

110TH CONGRESS
1ST SESSION

S. 187

To provide sufficient resources to permit electronic surveillance of United States persons for foreign intelligence purposes to be conducted pursuant to individualized court-issued orders for calls originating in the United States, to provide additional resources to enhance oversight and streamline the procedures of the Foreign Intelligence Surveillance Act of 1978, to ensure review of the Terrorist Surveillance Program by the United States Supreme Court, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 2007

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide sufficient resources to permit electronic surveillance of United States persons for foreign intelligence purposes to be conducted pursuant to individualized court-issued orders for calls originating in the United States, to provide additional resources to enhance oversight and streamline the procedures of the Foreign Intelligence Surveillance Act of 1978, to ensure review of the Terrorist Surveillance Program by the United States Supreme Court, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Foreign Intelligence
3 Surveillance Oversight and Resource Enhancement Act of
4 2007”.

5 **TITLE I—ENHANCEMENT OF RE-**
6 **SOURCES AND PERSONNEL**
7 **FOR ELECTRONIC SURVEIL-**
8 **LANCE FOR FOREIGN INTEL-**
9 **LIGENCE PURPOSES**

10 **SEC. 101. FOREIGN INTELLIGENCE SURVEILLANCE COURT**
11 **MATTERS.**

12 (a) **AUTHORITY FOR ADDITIONAL JUDGES.**—Section
13 103(a) of the Foreign Intelligence Surveillance Act of
14 1978 (50 U.S.C. 1803(a)) is amended—

15 (1) by inserting “(1)” after “(a)”;

16 (2) in paragraph (1), as so designated, by in-
17 sserting “at least” before “seven of the United States
18 judicial circuits”;

19 (3) by designating the second sentence as para-
20 graph (4) and indenting such paragraph, as so des-
21 igned, accordingly; and

22 (4) by inserting after paragraph (1), as so des-
23 igned, the following new paragraph:

24 “(2) In addition to the judges designated under
25 paragraph (1), the Chief Justice of the United
26 States may designate as judges of the court estab-

1 lished by paragraph (1) such judges appointed under
 2 Article III of the Constitution of the United States
 3 as the Chief Justice determines appropriate in order
 4 to provide for the prompt and timely consideration
 5 under section 105 of applications under section 104
 6 for electronic surveillance under this title. Any judge
 7 designated under this paragraph shall be designated
 8 publicly.”.

9 (b) CONSIDERATION OF EMERGENCY APPLICA-
 10 TIONS.—Such section is further amended by inserting
 11 after paragraph (2), as added by subsection (a) of this
 12 section, the following new paragraph:

13 “(3) A judge of the court established by para-
 14 graph (1) shall make a determination to approve,
 15 deny, or seek modification of an application sub-
 16 mitted under subsection (f) or (g) of section 105 not
 17 later than 24 hours after the receipt of such applica-
 18 tion by the court.”.

19 **SEC. 102. ADDITIONAL PERSONNEL FOR PREPARATION**
 20 **AND CONSIDERATION OF APPLICATIONS FOR**
 21 **ORDERS APPROVING ELECTRONIC SURVEIL-**
 22 **LANCE.**

23 (a) OFFICE OF INTELLIGENCE POLICY AND RE-
 24 VIEW.—

1 (1) ADDITIONAL PERSONNEL.—The Office of
2 Intelligence Policy and Review of the Department of
3 Justice is authorized such additional personnel, in-
4 cluding not fewer than 21 full-time attorneys, as
5 may be necessary to carry out the prompt and time-
6 ly preparation, modification, and review of applica-
7 tions under section 104 of the Foreign Intelligence
8 Surveillance Act of 1978 (50 U.S.C. 1804) for or-
9 ders under section 105 of that Act (50 U.S.C. 1805)
10 approving electronic surveillance for foreign intel-
11 ligence purposes.

12 (2) ASSIGNMENT.—The Attorney General shall
13 assign personnel authorized by paragraph (1) to and
14 among appropriate offices of the National Security
15 Agency in order that such personnel may directly as-
16 sist personnel of the Agency in preparing applica-
17 tions described in that paragraph.

18 (b) FEDERAL BUREAU OF INVESTIGATION.—

19 (1) ADDITIONAL LEGAL AND OTHER PER-
20 SONNEL.—The National Security Branch of the
21 Federal Bureau of Investigation is authorized such
22 additional legal and other personnel as may be nec-
23 essary to carry out the prompt and timely prepara-
24 tion of applications under section 104 of the Foreign
25 Intelligence Surveillance Act of 1978 for orders

1 under section 105 of that Act approving electronic
2 surveillance for foreign intelligence purposes.

3 (2) ASSIGNMENT.—The Director of the Federal
4 Bureau of Investigation shall assign personnel au-
5 thorized by paragraph (1) to and among the field of-
6 fices of the Federal Bureau of Investigation in order
7 that such personnel may directly assist personnel of
8 the Bureau in such field offices in preparing applica-
9 tions described in that paragraph.

10 (c) ADDITIONAL LEGAL AND OTHER PERSONNEL
11 FOR NATIONAL SECURITY AGENCY.—The National Secu-
12 rity Agency is authorized such additional legal and other
13 personnel as may be necessary to carry out the prompt
14 and timely preparation of applications under section 104
15 of the Foreign Intelligence Surveillance Act of 1978 for
16 orders under section 105 of that Act approving electronic
17 surveillance for foreign intelligence purposes.

18 (d) ADDITIONAL LEGAL AND OTHER PERSONNEL
19 FOR FOREIGN INTELLIGENCE SURVEILLANCE COURT.—
20 There is authorized for the Foreign Intelligence Surveil-
21 lance Court such additional personnel (other than judges)
22 as may be necessary to facilitate the prompt and timely
23 consideration by that Court of applications under section
24 104 of the Foreign Intelligence Surveillance Act of 1978
25 for orders under section 105 of that Act approving elec-

1 tronic surveillance for foreign intelligence purposes. Per-
2 sonnel authorized by this paragraph shall perform such
3 duties relating to the consideration of such applications
4 as that Court shall direct.

5 (e) SUPPLEMENT NOT SUPPLANT.—The personnel
6 authorized by this section are in addition to any other per-
7 sonnel authorized by law.

8 **SEC. 103. TRAINING OF FEDERAL BUREAU OF INVESTIGA-**
9 **TION AND NATIONAL SECURITY AGENCY PER-**
10 **SONNEL IN FOREIGN INTELLIGENCE SUR-**
11 **VEILLANCE MATTERS.**

12 The Director of the Federal Bureau of Investigation
13 and the Director of the National Security Agency shall
14 each, in consultation with the Attorney General—

15 (1) develop regulations establishing procedures
16 for conducting and seeking approval of electronic
17 surveillance on an emergency basis, and for pre-
18 paring and properly submitting and receiving appli-
19 cations and orders, under sections 104 and 105 of
20 the Foreign Intelligence Surveillance Act of 1978
21 (50 U.S.C. 1804 and 1805); and

22 (2) prescribe related training for the personnel
23 of the applicable agency.

1 **TITLE II—IMPROVEMENT OF**
2 **FOREIGN INTELLIGENCE**
3 **SURVEILLANCE AUTHORITY**

4 **SEC. 201. EXTENSION OF PERIOD FOR APPLICATIONS FOR**
5 **ORDERS FOR EMERGENCY ELECTRONIC SUR-**
6 **VEILLANCE.**

7 Section 105(f) of the Foreign Intelligence Surveil-
8 lance Act of 1978 (50 U.S.C. 1805(f)) is amended by
9 striking “72 hours” both places it appears and inserting
10 “168 hours”.

11 **SEC. 202. ACQUISITION OF FOREIGN-FOREIGN COMMU-**
12 **NICATIONS.**

13 (a) IN GENERAL.—Notwithstanding any other provi-
14 sion of this Act or the Foreign Intelligence Surveillance
15 Act of 1978 (50 U.S.C. 1801 et seq.), no court order shall
16 be required for the acquisition through electronic surveil-
17 lance of the contents of any communication between one
18 person who is not located within the United States and
19 another person who is not located within the United States
20 for the purpose of collecting foreign intelligence informa-
21 tion even if such communication passes through, or the
22 surveillance device is located within, the United States.

23 (b) TREATMENT OF INTERCEPTED COMMUNICATIONS
24 INVOLVING DOMESTIC PARTY.—If surveillance conducted,
25 as described in subsection (a), inadvertently collects a

1 communication in which at least one party is within the
2 United States, the contents of such communications shall
3 be handled in accordance with the minimization proce-
4 dures set forth in section 101(h)(4) of the Foreign Intel-
5 ligence Surveillance Act of 1978 (50 U.S.C. 1801(h)(4)).

6 (c) DEFINITIONS.—In this section, the terms “con-
7 tents”, “electronic surveillance”, and “foreign intelligence
8 information” have the meaning given such terms in sec-
9 tion 101 of the Foreign Intelligence Surveillance Act of
10 1978 (50 U.S.C. 1801).

11 **SEC. 203. INDIVIDUALIZED FISA APPLICATIONS.**

12 The contents of any wire or radio communication sent
13 by a person who is reasonably believed to be inside the
14 United States to a person outside the United States may
15 not be retained or used unless a court order authorized
16 under the Foreign Intelligence Surveillance Act is ob-
17 tained.

18 **SEC. 204. ISSUES RESERVED FOR THE COURTS.**

19 Nothing in this Act shall be deemed to amend those
20 provisions of FISA concerning any wire or radio commu-
21 nication sent from outside the United States to a person
22 inside the United States. The constitutionality of such
23 interceptions shall be determined by the courts, including
24 the President’s claim that his article II authority super-
25 sedes FISA.

1 **TITLE III—ENHANCED CONGRES-**
2 **SIONAL OVERSIGHT AND SU-**
3 **PREME COURT REVIEW OF**
4 **THE TERRORIST SURVEIL-**
5 **LANCE PROGRAM**

6 **SEC. 301. CONGRESSIONAL OVERSIGHT.**

7 (a) ELECTRONIC SURVEILLANCE UNDER FISA.—

8 Section 108 of the Foreign Intelligence Surveillance Act
9 of 1978 (50 U.S.C. 1808) is amended—

10 (1) in subsection (a)(2)—

11 (A) in subparagraph (B), by striking
12 “and” at the end;

13 (B) in subparagraph (C), by striking the
14 period and inserting “; and”; and

15 (C) by adding at the end the following:

16 “(D) the authority under which the elec-
17 tronic surveillance is conducted.”; and

18 (2) by striking subsection (b) and inserting the
19 following:

20 “(b) On a semiannual basis, the Attorney General ad-
21 ditionally shall fully inform the Permanent Select Com-
22 mittee on Intelligence of the House of Representatives and
23 the Select Committee on Intelligence of the Senate on elec-
24 tronic surveillance conducted without a court order.”.

1 (b) INTELLIGENCE ACTIVITIES.—The National Secu-
2 rity Act of 1947 (50 U.S.C. 401 et seq.) is amended—

3 (1) in section 501 (50 U.S.C. 413)—

4 (A) by redesignating subsection (f) as sub-
5 section (g); and

6 (B) by inserting after subsection (e) the
7 following new subsection:

8 “(f) The Chair of each of the congressional intel-
9 ligence committees, in consultation with the ranking mem-
10 ber of the committee for which the person is Chair, may
11 inform, on a bipartisan basis, all members or any indi-
12 vidual members of such committee of a report submitted
13 under subsection (a)(1) or subsection (b) as such Chair
14 considers necessary.”; and

15 (2) in section 502 (50 U.S.C. 414), by adding
16 at the end the following new subsection:

17 “(d) INFORMING OF COMMITTEE MEMBERS.—The
18 Chair of each of the congressional intelligence committees,
19 in consultation with the ranking member of the committee
20 for which the person is Chair, may inform, on a bipartisan
21 basis, all members or any individual members of such com-
22 mittee of a report submitted under subsection (a) as such
23 Chair considers necessary.”.

1 **SEC. 302. SUPREME COURT REVIEW OF THE TERRORIST**
2 **SURVEILLANCE PROGRAM.**

3 (a) **IN GENERAL.**—Upon appeal by the United States
4 or any party to the underlying proceedings, the Supreme
5 Court of the United States shall review the final decision
6 of any United States court of appeal concerning the legal-
7 ity of the Terrorist Surveillance Program.

8 (b) **EXPEDITED CONSIDERATION.**—It shall be the
9 duty of the Supreme Court of the United States to ad-
10 vance on the docket and to expedite to the greatest pos-
11 sible extent the disposition of any matter brought under
12 subsection (a).

13 (c) **DEFINITION.**—In this section, the term “Ter-
14 rorist Surveillance Program” means the program identi-
15 fied by the President of the United States on December
16 17, 2005, to intercept international communications into
17 and out of the United States of persons linked to al Qaeda
18 or related terrorist organizations.

19 **TITLE IV—OTHER MATTERS**

20 **SEC. 401. DEFINITION.**

21 In this Act, the term “Foreign Intelligence Surveil-
22 lance Court” means the court established by section
23 103(a) of the Foreign Intelligence Surveillance Act of
24 1978 (50 U.S.C. 1803(a)).

1 **SEC. 402. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriated such sums as
3 may be necessary to carry out this Act and the amend-
4 ments made by this Act.

5 **SEC. 403. EFFECTIVE DATE.**

6 This Act, and the amendments made by this Act,
7 shall take effect on the date that is 30 days after the date
8 of the enactment of this Act.

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