

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, WATSON, GRELL, MURT, CALTAGIRONE, HACKETT, NEILSON, DEASY, DAVIS, ENGLISH AND KORTZ, JANUARY 14, 2013

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES, APRIL 8, 2013

AN ACT

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

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

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

8 § 5743.1. Administrative subpoena.

9 (a) Authorization.--

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

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

16 (A) The Attorney General.

1 (B) A deputy attorney general designated in
2 writing by the Attorney General.

3 (C) A district attorney.

4 (D) An assistant district attorney designated in
5 writing by a district attorney.

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

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

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

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

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

28 (4) Prior to the return date specified in the summons,
29 the person or entity summoned may, in the court of common
30 pleas of the county in which the person or entity conducts

1 business or resides, petition for an order modifying or
2 setting aside the summons or for a prohibition of disclosure
3 ordered by a court under paragraph (7).

4 (5) The following shall apply:

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

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

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

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

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

28 (A) Endangerment to the life or physical safety
29 of any person.

30 (B) Flight to avoid prosecution.

1 (C) Destruction of or tampering with evidence.

2 (D) Intimidation of potential witnesses.

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

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

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

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

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

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

21 (i) An officer of the entity.

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

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

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

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

29 (1) The Attorney General or a district attorney may
30 invoke the aid of a court of common pleas within the

1 following jurisdictions to compel compliance with the
2 subpoena:

3 (i) The jurisdiction in which the investigation is
4 carried on.

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

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

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

22 (e) Annual reports and records of Attorney General and
23 district attorneys.--The following shall apply:

24 (1) On or before April 1 following the effective date of
25 this section and annually thereafter, including the year
26 following the expiration of this section, the Attorney
27 General shall make a report on the operation of this section
28 to the Judiciary Committee of the Senate and the Judiciary
29 Committee of the House of Representatives. The reports by the
30 Attorney General shall contain the following information for

1 the previous calendar year:

2 (i) The number of administrative subpoenas issued.

3 (ii) The number of investigations for which an
4 administrative subpoena was issued.

5 (iii) The number of court orders issued under
6 subsections (a)(4) and (7) and (c)(2).

7 (iv) The number of arrests made and the type of
8 charge filed in cases in which an administrative subpoena
9 was issued.

10 (v) The number of cases in which an administrative
11 subpoena was issued and in which no arrests or
12 prosecutions resulted.

13 (2) On or before March 1 following the effective date of
14 this section and annually thereafter, including the year
15 following the expiration of this section, each district
16 attorney shall provide to the Attorney General all of the
17 information under paragraph (1) with respect to all
18 administrative subpoenas issued by that district attorney on
19 forms prescribed by the Attorney General.

20 (f) Expiration.--This section shall expire December 31,
21 2017.

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

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

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

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

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

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

3 (5) Section 6318 (relating to unlawful contact with
4 minor).

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

7 Section 1.1. Section 5747(b) of Title 18 is amended to read:

8 § 5747. Civil action.

9 * * *

10 (b) Relief.--In a civil action under this section,
11 appropriate relief [includes] shall include:

12 (1) such preliminary and other equitable or declaratory
13 relief as may be appropriate;

14 (2) damages under subsection (c); and

15 (3) reasonable attorney fees and other litigation costs
16 reasonably incurred.

17 * * *

18 Section 2. This act shall take effect immediately.