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2018 Legislature

1
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

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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
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:

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50 Section 1. Section 934.255, Florida Statutes, is created

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

60 | (d) "Supervisory official" means the person in charge of
 61 | an 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

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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 s. 934.23(4) (b), but not including the
 82 | contents of a communication. An investigative or law enforcement
 83 | officer 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
 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

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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
104 computer processing services to a subscriber or customer, if the
105 provider 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
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

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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.

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

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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
161 obtains 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
168 result:

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

171 (b) Fleeing from prosecution.

172 (c) Destroying or tampering with evidence.

173 (d) Intimidating potential witnesses.

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

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

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

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

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

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

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

200 2. That notification of such subscriber or customer was

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201 delayed.

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

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

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

219 (12) In the case of contumacy by a person served a
 220 subpoena issued under subsection (2), or his or her refusal to
 221 comply with such a subpoena, the investigative or law
 222 enforcement officer who sought the subpoena may petition a court
 223 of competent jurisdiction to compel compliance. The court may
 224 address the matter as indirect criminal contempt pursuant to
 225 Rule 3.840 of the Florida Rules of Criminal Procedure. Any

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226 prohibited disclosure of a subpoena issued under subsection (2)
227 for which a period of prohibition of disclosure provided in
228 subsection (5), a delay of notification in subsection (6), or an
229 extension thereof under subsection (9) is in effect is
230 punishable as provided in s. 934.43.

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

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

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

246 (15) A provider of electronic communication service, a
247 remote computing service, or any other person who furnished
248 assistance pursuant to this section shall be held harmless from
249 any claim and civil liability resulting from the disclosure of
250 information pursuant to this section and shall be reasonably

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251 compensated for reasonable expenses incurred in providing such
252 assistance. A witness who is subpoenaed to appear to testify
253 under subsection (2) and who complies with the subpoena must be
254 paid the same fees and mileage rate paid to a witness appearing
255 before a court of competent jurisdiction in this state.

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