

111TH CONGRESS
1ST SESSION

S. 1726

To reauthorize the expiring intelligence tools of the USA PATRIOT Improvement and Reauthorization Act of 2005 and defend against terrorism through improved classified procedures and criminal law reforms, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2009

Mr. KYL (for himself and Mr. CORNYN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To reauthorize the expiring intelligence tools of the USA PATRIOT Improvement and Reauthorization Act of 2005 and defend against terrorism through improved classified procedures and criminal law reforms, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “USA PATRIOT Reauthorization and Additional Weap-
6 ons Against Terrorism Act of 2009”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—USA PATRIOT REAUTHORIZATION ACT OF 2009

Sec. 101. Short title.

Sec. 102. USA Patriot Improvement and Reauthorization Act repeal of sunset provisions.

Sec. 103. Repeal of sunset relating to individual terrorists as agents of foreign powers.

TITLE II—CLASSIFIED INFORMATION PROCEDURES REFORM ACT

Sec. 201. Short title.

Sec. 202. Definitions.

Sec. 203. Ex parte authorizations under the Classified Information Procedures Act.

Sec. 204. Application of Classified Information Procedures Act to nondocumentary information.

Sec. 205. Interlocutory appeals under the Classified Information Procedures Act.

TITLE III—ADDITIONAL GOVERNMENT WEAPONS AGAINST TERRORISM ACT

Sec. 301. Short title.

Sec. 302. Prevention and deterrence of material support for terrorist suicide bombings.

Sec. 303. Prohibiting attempts and conspiracies to obtain military-type training from a foreign terrorist organization.

Sec. 304. Prohibiting use of false travel documents.

Sec. 305. Preventing unwarranted release of convicted terrorists and sex offenders pending sentencing or appeal.

3 **TITLE I—USA PATRIOT** 4 **REAUTHORIZATION ACT OF 2009**

5 **SEC. 101. SHORT TITLE.**

6 This title may be cited as the “USA PATRIOT Reau-
 7 thorization Act of 2009”.

8 **SEC. 102. USA PATRIOT IMPROVEMENT AND REAUTHORIZA-** 9 **TION ACT REPEAL OF SUNSET PROVISIONS.**

10 Section 102(b) of the USA PATRIOT Improvement
 11 and Reauthorization Act of 2005 (Public Law 109–177;

1 50 U.S.C. 1805 note, 50 U.S.C. 1861 note, and 50 U.S.C.
 2 1862 note) is repealed.

3 **SEC. 103. REPEAL OF SUNSET RELATING TO INDIVIDUAL**
 4 **TERRORISTS AS AGENTS OF FOREIGN POW-**
 5 **ERS.**

6 Section 6001(b) of the Intelligence Reform and Ter-
 7 rorism Prevention Act of 2004 (Public Law 108–458; 50
 8 U.S.C. 1801 note) is repealed.

9 **TITLE II—CLASSIFIED INFORMA-**
 10 **TION PROCEDURES REFORM**
 11 **ACT**

12 **SEC. 201. SHORT TITLE.**

13 This title may be cited as the “Classified Information
 14 Procedures Reform Act of 2009”.

15 **SEC. 202. DEFINITIONS.**

16 (a) IN GENERAL.—Section 1 of the Classified Infor-
 17 mation Procedures Act (18 U.S.C. App.) is amended—

18 (1) by redesignating subsection (b) as sub-
 19 section (c); and

20 (2) by inserting after subsection (a) the fol-
 21 lowing:

22 “(b) ‘Disclosure’, as used in this Act—

23 “(1) means the release, transmittal, or making
 24 available of, or providing access to, classified infor-
 25 mation to any person (including a defendant or

1 counsel for a defendant) during discovery, or to a
 2 participant or member of the public at any pro-
 3 ceeding; and

4 “(2) does not include the release, transmittal,
 5 or making available of, or providing access to, classi-
 6 fied information by the defendant to an attorney
 7 representing the defendant in a matter who has re-
 8 ceived—

9 “(A) the necessary security clearance to re-
 10 ceive the classified information; and

11 “(B) if the classified information has been
 12 designated as sensitive compartmented informa-
 13 tion or special access program information, any
 14 additional required authorization to receive the
 15 classified information.”.

16 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 17 Section 501(3) of the Immigration and Nationality Act (8
 18 U.S.C. 1531(3)) is amended by striking “section 1(b)”
 19 and inserting “section 1”.

20 **SEC. 203. EX PARTE AUTHORIZATIONS UNDER THE CLASSI-**
 21 **FIED INFORMATION PROCEDURES ACT.**

22 Section 4 of the Classified Information Procedures
 23 Act (18 U.S.C. App.) is amended—

24 (1) in the second sentence—

1 (A) by striking “may” and inserting
2 “shall”; and

3 (B) by striking “authorization in the form
4 of a written statement to be inspected” and in-
5 serting “authorization, together with any argu-
6 ment in support of that request, in the form of
7 a statement made ex parte and to be consid-
8 ered”; and
9 (2) in the third sentence—

10 (A) by striking “If the court enters an
11 order granting relief following such an ex parte
12 showing, the” and inserting “The”; and

13 (B) inserting “, and the transcript of any
14 argument and any summary of the classified in-
15 formation the defendant seeks to obtain,” after
16 “text of the statement of the United States”.

17 **SEC. 204. APPLICATION OF CLASSIFIED INFORMATION PRO-**
18 **CEDURES ACT TO NONDOCUMENTARY INFOR-**
19 **MATION.**

20 Section 4 of the Classified Information Procedures
21 Act (18 U.S.C. App.), as amended by section 203 of this
22 Act, is amended—

23 (1) in the section heading, by inserting “AND
24 ACCESS TO” after “OF”;

1 (2) by inserting “(a) IN GENERAL.—” before
2 “The court, upon”; and

3 (3) by adding the following at the end the fol-
4 lowing:

5 “(b) ACCESS TO OTHER CLASSIFIED INFORMA-
6 TION.—(1) If the defendant seeks access through deposi-
7 tion under the Federal Rules of Criminal Procedure or
8 otherwise to nondocumentary information from a potential
9 witness or other person which the defendant knows or rea-
10 sonably believes is classified, the defendant shall notify the
11 attorney for the United States and the district court in
12 writing. Such notice shall specify with particularity the
13 classified information sought by the defendant and the
14 legal basis for such access. At a time set by the court,
15 the United States may oppose such access to the classified
16 information.

17 “(2) If, after consideration of any objection raised by
18 the United States, including any objection asserted on the
19 basis of privilege, the court determines that the defendant
20 is legally entitled to have access to the information speci-
21 fied in a notice made under paragraph (1), the United
22 States may request the substitution of a summary of the
23 classified information or the substitution of a statement
24 admitting relevant facts that the classified information
25 would tend to prove.

1 “(3) The court shall permit the United States to
2 make an objection to access to classified information
3 under paragraph (1) or a request for a substitution under
4 paragraph (2) in the form of a statement made ex parte
5 and to be considered by the court alone. The entire text
6 of the statement of the United States, and any summary
7 of the classified information the defendant seeks to obtain,
8 shall be sealed and preserved in the records of the court
9 and made available to the appellate court in the event of
10 an appeal.

11 “(4) A court shall grant the request of the United
12 States to substitute a summary of the classified informa-
13 tion or to substitute a statement admitting relevant facts
14 that the classified information would tend to prove under
15 paragraph (2) if the court finds that the summary or
16 statement will provide the defendant with substantially the
17 same ability to make a defense as would disclosure of the
18 specific classified information.

19 “(5) A defendant may not obtain access to classified
20 information subject to this subsection except as provided
21 in this subsection. Any proceeding, whether by deposition
22 under the Federal Rules of Criminal Procedure or other-
23 wise, in which a defendant seeks to obtain access to classi-
24 fied information subject to this subsection not previously
25 authorized by a court for disclosure under this subsection

1 shall be discontinued or may proceed only as to lines of
 2 inquiry not involving the classified information.”.

3 **SEC. 205. INTERLOCUTORY APPEALS UNDER THE CLASSI-**
 4 **FIED INFORMATION PROCEDURES ACT.**

5 Section 7(a) of the Classified Information Procedures
 6 Act (18 U.S.C. App.) is amended by adding the following
 7 at the end: “The right of the United States to appeal
 8 under this subsection applies without regard to whether
 9 the order appealed from was entered under this Act.”.

10 **TITLE III—ADDITIONAL GOV-**
 11 **ERNMENT WEAPONS AGAINST**
 12 **TERRORISM ACT**

13 **SEC. 301. SHORT TITLE.**

14 This title may be cited as the “Additional Govern-
 15 ment Weapons Against Terrorism Act of 2009”.

16 **SEC. 302. PREVENTION AND DETERRENCE OF MATERIAL**
 17 **SUPPORT FOR TERRORIST SUICIDE BOMB-**
 18 **INGS.**

19 (a) IN GENERAL.—Chapter 113B of title 18, United
 20 States Code, is amended by adding at the end the fol-
 21 lowing:

22 **“§ 2339E. Providing material support to international**
 23 **terrorism**

24 **“(a) DEFINITIONS.—In this section—**

1 “(1) the term ‘facility of interstate or foreign
2 commerce’ has the meaning given that term in sec-
3 tion 1958;

4 “(2) the term ‘material support or resources’
5 has the meaning given that term in section 2339A;

6 “(3) the term ‘perpetrator of an act’ includes
7 any person who—

8 “(A) commits the act;

9 “(B) aids, abets, counsels, commands, in-
10 duces, or procures the commission of the act; or

11 “(C) attempts, plots, or conspires to com-
12 mit the act; and

13 “(4) the term ‘serious bodily injury’ has the
14 meaning given that term in section 1365.

15 “(b) PROHIBITION.—Whoever, in a circumstance de-
16 scribed in subsection (c), provides, or attempts or con-
17 spires to provide, material support or resources to the per-
18 petrator of an act of international terrorism, to a family
19 member of the perpetrator of an act of international ter-
20 rorism perpetrator, or to any other person, with the intent
21 to facilitate, reward, or encourage that act or other acts
22 of international terrorism, shall be fined under this title,
23 imprisoned not more than 15 years, or both, and, if death
24 results, shall be imprisoned for any term of years or for
25 life.

1 “(c) JURISDICTIONAL BASES.—A circumstance re-
2 ferred to in this subsection is that—

3 “(1) the offense occurs in or affects interstate
4 or foreign commerce;

5 “(2) the offense involves the use of the mails or
6 a facility of interstate or foreign commerce;

7 “(3) an offender intends to facilitate, reward, or
8 encourage an act of international terrorism that af-
9 fects interstate or foreign commerce or would have
10 affected interstate or foreign commerce had the act
11 been consummated;

12 “(4) an offender intends to facilitate, reward, or
13 encourage an act of international terrorism that vio-
14 lates the criminal laws of the United States;

15 “(5) an offender intends to facilitate, reward, or
16 encourage an act of international terrorism that is
17 designed to influence the policy or affect the conduct
18 of the United States Government;

19 “(6) an offender intends to facilitate, reward, or
20 encourage an act of international terrorism that oc-
21 curs in part within the United States and is de-
22 signed to influence the policy or affect the conduct
23 of a foreign government;

24 “(7) an offender intends to facilitate, reward, or
25 encourage an act of international terrorism that

1 causes or is designed to cause death or serious bod-
 2 ily injury to a national of the United States while
 3 that national is outside the United States, or sub-
 4 stantial damage to the property of a legal entity or-
 5 ganized under the laws of the United States (includ-
 6 ing any State, district, commonwealth, territory, or
 7 possession of the United States) while that property
 8 is outside of the United States;

9 “(8) the offense occurs in whole or in part with-
 10 in the United States, and an offender intends to fa-
 11 cilitate, reward, or encourage an act of international
 12 terrorism that is designed to influence the policy or
 13 affect the conduct of a foreign government; or

14 “(9) the offense occurs in whole or in part out-
 15 side of the United States, and an offender is a na-
 16 tional of the United States, a stateless person whose
 17 habitual residence is in the United States, or a legal
 18 entity organized under the laws of the United States
 19 (including any State, district, commonwealth, terri-
 20 tory, or possession of the United States).”.

21 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

22 (1) TABLE OF SECTIONS.—The table of sections
 23 for chapter 113B of title 18, United States Code, is
 24 amended by adding at the end the following:

“2339D. Receiving military-type training from a foreign terrorist organization.
 “2339E. Providing material support to international terrorism.”.

1 (2) OTHER AMENDMENT.—Section
 2 2332b(g)(5)(B)(i) of title 18, United States Code, is
 3 amended by inserting “2339E (relating to providing
 4 material support to international terrorism),” before
 5 “or 2340A (relating to torture)”.

6 **SEC. 303. PROHIBITING ATTEMPTS AND CONSPIRACIES TO**
 7 **OBTAIN MILITARY-TYPE TRAINING FROM A**
 8 **FOREIGN TERRORIST ORGANIZATION.**

9 Section 2339D(a) of title 18, United States Code, is
 10 amended by inserting “, or attempts or conspires to do
 11 so,” after “foreign terrorist organization”.

12 **SEC. 304. PROHIBITING USE OF FALSE TRAVEL DOCU-**
 13 **MENTS.**

14 (a) IN GENERAL.—Section 1028 of title 18, United
 15 States Code, is amended—

16 (1) in the section heading, by inserting “**false**
 17 **travel documents,**” after “**identification**
 18 **documents,**”;

19 (2) in subsection (a)—

20 (A) in paragraph (1), by striking “or a
 21 false identification document” and inserting
 22 “false identification document, or false travel
 23 document”;

24 (B) in paragraph (2), by striking “or a
 25 false identification document” and inserting

1 “false identification document, or false travel
2 document”;

3 (C) in paragraph (3), by striking “or false
4 identification documents” and inserting “false
5 identification documents, or false travel docu-
6 ments”;

7 (D) in paragraph (5), by inserting “, false
8 travel document,” after “false identification
9 document”; and

10 (E) in paragraph (8), by inserting “false
11 travel documents,” after “false identification
12 documents,”;

13 (3) in subsection (b)—

14 (A) in paragraph (1)(B), by striking “or
15 false identification documents” and inserting
16 “false identification documents, or false travel
17 documents”; and

18 (B) in paragraph (2)(A)—

19 (i) by striking “document,,” and in-
20 serting “document,”; and

21 (ii) by striking “or a false identifica-
22 tion document” and inserting “a false
23 identification document, or a false travel
24 document”;

1 (4) in subsection (c)(3)(B), by inserting “false
2 travel document,” after “false identification docu-
3 ment,”;

4 (5) in subsection (d)—

5 (A) in paragraph (11), by striking “and”
6 at the end;

7 (B) in paragraph (12), by striking the pe-
8 riod at the end and inserting “; and”; and

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

10 “(13) the term ‘false travel document’ means a
11 document issued for the use of a particular, identi-
12 fied individual and of a type intended or commonly
13 accepted for the purposes of passage on a commer-
14 cial aircraft or mass transportation vehicle, including
15 a ticket or boarding pass, that—

16 “(A) was not issued by or under the au-
17 thority of a commercial airline or mass trans-
18 portation provider, but appears to be issued by
19 or under the authority of a commercial airline
20 or mass transportation provider; or

21 “(B) was issued by or under the authority
22 of a commercial airline or mass transportation
23 provider, and was subsequently altered for pur-
24 poses of deceit.”; and

1 (6) in subsection (h), by inserting “false travel
2 documents,” after “identification documents,”.

3 (b) TECHNICAL AMENDMENT.—The table of sections
4 for chapter 47 of title 18, United States Code, is amended
5 by striking the item related to section 1028 and inserting
6 the following:

 “1028. Fraud and related activity in connection with identification documents,
 false travel documents, authentication features, and informa-
 tion.”.

7 **SEC. 305. PREVENTING UNWARRANTED RELEASE OF CON-**
8 **VICTED TERRORISTS AND SEX OFFENDERS**
9 **PENDING SENTENCING OR APPEAL.**

10 (a) IN GENERAL.—Section 3145 of title 18, United
11 States Code, is amended by adding at the end the fol-
12 lowing:

13 “(d) APPLICATION.—No person shall be eligible for
14 release under subsection (c) based on exceptional reasons
15 if the person is being detained pending sentencing or ap-
16 peal in a case involving—

17 “(1) an offense under section 2332b of this
18 title;

19 “(2) an offense listed in section 2332b(g)(5)(B)
20 of this title for which a maximum term of imprison-
21 ment of 10 years or more is prescribed; or

22 “(3) an offense involving a minor victim under
23 section 1201, 1591, 2241, 2242, 2244(a)(1), 2245,
24 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3),

1 2252A(a)(1), 2252A(a)(2), 2252A(a)(3),
2 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of
3 this title.”.

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