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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
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	.	

The Committee on Judiciary (Steube) recommended the following:

Senate Amendment (with title amendment)

Between lines 154 and 155

insert:

Section 5. Section 794.11, Florida Statutes, is created to read:

794.11 Investigative subpoenas in certain cases involving child victims.—

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

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

(b) "Child sexual offender" means a person required to



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12 register as a sexual predator under s. 775.21 or as a sexual
13 offender under s. 943.0435 if at least one of the offenses that
14 qualified the person for such registration requirement involved
15 a victim who was a child at the time of the offense.

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

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

20 (2) AUTHORIZATION.—

21 (a) A criminal justice agency may issue in writing and
22 cause to be served a subpoena requiring the production of any
23 record, object, or other information or testimony described in
24 paragraph (b) in any investigation of:

25 1. An offense involving the sexual exploitation or abuse of
26 a child;

27 2. A sexual offense allegedly committed by a child sexual
28 offender who has not registered as required under s. 775.21 or
29 s. 943.0435; or

30 3. An offense under chapter 847 involving a child victim
31 which is not otherwise included in subparagraph 1. or
32 subparagraph 2.

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

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

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

38 (3) CONTENTS OF SUBPOENAS.—A subpoena issued under this
39 section must describe any record, object, or other information
40 required to be produced and prescribe a reasonable return date



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41 by which the record, object, or other information can be
42 assembled and made available.

43 (4) WITNESS EXPENSES.—Witnesses subpoenaed under this
44 section shall be reimbursed for fees and mileage at the same
45 rate at which witnesses in the courts of this state are
46 reimbursed.

47 (5) PETITIONS BEFORE RETURN DATE.—At any time before the
48 return date specified in the subpoena, the recipient of the
49 subpoena may, in the circuit court of the county in which the
50 recipient conducts business or resides, petition for an order
51 modifying or setting aside the subpoena or the requirement for
52 nondisclosure of certain information under subsection (6).

53 (6) NONDISCLOSURE.—

54 (a)1. If a subpoena issued under this section is
55 accompanied by a written certification under subparagraph 2. and
56 notice under paragraph (c), the recipient of the subpoena, and a
57 person to whom information is disclosed under subparagraph
58 (b)1., may not disclose to any person for a period of 180 days
59 the existence or contents of the subpoena.

60 2. The nondisclosure requirement in subparagraph 1. applies
61 if the criminal justice agency that issued the subpoena
62 certifies in writing that the disclosure may result in one or
63 more of the following circumstances:

- 64 a. Endangering a person's life or physical safety;
65 b. Encouraging a person's flight from prosecution;
66 c. Destruction of or tampering with evidence;
67 d. Intimidation of potential witnesses; or
68 e. Otherwise seriously jeopardizing an investigation or
69 unduly delaying a trial.



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70 (b)1. A recipient of a subpoena may disclose information
71 subject to the nondisclosure requirement in subparagraph (a)1.
72 to:

73 a. A person to whom disclosure is necessary in order to
74 comply with the subpoena;

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

77 c. Any other person as authorized by the criminal justice
78 agency that issued the subpoena.

79 2. A recipient of a subpoena who discloses to a person
80 described in subparagraph 1. information subject to the
81 nondisclosure requirement shall notify such person of the
82 nondisclosure requirement by providing the person with a copy of
83 the subpoena. A person to whom information is disclosed under
84 subparagraph 1. is subject to the nondisclosure requirement in
85 subparagraph (a)1.

86 3. At the request of the criminal justice agency that
87 issued the subpoena, a recipient of a subpoena who discloses or
88 intends to disclose to a person described in sub-subparagraph
89 1.a. or sub-subparagraph 1.b. information subject to the
90 nondisclosure requirement shall provide to the criminal justice
91 agency the identity of the person to whom such disclosure was or
92 will be made.

93 (c)1. The nondisclosure requirement imposed under paragraph
94 (a) is subject to judicial review under subsection (13).

95 2. A subpoena issued under this section, in connection with
96 which a nondisclosure requirement under paragraph (a) is
97 imposed, must include:

98 a. Notice of the nondisclosure requirement and the



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99 availability of judicial review.

100 b. Notice that a violation of the nondisclosure requirement
101 is subject to the penalties provided in paragraph (11)(b).

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

104 (7) EXCEPTIONS TO PRODUCTION.—A subpoena issued under this
105 section may not require the production of anything that is
106 protected from production under the standards applicable to a
107 subpoena duces tecum issued by a court of this state.

108 (8) RETURN OF RECORDS AND OBJECTS.—If a case or proceeding
109 resulting from the production of any record, object, or other
110 information under this section does not arise within a
111 reasonable time after such production, the criminal justice
112 agency to which it was delivered shall, upon written demand made
113 by the person producing it, return the record, object, or other
114 information to such person, unless the record was a copy and not
115 an original.

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

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

123 (11) ENFORCEMENT.—

124 (a) If a recipient of a subpoena under this section refuses
125 to comply with the subpoena, the criminal justice agency may
126 invoke the aid of any circuit court described in subsection (5)
127 or of the circuit court of the county in which the authorized



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128 investigation is being conducted. Such court may issue an order
129 requiring the recipient of a subpoena to appear before the
130 criminal justice agency that issued the subpoena to produce any
131 record, object, or other information or to testify concerning
132 the production and authenticity of the record, object, or other
133 information. Any failure to comply with an order under this
134 paragraph may be punished by the court as a contempt of court.
135 All process in any such case may be served in any county in
136 which such person may be found.

137 (b) A recipient of a subpoena, or a person to whom
138 information is disclosed under subparagraph(6) (b)1., who
139 knowingly violates:

140 1. A nondisclosure requirement imposed under paragraph
141 (6) (a) commits a noncriminal violation punishable as provided in
142 s. 775.083. Each person to whom a disclosure is made in
143 violation of this subparagraph constitutes a separate violation
144 subject to a separate fine.

145 2. A nondisclosure requirement ordered by the court under
146 this section may be held in contempt of court.

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 or discloses any record, object, or other
151 information sought is not liable in any court in this state to
152 any customer or other 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, or
155 a person to whom information is disclosed under subparagraph
156 (6) (b)1., wishes to have a court review a nondisclosure



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157 requirement under subsection (6), such recipient or person may
158 notify the criminal justice agency issuing the subpoena or file
159 a petition for judicial review in the circuit court described in
160 subsection (5).

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

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

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

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

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



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

192 (b) In all proceedings under this subsection, subject to
193 any right to an open hearing in a contempt proceeding, a circuit
194 court must close any hearing to the extent necessary to prevent
195 the unauthorized disclosure of a request for records, objects,
196 or other information made to any person under this section.
197 Petitions, filings, records, orders, certifications, and
198 subpoenas must also be kept under seal to the extent and as long
199 as necessary to prevent the unauthorized disclosure of any
200 information under this section.

201
202 ===== T I T L E A M E N D M E N T =====

203 And the title is amended as follows:

204 Delete line 19

205 and insert:

206 specified information, by a specified date; creating
207 s. 794.11, F.S.; defining terms; authorizing subpoenas
208 in certain investigations of sexual offenses involving
209 child victims; specifying the purpose of such
210 subpoenas; requiring a subpoena to contain certain
211 information; requiring the reimbursement of subpoenaed
212 witnesses; authorizing the recipient of the subpoena
213 to petition a court; prohibiting the disclosure of the
214 existence or contents of a subpoena under certain



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215 circumstances; providing exceptions; requiring certain
216 notice to be provided in a subpoena that contains a
217 nondisclosure requirement; exempting from production
218 certain records, objects, and other information;
219 providing for the return of records, objects, and
220 other information produced; specifying timeframes
221 within which records, objects, and other information
222 must be returned; providing for service and
223 enforcement of the subpoenas; providing penalties for
224 a violation of the subpoena or nondisclosure
225 requirement; providing immunity for certain persons
226 complying with the subpoenas in certain circumstances;
227 providing for judicial review, and extensions, of such
228 nondisclosure requirement; amending