

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  
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

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

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

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

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

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.

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

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

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

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.