

HOMELAND SECURITY INFORMATION SHARING ACT

JUNE 25, 2002.—Ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary,  
 submitted the following

R E P O R T

[To accompany H.R. 4598]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4598) to provide for the sharing of homeland security information by Federal intelligence and law enforcement agencies with State and local entities, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:  
 Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Homeland Security Information Sharing Act”.

**SEC. 2. FINDINGS AND SENSE OF CONGRESS.**

(a) FINDINGS.—The Congress finds the following:

(1) The Federal Government is required by the Constitution to provide for the common defense, which includes terrorist attack.

(2) The Federal Government relies on State and local personnel to protect against terrorist attack.

(3) The Federal Government collects, creates, manages, and protects classified and sensitive but unclassified information to enhance homeland security.

(4) Some homeland security information is needed by the State and local personnel to prevent and prepare for terrorist attack.

(5) The needs of State and local personnel to have access to relevant homeland security information to combat terrorism must be reconciled with the need to preserve the protected status of such information and to protect the sources and methods used to acquire such information.

(6) Granting security clearances to certain State and local personnel is one way to facilitate the sharing of information regarding specific terrorist threats among Federal, State, and local levels of government.

(7) Methods exist to declassify, redact, or otherwise adapt classified information so it may be shared with State and local personnel without the need for granting additional security clearances.

(8) State and local personnel have capabilities and opportunities to gather information on suspicious activities and terrorist threats not possessed by Federal agencies.

(9) The Federal Government and State and local governments and agencies in other jurisdictions may benefit from such information.

(10) Federal, State, and local governments and intelligence, law enforcement, and other emergency preparation and response agencies must act in partnership to maximize the benefits of information gathering and analysis to prevent and respond to terrorist attacks.

(11) Information systems, including the National Law Enforcement Telecommunications System and the Terrorist Threat Warning System, have been established for rapid sharing of classified and sensitive but unclassified information among Federal, State, and local entities.

(12) Increased efforts to share homeland security information should avoid duplicating existing information systems.

(b) SENSE OF CONGRESS.—It is the sense of Congress that Federal, State, and local entities should share homeland security information to the maximum extent practicable, with special emphasis on hard-to-reach urban and rural communities.

### SEC. 3. FACILITATING HOMELAND SECURITY INFORMATION SHARING PROCEDURES.

(a) PRESIDENTIAL PROCEDURES FOR DETERMINING EXTENT OF SHARING OF HOMELAND SECURITY INFORMATION.—

(1) The President shall prescribe procedures under which relevant Federal agencies determine—

(A) whether, how, and to what extent homeland security information may be shared with appropriate State and local personnel, and with which such personnel it may be shared;

(B) how to identify and safeguard homeland security information that is sensitive but unclassified; and

(C) to the extent such information is in classified form, whether, how, and to what extent to remove classified information, as appropriate, and with which such personnel it may be shared after such information is removed.

(2) The President shall ensure that such procedures apply to all agencies of the Federal Government.

(3) Such procedures shall not change the substantive requirements for the classification and safeguarding of classified information.

(4) Such procedures shall not change the requirements and authorities to protect sources and methods.

(b) PROCEDURES FOR SHARING OF HOMELAND SECURITY INFORMATION.—

(1) Under procedures prescribed by the President, all appropriate agencies, including the intelligence community, shall, through information sharing systems, share homeland security information with appropriate State and local personnel to the extent such information may be shared, as determined in accordance with subsection (a), together with assessments of the credibility of such information.

(2) Each information sharing system through which information is shared under paragraph (1) shall—

(A) have the capability to transmit unclassified or classified information, though the procedures and recipients for each capability may differ;

(B) have the capability to restrict delivery of information to specified subgroups by geographic location, type of organization, position of a recipient within an organization, or a recipient's need to know such information;

(C) be configured to allow the efficient and effective sharing of information; and

(D) be accessible to appropriate State and local personnel.

(3) The procedures prescribed under paragraph (1) shall establish conditions on the use of information shared under paragraph (1)—

(A) to limit the dissemination of such information to ensure that such information is not used for an unauthorized purpose;

(B) to ensure the security and confidentiality of such information;

(C) to protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(D) to provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

(4) The procedures prescribed under paragraph (1) shall ensure, to the greatest extent practicable, that the information sharing system through which information is shared under such paragraph include existing information sharing systems, including, but not limited to, the National Law Enforcement Telecommunications System, the Regional Information Sharing System, and the Terrorist Threat Warning System of the Federal Bureau of Investigation.

(5) Each appropriate Federal agency, as determined by the President, shall have access to each information sharing system through which information is shared under paragraph (1), and shall therefore have access to all information, as appropriate, shared under such paragraph.

(6) The procedures prescribed under paragraph (1) shall ensure that appropriate State and local personnel are authorized to use such information sharing systems—

(A) to access information shared with such personnel; and

(B) to share, with others who have access to such information sharing systems, the homeland security information of their own jurisdictions, which shall be marked appropriately as pertaining to potential terrorist activity.

(7) Under procedures prescribed jointly by the Director of Central Intelligence and the Attorney General, each appropriate Federal agency, as determined by the President, shall review and assess the information shared under paragraph (6) and integrate such information with existing intelligence.

(c) SHARING OF CLASSIFIED INFORMATION AND SENSITIVE BUT UNCLASSIFIED INFORMATION WITH STATE AND LOCAL PERSONNEL.—

(1) The President shall prescribe procedures under which Federal agencies may, to the extent the President considers necessary, share with appropriate State and local personnel homeland security information that remains classified or otherwise protected after the determinations prescribed under the procedures set forth in subsection (a).

(2) It is the sense of Congress that such procedures may include one or more of the following means:

(A) Carrying out security clearance investigations with respect to appropriate State and local personnel.

(B) With respect to information that is sensitive but unclassified, entering into nondisclosure agreements with appropriate State and local personnel.

(C) Increased use of information-sharing partnerships that include appropriate State and local personnel, such as the Joint Terrorism Task Forces of the Federal Bureau of Investigation, the Anti-Terrorism Task Forces of the Department of Justice, and regional Terrorism Early Warning Groups.

(d) RESPONSIBLE OFFICIALS.—For each affected Federal agency, the head of such agency shall designate an official to administer this Act with respect to such agency.

(e) FEDERAL CONTROL OF INFORMATION.—Under procedures prescribed under this section, information obtained by a State or local government from a Federal agency under this section shall remain under the control of the Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply to such information.

(f) DEFINITIONS.—As used in this section:

(1) The term “homeland security information” means any information possessed by a Federal, State, or local agency that—

(A) relates to the threat of terrorist activity;

(B) relates to the ability to prevent, interdict, or disrupt terrorist activity;

(C) would improve the identification or investigation of a suspected terrorist or terrorist organization; or

(D) would improve the response to a terrorist act.

(2) The term “intelligence community” has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(3) The term “State and local personnel” means any of the following persons involved in prevention, preparation, or response for terrorist attack:

- (A) State Governors, mayors, and other locally elected officials.
- (B) State and local law enforcement personnel and firefighters.
- (C) Public health and medical professionals.
- (D) Regional, State, and local emergency management agency personnel, including State adjutant generals.
- (E) Other appropriate emergency response agency personnel.
- (F) Employees of private-sector entities that affect critical infrastructure, cyber, economic, or public health security, as designated by the Federal government in procedures developed pursuant to this section.

(4) The term “State” includes the District of Columbia and any commonwealth, territory, or possession of the United States.

**SEC. 4. REPORT.**

(a) **REPORT REQUIRED.**—Not later than 12 months after the date of the enactment of this Act, the President shall submit to the congressional committees specified in subsection (b) a report on the implementation of section 3. The report shall include any recommendations for additional measures or appropriation requests, beyond the requirements of section 3, to increase the effectiveness of sharing of information among Federal, State, and local entities.

(b) **SPECIFIED CONGRESSIONAL COMMITTEES.**—The congressional committees referred to in subsection (a) are the following committees:

- (1) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.
- (2) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

**SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary to carry out section 3.

**SEC. 6. AUTHORITY TO SHARE GRAND JURY INFORMATION.**

Rule 6(e) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (2), by inserting “, or of guidelines jointly issued by the Attorney General and Director of Central Intelligence pursuant to Rule 6,” after “Rule 6”; and

(2) in paragraph (3)—

(A) in subparagraph (A)(ii), by inserting “or of a foreign government” after “(including personnel of a state or subdivision of a state”;

(B) in subparagraph (C)(i)—

(i) in subclause (I), by inserting before the semicolon the following: “or, upon a request by an attorney for the government, when sought by a foreign court or prosecutor for use in an official criminal investigation”;

(ii) in subclause (IV)—

(I) by inserting “or foreign” after “may disclose a violation of State”;

(II) by inserting “or of a foreign government” after “to an appropriate official of a State or subdivision of a State”; and

(III) by striking “or” at the end;

(iii) by striking the period at the end of subclause (V) and inserting “, or”; and

(iv) by adding at the end the following:

“(VI) when matters involve a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, to any appropriate federal, state, local, or foreign government official for the purpose of preventing or responding to such a threat.”; and

(C) in subparagraph (C)(iii)—

(i) by striking “Federal”;

(ii) by inserting “or clause (i)(VI)” after “clause (i)(V)”; and

(iii) by adding at the end the following: “Any state, local, or foreign official who receives information pursuant to clause (i)(VI) shall use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.”.

**SEC. 7. AUTHORITY TO SHARE ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION.**

Section 2517 of title 18, United States Code, is amended by adding at the end the following:

“(7) Any investigative or law enforcement officer, or attorney for the government, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to a foreign investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure, and foreign investigative or law enforcement officers may use or disclose such contents or derivative evidence to the extent such use or disclosure is appropriate to the proper performance of their official duties.

“(8) Any investigative or law enforcement officer, or attorney for the government, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to any appropriate Federal, State, local, or foreign government official to the extent that such contents or derivative evidence reveals a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person’s official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.”

**SEC. 8. FOREIGN INTELLIGENCE INFORMATION.**

(a) DISSEMINATION AUTHORIZED.—Section 203(d)(1) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT ACT) of 2001 (Public Law 107–56; 50 U.S.C. 403–5d) is amended—

(1) by striking “Notwithstanding any other provision of law, it” and inserting “It”; and

(2) by adding at the end the following: “It shall be lawful for information revealing a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, obtained as part of a criminal investigation to be disclosed to any appropriate Federal, State, local, or foreign government official for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person’s official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.”

(b) CONFORMING AMENDMENTS.—Section 203(c) of that Act is amended—

(1) by striking “section 2517(6)” and inserting “paragraphs (6) and (8) of section 2517 of title 18, United States Code.”; and

(2) by inserting “and (VI)” after “Rule 6(e)(3)(C)(i)(V)”.

**SEC. 9. INFORMATION ACQUIRED FROM AN ELECTRONIC SURVEILLANCE.**

Section 106(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806) is amended by inserting after “law enforcement officers” the following: “or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)”.

**SEC. 10. INFORMATION ACQUIRED FROM A PHYSICAL SEARCH.**

Section 305(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1825) is amended by inserting after “law enforcement officers” the following: “or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority

to appoint or direct the chief law enforcement officer of that State or political subdivision)".

#### PURPOSE AND SUMMARY

With the passage of the USA PATRIOT Act, this Congress began to break down the barriers to facilitate information sharing between Federal law enforcement officials and the intelligence community.<sup>1</sup> H.R. 4598, the "Homeland Security Information Sharing Act" requires the President to create procedures to strip out classified information so that State and local officials may receive the information without clearances. The bill also removes the barriers for State and local officials to share law enforcement and intelligence information with Federal officials.

#### BACKGROUND AND NEED FOR THE LEGISLATION

The U.S. is in a war against terrorism. This war is borderless and threatens Americans at home and abroad. To prevent, disrupt and respond to a terrorist attack at home, the Federal Government must improve three critical areas to protect our homeland. Those areas are: (1) information sharing; (2) analysis of the information; and (3) coordination. All three are interdependent and vital for a strong homeland security system that will prevent, disrupt and, if necessary, respond to a terrorist attack. All Federal, State and local government officials need to share information with the appropriate officials for analysis of threats to determine the appropriate response.

After September 11, 2001, it became immediately clear that there were serious problems with communications between Federal law enforcement agencies and the intelligence community. The Federal Government knew then, as did the press and the public, that we had some warnings, but the lack of information sharing prevented the U.S. intelligence community from appropriately responding.

The Administration and the Congress took immediate action to address this problem by drafting and passing the USA PATRIOT Act. The President signed that bill into law on October 26, 2001. The very purpose of that bill was to improve information sharing for the law enforcement and intelligence communities to combat terrorism and terrorist-related crimes. Prior to the enactment of this landmark legislation, information sharing was limited to law enforcement agencies. This limitation hampered law enforcement officials in sharing or receiving information with other Government officials that was needed to perform official duties related to terrorist activities or homeland security.

With any information-sharing bill, protecting privacy of citizens must be balanced with protecting the nation's security. The Administration and the Congress maintained that balance in the USA PATRIOT Act by limiting the type of information that may be shared and requiring that information may only be made available to persons agencies who are engaged in the performance of the official duties.

Similar protections are include in H.R. 4598, which expands the information-sharing to State and local officials. The USA PATRIOT

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<sup>1</sup> Pub. L. No. 107-56, 115 Stat. 242.

Act did not remove restrictions in sharing homeland security information with States and localities. The country needs a comprehensive information sharing system that includes Federal, State and local law enforcement agencies. H.R. 4598 would facilitate communications between State and local officials by directing the Administration to create procedures for the sharing of classified and unclassified, but sensitive, homeland security information and by extending the provisions in the USA PATRIOT Act to State and local officials with regard to cover grand jury information and law enforcement or intelligence surveillance information.

#### HEARINGS

The Subcommittee on Crime, Terrorism, and Homeland Security held hearings on H.R. 4598, the "Homeland Security Information Sharing Act," on June 4, 2002. Testimony was received from 3 witnesses. The witnesses were: the Honorable Saxby Chambliss (GA), the Honorable Jane Harman (CA); and the Honorable John Cary Bittick, President of the National Sheriff's Association.

#### COMMITTEE CONSIDERATION

On June 4, 2002, the Subcommittee on Crime, Terrorism, and Homeland Security met in open session and ordered favorably reported, the bill H.R. 4598, the "Homeland Security Information Sharing Act," as amended, by a voice vote, a quorum being present. On June 13, 2002, the Committee met in open session and ordered favorably reported, the bill H.R. 4598 with amendment, by voice vote, a quorum being present.

#### VOTE OF THE COMMITTEE

There were no recorded votes for H.R. 4598.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### PERFORMANCE GOALS AND OBJECTIVES

H.R. 4598, will facilitate the sharing of critical threat information between Federal agencies and State and local personnel.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 4598, the following estimate and comparison prepared

by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 25, 2002.*

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4598, the Homeland Security Information Sharing Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

*H.R. 4598—Homeland Security Information Sharing Act.*

CBO estimates that implementing H.R. 4598 within the Department of Justice (DOJ) would cost less than \$500,000 annually, subject to the availability of appropriated funds. CBO cannot determine the cost to implement the bill's provisions for Federal intelligence agencies. The bill would not affect direct spending or receipts, so pay-as-you-go procedures would not apply.

H.R. 4598 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments. The bill would benefit State and local governments by allowing these levels of government better access to homeland security information.

H.R. 4598 would direct the President to establish guidelines for Federal agencies to share homeland security information with State and local personnel. Based on information from DOJ about the current and anticipated levels of information sharing, we do not expect that the bill would have a significant effect on Federal spending for these activities. CBO cannot estimate the cost to conduct these activities at Federal intelligence agencies because the information necessary to make such an estimate is classified.

The CBO staff contacts for this estimate are Mark Grabowicz, and Matthew Schmit. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

SEC. 1. SHORT TITLE.

The short title is the "Homeland Security Information Sharing Act."



## SEC. 2. FINDINGS AND SENSE OF THE CONGRESS.

This section provides the following findings:

- (1) The Constitution requires the Federal Government to provide for the common defense, which includes a terrorist attack.
- (2) The Federal Government relies on State and local personnel to protect against terrorist attacks.
- (3) The Federal Government collects, creates, manages, and protects classified and sensitive, but unclassified information to enhance homeland security.
- (4) State and local personnel need some of the homeland security information to prevent and prepare for terrorist attacks.
- (5) The Federal Government must reconcile the need to provide this information to the State and local officials with the need to protect sources and methods used to acquire such information.
- (6) One way to facilitate information sharing regarding specific terrorist threats among Federal, State, and local levels of government is to grant security clearances to certain State and local personnel.
- (7) Methods exist to declassify, redact, or otherwise adapt classified information so it may be shared with State and local officials without granting additional security clearances.
- (8) State and local personnel have capabilities and opportunities to gather information on suspicious activities and terrorist threats not possessed by the Federal agencies.
- (9) The Federal Government and State and local governments and agencies in other jurisdictions may benefit from such information.
- (10) Federal, State, and local governments and intelligence, law enforcement, and other emergency preparation and response agencies must act in partnership to maximize the benefits of information gathering and analysis to prevent and respond to terrorist attacks.
- (11) Information systems, including the National Law Enforcement Telecommunications System and the Terrorist Threat Warning System, have been established for rapid sharing of classified and sensitive, but unclassified, information among Federal, State and local entities.
- (12) Increased efforts to share homeland security information should avoid duplicating existing information systems.

Additionally, this section provides a sense of the Congress that all levels of government should share homeland security information to the maximum extent practicable, with special emphasis on hard-to-reach urban and rural community.

## SEC. 3. FACILITATING HOMELAND SECURITY INFORMATION SHARING PROCEDURES.

Subsection (a) of section 3 requires the President to establish procedures for Federal agencies to determine the extent to which homeland security information is shared with State and local per-

sonnel. Specifically, the section directs the President to establish procedures that require Federal agencies to determine whether, how, and to what extent, homeland security information may be shared with the appropriate State and local personnel. Additionally, the procedures shall provide a process by which Federal agencies determine whether, how, and to what extent, unclassified versions of the information may be made shared and with which State and local personnel. The procedures must identify and safeguard homeland security information that is sensitive but unclassified.

This section also requires the President to ensure that such procedures apply to all Federal agencies. The bill does not change the substantive requirements for the classification and treatment of classified information nor the requirements to protect sources and methods.

Subsection (b) of section 3 requires the President to prescribe procedures for all appropriate agencies, including the intelligence community, to use information sharing systems to provide both classified and sensitive, but unclassified information, in accordance with subsection (a). Specifically, homeland security information shall be shared with the appropriate State and local personnel through information sharing systems that: (1) have the capability to transmit unclassified or classified information; (2) have the capability to restrict delivery of information to specified subgroups by geographic location, type of organization and position of a recipient with an organization or a recipient's need to know of such information; and (3) be accessible to appropriate State and local personnel. These new systems should include existing information sharing systems.

To protect privacy this subsection also requires that these procedures must: (1) limit the redissemination of such information to ensure that such information is not used for an unauthorized purpose; (2) ensure the security and confidentiality of such information; (3) protect the constitutional and statutory rights of any individuals who are subjects of such information; and (4) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

Additionally, the systems must be accessible to appropriate Federal agencies and appropriate State and local personnel. The procedures shall ensure that State and local personnel have been authorized to use such information sharing systems. Furthermore, these systems should include existing information sharing systems.

Subsection (c) of section 3 provides procedures for sharing classified information with State and local personnel.

Subsection (d) of section 3 requires that the head of an affected Agency designate an official to administer this act.

Subsection (e) of section 3 provides that Federal information obtained by a State or local government from a Federal agency shall remain under the control of the Federal agency, and thus, not subject to State or local law authorizing or requiring disclosure.

Subsection (f) of section 3 defines the terms "homeland security information," "intelligence community," "State and local personnel," and "State."

## SEC. 4. REPORT.

This section would require the President to report 6 months after the date of enactment to the House and Senate Select Committees on Intelligence and the House and Senate Judiciary Committees on the implementation of this act.

## SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

This section authorizes appropriations of such sums as may be necessary to carry out this act.

## SEC. 6. AUTHORITY TO SHARE GRAND JURY INFORMATION.

Rule 6(e) of the Rules of Criminal Procedure prohibits the disclosure of matters occurring before the grand jury, unless the disclosure is covered under specified exceptions. Rule 6(e) provides two types exceptions to the prohibition—(1) those that do not require a court order for disclosure and (2) those that do require a court order for disclosure. Exceptions that do not require a court order are under rule 6(e)(3)(A). Subparagraph (A) provides that disclosures otherwise prohibited, may be made to the attorney for the Government for use in the performance of his or her duty and to such personnel as are deemed necessary by the attorney for the Government.

Rule 6(e)(3)(C) contains exceptions that generally require a court order. One of the exceptions allows State and local officials to receive Federal grand jury evidence when permitted by a court and upon the show that the information relates to a State crime.

The USA PATRIOT Act amended rule 6(e)(3)(C) to permit the sharing of grand jury information that pertains to foreign intelligence or counterintelligence, to a limited group of Federal officials (including the President and Vice President), so long as they are performing official duties. This section of the bill would further amend rule 6(e) to permit the sharing such information to law enforcement personnel of a State or political subdivision of a State without a court order.

Specifically, this section would permit the disclosure of foreign intelligence, foreign counterintelligence, foreign intelligence information, and domestic threat information. Domestic threat information is included because it is not always clear whether threats to public safety result from international or domestic terrorism threats. The anthrax attacks are one example of where the origin of that attacks is not clear. Additionally, this section allows for the information to be shared with foreign government officials to the same extent it may be shared with State and local officials.

Current law, allows an attorney for the Federal Government to disclose grand jury information to State and local officials to assist in Federal criminal law matters under rule 6(e)(3)(A)(ii) and to share information related to a State criminal matter with court approval under rule 6(e)(3)(C)(i)(IV). With the increase in international crime, the Committee believes that there are situations where the Federal attorney may need to disclose matters occurring before a grand jury to foreign officials. In an April 24, 2002 letter, the Department of Justice reasoned:

Foreign prosecutors or investigating courts seeking evidence in the United States make request under mutual legal assistance

treaties or in letters rogatory pursuant to 28 U.S.C. § 1782. U.S. prosecutors actively assist the foreign authorities to obtain the evidence. On occasion, providing the evidence may require disclosure of grand jury information. However, even when the Government makes an appropriate showing to the court (i.e., a showing similar to that required for disclosure of grand jury material in a domestic proceeding), the rule as currently written does not expressly authorize courts to order disclosure. As a consequence, the U.S. prosecutor sometimes must re-subpoena the same information from the original sources. That process is cumbersome, it may unnecessarily inconvenience the persons or entities that already provided the information to the grand jury, and it is time-consuming. These difficulties and delays can affirmatively impede the foreign investigation. Moreover, certain evidence—such as witness testimony or original documents—simply cannot be obtained through alternative means. The foreign investigation may thus be thwarted, even though the evidence is available.

The Committee agrees that this clarification is necessary.

This section also would add new subclause (VI) to rule 6(e)(E)(C)(i) to deal with situations where the grand jury information reveals a threat of attack, sabotage, terrorism, or clandestine intelligence-gathering activities. This information is similar to that listed under the definition of “foreign intelligence information” under 50 U.S.C. § 1801(e). This section would include domestic terrorism as part of the definition. Additionally, this section differs from the provisions added in the USA PATRIOT Act because the information could be shared with the “appropriate” State and local officials upon a court order. In the USA PATRIOT Act, section 203(a) added rule 6(e)(3)(C)(i)(V) to allow disclosure of grand jury matters to designated categories of Federal officials rather than to “appropriate” officials. This bill, however, contains safeguards against the misuse of this threat information as it follows rule 6(e)(3)(C)(i)(IV), which only permits disclosure for specified purpose. Here the specified purpose is to prevent or respond to a threat. Additionally, the recipients may only use the disclosed information in the conduct of their official duties as is necessary and they are subject to the restrictions for unauthorized disclosure—including contempt of court.

#### SEC. 7. AUTHORITY TO SHARE ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION.

Section 18 U.S.C. § 2510 *et seq.* limited disclosure and dissemination of information obtained by or related to wire, oral, or electronic surveillance to other investigative or law enforcement officials. The USA PATRIOT Act amended the law to allow foreign intelligence or counterintelligence information (as defined in the National Security Act of 1945) that is obtained as a result of a criminal investigation to be shared with specified law-enforcement, intelligence, protective, immigration, or national-defense personnel where they are performing official duties.

Prior to this change, it was impossible for law enforcement or criminal investigators to share information collected under a criminal wiretap that related to foreign intelligence or intelligence infor-

mation without seeking court authority. This limitation could have adversely affected a criminal or counter-terrorism investigation where time is often of the essence. While the USA PATRIOT Act made it clear that Federal law-enforcement and investigation officials, without seeking court authority, could share foreign intelligence information in the performance of their official duties with other specified Federal officials, the bill did not provide that State and local law officials could receive this type of information.

This section would amend section 2517 of title 18 by adding a new paragraph (7) to provide that State law enforcement personnel and political subdivisions of the State may also receive the information.

#### SEC. 8. FOREIGN INTELLIGENCE INFORMATION.

The USA PATRIOT Act also provided that notwithstanding any other provision of law, it shall be lawful for foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)) or foreign intelligence information obtained as part of a criminal investigation to be disclosed to Federal law enforcement, intelligence, protective, immigration, national defense, or national security officials in performance of their official duties.

This section would amend section 203(d) of the USA PATRIOT Act to include law enforcement personnel of a State or political subdivision of State.

#### SEC. 9. INFORMATION ACQUIRED FROM AN ELECTRONIC SURVEILLANCE.

This section amends section 106(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (FISA) (50 U.S.C. 1806). The USA PATRIOT Act added section 1806(k) to title 18 to allow Federal officials conducting electronic surveillance under FISA to consult with Federal law enforcement officers to investigate and protect against specified foreign and national security threats to the United States. This section would amend the law to allow for State and local officials to participate in this coordination.

#### SEC. 10. INFORMATION ACQUIRED FROM A PHYSICAL SEARCH.

This section amends section 305(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (FISA) (50 U.S.C. 1825). The USA PATRIOT Act added section 1825(k) to title 18 to allow Federal officials conducting physical under FISA to consult with Federal law enforcement officers to investigate and protect against specified foreign and national security threats to the United States. This section would amend the law to allow for State and local officials to participate in this coordination.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

**SECTION 2517 OF TITLE 18, UNITED STATES CODE**

**§ 2517. Authorization for disclosure and use of intercepted wire, oral, or electronic communications**

(1) \* \* \*

\* \* \* \* \*

*(7) Any investigative or law enforcement officer, or attorney for the government, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to a foreign investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure, and foreign investigative or law enforcement officers may use or disclose such contents or derivative evidence to the extent such use or disclosure is appropriate to the proper performance of their official duties.*

*(8) Any investigative or law enforcement officer, or attorney for the government, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to any appropriate Federal, State, local, or foreign government official to the extent that such contents or derivative evidence reveals a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.*

\* \* \* \* \*

**SECTION 203 OF THE UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM ACT (USA PATRIOT ACT) OF 2001**

**SEC. 203. AUTHORITY TO SHARE CRIMINAL INVESTIGATIVE INFORMATION.**

(a) \* \* \*

\* \* \* \* \*

(c) PROCEDURES.—The Attorney General shall establish procedures for the disclosure of information pursuant to [section 2517(6)] paragraphs (6) and (8) of section 2517 of title 18, United States Code, and Rule 6(e)(3)(C)(i)(V) and (VI) of the Federal Rules of Criminal Procedure that identifies a United States person, as de-

fined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801)).

(d) FOREIGN INTELLIGENCE INFORMATION.—

(1) IN GENERAL.—[Notwithstanding any other provision of law, it] *It shall be lawful for foreign intelligence or counter-intelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)) or foreign intelligence information obtained as part of a criminal investigation to be disclosed to any Federal law enforcement, intelligence, protective, immigration, national defense, or national security official in order to assist the official receiving that information in the performance of his official duties. Any Federal official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information. It shall be lawful for information revealing a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, obtained as part of a criminal investigation to be disclosed to any appropriate Federal, State, local, or foreign government official for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.*

\* \* \* \* \*

**FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978**

\* \* \* \* \*

**TITLE I—ELECTRONIC SURVEILLANCE WITHIN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES**

\* \* \* \* \*

**USE OF INFORMATION**

**SEC. 106. (a) \* \* \***

\* \* \* \* \*

(k)(1) Federal officers who conduct electronic surveillance to acquire foreign intelligence information under this title may consult with Federal law enforcement officers or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that

*State or political subdivision) to coordinate efforts to investigate or protect against—*

(A) \* \* \*

\* \* \* \* \*

**TITLE III—PHYSICAL SEARCHES WITH-  
IN THE UNITED STATES FOR FOREIGN  
INTELLIGENCE PURPOSES**

\* \* \* \* \*

USE OF INFORMATION

SEC. 305. (a) \* \* \*

\* \* \* \* \*

(k)(1) Federal officers who conduct physical searches to acquire foreign intelligence information under this title may consult with Federal law enforcement officers or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision) to coordinate efforts to investigate or protect against—

(A) \* \* \*

\* \* \* \* \*

MARKUP TRANSCRIPT

**BUSINESS MEETING  
THURSDAY, JUNE 13, 2002**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee notes the presence of a working quorum. To begin the Chair will announce that he has designated the gentleman from Wisconsin, Mr. Green, as Vice Chairman of the Crime, Terrorism, and Homeland Security Subcommittee. First up today—well, I must start this markup with sad news. The Chairman of the Subcommittee on Crime, Terrorism, and Homeland Security, the gentleman from Texas, Mr. Smith, is unable to be with us because his father, Campbell Smith, died last Friday. I believe we all offer our condolences to him and his family. And Mr. Smith has asked Mr. Green to speak on his behalf for the Subcommittee today.

Now, I would like to ask unanimous consent as far as Subcommittee assignments are concerned, because we have had the appointment of Mr. Forbes of Virginia as a new Member of the Committee. I would ask unanimous consent that the gentleman from Virginia, Mr. Forbes is appointed to the Subcommittee on the Constitution and on Immigration and Claims. The gentlewoman from



Pennsylvania, Ms. Hart, is removed from the Subcommittee on Commercial and Administrative Law. The gentleman from Indiana, Mr. Pence, is appointed to the Subcommittee on Crime, Terrorism, and Homeland Security, and also on Commercial and Administrative Law.

As previously stated Mr. Green is appointed as Vice Chairman of the Subcommittee on Crime, Terrorism, and Homeland Security. Is there any objection to these assignments? And hearing none, so ordered.

I also ask unanimous consent that the Subcommittee on Immigration and Claims be renamed the Subcommittee on Immigration, Border Security, and Claims. And without objection, that change in title is agreed to as well.

The next item on the agenda is H.R. 4598, the "Homeland Security Information Sharing Act."

[The bill, H.R. 4598, follows:]

107TH CONGRESS  
2D SESSION

# H. R. 4598

To provide for the sharing of homeland security information by Federal intelligence and law enforcement agencies with State and local entities.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 25, 2002

Mr. CHAMBLISS (for himself, Ms. HARMAN, Mr. GOSS, Ms. PELOSI, Mr. SENBRENNER, Mr. SMITH of Texas, Mr. BISHOP, Mr. CONDIT, Mr. HOEKSTRA, Mr. ROEMER, Mr. BURR of North Carolina, Mr. REYES, Mr. BEREUTER, Mr. BOSWELL, Mr. PETERSON of Minnesota, Mr. CRAMER, Mr. HASTINGS of Florida, Mr. ROGERS of Michigan, Mr. FRANK, Mr. BARR of Georgia, Mr. FROST, Mr. SULLIVAN, Mr. BALDACCI, Mr. SESSIONS, Mr. DEUTSCH, Mr. TIERNEY, and Ms. HART) introduced the following bill; which was referred to the Committee on Intelligence (Permanent Select), and in addition to the Committee on the Judiciary, 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

---

## A BILL

To provide for the sharing of homeland security information by Federal intelligence and law enforcement agencies with State and local entities.

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 “Homeland Security  
5 Information Sharing Act”.

1 **SEC. 2. FINDINGS AND SENSE OF CONGRESS.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) The Federal Government is required by the  
4 Constitution to protect every State from invasion,  
5 which includes terrorist attack.

6 (2) The Federal Government relies on State  
7 and local personnel to protect against terrorist at-  
8 tack.

9 (3) The Federal Government collects, creates,  
10 manages, and protects sensitive information to en-  
11 hance national security.

12 (4) Some homeland security information is  
13 needed by the State and local personnel to prevent  
14 and prepare for terrorist attack.

15 (5) The needs of State and local personnel to  
16 have access to relevant homeland security informa-  
17 tion to combat terrorism must be reconciled with the  
18 need to preserve the protected status of such infor-  
19 mation and to protect the sources and methods used  
20 to acquire such information.

21 (6) Granting security clearances to certain  
22 State and local personnel is one way to facilitate the  
23 sharing of information regarding specific terrorist  
24 threats among Federal, State, and local levels of  
25 government.

1           (7) Methods exist to declassify, redact, or other-  
2           wise adapt classified information so it may be shared  
3           with State and local personnel without the need for  
4           granting additional security clearances.

5           (8) State and local personnel have capabilities  
6           and opportunities to gather information on sus-  
7           picious activities and terrorist threats not possessed  
8           by the Federal intelligence agencies.

9           (9) The intelligence community and State and  
10          local governments and agencies in other jurisdictions  
11          may benefit from such information.

12          (10) Federal, State, and local governments and  
13          intelligence, law enforcement, and other emergency  
14          preparation and response agencies must act in part-  
15          nership to maximize the benefits of information  
16          gathering and analysis to prevent and respond to  
17          terrorist attacks.

18          (11) Information systems, including the Na-  
19          tional Law Enforcement Telecommunications Sys-  
20          tem and the Terrorist Threat Warning System, have  
21          been established for rapid sharing of sensitive and  
22          unclassified information among Federal, State, and  
23          local entities.

1           (12) Increased efforts to share homeland secu-  
2           rity information should avoid duplicating existing in-  
3           formation systems.

4           (b) SENSE OF CONGRESS.—It is the sense of Con-  
5           gress that Federal, State, and local entities should share  
6           homeland security information to the maximum extent  
7           practicable.

8           **SEC. 3. FACILITATING HOMELAND SECURITY INFORMA-**  
9           **TION SHARING PROCEDURES.**

10          (a) PRESIDENTIAL PROCEDURES FOR DETERMINING  
11          EXTENT OF SHARING OF HOMELAND SECURITY INFOR-  
12          MATION.—

13               (1) The President shall prescribe procedures  
14               under which relevant Federal agencies determine—

15                     (A) whether, how, and to what extent  
16                     homeland security information may be shared  
17                     with appropriate State and local personnel, and  
18                     with which such personnel may it be shared;  
19                     and

20                     (B) to the extent such information is in  
21                     classified form, whether, how, and to what ex-  
22                     tent to declassify (or remove classified informa-  
23                     tion from, as appropriate) such information,  
24                     and with which such personnel may it be shared  
25                     after such declassification (or removal).

1           (2) The President shall ensure that such proce-  
2           dures apply to each element of the intelligence com-  
3           munity and that the requisite technology is available.

4           (3) Such procedures shall not change the sub-  
5           stantive requirements for the classification and  
6           treatment of classified information.

7           (4) Such procedures shall not change the re-  
8           quirements and authorities to protect sources and  
9           methods.

10          (b) PROCEDURES FOR SHARING OF HOMELAND SE-  
11          CURITY INFORMATION.—

12           (1) Under procedures prescribed jointly by the  
13           Director of Central Intelligence and the Attorney  
14           General, each element of the intelligence community  
15           shall, through information sharing systems, share  
16           homeland security information with appropriate  
17           State and local personnel to the extent such infor-  
18           mation may be shared, as determined in accordance  
19           with subsection (a), together with assessments of the  
20           credibility of such information.

21           (2) Each information sharing system through  
22           which information is shared under paragraph (1)  
23           shall—

24                   (A) have the capability to transmit unclas-  
25                   sified or classified information, though the pro-

1           cedures and recipients for each capability may  
2           differ;

3           (B) have the capability to restrict delivery  
4           of information to specified subgroups by geo-  
5           graphic location, type of organization, position  
6           of a recipient within an organization, and a re-  
7           cipient's need to know such information;

8           (C) be configured to allow the efficient and  
9           effective sharing of information; and

10          (D) be accessible to appropriate State and  
11          local personnel.

12          (3) The procedures prescribed under paragraph  
13          (1) shall ensure, to the greatest extent practicable,  
14          that the information sharing system through which  
15          information is shared under such paragraph include  
16          existing information sharing systems, including, but  
17          not limited to, the National Law Enforcement Tele-  
18          communications System, the Regional Information  
19          Sharing System, and the Terrorist Threat Warning  
20          System of the Federal Bureau of Investigation.

21          (4) Each element of the Federal intelligence  
22          and law enforcement communities, as well as the  
23          Permanent Select Committee on Intelligence of the  
24          House of Representatives, the Select Committee on  
25          Intelligence of the Senate, the Committee on the Ju-

1       diciary of the House of Representatives, the Com-  
2       mittee on the Judiciary of the Senate, and other  
3       congressional committees as appropriate, shall have  
4       access to each information sharing system through  
5       which information is shared under paragraph (1),  
6       and shall therefore have access to all information, as  
7       appropriate, shared under such paragraph.

8               (5) The procedures prescribed under paragraph  
9       (1) shall ensure that appropriate State and local  
10       personnel are authorized to use such information  
11       sharing systems—

12               (A) to access information shared with such  
13       personnel; and

14               (B) to share, with others who have access  
15       to such information sharing systems, the home-  
16       land security information of their own jurisdic-  
17       tions, which shall be marked appropriately as  
18       pertaining to potential terrorist activity.

19               (6) Under procedures prescribed jointly by the  
20       Director of Central Intelligence and the Attorney  
21       General, each element of the intelligence community  
22       shall review and assess the information shared under  
23       paragraph (5) and integrate such information with  
24       existing intelligence.



1 (c) SHARING OF CLASSIFIED INFORMATION WITH  
2 STATE AND LOCAL PERSONNEL.—

3 (1) The President shall prescribe procedures  
4 under which Federal agencies may, to the extent the  
5 President considers necessary, share with appro-  
6 priate State and local personnel homeland security  
7 information that remains classified or otherwise pro-  
8 tected after the determinations prescribed under the  
9 procedures set forth in subsection (a).

10 (2) Such procedures may provide for sharing to  
11 be carried out through one or more of the following  
12 means:

13 (A) Carrying out security clearance inves-  
14 tigation with respect to appropriate State and  
15 local personnel.

16 (B) Entering into nondisclosure agree-  
17 ments with appropriate State and local per-  
18 sonnel.

19 (C) Increasing the use of information-shar-  
20 ing partnerships that include appropriate State  
21 and local personnel, such as the Joint Ter-  
22 rorism Task Forces of the Federal Bureau of  
23 Investigation, the Anti-Terrorism Task Forces  
24 of the Department of Justice, and regional Ter-  
25 rorism Early Warning Groups.

1 (d) RESPONSIBLE OFFICIALS.—For each element of  
2 the intelligence community, the head of such element shall  
3 designate an official of such element to administer this  
4 Act with respect to such element.

5 (e) DEFINITIONS.—As used in this section:

6 (1) The term “homeland security information”  
7 means any information possessed by a Federal,  
8 State, or local intelligence or law enforcement agen-  
9 cy that—

10 (A) relates to the threat of terrorist activ-  
11 ity;

12 (B) relates to the ability to prevent, inter-  
13 dict, or disrupt terrorist activity;

14 (C) would improve the identification or in-  
15 vestigation of a suspected terrorist or terrorist  
16 organization; or

17 (D) would improve the response to a ter-  
18 rorist act.

19 (2) The term “intelligence community” has the  
20 meaning given such term in section 3(4) of the Na-  
21 tional Security Act of 1947 (50 U.S.C. 401a(4)).

22 (3) The term “State and local personnel”  
23 means any of the following persons involved in pre-  
24 vention, preparation, or response for terrorist attack:

1 (A) State Governors, mayors, and other lo-  
2 cally elected officials.

3 (B) State and local law enforcement per-  
4 sonnel and firefighters.

5 (C) Public health and medical profes-  
6 sionals.

7 (D) Regional, State, and local emergency  
8 management agency personnel, including State  
9 adjutant generals.

10 (E) Other appropriate emergency response  
11 agency personnel.

12 (F) Employees of private-sector entities  
13 that affect critical infrastructure, cyber, or eco-  
14 nomic security.

15 (4) The term “State” includes the District of  
16 Columbia and any commonwealth, territory, or pos-  
17 session of the United States.

18 **SEC. 4. REPORT.**

19 (a) REPORT REQUIRED.—Not later than 6 months  
20 after the date of the enactment of this Act, the President  
21 shall submit to the congressional committees specified in  
22 subsection (b) a report on the implementation of this Act.  
23 The report shall include any recommendations for addi-  
24 tional measures or appropriation requests, beyond the re-  
25 quirements of this Act, to increase the effectiveness of

1 sharing of information among Federal, State, and local  
2 entities.

3 (b) SPECIFIED CONGRESSIONAL COMMITTEES.—The  
4 congressional committees referred to in subsection (a) are  
5 the following committees:

6 (1) The Permanent Select Committee on Intel-  
7 ligence and the Committee on the Judiciary of the  
8 House of Representatives.

9 (2) The Select Committee on Intelligence and  
10 the Committee on the Judiciary of the Senate.

11 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

12 There are authorized to be appropriated such sums  
13 as may be necessary to carry out this Act.

○

Chairman SENSENBRENNER. The Chair recognizes the gentleman from Wisconsin, Mr. Green, Vice Chairman of the Subcommittee on Crime, Terrorism, and Homeland Security, for a motion.

Mr. GREEN. Thank you, Mr. Chairman. Mr. Chairman, the Subcommittee on Crime, Terrorism, and Homeland Security reports favorably the bill H.R. 4598 with a single amendment in the nature of a substitute, and moves its favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point.

[The amendment follows:]

**SUBCOMMITTEE AMENDMENT IN THE NATURE OF  
A SUBSTITUTE TO H.R. 4598  
(AS ORDERED REPORTED BY THE SUBCOMMITTEE  
ON CRIME, TERRORISM, AND HOMELAND SE-  
CURITY ON JUNE 4, 2002)**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Homeland Security  
3 Information Sharing Act”.

4 **SEC. 2. FINDINGS AND SENSE OF CONGRESS.**

5 (a) FINDINGS.—The Congress finds the following:

6 (1) The Federal Government is required by the  
7 Constitution to protect every State from invasion,  
8 which includes terrorist attack.

9 (2) The Federal Government relies on State  
10 and local personnel to protect against terrorist at-  
11 tack.

12 (3) The Federal Government collects, creates,  
13 manages, and protects sensitive information to en-  
14 hance national security.

15 (4) Some homeland security information is  
16 needed by the State and local personnel to prevent  
17 and prepare for terrorist attack.

1           (5) The needs of State and local personnel to  
2 have access to relevant homeland security informa-  
3 tion to combat terrorism must be reconciled with the  
4 need to preserve the protected status of such infor-  
5 mation and to protect the sources and methods used  
6 to acquire such information.

7           (6) Granting security clearances to certain  
8 State and local personnel is one way to facilitate the  
9 sharing of information regarding specific terrorist  
10 threats among Federal, State, and local levels of  
11 government.

12           (7) Methods exist to declassify, redact, or other-  
13 wise adapt classified information so it may be shared  
14 with State and local personnel without the need for  
15 granting additional security clearances.

16           (8) State and local personnel have capabilities  
17 and opportunities to gather information on sus-  
18 picious activities and terrorist threats not possessed  
19 by the Federal intelligence agencies.

20           (9) The intelligence community and State and  
21 local governments and agencies in other jurisdictions  
22 may benefit from such information.

23           (10) Federal, State, and local governments and  
24 intelligence, law enforcement, and other emergency  
25 preparation and response agencies must act in part-

1 nership to maximize the benefits of information  
2 gathering and analysis to prevent and respond to  
3 terrorist attacks.

4 (11) Information systems, including the Na-  
5 tional Law Enforcement Telecommunications Sys-  
6 tem and the Terrorist Threat Warning System, have  
7 been established for rapid sharing of sensitive and  
8 unclassified information among Federal, State, and  
9 local entities.

10 (12) Increased efforts to share homeland secu-  
11 rity information should avoid duplicating existing in-  
12 formation systems.

13 (b) SENSE OF CONGRESS.—It is the sense of Con-  
14 gress that Federal, State, and local entities should share  
15 homeland security information to the maximum extent  
16 practicable.

17 **SEC. 3. FACILITATING HOMELAND SECURITY INFORMA-**  
18 **TION SHARING PROCEDURES.**

19 (a) PRESIDENTIAL PROCEDURES FOR DETERMINING  
20 EXTENT OF SHARING OF HOMELAND SECURITY INFOR-  
21 MATION.—

22 (1) The President shall prescribe procedures  
23 under which relevant Federal agencies determine—

24 (A) whether, how, and to what extent  
25 homeland security information may be shared



1 with appropriate State and local personnel, and  
2 with which such personnel it may be shared;  
3 and

4 (B) to the extent such information is in  
5 classified form, whether, how, and to what ex-  
6 tent to remove classified information, as appro-  
7 priate, and with which such personnel it may be  
8 shared after such information is removed.

9 (2) The President shall ensure that such proce-  
10 dures apply to each element of the intelligence com-  
11 munity and that the requisite technology is available.

12 (3) Such procedures shall not change the sub-  
13 stantive requirements for the classification and  
14 treatment of classified information.

15 (4) Such procedures shall not change the re-  
16 quirements and authorities to protect sources and  
17 methods.

18 (b) PROCEDURES FOR SHARING OF HOMELAND SE-  
19 CURITY INFORMATION.—

20 (1) Under procedures prescribed jointly by the  
21 Director of Central Intelligence and the Attorney  
22 General, each element of the intelligence community  
23 shall, through information sharing systems, share  
24 homeland security information with appropriate  
25 State and local personnel to the extent such infor-

1       mation may be shared, as determined in accordance  
2       with subsection (a), together with assessments of the  
3       credibility of such information.

4               (2) Each information sharing system through  
5       which information is shared under paragraph (1)  
6       shall—

7                       (A) have the capability to transmit unclas-  
8                       sified or classified information, though the pro-  
9                       cedures and recipients for each capability may  
10                      differ;

11                     (B) have the capability to restrict delivery  
12                     of information to specified subgroups by geo-  
13                     graphic location, type of organization, position  
14                     of a recipient within an organization, and a re-  
15                     cipient's need to know such information;

16                     (C) be configured to allow the efficient and  
17                     effective sharing of information; and

18                     (D) be accessible to appropriate State and  
19                     local personnel.

20               (3) The procedures prescribed under paragraph  
21       (1) shall ensure, to the greatest extent practicable,  
22       that the information sharing system through which  
23       information is shared under such paragraph include  
24       existing information sharing systems, including, but  
25       not limited to, the National Law Enforcement Tele-

1       communications System, the Regional Information  
2       Sharing System, and the Terrorist Threat Warning  
3       System of the Federal Bureau of Investigation.

4               (4) Each element of the Federal intelligence  
5       and law enforcement communities shall have access  
6       to each information sharing system through which  
7       information is shared under paragraph (1), and shall  
8       therefore have access to all information, as appro-  
9       priate, shared under such paragraph.

10              (5) The procedures prescribed under paragraph  
11       (1) shall ensure that appropriate State and local  
12       personnel are authorized to use such information  
13       sharing systems—

14                   (A) to access information shared with such  
15       personnel; and

16                   (B) to share, with others who have access  
17       to such information sharing systems, the home-  
18       land security information of their own jurisdic-  
19       tions, which shall be marked appropriately as  
20       pertaining to potential terrorist activity.

21              (6) Under procedures prescribed jointly by the  
22       Director of Central Intelligence and the Attorney  
23       General, each element of the intelligence community  
24       shall review and assess the information shared under

1 paragraph (5) and integrate such information with  
2 existing intelligence.

3 (c) SHARING OF CLASSIFIED INFORMATION AND  
4 SENSITIVE BUT UNCLASSIFIED INFORMATION WITH  
5 STATE AND LOCAL PERSONNEL.—

6 (1) The President shall prescribe procedures  
7 under which Federal agencies may, to the extent the  
8 President considers necessary, share with appro-  
9 priate State and local personnel homeland security  
10 information that remains classified or otherwise pro-  
11 tected after the determinations prescribed under the  
12 procedures set forth in subsection (a).

13 (2) It is the sense of Congress that such proce-  
14 dures should provide for sharing to be carried out  
15 through one or more of the following means:

16 (A) Carrying out security clearance inves-  
17 tigation with respect to appropriate State and  
18 local personnel.

19 (B) With respect to information that is  
20 sensitive but unclassified, entering into non-  
21 disclosure agreements with appropriate State  
22 and local personnel.

23 (C) Increased use of information-sharing  
24 partnerships that include appropriate State and  
25 local personnel, such as the Joint Terrorism

1 Task Forces of the Federal Bureau of Inves-  
2 tigation, the Anti-Terrorism Task Forces of the  
3 Department of Justice, and regional Terrorism  
4 Early Warning Groups.

5 (d) RESPONSIBLE OFFICIALS.—For each element of  
6 the intelligence community, the head of such element shall  
7 designate an official of such element to administer this  
8 Act with respect to such element.

9 (e) DEFINITIONS.—As used in this section:

10 (1) The term “homeland security information”  
11 means any information possessed by a Federal,  
12 State, or local intelligence or law enforcement agen-  
13 cy that—

14 (A) relates to the threat of terrorist activ-  
15 ity;

16 (B) relates to the ability to prevent, inter-  
17 dict, or disrupt terrorist activity;

18 (C) would improve the identification or in-  
19 vestigation of a suspected terrorist or terrorist  
20 organization; or

21 (D) would improve the response to a ter-  
22 rorist act.

23 (2) The term “intelligence community” has the  
24 meaning given such term in section 3(4) of the Na-  
25 tional Security Act of 1947 (50 U.S.C. 401a(4)).

1           (3) The term “State and local personnel”  
2 means any of the following persons involved in pre-  
3 vention, preparation, or response for terrorist attack:

4           (A) State Governors, mayors, and other lo-  
5 cally elected officials.

6           (B) State and local law enforcement per-  
7 sonnel and firefighters.

8           (C) Public health and medical profes-  
9 sionals.

10           (D) Regional, State, and local emergency  
11 management agency personnel, including State  
12 adjutant generals.

13           (E) Other appropriate emergency response  
14 agency personnel.

15           (F) Employees of private-sector entities  
16 that affect critical infrastructure, cyber, or eco-  
17 nomic security.

18           (4) The term “State” includes the District of  
19 Columbia and any commonwealth, territory, or pos-  
20 session of the United States.

21 **SEC. 4. REPORT.**

22           (a) REPORT REQUIRED.—Not later than 6 months  
23 after the date of the enactment of this Act, the President  
24 shall submit to the congressional committees specified in  
25 subsection (b) a report on the implementation of this Act.

1 The report shall include any recommendations for addi-  
2 tional measures or appropriation requests, beyond the re-  
3 quirements of this Act, to increase the effectiveness of  
4 sharing of information among Federal, State, and local  
5 entities.

6 (b) SPECIFIED CONGRESSIONAL COMMITTEES.—The  
7 congressional committees referred to in subsection (a) are  
8 the following committees:

9 (1) The Permanent Select Committee on Intel-  
10 ligence and the Committee on the Judiciary of the  
11 House of Representatives.

12 (2) The Select Committee on Intelligence and  
13 the Committee on the Judiciary of the Senate.

14 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

15 There are authorized to be appropriated such sums  
16 as may be necessary to carry out this Act.

Chairman SENSENBRENNER. The Subcommittee amendment in the nature of a substitute which the Members have before them will be considered as read and considered as the original text for purposes of amendment and open for amendment at any point. The Chair yields himself 5 minutes for purposes of making an opening statement. This Committee has greatly improved information sharing between Federal law enforcement and the intelligence community last year with the passage of the PATRIOT Act, yet further cooperation is still needed. Because State and local officials will be the first to respond to a terrorist attack, we need to create procedures so that appropriate State and local officials will receive the information they need to understand, prevent, detect and disrupt terrorist threats.

Often this information is classified, so we must provide a way to provide this information quickly and efficiently while protecting the classified sources and methods of obtaining the information. Understanding the complexity of sharing classified and law enforcement sensitive information, this Committee worked with the Committee on Intelligence to produce this legislation. It will facilitate the sharing of homeland security information with State and local officials by directing the Administration in developing procedures to sanitize classified information so that it can be shared in an unclassified form.

If the information cannot be sanitized, the bill directs the administration to develop procedures to share classified information while protecting that information. I believe this bill is vital to improving homeland security. I urge my colleagues to support this bill. Does the gentleman from Virginia, Mr. Scott, who is the Ranking Member on the Subcommittee, have an opening statement? The gentleman is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman, for holding this markup on Homeland Security Information Sharing Act. Just as with the U.S.A. PATRIOT Act on sharing sensitive protected information among Federal agencies, I think the challenge we face in sharing such information with local government authorities is the same, getting critical information in a timely manner to authorities who need it in order to effectively prevent or address terrorism through proactive strategies, while at the same time, protecting the privacy and freedoms of our citizens.

In so doing, we must be vigilant that we not only accomplish for would-be terrorists what they cannot accomplish on their own and that is, we don't want to diminish our freedoms and our cherished way of life. From my experience in assessing and debating the USA PATRIOT Act, I am concerned that we have gone too far in the area of restricting liberties and privacy of law-abiding citizens under the rubric of preventing and fighting terrorism. There is little debate over empowering our intelligence and law enforcement forces to prevent and fight terrorism. The debate is whether these extraordinary powers and discretions we give to prevent and fight terrorism can and will be used on very ordinary street crimes or other undesirable activities where these extraordinary powers may not be appropriate.

The bill before us is not as much at issue as the regulations which will be formulated based on this legislation. I am concerned that without sufficient guidelines, the delicate balance we must



strike between sharing critical information with State and local officials needed to prevent and fight terrorism and maintaining the privacy and liberties of our citizens will be jeopardized. I will be particularly concerned in this regard if we authorize the sharing of even more sensitive information than the President has at his command, such as sharing grand jury testimony and information from wire and electronic wiretaps without sufficient guidelines to protect citizens to discourage and address improper disclosures of sensitive private information.

So if any such—so with any such additions, I would hope that we would also include provisions to ensure these concerns and the concerns that when we focus on antiterrorism instead of ordinary street crime, we address the regulations implementing the information sharing. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. Without objection, all Members may insert opening statements in the record at this point. Are there any amendments?

Ms. JACKSON LEE. Mr. Chairman I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Mr. Chairman, there are two amendments.

Ms. JACKSON LEE. Do the 236 or the one that is at 2(b). I have two amendments. Thank you.

The CLERK. Amendment to H.R. 4598 offered by Ms. Jackson Lee of Texas, insert 2(b) of the bill, strike the period at the end and insert—

Chairman SENSENBRENNER. Without objection the amendment is considered as read and the gentlewoman from Texas is recognized for 5 minutes.

[The amendment follows:]

### **AMENDMENT TO H.R. 4598**

#### **OFFERED BY MS. JACKSON-LEE OF TEXAS**

In section 2(b) of the bill, strike the period at the end and insert “, with special emphasis on hard-to-reach urban and rural communities.”.

Ms. JACKSON LEE. I thank the gentleman very much. I have two amendments that I hope my colleagues will be able to join me on, that really just add to many of the discussions that all of us have had with respect to homeland security, and that is to ensure the outreach to the local communities and first responders. This simply says with special emphasis on hard to reach urban and rural communities just to make sure that those places that may not even have sufficient number of first responders and others in the area or the ability to receive information quickly, that we do have them on our mind and we make an effort to reach out to provide and dis-

seminate information to these particular entities. I would ask my colleagues to support this amendment.

Chairman SENSENBRENNER. Gentleman from Wisconsin, Mr. Green.

Mr. GREEN. Thank you Mr. Chairman this seems to be a reasonable amendment and I have no objection to it.

Chairman SENSENBRENNER. Question is on the agreeing to the amendment offered by the gentlewoman from Texas, Ms. Jackson Lee. Those in favor will say aye. Opposed no. The aye appears to have it. The aye has it and the amendment is agreed to.

Ms. JACKSON LEE. I have another amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 4598 offered by Ms. Jackson Lee of Texas, insert 3(e), 3(f) of the bill, strike—

Chairman SENSENBRENNER. Without objection the amendment is considered as read and the gentlewoman from Texas is recognized for 5 minutes.

[The amendment follows:]

**AMENDMENT TO H.R. 4598**

**OFFERED BY MS. JACKSON-LEE OF TEXAS** *Modified by U.C.*

In section 3(e)(3)(F) of the bill, strike "or economic security" and insert "economic, or health security".

*Public*

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. In the last couple of days listening to the President, listening to Governor Ridge, we have recognized the broadness of the issues dealing with homeland security. I very much appreciate the emphasis on cyber and economic security, but as well, I believe that one of the other major issues that we face, particularly with anthrax, is health security and a simple amendment just indicates employees of private sector entities that affect critical infrastructure, cyber, economic or health security. I would ask my colleagues to support that amendment.

Chairman SENSENBRENNER. The gentleman from Wisconsin.

Mr. GREEN. Would the gentlelady yield to a question?

Ms. JACKSON LEE. Yes.

Mr. GREEN. I am not sure I understand precisely what health security means. Could you define that term.

Ms. JACKSON LEE. For example, one of the issues we discussed in the immigration area is the border and the full coming across the border, for example, and to be able to ensure that it is not contaminated and that is one of the areas that would similarly fall under our jurisdiction. So health is just the broad-based health of the Nation.

Mr. GREEN. If the lady will further yield. Would the gentlelady be willing to work with us on the terminology of health security so we define that more specifically. Health security is a broad term. You made reference to food security in particular which I agree with you on, but what I would like to do is develop language that

clarifies that term a little bit so we understand precisely what is being asked of us.

Ms. JACKSON LEE. I would welcome the gentleman. Is it possible because it is just a minor amendment to add maybe public health or refine it so that would make you feel more comfortable.

Chairman SENSENBRENNER. Without objection the amendment is modified to include the word "public" before health so it is public health security. Hearing no objection, the amendment is so modified.

Mr. GREEN. Mr. Chairman?

Chairman SENSENBRENNER. Does the gentlelady yield back the balance of her time?

Ms. JACKSON LEE. I yield back.

Chairman SENSENBRENNER. Gentleman from Wisconsin.

Mr. GREEN. Thank you, Mr. Chairman. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. With that change in terminology, I have no objections to this amendment.

Ms. JACKSON LEE. If the gentleman would yield, thank you very much.

Chairman SENSENBRENNER. The question is agreeing to the second amendment as modified, those in favor will say aye. Opposed no. The ayes appear to have it, the ayes have it and the amendment is agreed to. Are there further amendments? The gentleman from Wisconsin.

Mr. GREEN. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Mr. Chairman, Mr. Green has two amendments.

Chairman SENSENBRENNER. There are two amendments. Which one does the gentleman from Wisconsin wish to offer first?

Mr. GREEN. The first one.

The CLERK. Amendment to H.R. 4598 offered by Mr. Green of Wisconsin, page 1, line 13, strike sensitive and insert—

Mr. GREEN. Unanimous consent that the amendment be considered as read.

[The amendment follows:]

**AMENDMENT TO H.R. 4598**  
**OFFERED BY MR. GREEN OF WISCONSIN**

**(Page & line nos. refer to Subcommittee Amendment in the  
Nature of a Substitute of June 4, 2002)**

Page 1, line 13, strike “sensitive” and insert “classified and sensitive but unclassified”.

Page 1, line 14, strike “national” and insert “homeland”.

Page 2, line 19, strike “the Federal intelligence agencies” and insert “Federal agencies”.

Page 2, line 20, strike “intelligence community” and insert “Federal government”.

Page 3, line 7, strike “sensitive and” and insert “classified and sensitive but”.

Page 4, line 3, strike “and”.

Page 4, after line 3, insert the following new paragraph:

- 1 (B) how to identify and safeguard homeland se-
- 2 curity information that is sensitive but unclassified;
- 3 and

Page 4, line 4, strike “(B)” and insert “(C)”.

Page 4, line 10, strike “each element” and all that follows through the period at the end of line 11 and insert “all agencies of the Federal government.”.

Page 4, line 14, strike “treatment” and insert “safeguarding”.

Page 4, line 20, strike “jointly” and all that follows through “shall,” on line 23 and insert “by the President, all appropriate agencies, including the intelligence community, shall,”.

Page 5, line 14, strike “and” and insert “or”.

Page 6, lines 4 through 5, strike “element of the Federal intelligence and law enforcement communities” and insert “appropriate Federal agency, as determined by the President,”.

Page 8, lines 5 through 6, strike “element of the intelligence community” and insert “affected Federal agency”.

Page 8, line 6, strike “element” and insert “agency”.

Page 8, line 7, strike “of such element”.

Page 8, line 8, strike “element” and insert “agency”.

Page 8, after line 8, insert the following new subsection:

1       (e) FEDERAL CONTROL OF INFORMATION.—Under  
2 procedures prescribed under this section, information ob-  
3 tained by a State or local government from a Federal  
4 agency under this section shall remain under the control  
5 of the Federal agency, and a State or local law authorizing  
6 or requiring such a government to disclose information  
7 shall not apply to such information.

Page 8, line 9, redesignate subsection (e) as subsection (f).

Page 8, line 12, strike “intelligence or law enforcement”.

Page 9, line 17, insert before the period at the end the following: “, as designated by the Federal government in procedures developed pursuant to this section”.

Page 9, line 22, strike “6 months” and insert “12 months”.

Chairman SENSENBRENNER. Without objection, so ordered. The gentleman is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. Mr. Chairman, I am offering an amendment to H.R. 4598 to make a few additional technical changes at the request of the Office of Homeland Security that will we believe further strengthen this bill. The amendment clarifies some of the findings of fact in section 2. This amendment would also modify section 3, sub (a) of the bill. Section 3, sub (a) directs the President to prescribe procedures to determine the extent to which information may be shared. This amendment would add that procedures should be established to identify and safeguard homeland security information that is sensitive, but not classified. Additionally, the amendment would add a new subparagraph to section 3, that requires any information disclosed to a State or local government from a Federal agency would remain under the control of the Federal Government and would not be subject to State disclosure laws. This would help to protect classified information as well as privacy. These changes are more technical in nature but they are needed for clarification. With that I ask my colleagues to support the amendment. I yield back my time.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Wisconsin, Mr. Green. Those in favor will say aye. Opposed no. The ayes appear to have it the ayes have it and the amendment is agreed to. The gentleman from Wisconsin have a second amendment?

Mr. GREEN. No.

Chairman SENSENBRENNER. Are there further amendments. The gentleman from North Carolina.

Mr. WATT. Mr. Chairman I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to—

Mr. WATT. Ask unanimous consent that the amendment be considered as read.

The CLERK.—section 3(b) of the bill, insert after paragraph 2—

Mr. WATT. Ask unanimous consent that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection the amendment is considered as read and the gentleman from North Carolina is recognized for 5 minutes.

[The amendment follows:]

**AMENDMENT TO H.R. 4598**  
**OFFERED BY MR. WATT OF NORTH CAROLINA**

In section 3(b) of the bill, insert after paragraph (2) the following new paragraph (and redesignate subsequent paragraphs accordingly):

- 1           (3) The procedures prescribed under paragraph  
2           (1) shall establish conditions on the use of informa-  
3           tion shared under paragraph (1)—
- 4                 (A) to limit the redissemination of such in-  
5                 formation;
- 6                 (B) to ensure that such information is  
7                 used solely for the purposes for which the infor-  
8                 mation was shared;
- 9                 (C) to ensure the accuracy, security, and  
10                confidentiality of such information;
- 11                (D) to protect the privacy rights of any in-  
12                dividuals who are subjects of such information;  
13                and
- 14                (E) to provide data integrity through the  
15                timely removal and destruction of obsolete or  
16                erroneous names and information.

Mr. WATT. Thank you, Mr. Chairman. This amendment was drafted by legislatively drafting, and for some reason, they didn't put the page number on it. We are dealing with page 5—I am sorry, page 6 after line 11, a new paragraph would be inserted that would be number 3 and the subsequent paragraphs there, they are



now numbered 3 and 4 and further would be renumbered. The bill sets up a process by which the President, under language on pages 4 and 5 of the bill, sets up some general guidelines for use of homeland security information, and then the director of the CIA and the Attorney General starting at the middle of page 5 and going over to page 6, give more detail to the general process that the President has prescribed for dealing with this information.

This amendment simply adds some additional things that the director of the CIA and Attorney General would be required to prescribe regulations about, including procedures to limit the re-dissemination of information that is being shared, procedures to ensure that such information is used solely for the purposes for which the information was shared, procedures to ensure the accuracy, security and confidentiality of such information, procedures to protect the privacy rights of any individuals who are subjects of such information and procedures to provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

Basically what we are trying to get the CIA and the Attorney General to do is to do some additional things in addition to those prescribed in the bill currently. We have vetted this language with Mr. Chambliss and Ms. Harman, the two lead sponsors of the—of this legislation. And I have an e-mail from Ms. Harman's staff which reads, thanks for sending this proposal over. I just chatted with Mr. Chambliss' staff on the bill and we both agree that the amendment looks good to us so I don't think we are doing anything that is inconsistent with what they intended to do or anything that is revolutionary.

We just think that there are some additional things that the CIA and the Attorney General, in furtherance of the guidelines that the President—general guidelines that the President gives them should be trying to assure and those things are set out in the amendment. So I encourage my colleagues to support the amendment and yield back the balance of my time.

Chairman SENSENBRENNER. Gentleman from Wisconsin.

Mr. GREEN. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. Mr. Chairman, I think we all agree with the ideas behind Mr. Watt's amendment. However, I must oppose it for a couple of reasons. First off, the gentleman refers to conversations that he has had with Ms. Harman, and I believe Mr. Chambliss. We have not heard from them on our side—the Subcommittee and the Committee has not heard from them. Secondly, much of what this amendment would seek to do, we already do. There are already penalties for disclosing protected information in the criminal code and in the Privacy Act. Additionally, there are penalties for disclosing grand jury information. To be honest, I think much of what Mr. Watt has in his amendment is redundant.

Mr. WATT. Would the gentleman yield on that point?

Mr. GREEN. If I could finish my statement. Instead, we have a substitute amendment. That amendment would amend section 4 of the bill to add a requirement that the Administration report on the existing privacy protections as well as any new ones which they

plan to implement, and I would hope you would be able to join us in that amendment. And with that, I would be happy to yield.

Mr. WATT. First of all, I appreciate the spirit in which the gentleman is approaching this, but I would say two things: Number one, this amendment doesn't do anything about penalties that are in the underlying law. We are not trying to prescribe any penalties. What we are trying to do is get the CIA and the Attorney General to set up some guidelines and requirements on the use of data so that you won't even be worrying about what the standards are to trigger penalties. Right now there are really no guidelines in place, and I thought that was the purpose of this bill. There are certainly no guidelines in place for the sharing of information.

Mr. GREEN. Reclaiming my time. We believe there are. There are procedures and guidelines in place not just penalties. The gentleman nudged me in the right direction. This doesn't just deal with penalties. It also does deal with procedures and guidelines for information sharing. And again, we believe that while the intentions are sound, the gentleman's amendment is redundant to what is already prescribed, and therefore unnecessary. And what we would hope is that the amendment that I would put forward would lay out precisely what the Administration would do in terms of privacy protection and also lay out for us any privacy protections they plan to implement. And with that I yield back.

Mr. WATT. Would the gentleman yield?

Mr. GREEN. I guess with the remaining time I have, I would like to go ahead and offer my amendment. So I have a Green number 2, Mr. Chairman, at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. SCOTT. Mr. Chairman, point of order.

Mr. WATT. Is this a substitute or—

Chairman SENSENBRENNER. The gentleman from Virginia has a point of order.

Mr. SCOTT. I was asking whether this was a substitute amendment or an amendment to the amendment?

Mr. GREEN. It is a substitute amendment.

Chairman SENSENBRENNER. It is a substitute.

Mr. WATT. I would like to reserve a point of order. The point of order is reserved and the clerk will report the amendment. The point of order is reserved by the gentleman from North Carolina.

The CLERK. Amendment offered by Mr. Green of Wisconsin to H.R. 4598. On page 10, line 5, insert after the word "entities," the report shall also include a description of the existing protections of privacy and any new protections the Administration plans to implement.

Chairman SENSENBRENNER. The gentlewoman from Wisconsin is recognized for 5 minutes and the point of order is reserved. The gentleman from Wisconsin.

[The amendment follows:]

**Amendment offered by Mr. Green of Wisconsin to H.R. 4598**

On Page 10, line 5, insert after the word "entities." "The report shall also include a description of the existing protections of privacy and any new protections the administration plans to implement."

Mr. GREEN. Thank you, Mr. Chairman. I will be very brief. As indicated previously, this substitute amendment would amend section 4 of the bill to add a requirement that the Administration report on the existing privacy protections as well as any new ones that they would plan to implement. This way we would identify very clearly what the guidelines and protections that are in place and what the Administration's plans are in going forward. Thank you, Mr. Chairman. I yield back my time.

Chairman SENSENBRENNER. The gentleman from North Carolina insist upon his point of order?

Mr. WATT. Yes, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman will state his point of order.

Mr. WATT. My point of order is that this amendment, while it may be good, has nothing to do with the underlying amendment. It deals with an entirely different subject matter in a different section of the bill, and therefore would have no germaneness to the underlying amendment for which it is being offered as a substitute. So I don't really have any objection to the gentleman's amendment, it just doesn't have anything to do with the subject matter of the underlying amendment.

Chairman SENSENBRENNER. Other Members wish to be heard on the point of order? Gentleman from Wisconsin.

Mr. GREEN. Thank you, Mr. Chairman. To speed this along, I will withdraw my amendment.

Chairman SENSENBRENNER. The amendment is withdrawn. The question is on agreeing to the amendment offered by the gentleman from North Carolina, Mr. Watt.

Mr. WATT. Mr. Chairman.

Chairman SENSENBRENNER. For what purpose does the gentleman from Virginia, Mr. Scott, seek recognition?

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. Gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, I rise in support of the amendment. What it does is outline some very important factors that were brought up in the hearing, how this information will be redisseminated, whether it can be used for purposes other than the purpose for which it was disseminated, how you ensure the accuracy, protecting privacy rights. All of these issues came up and I think it is important that the Administration outline how this information is going to be protected before it gets out. I mean, a penalty after the fact is a woefully inadequate remedy for information that can be extremely sensitive, personal, defamatory, and it is being let out in such a way that you have no way of defending yourself. Rumor

gets out that you have committed crimes, there is no trial, there is no nothing. Your integrity, your reputation has been sullied. And even if somebody gets punished, that doesn't help you. I would hope that we would adopt the amendment. The fact is that the Administration will draft the language based on this. Whatever they do will be workable. We just want to make sure that they address—doesn't tell them it has to be limited, just conditions—shall establish conditions on how you are going to disseminate the information. The Administration will decide, and I would hope we will give them the flexibility, but also require they address these issues. I yield back.

Chairman SENSENBRENNER. For what purpose does the gentleman from California, Mr. Gallegly, seek recognition?

Mr. GALLEGLY. Strike the last word, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GALLEGLY. At this point I would yield to the gentleman from Wisconsin, Mr. Green.

Mr. GREEN. I thank the gentleman for yielding. Just very briefly, we just had a communication from Mr. Chambliss' office and they indicated that Mr. Chambliss did not agree to this amendment or to this language. Just so the Committee Members are aware of that, Mr. Chambliss, the author of the bill, does not agree to this language and I thank the gentleman for yielding.

Mr. GALLEGLY. Yield back, Mr. Chairman. For what purpose does the gentlewoman from California wish to be recognized?

Ms. LOFGREN. Strike the last word.

Chairman SENSENBRENNER. The gentlewoman from California is recognized.

Ms. LOFGREN. Mr. Chairman, I as you know was very active in the drafting of the PATRIOT Act, and believe we must be vigorous in the fight against terrorism, but it seems to me that the amendment offered by Mr. Watt is very carefully crafted and very balanced, and would not at all interfere with our mutual objective of making a safer America, and I would yield to Mr. Watt for further comment.

Mr. WATT. Mr. Chairman, let me make a couple of points. Number one, the PATRIOT Act dealt with—if we were only dealing with what was in the PATRIOT Act, this whole bill wouldn't be necessary. This is a step beyond the PATRIOT Act designed to set up a process for sharing of information that is obtained under the PATRIOT Act with other law enforcement agencies and governmental bodies.

So to argue that there is something in the PATRIOT Act that deals with the issues that are raised in this amendment really misses the point because this bill doesn't deal with what is in the PATRIOT Act. It deals with setting up a regimen for sharing of information that is obtained under the PATRIOT Act.

Second, lest there be some misunderstanding, I am holding in my hand an e-mail from Ms. Harman's office now—and I am happy to submit that for the record, which I read.

Chairman SENSENBRENNER. Without objection.

Mr. WATT.—that I read to the Committee, which says that her office just chatted with Mr. Chambliss' staff and we both agree that this amendment looks good to us. Now I am—hell, I have no inter-

est in coming in here and misrepresenting to this Committee. I haven't talked to Mr. Chambliss. I assume his staff is talking to him. But I mean, to turn this into some kind of partisan divide here on an issue which is very straightforward and very balanced, seems to me to be just unjustified, and I yield back.

Mr. FRANK. Would the gentlewoman yield to me?

Ms. LOFGREN. I would yield.

Mr. FRANK. Whether or not there was information sharing among Mr. Chambliss and his staff is, of course, not within our jurisdiction. I was the sponsor of one of the amendments, and I am grateful to the Chairman for working closely with me for the amendment that was adopted to protect privacy in the PATRIOT Act and the Chairman's support was very helpful and that is to establish a means by which people about whom information is surveilled and improperly released could sue and get some damages. And I think that is helpful and I am glad it is there.

But I have to say as a sponsor of one of the amendments that was adopted dealing with privacy, it was never intended by me or would I argue that it filled the four corners. And it is totally not only consistent with the gentleman's amendment, but the gentleman's amendment fills gaps that it never was intended to fill. So I would hope that the amendment could be adopted.

Let me say, we have this dilemma. We all agree there should be more surveillance. The problem is the fear that some people have of misuse of the surveilled information. The gentleman's amendment is really trying to help law enforcement. What he is trying to do, I think, is it is clear to reassure people that we are capable of doing surveillance where we should, but of protecting people from having that misused.

And the fact that people would oppose this amendment really troubles me because I think it just gives aid and comfort to those who want to block the law enforcement powers because we then can't say look, we are doing everything we can to protect you. I do not understand what objection there could be to any single item on this list and I thank the gentlewoman for yielding.

Ms. LOFGREN. Thank you. And I would yield further to Mr. Watt.

Mr. WATT. I, for the life of me, don't understand what the opposition is about either. I just—you have got a regimen under the PATRIOT Act that governs the Federal Government. This bill is designed to govern the sharing of information with other agencies and what we are trying to do is put the same regimen or put some regimen into effect. The rules are going to be written by the CIA and the Attorney General, so I am not trying to write the rules. I am just saying you need some rules to prevent redissemination of this information, and to do the same things in the sharing of information that we do under the PATRIOT Act. This is the same language that is in the Border Security Act. I mean, we picked up the same language. So we are not trying to do anything sinister here.

Chairman SENSENBRENNER. The time of the gentlewoman has expired. There is more debate. We have two votes, one on the rule and one on the journal. The Committee will be in recess. It is the Chair's hope that we will be able to resume our sitting as soon as a working quorum appears after the two votes. The Committee stands in recess.

[Recess.]

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present. Pending at the time of the recess was an amendment offered by the gentleman from North Carolina, Mr. Watt. There appears to have been an agreement on language. For what purpose does the gentleman from Wisconsin Mr. Green seek recognition?

Mr. GREEN. Mr. Chairman, I would like to offer an amendment to the amendment.

Chairman SENSENBRENNER. The clerk will report the Green amendment to the Watt amendment.

The CLERK. Amendment offered by Mr. Green of Wisconsin to the amendment offered by Mr. Watt of North Carolina.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read and the gentleman from Wisconsin is recognized for 5 minutes on behalf of his amendment to the amendment.

[The amendment follows:]

**Amendment Offered by**

Mr. Green of Wisconsin

**To the Amendment Offered by**

Mr. Watt of North Carolina

Line 5, strike the semicolon at the end  
and all that follows through "(B)" on line 6.

Strike lines 7 and 8 and insert  
"not used for an unauthorized purpose;"

Line 9, strike "accuracy,  
security," and insert "security".

Line 11, strike "privacy"  
and insert "constitutional  
and statutory."

Mr. GREEN. Thank you, Mr. Chairman. Between the votes that we cast and this moment, I think a number of us had a chance to talk to the primary authors of this legislation and I think the general consensus was that there may be a legitimate reason for dissemination of information and therefore a legitimate reason for some of the concerns that Mr. Watt has raised. The purpose of the

language in the amendment that I offer to Mr. Watt's amendment is to assure that dissemination is not made for unauthorized purposes, which I believe captures the intent of what Mr. Watt is trying to do. The first change reflects this. I would strike the word "accuracy" in our amendment, because we are talking about threat information, and accuracy is not necessarily a term that can be guaranteed.

For instance, a bridge will be blown up in a major city, we may not know if the information is accurate. Finally, I would replace the word "privacy" with the term "constitutional." in any case, this appears to be language that the two main authors of the bill as well as Mr. Watt have all come to a consensus on. Although Mr. Chambliss and Ms. Harman have not seen the precise terminology, they have agreed to the concept and they will have a chance after this before we go to the floor. So I yield back my time.

Mr. WATT. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. First of all, I would like to express my thanks to Mr. Green and to Mr. Scott and Mr. Chambliss and Ms. Harman in absentia. We had good conversation on the floor about what everybody was trying to accomplish. I think we are all in agreement that something needs to be in this bill. Mr. Chambliss and Ms. Harman both were concerned that we don't create a bureaucracy that slows down the process of evaluation of information. I am fully in accord with that, and actually had agreed with them that I would withdraw the amendment. It turned out that we got to some language that we could put into the bill. And if they object to it later, then we can get their input into it and revise it some more. So I think does exactly what we want to do and does it with better language in fact now that I have read what has been proposed. So I am fully in accord with it and encourage my colleagues to support it.

Chairman SENSENBRENNER. The question is on the Green amendment to the Watt amendment. Those in favor will say aye. Opposed no. The ayes appear to have it, the ayes have it. The amendment to the amendment is agreed to. The question now is on the Watt amendment as amended. Those in favor will say aye opposed no. The ayes appear to have it the ayes have it and the amendment as amended is agreed to. Are there further amendments. Gentleman from New York, Mr. Weiner?

Mr. WEINER. Mr. Chairman, I have amendment 36 at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 4598 offered by Mr. Weiner. In section 4—

Mr. WEINER. Request unanimous consent that the amendment be considered as read, Mr. Chairman.

Chairman SENSENBRENNER. Without objection the amendment is considered as read. The gentleman from New York is recognized for 5 minutes.

[The amendment follows:]

**AMENDMENT TO H.R. 4598**  
**OFFERED BY MR. WEINER**

In sections 4 and 5, strike “this Act” each place such term appears and insert “section 3”.

At the end of the bill, add the following new sections:

1 **SEC. 6. AUTHORITY TO SHARE GRAND JURY INFORMATION.**

2 Rule 6(e) of the Federal Rules of Criminal Procedure  
3 is amended—

4 (1) in paragraph (2), by inserting “, or of  
5 guidelines jointly issued by the Attorney General and  
6 Director of Central Intelligence pursuant to Rule 6,”  
7 after “Rule 6”;

8 (2) in paragraph (3)—

9 (A) in subparagraph (A)(ii), by inserting  
10 “or of a foreign government” after “(including  
11 personnel of a state or subdivision of a state”;

12 (B) in subparagraph (C)(i)—

13 (i) in subclause (I), by inserting be-  
14 fore the semicolon the following: “or, upon  
15 a request by an attorney for the govern-  
16 ment, when sought by a foreign court or  
17 prosecutor for use in an official criminal  
18 investigation”;



- 1 (ii) in subclause (IV)—
- 2 (I) by inserting “or foreign”
- 3 after “may disclose a violation of
- 4 State”;
- 5 (II) by inserting “or of a foreign
- 6 government” after “to an appropriate
- 7 official of a State or subdivision of a
- 8 State”; and
- 9 (III) by striking “or” at the end;
- 10 (iii) by striking the period at the end
- 11 of subclause (V) and inserting “; or”; and
- 12 (iv) by adding at the end the fol-
- 13 lowing:
- 14 “(VI) when matters involve a threat
- 15 of actual or potential attack or other grave
- 16 hostile acts of a foreign power or an agent
- 17 of a foreign power, domestic or inter-
- 18 national sabotage, domestic or inter-
- 19 national terrorism, or clandestine intel-
- 20 ligence gathering activities by an intel-
- 21 ligence service or network of a foreign
- 22 power or by an agent of a foreign power,
- 23 within the United States or elsewhere, to
- 24 any appropriate federal, state, local, or for-
- 25 eign government official for the purpose of

1 preventing or responding to such a  
2 threat.”;

3 (C) in subparagraph (C)(iii)—

4 (i) by striking “Federal”;

5 (ii) by inserting “or clause (i)(VI)”  
6 after “clause (i)(V)”;

7 (iii) by adding at the end the fol-  
8 lowing: “Any state, local, or foreign official  
9 who receives information pursuant to  
10 clause (i)(VI) shall use that information  
11 only consistent with such guidelines as the  
12 Attorney General and Director of Central  
13 Intelligence shall jointly issue.”.

14 **SEC. 7. AUTHORITY TO SHARE ELECTRONIC, WIRE, AND**  
15 **ORAL INTERCEPTION INFORMATION.**

16 Section 2517 of title 18, United States Code, is  
17 amended by adding at the end the following:

18 “(7) Any investigative or law enforcement officer, or  
19 attorney for the government, who by any means author-  
20 ized by this chapter, has obtained knowledge of the con-  
21 tents of any wire, oral, or electronic communication, or  
22 evidence derived therefrom, may disclose such contents or  
23 derivative evidence to a foreign investigative or law en-  
24 forcement officer to the extent that such disclosure is ap-  
25 propriate to the proper performance of the official duties

1 of the officer making or receiving the disclosure, and for-  
2 eign investigative or law enforcement officers may use or  
3 disclose such contents or derivative evidence to the extent  
4 such use or disclosure is appropriate to the proper per-  
5 formance of their official duties.

6       “(8) Any investigative or law enforcement officer, or  
7 attorney for the government, who by any means author-  
8 ized by this chapter, has obtained knowledge of the con-  
9 tents of any wire, oral, or electronic communication, or  
10 evidence derived therefrom, may disclose such contents or  
11 derivative evidence to any appropriate Federal, State,  
12 local, or foreign government official to the extent that such  
13 contents or derivative evidence reveals a threat of actual  
14 or potential attack or other grave hostile acts of a foreign  
15 power or an agent of a foreign power, domestic or inter-  
16 national sabotage, domestic or international terrorism, or  
17 clandestine intelligence gathering activities by an intel-  
18 ligence service or network of a foreign power or by an  
19 agent of a foreign power, within the United States or else-  
20 where, for the purpose of preventing or responding to such  
21 a threat. Any official who receives information pursuant  
22 to this provision may use that information only as nec-  
23 essary in the conduct of that person’s official duties sub-  
24 ject to any limitations on the unauthorized disclosure of  
25 such information, and any State, local, or foreign official

1 who receives information pursuant to this provision may  
2 use that information only consistent with such guidelines  
3 as the Attorney General and Director of Central Intel-  
4 ligence shall jointly issue.”.

5 **SEC. 8. FOREIGN INTELLIGENCE INFORMATION.**

6 (a) DISSEMINATION AUTHORIZED.—Section  
7 203(d)(1) of the Uniting and Strengthening America by  
8 Providing Appropriate Tools Required to Intercept and  
9 Obstruct Terrorism Act (USA PATRIOT ACT) of 2001  
10 (Public Law 107–56; 50 U.S.C. 403–5d) is amended—

11 (1) by striking “Notwithstanding any other pro-  
12 vision of law, it” and inserting “It”; and

13 (2) by adding at the end the following: “It shall  
14 be lawful for information revealing a threat of actual  
15 or potential attack or other grave hostile acts of a  
16 foreign power or an agent of a foreign power, do-  
17 mestic or international sabotage, domestic or inter-  
18 national terrorism, or clandestine intelligence gath-  
19 ering activities by an intelligence service or network  
20 of a foreign power or by an agent of a foreign  
21 power, within the United States or elsewhere, ob-  
22 tained as part of a criminal investigation to be dis-  
23 closed to any appropriate Federal, State, local, or  
24 foreign government official for the purpose of pre-  
25 venting or responding to such a threat. Any official

1 who receives information pursuant to this provision  
2 may use that information only as necessary in the  
3 conduct of that person’s official duties subject to any  
4 limitations on the unauthorized disclosure of such  
5 information, and any State, local, or foreign official  
6 who receives information pursuant to this provision  
7 may use that information only consistent with such  
8 guidelines as the Attorney General and Director of  
9 Central Intelligence shall jointly issue.”.

10 (b) CONFORMING AMENDMENTS.—Section 203(e) of  
11 that Act is amended—

12 (1) by striking “section 2517(6)” and inserting  
13 “paragraphs (6) and (8) of section 2517 of title 18,  
14 United States Code,”; and

15 (2) by inserting “and (VI)” after “Rule  
16 6(e)(3)(C)(i)(V)”.

17 **SEC. 9. INFORMATION ACQUIRED FROM AN ELECTRONIC**  
18 **SURVEILLANCE.**

19 Section 160(k)(1) of the Foreign Intelligence Surveil-  
20 lance Act of 1978 (50 U.S.C. 1806) is amended by insert-  
21 ing after “law enforcement officers” the following: “or law  
22 enforcement personnel of a State or political subdivision  
23 of a State (including the chief executive officer of that  
24 State or political subdivision who has the authority to ap-

1 point or direct the chief law enforcement officer of that  
2 State or political subdivision)”.  
3

4 **SEC. 10. INFORMATION ACQUIRED FROM A PHYSICAL  
5 SEARCH.**

6 Section 305(k)(1) of the Foreign Intelligence Surveil-  
7 lance Act of 1978 (50 U.S.C. 1825) is amended by insert-  
8 ing after “law enforcement officers” the following: “or law  
9 enforcement personnel of a State or political subdivision  
10 of a State (including the chief executive officer of that  
11 State or political subdivision who has the authority to ap-  
12 point or direct the chief law enforcement officer of that  
State or political subdivision)”.

Mr. WEINER. Thank you, Mr. Chairman. Mr. Chairman, last year when anthrax was discovered at the NBC studios in New York, we discovered quite accidentally that there is a dramatic gap in the disclosure and information sharing laws that prohibit Federal agencies from sharing information that they get, tips about terrorist attacks and or crimes that are pending if their information is gathered by the Federal Government via a wiretap or grand jury testimony.

It wasn't until days after that the anthrax was discovered in New York that authorities in New York were notified of its presence. Right now, if there is a wiretap surveillance or grand jury testimony that reveals there will be a terrorist threat in the New York City subway system, the law not only does not require that that information be shared with officials in New York City or any other city, but it prohibits them from doing so if it comes from these two sources.

My amendment seeks to amend that, to close that loophole. It does not require the sharing of information. It simply calls upon the Attorney General to come up with appropriate confidentiality guidelines and then permits the sharing of that information if it is deemed appropriate. This has been an amendment that was drafted with bipartisan consideration. It is a bipartisan effort in the Senate.

Mr. Conyers, Chairman Smith, who I thank in absentia for his support, and also the Bush administration has reviewed the amendment and has expressed support for it. There is obviously much greater need for information to go back and forth between different levels of government. I don't think every piece of information should be shared with local authorities. But when it is appropriate, we certainly should remove the barriers that exist that make it illegal for an agency like the CIA or the FBI or the Justice Department to share information with cities like mine and the ones we all represent.

Frankly if that scenario that I described for you, if it were grand jury testimony or someone said there was going to be a dirty bomb detonated in the subways of New York City, frankly, it would have to be the Federal Bureau of Investigation officers only that went and responded to that threat and took up posts in the New York City subway system where, frankly, I am not sure they would be safe.

So I think this legislation allows New York City agencies and police departments as well as any other local law enforcement agency could be notified as a result of this. And I yield back the balance of my time.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF MICHIGAN

I am happy to support this amendment which would provide for information sharing between federal and state and local authorities.

I believe that providing state and local officials with this type of information will help us thwart future acts of terrorism. State and local personnel are the most likely individuals to interdict terrorists—as demonstrated by the detainment of Ahmed Ressam on the Canadian border and the routine traffic stopping of one of the 9/11 terrorists by a Maryland state trooper. As we have learned in the last several weeks, if we had shared more information before the attacks, we may have been able to more aggressively intervene against the terrorist plot.

The amendment will also help state and local officials prepare an appropriate response to future attacks. Every act of terrorism is local—occurring in a neighborhood, city or state near you or someone you know. Often times, officials at the state and local level are first-line responders to these attacks.

Having said this, I must admit that the amendment is not perfect. I would prefer that it be limited to possible acts of terrorism. The amendment applies to some of the most sensitive information at our government's disposal, including wiretap information, grand jury information, and foreign intelligence information. If we are going to take the extraordinary step of sharing this information, it should be limited to the threat of terrorism.

Second, I would hope that we could provide some safeguards so that once the information is disclosed there are security measures in place to guard against improper disclosure and to punish such disclosure. The last thing we would want is for the newly shared information to be used to harm an innocent person's reputation.

It is my hope that these concerns can be addressed as we move this legislation to the House floor and in conference with the Senate. But I believe this amendment offers us a good starting point to improve our nation's defenses against terrorism.

Chairman SENSENBRENNER. Gentleman from Wisconsin, Mr. Green.

Mr. GREEN. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. Mr. Chairman, on behalf of Chairman Smith, let me say that I am pleased that Mr. Weiner offered his amendment. The Weiner amendment does not mandate the sharing of information, but rather removes the barriers to doing so. The discretion will still remain with the Federal entity which possesses the information. The amendment also includes the direction to the Attorney General and the CIA director to promulgate appropriate confidentiality guidelines for the use of such information with which State and local officials must then comply.

This is, as Mr. Weiner has already stated, a bipartisan proposal whose leading proponents include former Mayor Rudolph Giuliani, Senator Orrin Hatch, Congressman Vito Fossella. I am also pleased that Mr. Weiner's amendment reflects the suggestions of the Justice Department, which has, in turn, endorsed this proposal. Therefore I urge my colleagues to support this amendment.

Chairman SENSENBRENNER. The question is—who seeks recognition. Gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. DELAHUNT. I won't take the 5 minutes. I don't have a problem with the sharing of information developed pursuant to a court authorized wiretap because I am sure many of these investigations are probably done pursuant to the concept of a task force, where you have local and State agencies involved. And it is clear that this amendment is going to pass. I just wanted to express my profound concern about the expansion of—that this amendment does in terms of the sharing of information. We broke, really, a long-term precedent back in the aftermath of 9/11 when we authorized the sharing of grand jury information to very well-defined, enumerated Federal investigatory officials. Now we are expanding it even further or allowing that expansion. I think it is something that could easily portend tremendous abuse, and I just want to say that for the record, and I yield back.



Mr. WEINER. I would like to point out that the language that Mr. Frank and the Chairman included about increasing the civil liability for anyone leaking information to an inappropriate source would still apply to this information as well. I know that might not provide comfort in the context of this broader issue.

Mr. DELAHUNT. Reclaiming my time, I understand that the Frank amendment to the Patriot Act I think was important, but this is, let's be very, very clear, a dramatic departure from American criminal jurisprudence. I think it is something that is a prescription for abuse, and I just simply want to express myself—and I know that the amendment is well intended. Let me say this:

The disclosure of grand jury information—if we are at that point, I dare say we are in real trouble. Because I would suspect that, prior to testimony in front of a grand jury, the information that the gentleman is seeking via amendment would be made—has already been made available to local and State officials. I just think that what we are doing here is we are diminishing the traditional concept of what a grand jury is about in our jurisprudence. I think it is dangerous.

I yield to Mr. Scott.

Mr. SCOTT. Thank the gentleman for yielding.

I would like to say to the gentleman that I share some of the same concerns and would hope, as the bill goes forward, that we make sure that the information that is being disseminated is actually information on terrorism and not just run-of-the-mill information. It is important information. As the gentleman has suggested, the information that can come out of a grand jury or some of the other homeland security information can be good rumor or innuendo.

We have regulations on grand juries, we have regulations on classified information, we have regulations on privacy, but this bill includes homeland security information which is just about anything. So long as it is restricted to the narrow range of terrorism and that is what it is being used for, then that may override the privacy concerns. We need to make sure that it doesn't become a run-of-the-mill information sharing, where everybody in town gets to know what the local rumor is and the person subject to the rumor has no opportunity to clarify the record, say he wasn't the right one, they confused me with somebody else or otherwise totally innocent of the rumor.

I yield back. Thank you very much.

Chairman SENSENBRENNER. The time belongs to the gentleman from Massachusetts.

Mr. DELAHUNT. Yield back.

Chairman SENSENBRENNER. For what purpose does is the gentleman from California, Mr. Schiff, seek recognition?

Mr. SCHIFF. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCHIFF. I really want to add my voice to that of the gentleman from Massachusetts. Having been a Federal prosecutor for 6 years, this strikes me, too, as very unprecedented treatment of grand jury material. I am going to support the amendment. These are extraordinary conditions that we are in. They call for extraordinary steps to protect the country, but I don't think we should do

this lightly or not fully cognizant of the significant departure that we are making today.

Also, I think we need to be aware of the ongoing responsibility that we are going to have as a body to continue to monitor how this affects the grand jury process, how it affects witnesses' willingness to testify candidly before the grand jury, how it affects expectations of the confidentiality of what is said in the grand jury, a whole host of related issues. So I think our work with this bill is really only beginning and that we are going to have a very important, ongoing responsibility.

It is surprising, I think, to many lay people how little Government is able to share with itself and frequently how it is prohibited from sharing with itself. It seems in some respects institutionally we preclude the left hand from knowing what the right hand is doing.

Chairman SENSENBRENNER. Would the gentleman yield?

I would like to inform the gentleman and the Members we are in the process of doing some comprehensive bipartisan oversight on the Patriot Act, and the majority and minority staff has been working assiduously to draft a letter which I am sure the Attorney General is going to love to receive. So everybody in the room is, you know, on notice that that letter is coming and we are going to continue working on that.

Mr. SCHIFF. I think what has been very encouraging is that it has been truly bipartisan and sustained and simply can't stop today. I want to thank my colleague from Massachusetts for raising this issue.

Mr. DELAHUNT. I want to congratulate the Chair in terms of exercising that oversight. I applaud him and think it is vital. But I think it is important, also, to note that Mr. Schiff made an excellent point. Responsible defense counsel who have witnesses subpoenaed before local and State grand juries are going to—if this act, if this amendment should pass and something similar becomes law, it is going to take a different look at whether that particular witness should testify and under what circumstances should testify.

I mean, there are just implications here that are difficult to describe. But, clearly, competent defense counsel will be looking at this particular statute with maybe motives to slow down or even impair or impede a criminal investigation, unrelated to terrorist activity.

Mr. WEINER. Just so we understand, Federal law enforcement officials will have access to the information from the grand jury. They already will. So the idea that there is going to be some reluctance to reveal information about future crimes, well, that probably—that chilling effect probably exists today. The only question is, if you get information, what you do with it and with whom do you share it? And I don't think this is going to be broadly shared. We were very careful to draw into the bill that it is incumbent on the Attorney General to write regulations for under what circumstances the information is going to be shared with local law enforcement.

And we must not forget that another element to this is wire tap information as well. I mean, I hear your concern, and I agree with it, and we tried to be sensitive to that issue here, but we should

not think that presently the information doesn't get in the hands of—

Mr. SCHIFF. Reclaim the balance of my time.

I do think, though, that we are talking about a market expansion of the dissemination of this information. Indeed, that is the purpose of this bill; and I don't think it should be underestimated. I think there is a certain level of confidence within the Federal law enforcement world about the confidentiality of information, which is perfect, but it is a certain expectation. Once you go beyond that and open it up to local law enforcement, local agencies that might be involved in emergency preparedness, then there is a lot less grip on the information.

So I have, for example, in the past resisted allowing the induction of attorneys in the grand jury because this changes the character of those proceedings. I think we have to be very careful here.

Chairman SENSENBRENNER. The time of the gentleman has expired. For what purpose does the gentleman from North Carolina, Mr. Watt, seek recognition?

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. I won't take 5 minutes, and I don't want to go back and beat a dead horse that we apparently worked very hard to—but I think this points up even more the importance of the amendment that we just adopted.

Because while there was a regimen for protecting this information under the Patriot Act in the Federal Government's bosom, what we are trying to do is set up a regimen for sharing of information with other law enforcement and Government agencies; and when you do that, you have got to have some pretty rigorous rules of the road. And while we didn't write those rules into this bill or with the amendment that we just passed, we did write in a requirement that the Attorney General and the CIA—director of the CIA adopts a set of rules that will govern the dissemination of this information.

So I just wanted to point that out. It doesn't address still the concerns that Mr. Delahunt and Mr. Schiff are raising, concerns which I very much share, but at least it requires them to be cognizant of it and to set up and adopt some rules of the road before they go forward.

Chairman SENSENBRENNER. The gentleman yield back?

Mr. WATT. Yes, I do.

Chairman SENSENBRENNER. For what purpose does the gentleman from Texas, Ms. Jackson Lee, seek recognition?

Ms. JACKSON LEE. Strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. As I review this amendment, I am clear on its intent. I am not clear on its practicality or its impact. It is certainly clear that many of us expressed our concerns over the last couple of weeks on the basic question of information sharing to which the base bill applies, particularly as we listen to some of the alleged egregious inertia and inaction with respect to information that the FBI received and the CIA and the question of whether or not that information was exchanged.

I think I add to what I perceive to hear from some of my colleagues a concern about the piercing of the grand jury system which is a sacred system which had been set up, in essence, by the early founders of this Nation in post common law to protect the sanctity of information gathering to determine guilt or innocence.

We always discuss with a high degree of sensitivity grand jury testimony. Individuals go into grand juries without counsel. It is there that there is a determination of whether to proceed or not to proceed.

Therefore, I am unready with this particular amendment as to its narrowness, whether or not it is geared only to terrorism, whether in fact we will be relying upon the other body to address the question. And the importance of information sharing has its place, even as I begin to wonder about the terminology “enemy combatant” and someone detained since May 8th without counsel or being charged.

I do realize we are looking at a new face, but the question is whether the face can be—to hold someone since May 8th when I, on the newspaper facts, perceive that there is probable cause and the individual could have counsel or could be held in some other circumstances.

This brings to bear the similar type of concerns as to whether or not we are piercing grand jury testimony even as we allow the interaction of local government. I see references to the U.S. Patriot Act, and this may require further study, but I did not want this amendment to proceed without expressing my degree of un readiness.

I guess the overall concern, Mr. Chairman, that I think we will have to confront in the weeks and months to come as we move the homeland security department along is that we are going to do ourselves, this country, a great disservice and great damage if we are willy-nilly and in fear of not being steady on our oversight of civil liberties and due process, the protection of individual rights. I think we can be safe and we can fight terrorism with those particular parameters in place.

Again, my view of the grand jury testimony is sacred, is all I can see out of this amendment—and I am sure I will see more, reading this more clearly—is a piercing of the grand jury testimony on suggestion that that will help—

Mr. WEINER. Would the gentlewoman yield?

Ms. JACKSON LEE.—local law enforcement.

I will be happy to yield.

Mr. WEINER. I want to point out to the Committee, the PATRIOT Act did this piercing already, inasmuch as it did—if you consider it to be piercing for the FBI to be able to talk to CIA about grand jury, we did that in the PATRIOT Act. If you consider it to be piercing that the INS can talk to the FBI, we did that in the PATRIOT Act. The only thing we are doing here with this is we are saying, taking that same sharing information after we ensure that the information is only necessary to conduct official duties, the confidentiality steps are taken. We understand that this doesn’t mandate the shaving of information. We simply remove a barrier to—

Ms. JACKSON LEE. Reclaiming my time. I am reclaiming only because I don’t want it to be finished.

Let me make it clear that the final PATRIOT Act I did not vote for. So I remain unready with respect to the impact, ultimately. I do believe in information sharing and intelligence sharing. I am concerned with its expansiveness.

I think Mr. Schiff made a comment—he did say expanding the marketplace. That is the concern that I have.

Again, I think the merits of this amendment are legitimate. I question its practicality, and the ultimate impact of it as relates to the issues that I am concerned about is the sanctity of the grand jury testimony. I don't know how the PATRIOT Act is going to ultimately play out in the long range. So I hope we will be cautious as we pass this, and I hope the other body—

Chairman SENSENBRENNER. The gentlelady's time has expired.

The question is on the amendment offered by the gentleman from New York, Mr. Weiner. Those in favor will say aye. Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Are there further amendments?

If not, the question is on the amendment in the nature of the substitute as amended. Those in favor will say aye. Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment is in the nature of a substitute as amended is agreed to.

The Chair notes the presence of a reporting quorum.

The question is on reporting the bill H.R. 4598 favorably. Those in favor will say aye. Opposed, no.

The ayes appear to have it. The ayes have it, and the motion to report favorably is agreed to.

Without objection, the bill will be reported in the form of a single amendment in the nature of a substitute, reflecting amendments that were agreed to today.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days as provided by House rules in which to submit additional dissenting, supplemental or minority views.