

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

SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED, SEPTEMBER 23, 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 the person or entity summoned may, in the court of common  
3 pleas of the county in which the person or entity conducts  
4 business or resides, petition for an order modifying or  
5 setting aside the summons or for a prohibition of disclosure  
6 ordered by a court under paragraph (7).

7       (5) The following shall apply:

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

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

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

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

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

30           ~~(A) Endangerment to the life or physical safety~~

1 ~~of any person.~~

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

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

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

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

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

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

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

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

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

23 (i) An officer of the entity.

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

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

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

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

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

5           (i) The jurisdiction in which the investigation is  
6 carried on.

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

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

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

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

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

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

4 (i) The number of administrative subpoenas issued.

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

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

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

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

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

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

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

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

1           (1) Chapter 29 (relating to kidnapping).  
2           (2) Chapter 30 (relating to ~~trafficking of persons~~ HUMAN <--  
3           TRAFFICKING).  
4           (3) Chapter 31 (relating to sexual offenses).  
5           (4) Section 6312 (relating to sexual abuse of children).  
6           (5) Section 6318 (relating to unlawful contact with  
7           minor).  
8           (6) Section 6320 (relating to sexual exploitation of  
9           children).  
10          Section ~~1.1~~ 2. Section 5747(b) of Title 18 is amended to       <--  
11          read:  
12          § 5747. Civil action.  
13               \* \* \*  
14               (b) Relief.--In a civil action under this section,  
15          appropriate relief [includes] shall include:  
16               (1) such preliminary and other equitable or declaratory  
17               relief as may be appropriate;  
18               (2) damages under subsection (c); and  
19               (3) reasonable attorney fees and other litigation costs  
20               reasonably incurred.  
21               \* \* \*  
22          Section ~~2~~ 3. This act shall take effect ~~immediately~~ IN 60       <--  
23          DAYS.