

**By** the Committees on Judiciary; and Criminal Justice; and Senators Baxley, Steube, Book, Rouson, and Mayfield

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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; authorizing a  
10      subpoenaed person to petition a court for an order  
11      modifying or setting aside the subpoena or a  
12      prohibition on disclosure; authorizing an  
13      investigative or law enforcement officer to retain  
14      subpoenaed records, documents, or other tangible  
15      objects under certain circumstances; prohibiting the  
16      disclosure of a subpoena for a specified period if the  
17      disclosure might result in an adverse result;  
18      providing exceptions; specifying the acts that  
19      constitute an adverse result; requiring the  
20      investigative or law enforcement officer to maintain a  
21      true copy of a written certification; authorizing a  
22      court to grant extension of certain periods under  
23      certain circumstances; requiring an investigative or  
24      law enforcement officer to serve or deliver a copy of  
25      the process along with specified information upon the  
26      expiration of a nondisclosure period or delay of  
27      notification; authorizing an investigative or law  
28      enforcement officer to apply to a court for an order  
29      prohibiting certain entities from notifying any person

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30 of the existence of a subpoena under certain  
31 circumstances; authorizing an investigative or law  
32 enforcement officer to petition a court to compel  
33 compliance; authorizing a court to punish a person who  
34 does not comply with a subpoena as indirect criminal  
35 contempt; providing criminal penalties; precluding a  
36 cause of action against certain entities or persons  
37 for providing information, facilities, or assistance  
38 in accordance with terms of a subpoena; providing for  
39 preservation of evidence pending issuance of process;  
40 providing that certain entities or persons shall be  
41 held harmless from any claim and civil liability  
42 resulting from disclosure of specified information;  
43 providing for reasonable compensation for reasonable  
44 expenses incurred in providing assistance; requiring  
45 that a subpoenaed witness be paid certain fees and  
46 mileage; providing an effective date.

47  
48 Be It Enacted by the Legislature of the State of Florida:

49  
50 Section 1. Section 934.255, Florida Statutes, is created to  
51 read:

52 934.255 Subpoenas in investigations of sexual offenses.—

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

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

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

58 (c) "Sexual abuse of a child" means a criminal offense

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59 based on any conduct described in s. 39.01(71).

60 (d) "Supervisory official" means the person in charge of an  
61 investigating or law enforcement agency's or entity's  
62 headquarters or regional office; the state attorney of the  
63 circuit from which the subpoena has been issued; the statewide  
64 prosecutor; or an assistant state attorney or assistant  
65 statewide prosecutor specifically designated by the state  
66 attorney or statewide prosecutor to make such written  
67 certification.

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

70 (a) Allegations of the sexual abuse of a child or an  
71 individual's suspected commission of a crime listed in s.  
72 943.0435(1)(h)1.a.(I) may use a subpoena to compel the  
73 production of records, documents, or other tangible objects and  
74 the testimony of the subpoena recipient concerning the  
75 production and authenticity of such records, documents, or  
76 objects, except as provided in paragraphs (b) and (c).

77 (b) Allegations of the sexual abuse of a child may use a  
78 subpoena to require a provider of electronic communication  
79 services or remote computing services to disclose a record or  
80 other information pertaining to a subscriber or customer of such  
81 service as described in 934.23(4)(b), not including the contents  
82 of a communication. An investigative or law enforcement officer  
83 who receives records or information from a provider of  
84 electronic communication services or remote computing services  
85 under this paragraph is not required to provide notice to a  
86 subscriber or customer of that provider.

87 (c) Allegations of the sexual abuse of a child may use a

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88 subpoena to require a provider of remote computing services to  
89 disclose the contents of any wire or electronic communication  
90 that has been in electronic storage in an electronic  
91 communications system for more than 180 days and to which this  
92 paragraph is made applicable by paragraph (d), with prior  
93 notice, or with delayed notice pursuant to subsection (6), from  
94 the investigative or law enforcement officer to the subscriber  
95 or customer.

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

98 1. On behalf of a subscriber or customer of such service  
99 and received by means of electronic transmission from, or  
100 created by means of computer processing of communications  
101 received by means of electronic transmission from, a subscriber  
102 or customer of such service.

103 2. Solely for the purposes of providing storage or computer  
104 processing services to a subscriber or customer, if the provider  
105 is not authorized to access the contents of any such  
106 communication for purposes of providing any service other than  
107 storage or computer processing.

108  
109 A subpoena issued under this subsection must describe the  
110 records, documents, or other tangible objects required to be  
111 produced, and must prescribe a date by which such records,  
112 documents, or other tangible objects must be produced.

113 (3) At any time before the date prescribed in the subpoena  
114 by which records, documents, or other tangible objects must be  
115 produced, a person or entity receiving a subpoena issued  
116 pursuant to subsection (2) may, before a judge of competent

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117 jurisdiction, petition for an order modifying or setting aside  
118 the subpoena or a prohibition of disclosure issued under  
119 subsection (5) or subsection (9).

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

125 (5) If a subpoena issued under subsection (2) is served  
126 upon a recipient and accompanied by a written certification of a  
127 supervisory official that there is reason to believe that  
128 notification of the existence of the subpoena may have an  
129 adverse result, as described in subsection (7), the subpoena  
130 recipient is prohibited from disclosing to any person for a  
131 period of 180 days the existence of the subpoena.

132 (a) A recipient of a subpoena issued under subsection (2)  
133 that is accompanied by a written certification issued pursuant  
134 to this subsection is authorized to disclose information  
135 otherwise subject to any applicable nondisclosure requirement to  
136 persons as is necessary to comply with the subpoena, to an  
137 attorney in order to obtain legal advice or assistance regarding  
138 compliance with the subpoena, or to any other person as allowed  
139 and specifically authorized by the investigative or law  
140 enforcement officer who obtained the subpoena or the supervisory  
141 official who issued the written certification. The subpoena  
142 recipient shall notify any person to whom disclosure of the  
143 subpoena is made pursuant to this paragraph of the existence of,  
144 and length of time associated with, the nondisclosure  
145 requirement.

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

149 (c) At the request of the investigative or law enforcement  
150 officer who obtained the subpoena or the supervisory official  
151 who issued the written certification, the subpoena recipient  
152 shall identify to the investigative or law enforcement officer  
153 or supervisory official, before or at the time of compliance  
154 with the subpoena, the name of any person to whom disclosure was  
155 made under paragraph (a). If the investigative or law  
156 enforcement officer or supervisory official makes such a  
157 request, the subpoena recipient has an ongoing duty to disclose  
158 the identity of any individuals notified of the subpoena's  
159 existence throughout the nondisclosure period.

160 (6) An investigative or law enforcement officer who obtains  
161 a subpoena pursuant to paragraph (2)(c) may delay the  
162 notification required under that paragraph for a period not to  
163 exceed 180 days upon the execution of a written certification of  
164 a supervisory official that there is reason to believe that that  
165 notification of the existence of the subpoena may have an  
166 adverse result described in subsection (7).

167 (7) Any of the following acts constitute an adverse result:

168 (a) Endangering the life or physical safety of an  
169 individual.

170 (b) Fleeing from prosecution.

171 (c) Destroying or tampering with evidence.

172 (d) Intimidating potential witnesses.

173 (e) Seriously jeopardizing an investigation or unduly  
174 delaying a trial.

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175 (8) The investigative or law enforcement officer shall  
176 maintain a true copy of a written certification obtained under  
177 subsection (5) or subsection (6).

178 (9) The court may grant extensions of the nondisclosure  
179 period provided in subsection (5) or the delay of notification  
180 provided in subsection (6) of up to 90 days each upon  
181 application by an investigative or law enforcement officer, but  
182 only in accordance with subsection (11).

183 (10) Upon the expiration of the period of delay of  
184 notification in subsection (6) or subsection (9), an  
185 investigative or law enforcement officer who receives records or  
186 information pursuant to a subpoena issued under paragraph (2)(c)  
187 must serve upon or deliver by registered or first-class mail to  
188 the subscriber or customer a copy of the process or request,  
189 together with notice that:

190 (a) States with reasonable specificity the nature of the  
191 law enforcement inquiry; and

192 (b) Informs the subscriber or customer of all of the  
193 following:

194 1. That information maintained for such subscriber or  
195 customer by the service provider named in the process or request  
196 was supplied to or requested by the investigative or law  
197 enforcement officer and the date on which such information was  
198 so supplied or requested.

199 2. That notification of such subscriber or customer was  
200 delayed.

201 3. What investigative or law enforcement officer or what  
202 court made the written certification or determination pursuant  
203 to which that delay was made.

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204 4. Which provision of ss. 934.21-934.28 allowed such a  
205 delay.

206 (11) An investigative or law enforcement officer acting  
207 under paragraph (2) (b), when not required to notify the  
208 subscriber or customer, or to the extent that such notice may be  
209 delayed pursuant to subsection (6), may apply to a court for an  
210 order prohibiting a provider of electronic communication  
211 services or remote computing services to whom the subpoena is  
212 directed, for such period as the court deems appropriate, from  
213 notifying any other person of the existence of such subpoena  
214 except as specifically authorized in subsection (5). The court  
215 shall enter such order if it determines that there is reason to  
216 believe that notification of the existence of the subpoena will  
217 result in an adverse result, as specified under subsection (7).

218 (12) In the case of contumacy by a person served a subpoena  
219 issued under subsection (2), or his or her refusal to comply  
220 with such a subpoena, the investigative or law enforcement  
221 officer who sought the subpoena may petition a court of  
222 competent jurisdiction to compel compliance. The court may  
223 address the matter as indirect criminal contempt pursuant to  
224 Rule 3.840 of the Florida Rules of Criminal Procedure. Any  
225 prohibited disclosure of a subpoena issued under subsection (2)  
226 for which a period of prohibition of disclosure provided in  
227 subsection (5), a delay of notification in subsection (6), or an  
228 extension thereof under subsection (9) is in effect is  
229 punishable as provided in s. 934.43.

230 (13) No cause of action shall lie in any court against any  
231 provider of wire or electronic communication service, its  
232 officers, employees, agents, or other specified persons for



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233 providing information, facilities, or assistance in accordance  
234 with the terms of a subpoena under this section.

235 (14) (a) A provider of wire or electronic communication  
236 services or a remote computing service, upon the request of an  
237 investigative or law enforcement officer, shall take all  
238 necessary steps to preserve records and other evidence in its  
239 possession pending the issuance of a court order or other  
240 process.

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

245 (15) A provider of electronic communication service, a  
246 remote computing service, or any other person who furnished  
247 assistance pursuant to this section shall be held harmless from  
248 any claim and civil liability resulting from the disclosure of  
249 information pursuant to this section and shall be reasonably  
250 compensated for reasonable expenses incurred in providing such  
251 assistance. A witness who is subpoenaed to appear to testify  
252 under subsection (2) and who complies with the subpoena must be  
253 paid the same fees and mileage rate paid to a witness appearing  
254 before a court of competent jurisdiction in this state.

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