



968614

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/09/2018	.	
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The Committee on Criminal Justice (Baxley) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 934.255, Florida Statutes, is created to  
read:

934.255 Subpoenas in investigations of sexual offenses.—

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

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

(b) "Deliver" is construed in accordance with completed



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11 delivery, as provided for in Rule 1.080(b) of the Florida Rules  
12 of Civil Procedure.

13 (c) "Sexual abuse of a child" means a criminal offense  
14 based on any conduct described in s. 39.01(71).

15 (d) "Supervisory official" means the person in charge of an  
16 investigating or law enforcement agency's or entity's  
17 headquarters or regional office; the state attorney of the  
18 circuit from which the subpoena has been issued; the statewide  
19 prosecutor; or an assistant state attorney or assistant  
20 statewide prosecutor specifically designated by the state  
21 attorney or statewide prosecutor to make such written  
22 certification.

23 (2) An investigative or law enforcement officer who is  
24 conducting an investigation into:

25 (a) Allegations of the sexual abuse of a child or an  
26 individual's suspected commission of a crime listed in s.  
27 943.0435(1)(h)1.a.(I) may use a subpoena to compel the  
28 production of records, documents, or other tangible objects and  
29 the testimony of the subpoena recipient concerning the  
30 production and authenticity of such records, documents, or  
31 objects, except as provided in paragraphs (b) and (c).

32 (b) Allegations of the sexual abuse of a child may use a  
33 subpoena to require a provider of electronic communication  
34 services or remote computing services to disclose a record or  
35 other information pertaining to a subscriber or customer of such  
36 service as described in 934.23(4)(b), not including the contents  
37 of a communication. An investigative or law enforcement officer  
38 who receives records or information from a provider of  
39 electronic communication services or remote computing services



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40 under this paragraph is not required to provide notice to a  
41 subscriber or customer of that provider.

42 (c) Allegations of the sexual abuse of a child may use a  
43 subpoena to require a provider of remote computing services to  
44 disclose the contents of any wire or electronic communication  
45 that has been in electronic storage in an electronic  
46 communications system for more than 180 days and to which this  
47 paragraph is made applicable by paragraph (d), with prior  
48 notice, or with delayed notice pursuant to subsection (6), from  
49 the investigative or law enforcement officer to the subscriber  
50 or customer.

51 (d) Paragraph (c) applies to any electronic communication  
52 that is held or maintained on a remote computing service:

53 1. On behalf of a subscriber or customer of such service  
54 and received by means of electronic transmission from, or  
55 created by means of computer processing of communications  
56 received by means of electronic transmission from, a subscriber  
57 or customer of such service.

58 2. Solely for the purposes of providing storage or computer  
59 processing services to a subscriber or customer, if the provider  
60 is not authorized to access the contents of any such  
61 communication for purposes of providing any service other than  
62 storage or computer processing.

63  
64 A subpoena issued under this subsection must describe the  
65 records, documents, or other tangible objects required to be  
66 produced, and must prescribe a date by which such records,  
67 documents, or other tangible objects must be produced.

68 (3) At any time before the date prescribed in the subpoena



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69 by which records, documents, or other tangible objects must be  
70 produced, a person or entity receiving a subpoena issued  
71 pursuant to subsection (2) may, before a judge of competent  
72 jurisdiction, petition for an order modifying or setting aside  
73 the subpoena or a prohibition of disclosure issued under  
74 subsection (5) or subsection (9).

75 (4) An investigative or law enforcement officer who uses a  
76 subpoena issued under subsection (2) to obtain any record,  
77 document, or other tangible object may retain such items for use  
78 in any ongoing criminal investigation or a closed investigation  
79 with the intent that the investigation may later be reopened.

80 (5) If a subpoena issued under subsection (2) is served  
81 upon a recipient and accompanied by a written certification of a  
82 supervisory official that there is reason to believe that  
83 notification of the existence of the subpoena may have an  
84 adverse result, as described in subsection (7), the subpoena  
85 recipient is prohibited from disclosing to any person for a  
86 period of 180 days the existence of the subpoena.

87 (a) A recipient of a subpoena issued under subsection (2)  
88 that is accompanied by a written certification issued pursuant  
89 to this subsection is authorized to disclose information  
90 otherwise subject to any applicable nondisclosure requirement to  
91 persons as is necessary to comply with the subpoena, to an  
92 attorney in order to obtain legal advice or assistance regarding  
93 compliance with the subpoena, or to any other person as allowed  
94 and specifically authorized by the investigative or law  
95 enforcement officer who obtained the subpoena or the supervisory  
96 official who issued the written certification. The subpoena  
97 recipient shall notify any person to whom disclosure of the



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98 subpoena is made pursuant to this paragraph of the existence of,  
99 and length of time associated with, the nondisclosure  
100 requirement.

101 (b) A person to whom disclosure of the subpoena is made  
102 under paragraph (a) is subject to the nondisclosure requirements  
103 of this subsection in the same manner as the subpoena recipient.

104 (c) At the request of the investigative or law enforcement  
105 officer who obtained the subpoena or the supervisory official  
106 who issued the written certification, the subpoena recipient  
107 shall identify to the investigative or law enforcement officer  
108 or supervisory official, before or at the time of compliance  
109 with the subpoena, the name of any person to whom disclosure was  
110 made under paragraph (a). If the investigative or law  
111 enforcement officer or supervisory official makes such a  
112 request, the subpoena recipient has an ongoing duty to disclose  
113 the identity of any individuals notified of the subpoena's  
114 existence throughout the nondisclosure period.

115 (6) An investigative or law enforcement officer who obtains  
116 a subpoena pursuant to paragraph (2)(c) may delay the  
117 notification required under that paragraph for a period not to  
118 exceed 180 days upon the execution of a written certification of  
119 a supervisory official that there is reason to believe that that  
120 notification of the existence of the subpoena may have an  
121 adverse result described in subsection (7).

122 (7) Any of the following acts by a subpoena recipient  
123 constitute an adverse result:

124 (a) Endangering the life or physical safety of an  
125 individual.

126 (b) Fleeing from prosecution.



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- 127        (c) Destroying or tampering with evidence.  
128        (d) Intimidating potential witnesses.  
129        (e) Seriously jeopardizing an investigation or unduly  
130 delaying a trial.
- 131        (8) The investigative or law enforcement officer shall  
132 maintain a true copy of a written certification obtained under  
133 subsection (5) or subsection (6).
- 134        (9) The court may grant extensions of the nondisclosure  
135 period provided in subsection (5) or the delay of notification  
136 provided in subsection (6) of up to 90 days each upon  
137 application by an investigative or law enforcement officer, but  
138 only in accordance with subsection (11).
- 139        (10) Upon the expiration of the period of delay of  
140 notification in subsection (6) or subsection (9), an  
141 investigative or law enforcement officer who receives records or  
142 information pursuant to a subpoena issued under paragraph (2)(c)  
143 must serve upon or deliver by registered or first-class mail to  
144 the subscriber or customer a copy of the process or request,  
145 together with notice that:
- 146            (a) States with reasonable specificity the nature of the  
147 law enforcement inquiry; and
- 148            (b) Informs the subscriber or customer of all of the  
149 following:
- 150            1. That information maintained for such subscriber or  
151 customer by the service provider named in the process or request  
152 was supplied to or requested by the investigative or law  
153 enforcement officer and the date on which such information was  
154 so supplied or requested.
- 155            2. That notification of such subscriber or customer was



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156 delayed.

157 3. What investigative or law enforcement officer or what  
158 court made the written certification or determination pursuant  
159 to which that delay was made.

160 4. Which provision of ss. 934.21-934.28 allowed such a  
161 delay.

162 (11) An investigative or law enforcement officer acting  
163 under paragraph (2) (b), when not required to notify the  
164 subscriber or customer, or to the extent that such notice may be  
165 delayed pursuant to subsection (6), may apply to a court for an  
166 order prohibiting a provider of electronic communication  
167 services or remote computing services to whom the subpoena is  
168 directed, for such period as the court deems appropriate, from  
169 notifying any other person of the existence of such subpoena  
170 except as specifically authorized in subsection (5). The court  
171 shall enter such order if it determines that there is reason to  
172 believe that notification of the existence of the subpoena will  
173 result in an adverse result, as specified under subsection (7).

174 (12) In the case of contumacy by a person served a subpoena  
175 issued under subsection (2), or his or her refusal to comply  
176 with such a subpoena, the investigative or law enforcement  
177 officer who sought the subpoena may petition a court of  
178 competent jurisdiction to compel compliance. The court may  
179 address the matter as indirect criminal contempt pursuant to  
180 Rule 3.840 of the Florida Rules of Criminal Procedure. Any  
181 prohibited disclosure of a subpoena issued under subsection (2)  
182 for which a period of prohibition of disclosure provided in  
183 subsection (5), a delay of notification in subsection (6), or an  
184 extension thereof under subsection (9) is in effect is



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185 punishable as provided in s. 934.43.

186 (13) No cause of action shall lie in any court against any  
187 provider of wire or electronic communication service, its  
188 officers, employees, agents, or other specified persons for  
189 providing information, facilities, or assistance in accordance  
190 with the terms of a subpoena under this section.

191 (14) (a) A provider of wire or electronic communication  
192 services or a remote computing service, upon the request of an  
193 investigative or law enforcement officer, shall take all  
194 necessary steps to preserve records and other evidence in its  
195 possession pending the issuance of a court order or other  
196 process.

197 (b) Records referred to in paragraph (a) shall be retained  
198 for a period of 90 days, which shall be extended for an  
199 additional 90 days upon a renewed request by an investigative or  
200 law enforcement officer.

201 (15) A provider of electronic communication service, a  
202 remote computing service, or any other person who furnished  
203 assistance pursuant to this section shall be held harmless from  
204 any claim and civil liability resulting from the disclosure of  
205 information pursuant to this section and shall be reasonably  
206 compensated for reasonable expenses incurred in providing such  
207 assistance. A witness who is subpoenaed to appear to testify  
208 under subsection (2) and who complies with the subpoena must be  
209 paid the same fees and mileage rate paid to a witness appearing  
210 before a court of competent jurisdiction in this state.

211 Section 2. This act shall take effect October 1, 2018.

212  
213 ===== T I T L E A M E N D M E N T =====





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214 And the title is amended as follows:

215 Delete everything before the enacting clause  
216 and insert:

217 A bill to be entitled

218 An act relating to subpoenas in investigations of  
219 sexual offenses; creating s. 934.255, F.S.; defining  
220 terms; authorizing an investigative or law enforcement  
221 officer conducting an investigation into specified  
222 matters to subpoena certain persons or entities for  
223 the production of records, documents, or other  
224 tangible things and testimony; specifying requirements  
225 for the issuance of a subpoena; authorizing a  
226 subpoenaed person to petition a court for an order  
227 modifying or setting aside the subpoena or a  
228 prohibition on disclosure; authorizing an  
229 investigative or law enforcement officer to retain  
230 subpoenaed records, documents, or other tangible  
231 objects under certain circumstances; prohibiting the  
232 disclosure of a subpoena for a specified period if the  
233 disclosure might result in an adverse result;  
234 providing exceptions; specifying the acts that  
235 constitute an adverse result; requiring the  
236 investigative or law enforcement officer to maintain a  
237 true copy of a written certification; authorizing a  
238 court to grant extension of certain periods under  
239 certain circumstances; requiring an investigative or  
240 law enforcement officer to serve or deliver a copy of  
241 the process along with specified information upon the  
242 expiration of a nondisclosure period or delay of



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243 notification; authorizing an investigative or law  
244 enforcement officer to apply to a court for an order  
245 prohibiting certain entities from notifying the  
246 existence of a subpoena under certain circumstances;  
247 authorizing an investigative or law enforcement  
248 officer to petition a court to compel compliance;  
249 authorizing a court to punish a person who does not  
250 comply with a subpoena as indirect criminal contempt;  
251 providing criminal penalties; precluding a cause of  
252 action against certain entities or persons for  
253 providing information, facilities, or assistance in  
254 accordance with terms of a subpoena; providing for  
255 preservation of evidence pending issuance of process;  
256 providing that certain entities or persons shall be  
257 held harmless from any claim and civil liability  
258 resulting from disclosure of specified information;  
259 providing for reasonable compensation for reasonable  
260 expenses incurred in providing assistance; requiring  
261 that a subpoenaed witness be paid certain fees and  
262 mileage; providing an effective date.