

Side-by-Side Comparison Chart of FISA Legislation

Theme	Issue	Senate Judiciary	Senate Intel.	House RESTORE	PAA
Targeting Non-U.S. Persons Abroad	Who authorizes surveillance of non-U.S. persons abroad?	AG and DNI acting jointly	AG and DNI acting jointly	FISC (basket order)	AG & DNI (unclear whether acting jointly)
	... under prob. cause standard?	No	No	No	No
	... to collect all foreign intel. information?	Yes	Yes	No. Excludes foreign affairs foreign intelligence info.	Yes
	Prohibits bulk collection of int'l comms.?	Yes. Requires at least 1 specific individual target	No	No	No
	Does bill require full FISC order to continue surveillance when person in the U.S. is on the line?	Yes. Full FISC order required when a “significant purpose” is surveillance of a person in the U.S.	No meaningful protection. Bars targeting a person abroad for the purpose of acquiring comms. of a known person in the U.S.	Yes. Full FISC order required when a “significant purpose” is surveillance of a <i>U.S. person</i> in the U.S. Lists factors for court to consider when assessing whether significant purpose threshold is met.	No
Definition of “Electronic Surveillance”	Does the bill operate by confusingly redefining “electronic surveillance” in FISA?	No	Yes. Result: illegal surveillance of targets abroad not penalized.	No	Yes. Result: illegal surveillance of targets abroad not penalized.

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What the FISC Reviews Initially	Targeting procedures subject to FISC approval?	Yes. Must be submitted to FISC w/in 5 days of adoption or of amendment.	Yes. Must be submitted to FISC w/in 5 days of adoption or amendment.	Yes, and as a condition to commencement of surveillance (with an exception for emergencies).	Yes. Must be submitted to FISC w/in 120 days of enactment of PAA. “Clearly erroneous” review standard.
	Minimization procedures subject to FISC approval?	Yes. Must be submitted to FISC w/in 5 days of adoption or of amendment	Yes. Must be submitted to FISC w/in 5 days of adoption or of amendment	Yes, and as a condition to commencement of surveillance (with an exception for emergencies).	No
	FISC assesses whether procedures are consistent w. 4 th amendment?	Yes	Yes	Not statutorily required.	Not statutorily required.
Appeals	Surveillance continues while gov’t appeals?	FISC decides.	Yes	FISC decides.	Yes
Ongoing FISC Supervision	FISC monitors compliance w. procedures?	Yes, but as to minimization procedures only.	No	Yes, as to both targeting and minimization.	No
Targeting U.S. Persons Abroad	Who authorizes surveillance of U.S. persons abroad?	FISC	FISC	AG under an Exec. Order. No statutory provision. (Continues current practice.)	AG under an Exec. Order. No statutory provision. (Continues current practice.)
	... under probable cause standard?	Yes	Yes	Yes	Yes

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Emergencies	Amends FISA emergency provisions that allow wiretap without prior FISC order?	Yes. Eliminates requirement that AG emergency determination must be reasonable. Allows for 7 days of emergency surveillance.	Yes. Eliminates requirement AG emergency determination must be reasonable. Allows 7 days.	No. Retains reasonableness requirement and 3-day rule for emergency surveillance.	No. Retains reasonableness requirement and 3-day rule for emergency surveillance.
Other Oversight Mechanisms	Audit of TSP? By whom?	Yes. By DOJ and Intel IG's.	No	Yes. By DOJ IG.	No
	Requires report of U.S. persons interceptions?	Yes, but as to disseminations only.	Yes, but as to disseminations only.	Yes, of both acquisitions and disseminations.	No
	Requires report on interceptions of persons in the U.S.?	Yes	Yes	Yes	No
Libraries	Library exception?	No	No	No	No
Sunset	Sunset date	12/31/11 Four years	12/31/13 Six years	12/31/09 Two years (same sunset as some Patriot provisions and as "lone wolf")	2/1/08 Six months from enactment of PAA.