70 in the course of an investigation of an offense involving the
71 sexual exploitation or abuse of a child may not extend beyond
72 requiring the provider to disclose the information specified in
73 s. 775.21, which may be relevant to an authorized law
74 enforcement inquiry, or requiring the provider's custodian of
75 the records to give testimony concerning the production and
76 authentication of such records or information.

77 4. As used in this paragraph, the term "sex offender" means
78 a person who has been convicted of committing, or attempting,
79 soliciting, or conspiring to commit, any of the following
80 criminal offenses in this state or similar offenses in another
81 jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s.
82 787.02, or s. 787.025(2) (c), when the victim is a minor; s.
83 787.06(3) (b), (d), (f), or (g); former s. 787.06(3) (h); s.
84 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;
85 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.
86 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
87 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court

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88 makes a written finding that the racketeering activity involved
89 at least one sexual offense listed in this subparagraph or at
90 least one offense listed in this subparagraph with sexual intent
91 or motive; s. 916.1075(2); or s. 985.701(1).

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

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

98 (d) At any time before the return date specified in the
99 summons, the person or entity summoned, in the court having
100 jurisdiction over such person or investigation, may petition for
101 an order modifying or setting aside the summons or a prohibition
102 of disclosure under paragraph (e).

103 (e)1. If a subpoena issued under this subsection is
104 accompanied by a certification under this subparagraph and
105 notice of the right to judicial review under subparagraph 3.,
106 the recipient of the subpoena may not disclose to any person
107 that the law enforcement agency that issued the subpoena has
108 sought or obtained access to information or records under this
109 section for a period of 180 days. The law enforcement agency
110 that issues the subpoena may request such certification by
111 certifying to the court that the absence of a prohibition on
112 disclosure may result in:

113 a. Endangering the life or physical safety of an
114 individual;

115 b. Flight from prosecution;

116 c. Destruction of or tampering with evidence;

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117 d. Intimidation of potential witnesses; or

118 e. Seriously jeopardizing an investigation or unduly
119 delaying a trial.

120 2.a. A recipient of a subpoena issued under this subsection
121 may disclose information otherwise subject to any applicable
122 nondisclosure requirement to persons as necessary to comply with
123 the request, to an attorney in order to obtain legal advice or
124 assistance regarding the request, or to other persons as allowed
125 by the law enforcement agency that issued the subpoena.

126 b. A person to whom disclosure is made under sub-
127 subparagraph a. is subject to the nondisclosure requirements
128 applicable to a person to whom a subpoena is issued under this
129 subsection in the same manner as the person to whom the subpoena
130 was issued.

131 c. Any recipient who discloses to a person described in
132 sub-subparagraph a. information otherwise subject to a
133 nondisclosure requirement shall notify that person of the
134 applicable nondisclosure requirement.

135 d. At the request of the law enforcement agency that issued
136 the subpoena, any person making or intending to make a
137 disclosure under sub-subparagraph a. to a person other than an
138 attorney shall identify to the law enforcement agency the person
139 to whom such disclosure has been or will be made.

140 3. A nondisclosure requirement imposed under subparagraph
141 1. is subject to judicial review under subsection (5). A
142 subpoena issued under this subsection in connection with a
143 nondisclosure requirement imposed under subparagraph 1. must
144 include notice of the availability of such judicial review. Such
145 nondisclosure requirement may be extended in accordance with

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146 subsection (5).

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

151 (g) If a case or proceeding does not arise from the
152 production of records or other things pursuant to this
153 subsection within a reasonable time after those records or
154 things are produced, the agency to which those records or things
155 were delivered shall, upon written demand made by the person who
156 produced them, return them to that person, unless the materials
157 produced were copies rather than originals.

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

162 (2) SERVICE.—A subpoena issued under subsection (1) may be
163 served by any person who is at least 18 years of age and
164 designated in the subpoena to serve it. Service upon an
165 individual may be made by personal delivery. Service may be made
166 on a domestic or foreign corporation or on a partnership or
167 other unincorporated association that is subject to suit under a
168 common name by delivering the subpoena to an officer, a managing
169 or general agent, or any other agent authorized by appointment
170 or by law to receive service of process. The affidavit of the
171 person serving the subpoena entered on a true copy of the
172 subpoena is proof of service.

173 (3) ENFORCEMENT.—In the case of contumacy by or refusal to
174 comply with a subpoena, the law enforcement agency that issued

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175 the subpoena may petition a court that has jurisdiction of the
176 investigation or over the person subpoenaed, or in which he or
177 she conducts business or may be found, to compel compliance. The
178 court may issue an order requiring the subpoenaed person to
179 appear before the law enforcement agency to produce records or
180 to give testimony concerning the production and authentication
181 of such records. Any failure to obey the order of the court may
182 be punished by the court as contempt. All process in any such
183 case may be served in any judicial district in which such person
184 is located.

185 (4) IMMUNITY FROM CIVIL LIABILITY.—Notwithstanding any
186 other law, a person subpoenaed under this section who complies
187 in good faith with the subpoena and produces the materials
188 sought is not liable in any court within the state to any
189 customer or other person for such production or for
190 nondisclosure of that production.

191 (5) JUDICIAL REVIEW OF NONDISCLOSURE REQUIREMENTS.—

192 (a) Nondisclosure order.—

193 1. If a recipient of a subpoena under this section wishes
194 to have a court review a nondisclosure requirement imposed in
195 connection with the subpoena, the recipient may notify the law
196 enforcement agency or file a petition for judicial review with
197 the issuing court.

198 2. No later than 30 days after the date of receipt of a
199 notification under subparagraph 1., the law enforcement agency
200 that shall apply for an order prohibiting the disclosure of the
201 existence or contents of the relevant subpoena. An application
202 under this subparagraph may be filed with the district court of
203 appeal for the judicial district in which the recipient of the

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204 subpoena is doing business or with the district court of appeal
205 for any judicial district within which the authorized
206 investigation that is the basis for the subpoena is being
207 conducted. The applicable nondisclosure requirement shall remain
208 in effect during the pendency of any related proceeding.

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

214 (b) Application contents.—An application for a
215 nondisclosure order, or an extension thereof, or a response to a
216 petition must include the certification required under
217 subparagraph (1)(e)1.

218 (c) Standard.—A district court of appeal shall issue a
219 nondisclosure order, or an extension thereof, under this
220 subsection if the court determines that there is reason to
221 believe that disclosure of the information subject to the
222 nondisclosure requirement during the applicable time period may
223 result in:

- 224 1. Endangering the life or physical safety of an
225 individual;
226 2. Flight from prosecution;
227 3. Destruction of or tampering with evidence;
228 4. Intimidation of potential witnesses; or
229 5. Seriously jeopardizing an investigation or unduly
230 delaying a trial.

231 (d) Extension.—Upon a showing that a circumstance described
232 in any of subparagraphs (c)1.-(c)5. continues to exist, a

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233 district court of appeal may issue an ex parte order extending a
234 nondisclosure order imposed under this subsection for additional
235 180-day periods or, if the court determines that the
236 circumstances necessitate a longer period of nondisclosure, for
237 additional periods that are longer than 180 days.

238 (e) Closed hearings.—In all proceedings under this
239 subsection, subject to any right to an open hearing in a
240 contempt proceeding, the court shall close any hearing to the
241 extent necessary to prevent the unauthorized disclosure of a
242 request for records, a report, or other information made to any
243 person or entity under this section. Petitions, filings,
244 records, orders, certifications, and subpoenas must be kept
245 under seal to the extent and length of time necessary to prevent
246 the unauthorized disclosure of a subpoena under this section.

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