

**HIGHLIGHTS OF UNITING AND STRENGTHENING AMERICA (USA) ACT****Foreign Intelligence Surveillance Act (FISA)**

- **Extending Surveillance Periods.** Administration initially proposed changing the period of orders for electronic surveillance in non-U.S. person cases from 90 days to one year and for searches from 45 to 90 days. Agreement reached to change the initial period for electronic surveillance from 90 to 120 days and extensions from 90 days to one year; and for searches from 45 to 90 days.
  
- **Changing Primary Purpose.** Administration initially proposed changing “*the*” to “*a*” purpose for the foreign intelligence certification of FISA search and surveillance. Agreement reached on “*a significant*” purpose and to authorize FISA personnel to consult with law enforcement officers to coordinate efforts to investigate or protect against international terrorism or espionage.
  
- **Streamlining FISA Pen Registers.** Administration initially proposed to delete the “agent of a foreign power” standard for FISA pen registers and trap and trace. Agreement reached to limit use to protection against international terrorism or clandestine intelligence activities and bar use based solely on First Amendment activities.
  
- **Court Order (Not Administrative Subpoena) For Records.** The Administration initially proposed authorizing administrative subpoenas, without judicial review and without the “agent of a foreign power” standard, for access to business, telephone, bank, and credit records. Agreement reached to (1) retain the court order for business records; (2) limit the use of this authority to investigations to protect against international terrorism or clandestine intelligence activities; and (3) provide that investigations of U.S. persons may not be based solely on First Amendment activities.
  
- **FISA Roving Wiretap.** Agreement reached to provide roving wiretap authority in foreign intelligence investigations.
  
- **Increase Number of FISA Judges.** Agreement reached to increase the number of FISA judges from seven to eleven, with the designation of three who reside within 20 miles of Washington, D.C.
  
- **Hiring of FBI Translators.** Agreement reached to expedite hiring of translators.

## Electronic Surveillance

- **Pen Registers/Trap and Traces.** Administration initially proposed expansion of pen register and trap and trace authority to capture undefined "routing" and "addressing" information of Internet users. Agreement reached on allowing nationwide service of orders, excluding "content" from information collected, and requiring use of reasonable available pen register and trap and trace technology to restrict collection of any content.
- **Warrant Seizure of Voice Mail Messages.** Agreement reached on Administration proposal to authorize seizure of voice mail messages pursuant to a probable cause warrant and nationwide service of such warrants.
- **Dropping of Foreign Surveillance Provision.** Elimination of Administration's initial proposal to allow use of wiretap information collected on Americans by foreign governments, even when that information was collected in violation of the U.S. Constitution and foreign nation's laws.
- **Computer Trespasser.** Administration initially proposed to allow an owner/operator of any computer connected to the Internet to consent to FBI wiretapping of any user who violated a workplace computer use policy or online term of service. Agreement reached to limit authority to unauthorized users without an existing subscriber or other contractual relationship with the owner/operator.
- **Expanded Scope of Subpoenas for Electronic Records.** Agreement reached on Administration proposal to authorize nationwide service of subpoenas for subscriber information and expand list of items subject to subpoena to include the means and source of payment. Agreement also reached on equalizing standard for law enforcement access to cable subscriber records on the same basis as other electronic records.
- **Emergency Disclosure Authority.** Agreement reached on Administration proposal to authorize electronic communications service to disclose contents of and subscriber information for communications in emergencies involving the immediate danger of death or serious physical injury.

## Sharing of Criminal Justice and Tax Return Information

- **Grand Jury, Wiretap, and other Criminal Justice Information.** Overlapping Administration proposals authorized unfettered sharing of information from title III wiretaps and grand juries, and other criminal investigative information, with the Executive Branch officials. Agreement was reached to (1) limit such disclosures to foreign intelligence and counterintelligence information, as defined by statute; (2) restrict disclosure to official with a need to know in performance of official duties; and (3) limitations on public or other unauthorized disclosure would remain in force.

- **Dropping of Tax Return Disclosure Provision.** Elimination of Administration's initial proposal to authorize disclosure of tax returns and information by Treasury to Federal law enforcement and intelligence agencies in responding to terrorist incidents.

#### **Northern Border Security**

- **Tripling Agents At the Northern Border.** Agreement reached to triple the number of Border Patrol, Customs Service, and INS inspectors at the northern border – a major security enhancement for a previously understaffed area.
- **\$100 Million For Technology.** Agreement reached to authorize \$100 million to improve INS and Customs technology and additional equipment for monitoring the northern border.
- **Foreign Visa Fingerprint Identification System.** Agreement reached to require the Attorney General, in consultation with appropriate agencies, to develop technical standards for an integrated automated fingerprint identification system for points of entry and overseas consular posts.

#### **Counter-Terrorism Fund**

- **Authorized Fund.** Agreement reached to authorize a counter-terrorism fund to reimburse the Department of Justice for any costs related to investigating and prosecuting domestic or international terrorism.

#### **Cybercrime**

- **Computer Fraud and Abuse.** Agreement reached to clarify this law to cover computers located outside the U.S. when used in a manner that affects the interstate commerce or communications of this country, update the definition of "loss" to ensure full costs to victims of responding to hacking offenses are counted, clarify scope of civil liability, and eliminate current mandatory minimum sentence applicable in some cases.

#### **Public Safety Officers**

- **Expedite Payment.** Agreement reached to streamline the Public Safety Officers' Benefit Program to require payments within 30 days of certification of death or disability for any firefighter, law enforcement officer, or emergency personnel involved in the prevention, investigation, rescue or recovery efforts related to any future terrorist attack.
- **Increase Payments.** Agreement reached to raise the Public Safety Officers' Benefit Program payment from \$151,635 to \$250,000 effective Jan. 1, 2001.
- **Coordinate Communications.** Agreement reached to expand the Regional Information Sharing Systems Program to coordinate secure information sharing among Federal, State and local law enforcement agencies to investigate and prosecute terrorist conspiracies and activities.

## Victims

- **Victims of Crime Act.** Agreement reached to amend the Victims of Crime Act to (1) replenish the antiterrorism emergency reserve with up to \$50 million; (2) replace the annual cap on the Crime Victim Fund with a self-regulating system that would allow more money to be distributed in years when deposits to the Fund are high; (3) authorize private gift-giving to the Fund; and (4) authorize the Office for Victims of Crime to work directly with service providers (as opposed to governments) to expedite assistance to victims of domestic terrorism.

## Criminal Justice

- **Professional Standards.** Agreement reached to modify the so-called McDade law.
- **Mass Transportation Crime.** Agreement reached to create a new criminal statute to punish terrorist attacks and other acts of violence against mass transportation systems.
- **Statute of Limitations.** Administration initially sought to eliminate the statute of limitations for a long list of offenses, some of which (e.g., computer hacking) could amount to little more than high school pranks. Agreement reached to a shorter, more focused list of offenses that they will continue to carry an 8-year statute of limitations except where they resulted in, or created a risk of, death or serious bodily injury.
- **Increased Penalties.** Administration initially proposed increasing the maximum penalty and supervised release terms for a broad range of offenses to life imprisonment or lifetime supervision. Agreement reached to more measured increases in maximum penalties where appropriate, including life imprisonment or supervision in cases in which the offense resulted in death.
- **Conspiracy Penalties.** Administration initially proposed authorizing conspiracy penalties for a broad range of offenses equal to the penalties for the object offense, which would have created new death-eligible offenses in some instances. Agreement reached to add conspiracy provisions to a few criminal statutes where appropriate, and to provide that the penalties for such conspiracies may not include death.
- **Terrorism Predicates.** Agreement reached on adding certain terrorism-related crimes as predicates for RICO and money laundering.
- **Biological Weapons.** Agreement reached on Administration proposal creating two new crimes. The first prohibits certain restricted persons, including non-resident aliens from countries that support terrorism, from possessing a listed biological agent or toxin. The second prohibits any person from possessing a biological agent, toxin, or delivery system of a type or in a quantity that, under the circumstances, is not reasonably justified by a peaceful purpose.

- **Delayed Notice for Search Warrants.** Administration initially proposed authorizing delayed notice of the execution of any search warrant to avoid an adverse result, such as endangering the life of a person, flight from prosecution, destruction of evidence, intimidation of witnesses or seriously jeopardizing an investigation. Agreement reached to limit this authority by (1) requiring reasonable cause to believe the adverse result would occur; (2) prohibiting the seizure of tangible property or electronic or wire communications and stored electronic information unless the government makes a special showing of necessity for such a seizure; and (3) requiring that notice be given within a reasonable time after the search.
  
- **Educational Records.** Administration initially proposed authorizing the Attorney General (or designee) to collect information on private student records in the possession of the National Center for Education Statistics or any educational agency or institution, upon the Attorney General's determination that such information was necessary for the prosecution or investigation of terrorism. Agreement reached requiring an application to the court to obtain such information, limiting immunity of persons producing such information to those acting in good faith, and directing the Attorney General to issue guidelines to protect confidentiality.

#### **Presidential Authority**

- **Trade Sanctions.** The Administration initially proposed changing current law to authorize the imposition of unilateral trade sanctions, despite the broad exceptions that are already allow flexibility, including when there is imminent engagement of U.S. Armed Forces. Agreement reached to limit the authority to existing laws and executive orders, and to grant authority for the President to restrict exports of agricultural products, medicine or medical devices to the Taliban or the territory of Afghanistan controlled by the Taliban as determined appropriate.

#### **Immigration**

- **Mandatory Detention:** Administration initially proposed mandatory detention of aliens upon Attorney General certification of suspicion of links to terrorism for unlimited periods without charge. Agreement reached to (1) limit to 7 days the length of time an alien may be held before being charged with criminal or immigration violations, (2) allow the Attorney General to delegate the certification power only to the INS Commissioner, and (3) specify that the merits of the certification is subject to judicial review.
  
- **Terrorism Definitions:** The Administration initially proposed a sweeping definition of terrorist activity and new powers for the Secretary of State to certify an organization as a terrorist organization for purposes of immigration law. Agreement reached to limit definition as applied to individuals with innocent contacts to non-certified organizations and to enhance the Secretary of State's existing power to certify groups as terrorist organizations.

- **Data Sharing:** Agreement reached to enhance data sharing between the FBI and the State Department/INS, and between the State Department and foreign governments as part of terrorism investigations.

**Intelligence Agency Improvements:**

- **CIA Director Responsibilities.** Agreement reached to clarify CIA Director role to set overall strategy for collection of information through court-ordered FISA surveillance, but no operational authority.
- **CIA Director Access To Criminal Investigative Information.** Agreement reached to require Attorney General to develop guidelines for expeditious disclosure to the CIA of foreign intelligence information obtained in criminal investigations.

**Intelligence Agency Improvements:**

- **CIA Director Responsibilities.** Agreement reached to clarify CIA Director role to set overall strategy for collection of information through court-ordered FISA surveillance, but no operational authority.
- **Foreign Intelligence Definition.** Agreement reached to include "international terrorist activities" in definition of "foreign intelligence" to clarify authorities of the CIA.
- **Recruiting Terrorists.** Agreement reached on sense of Congress that CIA should make efforts to recruit informants to fight terrorism.
- **CIA Director Access To Criminal Investigative Information.** Agreement reached to require Attorney General to develop guidelines for expeditious disclosure to the CIA of foreign intelligence information obtained in criminal investigations. When the CIA seeks to recruit a criminal suspect, the Attorney General is required to notify the CIA within a reasonable period of time whether a criminal case will be pursued.
- **Foreign Terrorist Asset Tracking Center.** Agreement reached to require report from the CIA and Treasury on the feasibility of using the Foreign Terrorist Asset Tracking Center to compile, analyze and disseminate information on the finances of international terrorist organizations.
- **National Virtual Translation Center.** Agreement reached to require report from the CIA on the feasibility of establishing a virtual translation center for use by the intelligence community.
- **Training.** Agreement reached to require the Attorney General, in consultation with the CIA Director, to provide training to federal, state and local government officials to identify foreign intelligence information obtained in the course of their duties.