

Legislation for Recommendation 2.1.4a & b- Administrative Subpoena Authority

Introduction to Proposal. This proposal implements the commission’s recommendation to give additional administrative subpoena authority to the Department of Justice.

SEC. XXX. ADMINISTRATIVE SUBPOENAS.

(a) Section 3486(a) of chapter 223 of title 18, United States Code, is amended—

(1) In clause (1)(A)(i)—

(A) In subclause (I), by striking “or”;

(B) In subclause (II), by striking “, the Attorney General”; and

(C) By adding at the end the following new subclauses:

“(III) a criminal matter in which the assistance of the United States is required under a mutual legal assistance agreement or treaty; or

“(IV) a violation of 18 U.S.C. 1030, the Attorney General;”;

(2) In subparagraph (1)(C)—

(A) By inserting “, a mutual legal assistance agreement or treaty, or an investigation of a violation of 18 U.S.C. 1030” before “shall not extend beyond—”; and

(B) By inserting after subparagraph (1)(C) the following new subparagraph:

“(D) An administrative subpoena issued under (a)(1)(A)(i)(III-IV) shall be subject to the same prohibitions and exceptions for disclosure as in 18 U.S.C. 2709(c) & (d).”;

(3) By redesignating subparagraph (1)(D) as subparagraph (1)(E);

(4) In subparagraph (1)(E), as so redesignated—

(A) In clause (i), by striking “and” after “18 years;”

(B) In clause (ii), by striking “.” after “(42 U.S.C. 16901 et seq.)” and inserting “; and”; and

(C) By adding at the end the following new clause:

“(iii) the term “mutual legal assistance agreement or treaty” means either a treaty between the United States and a foreign country or countries, or an executive agreement made in accordance with 18 U.S.C. 2523.”; and

(5) In paragraph (9), by inserting “-III” after “paragraph (1)(A)(i)(II”.

Legend. This proposal amends existing legislation (18 USC 3486). Changes are **highlighted** with new words **underlined** and deleted words are **strikethroughs**.

§ 3486. ADMINISTRATIVE SUBPOENAS

(a) Authorization.

(1)

(A) In any investigation of—

(i) (I) a Federal health care offense; ~~or~~ (II) a Federal offense involving the sexual exploitation or abuse of children; (III) **a criminal matter in which the assistance of the United States is required under a mutual legal assistance agreement or treaty**; or (IV) a violation of 18 U.S.C. 1030, the Attorney General;

(ii) an unregistered sex offender conducted by the United States Marshals Service, the Director of the United States Marshals Service; or

(iii) an offense under section 871 or 879, or a threat against a person protected by the United States Secret Service under paragraph (5) or (6) of section 3056, if the Director of the Secret Service determines that the threat constituting the offense or the threat against the person protected is imminent, the Secretary of the Treasury,

may issue in writing and cause to be served a subpoena requiring the production and testimony described in subparagraph (B).

(B) Except as provided in subparagraph (C), a subpoena issued under subparagraph (A) may require—

(i) the production of any records or other things relevant to the investigation; and

(ii) testimony by the custodian of the things required to be produced concerning the production and authenticity of those things.

(C) A subpoena issued under subparagraph (A) with respect to a provider of electronic communication service or remote computing service, in an investigation of a Federal offense involving the sexual exploitation or abuse of children, **a mutual legal assistance agreement or treaty, or an investigation of a violation of 18 U.S.C. 1030** shall not extend beyond—

(i) requiring that provider to disclose the information specified in section 2703(c)(2), which may be relevant to an authorized law enforcement inquiry; or

(ii) requiring a custodian of the records of that provider to give testimony concerning the production and authentication of such records or information.

(D) An administrative subpoena issued under (a)(1)(A)(i)(III-IV) shall be subject to the same prohibitions and exceptions for disclosure as in 18 U.S.C. 2709(c) & (d).

(DE) As used in this paragraph—

(i) the term “Federal offense involving the sexual exploitation or abuse of children” means an offense under section 1201, 1591, 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423, in which the victim is an individual who has not attained the age of 18 years; **and**

(ii) the term “sex offender” means an individual required to register under the Sex Offender Registration and Notification Act (42 U.S.C. 16901 et seq.); **and**

(iii) the term “mutual legal assistance agreement or treaty” means either a treaty between the United States and a foreign country or countries, or an executive agreement made in accordance with 18 U.S.C. 2523.

- (2)** A subpoena under this subsection shall describe the objects required to be produced and prescribe a return date within a reasonable period of time within which the objects can be assembled and made available.
- (3)** The production of records relating to a Federal health care offense shall not be required under this section at any place more than 500 miles distant from the place where the subpoena for the production of such records is served. The production of things in any other case may be required from any place within the United States or subject to the laws or jurisdiction of the United States.
- (4)** Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.
- (5)** At any time before the return date specified in the summons, the person or entity summoned may, in the United States district court for the district in which that person or entity does business or resides, petition for an order modifying or setting aside the summons, or a prohibition of disclosure ordered by a court under paragraph (6).
- (6)**
- (A)** A United States district court for the district in which the summons is or will be served, upon application of the United States, may issue an ex parte order that no person or entity disclose to any other person or entity (other than to an attorney in order to obtain legal advice) the existence of such summons for a period of up to 90 days.
- (B)** Such order may be issued on a showing that the things being sought may be relevant to the investigation and there is reason to believe that such disclosure may result in—
- (i)** endangerment to the life or physical safety of any person;
 - (ii)** flight to avoid prosecution;
 - (iii)** destruction of or tampering with evidence; or
 - (iv)** intimidation of potential witnesses.
- (C)** An order under this paragraph may be renewed for additional periods of up to 90 days upon a showing that the circumstances described in subparagraph (B) continue to exist.

(7) A summons issued under this section shall not require the production of anything that would be protected from production under the standards applicable to a subpoena duces tecum issued by a court of the United States.

(8) If no case or proceeding arises from the production of records or other things pursuant to this section within a reasonable time after those records or things are produced, the agency to which those records or things were delivered shall, upon written demand made by the person producing those records or things, return them to that person, except where the production required was only of copies rather than originals.

(9) A subpoena issued under paragraph (1)(A)(i)(II-III) or (1)(A)(iii) may require production as soon as possible, but in no event less than 24 hours after service of the subpoena.

(10) As soon as practicable following the issuance of a subpoena under paragraph (1)(A)(iii), the Secretary of the Treasury shall notify the Attorney General of its issuance.

(b) Service. 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. Service upon a natural person may be made by personal delivery of the subpoena to him. 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 an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

(c) Enforcement. In the case of contumacy by or refusal to obey a subpoena issued to any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on or of which the subpoenaed person is an inhabitant, or in which he carries on business or may be found, to compel compliance with the subpoena. The court may issue an order requiring the subpoenaed person to appear before the Attorney General to produce records, if so ordered, or to give testimony concerning the production and authentication of such records. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in any judicial district in which such person may be found.

(d) Immunity from civil liability. Notwithstanding any Federal, State, or local law, any person, including officers, agents, and employees, receiving a subpoena under this section, who complies in good faith with the subpoena and thus produces the materials sought, shall not be liable in any court of any State or the United States to any customer or other person for such production or for nondisclosure of that production to the customer.

(e) Limitation on use.

(1) Health information about an individual that is disclosed under this section may not be used in, or disclosed to any person for use in, any administrative, civil, or criminal action or investigation directed against the individual who is the subject of the information unless the action or investigation arises out of and is directly related to receipt of health care or payment for health care or action involving a fraudulent claim related to health; or if authorized by an appropriate order of a court of competent jurisdiction, granted after application showing good cause therefor.

- (2) In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services.
- (3) Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.