

Public Law 111–79
111th Congress

An Act

Oct. 19, 2009

[S. 1289]

Foreign Evidence
Request
Efficiency Act of
2009.
18 USC 1 note.

To improve title 18 of the United States Code.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Foreign Evidence Request Efficiency Act of 2009”.

SEC. 2. IMPROVEMENTS TO TITLE 18.

Title 18 of the United States Code is amended—

(1) in section 2703—

(A) in subsection (a), by striking “by a court with jurisdiction over the offense under investigation or an equivalent State warrant” and inserting “(or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction”;

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

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

(2) in section 2711(3), by striking “has the meaning assigned by section 3127, and includes any Federal court within that definition, without geographic limitation; and” and inserting the following: “includes—

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

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

“(ii) is in or for a district in which the provider of a wire or electronic communication service is located or in which the wire or electronic communications, records, or other information are stored; or

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

“(B) a court of general criminal jurisdiction of a State authorized by the law of that State to issue search warrants; and”;

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

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

“(ii) is in or for a district in which the provider of a wire or electronic communication service is located;

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

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

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

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

“(a) EXECUTION OF REQUEST FOR ASSISTANCE.—

“(1) IN GENERAL.—Upon application, duly authorized by an appropriate official of the Department of Justice, of an attorney for the Government, a Federal judge may issue such orders as may be necessary to execute a request from a foreign authority for assistance in the investigation or prosecution of criminal offenses, or in proceedings related to the prosecution of criminal offenses, including proceedings regarding forfeiture, sentencing, and restitution.

“(2) SCOPE OF ORDERS.—Any order issued by a Federal judge pursuant to paragraph (1) may include the issuance of—

“(A) a search warrant, as provided under Rule 41 of the Federal Rules of Criminal Procedure;

“(B) a warrant or order for contents of stored wire or electronic communications or for records related thereto, as provided under section 2703 of this title;

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

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

“(b) APPOINTMENT OF PERSONS TO TAKE TESTIMONY OR STATEMENTS.—

“(1) IN GENERAL.—In response to an application for execution of a request from a foreign authority as described under subsection (a), a Federal judge may also issue an order appointing a person to direct the taking of testimony or statements or of the production of documents or other things, or both.

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

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

“(B) administer any necessary oath; and

“(C) take testimony or statements and receive documents or other things.

“(c) FILING OF REQUESTS.—Except as provided under subsection (d), an application for execution of a request from a foreign authority under this section may be filed—

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

“(2) in cases in which the request seeks the appearance of persons or production of documents or things that may be located in multiple districts, in any one of the districts in which such a person, documents, or things may be located; or

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

“(d) SEARCH WARRANT LIMITATION.—An application for execution of a request for a search warrant from a foreign authority under this section, other than an application for a warrant issued as provided under section 2703 of this title, shall be filed in the district in which the place or person to be searched is located.

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

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

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

“(h) DEFINITIONS.—As used in this section, the following definitions shall apply:

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

“(2) FOREIGN AUTHORITY.—The term ‘foreign authority’ means a foreign judicial authority, a foreign authority responsible for the investigation or prosecution of criminal offenses or for proceedings related to the prosecution of criminal offenses, or an authority designated as a competent authority or central authority for the purpose of making requests for assistance pursuant to an agreement or treaty with the United States regarding assistance in criminal matters.”; and

(5) in the table of sections for chapter 223, by adding
at the end the following:

“3512. Foreign requests for assistance in criminal investigations and prosecutions.”.

Approved October 19, 2009.

LEGISLATIVE HISTORY—S. 1289:

CONGRESSIONAL RECORD, Vol. 155 (2009):

July 10, considered and passed Senate.

Sept. 30, considered and passed House.