

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 90 Session of 2013

INTRODUCED BY SACCONI, DUNBAR, GINGRICH, BOBACK, SAYLOR,
SWANGER, STEPHENS, BAKER, BIZZARRO, BENNINGHOFF, COHEN,
PETRI, MARSICO, ROCK, C. HARRIS, HESS AND WATSON,
JANUARY 14, 2013

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 14, 2013

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, providing for administrative subpoena.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Title 18 of the Pennsylvania Consolidated
6 Statutes is amended by adding a section to read:

7 § 5743.1. Administrative subpoena.

8 (a) Authorization.--

9 (1) In an investigation of or relating to an offense
10 involving the sexual exploitation or abuse of children, the
11 following shall apply:

12 (i) The following may issue in writing and cause to
13 be served a subpoena requiring the production and
14 testimony under subparagraph (ii):

15 (A) The Attorney General.

16 (B) A deputy attorney general designated in
17 writing by the Attorney General.

1 (C) A district attorney.

2 (D) An assistant district attorney designated in
3 writing by a district attorney.

4 (ii) A subpoena issued under subparagraph (i) may be
5 issued to a provider of electronic communication service
6 or remote computing service:

7 (A) requiring disclosure under section 5743(c)
8 (2) (relating to requirements for governmental
9 access) of a subscriber or customer's name, address,
10 telephone or instrument number or other subscriber
11 number or identity, including any temporarily
12 assigned network address, which may be relevant to an
13 authorized law enforcement inquiry; or

14 (B) requiring a custodian of the records of the
15 provider to give testimony or affidavit concerning
16 the production and authentication of the records or
17 information.

18 (2) A subpoena under this section shall describe the
19 information required to be produced and prescribe a return
20 date within a reasonable period of time within which the
21 information can be assembled and made available.

22 (3) If summoned to appear under paragraph (1)(ii)(B), a
23 custodian of records subpoenaed under this section shall be
24 paid the same fees and mileage that are paid to witnesses in
25 the courts of this Commonwealth.

26 (4) Prior to the return date specified in the summons,
27 the person or entity summoned may, in the court of common
28 pleas of the county in which the person or entity conducts
29 business or resides, petition for an order modifying or
30 setting aside the summons or for a prohibition of disclosure

1 ordered by a court under paragraph (7).

2 (5) The following shall apply:

3 (i) Except as provided under subparagraph (ii), if
4 no case or proceeding arises from the production of
5 materials under this section within a reasonable time
6 after the materials are produced, the agency to which the
7 materials were delivered shall, upon written demand made
8 by the person producing the materials, return the
9 materials to the person.

10 (ii) This paragraph shall not apply if the
11 production required was of copies rather than originals.

12 (6) A subpoena issued under paragraph (1)(i) may require
13 production as soon as possible, but not less than 24 hours
14 after service of the subpoena.

15 (7) Upon application of the Commonwealth, a court of
16 common pleas for the jurisdiction in which the investigation
17 is taking place may issue an ex parte order that no person or
18 entity may disclose to any other person or entity, other than
19 to an attorney in order to obtain legal advice, the existence
20 of the summons for a period of up to 90 days. The following
21 shall apply:

22 (i) The order may be issued on a showing that the
23 materials being sought may be relevant to the
24 investigation and there is reason to believe that the
25 disclosure may result in any of the following:

26 (A) Endangerment to the life or physical safety
27 of any person.

28 (B) Flight to avoid prosecution.

29 (C) Destruction of or tampering with evidence.

30 (D) Intimidation of potential witnesses.

1 (ii) An order under this paragraph may be renewed
2 for additional periods of up to 90 days upon a showing
3 that the circumstances under subparagraph (i) continue to
4 exist.

5 (8) A summons issued under this section may not require
6 the production of anything that would be protected from
7 production under the standards applicable to a subpoena for
8 the production of documents issued by a court.

9 (b) Service.--The following shall apply:

10 (1) A subpoena issued under this section may be served
11 by any person who is at least 18 years of age and is
12 designated in the subpoena to serve it.

13 (2) Service upon a natural person may be made by
14 personal delivery of the subpoena to him.

15 (3) Service may be made upon a domestic or foreign
16 corporation or upon a partnership or other unincorporated
17 association which is subject to suit under a common name by
18 delivering the subpoena to any of the following:

19 (i) An officer of the entity.

20 (ii) A managing or general agent of the entity.

21 (iii) An agent authorized by appointment or by law
22 to receive service of process in this Commonwealth.

23 (4) The affidavit of the person serving the subpoena
24 entered on a true copy of the subpoena by the person serving
25 it shall be proof of service.

26 (c) Enforcement.--The following shall apply:

27 (1) The Attorney General or a district attorney may
28 invoke the aid of a court of common pleas within the
29 following jurisdictions to compel compliance with the
30 subpoena:

1 (i) The jurisdiction in which the investigation is
2 carried on.

3 (ii) The jurisdiction in which the subpoenaed person
4 resides, conducts business or may be found.

5 (2) The court may issue an order requiring the
6 subpoenaed person to appear before the Attorney General or a
7 district attorney to produce records or to give testimony
8 concerning the production and authentication of the records.
9 A failure to obey the order of the court may be punished by
10 the court as contempt of court. All process may be served in
11 a judicial district of the Commonwealth in which the person
12 may be found.

13 (d) Immunity from civil liability.--Notwithstanding any
14 State or local law, any person receiving a subpoena under this
15 section who complies in good faith with the subpoena and
16 produces the records sought shall not be liable in a court of
17 this Commonwealth to a subscriber, customer or other person for
18 the production or for nondisclosure of that production to the
19 subscriber, customer or person.

20 (e) Definitions.--As used in this section, the following
21 words and phrases shall have the meanings given to them in this
22 subsection:

23 "Offense involving the sexual exploitation or abuse of
24 children." An offense, including an attempt, conspiracy or
25 solicitation involving any of the following, in which a victim
26 is an individual who is under the age of 18 years:

27 (1) Chapter 29 (relating to kidnapping).

28 (2) Chapter 30 (relating to trafficking of persons).

29 (3) Chapter 31 (relating to sexual offenses).

30 (4) Section 6312 (relating to sexual abuse of children).

1 (5) Section 6318 (relating to unlawful contact with
2 minor).

3 (6) Section 6320 (relating to sexual exploitation of
4 children).

5 Section 2. This act shall take effect immediately.