

By Senator Baxley

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1 A bill to be entitled
2 An act relating to subpoenas in investigations of
3 sexual offenses; creating s. 934.255, F.S.; defining
4 terms; authorizing an investigative or law enforcement
5 officer conducting an investigation into specified
6 matters to subpoena certain persons or entities for
7 the production of records, documents, or other
8 tangible things and testimony; specifying requirements
9 for the issuance of a subpoena; requiring that a
10 subpoenaed witness be paid certain fees and mileage;
11 prohibiting the use of a subpoena to compel records,
12 documents, or other tangible objects protected under
13 certain circumstances; authorizing a subpoenaed person
14 to petition a court for an order modifying or setting
15 aside the subpoena or a prohibition on disclosure;
16 authorizing an investigative or law enforcement
17 officer to retain subpoenaed records, documents, or
18 other tangible objects under certain circumstances;
19 prohibiting the disclosure of a subpoena for a
20 specified period if the disclosure might result in an
21 adverse result; providing exceptions; specifying the
22 acts that constitute an adverse result; requiring the
23 investigative or law enforcement officer to maintain a
24 true copy of a written certification; authorizing a
25 court to grant extension of certain periods under
26 certain circumstances; requiring an investigative or
27 law enforcement officer to serve or deliver a copy of
28 the process along with specified information upon the
29 expiration of a nondisclosure period or delay of

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30 notification; authorizing an investigative or law
31 enforcement officer to apply to a court for an order
32 prohibiting certain entities from notifying the
33 existence of a subpoena under certain circumstances;
34 requiring that a subpoena be served in a specified
35 manner; authorizing an investigative or law
36 enforcement officer to petition a court to compel
37 compliance; authorizing a court to punish a person who
38 does not comply with a subpoena as indirect criminal
39 contempt; providing criminal penalties; providing an
40 effective date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. Section 934.255, Florida Statutes, is created to
45 read:

46 934.255 Subpoenas in investigations of sexual offenses.-

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

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

49 (b) "Child sexual offender" means a person required to
50 register as a sexual offender under s. 943.0435 or as a sexual
51 predator under s. 775.21, and the registration was for a
52 conviction of an offense in which a child was the victim.

53 (c) "Deliver" is construed in accordance with completed
54 delivery, as provided for in Rule 1.080(b) of the Florida Rules
55 of Civil Procedure.

56 (d) "Sexual abuse of a child" means a criminal offense
57 based on any conduct described in s. 39.01(71).

58 (e) "Supervisory official" means the person in charge of an

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59 investigating or law enforcement agency's or entity's
60 headquarters or regional office; the state attorney of the
61 circuit from which the subpoena has been issued; the statewide
62 prosecutor; or an assistant state attorney or assistant
63 statewide prosecutor specifically designated by the state
64 attorney or statewide prosecutor to make such written
65 certification.

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

68 (a) Allegations of the sexual abuse of a child, a child
69 sexual offender's failure to register as required by chapter 943
70 or chapter 775, or an individual's suspected commission of a
71 crime listed in s. 775.21(4) (a) may use a subpoena to compel the
72 production of records, documents, or other tangible objects and
73 the testimony of the subpoena recipient concerning the
74 production and authenticity of such records, documents, or
75 objects, except as provided in paragraphs (b) and (c).

76 (b) Allegations of the sexual abuse of a child may require
77 a provider of electronic communication services or remote
78 computing services to disclose a record or other information
79 pertaining to a subscriber or customer of such service, not
80 including the contents of a communication, when the
81 investigative or law enforcement officer obtains such
82 information in the manner prescribed in s. 934.23(4) (a), or
83 through the use of a subpoena that is served upon a provider of
84 electronic communication services or remote computer services,
85 compelling the provider to produce records, documents, or other
86 tangible objects and testimony concerning their production and
87 authenticity. An investigative or law enforcement officer who

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88 receives records or information from a provider of electronic
89 communication services or remote computing services under this
90 paragraph is not required to provide notice to a subscriber or
91 customer of that provider.

92 (c) Allegations of the sexual abuse of a child may require,
93 through the use of a subpoena, a provider of electronic
94 communication services or remote computing services to disclose
95 a record or other information, including the contents of any
96 wire or electronic communication that has been in electronic
97 storage in an electronic communications system for more than 180
98 days and to which this subsection is made applicable by
99 paragraph (d), with prior notice, or with delayed notice
100 pursuant to subsection (8), from the investigative or law
101 enforcement officer to the subscriber or customer.

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

104 1. On behalf of a subscriber or customer of such service
105 and received by means of electronic transmission from, or
106 created by means of, computer processing of communications
107 received by means of electronic transmission from, a subscriber
108 or customer of such service.

109 2. Solely for the purposes of providing storage or computer
110 processing services to a subscriber or customer, if the provider
111 is not authorized to access the contents of any such
112 communication for purposes of providing any service other than
113 storage or computer processing.

114
115 A subpoena issued under this subsection must describe the
116 records, documents, or other tangible objects required to be

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117 produced, and must prescribe a date by which such records,
118 documents, or other tangible objects must be produced. A
119 subpoena issued under this subsection and in the course of an
120 investigation into a child sexual offender's alleged failure to
121 register, as required by chapter 943 or chapter 775, may require
122 production as soon as possible, but must allow the subpoena
123 recipient a minimum of 24 hours after service of the subpoena to
124 produce the records, documents, or other tangible objects.

125 (3) A witness who is subpoenaed to appear to testify under
126 subsection (2) and who complies with the subpoena must be paid
127 the same fees and mileage rate paid to a witness appearing
128 before a court of competent jurisdiction in this state.

129 (4) A subpoena issued pursuant to subsection (2) may not
130 compel the production of any record, document, or other tangible
131 object which would otherwise be protected from production under
132 the standards applicable to a subpoena duces tecum if issued by
133 a court of competent jurisdiction.

134 (5) At any time before the date prescribed in the subpoena
135 by which records, documents, or other tangible objects must be
136 produced, a person or entity receiving a subpoena issued
137 pursuant to subsection (2) may, before a judge of competent
138 jurisdiction, petition for an order modifying or setting aside
139 the subpoena or a prohibition of disclosure issued under
140 subsections (7) or (12).

141 (6) An investigative or law enforcement officer who uses a
142 subpoena issued under subsection (2) to obtain any record,
143 document, or other tangible object may retain such items for use
144 in any ongoing criminal investigation or a closed investigation
145 with the intent that the investigation may later be reopened.

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146 (7) If a subpoena issued under subsection (2) is served
147 upon a recipient and accompanied by a written certification of a
148 supervisory official that there is reason to believe that
149 notification of the existence of the subpoena may have an
150 adverse result, as described in subsection (9), the subpoena
151 recipient is prohibited from disclosing to any person for a
152 period of 180 days the existence of the subpoena.

153 (a) A recipient of a subpoena issued under subsection (2)
154 that is accompanied by a written certification issued pursuant
155 to this subsection is authorized to disclose information
156 otherwise subject to any applicable nondisclosure requirement to
157 persons as is necessary to comply with the subpoena, to an
158 attorney in order to obtain legal advice or assistance regarding
159 compliance with the subpoena, or to any other person as allowed
160 and specifically authorized by the investigative or law
161 enforcement officer who obtained the subpoena or the supervisory
162 official who issued the written certification. The subpoena
163 recipient shall notify any person to whom disclosure of the
164 subpoena is made pursuant to this paragraph of the existence of,
165 and length of time associated with, the nondisclosure
166 requirement.

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

170 (c) At the request of the investigative or law enforcement
171 officer who obtained the subpoena or the supervisory official
172 who issued the written certification, the subpoena recipient
173 shall identify to the investigative or law enforcement officer
174 or supervisory official, before or at the time of compliance

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175 with the subpoena, the name of any person to whom disclosure was
176 made under paragraph (a). If the investigative or law
177 enforcement officer or supervisory official makes such a
178 request, the subpoena recipient has an ongoing duty to disclose
179 the identity of any individuals notified of the subpoena's
180 existence throughout the nondisclosure period.

181 (8) An investigative or law enforcement officer who obtains
182 a subpoena under subsection (2) may delay the notification
183 required under paragraph (2)(c) for a period not to exceed 180
184 days after the execution of a written certification of a
185 supervisory official unless there is reason to believe that
186 notification of the existence of the subpoena may have an
187 adverse result described in subsection (9).

188 (9) Any of the following acts by a subpoena recipient
189 constitute an adverse result:

190 (a) Endangering the life or physical safety of an
191 individual.

192 (b) Fleeing from prosecution.

193 (c) Destroying or tampering with evidence.

194 (d) Intimidating potential witnesses.

195 (e) Seriously jeopardizing an investigation or unduly
196 delaying a trial.

197 (10) The investigative or law enforcement officer shall
198 maintain a true copy of a written certification obtained under
199 subsection (7) or subsection (8).

200 (11) The court may grant an extension of the nondisclosure
201 period provided in subsection (7) or the delay of notification
202 provided in subsection (8) of up to 90 days upon application, or
203 by certification by an investigative or law enforcement officer,

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204 but only in accordance with subsection (13).

205 (12) Upon the expiration of the nondisclosure period
206 provided in subsection (7) or delay of notification in
207 subsection (8), an investigative or law enforcement officer who
208 receives records or information pursuant to a subpoena issued
209 under paragraph (2) (c) must serve upon or deliver by registered
210 or first-class mail to the subscriber or customer a copy of the
211 process or request, together with notice that:

212 (a) States with reasonable specificity the nature of the
213 law enforcement inquiry; and

214 (b) Informs the subscriber or customer of all of the
215 following:

216 1. That information maintained for such subscriber or
217 customer by the service provider named in the process or request
218 was supplied to or requested by the investigative or law
219 enforcement officer and the date on which such information was
220 so supplied or requested.

221 2. That notification of such subscriber or customer was
222 delayed.

223 3. What investigative or law enforcement officer or what
224 court made the written certification or determination pursuant
225 to which that delay was made.

226 4. Which provision of ss. 934.21-934.28 allowed such a
227 delay.

228 (13) An investigative or law enforcement officer acting
229 under paragraph (2) (b), when not required to notify the
230 subscriber or customer, or to the extent that such notice may be
231 delayed pursuant to subsection (8), may apply to a court for an
232 order prohibiting a provider of electronic communication

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233 services or remote computing services to whom the subpoena is
234 directed, for such period as the court deems appropriate, from
235 notifying any other person of the existence of such subpoena
236 except as specifically authorized in subsection (7). The court
237 shall enter such order if it determines that there is reason to
238 believe that notification of the existence of the warrant,
239 subpoena, or court order will result in an adverse result, as
240 specified under subsection (9).

241 (14) A subpoena issued under subsection (2) shall be served
242 in accordance with chapter 48, except that service may be made
243 on a domestic or foreign corporation or on a partnership or
244 other unincorporated association that is subject to suit under a
245 common name by delivering the subpoena to an officer, a managing
246 or general agent, or any other agent authorized by appointment
247 or by law to receive service of process. The affidavit of the
248 individual serving the subpoena entered on a true copy of the
249 subpoena is proof of service.

250 (15) In the case of contumacy by a person served a subpoena
251 issued under subsection (2), or his or her refusal to comply
252 with such a subpoena, the investigative or law enforcement
253 officer who sought the subpoena may petition a court of
254 competent jurisdiction to compel compliance. The court may
255 address the matter as indirect criminal contempt pursuant to
256 Rule 3.840 of the Florida Rules of Criminal Procedure. Any
257 prohibited disclosure of a subpoena issued under subsection (2)
258 for which a period of prohibition of disclosure provided in
259 subsection (7), a delay of notification in subsection (8), or an
260 extension thereof under subsection (11) is in effect is
261 punishable as provided in s. 934.43.

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