

110TH CONGRESS
1ST SESSION

H. R. 3356

To amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain electronic surveillance.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 3, 2007

Mr. REYES (for himself, Mr. CONYERS, Mr. SCHIFF, and Mr. FLAKE) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Select Committee on Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned; which was considered and failed of passage

A BILL

To amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain electronic surveillance.

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 “Improving Foreign In-
5 telligence Surveillance to Defend the Nation and the Con-
6 stitution Act of 2007”.

1 **SEC. 2. PURPOSE.**

2 The purpose of this Act is to facilitate the acquisition
3 of foreign intelligence information by providing for the
4 electronic surveillance of persons reasonably believed to be
5 outside the United States pursuant to methodologies pro-
6 posed by the Attorney General, reviewed by the Foreign
7 Intelligence Surveillance Court, and applied by the Attor-
8 ney General without further court approval, unless other-
9 wise required under the Foreign Intelligence Surveillance
10 Act of 1978 (50 U.S.C. 1801 et seq.).

11 **SEC. 3. ADDITIONAL PROCEDURE FOR AUTHORIZING CER-**
12 **TAIN ELECTRONIC SURVEILLANCE.**

13 (a) IN GENERAL.—The Foreign Intelligence Surveil-
14 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended
15 by inserting after section 105 the following:

16 “CLARIFICATION OF ELECTRONIC SURVEILLANCE OF
17 PERSONS OUTSIDE THE UNITED STATES

18 “SEC. 105A. Notwithstanding any other provision of
19 this Act, a court order is not required for the acquisition
20 of the contents of any communication between persons
21 that are not located within the United States for the pur-
22 pose of collecting foreign intelligence information, without
23 respect to whether the communication passes through the
24 United States or the surveillance device is located within
25 the United States.

1 “ADDITIONAL PROCEDURE FOR AUTHORIZING CERTAIN
2 ELECTRONIC SURVEILLANCE

3 “SEC. 105B. (a) IN GENERAL.—Notwithstanding
4 any other provision of this title, the Attorney General,
5 upon the authorization of the President, may apply to a
6 judge of the court established under section 103(a) for an
7 ex parte order, or an extension of an order, authorizing
8 electronic surveillance for periods of not more than 1 year,
9 for the purpose of acquiring foreign intelligence informa-
10 tion, in accordance with this section.

11 “(b) APPLICATION.—

12 “(1) SPECIFIC PERSONS AND PLACES NOT RE-
13 QUIRED.—An application for an order, or extension
14 of an order, submitted under subsection (a) shall not
15 be required to identify—

16 “(A) the persons, other than a foreign
17 power, against whom electronic surveillance will
18 be directed; or

19 “(B) the specific facilities, places, prem-
20 ises, or property at which the electronic surveil-
21 lance will be directed.

22 “(2) CONTENTS.—An application for an order,
23 or extension of an order, submitted under subsection
24 (a) shall include—

1 “(A) a statement that the electronic sur-
2 veillance is directed at persons reasonably be-
3 lieved to be outside the United States;

4 “(B) the identity of the Federal officer
5 seeking to conduct such electronic surveillance;

6 “(C) a description of—

7 “(i) the methods to be used by the At-
8 torney General to determine, during the
9 duration of the order, that there is a rea-
10 sonable belief that the targets of the elec-
11 tronic surveillance are persons outside the
12 United States; and

13 “(ii) the procedures to audit the im-
14 plementation of the methods described in
15 clause (i) to achieve the objective described
16 in that clause;

17 “(D) a description of the nature of the in-
18 formation sought, including the identity of any
19 foreign power against whom electronic surveil-
20 lance will be directed; and

21 “(E) a statement of the means by which
22 the electronic surveillance will be effected and
23 such other information about the surveillance
24 techniques to be used as may be necessary to
25 assess the proposed minimization procedures.

1 “(c) APPLICATION APPROVAL; ORDER.—

2 “(1) APPLICATION APPROVAL.—A judge consid-
3 ering an application for an order, or extension of an
4 order, submitted under subsection (a) shall approve
5 such application if the Attorney General certifies in
6 writing under oath, and the judge upon consider-
7 ation of the application determines, that—

8 “(A) the acquisition does not constitute
9 electronic surveillance within the meaning of
10 paragraph (1) or (3) of section 101(f);

11 “(B) the methods described by the Attor-
12 ney General under subsection (b)(2)(B)(i) are
13 reasonably designed to determine whether the
14 persons are outside the United States;

15 “(C) a significant purpose of the electronic
16 surveillance is to obtain foreign intelligence in-
17 formation; and

18 “(D) the proposed minimization procedures
19 meet the definition of minimization procedures
20 under section 101(h).

21 “(2) ORDER.—A judge approving an applica-
22 tion pursuant to paragraph (1) shall issue an order
23 that—

24 “(A) authorizes electronic surveillance as
25 requested, or as modified by the judge;

1 “(B) requires a communications service
2 provider, custodian, or other person who has
3 the lawful authority to access the information,
4 facilities, or technical assistance necessary to
5 accomplish the electronic surveillance, upon the
6 request of the applicant, to furnish the appli-
7 cant forthwith with such information, facilities,
8 or technical assistance in a manner that will
9 protect the secrecy of the electronic surveillance
10 and produce a minimum of interference with
11 the services that provider, custodian, or other
12 person is providing the target of electronic sur-
13 veillance;

14 “(C) requires such communications service
15 provider, custodian, or other person, upon the
16 request of the applicant, to maintain under se-
17 curity procedures approved by the Attorney
18 General and the Director of National Intel-
19 ligence any records concerning the acquisition
20 or the aid furnished;

21 “(D) directs the Federal Government to
22 compensate, at the prevailing rate, a person for
23 providing information, facilities, or assistance
24 pursuant to such order; and

1 “(E) directs the applicant to follow the
2 minimization procedures as proposed or as
3 modified by the court.

4 “(3) ASSESSMENT OF COMPLIANCE WITH MINI-
5 MIZATION PROCEDURES.—At or before the end of
6 the period of time for which electronic surveillance
7 is approved by an order or an extension under this
8 section, the judge may assess compliance with the
9 minimization procedures by reviewing the cir-
10 cumstances under which information concerning
11 United States persons was acquired, retained, or dis-
12 seminated.

13 “(d) GUIDELINES FOR SURVEILLANCE OF UNITED
14 STATES PERSONS.—Not later than 15 days after the date
15 of the enactment of this section, the Attorney General
16 shall establish guidelines that are reasonably designed to
17 ensure that an application is filed under section 104, if
18 otherwise required by this Act, when the Attorney General
19 seeks to initiate electronic surveillance, or continue elec-
20 tronic surveillance that began under this section, of a
21 United States person.

22 “(e) SUBMISSION OF ORDERS, GUIDELINES, AND AU-
23 DITS.—

24 “(1) ORDERS.—Upon the entry of an order
25 under subsection (c)(2), the Attorney General shall

1 submit to the appropriate committees of Congress
2 such order.

3 “(2) GUIDELINES.—Upon the establishment of
4 the guidelines under subsection (d), the Attorney
5 General shall submit to the appropriate committees
6 of Congress and the court established under section
7 103(a) such guidelines.

8 “(3) AUDITS.—Not later than 60 days after the
9 date of the enactment of this section, and every 60
10 days thereafter until the expiration of all orders
11 issued under this section, the Inspector General of
12 the Department of Justice shall complete an audit
13 on the compliance with the guidelines established
14 under subsection (d) and shall submit to the appro-
15 priate committees of Congress, the Attorney Gen-
16 eral, the Director of National Intelligence, and the
17 court established under section 103(a)—

18 “(A) the results of such audit;

19 “(B) a list of any targets of electronic sur-
20 veillance under this section determined to be in
21 the United States; and

22 “(C) the number of persons in the United
23 States whose communications have been inter-
24 cepted under this section.

25 “(f) IMMEDIATE EMERGENCY AUTHORIZATION.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of this title, during the first 15 days fol-
3 lowing the date of the enactment of this section,
4 upon the authorization of the President, the Attor-
5 ney General may authorize electronic surveillance
6 without a court order under this title until the date
7 that is 15 days after the date on which the Attorney
8 General authorizes such electronic surveillance if the
9 Attorney General determines—

10 “(A) that an emergency situation exists
11 with respect to the employment of electronic
12 surveillance to obtain foreign intelligence infor-
13 mation before an order authorizing such surveil-
14 lance can with due diligence be obtained; and

15 “(B) the electronic surveillance will be di-
16 rected at persons reasonably believed to be out-
17 side the United States.

18 “(2) PENDING ORDER.—

19 “(A) INITIAL EXTENSION.—If at the end
20 of the period in which the Attorney General au-
21 thorizes electronic surveillance under paragraph
22 (1), the Attorney General has submitted an ap-
23 plication for an order under subsection (a) but
24 the court referred to in section 103(a) has not
25 approved or disapproved such application, such

1 court may authorize the Attorney General to
2 extend the emergency authorization of elec-
3 tronic surveillance under paragraph (1) for not
4 more than 15 days.

5 “(B) SUBSEQUENT EXTENSION.—If at the
6 end of the extension of the emergency author-
7 ization of electronic surveillance under subpara-
8 graph (A) the court referred to in section
9 103(a) has not approved or disapproved the ap-
10 plication referred to in subparagraph (A), such
11 court may authorize the Attorney General to
12 extend the emergency authorization of elec-
13 tronic surveillance under paragraph (1) for not
14 more than 15 days.

15 “(3) MAXIMUM LENGTH OF AUTHORIZATION.—
16 Notwithstanding paragraphs (1) and (2), in no case
17 shall electronic surveillance be authorized under this
18 subsection for a total of more than 45 days without
19 a court order under this title.

20 “(4) MINIMIZATION PROCEDURES.—The Attor-
21 ney General shall ensure that any electronic surveil-
22 lance conducted pursuant to paragraph (1) or (2) is
23 in accordance with minimization procedures that
24 meet the definition of minimization procedures in
25 section 101(h).

1 “(5) INFORMATION, FACILITIES, AND TECH-
2 NICAL ASSISTANCE.—Pursuant to an authorization
3 of electronic surveillance under this subsection, the
4 Attorney General may direct a communications serv-
5 ice provider, custodian, or other person who has the
6 lawful authority to access the information, facilities,
7 or technical assistance necessary to accomplish such
8 electronic surveillance to—

9 “(A) furnish the Attorney General forth-
10 with with such information, facilities, or tech-
11 nical assistance in a manner that will protect
12 the secrecy of the electronic surveillance and
13 produce a minimum of interference with the
14 services that provider, custodian, or other per-
15 son is providing the target of electronic surveil-
16 lance; and

17 “(B) maintain under security procedures
18 approved by the Attorney General and the Di-
19 rector of National Intelligence any records con-
20 cerning the acquisition or the aid furnished.

21 “(g) PROHIBITION ON LIABILITY FOR PROVIDING
22 ASSISTANCE.—Section 105(i), relating to protection from
23 liability for the furnishing of information, facilities, or
24 technical assistance pursuant to a court order under this
25 Act, shall apply to this section.

1 “(h) EFFECT OF SECTION ON OTHER AUTHORI-
2 TIES.—The authority under this section is in addition to
3 the authority to conduct electronic surveillance under sec-
4 tions 104 and 105.

5 “(i) APPROPRIATE COMMITTEES OF CONGRESS DE-
6 FINED.—In this section, the term ‘appropriate committees
7 of Congress’ means—

8 “(1) the Select Committee on Intelligence and
9 the Committee on the Judiciary of the Senate; and

10 “(2) the Permanent Select Committee on Intel-
11 ligence and the Committee on the Judiciary of the
12 House of Representatives.”.

13 (b) TECHNICAL AND CONFORMING AMENDMENT.—
14 The table of contents in the first section of the Foreign
15 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et
16 seq.) is amended by inserting after the item relating to
17 section 105 the following:

“Sec. 105A. Clarification of electronic surveillance of persons outside the
United States.

“Sec. 105B. Additional procedure for authorizing certain electronic surveil-
lance.”.

18 (c) SUNSET.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (2), effective on the date that is 120 days
21 after the date of the enactment of this Act, sections
22 105A and 105B of the Foreign Intelligence Surveil-

1 lance Act of 1978, as added by subsection (a), are
2 hereby repealed.

3 (2) EXCEPTION.—Any order under section
4 105B of the Foreign Intelligence Surveillance Act of
5 1978, as added by this Act, in effect on such date
6 that is 120 days after the date of the enactment of
7 this Act, shall continue in effect until the date of the
8 expiration of such order.

○