

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 SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, MARCH 19, 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) may require  
15 production as soon as possible, but not less than 24 hours  
16 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:

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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 ~~(e)~~ (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.