

House Judiciary Committee Majority Staff Description of the latest version of the PATRIOT Act. October 12, 2001

The bill on the floor today (H.R. 3108) represents a compromise between the Judiciary Committee passed bill, H.R. 2975 and S. 1510, which passed the Senate by a vote of 96-1 on Thursday night. This “compromise bill” resulted from negotiations brokered by House GOP leadership and Administration officials. This new legislation makes some changes to the bill passed by the Senate last night, although most core provisions are very similar or identical to H.R. 2975 as reported by the Judiciary Committee last week.

Essentially, the brokered deal consisted of taking the Senate bill and debating some major House provisions like sunset, sharing of grand jury information, exclusionary rule and a few immigration subjects. We fought to protect the interests of the Committee throughout the process and were able to preserve central provisions of the Judiciary-passed bill. Unfortunately, however, many well-crafted and intentioned provisions from H.R. 2975 as marked-up by the Judiciary Committee are not included in the new bill because of the mandate to start with the Senate bill, negotiate over a few major issues and then jettison House provisions that were not in the Senate bill. Obviously this was not an ideal process and the revised bill does not represent a perfect compromise. However, the work of the House Judiciary Committee over the past three weeks has greatly improved the original Justice Department proposal and the Senate bill incorporated many of the Committee’s provisions, reflecting our diligent work.

Importantly, the new bill contains a sunset provision, albeit a 5 year sunset as opposed to the Judiciary Committee’s 2 year sunset. Overall, we believe it is fair to say that the legislation responsibly addresses many of the shortcomings of current law and improves law enforcement’s ability to protect against and prosecute terrorism and other crimes while preserving civil rights.

Below is a description of the *some* of the major provisions of the new bill along with a list of *some* of the items that are not contained in the new bill.

COMPROMISE BILL

- provides for increased penalties for federal terrorism offenses
- eliminates the statute of limitations, and provides for extended post-incarceration supervised release for persons convicted of such offenses.
- adds terrorism offenses as offenses for which the government can investigate and prosecute RICO offenses constituting a continuous course of criminal activity.

As with the Committee bill — It continues to provide for modernization of Pen registers/ Trap & Trace laws

(records telephone numbers in and out and duration of call)
(does not obtain content of conversation)

Bill **continues to** clarifies (existing practice) to cover modern technology – e-mail and internet communication.

(Thus - records e-mail addresses - and webpage **addresses**)

Continues to include specific statutory language which PROHIBITS CAPTURING CONTENT)

Continues to provide for Nationwide service of Warrants for electronic evidence (content of e-mails) & Search Warrants for Terrorism

Current rules require that a search warrant be issued from the judicial district in which the _____ property to be search is located.

The bill would change this to permit the prosecutor to go to the judge in the district overseeing the investigation to issue the warrant, and in the case of search warrants for terrorism offenses, in any district in which activities related to terrorism occurred. This will save valuable time.

Continues to provide for Roving Wiretap (“Multi-point”)for FISA (Foreign Intelligence Surveillance Act)

Currently (under FISA) government must identify and get a separate order **for each telephone** to be wiretapped. This provision allows the government to **make a showing to a court** that the target is changing telephones to thwart the tap – and allow the **court** to authorize taps of any phones which the target may use. **This provision is consistent with current criminal law.**

Continues the compromise language between current law and the administration's initial proposal for the showing needed for FISA investigations using wiretaps

Current FISA law requires that in order to obtain a FISA wiretap the Attorney General must certify that the gathering of foreign intelligence is **the, or primary purpose** of the investigation.

Administration draft wanted to change this to only require a certification that it was **a** purpose. Our bill compromises and requires that the AG must certify that it is a **significant purpose**.

Continues to authorize Sharing criminal information with Intelligence Community

Bill permits providing criminal information (including grand jury information) to intelligence community **when it is "foreign intelligence information"**

It expands the ability to obtain business records in FISA investigations

Continues change of FISA Pen Register / Trap&Trace AND National Security Letters for certain records to conform to existing criminal law standards

Our bill adopts the administration proposal – Makes pen registers and trap & trace provisions in FISA **consistent with current provisions in criminal law**. Government must **certify to the court** that information sought is **relevant** to foreign intelligence investigation. [deletes current burden of having to show that the telephone line is being used by an agent of a foreign power]

Same concept for issuance of national security letters for certain transactional records (phone billing records) for which any Assistant United States Attorney may obtain in criminal investigation just by issuing a subpoena. Bill adopts administration proposal and makes this **consistent with current criminal investigative tools**.

It continues the SUNSET provision (albeit now sunset at 5 years – instead of the 2 years in the Committee passed bill)..

IMMIGRATION

On the immigration provisions, we generally accepted the language contained in S. 1510 with a few modifications. This is not really so far from the original House version because the Senate based its immigration provisions on the initial House Judiciary Committee draft. The modifications are to the mandatory detention section. **First, we add the House language codifying the Supreme Court's decision in Zavidas v. Davis.** In that decision, the Court ruled that aliens ordered deported cannot be detained indefinitely without realistic prospect of another country accepting them except in instances where release would harm the national security or the safety of the community. **Second, we provide,** per the House agreement, that an alien detained after being certified as a terrorist can bring a habeas corpus action in any U.S. district court which has jurisdiction. However, all appeals of district court decisions would go to the U.S. Court of Appeals for the District of Columbia. **Finally, we added** subtitle B of title II of the original House bill, which grants humanitarian immigration relief to legal aliens who were harmed by the terrorist attacks on September 11 or who had family members die in the attacks.

One provision in the Senate bill which was not in the House bill is that the spouses and children of alien terrorists are inadmissible to the U.S.

A number of immigration provisions in the original House bill are not contained in any form in the Senate bill/new House bill:

- The original House bill made deportable an alien who is a representative of a terrorist organization so designated by the Secretary of State or of a political, social or other similar group who publicly endorses terrorism only if the endorsement undermines the effort of the U.S. to eliminate or reduce terrorism and is intended and likely to incite or produce imminent lawless action. Also deportable is an alien who has used his or her prominence to endorse terrorism or to persuade others to support terrorism only if this will undermine the efforts of the U.S. to reduce or eliminate terrorism and is intended and likely to incite or produce imminent lawless action.
- Current law provides a process whereby the Secretary of State can designate an organization as a foreign terrorist organization. HR 2975 provided that either the Secretary or the Attorney General may recommend an organization for designation, and the organization will be so designated if the other concurs. In instances where either official cannot gain the other's concurrence, the President shall decide on the requested designation.
- The Judiciary Committee bill clarified that even if the INS charges an alien for purposes of removal or deportation with a non terrorist-based offense, if the alien seeks asylum, the INS can seek to oppose its grant by providing evidence that the alien is a terrorist.
- HR 2975 amended the foreign student tracking system created by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The bill advanced the date by which the system must be fully operational and provides that students who are nationals of countries that have repeatedly provided support for acts of international terrorism may be assessed a higher fee than other foreign students. In addition, the bill provided that the Attorney General shall provide to the Secretary of State and the Director of the FBI the information collected by the system.

This bill does not contain (among many other things):

1) the statutory exclusionary rule provision from the reported Judiciary Committee bill, nor the requirement for voluminous reports concerning the disclosure of the contents of electronic communications.

2) the precise Judiciary Committee language concerning the sharing of grand jury material; instead of requiring prior court approval before the disclosure, the new bill permits disclosure followed by post disclosure notification to the court of the agencies to which the information was provided. Distribution of the information is restricted to a defined group of federal agencies in the performance of their official duties.

3) the Bob Barr amendment directing the FBI to provide background checks and fingerprints for private companies

4) the Chris Cannon/Issa amendment which would allow victims of terrorism to satisfy judgements against foreign states by allowing assets frozen by the U.S. to be subject to attachment and execution; it would not allow for the use of U.S. funds to satisfy the judgement.

The bill does not contain these provisions from the Senate-passed bill:

1) the McDade language

2) the very large Sarbanes money laundering bill