

109TH CONGRESS
2^D SESSION

S. 3001

To ensure that all electronic surveillance of United States persons for foreign intelligence purposes is conducted pursuant to individualized court-issued orders, to streamline the procedures of the Foreign Intelligence Surveillance Act of 1978, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 24, 2006

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

A BILL

To ensure that all electronic surveillance of United States persons for foreign intelligence purposes is conducted pursuant to individualized court-issued orders, to streamline the procedures of the Foreign Intelligence Surveillance Act of 1978, 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 “Foreign Intelligence
5 Surveillance Improvement and Enhancement Act of
6 2006”.

1 **TITLE I—CONSTRUCTION OF**
2 **FOREIGN INTELLIGENCE**
3 **SURVEILLANCE AUTHORITY**

4 **SEC. 101. REITERATION OF CHAPTERS 119, 121, AND 206 OF**
5 **TITLE 18, UNITED STATES CODE, AND FOR-**
6 **EIGN INTELLIGENCE SURVEILLANCE ACT OF**
7 **1978 AS EXCLUSIVE MEANS BY WHICH DOMES-**
8 **TIC ELECTRONIC SURVEILLANCE MAY BE**
9 **CONDUCTED.**

10 (a) EXCLUSIVE MEANS.—Notwithstanding any other
11 provision of law, chapters 119, 121, and 206 of title 18,
12 United States Code, and the Foreign Intelligence Surveil-
13 lance Act of 1978 (50 U.S.C. 1801 et seq.) shall be the
14 exclusive means by which electronic surveillance may be
15 conducted on a United States person in the United States.

16 (b) AMENDMENT TO FOREIGN INTELLIGENCE SUR-
17 VEILLANCE ACT OF 1978.—Section 109(a) of the Foreign
18 Intelligence Surveillance Act of 1978 (50 U.S.C. 1809(a))
19 is amended by striking “authorized by statute” each place
20 it appears and inserting “authorized by this title or chap-
21 ter 119, 121 or 206 of title 18, United States Code”.

22 (c) AMENDMENT TO TITLE 18, UNITED STATES
23 CODE.—Section 2511(2)(a)(ii)(B) of title 18, United
24 States Code, is amended by striking “statutory require-
25 ments” and inserting “requirements under the Foreign In-

1 telligence Surveillance Act of 1978 (50 U.S.C. 1801 et
2 seq.), this chapter, or chapters 121 or 206 of this title”.

3 **SEC. 102. SPECIFIC AUTHORIZATION REQUIRED FOR ANY**
4 **REPEAL OR MODIFICATION OF TITLE I OF**
5 **THE FOREIGN INTELLIGENCE SURVEIL-**
6 **LANCE ACT OF 1978.**

7 (a) IN GENERAL.—Title I of the Foreign Intelligence
8 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is
9 amended by inserting after section 109 the following new
10 section:

11 “SPECIFIC AUTHORIZATION REQUIRED FOR ANY REPEAL
12 OR MODIFICATION OF TITLE

13 “SEC. 109A. No provision of law shall be construed
14 to implicitly repeal or modify this title or any provision
15 thereof, nor shall any provision of law be deemed to repeal
16 or modify this title in any manner unless such provision
17 of law, if enacted after the date of the enactment of the
18 Foreign Intelligence Surveillance Improvement and En-
19 hancement Act of 2006, expressly amends or otherwise
20 specifically cites this title.”.

21 (b) CLERICAL AMENDMENT.—The table of contents
22 for that Act is amended by inserting after the item relat-
23 ing to section 109 the following new item:

“Sec. 109A. Specific authorization required for any repeal or modification of
title.”.

1 **SEC. 103. PROHIBITION ON USE OF FUNDS FOR ELEC-**
2 **TRONIC SURVEILLANCE NOT AUTHORIZED**
3 **BY LAW.**

4 Commencing on the effective date of this Act, no
5 funds appropriated or otherwise made available by any Act
6 may be obligated or expended to conduct electronic surveil-
7 lance (as defined in section 101(f) of the Foreign Intel-
8 ligence Surveillance Act of 1978 (50 U.S.C. 1801(f)), ex-
9 cept in accordance with the provisions of law as follows:

10 (1) Title I of the Foreign Intelligence Surveil-
11 lance Act of 1978 (50 U.S.C. 1801 et seq.).

12 (2) Title IV of the Foreign Intelligence Surveil-
13 lance Act of 1978 (50 U.S.C. 1841 et seq).

14 (3) Chapter 119 of title 18, United States
15 Code.

16 (4) Chapter 121 of title 18, United States
17 Code.

18 (5) Chapter 206 of title 18, United States
19 Code.

20 **SEC. 104. INFORMATION FOR CONGRESS ON THE TER-**
21 **RORIST SURVEILLANCE PROGRAM AND SIMI-**
22 **LAR PROGRAMS.**

23 As soon as practicable after the date of the enactment
24 of this Act, but not later than seven days after such date,
25 the President shall brief and inform each member of the
26 congressional intelligence committees on the following:

1 (1) The Terrorist Surveillance Program of the
2 National Security Agency.

3 (2) Any program which involves, whether in
4 part or in whole, the electronic surveillance of
5 United States persons in the United States for for-
6 eign intelligence purposes, and which is conducted
7 by any department, agency, or other element of the
8 United States Government, or by any entity at the
9 direction of a department, agency, or other element
10 of the United States Government, without fully com-
11 plying with the procedures set forth in the Foreign
12 Intelligence Surveillance Act of 1978 (50 U.S.C.
13 1801 et seq.) or chapter 119, 121, or 206 of title
14 18, United States Code.

15 **TITLE II—APPLICATIONS AND**
16 **PROCEDURES FOR ELEC-**
17 **TRONIC SURVEILLANCE FOR**
18 **FOREIGN INTELLIGENCE**
19 **PURPOSES**

20 **SEC. 201. EXTENSION OF PERIOD FOR APPLICATIONS FOR**
21 **ORDERS FOR EMERGENCY ELECTRONIC SUR-**
22 **VEILLANCE.**

23 Section 105(f) of the Foreign Intelligence Surveil-
24 lance Act of 1978 (50 U.S.C. 1805(f)) is amended by

1 striking “72 hours” both places it appears and inserting
2 “168 hours”.

3 **SEC. 202. DELEGATION OF AUTHORITY TO APPROVE APPLI-**
4 **CATIONS FOR ELECTRONIC SURVEILLANCE.**

5 (a) IN GENERAL.—Section 104 of the Foreign Intel-
6 ligence Surveillance Act of 1978 (50 U.S.C. 1804) is
7 amended—

8 (1) in subsection (a), by striking “Attorney
9 General based upon his finding” and inserting “At-
10 torney General (or a delegee of the Attorney General
11 under subsection (f)) based upon a finding”; and

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

14 “(f) The Attorney General may delegate the authority
15 to approve an application under this section for an order
16 approving electronic surveillance under this title to each
17 of the following:

18 “(1) The Deputy Attorney General.

19 “(2) The Assistant Attorney General for Na-
20 tional Security.”.

21 (b) CONFORMING AMENDMENT.—Section 102(b) of
22 such Act (50 U.S.C. 1802(b)) is amended by inserting
23 “(or delegee of the Attorney General under section
24 104(f))” after “Attorney General”.

1 **SEC. 203. ADDITIONAL AUTHORITY FOR EMERGENCY ELEC-**
2 **TRONIC SURVEILLANCE.**

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

5 (1) by redesignating subsections (g), (h), (i),
6 and (j) as subsections (h), (i), (j), and (k), respec-
7 tively; and

8 (2) by inserting after subsection (f) the fol-
9 lowing new subsection (g):

10 “(g)(1)(A) Notwithstanding any other provision of
11 this title and subject to the provisions of this subsection,
12 the Attorney General may, with the concurrence of the Di-
13 rector of National Intelligence, appoint appropriate super-
14 visory or executive personnel within the Federal Bureau
15 of Investigation and the National Security Agency to au-
16 thorize electronic surveillance on a United States person
17 in the United States on an emergency basis pursuant to
18 the provisions of this subsection.

19 “(B) For purposes of this subsection, an intelligence
20 agent or employee acting under the supervision of a super-
21 visor or executive appointed under subparagraph (A) may
22 conduct emergency electronic surveillance under this sub-
23 section if such supervisor or executive reasonably deter-
24 mines that—

25 “(i) an emergency situation exists with respect
26 to the employment of electronic surveillance to ob-

1 tain foreign intelligence information before an order
2 authorizing such surveillance can with due diligence
3 be obtained; and

4 “(ii) the factual basis exists for the issuance of
5 an order approving such surveillance under this title.

6 “(2) The supervisors and executives appointed by the
7 Attorney General under paragraph (1) may only be offi-
8 cials as follows:

9 “(A) In the case of the Federal Bureau of In-
10 vestigation, officials at or above the level of Special
11 Agent in Charge.

12 “(B) In the case of the National Security Agen-
13 cy, officials at or above the level of head of branch
14 of the National Security Agency.

15 “(3) A supervisor or executive responsible for the
16 emergency employment of electronic surveillance under
17 this subsection shall submit to the Attorney General (and,
18 if authorized by the Attorney General, to the Deputy At-
19 torney General and the Assistant Attorney General for
20 National Security) a request for approval of the surveil-
21 lance within 24 hours of the commencement of the surveil-
22 lance. The request shall set forth the ground for the belief
23 specified in paragraph (1), together with such other infor-
24 mation as the Attorney General shall require.

1 “(4)(A) The review of a request under paragraph (3)
2 shall be completed by the official concerned under that
3 paragraph as soon as practicable, but not more than 72
4 hours after the commencement of the electronic surveil-
5 lance concerned under paragraph (1).

6 “(B)(i) If the official concerned determines that the
7 electronic surveillance does not meet the requirements of
8 paragraph (1), the surveillance shall terminate imme-
9 diately and may not be recommenced by any supervisor
10 or executive appointed under paragraph (1), or any agent
11 or employee acting under the supervision of such super-
12 visor or executive, absent additional facts or changes in
13 circumstances that lead a supervisor or executive ap-
14 pointed under paragraph (1) to reasonably believe that the
15 requirements of paragraph (1) are satisfied.

16 “(ii) In the event of a determination under clause (i),
17 the Attorney General shall not be required, under section
18 106(j), to notify any United States person of the fact that
19 the electronic surveillance covered by such determination
20 was conducted before the termination of the surveillance
21 under that clause. However, the official making such de-
22 termination shall notify the court established by section
23 103(a) of such determination, and shall also provide notice
24 of such determination in the first report that is submitted
25 under section 108(a) after such determination is made.

1 “(C) If the official concerned determines that the sur-
2 veillance meets the requirements of subsection (f), the sur-
3 veillance may continue, subject to the requirements of
4 paragraph (5).

5 “(5)(A) An application in accordance with this title
6 shall be made to a judge having jurisdiction under section
7 103 as soon as practicable but not more than 168 hours
8 after the commencement of electronic surveillance under
9 paragraph (1).

10 “(B) In the absence of a judicial order approving
11 electronic surveillance commenced under paragraph (1),
12 the surveillance shall terminate at the earlier of—

13 “(i) when the information sought is obtained; or

14 “(ii) when the application under subparagraph
15 (A) for an order approving the surveillance is de-
16 nied; or

17 “(iii) 168 hours after the commencement of the
18 surveillance.

19 “(C) If an application under subparagraph (A) for
20 an order approving electronic surveillance commenced
21 under paragraph (1) is denied, or in any other case in
22 which the surveillance is terminated and no order approv-
23 ing the surveillance is issued by a court, the use of infor-
24 mation obtained or evidence derived from the surveillance
25 shall be governed by the provisions of subsection (f).

1 “(D) The denial of an application submitted under
2 subparagraph (A) may be reviewed as provided in section
3 103.

4 “(6) Any person who engages in the emergency em-
5 ployment of electronic surveillance under paragraph (1)
6 shall follow the minimization procedures otherwise re-
7 quired by this title for the issuance of a judicial order ap-
8 proving the conduct of electronic surveillance.

9 “(7) Not later than 30 days after appointing super-
10 visors and executives under paragraph (1) to authorize the
11 exercise of authority in that paragraph, the Attorney Gen-
12 eral, in consultation with the Director of National Intel-
13 ligence, shall submit to the Foreign Intelligence Surveil-
14 lance Court and the congressional intelligence committees,
15 and bring up to date as required, a report that—

16 “(A) identifies the number of supervisors and
17 executives who have been so appointed and the posi-
18 tions held by such supervisors and executives; and

19 “(B) sets forth guidelines or other directives
20 that describe the responsibilities of such supervisors
21 and executives under this subsection.”.

1 **SEC. 204. FOREIGN INTELLIGENCE SURVEILLANCE COURT**
2 **MATTERS.**

3 (a) **AUTHORITY FOR ADDITIONAL JUDGES.**—Section
4 103(a) of the Foreign Intelligence Surveillance Act of
5 1978 (50 U.S.C. 1803(a)) is amended—

6 (1) by inserting “(1)” after “(a)”;

7 (2) by designating the second sentence as para-
8 graph (4) and indenting such paragraph, as so des-
9 ignated, two ems from the left margin; and

10 (3) by inserting after paragraph (1), as so des-
11 ignated, the following new paragraph:

12 “(2) In addition to the judges designated under para-
13 graph (1), the Chief Justice of the United States may des-
14 ignate as judges of the court established by paragraph (1)
15 such judges appointed under Article III of the Constitu-
16 tion of the United States as the Chief Justice determines
17 appropriate in order to provide for the prompt and timely
18 consideration under section 105 of applications under sec-
19 tion 104 for electronic surveillance under this title. Any
20 judge designated under this paragraph shall be designated
21 publicly.”.

22 (b) **CONSIDERATION OF EMERGENCY APPLICA-**
23 **TIONS.**—Such section is further amended by inserting
24 after paragraph (2), as added by subsection (a)(3) of this
25 section, the following new paragraph:

1 “(3) A judge of the court shall make a determination
2 to approve, deny, or seek modification of an application
3 submitted pursuant to section subsection (f) or (g) of sec-
4 tion 105 not later than 24 hours after the receipt of such
5 application by the court.”.

6 **SEC. 205. DOCUMENT MANAGEMENT SYSTEM FOR APPLICA-**
7 **TIONS FOR ORDERS APPROVING ELEC-**
8 **TRONIC SURVEILLANCE.**

9 (a) **SYSTEM REQUIRED.**—The Attorney General
10 shall, in consultation with the Director of the Federal Bu-
11 reau of Investigation, the Director of the National Secu-
12 rity Agency, and the Foreign Intelligence Surveillance
13 Court, develop and implement a secure, classified docu-
14 ment management system that permits the prompt prepa-
15 ration, modification, and review by appropriate personnel
16 of the Department of Justice, the Federal Bureau of In-
17 vestigation, the National Security Agency, and other appli-
18 cable elements of the United States Government of appli-
19 cations under section 104 of the Foreign Intelligence Sur-
20 veillance Act of 1978 (50 U.S.C. 1804) before their sub-
21 mittal to the Foreign Intelligence Surveillance Court.

22 (b) **SCOPE OF SYSTEM.**—The document management
23 system required by subsection (a) shall—

24 (1) permit and facilitate the prompt submittal
25 of applications to the Foreign Intelligence Surveil-

1 lance Court under section 104 or 105(g)(5) of the
2 Foreign Intelligence Surveillance Act of 1978; and

3 (2) permit and facilitate the prompt transmittal
4 of rulings of the Foreign Intelligence Surveillance
5 Court to personnel submitting applications described
6 in paragraph (1).

7 **SEC. 206. ADDITIONAL PERSONNEL FOR PREPARATION**
8 **AND CONSIDERATION OF APPLICATIONS FOR**
9 **ORDERS APPROVING ELECTRONIC SURVEIL-**
10 **LANCE.**

11 (a) OFFICE OF INTELLIGENCE POLICY AND RE-
12 VIEW.—

13 (1) ADDITIONAL PERSONNEL.—The Office of
14 Intelligence Policy and Review of the Department of
15 Justice is hereby authorized such additional per-
16 sonnel, including not fewer than 21 full-time attor-
17 neys, as may be necessary to carry out the prompt
18 and timely preparation, modification, and review of
19 applications under section 104 of the Foreign Intel-
20 ligence Surveillance Act of 1978 (50 U.S.C. 1804)
21 for orders under section 105 of that Act (50 U.S.C.
22 1805) approving electronic surveillance for foreign
23 intelligence purposes.

24 (2) ASSIGNMENT.—The Attorney General shall
25 assign personnel authorized by paragraph (1) to and

1 among appropriate offices of the National Security
2 Agency in order that such personnel may directly as-
3 sist personnel of the Agency in preparing applica-
4 tions described in that paragraph.

5 (b) FEDERAL BUREAU OF INVESTIGATION.—

6 (1) ADDITIONAL LEGAL AND OTHER PER-
7 SONNEL.—The National Security Branch of the
8 Federal Bureau of Investigation is hereby authorized
9 such additional legal and other personnel as may be
10 necessary to carry out the prompt and timely prepa-
11 ration of applications under section 104 of the For-
12 eign Intelligence Surveillance Act of 1978 for orders
13 under section 105 of that Act approving electronic
14 surveillance for foreign intelligence purposes.

15 (2) ASSIGNMENT.—The Director of the Federal
16 Bureau of Investigation shall assign personnel au-
17 thorized by paragraph (1) to and among the field of-
18 fices of the Federal Bureau of Investigation in order
19 that such personnel may directly assist personnel of
20 the Bureau in such field offices in preparing applica-
21 tions described in that paragraph.

22 (c) ADDITIONAL LEGAL AND OTHER PERSONNEL
23 FOR NATIONAL SECURITY AGENCY.—The National Secu-
24 rity Agency is hereby authorized such additional legal and
25 other personnel as may be necessary to carry out the

1 prompt and timely preparation of applications under sec-
2 tion 104 of the Foreign Intelligence Surveillance Act of
3 1978 for orders under section 105 of that Act approving
4 electronic surveillance for foreign intelligence purposes.

5 (d) ADDITIONAL LEGAL AND OTHER PERSONNEL
6 FOR FOREIGN INTELLIGENCE SURVEILLANCE COURT.—
7 There is hereby authorized for the Foreign Intelligence
8 Surveillance Court such additional staff personnel as may
9 be necessary to facilitate the prompt and timely consider-
10 ation by that Court of applications under section 104 of
11 the Foreign Intelligence Surveillance Act of 1978 for or-
12 ders under section 105 of that Act approving electronic
13 surveillance for foreign intelligence purposes. Personnel
14 authorized by this paragraph shall perform such duties re-
15 lating to the consideration of such applications as that
16 Court shall direct.

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

20 **SEC. 207. REPORT ON PROCEDURES FOR APPLICATIONS**
21 **FOR ORDERS APPROVING ELECTRONIC SUR-**
22 **VEILLANCE.**

23 (a) REVIEW.—The Attorney General shall, in con-
24 sultation with the Foreign Intelligence Surveillance Court
25 and the Foreign Intelligence Surveillance Court of Review,

1 review the procedures applicable to the submittal under
2 section 104 of the Foreign Intelligence Surveillance Act
3 of 1978 (50 U.S.C. 1804) of applications for orders under
4 section 105 of that Act (50 U.S.C. 1805) approving elec-
5 tronic surveillance for foreign intelligence purposes.

6 (b) ELEMENTS.—The review required by subsection
7 (a) shall address the following:

8 (1) The procedures described in subsection (a).

9 (2) The requirements, if any, under such proce-
10 dures that impose recurring, undue impediments on
11 the submittal to the Foreign Intelligence Surveil-
12 lance Court of applications described in subsection
13 (a), including requirements for the submittal of in-
14 formation that is unnecessary for that Court in its
15 consideration of such applications.

16 (3) A determination of recommendations for
17 legislative or administrative action in light of the
18 matters addressed under paragraphs (1) and (2).

19 (4) The average length of time, over the pre-
20 vious calendar year, between—

21 (A) the submittal of a request or rec-
22 ommendation by a Federal officer to the De-
23 partment of Justice for an application under
24 section 104 of the Foreign Intelligence Surveil-

1 lance Act of 1978 for an order under section
2 105 of that Act; and

3 (B) the decision of the Department of Jus-
4 tice on such request or recommendation.

5 (5) The requirements imposed by the Depart-
6 ment of Justice in determining whether to submit an
7 application under section 104 of the Foreign Intel-
8 ligence Surveillance Act of 1978 for an order under
9 section 105 of that Act.

10 (c) MODIFICATION OF PROCEDURES.—

11 (1) IN GENERAL.—If the Attorney General de-
12 termines as a result of the review required by sub-
13 section (a) that the procedures described in that
14 subsection should be modified, including modifica-
15 tion to address requirements described by subsection
16 (b)(2), the Attorney General shall prescribe in regu-
17 lations such modifications as the Attorney General
18 considers appropriate. Such modification shall be
19 consistent with the provisions of title I of the For-
20 eign Intelligence Surveillance Act of 1978 (50
21 U.S.C. 1801 et seq.).

22 (2) SCOPE.—Any procedures prescribed under
23 paragraph (1) shall, to the extent practicable, apply
24 uniformly among all elements of the Department of
25 Justice, and among any other element of the United

1 States Government, concerned with the submittal of
2 applications under section 104 of the Foreign Intel-
3 ligence Surveillance Act of 1978 for orders under
4 section 105 of that Act approving electronic surveil-
5 lance for foreign intelligence purposes.

6 (d) REPORT.—Not later than 90 days after the effec-
7 tive date of this Act, the Attorney General shall submit
8 to the Committee on the Judiciary and the Select Com-
9 mittee on Intelligence of the Senate and the Committee
10 the Judiciary and the Permanent Select Committee on In-
11 telligence of the House of Representatives a report setting
12 forth the procedures applicable to applications under sec-
13 tion 104 of the Foreign Intelligence Surveillance Act of
14 1978 for orders under section 105 of that Act approving
15 electronic surveillance for foreign intelligence purposes, in-
16 cluding any modification to such procedures prescribed
17 under subsection (c).

18 **SEC. 208. TRAINING OF FEDERAL BUREAU OF INVESTIGA-**
19 **TION AND NATIONAL SECURITY AGENCY PER-**
20 **SONNEL IN FOREIGN INTELLIGENCE SUR-**
21 **VEILLANCE MATTERS.**

22 The Director of the Federal Bureau of Investigation
23 and the Director of the National Security Agency shall
24 each, in consultation with the Attorney General—

1 **TITLE III—OTHER MATTERS**

2 **SEC. 301. DEFINITIONS.**

3 In this Act:

4 (1) The term “congressional intelligence com-
5 mittees” means—

6 (A) the Select Committee on Intelligence of
7 the Senate; and

8 (B) the Permanent Select Committee on
9 Intelligence of the House of Representatives.

10 (2) The term “Foreign Intelligence Surveillance
11 Court” means the court established by section
12 103(a) of the Foreign Intelligence Surveillance Act
13 of 1978 (50 U.S.C. 1803(a)).

14 (3) The term “Foreign Intelligence Surveillance
15 Court of Review” means the court established by
16 section 103(b) of the Foreign Intelligence Surveil-
17 lance Act of 1978 (50 U.S.C. 1803(b)).

18 (4) The term “United States person” has the
19 meaning given such term in section 101(i) of the
20 Foreign Intelligence Surveillance Act of 1978 (50
21 U.S.C. 1801(i)).

22 **SEC. 302. AUTHORIZATION OF APPROPRIATIONS.**

23 There is authorized to be appropriated such sums as
24 may be necessary to carry out this Act and the amend-
25 ments made by this Act.

1 **SEC. 303. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as provided in subsection
3 (b), this Act, and the amendments made by this Act, shall
4 take effect on the date that is 30 days after the date of
5 the enactment of this Act.

6 (b) INFORMATION ON TERRORIST SURVEILLANCE
7 PROGRAM.—Section 104 shall take effect on the date of
8 the enactment of this Act.

○