

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Harrison offered the following:

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Amendment

Remove lines 28-208 and insert:

(a) "Child" means a person who is less than 18 years of age.

(b) "Criminal justice agency" means a law enforcement agency, court, or prosecutor in this state.

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

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

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17 (2) (a) AUTHORIZATION.—In any investigation of:

18 1. An offense involving the sexual exploitation or abuse
19 of a child;

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

22 3. An offense under chapter 847 involving a child victim
23 which is not otherwise included in subparagraph 1. or
24 subparagraph 2.,

25
26 a criminal justice agency may issue in writing and cause to be
27 served a subpoena requiring the production of any record,
28 object, or other information or testimony described in paragraph
29 (b).

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

31 1. The production of any record, object, or other
32 information relevant to the investigation.

33 2. Testimony by the custodian of the record, object, or
34 other information concerning its production and authenticity.

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

38 1. Requiring the provider to disclose any record, object,
39 or other information that may be relevant to the investigation;

40 or

41 2. Requiring a custodian of the record, object, or other

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42 information of such provider to testify concerning its
43 production and authenticity.

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

49 (4) WITNESS EXPENSES.—Witnesses subpoenaed under this
50 section shall be reimbursed for fees and mileage at the same
51 rate at which witnesses in the courts of this state are
52 reimbursed.

53 (5) PETITIONS BEFORE RETURN DATE.—At any time before the
54 return date specified in the subpoena, the person or entity
55 summoned may, in the circuit court of the county in which that
56 person or entity conducts business or resides, petition for an
57 order modifying or setting aside the subpoena or the requirement
58 for nondisclosure of certain information under subsection (6).

59 (6) NONDISCLOSURE.—

60 (a)1. If a subpoena issued under this section is
61 accompanied by a written certification under subparagraph 2. and
62 notice under paragraph (c), the recipient of the subpoena shall
63 not disclose, for a period of 180 days, to any person the
64 existence or contents of the subpoena.

65 2. The requirement in subparagraph 1. applies if the
66 criminal justice agency that issued the subpoena certifies in

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67 writing that the disclosure may result in one or more of the
68 following circumstances:

- 69 a. Endangering a person's life or physical safety;
70 b. Encouraging a person's flight from prosecution;
71 c. Destruction of or tampering with evidence;
72 d. Intimidation of potential witnesses; or
73 e. Otherwise seriously jeopardizing an investigation or
74 unduly delaying a trial.

75 (b)1. A recipient of a subpoena may disclose information
76 subject to the nondisclosure requirement in subparagraph (a)1.
77 to:

- 78 a. A person to whom disclosure is necessary in order to
79 comply with the subpoena;
80 b. An attorney in order to obtain legal advice or
81 assistance regarding the subpoena; or
82 c. Any other person as authorized by the criminal justice
83 agency that issued the subpoena.

84 2. A recipient of a subpoena who discloses to a person
85 described in subparagraph 1. information subject to the
86 nondisclosure requirement shall notify such person of the
87 nondisclosure requirement by providing the person with a copy of
88 the subpoena. A person to whom information is disclosed under
89 subparagraph 1. is subject to the nondisclosure requirement in
90 subparagraph (a)1.

91 3. At the request of the criminal justice agency that

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92 issued the subpoena, a recipient of a subpoena who discloses or
93 intends to disclose to a person described in sub-subparagraph
94 1.a. or sub-subparagraph 1.b. information subject to the
95 nondisclosure requirement shall provide to the criminal justice
96 agency the identity of the person to whom such disclosure was or
97 will be made.

98 (c)1. The nondisclosure requirement imposed under
99 paragraph (a) is subject to judicial review under subsection
100 (13).

101 2. A subpoena issued under this section, in connection
102 with which a nondisclosure requirement under paragraph (a) is
103 imposed, shall include:

104 a. Notice of the nondisclosure requirement and
105 availability of judicial review.

106 b. Notice that the nondisclosure requirement may subject
107 the recipient or any person to whom the subpoena is disclosed
108 under subparagraph 1. to contempt of court under subsection (11)
109 for a violation of the requirement.

110 (d) The nondisclosure requirement in (a) may be extended
111 under subsection (13).

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

116 (8) RETURN OF RECORDS AND OBJECTS.—If a case or proceeding

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117 resulting from the production of any record, object, or other
118 information under this section does not arise within a
119 reasonable period of time after such production, the criminal
120 justice agency to which it was delivered shall, upon written
121 demand made by the person producing it, return the record,
122 object, or other information to such person, unless the record
123 was a copy and not an original.

124 (9) TIME OF PRODUCTION.—A subpoena issued under this
125 section may require production of any record, object, or other
126 information as soon as possible, but the recipient of the
127 subpoena must have at least 24 hours after he or she is served
128 to produce the record, object, or other information.

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

131 (11) ENFORCEMENT.—

132 (a) If a recipient of a subpoena under this section
133 refuses to comply with the subpoena, the criminal justice agency
134 may invoke the aid of any circuit court described in subsection
135 (5) or in the circuit court of the county in which the
136 authorized investigation is being conducted. Such court may
137 issue an order requiring the recipient of a subpoena to appear
138 before the criminal justice agency that issued the subpoena to
139 produce any record, object, or other information or to testify
140 concerning the production and authenticity of the record,
141 object, or other information.

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142 (b) Any failure to comply with an order under paragraph
143 (a) or with a nondisclosure requirement under subsection (6) may
144 be punished by the court as a contempt of court. All process in
145 any such case may be served in any county in which such person
146 may be found.

147 (12) IMMUNITY.—Notwithstanding any other law, any person,
148 including any officer, agent, or employee, receiving a subpoena
149 under this section who complies in good faith with the subpoena
150 and produces any record, object, or other information sought is
151 not liable in any court in this state to any customer or other
152 person for such production or disclosure.

153 (13) JUDICIAL REVIEW OF NONDISCLOSURE REQUIREMENT.—

154 (a)1.a. If a recipient of a subpoena under this section
155 wishes to have a court review a nondisclosure requirement under
156 subsection (6), the recipient may notify the criminal justice
157 agency issuing the subpoena or file a petition for judicial
158 review in the circuit court described in subsection (5).

159 b. Within 30 days after the date on which the criminal
160 justice agency receives the notification under sub-subparagraph
161 a., the criminal justice agency shall apply for an order
162 prohibiting the disclosure of the existence or contents of the
163 subpoena. An application under this sub-subparagraph may be
164 filed in the circuit court described in subsection (5) or in the
165 circuit court of the county in which the authorized
166 investigation is being conducted.

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167 c. The nondisclosure requirement shall remain in effect
168 during the pendency of proceedings relating to the requirement.

169 d. A circuit court that receives a petition under sub-
170 subparagraph a. or an application under sub-subparagraph b.
171 shall rule on such petition or application as expeditiously as
172 possible.

173 2. An application for a nondisclosure order or extension
174 thereof or a response to a petition filed under this paragraph
175 must include a certification from the state criminal justice
176 agency that issued the subpoena indicating that the disclosure
177 of such information may result in one or more of the
178 circumstances described in subparagraph (6) (a)2.

179 3. A circuit court shall issue a nondisclosure order or
180 extension thereof under this paragraph if it determines that
181 there is reason to believe that disclosure of such information
182 may result in one or more of the circumstances described in
183 subparagraph (6) (a)2.

184 4. Upon a showing that any of the circumstances described
185 in subparagraph (6) (a)2. continue to exist, a circuit court may
186 issue an ex parte order extending a nondisclosure order imposed
187 under this section for an additional 180 days. There is no limit
188 on the number of nondisclosure extensions that may be granted
189 under this subparagraph.

190 (b) In all proceedings under this subsection, subject to
191 any right to an open hearing in a contempt proceeding, a circuit

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Bill No. HB 1429 (2017)

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192 | court must close any hearing to the extent necessary to prevent
193 | the unauthorized disclosure of a request for records, objects,
194 |