

COMMITTEE BILL ANALYSIS

Bill: House Bill 90

Printer's No.: 1392

Sponsor: Representative Saccone

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Synopsis: This bill amends Chapter 57 of the Crimes Code, Title 18 of the Pennsylvania Consolidated Statutes, known as the Wiretapping and Electronic Surveillance Control Act, to provide for the use of administrative subpoenas in the investigation of child sexual exploitation or abuse.

Summary: Subchapter C of Chapter 57 governs access to stored wire and electronic communications and transactional records. New section 5743.1, relating to administrative subpoenas, will be added.

Authorization

The following individuals are authorized to issue an administrative subpoena:

- (1) The Attorney General or a deputy attorney general designated in writing.
- (2) A district attorney or an assistant district attorney designated in writing.

The administrative subpoena may be issued to a provider of electronic communication service or remote computing service. The subpoena may require disclosure of a subscriber or customer's name, address, telephone or instrument number, which may be relevant to the investigation. The subpoena may require the custodian of the records to give testimony or authentication relating to the records.

The subpoena must describe the information requested and provide a reasonable amount of time for the information to be assembled and made available. If summoned to appear, the custodian of records shall be paid the same fees and mileage as witnesses.

The person or entity summoned may challenge the summons in the court of common pleas in which the person or entity conducts business or resides. If no case or proceeding arises using the materials produced as a result of the subpoena, the materials shall be returned if they are originals.

Upon application of the Commonwealth, a common pleas court may issue an ex parte order that no person or entity may disclose the existence of the summons for a period of up to 90 days. The order may be issued upon a showing that the materials are relevant to the investigation and that there may be endangerment to the life or physical safety of any person; flight to avoid prosecution; destruction or tampering with evidence; or intimidation of potential witnesses.

Service

An administrative subpoena may be served by any person who is at least 18 years of age. Service on a natural person may be made by personal delivery. Service upon a business entity may be made by delivering the subpoena to an officer, manager or agent.

Enforcement

The Attorney General or a district attorney may ask a court of common pleas to compel compliance with a subpoena. The court may issue an order requiring the subpoenaed person to produce the records or give testimony. Failure to do so may be punishable as contempt of court.

Any person who complies in good faith with the subpoena and produces the records sought shall not be liable to a subscriber, customer or other person for the production of the materials.

Annual report

On or before April 1 following the effective date of this legislation and annually thereafter, the Attorney General shall make a report on the use of administrative subpoenas under this section to the House and Senate judiciary committees.

Definition

“Offense involving the sexual exploitation or abuse of children” is defined as including an offense, including an attempt, conspiracy or solicitation, under Chapter 20 (relating to kidnapping); Chapter 30 (relating to the trafficking of persons); Chapter 31 (relating to sexual offenses); section 6312 (relating to sexual abuse of children); section 6318 (relating to unlawful contact with minor); and section 6320 (relating to sexual exploitation of children). The victim must be under 18 years of age.

Section 5747

The bill also amends section 5747 which provides for a civil action when a subscriber or customer is aggrieved by a violation of Subchapter C. Damages shall include equitable relief, damages and attorney fees.

Effective date

This act takes effect immediately.

Background: The House of Representatives passed House Bill 90 on April 8, 2013 by a vote of 198 to 0.

18 Pa.C.S. §5743 governs government access to electronic communications. Section 5743 authorizes an investigative or law enforcement officer to request information about a subscriber using an administrative subpoena as authorized by statute. New section 5743.1 provides that authorization.

An administrative subpoena may be used only to determine the name and address of the subscriber. A search warrant would still be required to view anything on the subscriber’s computer.