

## CHAPTER 2018-93

### Committee Substitute for House Bill No. 581

An act relating to subpoenas in investigations of sexual offenses; creating s. 934.255, F.S.; defining terms; authorizing an investigative or law enforcement officer conducting an investigation into specified matters to subpoena certain persons or entities for the production of records, documents, or other tangible things and testimony; specifying requirements for the issuance of a subpoena; authorizing a subpoenaed person to petition a court for an order modifying or setting aside the subpoena or a prohibition on disclosure; authorizing an investigative or law enforcement officer to retain subpoenaed records, documents, or other tangible objects under certain circumstances; prohibiting the disclosure of a subpoena for a specified period if the disclosure might result in an adverse result; providing exceptions; specifying the acts that constitute an adverse result; requiring the investigative or law enforcement officer to maintain a true copy of a written certification; authorizing a court to grant extension of certain periods under certain circumstances; requiring an investigative or law enforcement officer to serve or deliver a copy of the process along with specified information upon the expiration of a nondisclosure period or delay of notification; authorizing an investigative or law enforcement officer to apply to a court for an order prohibiting certain entities from notifying any person of the existence of a subpoena under certain circumstances; authorizing an investigative or law enforcement officer to petition a court to compel compliance; authorizing a court to punish a person who does not comply with a subpoena as indirect criminal contempt; providing criminal penalties; precluding a cause of action against certain entities or persons for providing information, facilities, or assistance in accordance with terms of a subpoena; providing for preservation of evidence pending issuance of process; providing that certain entities or persons shall be held harmless from any claim and civil liability resulting from disclosure of specified information; providing for reasonable compensation for reasonable expenses incurred in providing assistance; requiring that a subpoenaed witness be paid certain fees and mileage; providing an effective date.

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

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

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

(d) “Supervisory official” means the person in charge of an investigating or law enforcement agency’s or entity’s headquarters or regional office; the state attorney of the circuit from which the subpoena has been issued; the statewide prosecutor; or an assistant state attorney or assistant statewide prosecutor specifically designated by the state attorney or statewide prosecutor to make such written certification.

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

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

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

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

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

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

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

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

(3) At any time before the date prescribed in the subpoena by which records, documents, or other tangible objects must be produced, a person or entity receiving a subpoena issued pursuant to subsection (2) may, before a judge of competent jurisdiction, petition for an order modifying or setting aside the subpoena or a prohibition of disclosure issued under subsection (5) or subsection (9).

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

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

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

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

(c) At the request of the investigative or law enforcement officer who obtained the subpoena or the supervisory official who issued the written certification, the subpoena recipient shall identify to the investigative or law enforcement officer or supervisory official, before or at the time of compliance with the subpoena, the name of any person to whom disclosure was made under paragraph (a). If the investigative or law enforcement officer or supervisory official makes such a request, the subpoena recipient

has an ongoing duty to disclose the identity of any individuals notified of the subpoena's existence throughout the nondisclosure period.

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

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

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

(b) Fleeing from prosecution.

(c) Destroying or tampering with evidence.

(d) Intimidating potential witnesses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved by the Governor March 23, 2018.

Filed in Office Secretary of State March 23, 2018.