

A BILL

To amend Title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Foreign Intelligence Surveillance Act of 1976."

Sec. 2. Title 18, United States Code, is amended by adding a new chapter after Chapter 119:

Chapter 120. Electronic Surveillance within the United States for Foreign Intelligence Purposes --

Section 2521. Definitions.

(a) Except as otherwise provided in this section the definitions of Section 2510 of this title shall apply to this chapter.

(b) As used in this chapter --

(1) "Agent of a foreign power" means:

(i) a person who is not a permanent resident alien or citizen of the United States and who is an officer or employee of a foreign power; or

(ii) a person who, pursuant to the direction of a foreign power, is engaged in clandestine intelligence activities, sabotage, or terrorist activities, or who conspires with, assists or aids and abets such a person in engaging in such activities.

(2) "Electronic surveillance" means:

(i) the acquisition, by an electronic, mechanical, or other device, of the contents of a wire communication to or from a person in the United States, without the consent of any party thereto, where such acquisition occurs in the United States while the communication is being transmitted by wire;

(ii) the acquisition, by an electronic, mechanical, or other device, of the contents of a radio transmission, without the consent of any party thereto, made with a reasonable expectation of privacy where both the point of origin and all intended recipients are located within the United States, or

(iii) the installation of an electronic, mechanical, or other device in the United States to acquire information not transmitted by wire or radio under circumstances in which a person has a reasonable expectation of privacy.

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(3) "Foreign intelligence information" means:

(i) information relating to the ability of the United States to protect itself against actual or potential attack or other hostile acts of a foreign power or its agents;

(ii) information, with respect to foreign powers or territories, which because of its importance is deemed essential to the security or national defense of the Nation or to the conduct of the foreign affairs of the United States;

(iii) information relating to the ability of the United States to protect the national security against foreign intelligence activities.

(4) "Attorney General" means the Attorney General of the United States or in his absence the acting Attorney General.

(5) "Foreign power" includes foreign governments, factions, parties, military forces, or agencies or instrumentalities of such entities, or organizations composed of such entities, whether or not recognized by the United States, or foreign-based terrorist groups.

Section 2522. Authorization for Electronic Surveillance for Foreign Intelligence Purposes.

Applications for a court order under this chapter are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to Federal judges having jurisdiction under section 2523 of this chapter, and a judge to whom an application is made may grant an order, in conformity with section 2525 of this chapter, approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information.

Section 2523. Designation of Judges Authorized to Grant Orders for Electronic Surveillance.

(a) The Chief Justice of the United States shall designate seven district court judges, each of whom shall have jurisdiction to hear applications for and grant orders approving electronic surveillance anywhere within the United States under the procedures set forth in this chapter.

(b) The Chief Justice shall designate three judges from the United States district courts or courts of appeals who together shall comprise a special court of appeals which shall have jurisdiction to hear an appeal by the United States from the denial of any application made under this chapter. The United States shall further have the right to appeal an affirmance of denial by that court to the Supreme Court. All appeals under this chapter shall be heard and determined as expeditiously as possible.

(c) Applications made and orders granted under this chapter shall be sealed by the presiding judge and shall be kept under security measures established by the Chief Justice in consultation with the Attorney General.

Section 2524. Application for an Order.

(a) Each application for an order approving electronic surveillance under this chapter shall be made in writing upon oath or affirmation to a judge having jurisdiction under section 2523 of this chapter. Each application must be approved by the Attorney General and shall include the following information:

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(1) the identity of the officer making the application;

(2) the authority conferred on the applicant by the President of the United States and the approval of the Attorney General to make the application;

(3) the identity or a characterization of the person who is the subject of the electronic surveillance;

(4) a statement of the facts and circumstances relied upon by the applicant to justify his belief that:

(i) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and

(ii) the facilities or the place at which the electronic surveillance is directed are being used, or are about to be used, by a foreign power or an agent of a foreign power;

(5) a statement of the procedures by which the acquisition and retention of information relating to permanent resident aliens or citizens of the United States that is not foreign intelligence information will be minimized;

(6) a description of the type of information sought and a certification by the Assistant to the President for National Security Affairs or an Executive branch official designated by the President from among those Executive officers employed in the area of national security or defense and appointed by the President by and with the advice and consent of the Senate that such information is foreign intelligence information that cannot feasibly be obtained by normal investigative techniques;

(7) a statement of the means by which the surveillance will be effected;

(8) a statement of the facts concerning all previous applications known to the Attorney General that have been made to any judge under this chapter involving any of the persons, facilities or places specified in the application, and the action taken on each previous application, and

(9) a statement of the period of time for which the electronic surveillance is required to be maintained. If the nature of the intelligence gathering is such that the approval of the use of electronic surveillance under this chapter should not automatically terminate when the described type of information has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter.

(b) The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

(c) At the time of the hearing on the application, the applicant may furnish to the judge additional information in support of the application and the judge may require the applicant to furnish such other information or evidence as may be necessary to make the determinations required by section 2525 of this title.

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Section 2525. Issuance of an Order.

(a) Upon an application made pursuant to section 2524 of this title, the judge shall enter an ex parte order as requested or as modified approving the electronic surveillance if he finds that:

(1) the President has authorized the Attorney General to approve applications for electronic surveillance for foreign intelligence information;

(2) the application has been approved by the Attorney General;

(3) on the basis of the facts submitted by the applicant, there is probable cause to believe that:

(i) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and;

(ii) the facilities or place at which the electronic surveillance is directed are being used, or are about to be used, by a foreign power or an agent of a foreign power;

(4) minimization procedures to be followed are reasonably designed to minimize the acquisition and retention of information relating to permanent resident aliens or citizens of the United States that is not foreign intelligence information;

(5) certification has been made pursuant to section 2524(a)(6) that the information sought is foreign intelligence information that cannot feasibly be obtained by normal investigative techniques.

(b) An order approving an electronic surveillance under this section shall:

(1) specify:

(i) the identity or a characterization of the person who is the subject of the electronic surveillance;

(ii) the nature and location of the facilities or the place at which the electronic surveillance will be directed;

(iii) the type of information sought to be acquired;

(iv) the means by which the electronic surveillance will be effected; and

(v) the period of time during which the electronic surveillance is approved; and

(2) direct:

(i) that the minimization procedures be followed;

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(ii) that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, contractor, or other specified person furnish the applicant forthwith any and all information, facilities, technical assistance, or other aid necessary to accomplish the electronic surveillance in such manner as will protect its secrecy and produce a minimum of interference with the services that such carrier, landlord, custodian, contractor, or other person is providing the target of electronic surveillance; and

(iii) that the applicant compensate, at the prevailing rates, such carrier, landlord, custodian, or other person for furnishing such aid.

(c) An order issued under this section may approve an electronic surveillance for the period necessary to achieve its purpose, or for ninety days, whichever is less. Extensions of an order issued under this chapter may be granted upon an application for an extension made in the same manner as required for an original application and after findings required by subsection (a) of this section. Each extension may be for the period necessary to achieve the purposes for which it is granted, or for ninety days, whichever is less.

(d) Notwithstanding any other provision of this chapter when the Attorney General reasonably determines that:

(1) an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained, and

(2) the factual basis for issuance of an order under this chapter to approve such surveillance exists, he may authorize the emergency employment of electronic surveillance if a judge designated pursuant to section 2523 of this title is informed by the Attorney General or his designate at the time of such authorization that the decision has been made to employ emergency electronic surveillance and if an application in accordance with this chapter is made to that judge as soon as practicable, but not more than twenty-four hours after the Attorney General authorizes such acquisition. In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of twenty-four hours from the time of authorization by the Attorney General, whichever is earliest. As provided in section 2523, a denial of the application may be appealed by the Attorney General.

(e) A judge denying an order under this section or a panel affirming such denial under section 2523(b) shall state the reasons therefor.

Section 2526. Use of Information.

(a) Information acquired from an electronic surveillance conducted pursuant to this chapter may be used and disclosed by Federal officers and employees only for the purposes designated under this chapter or for the enforcement of the criminal law.

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(b) The minimization procedures required under this chapter shall not preclude the retention and disclosure of non-foreign intelligence information acquired incidentally which is evidence of a crime.

(c) When information acquired from or the product of an electronic surveillance conducted pursuant to this chapter is received in evidence in any trial, proceeding, or other hearing in any Federal or State court, the provisions of section 2518(9) of chapter 119 shall not apply. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character.

(d) If an emergency employment of electronic surveillance is authorized under section 2525(d) and a subsequent order approving the surveillance is not obtained, the judge shall cause to be served on any United States citizen or permanent resident alien named in the application and on such other United States citizen or permanent resident alien subject to electronic surveillance as the judge may determine in his discretion it is in the interest of justice to serve, notice of

- (1) the fact of the application;
- (2) the period of the surveillance; and
- (3) the fact that during the period information was or was not obtained.

On an ex parte showing of good cause to the judge the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed ninety days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

Section 2527. Report of Electronic Surveillance.

In April of each year, the Attorney General shall report to the Administrative Office of the United States Courts and shall transmit to the Congress with respect to the preceding calendar year:

- (1) the number of applications made for orders and extensions of orders approving electronic surveillance and the number of such orders and extensions granted, modified and denied;
- (2) the periods of time for which applications granted authorized electronic surveillances and the actual duration of such electronic surveillances;
- (3) the number of such surveillances in place at any time during the preceding year; and
- (4) the number of such surveillances terminated during the preceding year.

Section 2528. Presidential Power.

Nothing contained in this chapter shall limit the constitutional power of the President to order electronic surveillance for the reasons stated in section 2511(3) of Title 18, United States Code, if the facts and circumstances giving rise to such order are beyond the scope of this chapter.

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