

# Calendar No. 701

106<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2089

[Report No. 106–352]

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

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2000

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

MAY 23, 2000

Reported by Mr. HATCH, with an amendment

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

MAY 23, 2000

Referred to the Select Committee on Intelligence, pursuant to section 3(b) of Senate Resolution 400, 94th Congress, for a period not to exceed 30 days of session

JULY 20, 2000

Reported by Mr. SHELBY, with amendments

[Omit the part in boldface brackets and insert the part in bold roman]

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# A BILL

To amend the Foreign Intelligence Surveillance Act of 1978 to modify procedures relating to orders for surveillance

and searches for foreign intelligence purposes, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Counterintelligence Re-  
5 form Act of 2000”.

6 **SEC. 2. CIRCUMSTANCES ESTABLISHING PROBABLE CAUSE**  
7 **FOR ISSUANCE OF ORDERS FOR ELECTRONIC**  
8 **SURVEILLANCE UNDER FOREIGN INTEL-**  
9 **LIGENCE SURVEILLANCE ACT OF 1978.**

10 (a) PAST ACTIVITIES.—Section 105 of the Foreign  
11 Intelligence Surveillance Act of 1978 (50 U.S.C. 1805) is  
12 amended—

13 (1) by redesignating subsections (b), (c), (d),  
14 (e), (f), and (g) as subsections (c), (d), (e), (f), (g),  
15 and (h), respectively; and

16 (2) by inserting after subsection (a) the fol-  
17 lowing new subsection (b):

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

23 (b) CONFORMING AMENDMENT.—Subsection (d) of  
24 that section, as redesignated by subsection (a)(1) of this

1 section, is amended by striking “subsection (b)(1)” and  
 2 inserting “subsection (c)(1)”.

3 **SEC. 3. ORDERS FOR ELECTRONIC SURVEILLANCE UNDER**  
 4 **FOREIGN INTELLIGENCE SURVEILLANCE ACT**  
 5 **OF 1978.**

6 (a) ~~DESCRIPTION OF INTELLIGENCE OR LAW-EN-~~  
 7 ~~FORCEMENT ACTIVITIES OF CERTAIN TARGETS.~~—Section  
 8 104 of the Foreign Intelligence Surveillance Act of 1978  
 9 (50 U.S.C. 1804) is amended—

10 (1) in subsection (a)—

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

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

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

19 “(A) any current relationship between the  
 20 target and any Federal intelligence, intelligence-  
 21 related, or law enforcement activity; and

22 “(B) any prior relationship between the  
 23 target and any Federal intelligence, intelligence-  
 24 related, or law enforcement activity that is rel-

1           evant to a determination of probable cause  
2           under section 105;” and

3           ~~(2)~~ in subsection (b), by striking “(8), and  
4           (11)” and inserting “(9), and (12)”.

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

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

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

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

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

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

15 **SEC. 4. ORDERS FOR PHYSICAL SEARCHES UNDER FOR-**  
 16 **EIGN INTELLIGENCE SURVEILLANCE ACT OF**  
 17 **1978.**

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

22               (1) by redesignating paragraphs (8) and (9) as  
 23 paragraphs (9) and (10), respectively; and

24               (2) by inserting after paragraph (7) the fol-  
 25 lowing new paragraph (8):

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

4                   “(A) any current relationship between the  
5           target and any Federal intelligence, intelligence-  
6           related, or law enforcement activity; and

7                   “(B) any prior relationship between the  
8           target and any Federal intelligence, intelligence-  
9           related, or law enforcement activity that is rel-  
10          evant to a determination of probable cause  
11          under section 304;”.

12          (b) ~~ADDITIONAL REQUIREMENTS REGARDING CER-~~  
13 ~~TAIN APPLICATIONS.~~—That section is further amended by  
14 adding at the end the following new subsection:

15          “(d)(1)(A) Upon written request of the Director of  
16 the Federal Bureau of Investigation, the Secretary of De-  
17 fense, the Secretary of State, or the Director of Central  
18 Intelligence, the Attorney General shall personally review  
19 under subsection (a) an application under that subsection  
20 for a target described in section 101(b)(2).

21          “(B) An official referred to in subparagraph (A) may  
22 not delegate the authority to make a request referred to  
23 in that subparagraph.

24          “(2)(A) If as a result of a request under paragraph  
25 (1) the Attorney General determines not to approve an

1 application under the second sentence of subsection (a) for  
2 purposes of making the application under this section, the  
3 Attorney General shall provide written notice of the deter-  
4 mination to the official making the request for the review  
5 of the application under that paragraph. The Attorney  
6 General may not delegate the responsibility set forth in  
7 the preceding sentence.

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

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

1 **SEC. 5. DISCLOSURE FOR LAW ENFORCEMENT PURPOSES**  
 2 **OF INFORMATION ACQUIRED UNDER FOR-**  
 3 **EIGN INTELLIGENCE SURVEILLANCE ACT OF**  
 4 **1978.**

5 (a) ~~REGULATIONS RELATING TO DISCLOSURE.~~—Not  
 6 later than 180 days after the date of the enactment of  
 7 this Act, the Attorney General shall prescribe in regula-  
 8 tions the following:

9 (1) The circumstances under which information  
 10 acquired pursuant to title I of the Foreign Intel-  
 11 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et  
 12 seq.) shall be disclosed for law enforcement purposes  
 13 under section 106(b) of that Act (50 U.S.C.  
 14 1806(b)).

15 (2) The circumstances under which information  
 16 acquired pursuant to title III of the Foreign Intel-  
 17 ligence Surveillance Act of 1978 (50 U.S.C. 1821 et  
 18 seq.) shall be disclosed for law enforcement purposes  
 19 under section 305(e) of that Act (50 U.S.C.  
 20 1825(e)).

21 (3) The circumstances under which information  
 22 acquired pursuant to title IV of the Foreign Intel-  
 23 ligence Surveillance Act of 1978 (50 U.S.C. 1841 et  
 24 seq.) shall be disclosed for law enforcement purposes  
 25 under section 405(b) of that Act (50 U.S.C.  
 26 1845(b)).



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

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

7 (a) TREATMENT OF CERTAIN SUBJECTS OF INVES-  
 8 TIGATION.—Subsection (c) of section 811 of the Intel-  
 9 ligence Authorization Act for Fiscal Year 1995 (50 U.S.C.  
 10 402a) is amended—

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

13 (2) by redesignating paragraphs (3), (4), (5),  
 14 and (6) as paragraphs (5), (6), (7), and (9), respec-  
 15 tively;

16 (3) by inserting after paragraph (2) the fol-  
 17 lowing new paragraph (3):

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

24 “(B) Not later than 30 days after receiving written  
 25 notification under subparagraph (A), the head of the de-

1 department or agency so notified shall submit to the Direc-  
 2 tor a plan to minimize the unauthorized disclosure of clas-  
 3 sified information by the subject concerned.

4 “(C) A plan under this paragraph may be modified  
 5 if the Director and the head of the department or agency  
 6 concerned jointly determine that the modification is war-  
 7 ranted. A modification under this subparagraph may in-  
 8 clude a decision that the subject of an investigation no  
 9 longer be left in place for investigative purposes.

10 “(D) A disagreement regarding an element of a plan  
 11 under subparagraph (A), including a proposed modifica-  
 12 tion of the plan under subparagraph (C), shall be resolved  
 13 by the Board.”; and

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

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

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

22 (2) by inserting “in a timely manner” after  
 23 “are consulted”.

24 (c) INTERFERENCE WITH FULL FIELD ESPIONAGE  
 25 INVESTIGATIONS.—That subsection is further amended by

1 inserting after paragraph (3), as amended by subsection  
 2 (a) of this section, the following new paragraph (4):

3       “(4)(A) The Federal Bureau of Investigation shall  
 4 notify appropriate officials within the executive branch, in-  
 5 cluding the head of the department or agency concerned,  
 6 of the commencement of a full field espionage investiga-  
 7 tion with respect to an employee within the executive  
 8 branch.

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

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

18       (d) COORDINATION OF INFORMATION ON ESPIONAGE  
 19 INVESTIGATIONS.—That subsection is further amended by  
 20 inserting after paragraph (7), as redesignated by sub-  
 21 section (a)(2) of this section, the following new paragraph  
 22 (8):

23       “(8) The Director of the Federal Bureau of Inves-  
 24 tigation shall be responsible for coordinating all informa-  
 25 tion relating to espionage investigations, including infor-

1 mation on any prior or current relationship between the  
 2 subjects of such investigations and any Federal intel-  
 3 ligence or intelligence-related activity, within the intel-  
 4 ligence community and within and among Federal law en-  
 5 forcement agencies.”.

6 (c) ~~REQUESTS FOR TECHNICAL ASSISTANCE.~~—That  
 7 section is further amended by adding at the end the fol-  
 8 lowing new subsection (d):

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

16 **SEC. 7. SEVERABILITY.**

17 If any provision of this Act (including an amendment  
 18 made by this Act), or the application thereof, to any per-  
 19 son or circumstance, is held invalid, the remainder of this  
 20 Act (including the amendments made by this Act), and  
 21 the application thereof, to other persons or circumstances  
 22 shall not be affected thereby.

23 **SECTION 1. SHORT TITLE.**

24 *This Act may be cited as the “Counterintelligence Re-*  
 25 *form Act of 2000”.*

1 **SEC. 2. ORDERS FOR ELECTRONIC SURVEILLANCE UNDER**  
 2 **THE FOREIGN INTELLIGENCE SURVEILLANCE**  
 3 **ACT OF 1978.**

4 **[(a) DESCRIPTION OF INTELLIGENCE OR LAW-EN-**  
 5 **FORCEMENT ACTIVITIES OF CERTAIN TARGETS.—***Section*  
 6 *104 of the Foreign Intelligence Surveillance Act of 1978 (50*  
 7 *U.S.C. 1804) is amended—*

8 **[(1) in subsection (a)—**

9 **[(A) by redesignating paragraphs (8), (9),**  
 10 **(10), and (11) as paragraphs (9), (10), (11), and**  
 11 **(12), respectively; and**

12 **[(B) by inserting after paragraph (7) the**  
 13 **following new paragraph (8):**

14 **[(“8) in the case of an application covering a**  
 15 **target described in section 101(b)(2), a detailed de-**  
 16 **scription of—**

17 **[(“A) any current relationship between the**  
 18 **target and any Federal intelligence, intelligence-**  
 19 **related, or law enforcement activity; and**

20 **[(“B) any prior relationship between the**  
 21 **target and any Federal intelligence, intelligence-**  
 22 **related, or law enforcement activity that is rel-**  
 23 **evant to a determination of probable cause under**  
 24 **section 105;”]; and**

25 **[(2) in subsection (b), by striking “(8), and**  
 26 **(11)” and inserting “(9), and (12)”.**

1       **[(b) ADDITIONAL REQUIREMENTS REGARDING CER-**  
 2   **TAIN APPLICATIONS.—***That section is further amended by*  
 3   *adding at the end the following new subsection:]*

4       **(a) REQUIREMENTS REGARDING CERTAIN AP-**  
 5   **PLICATIONS.—Section 104 of the Foreign Intel-**  
 6   **ligence Surveillance Act of 1978 (50 U.S.C.**  
 7   **1804) is amended by adding at the end the fol-**  
 8   **lowing new subsection:**

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

15       *“(B) Except when disabled or otherwise unavailable*  
 16   *to make a request referred to in subparagraph (A), an offi-*  
 17   *cial referred to in that subparagraph may not delegate the*  
 18   *authority to make a request referred to in that subpara-*  
 19   *graph.*

20       **“(C) Each official referred to in subpara-**  
 21   **graph (A) with authority to make a request**  
 22   **under that subparagraph shall take appro-**  
 23   **priate actions in advance to ensure that dele-**  
 24   **gation of such authority is clearly established**

1 **in the event such official is disabled or other-**  
 2 **wise unavailable to make such request.**

3       “(2)(A) *If as a result of a request under paragraph*  
 4 *(1) the Attorney General determines not to approve an ap-*  
 5 *plication under the second sentence of subsection (a) for*  
 6 *purposes of making the application under this section, the*  
 7 *Attorney General shall provide written notice of the deter-*  
 8 *mination to the official making the request for the review*  
 9 *of the application under that paragraph. Except when dis-*  
 10 *abled or otherwise unavailable to make a determination*  
 11 *under the preceding sentence, the Attorney General may not*  
 12 *delegate the responsibility to make a determination under*  
 13 *that sentence.* **The Attorney General shall take**  
 14 **appropriate actions in advance to ensure that**  
 15 **delegation of such responsibility is clearly es-**  
 16 **tablished in the event the Attorney General is**  
 17 **disabled or otherwise unavailable to make**  
 18 **such determination.**

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

1       “(C) Upon review of any modifications of an applica-  
 2       tion set forth under subparagraph (B), the official notified  
 3       of the modifications under this paragraph shall modify the  
 4       application if such official determines that such modifica-  
 5       tion is warranted. Such official shall supervise the making  
 6       of any modification under this subparagraph. Except when  
 7       disabled or otherwise unavailable to supervise the making  
 8       of any modification under the preceding sentence, such offi-  
 9       cial may not delegate the responsibility to supervise the  
 10      making of any modification under that preceding sentence.  
 11      **Each such official shall take appropriate ac-**  
 12      **tions in advance to ensure that delegation of**  
 13      **such responsibility is clearly established in**  
 14      **the event such official is disabled or other-**  
 15      **wise unavailable to supervise the making of**  
 16      **such modification.”.**

17       **[(c)] (b) PROBABLE CAUSE.**—Section 105 of that Act  
 18      (50 U.S.C. 1805) is amended—

19               (1) by redesignating subsections (b), (c), (d), (e),  
 20               (f), and (g) as subsections (c), (d), (e), (f), (g), and  
 21               (h), respectively;

22               (2) by inserting after subsection (a) the following  
 23               new subsection (b):

24               “(b) In determining whether or not probable cause ex-  
 25               ists for purposes of an order under subsection (a)(3), a judge



1 *may consider past activities of the target, as well as facts*  
 2 *and circumstances relating to current or future activities*  
 3 *of the target.”; and*

4 *(3) in subsection (d), as redesignated by para-*  
 5 *graph (1), by striking “subsection (b)(1)” and insert-*  
 6 *ing “subsection (c)(1)”.*

7 **SEC. 3. ORDERS FOR PHYSICAL SEARCHES UNDER THE**  
 8 **FOREIGN INTELLIGENCE SURVEILLANCE ACT**  
 9 **OF 1978.**

10 **[(a) DESCRIPTION OF INTELLIGENCE OR LAW-EN-**  
 11 **FORCEMENT ACTIVITIES OF CERTAIN TARGETS.—***Sub-*  
 12 *section (a) of section 303 of the Foreign Intelligence Surveil-*  
 13 *lance Act of 1978 (50 U.S.C. 1823) is amended—*

14 **[(1) by redesignating paragraphs (8) and (9) as**  
 15 **paragraphs (9) and (10), respectively; and**

16 **[(2) by inserting after paragraph (7) the fol-**  
 17 **lowing new paragraph (8):**

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

21 **[(“A) any current relationship between the**  
 22 **target and any Federal intelligence, intelligence-**  
 23 **related, or law enforcement activity; and**

24 **[(“B) any prior relationship between the**  
 25 **target and any Federal intelligence, intelligence-**

1           *related, or law enforcement activity that is rel-*  
 2           *evant to a determination of probable cause under*  
 3           *section 304;”.*

4           **[(b) ADDITIONAL REQUIREMENTS REGARDING CER-**  
 5           **TAIN APPLICATIONS.—That section is further amended by**  
 6           **adding at the end the following new subsection:]**

7           **(a) REQUIREMENTS REGARDING CERTAIN AP-**  
 8           **PLICATIONS.—Section 303 of the Foreign Intel-**  
 9           **ligence Surveillance Act of 1978 (50 U.S.C.**  
 10           **1823) is amended by adding at the end the fol-**  
 11           **lowing new subsection:**

12           *“(d)(1)(A) Upon written request of the Director of the*  
 13           *Federal Bureau of Investigation, the Secretary of Defense,*  
 14           *the Secretary of State, or the Director of Central Intel-*  
 15           *ligence, the Attorney General shall personally review under*  
 16           *subsection (a) an application under that subsection for a*  
 17           *target described in section 101(b)(2).*

18           *“(B) Except when disabled or otherwise unavailable*  
 19           *to make a request referred to in subparagraph (A), an offi-*  
 20           *cial referred to in that subparagraph may not delegate the*  
 21           *authority to make a request referred to in that subpara-*  
 22           *graph.*

23           **“(C) Each official referred to in subpara-**  
 24           **graph (A) with authority to make a request**  
 25           **under that subparagraph shall take appro-**

1 **priate actions in advance to ensure that dele-**  
 2 **gation of such authority is clearly established**  
 3 **in the event such official is disabled or other-**  
 4 **wise unavailable to make such request.**

5       “(2)(A) *If as a result of a request under paragraph*  
 6 *(1) the Attorney General determines not to approve an ap-*  
 7 *plication under the second sentence of subsection (a) for*  
 8 *purposes of making the application under this section, the*  
 9 *Attorney General shall provide written notice of the deter-*  
 10 *mination to the official making the request for the review*  
 11 *of the application under that paragraph. Except when dis-*  
 12 *abled or otherwise unavailable to make a determination*  
 13 *under the preceding sentence, the Attorney General may not*  
 14 *delegate the responsibility to make a determination under*  
 15 *that sentence.* **The Attorney General shall take**  
 16 **appropriate actions in advance to ensure that**  
 17 **delegation of such responsibility is clearly es-**  
 18 **tablished in the event the Attorney General is**  
 19 **disabled or otherwise unavailable to make**  
 20 **such determination.**

21       “(B) *Notice with respect to an application under sub-*  
 22 *paragraph (A) shall set forth the modifications, if any, of*  
 23 *the application that are necessary in order for the Attorney*  
 24 *General to approve the application under the second sen-*

1 tence of subsection (a) for purposes of making the applica-  
 2 tion under this section.

3 “(C) Upon review of any modifications of an applica-  
 4 tion set forth under subparagraph (B), the official notified  
 5 of the modifications under this paragraph shall modify the  
 6 application if such official determines that such modifica-  
 7 tion is warranted. Such official shall supervise the making  
 8 of any modification under this subparagraph. Except when  
 9 disabled or otherwise unavailable to supervise the making  
 10 of any modification under the preceding sentence, such offi-  
 11 cial may not delegate the responsibility to supervise the  
 12 making of any modification under that preceding sentence.  
 13 **Each such official shall take appropriate ac-**  
 14 **tions in advance to ensure that delegation of**  
 15 **such responsibility is clearly established in**  
 16 **the event such official is disabled or other-**  
 17 **wise unavailable to supervise the making of**  
 18 **such modification.”.**

19 **[(c)] (b) PROBABLE CAUSE.**—Section 304 of that Act  
 20 (50 U.S.C. 1824) is amended—

21 (1) by redesignating subsections (b), (c), (d), and  
 22 (e) as subsections (c), (d), (e), and (f), respectively;  
 23 and

24 (2) by inserting after subsection (a) the following  
 25 new subsection (b):

1       “(b) *In determining whether or not probable cause ex-*  
 2 *ists for purposes of an order under subsection (a)(3), a judge*  
 3 *may consider past activities of the target, as well as facts*  
 4 *and circumstances relating to current or future activities*  
 5 *of the target.*”.

6   **【SEC. 4. DISCLOSURE FOR LAW ENFORCEMENT PURPOSES**  
 7                   **OF INFORMATION ACQUIRED UNDER THE**  
 8                   **FOREIGN INTELLIGENCE SURVEILLANCE ACT**  
 9                   **OF 1978.**

10       **【(a) REGULATIONS RELATING TO DISCLOSURE.—***Not*  
 11 *later than 180 days after the date of the enactment of this*  
 12 *Act, the Attorney General shall prescribe in regulations the*  
 13 *following:*

14               **【(1) The circumstances under which information**  
 15 *acquired pursuant to title I of the Foreign Intel-*  
 16 *ligence Surveillance Act of 1978 (50 U.S.C. 1801 et*  
 17 *seq.) shall be disclosed for law enforcement purposes*  
 18 *under section 106(b) of that Act (50 U.S.C. 1806(b)).*

19               **【(2) The circumstances under which information**  
 20 *acquired pursuant to title III of the Foreign Intel-*  
 21 *ligence Surveillance Act of 1978 (50 U.S.C. 1821 et*  
 22 *seq.) shall be disclosed for law enforcement purposes*  
 23 *under section 305(c) of that Act (50 U.S.C. 1825(c)).*

24               **【(3) The circumstances under which information**  
 25 *acquired pursuant to title IV of the Foreign Intel-*

1        *ligence Surveillance Act of 1978 (50 U.S.C. 1841 et*  
 2        *seq.) shall be disclosed for law enforcement purposes*  
 3        *under section 405(b) of that Act (50 U.S.C. 1845(b)).*

4        **[(b) SUBMITTAL TO CONGRESS.—***The Attorney Gen-*  
 5        *eral shall submit to the Committees on the Judiciary of the*  
 6        *Senate and House of Representatives the regulations pre-*  
 7        *scribed by the Attorney General under subsection (a).]*

8        **SEC. 4. DISCLOSURE OF INFORMATION ACQUIRED UNDER**  
 9                                **THE FOREIGN INTELLIGENCE SURVEIL-**  
 10                              **LANCE ACT OF 1978 FOR LAW ENFORCEMENT**  
 11                              **PURPOSES.**

12        **(a) INCLUSION OF INFORMATION ON DISCLO-**  
 13        **SURE IN SEMIANNUAL OVERSIGHT REPORT.—Sec-**  
 14        **tion 108(a) of the Foreign Intelligence Surveil-**  
 15        **lance Act of 1978 (50 U.S.C. 1808(a)) is**  
 16        **amended—**

17                    **(1) by inserting “(1)” after “(a)”;** and  
 18                    **(2) by adding at the end the following**  
 19        **new paragraph:**

20        **“(2) Each report under the first sentence**  
 21        **of paragraph (1) shall include a description**  
 22        **of—**

23                    **“(A) each criminal case in which in-**  
 24        **formation acquired under this Act has**  
 25        **been passed for law enforcement pur-**

1       poses during the period covered by such  
2       report; and

3               “(B) each criminal case in which in-  
4       formation acquired under this Act has  
5       been authorized for use at trial during  
6       such reporting period.”.

7       (b) **REPORT ON MECHANISMS FOR DETER-**  
8 **MINATIONS OF DISCLOSURE OF INFORMATION FOR**  
9 **LAW ENFORCEMENT PURPOSES.—(1) The Attor-**  
10 **ney General shall submit to the appropriate**  
11 **committees of Congress a report on the au-**  
12 **thorities and procedures utilized by the De-**  
13 **partment of Justice for determining whether**  
14 **or not to disclose information acquired under**  
15 **the Foreign Intelligence Surveillance Act of**  
16 **1978 (50 U.S.C. 1801 et seq.) for law enforce-**  
17 **ment purposes.**

18       (2) In this subsection, the term “appro-  
19       priate committees of Congress” means the fol-  
20       lowing:

21               (A) The Select Committee on Intel-  
22       ligence and the Committee on the Judici-  
23       ary of the Senate.

24               (B) The Permanent Select Committee  
25       on Intelligence and the Committee on the

1       **Judiciary of the House of Representa-**  
 2       **tives.**

3       **SEC. 5. COORDINATION OF COUNTERINTELLIGENCE WITH**  
 4       **THE FEDERAL BUREAU OF INVESTIGATION.**

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

9               (1) *in paragraphs (1) and (2), by striking*  
 10       *“paragraph (3)” and inserting “paragraph (5)”;*

11              (2) *by redesignating paragraphs (3), (4), (5),*  
 12       *and (6) as paragraphs (5), (6), (7), and **[(9)] (8),***  
 13       *respectively;*

14              (3) *by inserting after paragraph (2) the fol-*  
 15       *lowing new paragraph (3):*

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

22       **[(B) Not later than 30 days after receiving written**  
 23       *notification under subparagraph (A), the head of the de-*  
 24       *partment or agency so notified shall submit to the Director*



1 *a plan to minimize the unauthorized disclosure of classified*  
 2 *information by the subject concerned.*

3       **["(C) A plan under this paragraph may be modified**  
 4 *if the Director and the head of the department or agency*  
 5 *concerned jointly determine that the modification is war-*  
 6 *ranted. A modification under this subparagraph may in-*  
 7 *clude a decision that the subject of an investigation no*  
 8 *longer be left in place for investigative purposes.*

9       **["(D) A disagreement regarding an element of a plan**  
 10 *under subparagraph (A), including a proposed modifica-*  
 11 *tion of the plan under subparagraph (C), shall be resolved*  
 12 *by the Board.”; and]*

13       **“(3)(A) The Director of the Federal Bureau**  
 14 **of Investigation shall submit to the head of**  
 15 **the department or agency concerned a writ-**  
 16 **ten assessment of the potential impact of the**  
 17 **actions of the department or agency on a**  
 18 **counterintelligence investigation.**

19       **“(B) The head of the department or agen-**  
 20 **cy concerned shall—**

21               **“(i) use an assessment under subpara-**  
 22 **graph (A) as an aid in determining**  
 23 **whether, and under what circumstances,**  
 24 **the subject of an investigation under**

1       **paragraph (1) should be left in place for**  
 2       **investigative purposes; and**

3               **“(ii) notify in writing the Director of**  
 4       **the Federal Bureau of Investigation of**  
 5       **such determination.**

6       **“(C) The Director of the Federal Bureau of**  
 7       **Investigation and the head of the department**  
 8       **or agency concerned shall continue to con-**  
 9       **sult, as appropriate, to review the status of an**  
 10       **investigation covered by this paragraph and**  
 11       **to reassess, as appropriate, a determination of**  
 12       **the head of the department or agency con-**  
 13       **cerned to leave a subject in place for inves-**  
 14       **tigative purposes.”; and**

15               *(4) in paragraph (5), as so redesignated, by*  
 16       *striking “paragraph (1) or (2)” and inserting “para-*  
 17       *graph (1), (2), or (3)”.*

18       *(b) TIMELY PROVISION OF INFORMATION AND CON-*  
 19       *SULTATION ON ESPIONAGE INVESTIGATIONS.—Paragraph*  
 20       *(2) of that subsection is further amended—*

21               *(1) by inserting “in a timely manner” after*  
 22       *“through appropriate channels”; and*

23               *(2) by inserting “in a timely manner” after “are*  
 24       *consulted”.*

1       (c) *INTERFERENCE WITH FULL FIELD ESPIONAGE IN-*  
 2 *VESTIGATIONS.—That subsection is further amended by in-*  
 3 *serting after paragraph (3), as amended by subsection (a)*  
 4 *of this section, the following new paragraph (4):*

5       “(4)(A) *The Federal Bureau of Investigation shall no-*  
 6 *tify appropriate officials within the executive branch, in-*  
 7 *cluding the head of the department or agency concerned,*  
 8 *of the commencement of a full field espionage investigation*  
 9 *with respect to an employee within the executive branch.*

10       “(B)(i) *A department or agency may not conduct a*  
 11 *polygraph examination, interrogate, or otherwise take any*  
 12 *action that is likely to alert an employee covered by a notice*  
 13 *under subparagraph (A) of an investigation described in*  
 14 *that subparagraph without prior coordination with the*  
 15 *Federal Bureau of Investigation.*

16       “(ii) *Any examination, interrogation, or other action*  
 17 *taken under clause (i) shall be taken in consultation with*  
 18 *the Federal Bureau of Investigation.”.*

19       [(d) *COORDINATION OF INFORMATION ON ESPIONAGE*  
 20 *INVESTIGATIONS.—That subsection is further amended by*  
 21 *inserting after paragraph (7), as redesignated by subsection*  
 22 *(a)(2) of this section, the following new paragraph (8):*

23       [“(8) *The Director of the Federal Bureau of Investiga-*  
 24 *tion shall be responsible for coordinating all information*  
 25 *relating to espionage investigations, including information*

1 *on any prior or current relationship between the subjects*  
 2 *of such investigations and any Federal intelligence or intel-*  
 3 *ligence-related activity, within the intelligence community*  
 4 *and within and among Federal law enforcement agencies.”.*

5 **[(e) REQUESTS FOR TECHNICAL ASSISTANCE.—That**  
 6 *section is further amended by adding at the end the fol-*  
 7 *lowing new subsection (d):*

8 **[(“(d) REQUESTS FOR TECHNICAL ASSISTANCE.—The**  
 9 *Director of the Federal Bureau of Investigation and the Di-*  
 10 *rector of the National Security Agency shall establish proce-*  
 11 *dures to ensure the timely evaluation and determinations*  
 12 *regarding requests from the Federal Bureau of Investigation*  
 13 *for technical assistance in counterintelligence activities cov-*  
 14 *ered by this section.”.)]*

15 **SEC. 6. ENHANCING PROTECTION OF NATIONAL SECURITY**

16 **AT THE DEPARTMENT OF JUSTICE.**

17 **(a) AUTHORIZATION FOR INCREASED RESOURCES TO**  
 18 **FULFILL NATIONAL SECURITY MISSION OF THE DEPART-**  
 19 **MENT OF JUSTICE.—***There are authorized to be appro-*  
 20 *priated to the Department of Justice for the activities of*  
 21 *the [Office of Intelligence and Policy Review] **Office of***  
 22 **Intelligence Policy and Review** *to help meet the*  
 23 *increased personnel demands to combat terrorism, process*  
 24 *applications to the Foreign Intelligence Surveillance Court,*  
 25 *participate effectively in counter-espionage investigations,*

1 *provide policy analysis on national security issues, and en-*  
 2 *hance secure computer and telecommunications facilities—*

3 *(1) \$7,000,000 for fiscal year 2001;*

4 *(2) \$7,500,000 for fiscal year 2002; and*

5 *(3) \$8,000,000 for fiscal year 2003.*

6 **[(b) AVAILABILITY OF FUNDS.—***Funds made available*  
 7 *pursuant to subsection (a), in any fiscal year, shall remain*  
 8 *available until expended.]*

9 **(b) AVAILABILITY OF FUNDS.—(1) No funds**  
 10 **authorized to be appropriated by subsection**  
 11 **(a) for the Office of Intelligence Policy and**  
 12 **Review may be obligated or expended until 30**  
 13 **days after the later of the dates on which the**  
 14 **Attorney General submits the reports re-**  
 15 **quired by paragraphs (2) and (3).**

16 **(2)(A) The Attorney General shall submit**  
 17 **to the committees of Congress specified in**  
 18 **subparagraph (B) a report on the manner in**  
 19 **which the funds authorized to be appro-**  
 20 **priated by subsection (a) for the Office of In-**  
 21 **telligence Policy and Review will be used by**  
 22 **that Office—**

23 **(i) to improve and strengthen its**  
 24 **oversight of Federal Bureau of Investiga-**  
 25 **tion field offices in the implementation of**

1       **orders under the Foreign Intelligence**  
2       **Surveillance Act of 1978 (50 U.S.C. 1801 et**  
3       **seq.); and**

4               **(ii) to streamline and increase the ef-**  
5       **iciency of the application process under**  
6       **that Act.**

7       **(B) The committees of Congress referred**  
8       **to in this subparagraph are the following:**

9               **(i) The Select Committee on Intel-**  
10       **ligence and the Committee on the Judici-**  
11       **ary of the Senate.**

12               **(ii) The Permanent Select Committee**  
13       **on Intelligence and the Committee on the**  
14       **Judiciary of the House of Representa-**  
15       **tives.**

16       **(3) In addition to the report required by**  
17       **paragraph (2), the Attorney General shall also**  
18       **submit to the Select Committee on Intel-**  
19       **ligence of the Senate and the Permanent Se-**  
20       **lect Committee on Intelligence of the House of**  
21       **Representatives a report that addresses the**  
22       **issues identified in the semiannual report of**  
23       **the Attorney General to such committees**  
24       **under section 108(a) of the Foreign Intel-**  
25       **ligence Surveillance Act of 1978 (50 U.S.C.**

1 **1808(a)) that was submitted in April 2000, in-**  
 2 **cluding any corrective actions with regard to**  
 3 **such issues. The report under this paragraph**  
 4 **shall be submitted in classified form.**

5 **(4) Funds made available pursuant to sub-**  
 6 **section (a), in any fiscal year, shall remain**  
 7 **available until expended.**

8 *(c) REPORT ON COORDINATING NATIONAL SECURITY*  
 9 *AND INTELLIGENCE FUNCTIONS WITHIN THE DEPARTMENT*  
 10 *OF JUSTICE.—The Attorney General shall report to the*  
 11 **【Committees on the Judiciary of the Senate and the**  
 12 **House of Representatives】 Select Committee on In-**  
 13 **telligence and the Committee on the Judici-**  
 14 **ary of the Senate and the Permanent Select**  
 15 **Committee on Intelligence and the Committee**  
 16 **on the Judiciary of the House of Representa-**  
 17 **tives** *within 120 days on actions that have been or will*  
 18 *be taken by the Department to—*

19 *(1) promote quick and efficient responses to na-*  
 20 *tional security issues;*

21 *(2) centralize a point-of-contact within the De-*  
 22 *partment on national security matters for external*  
 23 *entities and agencies; and*

24 *(3) coordinate the dissemination of intelligence*  
 25 *information within the appropriate components of the*

1        *Department and the formulation of policy on na-*  
2        *tional security issues.*

3    **[SEC. 7. SEVERABILITY.]**

4    **SEC. 7. COORDINATION REQUIREMENTS RELATING TO THE**  
5                    **PROSECUTION OF CASES INVOLVING CLASSI-**  
6                    **FIED INFORMATION.**

7        **The Classified Information Procedures**  
8    **Act (18 U.S.C. App.) is amended by inserting**  
9    **after section 9 the following new section:**

10    **“COORDINATION REQUIREMENTS RELATING TO**  
11        **THE PROSECUTION OF CASES INVOLVING**  
12        **CLASSIFIED INFORMATION**

13        **“SEC. 9A. (a) BRIEFINGS REQUIRED.—The**  
14    **Assistant Attorney General for the Criminal**  
15    **Division and the appropriate United States**  
16    **Attorney, or the designees of such officials,**  
17    **shall provide briefings to the senior agency**  
18    **official, or the designee of such official, with**  
19    **respect to any case involving classified infor-**  
20    **mation that originated in the agency of such**  
21    **senior agency official.**

22        **“(b) TIMING OF BRIEFINGS.—Briefings**  
23    **under subsection (a) with respect to a case**  
24    **shall occur—**

25                **“(1) as soon as practicable after the**  
26        **Department of Justice and the United**



1       **States Attorney concerned determine**  
 2       **that a prosecution or potential prosecu-**  
 3       **tion could result; and**

4               **“(2) at such other times thereafter as**  
 5       **are necessary to keep the senior agency**  
 6       **official concerned fully and currently in-**  
 7       **formed of the status of the prosecution.**

8       **“(c) SENIOR AGENCY OFFICIAL DEFINED.—In**  
 9       **this section, the term ‘senior agency official’**  
 10       **has the meaning given that term in section 1.1**  
 11       **of Executive Order No. 12958.”.**

12       **SEC. 8. SEVERABILITY.**

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

**Calendar No. 701**

106TH CONGRESS  
2D SESSION

**S. 2089**

**[Report No. 106-352]**

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**A BILL**

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

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JULY 20, 2000

Reported with amendments