

1 A bill to be entitled
2 An act relating to child predators; creating s.
3 794.10, F.S.; providing definitions; authorizing
4 subpoenas in certain investigations of sexual offenses
5 involving child victims and specifying requirements
6 therefor; providing for specified reimbursement of
7 witnesses; authorizing certain motions; requiring
8 nondisclosure of specified information in certain
9 circumstances; providing exceptions to such
10 nondisclosure requirement; providing for judicial
11 review and extension of such nondisclosure requirement
12 and specifying requirements therefor; exempting
13 certain records, objects, and other information from
14 production; providing for the return of records,
15 objects, and other information produced; specifying
16 time periods within which records, objects, and other
17 information must be returned; providing for service
18 and enforcement of subpoenas; providing immunity for
19 certain persons complying with subpoenas in certain
20 circumstances; providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Section 794.10, Florida Statutes, is created to
25 read:

26 794.10 Investigative subpoenas in certain cases involving
 27 child victims.—

28 (1) DEFINITIONS.—As used in this section, the term:

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

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

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

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

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

40 1. An offense involving the sexual exploitation or abuse
 41 of a child;

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

44 3. An offense under chapter 847 involving a child victim
 45 that is not otherwise included in subparagraph 1. or
 46 subparagraph 2.,

47
 48 a criminal justice agency may issue in writing and cause to be
 49 served a subpoena requiring the production of any record,
 50 object, or other information or testimony described in paragraph

51 (b) .

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

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

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

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

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

63 2. Requiring a custodian of the record, object, or other
 64 information of such provider to testify concerning its
 65 production and authenticity.

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

71 (4) WITNESS EXPENSES.—Witnesses subpoenaed under this
 72 section shall be reimbursed for fees and mileage at the same
 73 rate at which witnesses in the courts of this state are
 74 reimbursed.

75 (5) PETITIONS BEFORE RETURN DATE.—At any time before the

76 return date specified in the subpoena, the person or entity
 77 summoned may, in the circuit court of the county in which that
 78 person or entity conducts business or resides, petition for an
 79 order modifying or setting aside the subpoena or the requirement
 80 for nondisclosure of certain information under subsection (6).

81 (6) NONDISCLOSURE.—

82 (a)1. If a subpoena issued under this section is
 83 accompanied by a written certification under subparagraph 2. and
 84 notice under paragraph (c), the recipient of the subpoena shall
 85 not disclose, for a period of 180 days, to any person the
 86 existence or contents of the subpoena.

87 2. The requirement in subparagraph 1. applies if the
 88 criminal justice agency that issued the subpoena certifies in
 89 writing that the disclosure may result in one or more of the
 90 following circumstances:

- 91 a. Endangering a person's life or physical safety;
- 92 b. Encouraging a person's flight from prosecution;
- 93 c. Destruction of or tampering with evidence;
- 94 d. Intimidation of potential witnesses; or
- 95 e. Otherwise seriously jeopardizing an investigation or
 96 unduly delaying a trial.

97 (b)1. A recipient of a subpoena may disclose information
 98 subject to the nondisclosure requirement in subparagraph (a)1.
 99 to:

- 100 a. A person to whom disclosure is necessary in order to

101 comply with the subpoena;

102 b. An attorney in order to obtain legal advice or
103 assistance regarding the subpoena; or

104 c. Any other person as authorized by the criminal justice
105 agency that issued the subpoena.

106 2. A recipient of a subpoena who discloses to a person
107 described in subparagraph 1. information subject to the
108 nondisclosure requirement shall notify such person of the
109 nondisclosure requirement by providing the person with a copy of
110 the subpoena. A person to whom information is disclosed under
111 subparagraph 1. is subject to the nondisclosure requirement in
112 subparagraph (a)1.

113 3. At the request of the criminal justice agency that
114 issued the subpoena, a recipient of a subpoena who discloses or
115 intends to disclose to a person described in sub-subparagraph
116 1.a. or sub-subparagraph 1.b. information subject to the
117 nondisclosure requirement shall provide to the criminal justice
118 agency the identity of the person to whom such disclosure was or
119 will be made.

120 (c)1. The nondisclosure requirement imposed under
121 paragraph (a) is subject to judicial review under subsection
122 (13).

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

126 a. Notice of the nondisclosure requirement and the
127 availability of judicial review.

128 b. Notice that the nondisclosure requirement may subject
129 the recipient or any person to whom the subpoena is disclosed
130 under subparagraph (b)1. to contempt of court under subsection
131 (11) for a violation of the requirement.

132 (d) The nondisclosure requirement in paragraph (a) may be
133 extended under subsection (13).

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

138 (8) RETURN OF RECORDS AND OBJECTS.—If a case or proceeding
139 resulting from the production of any record, object, or other
140 information under this section does not arise within a
141 reasonable period of time after such production, the criminal
142 justice agency to which it was delivered shall, upon written
143 demand made by the person producing it, return the record,
144 object, or other information to such person, unless the record
145 was a copy and not an original.

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

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

153 (11) ENFORCEMENT.—

154 (a) If a recipient of a subpoena under this section
155 refuses to comply with the subpoena, the criminal justice agency
156 may invoke the aid of any circuit court described in subsection
157 (5) or of the circuit court of the county in which the
158 authorized investigation is being conducted. Such court may
159 issue an order requiring the recipient of a subpoena to appear
160 before the criminal justice agency that issued the subpoena to
161 produce any record, object, or other information or to testify
162 concerning the production and authenticity of the record,
163 object, or other information.

164 (b) Any failure to comply with an order under paragraph
165 (a) or with a nondisclosure requirement under subsection (6) may
166 be punished by the court as a contempt of court. All process in
167 any such case may be served in any county in which such person
168 may be found.

169 (12) IMMUNITY.—Notwithstanding any other law, any person,
170 including any officer, agent, or employee, receiving a subpoena
171 under this section who complies in good faith with the subpoena
172 and produces or discloses any record, object, or other
173 information sought is not liable in any court in this state to
174 any customer or other person for such production or disclosure.

175 (13) JUDICIAL REVIEW OF NONDISCLOSURE REQUIREMENT.—

176 (a)1.a. If a recipient of a subpoena under this section
177 wishes to have a court review a nondisclosure requirement under
178 subsection (6), the recipient may notify the criminal justice
179 agency issuing the subpoena or file a petition for judicial
180 review in the circuit court described in subsection (5).

181 b. Within 30 days after the date on which the criminal
182 justice agency receives the notification under sub-subparagraph
183 a., the criminal justice agency shall apply for an order
184 prohibiting the disclosure of the existence or contents of the
185 subpoena. An application under this sub-subparagraph may be
186 filed in the circuit court described in subsection (5) or in the
187 circuit court of the county in which the authorized
188 investigation is being conducted.

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

191 d. A circuit court that receives a petition under sub-
192 paragraph a. or an application under sub-subparagraph b.
193 shall rule on such petition or application as expeditiously as
194 possible.

195 2. An application for a nondisclosure order or extension
196 thereof or a response to a petition filed under this paragraph
197 must include a certification from the criminal justice agency
198 that issued the subpoena indicating that the disclosure of such
199 information may result in one or more of the circumstances
200 described in subparagraph (6)(a)2.

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

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

212 (b) In all proceedings under this subsection, subject to
213 any right to an open hearing in a contempt proceeding, a circuit
214 court must close any hearing to the extent necessary to prevent
215 the unauthorized disclosure of a request for records, objects,
216 or other information made to any person or entity under this
217 section. Petitions, filings, records, orders, certifications,
218 and subpoenas must also be kept under seal to the extent and as
219 long as necessary to prevent the unauthorized disclosure of any
220 information under this section.

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