

119TH CONGRESS
2D SESSION

S. 3663

To amend title 18, United States Code, to modify delayed notice requirements,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 15, 2026

Mr. COONS (for himself and Mr. LEE) introduced the following bill; which was
read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to modify delayed
notice requirements, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “NDO Fairness Act
5 of 2026”.

6 **SEC. 2. PRECLUSION OF NOTICE.**

7 (a) IN GENERAL.—Subsection (b) of section 2705 of
8 title 18, United States Code, is amended to read as fol-
9 lows:

10 “(b) PRECLUSION OF NOTICE.—

1 “(1) APPLICATION.—

2 “(A) IN GENERAL.—A governmental entity
3 that is seeking a warrant, order, or subpoena
4 under section 2703, when it is not required to
5 notify the customer or subscriber, or to the ex-
6 tent that it may delay such notice pursuant to
7 subsection (a), may apply to a court for an
8 order, subject to paragraph (6), directing a pro-
9 vider of electronic communications service or re-
10 mote computing service to which a warrant,
11 order, or subpoena under section 2703 is di-
12 rected not to notify any other person of the ex-
13 istence of the warrant, order, or subpoena.

14 “(B) LENGTH.—An order granted under
15 subparagraph (A) shall be in effect—

16 “(i) for a period of not more than 1
17 year if the nature of the offense for which
18 the governmental entity is seeking the war-
19 rant, order, or subpoena pertains to child
20 pornography under section 2256, sexual
21 exploitation of children under section 2251,
22 or any Federal, State, Tribal, or military
23 offense that is the substantial equivalent;
24 or

1 “(ii) for a period of not more than 90
2 days for all other investigations.

3 “(C) OTHER REQUIREMENTS.—

4 “(i) IN GENERAL.—An application for
5 an order under subparagraph (A) shall
6 state, to the best of the applicant’s knowl-
7 edge, whether the named customer or sub-
8 scribe whose information is sought by the
9 warrant, order, or subpoena under section
10 2703—

11 “(I) is aware of the warrant,
12 order, subpoena, or underlying inves-
13 tigation; and

14 “(II) is suspected of involvement
15 in the commission of the crime under
16 investigation.

17 “(ii) ORDERS.—An order granted
18 under subparagraph (A) may not direct, or
19 otherwise require, a provider of electronic
20 communications service or remote com-
21 puting service to provide notification of the
22 expiration of the order to the court or gov-
23 ernment entity that sought the order.

24 “(2) DETERMINATION.—

1 “(A) IN GENERAL.—The court may not
2 grant a request for an order made under para-
3 graph (1), or an extension of such order re-
4 quested by the governmental entity pursuant to
5 paragraph (3), unless—

6 “(i) the court issues a written deter-
7 mination, based on specific and articulable
8 facts, and including written findings of
9 fact and conclusions of law, that it is likely
10 that not granting the request will result
11 in—

12 “(I) endangering the life or phys-
13 ical safety of an individual;

14 “(II) flight from prosecution;

15 “(III) destruction of or tam-
16 pering with evidence;

17 “(IV) intimidation of potential
18 witnesses; or

19 “(V) otherwise seriously jeopard-
20 izing an investigation or unduly delay-
21 ing a trial;

22 “(ii) the order is narrowly tailored
23 and there is no less restrictive alternative,
24 including notification to an individual or
25 organization within or providing legal rep-

1 resentation to the named customer or sub-
2 scriber, that is not likely to result in an
3 adverse result as described in subclauses
4 (I) through (V) of clause (i); and

5 “(iii) the court has reviewed the indi-
6 vidual warrant, order, or subpoena under
7 section 2703 to which the order issued
8 under paragraph (1) applies.

9 “(B) NATURE OF THE OFFENSE.—

10 “(i) IN GENERAL.—Subject to clause
11 (ii), the court may consider the nature of
12 the offense in issuing a determination
13 under subparagraph (A).

14 “(ii) PRESUMPTION.—If the court de-
15 termines there is a reasonable belief the
16 nature of the offense pertains to child por-
17 nography, as defined in section 2256, or
18 sexual exploitation of children, as described
19 in section 2251, or any Federal, State,
20 Tribal, or military offense that is the sub-
21 stantial equivalent, the court may presume
22 that 1 or more of the adverse results de-
23 scribed in subclauses (I) through (V) of
24 subparagraph (A)(i) are met and may
25 issue an order consistent with this sub-

1 section without a written decision under
2 subparagraph (A)(i).

3 “(3) EXTENSION.—A governmental entity may
4 request 1 or more extensions of an order granted
5 under paragraph (1) of not more than 90 days for
6 each such extension. The court may only grant such
7 an extension if the court issues the written deter-
8 mination required under paragraph (2)(A).

9 “(4) NOTIFICATION OF CHANGED CIR-
10 CUMSTANCES.—If the need for the order issued
11 under paragraph (1) or extended under paragraph
12 (3) changes materially, the governmental entity that
13 requested the order or extension shall notify the
14 court within a reasonable period of time (not to ex-
15 ceed 14 days) of the changed circumstances, and the
16 court shall reassess the order and modify or vacate
17 as appropriate.

18 “(5) OPPORTUNITY TO BE HEARD.—

19 “(A) IN GENERAL.—Upon an application,
20 petition, or motion by a provider of electronic
21 communications service or remote computing
22 service or person acting on behalf of the pro-
23 vider to which an order under paragraph (1)
24 has been issued, including any extension of such

1 order under paragraph (3), the court may mod-
2 ify or vacate the order if—

3 “(i) the order does not meet require-
4 ments under this subsection; or

5 “(ii) compliance with the order is un-
6 reasonable or otherwise unlawful.

7 “(B) STAY OF DISCLOSURE OF NAMED
8 CUSTOMER OR SUBSCRIBER COMMUNICATIONS
9 OR RECORDS.—A provider’s obligation to dis-
10 close the information requested in the warrant,
11 order, or subpoena to which the order in para-
12 graph (1) applies is stayed upon the filing of
13 the application, petition, or motion under this
14 paragraph pending resolution of the application,
15 petition, or motion, unless the court with juris-
16 diction over the challenge determines based on
17 a showing by the governmental entity that the
18 stay should be lifted in whole or in part prior
19 to resolution.

20 “(C) FINALITY OF ORDER.—The decision
21 of the court resolving an application, petition,
22 or motion under this paragraph shall constitute
23 a final, appealable order.

24 “(6) EXCEPTION.—A provider of electronic
25 communications service or remote computing service

1 to which an order under paragraph (1), including
2 any extension of such order under paragraph (3),
3 applies, or an officer, employee, or agent thereof,
4 may disclose information otherwise subject to any
5 applicable nondisclosure requirement to—

6 “(A) those persons to whom disclosure is
7 necessary in order to comply with the warrant,
8 order, or subpoena;

9 “(B) an attorney in order to obtain legal
10 advice or assistance regarding the order issued
11 under paragraph (1), including any extension of
12 such order under paragraph (3), or the war-
13 rant, order, or subpoena to which the order ap-
14 plies; and

15 “(C) any person the court determines can
16 be notified of the warrant, order, or subpoena.

17 “(7) SCOPE OF NONDISCLOSURE.—Any person
18 to whom disclosure is made under paragraph (6)
19 (other than the governmental entity) shall be subject
20 to the nondisclosure requirements applicable to the
21 person to whom the order is issued. Any recipient
22 authorized under this subsection to disclose to a per-
23 son information otherwise subject to a nondisclosure
24 requirement shall notify the person of the applicable
25 nondisclosure requirement.

1 “(8) SUPPORTING DOCUMENTATION.—Upon
2 serving a provider of electronic communications serv-
3 ice or remote computing service with an order grant-
4 ed under paragraph (1), including any extension of
5 such order under paragraph (3), the governmental
6 entity shall include a copy of the warrant, order, or
7 subpoena to which the nondisclosure order applies.

8 “(9) EXPIRATION OF ORDER PRECLUDING NO-
9 TICE.—Upon expiration of an order issued under
10 paragraph (1) or, if an extension has been granted
11 under paragraph (3), expiration of the extension, the
12 governmental entity shall deliver to the named cus-
13 tomer or subscriber, by at least 2 methods, which
14 shall be personal service, registered or first-class
15 mail, electronic mail, or other means approved by
16 the court as reasonably calculated to reach the
17 named customer or subscriber within 5 business
18 days of the expiration of the order—

19 “(A) a copy of the warrant, order, or sub-
20 poena; and

21 “(B) notice that informs the named cus-
22 tomer or subscriber—

23 “(i) of the nature of the law enforce-
24 ment inquiry with reasonable specificity;

1 “(ii) that information maintained for
2 such customer or subscriber by the pro-
3 vider of electronic communications service
4 or remote computing service to which the
5 warrant, order, or subpoena under section
6 2703, was directed, supplied to, or re-
7 quested by the government entity;

8 “(iii) that notification of such cus-
9 tomer or subscriber was precluded by court
10 order;

11 “(iv) of the identity of the court au-
12 thorizing the preclusion of notice;

13 “(v) of the provision of this chapter
14 under which the preclusion of notice was
15 authorized; and

16 “(vi) that the government will, upon
17 request by the customer or subscriber
18 made within 180 days after receiving noti-
19 fication under this paragraph, provide the
20 named customer or subscriber with a copy
21 of the information that was disclosed in re-
22 sponse to the warrant, order, or subpoena,
23 or in the event that no information was
24 disclosed, a written certification that no in-
25 formation was disclosed.

1 “(10) COPY OF INFORMATION DISCLOSED.—

2 Upon expiration of the order precluding notice
3 issued under paragraph (1), including any extension
4 of such order under paragraph (3), and at the re-
5 quest of the named customer or subscriber made
6 within 180 days of receiving notification under para-
7 graph (9), the governmental entity shall promptly
8 provide the named customer or subscriber—

9 “(A) with a copy of the information that
10 was disclosed in response to the warrant, order,
11 or subpoena except—

12 “(i) illicit records;

13 “(ii) records or materials pertaining
14 to child pornography, as defined in section
15 2256, or sexual exploitation of children, as
16 described in section 2251, or any Federal,
17 State, Tribal, or military offense that is
18 the substantial equivalent; or

19 “(iii) other illegal material; or

20 “(B) in the event that no information was
21 disclosed, a written certification that no infor-
22 mation was disclosed.

23 “(11) REDACTIONS.—Any information disclosed
24 pursuant to paragraph (9) or (10) may be redacted
25 only if a court finds such redactions necessary to

1 preserve the secrecy or integrity of an investiga-
2 tion.”.

3 (b) ADDITIONAL PROVISIONS REGARDING DELAYED
4 NOTICE.—Section 2705 of title 18, United States Code,
5 is amended by adding at the end the following:

6 “(c) ANNUAL REPORT.—

7 “(1) IN GENERAL.—On an annual basis, the
8 Attorney General shall provide to the Committee on
9 the Judiciary of the Senate, the Committee on the
10 Judiciary of the House of Representatives, and the
11 Director of the Administrative Office of the United
12 States Courts, which the Attorney General shall
13 publish on the website of the Department of Justice,
14 in a manner consistent with protection of national
15 security, a report setting forth with respect to the
16 preceding calendar year, for each Federal judicial
17 district—

18 “(A) the number of named customers or
19 subscribers with respect to whom, in that cal-
20 endar year, a warrant, subpoena, or court order
21 was issued pursuant to section 2703;

22 “(B) the aggregate number of applications
23 requesting delay of notification pursuant to
24 subsection (a)(1), preclusion of notice pursuant

1 to subsection (b)(1), and extensions pursuant to
2 subsection (b)(3);

3 “(C) the aggregate number of orders under
4 this section either granting, extending, or deny-
5 ing a request for delay of notification or pre-
6 clusion of notice;

7 “(D) the aggregate number of orders
8 under this section affecting a member of the
9 news media, including any conduct related to
10 activities protected under the First Amendment
11 to the Constitution of the United States; and

12 “(E) the aggregate number of arrests,
13 trials, and convictions, resulting from investiga-
14 tions in which orders under this section were
15 obtained, including the offenses for which indi-
16 viduals were arrested, tried, or convicted.

17 “(2) PROCESS.—The Attorney General shall in-
18 clude in the report under this subsection a descrip-
19 tion of the process and the information used to de-
20 termine the numbers for each of subparagraphs (A)
21 through (E) of paragraph (1).”.

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