

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5825
OFFERED BY M. _____**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Electronic Surveillance
3 Modernization Act”.

4 SEC. 2. FISA DEFINITIONS.

5 (a) AGENT OF A FOREIGN POWER.—Subsection
6 (b)(1) of section 101 of the Foreign Intelligence Surveil-
7 lance Act of 1978 (50 U.S.C. 1801) is amended—

8 (1) in subparagraph (B), by striking “; or” and
9 inserting “;”; and

10 (2) by adding at the end the following new sub-
11 paragraph:

12 “(D) possesses or is reasonably expected to
13 transmit or receive foreign intelligence informa-
14 tion while in the United States; or”.

15 (b) ELECTRONIC SURVEILLANCE.—Subsection (f) of
16 such section is amended to read as follows:

17 “(f) ‘Electronic surveillance’ means—

1 “(1) the installation or use of a surveillance de-
2 vice for the intentional collection of information re-
3 lating to a person who is reasonably believed to be
4 in the United States by intentionally targeting that
5 person, under circumstances in which the person has
6 a reasonable expectation of privacy and a warrant
7 would be required for law enforcement purposes; or

8 “(2) the intentional acquisition of the contents
9 of any communication, without the consent of a
10 party to the communication, under circumstances in
11 which a person has a reasonable expectation of pri-
12 vacy and a warrant would be required for law en-
13 forcement purposes, if both the sender and all in-
14 tended recipients are located within the United
15 States.”.

16 (c) MINIMIZATION PROCEDURES.—Subsection (h) of
17 such section is amended—

18 (1) in paragraph (2), by striking “importance;”
19 and inserting “importance; and”;

20 (2) in paragraph (3), by striking “; and” and
21 inserting “.”; and

22 (3) by striking paragraph (4).

23 (d) WIRE COMMUNICATION AND SURVEILLANCE DE-
24 VICE.—Subsection (l) of such section is amended to read
25 as follows:

1 (B) by striking subparagraph (B); and
2 (C) by redesignating subparagraph (C) as
3 subparagraph (B);
4 (2) by striking subsection (a)(4);
5 (3) in subsection (b), to read as follows:

6 “(b)(1) The Attorney General may require, by writ-
7 ten certification, any person with authorized access to
8 electronic communications or equipment used to transmit
9 or store electronic communications to provide information,
10 facilities, or technical assistance—

11 “(A) necessary to accomplish electronic surveil-
12 lance authorized under subsection (a); or

13 “(B) to an official designated by the President
14 for a period of up to one year, provided the Attorney
15 General certifies in writing, under oath, that the
16 provision of the information, facilities, or technical
17 assistance does not constitute electronic surveillance.

18 “(2) The Attorney General may require a person pro-
19 viding information, facilities, or technical assistance under
20 paragraph (1) to—

21 “(A) provide the information, facilities, or tech-
22 nical assistance in such a manner as will protect the
23 secrecy of the provision of such information, facili-
24 ties, or technical assistance and produce a minimum

1 of interference with the services that such person is
2 providing the customers of such person; and

3 “(B) maintain under security procedures ap-
4 proved by the Attorney General and the Director of
5 National Intelligence any records concerning such
6 electronic surveillance or the information, facilities,
7 or technical assistance provided which such person
8 wishes to retain.

9 “(3) The Government shall compensate, at the pre-
10 vailing rate, a person for providing information, facilities,
11 or technical assistance pursuant to paragraph (1).”; and

12 (4) by adding at the end the following new sub-
13 section:

14 “(c) Notwithstanding any other provision of law, the
15 President may designate an official who may authorize
16 electronic surveillance of international radio communica-
17 tions of a diplomat or diplomatic mission or post of the
18 government of a foreign country in the United States in
19 accordance with procedures approved by the Attorney
20 General.”.

21 **SEC. 4. APPLICATIONS FOR COURT ORDERS.**

22 Section 104 of the Foreign Intelligence Surveillance
23 Act of 1978 (50 U.S.C. 1804) is amended—

24 (1) in subsection (a)—

1 (A) by striking paragraphs (6), (9), and
2 (11);

3 (B) by redesignating paragraphs (7), (8),
4 and (10) as paragraphs (6), (7), and (8), re-
5 spectively;

6 (C) in paragraph (6), as redesignated by
7 subparagraph (B)—

8 (i) in the matter preceding subpara-
9 graph (A), by striking “or officials des-
10 ignated” and all that follows through “con-
11 sent of the Senate” and inserting “des-
12 ignated by the President to authorize elec-
13 tronic surveillance for foreign intelligence
14 purposes”;

15 (ii) in subparagraph (C), by striking
16 “techniques;” and inserting “techniques;
17 and”;

18 (iii) by striking subparagraphs (D)
19 and (E) and inserting the following:

20 “(D) including a statement of the basis for
21 the certification that the information sought is
22 the type of foreign intelligence information des-
23 ignated;”;

24 (D) in paragraph (7), as redesignated by
25 subparagraph (B)—

1 (i) by striking “a statement of the
2 means by which the surveillance will be ef-
3 fected and”; and

4 (ii) by adding “and” at the end; and
5 (E) in paragraph (8), as redesignated by
6 subparagraph (B), by striking “; and” and in-
7 serting a period;

8 (2) by striking subsection (b); and

9 (3) by redesignating subsections (c), (d), and
10 (e) as subsections (b), (c), and (d), respectively.

11 **SEC. 5. ISSUANCE OF AN ORDER.**

12 Section 105 of the Foreign Intelligence Surveillance
13 Act of 1978 (50 U.S.C. 1805) is amended—

14 (1) in subsection (a)—

15 (A) by striking paragraph (1); and

16 (B) by redesignating paragraphs (2), (3),
17 (4), and (5) as paragraphs (1), (2), (3), and
18 (4), respectively;

19 (2) in subsection (c)(1)—

20 (A) in subparagraph (B), by striking
21 “known;” and inserting “known; and”;

22 (B) by striking subparagraphs (C), (D),
23 and (F);

24 (C) by redesignating subparagraph (E) as
25 subparagraph (C); and

1 (D) in subparagraph (C), as redesignated
2 by subparagraph (C), by striking “approved;
3 and” and inserting “approved.”;

4 (3) by striking subsection (d);

5 (4) by redesignating subsections (e), (f), (g),
6 (h), and (i) as subsections (d), (e), (f), (g), and (h),
7 respectively;

8 (5) in subsection (d), as redesignated by para-
9 graph (4)—

10 (A) in paragraph (1), by striking “for the
11 period necessary” and all that follows and in-
12 sert “for a period not to exceed one year.”; and

13 (B) in paragraph (2), by striking “original
14 order, except that” and all that follows and in-
15 serting “original order for a period not to ex-
16 ceed one year.”;

17 (6) in subsection (e), as redesignated by para-
18 graph (4), to read as follows:

19 “(e) Notwithstanding any other provision of this title,
20 the Attorney General may authorize the emergency em-
21 ployment of electronic surveillance if the Attorney Gen-
22 eral—

23 “(1) determines that an emergency situation ex-
24 ists with respect to the employment of electronic
25 surveillance to obtain foreign intelligence informa-

1 tion before an order authorizing such surveillance
2 can with due diligence be obtained;

3 “(2) determines that the factual basis for
4 issuance of an order under this title to approve such
5 surveillance exists;

6 “(3) informs a judge having jurisdiction under
7 section 103 at the time of such authorization that
8 the decision has been made to employ emergency
9 electronic surveillance; and

10 “(4) makes an application in accordance with
11 this title to a judge having jurisdiction under section
12 103 as soon as practicable, but not more than 120
13 hours after the official authorizes such surveillance.

14 If the Attorney General authorizes such emergency em-
15 ployment of electronic surveillance, the Attorney General
16 shall require that the minimization procedures required by
17 this title for the issuance of a judicial order be followed.

18 In the absence of a judicial order approving such electronic
19 surveillance, the surveillance shall terminate when the in-
20 formation sought is obtained, when the application for the

21 order is denied, or after the expiration of 120 hours from
22 the time of authorization by the Attorney General, which-
23 ever is earliest. In the event that such application for ap-
24 proval is denied, or in any other case where the electronic

25 surveillance is terminated and no order is issued approving

1 the surveillance, no information obtained or evidence de-
2 rived from such surveillance shall be received in evidence
3 or otherwise disclosed in any trial, hearing, or other pro-
4 ceeding in or before any court, grand jury, department,
5 office, agency, regulatory body, legislative committee, or
6 other authority of the United States, a State, or political
7 subdivision thereof, and no information concerning any
8 United States person acquired from such surveillance shall
9 subsequently be used or disclosed in any other manner by
10 Federal officers or employees without the consent of such
11 person, except with the approval of the Attorney General
12 if the information indicates a threat of death or serious
13 bodily harm to any person. A denial of the application
14 made under this subsection may be reviewed as provided
15 in section 103.”; and

16 (7) in subsection (h), as redesignated by para-
17 graph (4)—

18 (A) by striking “in accordance with a court
19 order” and all that follows and inserting “—”;
20 and

21 (B) by adding at the end the following new
22 paragraphs:

23 “(1) in accordance with a court order or re-
24 quest for emergency assistance under this Act for
25 electronic surveillance or physical search; or

1 “(2) in response to a certification by the Attor-
2 ney General or a designee of the Attorney General
3 seeking information, facilities, or technical assistance
4 from such person that does not constitute electronic
5 surveillance.”.

6 **SEC. 6. USE OF INFORMATION.**

7 Section 106(i) of the Foreign Intelligence Surveil-
8 lance Act of 1978 (50 U.S.C. 1806(i)) is amended—

9 (1) by striking “radio communication” and in-
10 serting “communication”; and

11 (2) by striking “contents indicates” and insert-
12 ing “contents contain significant foreign intelligence
13 information or indicate”.

14 **SEC. 7. AUTHORIZATION AFTER AN ARMED ATTACK.**

15 (a) **ELECTRONIC SURVEILLANCE.**—Section 111 of
16 the Foreign Intelligence Surveillance Act of 1978 (50
17 U.S.C. 1811) is amended by striking “for a period not
18 to exceed” and all that follows and inserting the following:
19 “for a period not to exceed 60 days following an armed
20 attack against the territory of the United States if the
21 President submits to the Permanent Select Committee on
22 Intelligence of the House of Representatives and the Se-
23 lect Committee on Intelligence of the Senate notification
24 of the authorization under this section.”.

1 (b) PHYSICAL SEARCH.—Section 309 of such Act (50
2 U.S.C. 1829) is amended by striking “for a period not
3 to exceed” and all that follows and inserting the following:
4 “for a period not to exceed 60 days following an armed
5 attack against the territory of the United States if the
6 President submits to the Permanent Select Committee on
7 Intelligence of the House of Representatives and the Se-
8 lect Committee on Intelligence of the Senate notification
9 of the authorization under this section.”.

10 **SEC. 8. AUTHORIZATION OF ELECTRONIC SURVEILLANCE**

11 **AFTER A TERRORIST ATTACK.**

12 The Foreign Intelligence Surveillance Act of 1978
13 (50 U.S.C. 1801 et seq.) is further amended—

14 (1) by adding at the end of title I the following
15 new section:

16 “AUTHORIZATION FOLLOWING A TERRORIST ATTACK
17 UPON THE UNITED STATES

18 “SEC. 112. (a) IN GENERAL.—Notwithstanding any
19 other provision of law, but subject to the provisions of this
20 section, the President, acting through the Attorney Gen-
21 eral, may authorize electronic surveillance without an
22 order under this title to acquire foreign intelligence infor-
23 mation for a period not to exceed 45 days following a ter-
24 rorist attack against the United States if the President
25 submits a notification to the congressional intelligence

1 committees and a judge having jurisdiction under section
2 103 that—

3 “(1) the United States has been the subject of
4 a terrorist attack; and

5 “(2) identifies the terrorist organizations or af-
6 filiates of terrorist organizations believed to be re-
7 sponsible for the terrorist attack.

8 “(b) SUBSEQUENT CERTIFICATIONS.—At the end of
9 the 45-day period described in subsection (a), and every
10 45 days thereafter, the President may submit a subse-
11 quent certification to the congressional intelligence com-
12 mittees and a judge having jurisdiction under section 103
13 that the circumstances of the terrorist attack for which
14 the President submitted a certification under subsection
15 (a) require the President to continue the authorization of
16 electronic surveillance under this section for an additional
17 45 days. The President shall be authorized to conduct
18 electronic surveillance under this section for an additional
19 45 days after each such subsequent certification.

20 “(c) ELECTRONIC SURVEILLANCE OF INDIVID-
21 UALS.—The President, or an official designated by the
22 President to authorize electronic surveillance, may only
23 conduct electronic surveillance of a person under this sec-
24 tion if the President or such official determines that—

1 “(1) there is a reasonable belief that such per-
2 son is communicating with a terrorist organization
3 or an affiliate of a terrorist organization that is rea-
4 sonably believed to be responsible for the terrorist
5 attack; and

6 “(2) the information obtained from the elec-
7 tronic surveillance may be foreign intelligence infor-
8 mation.

9 “(d) MINIMIZATION PROCEDURES.—The President
10 may not authorize electronic surveillance under this sec-
11 tion until the Attorney General approves minimization
12 procedures for electronic surveillance conducted under this
13 section.

14 “(e) UNITED STATES PERSONS.—Notwithstanding
15 subsection (b), the President may not authorize electronic
16 surveillance of a United States person under this section
17 without an order under this title for a period of more than
18 90 days unless the President, acting through the Attorney
19 General, submits a certification to the congressional intel-
20 ligence committees that—

21 “(1) the continued electronic surveillance of the
22 United States person is vital to the national security
23 of the United States;

1 “(2) describes the circumstances that have pre-
2 vented the Attorney General from obtaining an order
3 under this title for continued surveillance;

4 “(3) describes the reasons for believing the
5 United States person is affiliated with or in commu-
6 nication with a terrorist organization or affiliate of
7 a terrorist organization that is reasonably believed to
8 be responsible for the terrorist attack; and

9 “(4) describes the foreign intelligence informa-
10 tion derived from the electronic surveillance con-
11 ducted under this section.

12 “(f) USE OF INFORMATION.—Information obtained
13 pursuant to electronic surveillance under this subsection
14 may be used to obtain an order authorizing subsequent
15 electronic surveillance under this title.

16 “(g) REPORTS.—Not later than 14 days after the
17 date on which the President submits a certification under
18 subsection (a), and every 30 days thereafter until the
19 President ceases to authorize electronic surveillance under
20 subsection (a) or (b), the President shall submit to the
21 congressional intelligence committees a report on the elec-
22 tronic surveillance conducted under this section, includ-
23 ing—

24 “(1) a description of each target of electronic
25 surveillance under this section; and

1 “(2) the basis for believing that each target is
2 in communication with a terrorist organization or an
3 affiliate of a terrorist organization.

4 “(h) CONGRESSIONAL INTELLIGENCE COMMITTEES
5 DEFINED.—In this section, the term ‘congressional intel-
6 ligence committees’ means the Permanent Select Com-
7 mittee on Intelligence of the House of Representatives and
8 the Select Committee on Intelligence of the Senate.”; and
9 (2) in the table of contents in the first section,
10 by inserting after the item relating to section 111
11 the following new item:

 “Sec. 112. Authorization following a terrorist attack upon the United States.”.

12 **SEC. 9. AUTHORIZATION OF ELECTRONIC SURVEILLANCE**
13 **DUE TO IMMINENT THREAT.**

14 The Foreign Intelligence Surveillance Act of 1978
15 (50 U.S.C. 1801 et seq.) is further amended—

16 (1) by adding at the end of title I the following
17 new section:

18 “AUTHORIZATION DUE TO IMMINENT THREAT

19 “SEC. 113. (a) IN GENERAL.—Notwithstanding any
20 other provision of law, but subject to the provisions of this
21 section, the President, acting through the Attorney Gen-
22 eral, may authorize electronic surveillance without an
23 order under this title to acquire foreign intelligence infor-
24 mation for a period not to exceed 90 days if the President
25 submits to the congressional leadership, the congressional

1 intelligence committees, and the Foreign Intelligence Sur-
2 veillance Court a written notification that the President
3 has determined that there exists an imminent threat of
4 attack likely to cause death, serious injury, or substantial
5 economic damage to the United States. Such notifica-
6 tion—

7 “(1) shall be submitted as soon as practicable,
8 but in no case later than 5 days after the date on
9 which the President authorizes electronic surveil-
10 lance under this section;

11 “(2) shall specify the entity responsible for the
12 threat and any affiliates of the entity;

13 “(3) shall state the reason to believe that the
14 threat of imminent attack exists;

15 “(4) shall state the reason the President needs
16 broader authority to conduct electronic surveillance
17 in the United States as a result of the threat of im-
18 minent attack;

19 “(5) shall include a description of the foreign
20 intelligence information that will be collected and the
21 means that will be used to collect such foreign intel-
22 ligence information; and

23 “(6) may be submitted in classified form.

24 “(b) SUBSEQUENT CERTIFICATIONS.—At the end of
25 the 90-day period described in subsection (a), and every

1 90 days thereafter, the President may submit a subse-
2 quent written notification to the congressional leadership,
3 the congressional intelligence committees, the other rel-
4 evant committees, and the Foreign Intelligence Surveil-
5 lance Court that the circumstances of the threat for which
6 the President submitted a written notification under sub-
7 section (a) require the President to continue the author-
8 ization of electronic surveillance under this section for an
9 additional 90 days. The President shall be authorized to
10 conduct electronic surveillance under this section for an
11 additional 90 days after each such subsequent written no-
12 tification.

13 “(c) ELECTRONIC SURVEILLANCE OF INDIVID-
14 UALS.—The President, or an official designated by the
15 President to authorize electronic surveillance, may only
16 conduct electronic surveillance of a person under this sec-
17 tion if the President or such official determines that—

18 “(1) there is a reasonable belief that such per-
19 son is communicating with an entity or an affiliate
20 of an entity that is reasonably believed to be respon-
21 sible for imminent threat of attack; and

22 “(2) the information obtained from the elec-
23 tronic surveillance may be foreign intelligence infor-
24 mation.

1 “(d) MINIMIZATION PROCEDURES.—The President
2 may not authorize electronic surveillance under this sec-
3 tion until the Attorney General approves minimization
4 procedures for electronic surveillance conducted under this
5 section.

6 “(e) UNITED STATES PERSONS.—Notwithstanding
7 subsections (a) and (b), the President may not authorize
8 electronic surveillance of a United States person under
9 this section without an order under this title for a period
10 of more than 60 days unless the President, acting through
11 the Attorney General, submits a certification to the con-
12 gressional intelligence committees that—

13 “(1) the continued electronic surveillance of the
14 United States person is vital to the national security
15 of the United States;

16 “(2) describes the circumstances that have pre-
17 vented the Attorney General from obtaining an order
18 under this title for continued surveillance;

19 “(3) describes the reasons for believing the
20 United States person is affiliated with or in commu-
21 nication with an entity or an affiliate of an entity
22 that is reasonably believed to be responsible for im-
23 minent threat of attack; and

1 “(4) describes the foreign intelligence informa-
2 tion derived from the electronic surveillance con-
3 ducted under this section.

4 “(f) USE OF INFORMATION.—Information obtained
5 pursuant to electronic surveillance under this subsection
6 may be used to obtain an order authorizing subsequent
7 electronic surveillance under this title.

8 “(g) DEFINITIONS.—In this section:

9 “(1) CONGRESSIONAL INTELLIGENCE COMMIT-
10 TEES.—The term ‘congressional intelligence commit-
11 tees’ means the Permanent Select Committee on In-
12 telligence of the House of Representatives and the
13 Select Committee on Intelligence of the Senate.

14 “(2) CONGRESSIONAL LEADERSHIP.—The term
15 ‘congressional leadership’ means the Speaker and
16 minority leader of the House of Representatives and
17 the majority leader and minority leader of the Sen-
18 ate.

19 “(3) FOREIGN INTELLIGENCE SURVEILLANCE
20 COURT.—The term ‘Foreign Intelligence Surveillance
21 Court’ means the court established under section
22 103(a).

23 “(4) OTHER RELEVANT COMMITTEES.—The
24 term ‘other relevant committees’ means the Commit-
25 tees on Appropriations, the Committees on Armed

1 Services, and the Committees on the Judiciary of
2 the House of Representatives and the Senate.”; and

3 (2) in the table of contents in the first section,
4 by inserting after the item relating to section 111
5 the following new item:

“Sec. 113. Authorization due to imminent threat.”.

6 **SEC. 10. CONGRESSIONAL OVERSIGHT.**

7 (a) **ELECTRONIC SURVEILLANCE UNDER FISA.**—

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

10 (1) in paragraph (2)—

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

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

15 (C) by adding at the end the following new
16 subparagraph:

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

19 (2) by adding at the end the following new
20 paragraph:

21 “(3) Each report submitted under this sub-
22 section shall include reports on electronic surveil-
23 lance conducted without a court order.”.

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

1 (1) in section 501 (50 U.S.C. 413)—

2 (A) by redesignating subsection (f) as sub-
3 section (g); and

4 (B) by inserting after subsection (e) the
5 following new subsection:

6 “(f) The Chair of each of the congressional intel-
7 ligence committees, in consultation with the ranking mem-
8 ber of the committee for which the person is Chair, may
9 inform—

10 “(1) on a bipartisan basis, all members or any
11 individual members of such committee, and

12 “(2) any essential staff of such committee,
13 of a report submitted under subsection (a)(1) or sub-
14 section (b) as such Chair considers necessary.”;

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—

21 “(1) on a bipartisan basis, all members or any
22 individual members of such committee, and

23 “(2) any essential staff of such committee,
24 of a report submitted under subsection (a) as such Chair
25 considers necessary.”; and

1 (3) in section 503 (50 U.S.C. 415), by adding
2 at the end the following new subsection:

3 “(g) The Chair of each of the congressional intel-
4 ligence committees, in consultation with the ranking mem-
5 ber of the committee for which the person is Chair, may
6 inform—

7 “(1) on a bipartisan basis, all members or any
8 individual members of such committee, and

9 “(2) any essential staff of such committee,
10 of a report submitted under subsection (b), (c), or (d) as
11 such Chair considers necessary.”.

12 **SEC. 11. TECHNICAL AND CONFORMING AMENDMENTS.**

13 The Foreign Intelligence Surveillance Act of 1978
14 (50 U.S.C. 1801 et seq.) is further amended—

15 (1) in section 102(a)(3)(A), by striking
16 “101(h)(4) and”;

17 (2) in section 105(a)(5)—

18 (A) by striking “104(a)(7)(E)” and insert-
19 ing “104(a)(6)(D)”;

20 (B) by striking “104(d)” and inserting
21 “104(c)”;

22 (3) in section 106—

23 (A) in subsection (j) in the matter pre-
24 ceding paragraph (1), by striking “105(e)” and
25 inserting “105(d)”;

1 (B) in subsection (k)(2), by striking
2 “104(a)(7)(B)” and inserting “104(a)(6)(B”;
3 and
4 (4) in section 108(a)(2)(C), by striking
5 “105(f)” and inserting “105(e)”.