

107TH CONGRESS  
1ST SESSION

# S. 1351

To provide administrative subpoena authority to apprehend fugitives.

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IN THE SENATE OF THE UNITED STATES

AUGUST 3, 2001

Mr. THURMOND (for himself, Mr. BIDEN, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide administrative subpoena authority to apprehend fugitives.

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 “Fugitive Apprehension  
5       Act of 2001”.

6       **SEC. 2. ADMINISTRATIVE SUBPOENAS TO APPREHEND FU-**  
7       **GITIVES.**

8       (a) IN GENERAL.—Chapter 49 of title 18, United  
9       States Code, is amended by adding at the end the fol-  
10      lowing:

1 **“§ 1075. Administrative subpoenas to apprehend fugi-**  
2 **tives**

3 “(a) DEFINITIONS.—In this section:

4 “(1) FUGITIVE.—The term ‘fugitive’ means a  
5 person who—

6 “(A) having been accused by complaint, in-  
7 formation, or indictment under Federal law or  
8 having been convicted of committing a felony  
9 under Federal law, flees or attempts to flee  
10 from or evades or attempts to evade the juris-  
11 diction of the court with jurisdiction over the  
12 felony;

13 “(B) having been accused by complaint, in-  
14 formation, or indictment under State law or  
15 having been convicted of committing a felony  
16 under State law, flees or attempts to flee from,  
17 or evades or attempts to evade, the jurisdiction  
18 of the court with jurisdiction over the felony;

19 “(C) escapes from lawful Federal or State  
20 custody after having been accused by complaint,  
21 information, or indictment or having been con-  
22 victed of committing a felony under Federal or  
23 State law; or

24 “(D) is in violation of subparagraph (2) or  
25 (3) of the first undesignated paragraph of sec-  
26 tion 1073.

1           “(2) INVESTIGATION.—The term ‘investigation’  
2       means, with respect to a State fugitive described in  
3       subparagraph (B) or (C) of paragraph (1), an inves-  
4       tigation in which there is reason to believe that the  
5       fugitive fled from or evaded, or attempted to flee  
6       from or evade, the jurisdiction of the court, or es-  
7       caped from custody, in or affecting, or using any fa-  
8       cility of, interstate or foreign commerce, or as to  
9       whom an appropriate law enforcement officer or offi-  
10      cial of a State or political subdivision has requested  
11      the Attorney General to assist in the investigation,  
12      and the Attorney General finds that the particular  
13      circumstances of the request give rise to a Federal  
14      interest sufficient for the exercise of Federal juris-  
15      diction pursuant to section 1075.

16      “(b) SUBPOENAS AND WITNESSES.—

17           “(1) SUBPOENAS.—In any investigation with  
18      respect to the apprehension of a fugitive, the Attor-  
19      ney General may subpoena witnesses for the purpose  
20      of the production of any records (including books,  
21      papers, documents, electronic data, and other tan-  
22      gible and intangible items that constitute or contain  
23      evidence) that the Attorney General finds, based on  
24      articulable facts, are relevant to discerning the  
25      whereabouts of the fugitive. A subpoena under this

1 subsection shall describe the records or items re-  
2 quired to be produced and prescribe a return date  
3 within a reasonable period of time within which the  
4 records or items can be assembled and made avail-  
5 able.

6 “(2) WITNESSES.—The attendance of witnesses  
7 and the production of records may be required from  
8 any place in any State or other place subject to the  
9 jurisdiction of the United States at any designated  
10 place where the witness was served with a subpoena,  
11 except that a witness shall not be required to appear  
12 more than 500 miles distant from the place where  
13 the witness was served. Witnesses summoned under  
14 this section shall be paid the same fees and mileage  
15 that are paid witnesses in the courts of the United  
16 States.

17 “(c) SERVICE.—

18 “(1) AGENT.—A subpoena issued under this  
19 section may be served by any person designated in  
20 the subpoena as the agent of service.

21 “(2) NATURAL PERSON.—Service upon a nat-  
22 ural person may be made by personal delivery of the  
23 subpoena to that person or by certified mail with re-  
24 turn receipt requested.

1           “(3) CORPORATION.—Service may be made  
2           upon a domestic or foreign corporation or upon a  
3           partnership or other unincorporated association that  
4           is subject to suit under a common name, by deliv-  
5           ering the subpoena to an officer, to a managing or  
6           general agent, or to any other agent authorized by  
7           appointment or by law to receive service of process.

8           “(4) AFFIDAVIT.—The affidavit of the person  
9           serving the subpoena entered on a true copy thereof  
10          by the person serving it shall be proof of service.

11          “(d) CONTUMACY OR REFUSAL.—

12               “(1) IN GENERAL.—In the case of the contu-  
13               macy by or refusal to obey a subpoena issued to any  
14               person, the Attorney General may invoke the aid of  
15               any court of the United States within the jurisdic-  
16               tion of which the investigation is carried on or of  
17               which the subpoenaed person is an inhabitant, or in  
18               which he carries on business or may be found, to  
19               compel compliance with the subpoena. The court  
20               may issue an order requiring the subpoenaed person  
21               to appear before the Attorney General to produce  
22               records if so ordered.

23               “(2) CONTEMPT.—Any failure to obey the order  
24               of the court may be punishable by the court as con-  
25               tempt thereof.

1           “(3) PROCESS.—All process in any case to en-  
 2           force an order under this subsection may be served  
 3           in any judicial district in which the person may be  
 4           found.

5           “(4) RIGHTS OF SUBPOENA RECIPIENT.—Not  
 6           later than 20 days after the date of service of an ad-  
 7           ministrative subpoena under this section upon any  
 8           person, or at any time before the return date speci-  
 9           fied in the subpoena, whichever period is shorter,  
 10          such person may file, in the district within which  
 11          such person resides, is found, or transacts business,  
 12          a petition to modify or quash such subpoena on  
 13          grounds that—

14                 “(A) the terms of the subpoena are unrea-  
 15                 sonable or oppressive;

16                 “(B) the subpoena fails to meet the re-  
 17                 quirements of this section; or

18                 “(C) the subpoena violates the constitu-  
 19                 tional rights or any other legal rights or privi-  
 20                 lege of the subpoenaed party.

21          “(e) GUIDELINES.—

22                 “(1) IN GENERAL.—The Attorney General shall  
 23                 issue guidelines governing the issuance of adminis-  
 24                 trative subpoenas pursuant to this section.

1           “(2) REVIEW.—The guidelines required by this  
2           subsection shall mandate that administrative sub-  
3           poenas may be issued only after review and approval  
4           of senior supervisory personnel within the respective  
5           investigative agency or component of the Depart-  
6           ment of Justice and of the United States Attorney  
7           for the judicial district in which the administrative  
8           subpoena shall be served.

9           “(f) NONDISCLOSURE REQUIREMENTS.—

10           “(1) IN GENERAL.—Except as otherwise pro-  
11           vided by law, the Attorney General may apply to a  
12           court for an order requiring the party to whom an  
13           administrative subpoena is directed to refrain from  
14           notifying any other party of the existence of the sub-  
15           poena or court order for such period as the court  
16           deems appropriate.

17           “(2) ORDER.—The court shall enter such order  
18           if it determines that there is reason to believe that  
19           notification of the existence of the administrative  
20           subpoena will result in—

21                   “(A) endangering the life or physical safety  
22                   of an individual;

23                   “(B) flight from prosecution;

24                   “(C) destruction of or tampering with evi-  
25                   dence;

1                   “(D) intimidation of potential witnesses; or

2                   “(E) otherwise seriously jeopardizing an

3                   investigation or undue delay of a trial.

4           “(g) IMMUNITY FROM CIVIL LIABILITY.—Any per-

5 son, including officers, agents, and employees, who in good

6 faith produce the records or items requested in a subpoena

7 shall not be liable in any court of any State or the United

8 States to any customer or other person for such produc-

9 tion or for nondisclosure of that production to the cus-

10 tomer, in compliance with the terms of a court order for

11 nondisclosure.”.

12           (b) TECHNICAL AND CONFORMING AMENDMENT.—

13 The analysis for chapter 49 of title 18, United States

14 Code, is amended by adding at the end the following:

“1075. Administrative subpoenas to apprehend fugitives.”.

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