109TH CONGRESS
2D Session

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To provide in statute for the conduct of electronic surveillance of suspected terrorists for the purposes of protecting the American people, the Nation, and its interests from terrorist attack while ensuring that the civil liberties of United States citizens are safeguarded, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. DeWine (for himself, Mr. Graham, Mr. Hagel, and Ms. Snowe) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To provide in statute for the conduct of electronic surveillance of suspected terrorists for the purposes of protecting the American people, the Nation, and its interests from terrorist attack while ensuring that the civil liberties of United States citizens are safeguarded, 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 “Terrorist Surveillance
5 Act of 2006”.

SEC. 2. TERRORIST SURVEILLANCE PROGRAM.

(a) In General.—Notwithstanding any provision of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), chapter 119 of title 18, United States Code, or any other provision of law related to the interception or collection of communications, the President, through the Attorney General, may authorize a program of electronic surveillance without a court order for periods of up to 45 days if—

(1) the President determines that the surveillance is necessary to protect the United States, its citizens, or its interests, whether inside the United States or outside the United States;

(2) there is probable cause to believe that one party subject to the surveillance is an agent or member of a group or organization, affiliated with a group or organization, or working in support of a group or organization on the list established under section 3;

(3) the surveillance is initiated and conducted in a manner reasonably designed to acquire only communications to or from the United States where—

(A) at least one party to such communications is reasonably believed to be physically located outside the United States; or
(B) such communications appear to originate or terminate outside the United States;

(4) there is not a substantial likelihood that the surveillance will acquire the substance of any communication where every party to such communication is physically located within the United States;

(5) a significant purpose of the surveillance is to obtain foreign intelligence information; and

(6) minimization procedures are in place with respect to the surveillance which meet the standards for minimization procedures under section 101(h) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(h)).

(b) SCOPE.—

(1) BASIS.—Electronic surveillance carried out pursuant to the authority in subsection (a) shall not be conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States.

(2) TARGETING DECISIONS.—The President may rely on intelligence community professionals to make targeting decisions during the course of electronic surveillance carried out pursuant to the authority in subsection (a) based on all lawfully col-
lected information available to such professionals at the time of such decisions.

(c) DESIGNATION OF PROGRAM.—Electronic surveillance carried out pursuant to the authority in subsection (a) shall be known as the “Terrorist Surveillance Program”.

(d) MINIMIZATION PROCEDURES.—

(1) INITIAL PROCEDURES.—The Attorney General shall establish the minimization procedures required by subsection (a)(6) not later than 30 days after the date of the enactment of this Act.

(2) UPDATES.—The Attorney General shall update the minimization procedures under this subsection at such times as the Attorney General considers appropriate, but not less often than annually.

(e) SUPPORT OF SURVEILLANCE.—With respect to any electronic surveillance authorized by subsection (a), the Attorney General may direct a specified provider of communication services or common carrier to—

(1) furnish all information, facilities, or technical assistance necessary to accomplish the surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier is providing its customers; and
(2) maintain under security procedures ap-
proved by the Attorney General and the Director of
National Intelligence any records concerning the sur-
veillance or assistance furnished that such carrier
determines to retain.

(f) USE OF INFORMATION.—

(1) Disclosure of information on United
States persons.—Information acquired from elec-
tronic surveillance conducted pursuant to this sec-
tion concerning any United States person may be
used or disclosed by Federal officers or employees
without the consent of the United States person only
in accordance with the minimization procedures re-
quired by subsection (a)(6).

(2) Uses of information.—No information
acquired from electronic surveillance conducted pur-
suant to this section may be used or disclosed by
Federal officers or employees except for lawful pur-
poses, including the provision of a factual predicate
for an order for electronic surveillance under section
104 of the Foreign Intelligence Surveillance Act of
1978 (50 U.S.C. 1804), dissemination to appro-
priate authorities consistent with the minimization
procedures required by subsection (a)(6), and use as
evidence in a criminal proceeding consistent with

SEC. 3. TERRORIST SURVEILLANCE LIST.

(a) In General.—The President shall establish and maintain for purposes of this Act a list of groups and organizations that are subject to electronic surveillance authorized under the Terrorist Surveillance Program. The list shall be known as the “Terrorist Surveillance List”.

(b) Requirements for Listing.—A group or organization may be placed on the list under this section only if the President determines that there is a reasonable likelihood that the group or organization, as the case may be—

(1) has engaged in an act of international terrorism against the United States, its citizens, or its interests, whether inside the United States or outside the United States;

(2) intends to engage in an act of international terrorism against the United States, its citizens, or its interests, whether inside the United States or outside the United States; or

(3) is engaged in activities in preparation for an actual or potential act of international terrorism against the United States, its citizens, or its inter-
ests, whether inside the United States or outside the
United States.

(c) Updates.—The President shall update the list
under this section at such times as the President considers
appropriate, but not less often than annually, including
determining whether a group or organization placed on the
Terrorist Surveillance List should be removed from the
list.

SEC. 4. PROGRAM REVIEW AND REAUTHORIZATION.

(a) In General.—Not later than 45 days after the
commencement of the Terrorist Surveillance Program and
45 days after the continuation of the Terrorist Surveil-
lance Program pursuant to a determination under sub-
section (b), the Attorney General shall review the conduct
of the program in order to determine the following:

(1) Whether the surveillance under the program
met the requirements of section 2(a) during the pe-
period covered by the review.

(2) Whether to recommend the continuation of
the program for another 45 days.

(b) Continuation of the Terrorist Surveil-
ance Program.—

(1) Determination on Continuation.—
Upon completion of the review of the Terrorist Sur-
veillance Program by the Attorney General under
subsection (a), the President shall determine the following:

(A) Whether the Terrorist Surveillance Program remains necessary to protect the United States, its citizens, or interests, whether inside the United States or outside the United States.

(B) Whether to continue the Terrorist Surveillance Program.

(2) CONTINUATION.—If the President determines under paragraph (1) to continue the Terrorist Surveillance Program, the President, through the Attorney General, may continue the program for an additional period of 45 days, subject to the requirements of section 2(a).

(3) DISCONTINUATION.—If the President determines under paragraph (1) to discontinue the Terrorist Surveillance Program, the President shall discontinue the program in a prompt manner.

(4) RECOMMENCEMENT OF PROGRAM.—At any time after the discontinuation of the Terrorist Surveillance Program under paragraph (3), the President may recommence the program or any other program of electronic surveillance under this Act if
the President determines that the requirements of section 2(a) are met.

(c) CERTIFICATION.—Following completion of any review of a program of surveillance under this section, the Attorney General shall certify in writing and under oath, to the congressional intelligence committees, whether the program of surveillance, during the period covered by the review, met the requirements of section 2(a).

(d) REVIEW.—The Attorney General shall conduct review of the Terrorist Surveillance Program under this section pursuant to such procedures as the Attorney General shall establish for purposes of this section.

SEC. 5. REVIEW OF SURVEILLANCE OF INDIVIDUAL TARGETS.

(a) IN GENERAL.—When conducting a 45-day review under section 4, the Attorney General shall also review the surveillance of individual targets within the United States under the program during the period covered by the review. During such review, the Attorney General shall determine the following:

(1) Whether the known facts and circumstances relating to any target within the United States—

(A) met the requirements of section 2(a) during the period covered by the review; and
(B) satisfy the criteria for an application under section 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804) for an order for electronic surveillance of the target under section 105 of that Act (50 U.S.C. 1805).

(2) Whether to terminate surveillance on the target.

(3) Whether to continue surveillance under section 2(a).

(b) CONTINUED SURVEILLANCE UNDER FISA.—

(1) IN GENERAL.—

(A) DETERMINATION.—If, at any time (including through a review of electronic surveillance under section 4), the Attorney General determines that the known facts and circumstances relating to any target within the United States satisfy the criteria for an application under section 104 of the Foreign Intelligence Surveillance Act of 1978 for an order for electronic surveillance of the target under section 105 of that Act, the Attorney General, at the direction of the President, shall—

(i) discontinue the surveillance of the target under section 2(a); or
(ii) continue the surveillance of the target under section 2(a), subject to the requirements of subparagraph (B).

(B) CONTINUATION OF SURVEILLANCE.—

(i) IN GENERAL.—The Attorney General may continue surveillance of a target under section 2(a) as specified in subparagraph (A)(ii) only if the Attorney General makes an application under section 104 of the Foreign Intelligence Surveillance Act of 1978 for an order for electronic surveillance of the target under section 105 of that Act as soon as practicable after the date on which the Attorney General makes the determination to continue surveillance of the target under subparagraph (A)(ii), but in no event later than seven days after the date of such determination.

(ii) PERIOD.—The period during which the Attorney General may continue surveillance of a target under section 2(a) as specified in subparagraph (A)(ii) shall be limited to the period during which the application of the Attorney General under section 104 of the Foreign Intelligence
Surveillance Act of 1978 for an order for
electronic surveillance of the target under
section 105 of that Act is pending under
that Act, including during any period in
which appeal from the denial of the appli-
cation is pending under the court of review
or the Supreme Court under section
103(b) of that Act (50 U.S.C. 1803(b)).

(e) DISCONTINUATION OF SURVEILLANCE.—If the
Attorney General determines through a review of elec-
tronic surveillance under this section that the known facts
and circumstances relating to any target within the United
States do not meet the requirements of section 2(a) and
do not satisfy the criteria for an application under section
104 of the Foreign Intelligence Surveillance Act of 1978
(50 U.S.C. 1804) for an order for electronic surveillance
of the target under section 105 of that Act (50 U.S.C.
1805), the Attorney General shall discontinue the surveil-
lance of the target under section 2(a).

(d) CONTINUED SURVEILLANCE UNDER SECTION
2(a).—

(1) PRESUMPTION.—In reviewing the electronic
surveillance of a target in the United States under
this section, the Attorney General shall presume that
electronic surveillance of a target shall be conducted
under the Foreign Intelligence Surveillance Act of 1978 or be terminated.

(2) REBUTTAL OF PRESUMPTION.—The presumption under paragraph (1) with respect to a target can be rebutted, and the Attorney General may continue the surveillance of a target under section 2(a), if—

(A) the Attorney General determines, based on the known facts and circumstances relating to such target, that—

(i) the surveillance of the target during the previous 45-day period satisfied the requirements of section 2(a); and

(ii) there is a good faith belief that continued surveillance will result in the acquisition of foreign intelligence information; and

(B) the President determines that continued surveillance of the target is necessary to protect the United States, its citizens, or interests, whether inside the United States or outside the United States.

(e) CERTIFICATION.—If the Attorney General decides to continue surveillance of a target under section 2(a), not later than 72 hours after the Attorney General conducts
the applicable review under subsection (a), the Attorney
General shall certify in writing and under oath to the ter-
rorist surveillance subcommittees that—

(1) the surveillance of the target during the
previous 45-day period satisfied the requirements of
section 2(a);

(2) the known facts and circumstances relating
to the target do not satisfy the criteria for an appli-
cation under section 104 of the Foreign Intelligence
Surveillance Act of 1978 for an order for electronic
surveillance of the target under section 105 of that
Act;

(3) the President has determined that contin-
ued surveillance of the target without a court order
is necessary to protect the United States, its citi-
zens, or interests; and

(4) continued surveillance is being undertaken
in a good faith belief that it will result in the acquisi-
tion of foreign intelligence information.

(f) SUBMITTING CERTIFICATION TO FISA COURT.—

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

(1) in paragraph (10), by striking “and” at the
end;
(2) in paragraph (11), by striking the period at the end and inserting ‘‘; and’’; and

(3) by adding at the end the following:

“(12) if applicable, each certification under section 5(e) of the Terrorist Surveillance Act of 2006 relating to the continued surveillance of the target of the electronic surveillance that is the subject of the application.”.

SEC. 6. REGULAR AND ONGOING OVERSIGHT BY CONGRESS.

(a) Senate Terrorist Surveillance Subcommittee.—The Select Committee on Intelligence of the Senate shall designate the creation of a Subcommittee, in accordance with the Rules of the Senate, with the exclusive jurisdiction to oversee and monitor all matters relating to surveillance conducted by the President under the Terrorist Surveillance Program. The Subcommittee shall be authorized to employ staff members, as needed, with the technical and subject matter expertise necessary to assist the Subcommittee in conducting regular, ongoing oversight of any surveillance conducted by the President under the Terrorist Surveillance Program. The staff members shall work exclusively for, and report exclusively to, the Subcommittee.
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(b) House Terrorist Surveillance Subcommittee.—The Permanent Select Committee on Intel-
ligence of the House of Representatives shall designate the
creation of a Subcommittee, in accordance with the Rules
of the House of Representatives, with the exclusive juris-
diction to oversee and monitor all matters relating to sur-
veillance conducted by the President under the Terrorist
Surveillance Program. The Subcommittee shall be author-
ized to employ staff members, as needed, with the tech-
nical and subject matter expertise necessary to assist the
Subcommittee in conducting regular, ongoing oversight of
any surveillance conducted by the President under the
Terrorist Surveillance Program. The staff members shall
work exclusively for, and report exclusively to, the Sub-
committee.

(c) Submittals to Full Intelligence Committees.—

(1) Terrorist Surveillance List.—

(A) In General.—Not later than 60 days
after the date of the enactment of this Act, and
annually thereafter, the President shall submit
to the congressional leadership and the congres-
sional intelligence committees a current version
of the list established under section 3.
(B) **UPDATES.**—Not later than 72 hours after any update or modification of the list established under section 3, the President shall submit to the congressional intelligence committees a current version of the list, showing such update or modification.

(2) **REVIEW PROCEDURES.**—

(A) **IN GENERAL.**—The Attorney General shall submit to the congressional intelligence committees the review procedures established under section 4(d).

(B) **UPDATES.**—Not later than 72 hours after any update or modification of the review procedures established under section 4(d), the Attorney General shall submit to the congressional intelligence committees a current version of the procedures, showing such update or modification.

(3) **NOTICE OF SURVEILLANCE.**—Not later than 72 hours after the commencement of a program of electronic surveillance under section 2(a) or the continuation, discontinuation, or recommencement of a program of electronic surveillance under section 2(a), the President shall provide notice of such action to the congressional intelligence committees.
(4) Minimization procedures.—

(A) In general.—The Attorney General shall submit to the congressional intelligence committees the minimization procedures established under section 2(d).

(B) Updates.—Not later than 72 hours after any update to or modification of the minimization procedures established under section 2(d), the Attorney General shall submit to the congressional intelligence committees the updated or modified version of the minimization procedures.

(5) Form of submittals.—Any matter submitted under this subsection shall be submitted in classified form.

(d) Submittals to subcommittees.—

(1) In general.—The President shall submit to the terrorist surveillance subcommittees a report on the management and operational details of the Terrorist Surveillance Program generally and on any specific surveillance conducted under the Terrorist Surveillance Program whenever requested by either of the terrorist surveillance subcommittees.

(2) Semi-annual reports.—
(A) IN GENERAL.—In addition to any reports required under paragraph (1), the President shall, not later than 6 months after the date of the enactment of this Act and every 6 months thereafter, fully inform the terrorist surveillance subcommittees on all electronic surveillance conducted under the Terrorist Surveillance Program.

(B) CONTENTS.—Each report under subparagraph (A) shall include the following:

   (i) A complete discussion of the management, operational details, effectiveness, and necessity of the Terrorist Surveillance Program generally, and of the management, operational details, effectiveness, and necessity of all electronic surveillance conducted under the program, during the six-month period ending on the date of such report.

   (ii) For any target located within the United States subject to surveillance under the Terrorist Surveillance Program for more than 45 days—

       (I) an explanation why continued surveillance of the subject is necessary
to protect the United States, its citizens, or interests; and

(II) an explanation why the Attorney General has not sought an order for the approval of electronic surveillance of the subject under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

(iii) The total number of targets of electronic surveillance within the United States during the preceding 6-month period either commenced or continued under the Terrorist Surveillance Program.

(iv) The total number of United States persons targeted for electronic surveillance during the preceding 6-month period under the Terrorist Surveillance Program.

(v) The total number of targets of electronic surveillance within the United States during the preceding 6-month period under the Terrorist Surveillance Program for which, an application was made under section 104 of the Foreign Intelligence Surveillance Act of 1978 (50
U.S.C. 1804) for an order under section 105 of that Act (50 U.S.C. 1805) approving electronic surveillance under that Act, and, of such applications, the total number either granted, modified, or denied.

(vi) Any other information specified, in writing, to be included in such report by either of the terrorist surveillance subcommittees.

(vii) A description of the nature of the information sought under the Terrorist Surveillance Program, the types of communications subjected to such program, and whether the information sought under such program could be reasonably obtained by less intrusive investigative techniques in a timely and effective manner.

(3) Form of Reports.—Any report or information submitted under this subsection shall be submitted in classified form.

(e) Annual Reports by Subcommittees.—The terrorist surveillance subcommittees shall prepare separate annual reports on the Terrorist Surveillance Program, including the program’s effectiveness, its management, its operational details, and any other matters that
the subcommittees consider appropriate. Each report shall be prepared in a classified form.

SEC. 7. SUNSET.

This Act and the amendments made by this Act are repealed effective on the date that is 5 years after the date of enactment of this Act.

SEC. 8. CRIMINAL PENALTIES FOR UNAUTHORIZED DISCLOSURE OF INFORMATION ON SURVEILLANCE PROGRAMS.

(a) Establishment of Offense.—Chapter 37 of title 18, United States Code, is amended by inserting after section 798A the following new section:

"§ 798B. Unauthorized disclosure of information on surveillance programs

"(a) In General.—Any covered person who intentionally discloses information identifying or describing, whether in whole or in part, electronic surveillance authorized by section 2 of the Terrorist Surveillance Act of 2006, or any other information relating to the Terrorist Surveillance Program under that Act or any program of surveillance under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) to any individual not authorized to receive such information shall be fined not more than $1,000,000, imprisoned not more than 15 years, or both."
“(b) DEFINITION.—In this section, the term ‘covered person’ means any person authorized to receive information under the Terrorist Surveillance Act of 2006, or the Foreign Intelligence Surveillance Act of 1978.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 798A the following new item:

“798B. Unauthorized disclosure of information on surveillance programs.”.

SEC. 9. DEFINITIONS.

In this Act—

(1) the term “congressional intelligence committees” means—

(A) each member of the Select Committee on Intelligence of the Senate; and

(B) each member of the Permanent Select Committee on Intelligence of the House of Representatives;

(2) the term “congressional leadership” means—

(A) the Speaker of the House of Representatives and the Minority Leader of the House of Representatives; and

(B) the Majority Leader and Minority Leader of the Senate;
(3) the terms “international terrorism”, “electronic surveillance”, “foreign intelligence information”, and “United States person” have the meaning given such terms in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and

(4) the term “terrorist surveillance subcommittees” means the subcommittees of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives created under section 6(a) and (b).