

106TH CONGRESS
2D SESSION

S. 2089

To amend the Foreign Intelligence Surveillance Act of 1978 to modify procedures relating to orders for surveillance and searches for foreign intelligence purposes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2000

Mr. SPECTER (for himself, Mr. TORRICELLI, Mr. THURMOND, Mr. BIDEN, Mr. GRASSLEY, Mr. FEINGOLD, Mr. HELMS, Mr. SCHUMER, and Mr. SESSIONS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Foreign Intelligence Surveillance Act of 1978 to modify procedures relating to orders for surveillance and searches for foreign intelligence purposes, and for other purposes.

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 “Counterintelligence Re-
5 form Act of 2000”.

1 **SEC. 2. CIRCUMSTANCES ESTABLISHING PROBABLE CAUSE**
 2 **FOR ISSUANCE OF ORDERS FOR ELECTRONIC**
 3 **SURVEILLANCE UNDER FOREIGN INTEL-**
 4 **LIGENCE SURVEILLANCE ACT OF 1978.**

5 (a) PAST ACTIVITIES.—Section 105 of the Foreign
 6 Intelligence Surveillance Act of 1978 (50 U.S.C. 1805) is
 7 amended—

8 (1) by redesignating subsections (b), (c), (d),
 9 (e), (f), and (g) as subsections (c), (d), (e), (f), (g),
 10 and (h), respectively; and

11 (2) by inserting after subsection (a) the fol-
 12 lowing new subsection (b):

13 “(b) In determining whether or not probable cause
 14 exists for purposes of an order under subsection (a)(3),
 15 a judge may consider past activities of the target, as well
 16 as facts and circumstances relating to current or future
 17 activities of the target.”.

18 (b) CONFORMING AMENDMENT.—Subsection (d) of
 19 that section, as redesignated by subsection (a)(1) of this
 20 section, is amended by striking “subsection (b)(1)” and
 21 inserting “subsection (c)(1)”.

22 **SEC. 3. ORDERS FOR ELECTRONIC SURVEILLANCE UNDER**
 23 **FOREIGN INTELLIGENCE SURVEILLANCE ACT**
 24 **OF 1978.**

25 (a) DESCRIPTION OF INTELLIGENCE OR LAW-EN-
 26 FORCEMENT ACTIVITIES OF CERTAIN TARGETS.—Section

1 104 of the Foreign Intelligence Surveillance Act of 1978
2 (50 U.S.C. 1804) is amended—

3 (1) in subsection (a)—

4 (A) by redesignating paragraphs (8), (9),
5 (10), and (11) as paragraphs (9), (10), (11),
6 and (12), respectively; and

7 (B) by inserting after paragraph (7) the
8 following new paragraph (8):

9 “(8) in the case of an application covering a
10 target described in section 101(b)(2), a detailed de-
11 scription of—

12 “(A) any current relationship between the
13 target and any Federal intelligence, intelligence-
14 related, or law enforcement activity; and

15 “(B) any prior relationship between the
16 target and any Federal intelligence, intelligence-
17 related, or law enforcement activity that is rel-
18 evant to a determination of probable cause
19 under section 105;” and

20 (2) in subsection (b), by striking “(8), and
21 (11)” and inserting “(9), and (12)”.

22 (b) ADDITIONAL REQUIREMENTS REGARDING CER-
23 TAIN APPLICATIONS.—That section is further amended by
24 adding at the end the following new subsection:

1 “(e)(1)(A) Upon written request of the Director of
2 the Federal Bureau of Investigation, the Secretary of De-
3 fense, the Secretary of State, or the Director of Central
4 Intelligence, the Attorney General shall personally review
5 under subsection (a) an application under that subsection
6 for a target described in section 101(b)(2).

7 “(B) An official referred to in subparagraph (A) may
8 not delegate the authority to make a request referred to
9 in that subparagraph.

10 “(2)(A) If as a result of a request under paragraph
11 (1) the Attorney General determines not to approve an
12 application under the second sentence of subsection (a) for
13 purposes of making the application under this section, the
14 Attorney General shall provide written notice of the deter-
15 mination to the official making the request for the review
16 of the application under that paragraph. The Attorney
17 General may not delegate the responsibility set forth in
18 the preceding sentence.

19 “(B) Notice with respect to an application under sub-
20 paragraph (A) shall set forth the modifications, if any, of
21 the application that are necessary in order for the Attor-
22 ney General to approve the application under the second
23 sentence of subsection (a) for purposes of making the ap-
24 plication under this section.

1 “(C) Upon review of any modifications of an applica-
 2 tion set forth under subparagraph (B), the official notified
 3 of the modifications under this paragraph shall modify the
 4 application if such official determines that such modifica-
 5 tion is warranted. Such official shall supervise the making
 6 of any modification under this subparagraph. Such official
 7 may not delegate the responsibility set forth in the pre-
 8 ceding sentence.”.

9 **SEC. 4. ORDERS FOR PHYSICAL SEARCHES UNDER FOR-**
 10 **EIGN INTELLIGENCE SURVEILLANCE ACT OF**
 11 **1978.**

12 (a) DESCRIPTION OF INTELLIGENCE OR LAW-EN-
 13 FORCEMENT ACTIVITIES OF CERTAIN TARGETS.—Sub-
 14 section (a) of section 303 of the Foreign Intelligence Sur-
 15 veillance Act of 1978 (50 U.S.C. 1823) is amended—

16 (1) by redesignating paragraphs (8) and (9) as
 17 paragraphs (9) and (10), respectively; and

18 (2) by inserting after paragraph (7) the fol-
 19 lowing new paragraph (8):

20 “(8) in the case of an application covering a
 21 target described in section 101(b)(2), a detailed de-
 22 scription of—

23 “(A) any current relationship between the
 24 target and any Federal intelligence, intelligence-
 25 related, or law enforcement activity; and

1 “(B) any prior relationship between the
2 target and any Federal intelligence, intelligence-
3 related, or law enforcement activity that is rel-
4 evant to a determination of probable cause
5 under section 304;”.

6 (b) ADDITIONAL REQUIREMENTS REGARDING CER-
7 TAIN APPLICATIONS.—That section is further amended by
8 adding at the end the following new subsection:

9 “(d)(1)(A) Upon written request of the Director of
10 the Federal Bureau of Investigation, the Secretary of De-
11 fense, the Secretary of State, or the Director of Central
12 Intelligence, the Attorney General shall personally review
13 under subsection (a) an application under that subsection
14 for a target described in section 101(b)(2).

15 “(B) An official referred to in subparagraph (A) may
16 not delegate the authority to make a request referred to
17 in that subparagraph.

18 “(2)(A) If as a result of a request under paragraph
19 (1) the Attorney General determines not to approve an
20 application under the second sentence of subsection (a) for
21 purposes of making the application under this section, the
22 Attorney General shall provide written notice of the deter-
23 mination to the official making the request for the review
24 of the application under that paragraph. The Attorney

1 General may not delegate the responsibility set forth in
 2 the preceding sentence.

3 “(B) Notice with respect to an application under sub-
 4 paragraph (A) shall set forth the modifications, if any, of
 5 the application that are necessary in order for the Attor-
 6 ney General to approve the application under the second
 7 sentence of subsection (a) for purposes of making the ap-
 8 plication under this section.

9 “(C) Upon review of any modifications of an applica-
 10 tion set forth under subparagraph (B), the official notified
 11 of the modifications under this paragraph shall modify the
 12 application if such official determines that such modifica-
 13 tion is warranted. Such official shall supervise the making
 14 of any modification under this subparagraph. Such official
 15 may not delegate the responsibility set forth in the pre-
 16 ceding sentence.”.

17 **SEC. 5. DISCLOSURE FOR LAW ENFORCEMENT PURPOSES**
 18 **OF INFORMATION ACQUIRED UNDER FOR-**
 19 **EIGN INTELLIGENCE SURVEILLANCE ACT OF**
 20 **1978.**

21 (a) REGULATIONS RELATING TO DISCLOSURE.—Not
 22 later than 180 days after the date of the enactment of
 23 this Act, the Attorney General shall prescribe in regula-
 24 tions the following:

1 (1) The circumstances under which information
2 acquired pursuant to title I of the Foreign Intel-
3 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et
4 seq.) shall be disclosed for law enforcement purposes
5 under section 106(b) of that Act (50 U.S.C.
6 1806(b)).

7 (2) The circumstances under which information
8 acquired pursuant to title III of the Foreign Intel-
9 ligence Surveillance Act of 1978 (50 U.S.C. 1821 et
10 seq.) shall be disclosed for law enforcement purposes
11 under section 305(c) of that Act (50 U.S.C.
12 1825(c)).

13 (3) The circumstances under which information
14 acquired pursuant to title IV of the Foreign Intel-
15 ligence Surveillance Act of 1978 (50 U.S.C. 1841 et
16 seq.) shall be disclosed for law enforcement purposes
17 under section 405(b) of that Act (50 U.S.C.
18 1845(b)).

19 (b) SUBMITTAL TO CONGRESS.—The Attorney Gen-
20 eral shall submit to the Committees on the Judiciary of
21 the Senate and House of Representatives the regulations
22 prescribed by the Attorney General under subsection (a).

1 **SEC. 6. COORDINATION OF COUNTERINTELLIGENCE WITH**
2 **THE FEDERAL BUREAU OF INVESTIGATION.**

3 (a) TREATMENT OF CERTAIN SUBJECTS OF INVES-
4 TIGATION.—Subsection (c) of section 811 of the Intel-
5 ligence Authorization Act for Fiscal Year 1995 (50 U.S.C.
6 402a) is amended—

7 (1) in paragraphs (1) and (2), by striking
8 “paragraph (3)” and inserting “paragraph (5)”;

9 (2) by redesignating paragraphs (3), (4), (5),
10 and (6) as paragraphs (5), (6), (7), and (9), respec-
11 tively;

12 (3) by inserting after paragraph (2) the fol-
13 lowing new paragraph (3):

14 “(3)(A) The Director of the Federal Bureau of Inves-
15 tigation shall notify in writing the head of the department
16 or agency concerned of a finding by the Federal Bureau
17 of Investigation that the subject of an investigation under
18 paragraph (1) should be left in place for investigative pur-
19 poses.

20 “(B) Not later than 30 days after receiving written
21 notification under subparagraph (A), the head of the de-
22 partment or agency so notified shall submit to the Direc-
23 tor a plan to minimize the unauthorized disclosure of clas-
24 sified information by the subject concerned.

25 “(C) A plan under this paragraph may be modified
26 if the Director and the head of the department or agency

1 concerned jointly determine that the modification is war-
 2 ranted. A modification under this subparagraph may in-
 3 clude a decision that the subject of an investigation no
 4 longer be left in place for investigative purposes.

5 “(D) A disagreement regarding an element of a plan
 6 under subparagraph (A), including a proposed modifica-
 7 tion of the plan under subparagraph (C), shall be resolved
 8 by the Board.”; and

9 (4) in paragraph (5), as so redesignated, by
 10 striking “paragraph (1) or (2)” and inserting “para-
 11 graph (1), (2), or (3)”.

12 (b) TIMELY PROVISION OF INFORMATION AND CON-
 13 SULTATION ON ESPIONAGE INVESTIGATIONS.—Paragraph
 14 (2) of that subsection is further amended—

15 (1) by inserting “in a timely manner” after
 16 “through appropriate channels”; and

17 (2) by inserting “in a timely manner” after
 18 “are consulted”.

19 (c) INTERFERENCE WITH FULL FIELD ESPIONAGE
 20 INVESTIGATIONS.—That subsection is further amended by
 21 inserting after paragraph (3), as amended by subsection
 22 (a) of this section, the following new paragraph (4):

23 “(4)(A) The Federal Bureau of Investigation shall
 24 notify appropriate officials within the executive branch, in-
 25 cluding the head of the department or agency concerned,

1 of the commencement of a full field espionage investiga-
2 tion with respect to an employee within the executive
3 branch.

4 “(B)(i) A department or agency may not conduct a
5 polygraph examination, interrogate, or otherwise take any
6 action that is likely to alert an employee covered by a no-
7 tice under subparagraph (A) of an investigation described
8 in that subparagraph without prior coordination with the
9 Federal Bureau of Investigation.

10 “(ii) Any examination, interrogation, or other action
11 taken under clause (i) shall be taken in consultation with
12 the Federal Bureau of Investigation.”.

13 (d) COORDINATION OF INFORMATION ON ESPIONAGE
14 INVESTIGATIONS.—That subsection is further amended by
15 inserting after paragraph (7), as redesignated by sub-
16 section (a)(2) of this section, the following new paragraph
17 (8):

18 “(8) The Director of the Federal Bureau of Inves-
19 tigation shall be responsible for coordinating all informa-
20 tion relating to espionage investigations, including infor-
21 mation on any prior or current relationship between the
22 subjects of such investigations and any Federal intel-
23 ligence or intelligence-related activity, within the intel-
24 ligence community and within and among Federal law en-
25 forcement agencies.”.

1 (e) REQUESTS FOR TECHNICAL ASSISTANCE.—That
2 section is further amended by adding at the end the fol-
3 lowing new subsection (d):

4 “(d) REQUESTS FOR TECHNICAL ASSISTANCE.—The
5 Director of the Federal Bureau of Investigation and the
6 Director of the National Security Agency shall establish
7 procedures to ensure the timely evaluation and determina-
8 tions regarding requests from the Federal Bureau of In-
9 vestigation for technical assistance in counterintelligence
10 activities covered by this section.”.

11 **SEC. 7. SEVERABILITY.**

12 If any provision of this Act (including an amendment
13 made by this Act), or the application thereof, to any per-
14 son or circumstance, is held invalid, the remainder of this
15 Act (including the amendments made by this Act), and
16 the application thereof, to other persons or circumstances
17 shall not be affected thereby.

