

109TH CONGRESS
1ST SESSION

H. R. 4170

To provide administrative subpoena authority to apprehend fugitives.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 27, 2005

Mr. SESSIONS (for himself, Mr. BOOZMAN, Mr. KUHLMANN of New York, and Mr. DANIEL E. LUNGREN of California) introduced the following bill; which was referred to the Committee on the Judiciary

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 Assistance Act of 2005”.

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’, inter alia,
5 means a person who—

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

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

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

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

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

19 “(3) STATE.—The term ‘State’ means a State
20 of the United States, the District of Columbia, and
21 any commonwealth, territory, or possession of the
22 United States.

23 “(b) SUBPOENAS AND WITNESSES.—

24 “(1) SUBPOENAS.—In any investigation with
25 respect to the apprehension of a fugitive, the Attor-

1 ney General may subpoena witnesses for the purpose
2 of the production of any records (including books,
3 papers, documents, electronic data, and other tan-
4 gible and intangible items that constitute or contain
5 evidence) that the Attorney General finds, based on
6 articulable facts, are relevant to discerning the
7 whereabouts of the fugitive. A subpoena under this
8 subsection shall describe the records or items re-
9 quired to be produced and prescribe a return date
10 within a reasonable period of time within which the
11 records or items can be assembled and made avail-
12 able: *Provided, however,* That procedures other than
13 subpoenas shall be used to obtain documents and in-
14 formation from Federal agencies.

15 “(2) WITNESSES.—The attendance of witnesses
16 and the production of records may be required from
17 any place in any State or other place subject to the
18 jurisdiction of the United States at any designated
19 place where the witness was served with a subpoena,
20 except that a witness shall not be required to appear
21 more than 500 miles distant from the person’s resi-
22 dence or from the place where the witness was
23 served. Witnesses summoned under this section shall
24 be paid the same fees and mileage that are paid wit-
25 nesses in the courts of the United States.

1 “(3) PROHIBITIONS.—Nothing in this section
2 shall require the attendance of witnesses or the pro-
3 duction of records whose attendance or production is
4 otherwise prohibited by law.

5 “(c) SERVICE.—

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

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

13 “(3) CORPORATION.—Service may be made
14 upon a domestic or foreign corporation or upon a
15 partnership or other unincorporated association that
16 is subject to suit under a common name, by deliv-
17 ering the subpoena to an officer, to a managing or
18 general agent, or to any other agent authorized by
19 appointment or by law to receive service of process.

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

23 “(d) CONTUMACY OR REFUSAL.—

24 “(1) IN GENERAL.—In the case of the contu-
25 macy by or refusal to obey a subpoena issued to any

1 person, the Attorney General may invoke the aid of
2 any court of the United States within the jurisdic-
3 tion in which the investigation is carried on or of
4 which the subpoenaed person is an inhabitant, or in
5 which he carries on business or may be found, to
6 compel compliance with the subpoena. The court
7 may issue an order requiring the subpoenaed person
8 to appear before the Attorney General to produce
9 records if so ordered.

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

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

17 “(4) RIGHTS OF SUBPOENA RECIPIENT.—Not
18 later than 20 days after the date of service of an ad-
19 ministrative subpoena under this section upon any
20 person, or 10 days before the return date specified
21 in the subpoena, whichever period is shorter, such
22 person may file, in the district within which such
23 person resides, is found, or transacts business, a pe-
24 tition to modify or quash such subpoena on grounds
25 that—

1 “(A) the terms of the subpoena are unrea-
2 sonable or unnecessary;

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

5 “(C) The subpoena violates the constitu-
6 tional rights or any other legal rights or privi-
7 lege of the subpoenaed party.

8 “(e) GUIDELINES.—

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

12 “(2) REVIEW.—The guidelines required by this
13 subsection shall mandate that administrative sub-
14 poenas may be issued only after review and approval
15 of senior supervisory personnel, as determined by
16 the Attorney General, of the relevant component of
17 the Department of Justice, as the case may be.

18 “(f) DELAYED NOTICE.—

19 “(1) IN GENERAL.—Where an administrative
20 subpoena is issued under this section to a provider
21 of electronic communication service, (as defined in
22 section 2510 of this title) or remote computing serv-
23 ice (as defined in section 2711 of this title), the At-
24 torney General may—

1 “(A) In accordance with section 2705(a) of
2 this title, delay notification to the subscriber or
3 customer to whom the record pertains; and

4 “(B) apply to a court, in accordance with
5 section 2705(b) of this title for an order com-
6 manding the provider of electronic communica-
7 tion service or remote computing service not to
8 notify any other person of the existence of the
9 subpoena or court order.

10 “(2) SUBPOENAS FOR FINANCIAL RECORDS.—If
11 a subpoena is issued under this section to a financial
12 institution for financial records of any customer of
13 such institution, the Attorney General may apply to
14 a court under section 1109 of the Right to Financial
15 Privacy Act of 1978 (12 U.S.C. 3409) for an order
16 to delay customer notice as otherwise required.

17 “(3) NONDISCLOSURE REQUIREMENTS.—

18 “(A) IN GENERAL.—Except as otherwise
19 provided in paragraphs (1) and (2), the court
20 may require the party to whom an administra-
21 tive subpoena is directed to refrain from noti-
22 fying any other party or person of the existence
23 of the subpoena for 30 days.

24 “(B) EXTENSION.—The Attorney General
25 may apply to a court for an order extending the

1 time for such period as the court deems appro-
2 priate.

3 “(C) CRITERIA FOR EXTENSION.—The
4 court shall enter an order under paragraph (2)
5 if it determines that there is reason to believe
6 that notification of the existence of the adminis-
7 trative subpoena will result in—

8 “(i) endangering the life or physical
9 safety of an individual;

10 “(ii) flight from prosecution or cus-
11 tody or confinement after conviction;

12 “(iii) destruction or tampering with
13 evidence;

14 “(iv) intimidation of potential wit-
15 nesses; or

16 “(v) otherwise seriously jeopardizing
17 an investigation or undue delay in trial.

18 “(g) IMMUNITY FROM CIVIL LIABILITY.—Any person
19 including officers, agents, and employees, who in good
20 faith produce the records or items required in a subpoena
21 shall not be liable in any court of any State or the United
22 States to any customer or other person for such produc-
23 tion or for nondisclosure of that production to the cus-
24 tomer, in compliance with the terms of a court order for
25 nondisclosure.”.

- 1 (b) TECHNICAL AND CONFORMING AMENDMENT.—
2 The analysis for chapter 49 of title 18, United States
3 Code, is amended by adding at the end of the following:
“1075. Administrative subpoenas to apprehend fugitives.”.

