

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, IN SENATE, OCTOBER 6, 2014

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, IN WIRETAPPING AND ELECTRONIC
3 SURVEILLANCE, providing for administrative subpoena; and
4 further providing for civil action. <--

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

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

9 § 5743.1. Administrative subpoena.

10 (a) Authorization.--

11 (1) In an investigation of or relating to ONGOING <--
12 INVESTIGATION THAT MONITORS OR UTILIZES ONLINE SERVICES OR
13 OTHER MEANS OF ELECTRONIC COMMUNICATION TO IDENTIFY
14 INDIVIDUALS ENGAGED IN an offense involving the sexual
15 exploitation or abuse of children, the following shall apply:

16 (i) The following may issue in writing and cause to

1 be served a subpoena requiring the production and
2 testimony under subparagraph (ii):

3 (A) The Attorney General.

4 (B) A deputy attorney general designated in
5 writing by the Attorney General.

6 (C) A district attorney.

7 (D) An assistant district attorney designated in
8 writing by a district attorney.

9 (ii) A subpoena issued under subparagraph (i) may be
10 issued to a provider of electronic communication service
11 or remote computing service:

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

19 (B) requiring a custodian of the records of the
20 provider to give testimony or affidavit concerning
21 the production and authentication of the records or
22 information.

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

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

1 ~~(4) Prior to the return date specified in the summons~~ <--
2 ~~SUBPOENA, the person or entity summoned SUBPOENAED may, in~~ <--
3 ~~the court of common pleas of the county in which the person~~
4 ~~or entity conducts business or resides, petition for an order~~
5 ~~modifying or setting aside the summons SUBPOENA or for a~~ <--
6 ~~prohibition of disclosure ordered by a court under paragraph~~
7 ~~(7).~~

8 (5) The following shall apply:

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

16 (ii) This paragraph shall not apply if the
17 ~~production required was of copies rather than originals.~~

18 (6) A subpoena issued under paragraph (1) may require
19 ~~production as soon as possible.~~

20 ~~(7) Upon application of the Commonwealth, a court of~~ <--
21 ~~common pleas for the jurisdiction in which the investigation~~
22 ~~is taking place may issue an ex parte order that WITHOUT~~ <--
23 ~~COURT APPROVAL, no person or entity may disclose to any other~~
24 ~~person or entity, other than to an attorney in order to~~
25 ~~obtain legal advice, the existence of the summons SUBPOENA~~ <--
26 ~~for a period of up to 90 days. The following shall apply:~~ <--

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

1 ~~(A) Endangerment to the life or physical safety~~
2 ~~of any person.~~

3 ~~(B) Flight to avoid prosecution.~~

4 ~~(C) Destruction of or tampering with evidence.~~

5 ~~(D) Intimidation of potential witnesses.~~

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

10 ~~(8) A summons SUBPOENA issued under this section may not <--~~
11 ~~require the production of anything that would be protected~~
12 ~~from production under the standards applicable to a subpoena~~
13 ~~for the production of documents issued by a court.~~

14 ~~(b) Service.--The following shall apply:~~

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

18 ~~(2) Service upon a natural person may be made by~~
19 ~~personal delivery of the subpoena to him THE PERSON. <--~~

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

24 ~~(i) An officer of the entity.~~

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

26 ~~(iii) An agent authorized by appointment or by law~~
27 ~~to receive service of process in this Commonwealth.~~

28 ~~(4) The affidavit of the person serving the subpoena~~
29 ~~entered on a true copy of the subpoena by the person serving~~
30 ~~it shall be proof of service.~~

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

2 (1) The Attorney General or a district attorney, OR A <--
3 DESIGNEE may invoke the aid of a court of common pleas within
4 the following jurisdictions to compel compliance with the
5 subpoena:

6 (i) The jurisdiction in which the investigation is
7 carried on BEING CONDUCTED. <--

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

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

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

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

27 (1) On or before April 1 following the effective date of
28 this section and annually thereafter, including the year
29 following the expiration of this section, the Attorney
30 General shall make a report on the operation of this section

1 to the Judiciary Committee of the Senate and the Judiciary
2 Committee of the House of Representatives. The reports by the
3 Attorney General shall contain the following information for
4 the previous calendar year:

5 (i) The number of administrative subpoenas issued.

6 (ii) The number of investigations for which an
7 administrative subpoena was issued.

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

10 (iv) The number of arrests made and the type of
11 charge filed in cases in which an administrative subpoena
12 was issued.

13 (v) The number of cases in which an administrative
14 subpoena was issued and in which no arrests or
15 prosecutions resulted.

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

23 (f) Expiration.--This section shall expire December 31,
24 2017.

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

28 "Offense involving the sexual exploitation or abuse of
29 children." An offense, including an attempt, conspiracy or
30 solicitation involving any of the following, in which a victim

1 is an individual who is under the age of 18 years:

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

3 (2) Chapter 30 (relating to ~~trafficking of persons~~ HUMAN <--
4 TRAFFICKING).

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

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

7 (5) Section 6318 (relating to unlawful contact with
8 minor).

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

11 Section ~~1.1~~ 2. Section 5747(b) of Title 18 is amended to <--
12 read:

13 § 5747. Civil action.

14 * * *

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

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

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

20 (3) reasonable attorney fees and other litigation costs
21 reasonably incurred.

22 * * *

23 Section ~~2~~ 3. This act shall take effect ~~immediately~~ IN 60 <--
24 DAYS.