
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2590 Session of
2012

INTRODUCED BY SACCONI, MARSICO, MALONEY, BAKER, STEPHENS,
SAYLOR, BENNINGHOFF, ROCK AND MILNE, SEPTEMBER 5, 2012

REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 5, 2012

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.

18 (C) A district attorney.

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

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

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

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

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

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

25 (4) Prior to the return date specified in the summons,
26 the person or entity summoned may, in the court of common
27 pleas of the county in which the person or entity conducts
28 business or resides, petition for an order modifying or
29 setting aside the summons or for a prohibition of disclosure
30 ordered by a court under paragraph (7).

1 (5) The following shall apply:

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

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

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

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

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

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

27 (B) Flight to avoid prosecution.

28 (C) Destruction of or tampering with evidence.

29 (D) Intimidation of potential witnesses.

30 (ii) An order under this paragraph may be renewed

1 for additional periods of up to 90 days upon a showing
2 that the circumstances under subparagraph (i) continue to
3 exist.

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

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

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

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

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

18 (i) An officer of the entity.

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

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

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

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

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

30 (i) The jurisdiction in which the investigation is

1 carried on.

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

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

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

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

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

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

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

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

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

30 (5) Section 6318 (relating to unlawful contact with

1 minor).

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

4 Section 2. This act shall take effect immediately.