

DOMESTIC SECURITY ENHANCEMENT ACT OF 2003

PATRIOT II



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- Sec. 2331. - Definitions: the term (1) "terrorism" means activities that –
 - (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;
 - the term "act of war" means any act occurring in the course of -
 - (A) declared war;
 - (B) armed conflict, whether or not war has been declared, between two or more nations; or
 - (C) armed conflict between military forces of any origin; and
 - (5) the term "domestic terrorism" means activities that -
 - (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
 - (B) appear to be intended -
 - (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidation or coercion; or
 - (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
 - (C) occur primarily within the territorial jurisdiction of the United States

➤ **Sec. 2510. - Definitions**

- **(1)** "wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce;
- **(2)** "oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication;
- **(4)** "intercept" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.
(FOOTNOTE 1)
- **(5)** "electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, oral, or electronic communication other than –
- **(a)** any telephone or telegraph instrument, equipment or facility, or any component thereof,

➤ **Sec. 2510. – Definitions**

- **(i)** furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or
- **(ii)** being used by a provider of wire or electronic communication service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;
- **(b)** a hearing aid or similar device being used to correct subnormal hearing to not better than normal;
- **(8)** "contents", when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication;
- **(10)** "communication common carrier" shall have the same meaning which is given the term "common carrier" by Common carrier The term "common carrier" or "carrier" means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

➤ **Sec. 2510. - Definitions**

- **(11)** "aggrieved person" means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed;
- **(12)** "electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include -

➤ **Sec. 3127. - Definitions for chapter**

- **(1)** the terms "wire communication", "electronic communication", "electronic communication service", and "contents" have the meanings set forth for such terms in section 2510 of this title;
- **(2)** the term "court of competent jurisdiction" means –
 - **(A)** any district court of the United States (including a magistrate judge of such a court) or any United States court of appeals having jurisdiction over the offense being investigated; or
 - **(B)** a court of general criminal jurisdiction of a State authorized by the law of that State to enter orders authorizing the use of a pen register or a trap and trace device;
- **(3)** the term "pen register" means a device or process which records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, provided, however, that such information shall not include the contents of any communication, but such term does not include any device or process used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device or process used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;

➤ **Sec. 3127. - Definitions for chapter**

➤ **(4)** the term "trap and trace device" means a device or process which captures the incoming electronic or other impulses which identify the originating number or other dialing, routing, addressing, and signaling information reasonably likely to identify the source of a wire or electronic communication, provided, however, that such information shall not include the contents of any communication;

➤ **(6)** the term "State" means a State, the District of Columbia, Puerto Rico, and any other possession or territory of the United States

➤ **Definition for Cyberterrorism**

➤ Mark Pollitt, special agent for the FBI, offers a working definition: "Cyberterrorism is the premeditated, politically motivated attack against information, computer systems, computer programs, and data which result in violence against noncombatant targets by sub national groups or clandestine agents." [1]

[1] Mark M. Pollitt. "A Cyberterrorism Fact or Fancy?", Proceedings of the 20th National Information Systems Security Conference, 1997, pp. 285-289

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- **Section 101: Individual Terrorists as Foreign Powers** Basically just redefines and expands the notion of a 'foreign power' to include *all* persons, regardless of whether they are affiliated with an international terrorist group, who engage in international terrorism.”
- **Section 102: Clandestine Intelligence Activities by Agent of a Foreign Power.** Expands the current definition of “an agent of a foreign power” to include “Any person who engages in clandestine intelligence gathering activities for a foreign power,” regardless of whether those activities are federal crimes.
- **Section 103: Strengthening Wartime Authorities Under FISA.** Expands the Attorney General's Wartime Authority to authorize, without the prior approval of the FISA Court, electronic surveillance, physical searches, or the use of pen registers for a period of 15 days to include anytime after Congress authorizes the use of military force, or after the United States has suffered an attack creating a national emergency.

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- **Section 104: Strengthening FISA's Presidential Authorization**
Exception. Currently the Attorney General can authorize the surveillance of communications of foreign powers, between foreign governments, and between a foreign government and its embassy, but this excludes spoken communication. This bill drops that exception, allowing for the surveillance of spoken communication of foreign powers and governments.
- **Section 105: Law Enforcement Use of FISA Information.** Allows for the use of FISA information in a criminal context only with the Attorney General's consent. The amendment allows such use to be approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or an Assistant Attorney General designated by the Attorney General.
- **Section 107: Pen Registers in FISA Investigations.** “Specifically, FISA pen registers would be available in investigations of both U.S. persons and non-U.S. persons whenever they could be used ‘to obtain foreign intelligence information.’ “

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- Section 123 : Extension of Authorized Periods Relating to Surveillance and Searches in Investigations of Terrorist Activities. Extends the normal duration of electronic surveillance orders in investigations of terrorist activities from 30 days to 90 days and for pen registers and trap and trace devices from 60 to 120 days.
- Section 124 : **Multi-function Devices** Electronic manufacturers increasingly are producing devices that are capable of performing multiple functions...Current law does not make it clear that the authorization (e.g., under an electronic surveillance order) to monitor one of a device's functions also entails the authority to monitor other functions.
- Section 125: Nationwide Search Warrants in Terrorism Investigations Federal Law currently authorizes judges in one district to issue search warrants that are valid in another district, if the crime being investigated is "domestic terrorism or international terrorism" The definition for terrorism reads, "violent acts or acts dangerous to human life." "As a result, a federal judge sitting in New York would be able to issue a search warrant that is valid in California in an investigation of a plot to bomb a building, but *arguably* could not issue the same warrant if the investigation concerned the raising of money to support terrorist operations."

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- **Section 126: Equal Access to Consumer Credit Reports.**
- **Currently businesses can obtain consumer credit reports within minutes while law enforcement must submit a series of subpoenas. S 126 would put them on equal footing.**
- **Section 127: Autopsy Authority.**
- **This would allow the autopsy of a U.S. citizen abroad should they be the victim in a terrorist attack. The autopsy would be performed in order to discover bomb fragments and other evidence.**

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- Section 201 Prohibition of Disclosure of Terrorism Investigation Detainee Information.
- This section clarifies exemption 3 of the FOIA which allows the government, in the interest of National Security, to detain a person in connection with terrorist without disclosure, until that person is formally charged.
- **Section 202: Distribution of "Worst Case Scenario" Information.**
- Companies that use dangerous chemicals are required to submit a "worst case scenario" report to the EPA. This report could be used by terrorists in planning the spread of chemicals in the geographical area covered by the report. This section would limit access of this report to a read-only format and to residents in the area and qualified Government personnel.

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- **Section 203: Information Relating to Capitol Buildings.**
- **This section restricts access to structural information concerning Capitol/Federal buildings.**
- **Section 205: Exclusion of United States Security Requirements from Gross Income of Protected Officials.**
- **This one sounds like a scam.**

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- Section 302 through 306: DNA collection and database creation
- DNA data collection and storage is already in use by the FBI. These sections would specifically create a terrorist DNA database. 306 would require persons associated with terrorism and who are under any form of federal supervision or conditional release, to cooperate in the collection of a DNA sample, as a condition of supervision or conditional release.
- **Section 312: Appropriate Remedies with Respect to Law Enforcement Surveillance Activities.**
- Consent Decrees...basically these are contracts negotiated outside of court to save time and money. For example, a company violates EPA policy, rather than go through court or penalize them with fines, the two parties agree upon sanctions for the perpetrator. An auto company might agree to meet 2005 EPA specs by 2004. Currently there are Consent Decrees affecting Police Departments for past indiscretions. These Decrees are outdated and many times are negotiated without input from the LEOs. This section would eliminate all decrees except those involving allegations of racial profiling.

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- **Section 313: Disclosure of Information.**
- This provision provides protection against civil liability for businesses and their personnel who voluntarily provide information to federal law enforcement agencies to assist in the investigation and prevention of terrorist activities. The purpose of the provision is to encourage voluntary cooperation and assistance in counterterrorism efforts by private entities and individuals.
- **Section 322: Extradition Without Treaties and for Offenses Not Covered by an Existing Treaty**
- This provision would amend current extradition law to: (1) authorize the U.S. to extradite offenders to treaty partners for modern crimes that may not be included in our older list treaties with those countries; and (2) provide for on a case-by-case basis and with the approval of the Attorney General and the Secretary of State extradition from the United States for serious crimes even in the absence of an extradition treaty.

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➤ **Section 401: Terrorism Hoaxes.**

- This section would amend federal law to create a new prohibition on terrorism hoaxes. In particular, it would (1) make it unlawful to knowingly convey false or misleading information, where the information reasonably may be believed, and concerns criminal activity relating to weapons of mass destruction; (2) require criminal defendants to reimburse any person, including the United States, State and local first responders who incur expenses incident to an emergency or investigative response to the terrorism hoax; and (3) authorize a civil action for such expenses.

➤ **Section 403: Weapons of Mass Destruction.**

- This would amend the WMD statute to cover any means of interstate or foreign transportation, any property used as such. or any interstate or foreign commerce completed in furtherance of the crime. It would amend the statute so that “Government Property” would cover any property used, leased or rented by the Government. Currently it only covers property that the Government owns. It would also add chemical weapons to the list of WMD.

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- **Section 404: Use of Encryption to Conceal Criminal Activity.**

- This makes it illegal to knowingly use message encryption in the commission of a crime or to conceal incriminating communications. If the violation is a felony, each instance shall be punishable by an additional 5 years imprisonment.

- **Sec. 405. Presumption for Pretrial Detention in Cases Involving Terrorism**

- This refers to the statute that allows courts to deny defendants of certain crimes, pre-trial release. An example of such a crime is a drug offense that carries a penalty of 10 years or more. This amendment would expand the statute to cover terrorists.

- **Section 406: "Mass Transportation Vehicle" Technical Correction.**

- The word "vehicle" was not previously defined so this would give it a definition (specifically to include aircraft).

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- **Section 407: Acts of Terrorism Transcending National Boundaries**
- Federal jurisdiction exists if the offense affects interstate or foreign commerce.

- **Section 408: Post-release Supervision of Terrorists.**
- Authorizes up to lifetime post-release supervision for the perpetrators of terrorist offenses.

- **Section 409: Suspension, Revocation, and Denial of Certificates for Civil Aviation or National Security Reasons.**
- This section provides procedures for the suspension, revocation, and denial of pilot certificates in relation to persons who pose a threat to civil aviation or national security

- **Section 410: No Statute of Limitations for Terrorism Crimes.**
- **Self explanatory**

- **Section 411: Penalties for terrorist murders.**
- This will make the option of capital punishment available for terrorists.

Subtitle B: Incapacitating Terrorism Financing

- **Section 421: Increased Penalties for Terrorism Financing.**
- This proposal would amend the International Emergency Economic Powers Act to increase the maximum civil penalty amount from \$10,000 per violation to \$50,000 per violation.
- **Section 422: Money Laundering Through Hawalas**
- Hawala is Hindi for “in trust.” Hawalas are the informal banking system based on trust used by Arab and South Asian migrant communities around the world to transfer remittances. Authorities claim that al-Barakaat skims off 5 percent of the take, donating it to the Al-Qaeda network. They estimate this amounts to \$25 million dollars a year.
- This amendment would clarify language pertaining to this, and other types of money laundering.

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- **Section 423: Suspension of Tax-Exempt Status of Designated Foreign Terrorist Organizations.**
- Even after an organizations have been identified as “terrorist” legally, they can maintain their tax-exempt status and persons donating to them can deduct the donation from their taxes. This amendment would cause immediate removal of tax-exempt status in the event an organization is designated as terrorist.
- **Section 424: Denial of Federal Benefits to Terrorists.**
- Uhhhhh, how long has this been going on?
- **Section 427: Assets of Persons Committing Terrorist Acts Against Foreign Countries or International Organizations.**
- The USA PATRIOT Act enacted a new forfeiture provision pertaining to the assets of any person planning or perpetrating an act of terrorism against the United States. This section adds a parallel provision pertaining to the assets of any person planning or perpetrating an act of terrorism against a foreign state or international organization while acting within the jurisdiction of the United States.

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- Section 501: Expatriation of Terrorists.
- Specifically, an American could be expatriated if, with the intent to relinquish nationality, he becomes a member of, or provides material support to, a group that the United States has designated as a "terrorist organization," if that group is engaged in hostilities against the United States.
- Section 502: Enhanced Criminal Penalties for Violations of Immigration and Nationality Act.
- This provision would amend the INA to increase the penalties for a number of immigration crimes, including unlawful entries, alien-smuggling crimes, crimes involving fraud, and failures to depart.

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- **Section 504: Expedited Removal of Criminal Aliens.**
- This provision would strengthen the existing expedited removal authorities in several ways. First, it would expand the individuals subject to expedited removal to include all aliens, not just nonpermanent residents. Second, it would expand the expedited-removal-triggering crimes to include offenses such as, possession of controlled substances, firearms offenses, espionage, sabotage, treason, threats against the President, violations of the Trading with the Enemy Act, draft evasion, and certain alien smuggling crimes. Perversely, many of these offenses are far more serious than "aggravated felonies," and yet at present do not trigger expedited removal.