

Calendar No. 695106TH CONGRESS
2^D SESSION**S. 2516**

To fund task forces to locate and apprehend fugitives in Federal, State, and local felony criminal cases and give administrative subpoena authority to the United States Marshals Service.

IN THE SENATE OF THE UNITED STATES

MAY 8, 2000

Mr. THURMOND (for himself, Mr. BIDEN, Mr. HELMS, Mr. DEWINE, Mr. KYL, Mr. SMITH of New Hampshire, Mr. JOHNSON, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JULY 20, 2000

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To fund task forces to locate and apprehend fugitives in Federal, State, and local felony criminal cases and give administrative subpoena authority to the United States Marshals Service.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fugitive Apprehension
3 Act of 2000”.

4 **SEC. 2. FUGITIVE APPREHENSION TASK FORCES.**

5 (a) **IN GENERAL.**—The Director of the United States
6 Marshal Service shall establish permanent Fugitive Appre-
7 hension Task Forces in areas of the United States as de-
8 termined by the Director to locate and apprehend fugi-
9 tives.

10 (b) **AUTHORIZATION OF APPROPRIATIONS.**—There
11 are authorized to be appropriated to the United States
12 Marshal Service to carry out the provisions of this section
13 \$22,100,000 for the fiscal year 2001, \$5,000,000 for fis-
14 cal year 2002, and \$8,000,000 for fiscal year 2003.

15 **SEC. 3. ADMINISTRATIVE SUBPOENAS TO APPREHEND FU-**
16 **GITIVES.**

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

20 **“§ 1075. Administrative subpoenas to apprehend fugi-**
21 **tives**

22 “(a) In this section—

23 “(1) the term ‘fugitive’ means a person who—

24 “(A) having been indicted under Federal
25 law or having been convicted of committing a
26 felony under Federal law, flees or attempts to

1 flee from or evades or attempts to evade the ju-
2 risdiction of the court with jurisdiction over the
3 felony;

4 “(B) having been indicted under State law
5 or having been convicted of committing a felony
6 under State law, flees or attempts to flee from,
7 or evades or attempts to evade, the jurisdiction
8 of the court with jurisdiction over the felony;

9 “(C) escapes from lawful Federal or State
10 custody after having been indicted or having
11 been convicted of committing a felony under
12 Federal or State law; or

13 “(D) is in violation of subparagraph (2) or
14 (3) of the first undesignated paragraph of sec-
15 tion 1073;

16 “(2) the term ‘investigation’ means, with re-
17 spect to a State fugitive described in subparagraph
18 (B) or (C) of paragraph (1), an investigation in
19 which there is reason to believe that the fugitive fled
20 from or evaded, or attempted to flee from or evade,
21 the jurisdiction of the court, or escaped from cus-
22 tody, in or affecting, or using any facility of, inter-
23 state or foreign commerce, or as to whom an appro-
24 priate law enforcement officer or official of a State
25 or political subdivision has requested the Attorney

1 General to assist in the investigation, and the Attor-
2 ney General finds that the particular circumstances
3 of the request give rise to a Federal interest suffi-
4 cient for the exercise of Federal jurisdiction pursu-
5 ant to section 1075;

6 “(3) the term ‘State’ means a State of the
7 United States, the District of Columbia, and any
8 commonwealth, territory, or possession of the United
9 States; and

10 “(4) the term ‘relevant or material’ means there
11 are articulable facts that show the fugitive’s where-
12 abouts may be discerned from the records sought.

13 “(b) In any investigation with respect to the appre-
14 hension of a fugitive, the Attorney General may subpoena
15 witnesses for the purpose of the production of any records
16 (including books, papers, documents, electronic data, and
17 other tangible and intangible items that constitute or con-
18 tain evidence) that the Attorney General finds relevant or
19 material in the investigation. The attendance of witnesses
20 and the production of records may be required from any
21 place in any State or other place subject to the jurisdiction
22 of the United States at any designated place where the
23 witness was served with a subpoena, except that a witness
24 shall not be required to appear more than 500 miles dis-
25 tant from the place where the witness was served. Wit-

1 nesses summoned under this section shall be paid the
2 same fees and mileage that are paid witnesses in the
3 courts of the United States.

4 “(e) A subpoena issued under this section may be
5 served by any person designated in the subpoena to serve
6 it. Service upon a natural person may be made by personal
7 delivery of the subpoena to that person or by certified mail
8 with return receipt requested. Service may be made upon
9 a domestic or foreign corporation or upon a partnership
10 or other unincorporated association that is subject to suit
11 under a common name, by delivering the subpoena to an
12 officer, to a managing or general agent, or to any other
13 agent authorized by appointment or by law to receive serv-
14 ice of process. The affidavit of the person serving the sub-
15 poena entered on a true copy thereof by the person serving
16 it shall be proof of service.

17 “(d) In the case of the contumacy by or refusal to
18 obey a subpoena issued to any person, the Attorney Gen-
19 eral may invoke the aid of any court of the United States
20 within the jurisdiction of which the investigation is carried
21 on or of which the subpoenaed person is an inhabitant,
22 or in which he carries on business or may be found, to
23 compel compliance with the subpoena. The court may
24 issue an order requiring the subpoenaed person to appear
25 before the Attorney General to produce records if so or-

1 dered. Any failure to obey the order of the court may be
2 punishable by the court as contempt thereof. All process
3 in any such case may be served in any judicial district
4 in which the person may be found.

5 “(e) This section shall be construed and applied in
6 a manner consistent with section 2703 and with section
7 1102 of the Right to Financial Privacy Act of 1978 (12
8 U.S.C. 3402).

9 “(f) The United States Marshals Service shall report
10 to the Attorney General on a quarterly basis regarding
11 administrative subpoenas issued pursuant to this section.
12 The Attorney General shall transmit the report to Con-
13 gress.

14 “(g) The Attorney General shall issue guidelines gov-
15 erning the issuance of administrative subpoenas by the
16 United States Marshals Service. Such guidelines shall
17 mandate that administrative subpoenas shall issue only
18 after review and approval of the Director of the Marshals
19 Service or his designee in a position of Assistant Director
20 or higher.”.

21 (b) TECHNICAL AND CONFORMING AMENDMENT.—
22 The analysis for chapter 49 of title 18, United States
23 Code, is amended by adding at the end the following:

“1075. Administrative subpoenas to apprehend fugitives.”.

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Fugitive Apprehension*
3 *Act of 2000”.*

4 **SEC. 2. FUGITIVE APPREHENSION TASK FORCES.**

5 *(a) IN GENERAL.—The Attorney General shall, upon*
6 *consultation with appropriate Department of Justice and*
7 *Department of the Treasury law enforcement components,*
8 *establish permanent Fugitive Apprehension Task Forces*
9 *consisting of Federal, State, and local law enforcement au-*
10 *thorities in designated regions of the United States, to be*
11 *directed and coordinated by the United States Marshals*
12 *Service, for the purpose of locating and apprehending fugi-*
13 *tives.*

14 *(b) AUTHORIZATION OF APPROPRIATIONS.—There are*
15 *authorized to be appropriated to the United States Marshal*
16 *Service to carry out the provisions of this section*
17 *\$30,000,000 for the fiscal year 2001, \$5,000,000 for fiscal*
18 *year 2002, and \$5,000,000 for fiscal year 2003.*

19 *(c) OTHER EXISTING APPLICABLE LAW.—Nothing in*
20 *this section shall be construed to limit any existing author-*
21 *ity under any other provision of Federal or State law for*
22 *law enforcement agencies to locate or apprehend fugitives*
23 *through task forces or any other means.*

1 **SEC. 3. ADMINISTRATIVE SUBPOENAS TO APPREHEND FU-**
 2 **GITIVES.**

3 (a) *IN GENERAL.*—Chapter 49 of title 18, United
 4 States Code, is amended by adding at the end the following:

5 **“§1075. Administrative subpoenas to apprehend fugi-**
 6 **tives**

7 “(a) *DEFINITIONS.*—In this section:

8 “(1) *FUGITIVE.*—The term ‘fugitive’ means a
 9 person who—

10 “(A) *having been accused by complaint, in-*
 11 *formation, or indictment under Federal law or*
 12 *having been convicted of committing a felony*
 13 *under Federal law, flees or attempts to flee from*
 14 *or evades or attempts to evade the jurisdiction of*
 15 *the court with jurisdiction over the felony;*

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

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

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

4 “(2) INVESTIGATION.—The term ‘investigation’
5 means, with respect to a State fugitive described in
6 subparagraph (B) or (C) of 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 from
9 or evade, the jurisdiction of the court, or escaped from
10 custody, in or affecting, or using any facility of,
11 interstate or foreign commerce, or as to whom an ap-
12 propriate law enforcement officer or official of a State
13 or political subdivision has requested the Attorney
14 General to assist in the investigation, and the Attor-
15 ney General finds that the particular circumstances of
16 the request give rise to a Federal interest sufficient for
17 the exercise of Federal jurisdiction pursuant to section
18 1075.

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

23 “(b) SUBPOENAS AND WITNESSES.—

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

1 *General may subpoena witnesses for the purpose of*
2 *the production of any records (including books, pa-*
3 *pers, documents, electronic data, and other tangible*
4 *and intangible items that constitute or contain evi-*
5 *dence) that the Attorney General finds, based on*
6 *articulable facts, are relevant to discerning the where-*
7 *abouts of the fugitive. A subpoena under this sub-*
8 *section shall describe the records or items required to*
9 *be produced and prescribe a return date within a rea-*
10 *sonable period of time within which the records or*
11 *items can be assembled and made available.*

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

22 *“(c) SERVICE.—*

23 *“(1) AGENT.—A subpoena issued under this sec-*
24 *tion may be served by any person designated in the*
25 *subpoena as the agent of service.*

1 “(2) *NATURAL PERSON.*—*Service upon a natural*
2 *person may be made by personal delivery of the sub-*
3 *poena to that person or by certified mail with return*
4 *receipt requested.*

5 “(3) *CORPORATION.*—*Service may be made upon*
6 *a domestic or foreign corporation or upon a partner-*
7 *ship or other unincorporated association that is sub-*
8 *ject to suit under a common name, by delivering the*
9 *subpoena to an officer, to a managing or general*
10 *agent, or to any other agent authorized by appoint-*
11 *ment or by law to receive service of process.*

12 “(4) *AFFIDAVIT.*—*The affidavit of the person*
13 *-serving the subpoena entered on a true copy thereof*
14 *by the person serving it shall be proof of service.*

15 “(d) *CONTUMACY OR REFUSAL.*—

16 “(1) *IN GENERAL.*—*In the case of the contumacy*
17 *by or refusal to obey a subpoena issued to any person,*
18 *the Attorney General may invoke the aid of any court*
19 *of the United States within the jurisdiction of which*
20 *the investigation is carried on or of which the subpoe-*
21 *naed person is an inhabitant, or in which he carries*
22 *on business or may be found, to compel compliance*
23 *with the subpoena. The court may issue an order re-*
24 *quiring the subpoenaed person to appear before the*
25 *Attorney General to produce records if so ordered.*

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

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

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

17 “(A) *the terms of the subpoena are unrea-*
18 *sonable or unnecessary;*

19 “(B) *the subpoena fails to meet the require-*
20 *ments of this section; or*

21 “(C) *the subpoena violates the constitutional*
22 *rights or any other legal rights or privilege of the*
23 *subpoenaed party.*

24 “(e) *REPORT.*—

1 “(1) *IN GENERAL.*—*The Attorney General shall*
2 *report in January of each year to the Committees on*
3 *the Judiciary of the Senate and the House of Rep-*
4 *resentatives on the number of administrative sub-*
5 *poenas issued under this section, whether each matter*
6 *involved a fugitive from Federal or State charges, and*
7 *identification of the agency or component of the De-*
8 *partment of Justice issuing the subpoena and impos-*
9 *ing the charges.*

10 “(2) *EXPIRATION.*—*The reporting requirement of*
11 *this subsection shall terminate in 3 years after the*
12 *date of enactment of this section.*

13 “(f) *GUIDELINES.*—

14 “(1) *IN GENERAL.*—*The Attorney General shall*
15 *issue guidelines governing the issuance of administra-*
16 *tive subpoenas pursuant to this section.*

17 “(2) *REVIEW.*—*The guidelines required by this*
18 *subsection shall mandate that administrative sub-*
19 *poenas may be issued only after review and approval*
20 *of senior supervisory personnel within the respective*
21 *investigative agency or component of the Department*
22 *of Justice.*

23 “(g) *DELAYED NOTICE.*—

24 “(1) *IN GENERAL.*—*Where an administrative*
25 *subpoena is issued under this section to a provider of*

1 *electronic communication service (as defined in sec-*
2 *tion 2510 of this title) or remote computing service*
3 *(as defined in section 2711 of this title), the Attorney*
4 *General may—*

5 *“(A) in accordance with section 2705(a) of*
6 *this title, delay notification to the subscriber or*
7 *customer to whom the record pertains; and*

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

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

21 *“(3) NONDISCLOSURE REQUIREMENTS.—*

22 *“(A) IN GENERAL.—Except as otherwise*
23 *provided in paragraphs (1) and (2), the Attor-*
24 *ney General may require the party to whom an*
25 *administrative subpoena is directed to refrain*

1 *from notifying any other party of the existence*
2 *of the subpoena for 30 days.*

3 “(B) *EXTENSION.*—*The Attorney General*
4 *may apply to a court for an order extending the*
5 *time for such period as the court deems appro-*
6 *priate.*

7 “(C) *CRITERIA FOR EXTENSION.*—*The court*
8 *shall enter an order under subparagraph (B) if*
9 *it determines that there is reason to believe that*
10 *notification of the existence of the administrative*
11 *subpoena will result in—*

12 “(i) *endangering the life or physical*
13 *safety of an individual;*

14 “(ii) *flight from prosecution;*

15 “(iii) *destruction of or tampering with*
16 *evidence;*

17 “(iv) *intimidation of potential wit-*
18 *nesses; or*

19 “(v) *otherwise seriously jeopardizing*
20 *an investigation or undue delay in trial.*

21 “(h) *IMMUNITY FROM CIVIL LIABILITY.*—*Any person,*
22 *including officers, agents, and employees, who in good faith*
23 *produce the records or items requested in a subpoena shall*
24 *not be liable in any court of any State or the United States*
25 *to any customer or other person for such production or for*

1 *nondisclosure of that production to the customer, in compli-*
 2 *ance with the terms of a court order for nondisclosure.”.*

3 (b) *TECHNICAL AND CONFORMING AMENDMENT.—The*
 4 *analysis for chapter 49 of title 18, United States Code, is*
 5 *amended by adding at the end the following:*

“1075. Administrative subpoenas to apprehend fugitives.”.

6 **SEC. 4. STUDY AND REPORT OF THE USE OF ADMINISTRA-**
 7 **TIVE SUBPOENAS.**

8 *Not later than December 31, 2001, the Attorney Gen-*
 9 *eral shall complete a study on the use of administrative sub-*
 10 *poena power by executive branch agencies or entities and*
 11 *shall report the findings to the Committees on the Judiciary*
 12 *of the Senate and the House of Representatives. Such report*
 13 *shall include—*

14 (1) *a description of the sources of administrative*
 15 *subpoena power and the scope of such subpoena power*
 16 *within executive branch agencies;*

17 (2) *a description of applicable subpoena enforce-*
 18 *ment mechanisms;*

19 (3) *a description of any notification provisions*
 20 *and any other provisions relating to safeguarding*
 21 *privacy interests;*

22 (4) *a description of the standards governing the*
 23 *issuance of administrative subpoenas; and*

24 (5) *recommendations from the Attorney General*
 25 *regarding necessary steps to ensure that administra-*

- 1 *tive subpoena power is used and enforced consistently*
- 2 *and fairly by executive branch agencies.*

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A BILL

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