



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB1920

Introduced 2/10/2011, by Sen. Toi W. Hutchinson

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/115-17b new  
730 ILCS 5/5-8-4

from Ch. 38, par. 1005-8-4

Amends the Code of Criminal Procedure of 1963. Provides that in any criminal investigation of an offense involving the sexual exploitation of children, the Attorney General, or his or her designee, or a State's Attorney, or his or her designee, may issue in writing and cause to be served subpoenas duces tecum to providers of electronic communication services or remote computing services requiring the production of records relevant to the investigation. Provides that a witness who is duly subpoenaed who neglects or refuses to comply with the subpoena shall be proceeded against and punished for contempt of the court. Provides that notwithstanding any federal, State, or local law, any person, including officers, agents, and employees, receiving a subpoena under these provisions, who complies in good faith with the subpoena and thus produces the materials sought, shall not be liable in any court of Illinois to any customer or other person for such production or for nondisclosure of that production to the customer. Amends the Unified Code of Corrections. Provides that consecutive sentences shall be imposed when one of the offenses is child pornography or aggravated child pornography. Effective immediately.

LRB097 07230 RLC 47338 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Code of Criminal Procedure of 1963 is  
5 amended by adding Section 115-17b as follows:

6 (725 ILCS 5/115-17b new)

7 Sec. 115-17b. Administrative subpoenas.

8 (a) Definitions. As used in this Section:

9 "Electronic communication services" and "remote  
10 computing services" have the same meaning as provided in  
11 the Electronic Communications Privacy Act in Chapter 121  
12 (commencing with Section 2701) of Part I of Title 18 of the  
13 United States Code Annotated.

14 "Offense involving the sexual exploitation of  
15 children" means an offense under Section 11-6, 11-6.5,  
16 11-9.1, 11-15.1, 11-17.1, 11-18.1, 11-19.1, 11-19.2,  
17 11-20.1, 11-20.3, 11-21, 11-23, 12-13, 12-14, 12-14.1,  
18 12-15, or 12-16 of the Criminal Code of 1961 or any attempt  
19 to commit any of these offenses.

20 (b) Subpoenas duces tecum. In any criminal investigation of  
21 an offense involving the sexual exploitation of children, the  
22 Attorney General, or his or her designee, or a State's  
23 Attorney, or his or her designee, may issue in writing and

1 cause to be served subpoenas duces tecum to providers of  
2 electronic communication services or remote computing services  
3 requiring the production of records relevant to the  
4 investigation. Any such request for records shall not extend  
5 beyond requiring the provider to disclose the information  
6 specified in 18 U.S.C. 2703(c)(2). Any subpoena duces tecum  
7 issued under this Section shall be made returnable to the Chief  
8 Judge of the Circuit Court for the Circuit in which the State's  
9 Attorney resides, or his or her designee, or for subpoenas  
10 issued by the Attorney General, the subpoena shall be made  
11 returnable to the Chief Judge of the Circuit Court for the  
12 Circuit to which the investigation pertains, or his or her  
13 designee, to determine whether the documents are privileged and  
14 whether the subpoena is unreasonable or oppressive.

15 (c) Contents of subpoena. A subpoena under this Section  
16 shall describe the records or other things required to be  
17 produced and prescribe a return date within a reasonable period  
18 of time within which the objects or records can be assembled  
19 and made available.

20 (d) Modifying or quashing subpoena. At any time before the  
21 return date specified in the subpoena, the person or entity to  
22 whom the subpoena is directed may petition for an order  
23 modifying or quashing the subpoena on the grounds that the  
24 subpoena is oppressive or unreasonable or that the subpoena  
25 seeks privileged documents or records.

26 (e) Ex parte order. An Illinois circuit court for the

1 circuit in which the subpoena is or will be issued, upon  
2 application of the Attorney General, or his or her designee, or  
3 State's Attorney, or his or her designee, may issue an ex parte  
4 order that no person or entity disclose to any other person or  
5 entity (other than persons necessary to comply with the  
6 subpoena) the existence of such subpoena for a period of up to  
7 90 days.

8 (1) Such order may be issued upon a showing that the  
9 things being sought may be relevant to the investigation  
10 and there is reason to believe that such disclosure may  
11 result in:

12 (A) endangerment to the life or physical safety of  
13 any person;

14 (B) flight to avoid prosecution;

15 (C) destruction of or tampering with evidence;

16 (D) intimidation of potential witnesses; or

17 (E) otherwise seriously jeopardizing an  
18 investigation or unduly delaying a trial.

19 (2) An order under this Section may be renewed for  
20 additional periods of up to 90 days upon a showing that the  
21 circumstances described in paragraph (1) of this  
22 subsection (e) continue to exist.

23 (f) Enforcement. A witness who is duly subpoenaed who  
24 neglects or refuses to comply with the subpoena shall be  
25 proceeded against and punished for contempt of the court. A  
26 subpoena duces tecum issued under this Section may be enforced

1 pursuant to the Uniform Act to Secure the Attendance of  
2 Witnesses from Within or Without a State in Criminal  
3 Proceedings.

4 (g) Immunity From civil liability. Notwithstanding any  
5 federal, State, or local law, any person, including officers,  
6 agents, and employees, receiving a subpoena under this Section,  
7 who complies in good faith with the subpoena and thus produces  
8 the materials sought, shall not be liable in any court of  
9 Illinois to any customer or other person for such production or  
10 for nondisclosure of that production to the customer.

11 Section 10. The Unified Code of Corrections is amended by  
12 changing Section 5-8-4 as follows:

13 (730 ILCS 5/5-8-4) (from Ch. 38, par. 1005-8-4)

14 Sec. 5-8-4. Concurrent and consecutive terms of  
15 imprisonment.

16 (a) Concurrent terms; multiple or additional sentences.  
17 When an Illinois court (i) imposes multiple sentences of  
18 imprisonment on a defendant at the same time or (ii) imposes a  
19 sentence of imprisonment on a defendant who is already subject  
20 to a sentence of imprisonment imposed by an Illinois court, a  
21 court of another state, or a federal court, then the sentences  
22 shall run concurrently unless otherwise determined by the  
23 Illinois court under this Section.

24 (b) Concurrent terms; misdemeanor and felony. A defendant

1 serving a sentence for a misdemeanor who is convicted of a  
2 felony and sentenced to imprisonment shall be transferred to  
3 the Department of Corrections, and the misdemeanor sentence  
4 shall be merged in and run concurrently with the felony  
5 sentence.

6 (c) Consecutive terms; permissive. The court may impose  
7 consecutive sentences in any of the following circumstances:

8 (1) If, having regard to the nature and circumstances  
9 of the offense and the history and character of the  
10 defendant, it is the opinion of the court that consecutive  
11 sentences are required to protect the public from further  
12 criminal conduct by the defendant, the basis for which the  
13 court shall set forth in the record.

14 (2) If one of the offenses for which a defendant was  
15 convicted was a violation of Section 32-5.2 (aggravated  
16 false personation of a peace officer) of the Criminal Code  
17 of 1961 (720 ILCS 5/32-5.2) and the offense was committed  
18 in attempting or committing a forcible felony.

19 (d) Consecutive terms; mandatory. The court shall impose  
20 consecutive sentences in each of the following circumstances:

21 (1) One of the offenses for which the defendant was  
22 convicted was first degree murder or a Class X or Class 1  
23 felony and the defendant inflicted severe bodily injury.

24 (2) The defendant was convicted of a violation of  
25 Section 11-20.1 (child pornography), 11-20.3 (aggravated  
26 child pornography), 12-13 (criminal sexual assault), 12-14

1 (aggravated criminal sexual assault), or 12-14.1  
2 (predatory criminal sexual assault of a child) of the  
3 Criminal Code of 1961 (720 ILCS 5/11-20.1, 5/11-20.3,  
4 5/12-13, 5/12-14, or 5/12-14.1).

5 (3) The defendant was convicted of armed violence based  
6 upon the predicate offense of any of the following:  
7 solicitation of murder, solicitation of murder for hire,  
8 heinous battery, aggravated battery of a senior citizen,  
9 criminal sexual assault, a violation of subsection (g) of  
10 Section 5 of the Cannabis Control Act (720 ILCS 550/5),  
11 cannabis trafficking, a violation of subsection (a) of  
12 Section 401 of the Illinois Controlled Substances Act (720  
13 ILCS 570/401), controlled substance trafficking involving  
14 a Class X felony amount of controlled substance under  
15 Section 401 of the Illinois Controlled Substances Act (720  
16 ILCS 570/401), a violation of the Methamphetamine Control  
17 and Community Protection Act (720 ILCS 646/), calculated  
18 criminal drug conspiracy, or streetgang criminal drug  
19 conspiracy.

20 (4) The defendant was convicted of the offense of  
21 leaving the scene of a motor vehicle accident involving  
22 death or personal injuries under Section 11-401 of the  
23 Illinois Vehicle Code (625 ILCS 5/11-401) and either: (A)  
24 aggravated driving under the influence of alcohol, other  
25 drug or drugs, or intoxicating compound or compounds, or  
26 any combination thereof under Section 11-501 of the

1 Illinois Vehicle Code (625 ILCS 5/11-501), (B) reckless  
2 homicide under Section 9-3 of the Criminal Code of 1961  
3 (720 ILCS 5/9-3), or (C) both an offense described in item  
4 (A) and an offense described in item (B).

5 (5) The defendant was convicted of a violation of  
6 Section 9-3.1 (concealment of homicidal death) or Section  
7 12-20.5 (dismembering a human body) of the Criminal Code of  
8 1961 (720 ILCS 5/9-3.1 or 5/12-20.5).

9 (5.5) The defendant was convicted of a violation of  
10 Section 24-3.7 (use of a stolen firearm in the commission  
11 of an offense) of the Criminal Code of 1961.

12 (6) If the defendant was in the custody of the  
13 Department of Corrections at the time of the commission of  
14 the offense, the sentence shall be served consecutive to  
15 the sentence under which the defendant is held by the  
16 Department of Corrections. If, however, the defendant is  
17 sentenced to punishment by death, the sentence shall be  
18 executed at such time as the court may fix without regard  
19 to the sentence under which the defendant may be held by  
20 the Department.

21 (7) A sentence under Section 3-6-4 (730 ILCS 5/3-6-4)  
22 for escape or attempted escape shall be served consecutive  
23 to the terms under which the offender is held by the  
24 Department of Corrections.

25 (8) If a person charged with a felony commits a  
26 separate felony while on pretrial release or in pretrial



1           detention in a county jail facility or county detention  
2           facility, then the sentences imposed upon conviction of  
3           these felonies shall be served consecutively regardless of  
4           the order in which the judgments of conviction are entered.

5           (8.5) If a person commits a battery against a county  
6           correctional officer or sheriff's employee while serving a  
7           sentence or in pretrial detention in a county jail  
8           facility, then the sentence imposed upon conviction of the  
9           battery shall be served consecutively with the sentence  
10          imposed upon conviction of the earlier misdemeanor or  
11          felony, regardless of the order in which the judgments of  
12          conviction are entered.

13          (9) If a person admitted to bail following conviction  
14          of a felony commits a separate felony while free on bond or  
15          if a person detained in a county jail facility or county  
16          detention facility following conviction of a felony  
17          commits a separate felony while in detention, then any  
18          sentence following conviction of the separate felony shall  
19          be consecutive to that of the original sentence for which  
20          the defendant was on bond or detained.

21          (10) If a person is found to be in possession of an  
22          item of contraband, as defined in clause (c)(2) of Section  
23          31A-1.1 of the Criminal Code of 1961, while serving a  
24          sentence in a county jail or while in pre-trial detention  
25          in a county jail, the sentence imposed upon conviction for  
26          the offense of possessing contraband in a penal institution

1 shall be served consecutively to the sentence imposed for  
2 the offense in which the person is serving sentence in the  
3 county jail or serving pretrial detention, regardless of  
4 the order in which the judgments of conviction are entered.

5 (11) If a person is sentenced for a violation of bail  
6 bond under Section 32-10 of the Criminal Code of 1961, any  
7 sentence imposed for that violation shall be served  
8 consecutive to the sentence imposed for the charge for  
9 which bail had been granted and with respect to which the  
10 defendant has been convicted.

11 (e) Consecutive terms; subsequent non-Illinois term. If an  
12 Illinois court has imposed a sentence of imprisonment on a  
13 defendant and the defendant is subsequently sentenced to a term  
14 of imprisonment by a court of another state or a federal court,  
15 then the Illinois sentence shall run consecutively to the  
16 sentence imposed by the court of the other state or the federal  
17 court. That same Illinois court, however, may order that the  
18 Illinois sentence run concurrently with the sentence imposed by  
19 the court of the other state or the federal court, but only if  
20 the defendant applies to that same Illinois court within 30  
21 days after the sentence imposed by the court of the other state  
22 or the federal court is finalized.

23 (f) Consecutive terms; aggregate maximums and minimums.  
24 The aggregate maximum and aggregate minimum of consecutive  
25 sentences shall be determined as follows:

26 (1) For sentences imposed under law in effect prior to

1 February 1, 1978, the aggregate maximum of consecutive  
2 sentences shall not exceed the maximum term authorized  
3 under Section 5-8-1 (730 ILCS 5/5-8-1) or Article 4.5 of  
4 Chapter V for the 2 most serious felonies involved. The  
5 aggregate minimum period of consecutive sentences shall  
6 not exceed the highest minimum term authorized under  
7 Section 5-8-1 (730 ILCS 5/5-8-1) or Article 4.5 of Chapter  
8 V for the 2 most serious felonies involved. When sentenced  
9 only for misdemeanors, a defendant shall not be  
10 consecutively sentenced to more than the maximum for one  
11 Class A misdemeanor.

12 (2) For sentences imposed under the law in effect on or  
13 after February 1, 1978, the aggregate of consecutive  
14 sentences for offenses that were committed as part of a  
15 single course of conduct during which there was no  
16 substantial change in the nature of the criminal objective  
17 shall not exceed the sum of the maximum terms authorized  
18 under Article 4.5 of Chapter V for the 2 most serious  
19 felonies involved, but no such limitation shall apply for  
20 offenses that were not committed as part of a single course  
21 of conduct during which there was no substantial change in  
22 the nature of the criminal objective. When sentenced only  
23 for misdemeanors, a defendant shall not be consecutively  
24 sentenced to more than the maximum for one Class A  
25 misdemeanor.

26 (g) Consecutive terms; manner served. In determining the

1 manner in which consecutive sentences of imprisonment, one or  
2 more of which is for a felony, will be served, the Department  
3 of Corrections shall treat the defendant as though he or she  
4 had been committed for a single term subject to each of the  
5 following:

6 (1) The maximum period of a term of imprisonment shall  
7 consist of the aggregate of the maximums of the imposed  
8 indeterminate terms, if any, plus the aggregate of the  
9 imposed determinate sentences for felonies, plus the  
10 aggregate of the imposed determinate sentences for  
11 misdemeanors, subject to subsection (f) of this Section.

12 (2) The parole or mandatory supervised release term  
13 shall be as provided in paragraph (e) of Section 5-4.5-50  
14 (730 ILCS 5/5-4.5-50) for the most serious of the offenses  
15 involved.

16 (3) The minimum period of imprisonment shall be the  
17 aggregate of the minimum and determinate periods of  
18 imprisonment imposed by the court, subject to subsection  
19 (f) of this Section.

20 (4) The defendant shall be awarded credit against the  
21 aggregate maximum term and the aggregate minimum term of  
22 imprisonment for all time served in an institution since  
23 the commission of the offense or offenses and as a  
24 consequence thereof at the rate specified in Section 3-6-3  
25 (730 ILCS 5/3-6-3).

26 (Source: P.A. 95-379, eff. 8-23-07; 95-766, eff. 1-1-09;

1 95-1052, eff. 7-1-09; 96-190, eff. 1-1-10; 96-1000, eff.  
2 7-2-10; 96-1200, eff. 7-22-10.)

3 Section 99. Effective date. This Act takes effect upon  
4 becoming law.