

No. 2014-151

AN ACT

HB 90

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in wiretapping and electronic surveillance, providing for administrative subpoena; and further providing for civil action.

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

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

§ 5743.1. Administrative subpoena.

(a) Authorization.—

(1) In an ongoing investigation that monitors or utilizes online services or other means of electronic communication to identify individuals engaged in an offense involving the sexual exploitation or abuse of children, the following shall apply:

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

(A) The Attorney General.

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

(C) A district attorney.

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

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

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

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

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

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

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

(5) The following shall apply:

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

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

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

(7) Without court approval, no person or entity may disclose to any other person or entity, other than to an attorney in order to obtain legal advice, the existence of the subpoena for a period of up to 90 days.

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

(b) Service.—The following shall apply:

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

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

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

(i) An officer of the entity.

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

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

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

(c) Enforcement.—The following shall apply:

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

(i) The jurisdiction in which the investigation is being conducted.

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

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

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

(e) *Annual reports and records of Attorney General and district attorneys.—The following shall apply:*

(1) *On or before April 1 following the effective date of this section and annually thereafter, including the year following the expiration of this section, the Attorney General shall make a report on the operation of this section to the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives. The reports by the Attorney General shall contain the following information for the previous calendar year:*

(i) *The number of administrative subpoenas issued.*

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

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

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

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

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

(f) *Expiration.—This section shall expire December 31, 2017.*

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

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

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

(2) *Chapter 30 (relating to human trafficking).*

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

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

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

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

Section 2. Section 5747(b) of Title 18 is amended to read:

§ 5747. Civil action.

* * *

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

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

(2) damages under subsection (c); and

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

* * *

Section 3. This act shall take effect in 60 days.

APPROVED—The 22nd day of October, A.D. 2014

TOM CORBETT