

111TH CONGRESS
1ST SESSION

S. 1289

To improve title 18 of the United States Code.

IN THE SENATE OF THE UNITED STATES

JUNE 18, 2009

Mr. WHITEHOUSE (for himself, Mr. SESSIONS, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To improve title 18 of the United States Code.

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 “Foreign Evidence Re-
5 quest Efficiency Act of 2009”.

6 **SEC. 2. IMPROVEMENTS TO TITLE 18.**

7 Title 18 of the United States Code is amended—

8 (1) in section 2703—

9 (A) in subsection (a), by striking “by a
10 court with jurisdiction over the offense under
11 investigation or an equivalent State warrant”

1 and inserting “(or, in the case of a State court,
 2 issued using State warrant procedures) by a
 3 court of competent jurisdiction”;

4 (B) in subsection (b)(1)(A), by striking
 5 “by a court with jurisdiction over the offense
 6 under investigation or an equivalent State war-
 7 rant” and inserting “(or, in the case of a State
 8 court, issued using State warrant procedures)
 9 by a court of competent jurisdiction”; and

10 (C) in subsection (c)(1)(A), by striking “by
 11 a court with jurisdiction over the offense under
 12 investigation or an equivalent State warrant”
 13 and inserting “(or, in the case of a State court,
 14 issued using State warrant procedures) by a
 15 court of competent jurisdiction”;

16 (2) in section 2711(3), by striking “has the
 17 meaning assigned by section 3127, and includes any
 18 Federal court within that definition, without geo-
 19 graphic limitation; and” and inserting the following:
 20 “includes—

21 “(A) any district court of the United
 22 States (including a magistrate judge of such a
 23 court) or any United States court of appeals
 24 that—

1 “(i) has jurisdiction over the offense
2 being investigated;

3 “(ii) is in or for a district in which the
4 provider of a wire or electronic communica-
5 tion service is located or in which the wire
6 or electronic communications, records, or
7 other information are stored; or

8 “(iii) is acting on a request for foreign
9 assistance pursuant to section 3512 of this
10 title; or

11 “(B) a court of general criminal jurisdic-
12 tion of a State authorized by the law of that
13 State to issue search warrants; and”;

14 (3) in section 3127(2)(A), by striking “having
15 jurisdiction over the offense being investigated;” and
16 inserting the following: “that—

17 “(i) has jurisdiction over the offense
18 being investigated;

19 “(ii) is in or for a district in which the
20 provider of a wire or electronic communica-
21 tion service is located;

22 “(iii) is in or for a district in which a
23 landlord, custodian, or other person subject
24 to subsections (a) or (b) of section 3124 of
25 this title is located; or

1 “(iv) is acting on a request for foreign
 2 assistance pursuant to section 3512 of this
 3 title;”;

4 (4) in chapter 223, by adding at the end the
 5 following:

6 **“§ 3512. Foreign requests for assistance in criminal**
 7 **investigations and prosecutions**

8 “(a) EXECUTION OF REQUEST FOR ASSISTANCE.—

9 “(1) IN GENERAL.—Upon application, duly au-
 10 thorized by an appropriate official of the Depart-
 11 ment of Justice, of an attorney for the Government,
 12 a Federal judge may issue such orders as may be
 13 necessary to execute a request from a foreign au-
 14 thority for assistance in the investigation or prosecu-
 15 tion of criminal offenses, or in proceedings related to
 16 the prosecution of criminal offenses, including pro-
 17 ceedings regarding forfeiture, sentencing, and res-
 18 titution.

19 “(2) SCOPE OF ORDERS.—Any order issued by
 20 a Federal judge pursuant to paragraph (1) may in-
 21 clude the issuance of—

22 “(A) a search warrant, as provided under
 23 Rule 41 of the Federal Rules of Criminal Pro-
 24 cedure;

1 “(B) a warrant or order for contents of
2 stored wire or electronic communications or for
3 records related thereto, as provided under sec-
4 tion 2703 of this title;

5 “(C) an order for a pen register or trap
6 and trace device as provided under section 3123
7 of this title; or

8 “(D) an order requiring the appearance of
9 a person for the purpose of providing testimony
10 or a statement, or requiring the production of
11 documents or other things, or both.

12 “(b) APPOINTMENT OF PERSONS TO TAKE TESTI-
13 MONY OR STATEMENTS.—

14 “(1) IN GENERAL.—In response to an applica-
15 tion for execution of a request from a foreign au-
16 thority as described under subsection (a), a Federal
17 judge may also issue an order appointing a person
18 to direct the taking of testimony or statements or of
19 the production of documents or other things, or
20 both.

21 “(2) AUTHORITY OF APPOINTED PERSON.—Any
22 person appointed under an order issued pursuant to
23 paragraph (1) may—

1 “(A) issue orders requiring the appearance
2 of a person, or the production of documents or
3 other things, or both;

4 “(B) administer any necessary oath; and

5 “(C) take testimony or statements and re-
6 ceive documents or other things.

7 “(c) FILING OF REQUESTS.—Except as provided
8 under subsection (d), an application for execution of a re-
9 quest from a foreign authority under this section may be
10 filed—

11 “(1) in the district in which a person who may
12 be required to appear resides or is located or in
13 which the documents or things to be produced are
14 located;

15 “(2) in cases in which the request seeks the ap-
16 pearance of persons or production of documents or
17 things that may be located in multiple districts, in
18 any one of the districts in which such a person, doc-
19 uments, or things may be located; or

20 “(3) in any case, the district in which a related
21 Federal criminal investigation or prosecution is
22 being conducted, or in the District of Columbia.

23 “(d) SEARCH WARRANT LIMITATION.—An applica-
24 tion for execution of a request for a search warrant from
25 a foreign authority under this section, other than an appli-

1 cation for a warrant issued as provided under section 2703
2 of this title, shall be filed in the district in which the place
3 or person to be searched is located.

4 “(e) SEARCH WARRANT STANDARD.—A Federal
5 judge may issue a search warrant under this section only
6 if the foreign offense for which the evidence is sought in-
7 volves conduct that, if committed in the United States,
8 would be considered an offense punishable by imprison-
9 ment for more than one year under Federal or State law.

10 “(f) SERVICE OF ORDER OR WARRANT.—Except as
11 provided under subsection (d), an order or warrant issued
12 pursuant to this section may be served or executed in any
13 place in the United States.

14 “(g) RULE OF CONSTRUCTION.—Nothing in this sec-
15 tion shall be construed to preclude any foreign authority
16 or an interested person from obtaining assistance in a
17 criminal investigation or prosecution pursuant to section
18 1782 of title 28, United States Code.

19 “(h) DEFINITIONS.—As used in this section, the fol-
20 lowing definitions shall apply:

21 “(1) FEDERAL JUDGE.—The terms ‘Federal
22 judge’ and ‘attorney for the Government’ have the
23 meaning given such terms for the purposes of the
24 Federal Rules of Criminal Procedure.

1 “(2) FOREIGN AUTHORITY.—The term ‘foreign
2 authority’ means a foreign judicial authority, a for-
3 eign authority responsible for the investigation or
4 prosecution of criminal offenses or for proceedings
5 related to the prosecution of criminal offenses, or an
6 authority designated as a competent authority or
7 central authority for the purpose of making requests
8 for assistance pursuant to an agreement or treaty
9 with the United States regarding assistance in crimi-
10 nal matters.”; and
11 (5) in the table of sections for chapter 223, by
12 adding at the end the following:

“3512. Foreign requests for assistance in criminal investigations and prosecu-
tions.”.

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