

108TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Ms. MURKOWSKI introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend title 18, United States Code, and the Foreign Intelligence Surveillance Act of 1978 to strengthen protections of civil liberties in the exercise of the foreign intelligence surveillance authorities under Federal law, 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 “Protecting the Rights
5 of Individuals Act”.

1 **SEC. 2. LIMITATION ON AUTHORITY TO DELAY NOTICE OF**
2 **SEARCH WARRANTS.**

3 Section 3103a of title 18, United States Code, is
4 amended—

5 (1) in subsection (b)—

6 (A) in the matter preceding paragraph (1),
7 by striking “a criminal offense in violation of
8 the laws of the United States” and inserting
9 “an act dangerous to human life that con-
10 stitutes a Federal crime of terrorism (as that
11 term is defined in section 2332b(g)(5) of this
12 title)”;

13 (B) in paragraph (1), by striking “may
14 have an adverse result (as defined in section
15 2705)” and inserting “will endanger the life or
16 physical safety of an individual, result in flight
17 from prosecution, or result in the destruction of
18 or tampering with the evidence sought under
19 the warrant”; and

20 (C) in paragraph (3), by striking “a rea-
21 sonable period” and all that follows and insert-
22 ing “seven calendar days, which period, upon
23 application of the Attorney General, the Deputy
24 Attorney General, or an Associate Attorney
25 General, may thereafter be extended by the
26 court for additional periods of up to seven cal-

1 endar days each if the court finds, for each ap-
2 plication, reasonable cause to believe that notice
3 of the execution of the warrant will endanger
4 the life or physical safety of an individual.”;
5 and

6 (2) by adding at the end the following new sub-
7 section:

8 “(c) REPORTS.—(1) On a semiannual basis, the At-
9 torney General shall transmit to Congress and make pub-
10 lic a report concerning all requests for delays of notice,
11 and for extensions of delays of notice, with respect to war-
12 rants under subsection (b).

13 “(2) Each report under paragraph (1) shall include,
14 with respect to the preceding six-month period—

15 “(A) the total number of requests for delays of
16 notice with respect to warrants under subsection (b);

17 “(B) the total number of such requests granted
18 or denied; and

19 “(C) for each request for delayed notice that
20 was granted, the total number of applications for ex-
21 tensions of the delay of notice and the total number
22 of such extensions granted or denied.”.

1 **SEC. 3. MODIFICATION OF DEFINITION OF DOMESTIC TER-**
2 **RORISM.**

3 (a) MODIFICATION.—Section 2331(5) of title 18,
4 United States Code, is amended—

5 (1) by striking subparagraphs (A) and (B) and
6 inserting the following new subparagraph (A):

7 “(A) involve acts dangerous to human life
8 that constitute a Federal crime of terrorism (as
9 that term is defined in section 2332b(g)(5) of
10 this title); and”;

11 (2) by redesignating subparagraph (C) as sub-
12 paragraph (B).

13 (b) CONSTRUCTION.—Nothing in section 2331 of title
14 18, United States Code, shall be construed to prohibit a
15 State from enforcing the laws of the State relating to ter-
16 rorism.

17 **SEC. 4. ENHANCEMENT OF PROTECTION OF BUSINESS**
18 **RECORDS AND MATERIALS PROTECTED BY**
19 **THE FIRST AMENDMENT FROM ACCESS FOR**
20 **FOREIGN INTELLIGENCE SURVEILLANCE**
21 **PURPOSES.**

22 (a) ACCESS UNDER FOREIGN INTELLIGENCE SUR-
23 VEILLANCE ACT OF 1978.—Section 501 of the Foreign
24 Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is
25 amended—

26 (1) in subsection (b)—

1 (A) by striking “and” at the end of para-
2 graph (1);

3 (B) by striking the period at the end of
4 paragraph (2) and inserting “; and”; and

5 (C) by adding at the end the following new
6 paragraph:

7 “(3) shall include a statement of the facts and
8 circumstances relied upon by the applicant to justify
9 the applicant’s belief that the person to whom the
10 records pertain is a foreign power or an agent of a
11 foreign power.”; and

12 (2) in subsection (c)(1), by striking “finds” and
13 all that follows and inserting “finds—

14 “(A)(i) unless clause (ii) applies, that on the
15 basis of the facts submitted by the applicant there
16 is reason to believe that the person to whom the
17 records pertain is a foreign power or an agent of a
18 foreign power; or

19 “(ii) in the case of medical records or library
20 records and other records involving the purchase or
21 rental of books, video, or music, or the accessing of
22 legal and publicly available content through the
23 Internet, that on the basis of the facts submitted by
24 the applicant there is probable cause to believe that

1 the person to whom the records pertain is a foreign
2 power or an agent of a foreign power; and

3 “(B) that the application meets the other re-
4 quirements of this section.”.

5 (b) COUNTERINTELLIGENCE ACCESS TO TELEPHONE
6 TOLL AND TRANSACTIONAL RECORDS.—Section 2709 of
7 title 18, United States Code, is amended—

8 (1) in subsection (a)—

9 (A) by inserting “(1)” before “A wire or
10 electronic communication service provider”; and

11 (B) by adding at the end the following new
12 paragraph:

13 “(2) A library shall not be treated as a wire or elec-
14 tronic communication service provider for purposes of this
15 section.”; and

16 (2) by adding at the end the following new sub-
17 section:

18 “(f) LIBRARY DEFINED.—In this section, the term
19 ‘library’ means a library (as that term is defined in section
20 213(2) of the Library Services and Technology Act (20
21 U.S.C. 9122(2)) whose services include access to the
22 Internet, books, journals, magazines, newspapers, or other
23 similar forms of communication in print or digitally to pa-
24 trons for their use, review, examination, or circulation.”.

1 **SEC. 5. ELIMINATION OF JOHN DOE ROVING WIRETAPS**
2 **UNDER FOREIGN INTELLIGENCE SURVEIL-**
3 **LANCE ACT OF 1978.**

4 Section 105(c) of the Foreign Intelligence Surveil-
5 lance Act of 1978 (50 U.S.C. 1805(c)) is amended—

6 (1) in paragraph (1)—

7 (A) in subparagraph (A), by inserting be-
8 fore the semicolon the following: “, however, if
9 the identity is unknown, a facility or place shall
10 be specified”; and

11 (B) in subparagraph (B), by inserting be-
12 fore the semicolon the following: “, however, if
13 the facility or place is unknown, the identity of
14 the target shall be specified”; and

15 (2) in paragraph (2)(A), by inserting before the
16 semicolon the following: “, and, in cases where the
17 facility or place at which the surveillance is to be di-
18 rected is not known at the time the order is issued,
19 that the surveillance be conducted only when the
20 presence of the target at a particular facility or
21 place has been ascertained by the person conducting
22 the surveillance”.

1 **SEC. 6. CLARIFICATION OF USE OF PEN REGISTERS AND**
2 **TRAP AND TRACE DEVICES FOR CRIMINAL**
3 **INVESTIGATION PURPOSES.**

4 (a) APPLICATION FOR ORDER.—Section 3122(b)(2)
5 of title 18, United States Code, is amended to read as
6 follows:

7 “(2) a statement by the applicant of specific
8 and articulable facts that indicate that a crime has
9 been, is being, or will be committed, and that infor-
10 mation likely to be obtained by such installation and
11 use is relevant to the investigation of that crime.”.

12 (b) ISSUANCE OF ORDER.—(1) Section 3123(a)(1) of
13 that title is amended by striking “the attorney for the
14 Government has certified to the court that the information
15 likely to be obtained by such installation and use is rel-
16 evant to an ongoing criminal investigation.” and inserting
17 “there exist specific and articulable facts that reasonably
18 indicate that a crime has been, is being, or will be com-
19 mitted, and that information likely to be obtained by such
20 installation and use is relevant to the investigation of that
21 crime.”.

22 (2) Section 3123(a)(2) of that title is amended by
23 striking “the State law enforcement or investigative officer
24 has certified to the court that the information likely to
25 be obtained by such installation and use is relevant to an
26 ongoing criminal investigation.” and inserting “there exist

1 specific and articulable facts that reasonably indicate that
2 a crime has been, is being, or will be committed, and that
3 information likely to be obtained by such installation and
4 use is relevant to the investigation of that crime.”.

5 (c) CLARIFICATION OF INTERNET CONTENT ACCES-
6 SIBLE.—Section 3121(c) of that title is amended—

7 (1) by inserting “(1)” before “A government
8 agency”; and

9 (2) by adding at the end the following new
10 paragraph:

11 “(2) For purposes of paragraph (1), the contents of
12 Internet electronic communications include the subject
13 line of such communications and any portion of a Uniform
14 Resource Identifier (URI) other than the server name and
15 top level domain.”.

16 **SEC. 7. MORATORIUM ON DATA-MINING.**

17 (a) MORATORIUM.—No officer or employee of any de-
18 partment or agency of the Federal Government may take
19 any action to implement or carry out any data-mining pro-
20 gram or activity except pursuant to a law specifically au-
21 thorizing such data-mining program or activity by such
22 department or agency.

23 (b) REPORT OF DEVELOPMENT OR USE OF DATA-
24 MINING.—(1) The head of each department or agency of
25 the Federal Government that engages or plans to engage

1 in any activities relating to the development or use of a
2 data-mining program or activity shall submit to Congress,
3 and make available to the public, a report on such activi-
4 ties.

5 (2) A report under paragraph (1) shall include, for
6 each activity relating to the development or use of a data-
7 mining program or activity, information as follows:

8 (A) A thorough description of the data-mining
9 program or activity concerned.

10 (B) A thorough discussion of the plans for the
11 use of the data-mining program or activity, or of any
12 technology relating to such program or activity.

13 (C) A thorough discussion of the policies, proce-
14 dures, and guidelines that are to be applied in the
15 use of such data-mining program or activity, or of
16 any technology relating to such program or activity,
17 for data-mining in order to—

18 (i) protect the privacy rights of individuals;

19 and

20 (ii) ensure that only accurate, complete,
21 and timely information is collected.

22 (3)(A) In the case of a department or agency of the
23 Federal Government that is engaged in activities described
24 in paragraph (1) as of the date of the enactment of this
25 Act, the report under paragraph (1) on such activities

1 shall be submitted not later than 90 days after the date
2 of enactment of this Act.

3 (B) In the case of a department or agency of the Fed-
4 eral Government that plans to commence activities de-
5 scribed in paragraph (1) after the date of the enactment
6 of this Act, the report under paragraph (1) on such activi-
7 ties shall be submitted not later than 90 days after the
8 department or agency commences planning for such activi-
9 ties.

10 (c) DEFINITIONS.—In this section:

11 (1) The term “data-mining” means a query or
12 search of one or more electronic databases by or at
13 the behest of a department or agency of the Federal
14 Government in which—

15 (A) at least one of the databases is ob-
16 tained from or remains under the control of a
17 non-Federal entity, or the information in at
18 least one database was acquired initially by an-
19 other department or agency of the Federal Gov-
20 ernment for purposes other than intelligence or
21 law enforcement;

22 (B) the search does not use the personal
23 identifiers of a particular individual to acquire
24 information concerning that individual; and

1 (C) the department or agency is con-
2 ducting the search in an effort to find evidence
3 of a pattern indicating possible terrorist or
4 other criminal activity.

5 (2)(A) The term “database” means a collection
6 or grouping of information about individuals that is
7 held in electronic form and that contains personally
8 identifiable information about individuals, such as
9 names, or identifying numbers, symbols or other
10 identifying particulars assigned to individuals, such
11 as fingerprints, voice prints, or photographs.

12 (B) The term does not include telephone direc-
13 tories or information publicly available over the
14 Internet without payment of a fee.

15 **SEC. 8. PUBLIC REPORTING REQUIREMENT UNDER FOR-**
16 **EIGN INTELLIGENCE SURVEILLANCE ACT OF**
17 **1978.**

18 (a) PUBLIC REPORTING REQUIREMENT.—(1) The
19 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
20 1801 et. seq.) is amended—

21 (1) by redesignating title VI and section 601 as
22 title VII and section 701, respectively; and

23 (2) by inserting after title V the following new
24 title:

1 “TITLE VI—PUBLIC REPORTING REQUIREMENT

2 “PUBLIC REPORT OF THE ATTORNEY GENERAL

3 “SEC. 601. In addition to the reports required by sec-
4 tions 107, 108, 306, 406, and 502 in April of each year,
5 the Attorney General shall issue each year a public report
6 setting forth with respect to the preceding calendar year—

7 “(1) the total number of orders and extensions
8 of orders under this Act that were granted, modi-
9 fied, or denied, including those approving—

10 “(A) electronic surveillance under section
11 105;

12 “(B) physical searches under section 304;

13 “(C) pen registers or trap and trace de-
14 vices under section 402; and

15 “(D) access to records under section 501;

16 “(2)(A) the total number of applications made
17 for orders approving requests for the production of
18 tangible things under section 501 to be served on
19 public media; and

20 “(B) the total number of such orders either
21 granted, modified, or denied;

22 “(3) the number of United States persons tar-
23 geted for orders under this Act, including those tar-
24 geted for—

1 “(A) electronic surveillance under section
2 105;

3 “(B) physical searches under section 304;

4 “(C) pen registers or trap and trace de-
5 vices under section 402; and

6 “(D) access to records under section 501;

7 “(4) the number of times that the Attorney
8 General authorized that information obtained under
9 the provisions of law referred to in paragraph (3),
10 or any information derived therefrom, be used in a
11 criminal proceeding;

12 “(5) the number of times that a statement was
13 completed pursuant to section 106(b), 305(c), or
14 405(b) to accompany a disclosure of information ac-
15 quired under this Act for law enforcement purposes;
16 and

17 “(6) in a manner consistent with the protection
18 of the national security of the United States—

19 “(A) the portions of the documents and
20 applications filed with the court established
21 under section 103 that include significant con-
22 struction or interpretation of the provisions of
23 this Act, or any provision of the United States
24 Constitution, not including the facts of any par-
25 ticular matter, which may be redacted;

1 “(B) the portions of the opinions and or-
2 ders of the court established under section 103
3 that include significant construction or interpre-
4 tation of the provisions of this Act, or any pro-
5 vision of the United States Constitution, not in-
6 cluding the facts of any particular matter,
7 which may be redacted; and

8 “(C) in the first report submitted under
9 this section, the matters specified in subpara-
10 graphs (A) and (B) for all documents and ap-
11 plications filed with the court established under
12 section 103, and all otherwise unpublished opin-
13 ions and orders of the court, for the four years
14 before the preceding calendar year in addition
15 to that year.”.

16 (2) The table of contents for that Act is amended
17 by striking the items relating to title VI and section 601
18 and inserting the following:

“TITLE VI—PUBLIC REPORTING REQUIREMENT

“Sec. 601. Public report of the Attorney General.

“TITLE VII—EFFECTIVE DATE

“Sec. 701. Effective date.”.

19 (b) MODIFICATION OF REPORTING REQUIREMENTS
20 TO CONGRESS.—(1) Section 107 of that Act (50 U.S.C.
21 1807) is amended—

22 (A) by redesignating clause (a) paragraph (1);

1 (B) in paragraph (1), as so redesignated, by
2 striking “and” at the end; and

3 (C) by striking clause (b) and inserting the fol-
4 lowing new paragraphs:

5 “(2) the total number of initial orders for elec-
6 tronic surveillance either granted, modified, or de-
7 nied;

8 “(3) the total number of extensions of orders
9 for electronic surveillance either granted, modified,
10 or denied; and

11 “(4) the total number of United States persons
12 to whom such orders or extensions that were granted
13 pertain.”.

14 (2) Section 406(b) of such Act (50 U.S.C. 1846(b))
15 is amended—

16 (A) by striking “and” at the end of paragraph
17 (1);

18 (B) by striking the period at the end of para-
19 graph (2) and inserting “; and”; and

20 (C) by adding at the end the following new
21 paragraph:

22 “(3) the total number of United States persons
23 to whom such orders that were granted or modified
24 pertain.”.

1 (3) Section 502(b) of such Act (50 U.S.C. 1862(b))
2 is amended—

3 (A) by striking “and” at the end of paragraph
4 (1);

5 (B) by striking the period at the end of para-
6 graph (2) and inserting “; and”; and

7 (B) by adding at the end the following new
8 paragraph:

9 “(3) the total number of United States persons
10 to whom such orders that were granted or modified
11 pertain, or in cases where the order does not name
12 a specific person whose records are being sought, an
13 estimate of the total number of persons to whom
14 records being sought pertain.”.

15 **SEC. 9. APPLICATION OF DISCOVERY PROCEDURES TO EVI-**
16 **DENCE USED IN COURT PROCEEDINGS.**

17 (a) **ELECTRONIC SURVEILLANCE.**—Section 106(f) of
18 the Foreign Intelligence Surveillance Act of 1978 (50
19 U.S.C. 1806(f)) is amended—

20 (1) in the first sentence—

21 (A) by striking “or an adversary hearing”;

22 and

23 (B) by striking “and ex parte”; and

24 (2) by striking the last sentence and inserting
25 the following new sentence: “In making this deter-

1 mination, the court shall, if otherwise discoverable,
2 disclose to the aggrieved person, under the proce-
3 dures and standards provided in the Classified Infor-
4 mation Procedures Act (18 U.S.C. App.), portions of
5 the application, order, or other materials relating to
6 the surveillance unless the court finds that such dis-
7 closure would not assist in determining any legal or
8 factual issue pertinent to the case.”.

9 (b) PHYSICAL SEARCHES.—Section 305(g) of that
10 Act (50 U.S.C. 1825(g)) is amended—

11 (1) in the first sentence—

12 (A) by striking “or an adversary hearing”;

13 and

14 (B) by striking “and ex parte”; and

15 (2) by striking the last sentence and inserting
16 the following new sentence: “In making this deter-
17 mination, the court shall, if otherwise discoverable,
18 disclose to the aggrieved person, under the proce-
19 dures and standards provided in the Classified Infor-
20 mation Procedures Act (18 U.S.C. App.), portions of
21 the application, order, or other materials relating to
22 the physical search, or may require the Attorney
23 General to provide to the aggrieved person a sum-
24 mary of such materials, unless the court finds that

1 such disclosure would not assist in determining any
2 legal or factual issue pertinent to the case.”.

3 (c) PEN REGISTER AND TRAP AND TRACE DE-
4 VICES.—Section 405(f) of that Act (50 U.S.C. 1845(f))
5 is amended by striking paragraph (2) and inserting the
6 following new paragraph (2):

7 “(2) Unless the court finds that such disclosure
8 would not assist in determining any legal or factual issue
9 pertinent to the case, the court shall, if otherwise discover-
10 able, disclose to the aggrieved person, under the proce-
11 dures and standards provided in the Classified Informa-
12 tion Procedures Act (18 U.S.C. App.), portions of the ap-
13 plication, order, or other materials relating to the use of
14 pen register or trap and trace device, as the case may be,
15 or evidence or information obtained or derived from the
16 use of pen register or trap and trace device, as the case
17 may be.”.

18 (d) DISCLOSURE OF CERTAIN BUSINESS
19 RECORDS.—(1) Title V of that Act (50 U.S.C. 1861 et
20 seq.) is amended—

21 (A) by redesignating section 502 as section
22 503; and

23 (B) by inserting after section 501 the following:

1 “DISCLOSURE OF CERTAIN BUSINESS RECORDS AND
2 ITEMS GOVERNED BY THE CLASSIFIED INFORMA-
3 TION PROCEDURES ACT

4 “SEC. 502. Any disclosure of applications, informa-
5 tion, or items submitted or acquired pursuant to an order
6 issued under section 501, if such information is otherwise
7 discoverable, shall be conducted under the procedures and
8 standards provided in the Classified Information Proce-
9 dures Act (18 U.S.C. App.).”.

10 (2) The table of contents for that Act is amended
11 by striking the item relating to section 502 and inserting
12 the following new items:

“Sec. 502. Disclosure of certain business records and items governed by the
Classified Information Procedures Act.

“Sec. 503. Congressional oversight.”.

13 **SEC. 10. FOREIGN INTELLIGENCE INFORMATION.**

14 Sections 104(a)(7)(B) and 303(a)(7)(B) of the For-
15 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
16 1804(a)(7)(B), 1823(a)(7)(B)) are each amended by
17 striking “a significant purpose” and inserting “the pri-
18 mary purpose”.

19 **SEC. 11. DISCLOSURE OF EDUCATION RECORDS.**

20 (a) APPLICATIONS FOR ORDERS.—Section
21 444(j)(2)(A) of the General Education Provisions Act (20
22 U.S.C. 1232g(j)(2)(A)) and section 408(c)(2)(A) of the
23 National Education Statistics Act of 1994 (20 U.S.C.
24 9573(e)(2)(A)) are each amended by striking “certify that

1 there are specific and articulable facts giving reason to
2 believe” and inserting “set forth specific and articulable
3 facts indicating”.

4 (b) ISSUANCE OF ORDERS.—Section 444(j)(2)(B) of
5 the General Education Provisions Act (20 U.S.C.
6 1232g(j)(2)(B)) and section 408(c)(2)(B) of the National
7 Education Statistics Act of 1994 (20 U.S.C.
8 9573(e)(2)(B)) are each amended by striking “the appli-
9 cation for the order includes the certification described in
10 subparagraph (A)” and inserting “there are specific and
11 articulable facts giving reason to believe that the education
12 records are likely to contain information described in para-
13 graph (1)(A)”.