

II. SECTION-by-SECTION

Sec. 1. Short Title

This Act may be cited as the “the Provide Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001.”

Sec. 2. Table of Contents

Title I - Intelligence Gathering Subtitle A - Electronic Surveillance

Section 101. Modification of authorities relating to use of pen registers and trap and trace devices.

Currently, the government must apply for a new pen/trap order in every jurisdiction where an investigation is being pursued and this can cause serious delays that could be devastating to an investigation, where additional criminal or terrorist acts are planned.

Under 18 U.S.C. §3121(b), law enforcement may obtain authorization **from a court** upon certification that the information to be obtained is relevant to a pending criminal investigation to install and use a pen register device that identifies the source of calls placed from (outgoing) or a trap and trace device that identifies the source of calls to a particular telephone (incoming). These devices **do not capture or record the content** of any such communication under the terms of the court order.

Section 101 does not change the requirement under 18 U.S.C. §3121 that law enforcement seek a **court order** to install and use pen registers/trap and trace devices. It does change the number of times law enforcement has to go back to court to track the same suspected terrorist or criminal for the same investigation. Under the bill, §3123(a) would authorize courts to issue a single pen register/trap and trace order that could be executed in multiple jurisdictions anywhere in the United States. The bill divides the existing 18 U.S.C. §3123(a) into two paragraphs. The new subsection (a)(1) applies to federal investigations and provides that the order may be issued to any provider of communication services within the United States whose assistance is appropriate to the effectuation of the order. Subsection (a)(2) applies to State law enforcement and does not change the current authority granted to State officials.

This section also includes language to ensure that the pen/trap provisions apply to new technologies, such as the Internet. Section 101(b)(2) amends the contents of the order provisions under §3123(b)(1) to take into account the new technologies relating to the different modes of communications. Section

101(b)(3) amends the non-disclosure requirements under §3123(d)(2) to take into account the new technologies relating to the different modes of communications.

Section 101(c) amends the definition section to include a new nexus standard under §3127(2)(A) to provide that the issuing court must have jurisdiction **over the crime being investigated rather than the communication line upon which the device is to be installed**. This section is also amended to account for the new technologies relating to the different modes of communications.

Section 101(d) amends section 3124(d) to ensure that communication providers continue to be covered under that section. Technology providers are concerned that the single order provisions of section 101 of the bill eliminates the protection of §3124(d) of title 18 which provides that “no cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance **in accordance with the terms of a court order.**” Once there is a nation-wide order it will not specify the provider and thus, the providers believe they could become liable. The intent of the current statutory language is to protect providers assisting law enforcement. The change in the statute should not change that protection. The bill removes the phrase “the terms of ” and leaves the phrase in accordance with a court order. This will keep the requirement of a court order but protect the providers even when that order does not specify the provider.

Section 101 does not expand the type of information which may be obtained. It is limited to the equivalent of telephone numbers dialed and the length of the call or in the Internet context it provides the address, such as an e-mail address.

The sunset provision in section ____ would sunset this section on December 31, 2003.

Section 102 . Seizure of voice-mail messages pursuant to warrants.

The purpose of this section is to allow **a court to issue an order** authorizing law enforcement to seize voice mail messages pursuant to a **search warrant upon a showing of probable cause**.

This section harmonizes all criminal provisions dealing with stored electronic communication - requiring **a warrant issued by a judge after establishing probable cause**.

The sunset provision in section ____ would sunset this section on December 31, 2003.

Section 103. Authorized disclosure.

This provision will allow law-enforcement to share “title III” (wiretap statute) information with limited

government agencies to further intelligence or national security investigations. Under current law, 18 U.S.C. §2517(1) allows any investigative or law enforcement officer who obtains information under the Wiretap Statute to disclose the information to the extent that the information assists a criminal investigation to another investigative or law enforcement officer. The current statutory language has hampered law enforcement in sharing information or receiving information from other government agencies that might relate to terrorist activities or national security. This section of the bill would amend the definition under §2510(7) of “investigative or law enforcement officer” to include any Federal law enforcement, intelligence, national security, national defense, protective, immigration personnel, or the President or Vice President of the United States for the purposes only of §2517 **when it relates to foreign intelligence information**. As with current law, the disclosure or sharing of information must be made in the performance of the official duties of the official making or receiving the information.

This language narrows that which was proposed by the Administration that would have authorized disclosure to “any officer or employee of the executive branch.” The bill also limits the information to that which relates to foreign intelligence information.

The sunset provision in section ____ would sunset this section on December 31, 2003.

Section 104. Savings provision.

This section is a technical and conforming amendment that would add chapter 206 (relating to pen registers/trap and trace orders) to section §2511(f) of the Wiretap Act. Section 2511(f) states that nothing in chapter 119 (relating to the interception of communications), chapter 121 (relating to stored wire and electronic communications and transactional records access), or section 705 of the Communications Act of 1934, “shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law” The bill would include chapter 206 under that §2511(f).

This section also updates the language to include electronic communications. The sunset provision in section ____ would sunset this section on December 31, 2003.

Section 105. Interception of computer trespasser communications.

Cyberattacks may be the work of terrorists or criminals. These attacks come in many forms that cost companies and citizens millions of dollars and sometimes can endanger public safety. For instance, the Denial-of-Service attacks, where the objective of the attack is to disable the computer system can shut down businesses or emergency responders or national security centers. This type attack causes the target site’s servers to run out of memory, and become incapable of responding to the queries of

legitimate customers or users. The victims of these computer trespassers should be able to authorize law enforcement to intercept the trespassers communications. Section 105 amends current law to clarify that law enforcement may intercept such communications at the authorization of the victims, under limited circumstances.

Section 105(1) of the bill adds to the definitions under 18 U.S.C. §2510(1) the terms ‘protected computer’ and states that the term has the same meaning set forth in §1030 of title 18, and (2) the term ‘computer trespasser’ that means a person who is accessing a protected computer without authorization and thus has no reasonable expectation of privacy in any communication transmitted to, through, or from the protected computer.

Section 105(2) of the bill amends current law to allow victims of computer intrusions to authorize law enforcement to intercept the communications of a **computer trespasser**, under limited circumstances. The circumstances are (1) the owner or operator of the protected computer must authorize the interception of the trespasser’s communications, (2) the person who intercepts the communication must be lawfully engaged in an investigation, (3) the person acting under color of law has reasonable grounds to believe that the contents of the computer trespasser’s communication to be intercepted will be relevant to the investigation and (4) **the investigator may only intercept communications of the computer trespasser.**

Section 105(3) would update the “good faith reliance” defense in section 2520(d), so that the computer trespasser situation is also covered. Current law provides that “a good faith reliance on (1) a court warrant or order, a grand jury subpoena, or a statutory authorization; (2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or (3) a good faith determination that section 2511(3) of this title permitted the conduct complained of; is a complete defense against civil or criminal action brought under this chapter or any other law.” The communication providers are concerned that while (d)(1) covers statutory authorization, the language of section 105 authorizes law enforcement and not the providers directly. Section 105(3) will ensure that the protection offered under 2320(d) continues.

The sunset provision in section ____ would sunset this section on December 31, 2003.

Section 106. Technical Amendment

Adds a missing add to §2518(3)(c).

Section 107. Scope of subpoenas for record of electronic communications.

Terrorists and criminals often use aliases in registering for Internet and phone services. This creates a

problem for law enforcement attempting to identify the suspects of terrorist or criminal acts that often support the terrorists. While the government currently can subpoena electronic communications or a remote computing services provider for the name, address and length of service of a suspect, this information does not help when the suspected a terrorist and criminal lie about his or her identity. Credit card and other payment information will help law enforcement track a suspect and establish his or her true identity.

This section would amend 18 U.S.C. §2703(c) to authorize a subpoena for transactional records to include information regarding the form of payment that would assist law enforcement in determining the user's identity.

The sunset provision in section ____ would sunset this section on December 31, 2003.

Section 108. Nationwide service of search warrants for electronic evidence.

Title 18 U.S.C. §2703(a) requires a search warrant to compel service providers to disclose unopened e-mails. This section **does not affect the requirement for a search warrant**, but rather attempts to address the investigative delays caused by the cross-jurisdictional nature of the Internet. Currently, Federal Rules of Criminal Procedure 41 requires that the "warrent" be obtained "within the district" where the property is located. An investigator, for example, located in Boston who is investigating a suspected terrorist in that city, might have to seek a suspect's electronic e-mail from an Internet service provider (ISP) account located in California. The investigator would then need to coordinate with agents, prosecutors and judges in the district in California where the ISP is located to obtain a warrant to search. These time delays could be devastating to an investigation, especially where additional criminal or terrorist acts are planned.

Section 108 amends §2703 to authorize **the court with jurisdiction over the investigation** to issue the warrant directly, without requiring the intervention of its counterpart in the district where the ISP is located.

The sunset provision in section ____ would sunset this section on December 31, 2003.

Section 109. Clarification of scope.

This section amends §2511(2) of title 18 to clarify that when a cable company is providing the services of a telephone company or Internet service provider, that cable company must comply with the same laws governing the interception and disclosure of wire and electronic communications that currently apply to all other telephone company or Internet service provider.

Under current law the Communications Act as amended, (passed at a time when cable companies provided only television viewing services on cable lines) with certain exceptions, prohibits a cable operator from disclosing personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned. At the same time, criminal laws governing the interception and disclosure of wire and electronic communications permit the court to order non-disclosure of the government interception.

Section 109 amends §2511 to provide that when cable providers are offering telephone and Internet services they are subject to the same criminal laws that telephone companies and Internet Service Providers governing interception and disclosure of such communications. This section also clarifies that the government's access to information related to the selection of video programming is still governed exclusively by the provisions of §631(h) of the Communications Act of 1934, as amended. The phrase "information ... concerning the selection of video programming" covers information about video programming service or services the subscriber purchased, but does not cover such information as the subscribers name, address, or the means of payment. The amendment does not affect the current prohibition under 631(h) of the Communication Act on releasing records that reveal what a customer chooses to view, for example what particular premium channels or "pay per view" shows the customer selects.

The sunset provision in section ____ would sunset this section on December 31, 2003.

Section 110. Emergency disclosure of electronic communications to protect life and limb.

This section amends 18 U.S.C. §2702 to authorize electronic communications service providers to disclose the communications (or records relating to such communications) of their customers or subscribers if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of the information without delay.

This section would also amend the law to allow communications providers to disclose non-content records (such as the subscriber's login records). Under current law, the communications provider is allowed to disclose content information but according to DOJ not expressly permitted to provide non-content records. This would permit the disclosure of this less protected information.

Additionally this section would ensure that providers of communications remain covered under §2703(e) the no cause of action provision when assisting law enforcement with an investigation. Under current law, there is a "no cause of action against a provider disclosing information under this chapter" under §2703(3) when "in accordance with the terms of a court order, warrant, subpoena, or certification under this chapter." However, as the current law is written, it would not cover providers that contact authorities to report emergency situations. This section would amend the law to include information disclosed under this statutory authorization.

The sunset provision in section ____ would sunset this section on December 31, 2003.

Sec. 111. Use as Evidence

This section amends the statutory suppression of evidence rule under the 1968 Wiretap Statute that provides illegally intercepted wire or oral communications cannot be used in court or in agency hearings under 18 U.S.C. §2515. This section extends the statutory exclusionary rule to electronic communications. The extension covers both real-time and stored communications. The sunset provision in section ____ would sunset this section on December 31, 2003.

Sec. 112. Reports Concerning the Disclosure of the Contents of Electronic Communications

This section amends 18 U.S.C. §2703, *et. seq.*, that governs access to stored wire and electronic communications to require the government to compile and publish annual reports of data regarding the government's acquisition of this type of information. This type of reporting is already required for the Wiretap Statute and Pen/Trap Statute. The sunset provision in section ____ would sunset this section on December 31, 2003.

Title I - Intelligence Gathering
Subtitle B - Foreign Intelligence Surveillance and Classified Information

Section 151. Period of Orders of Electronic Surveillance of Non-United States Persons Under Foreign Intelligence Surveillance

This section amends the Foreign Intelligence Surveillance Act (50 U.S.C. § 1801 *et seq.*) (FISA) to permit the Foreign Intelligence Surveillance Court (FISC) to authorize the search and surveillance within the United States of officers and employees of foreign powers and members of international terrorist cells for a period of up to one year.

Currently, section 105 of FISA (50 U.S.C. § 1805(e)(1) allows electronic surveillance of foreign governments up to a year upon receiving the court authorization and restricts electronic surveillance of a foreign agent to no more than 90 days. The government can go back to the FISA court after 90 days and get an extension on the same basis as the original order application.

Section 1824(d)(1) allows for a physical search of property of a foreign government for up to one year after receiving court authorization and restricts a physical search of the property or person of a foreign agent for no more than 45 days.

Section 151 of the bill extends the 45 day limitation for physical searches to 90 days and the 90 day

period for electronic surveillance to one year for those acting as foreign agents.

This change in the law is needed because it often takes longer than 45 days to get onto the premises to conduct a physical search.

The sunset provision in section ____ would sunset this section on December 31, 2003.

Section 152. Multi-Point Authority

Section 1805(c)(2)(B) of FISA permits the FISA court to require third parties, like common carriers, custodians, landlords and others, who are specified in any order sought from the FISA court to provide assistance and information to law enforcement authorities in the installation of a wiretap or the collection of information related to a foreign intelligence investigation.

Section 1805(c)(2)(B) is amended to insert language that permits the judge to direct the order to “other persons” **if the court finds** that the “actions of the target of the application may have the effect of thwarting the identification of a specified person,” who would be required to assist in the installation of any court-authorized intercept. This amendment is intended to expand the existing authority to allow for circumstances where the court finds that the actions of a target may thwart the identification of a specified person in the order. This is usually accomplished by the target moving his location.

This amendment allows the FISA court to direct those parties necessary to assist in the installation and to furnish all information, facilities, or technical assistance necessary without specifically naming such persons. Nevertheless, the target of the electronic surveillance must still be identified or described in the order.

For example, international terrorists and foreign intelligence officers are trained to thwart surveillance by changing hotels, cell phones, Internet accounts, etc. just prior to important meetings or communications. Under present law, each time this happens the government must return to the FISA court for a new order. The amendment permits the court to issue a generic order that can be presented to a carrier, landlord or custodian and then the surveillance may be undertaken as soon as technically feasible.

The sunset provision in section ____ would sunset this section on December 31, 2003.

Section 153. Foreign Intelligence Information

Under 50 U.S.C. § 1804(a)(7) and 50 U.S.C. § 1823(a)(7)(B) a FISA application requires certification that “the purpose” is to obtain foreign intelligence information. The certification for an order against any person who knowingly engages in espionage or terrorism (and is not an agent of a

foreign power) may only be made upon written request of the FBI Director, the Secretary of Defense, the Secretary of State, or the Director of the Central Intelligence Agency. The Attorney General must personally review the application.

Presently, a FISA certification request can only be used where foreign intelligence gathering is the sole or primary purpose of the investigation as interpreted by the courts. This requires law enforcement to constantly evaluate the relative weight of criminal and intelligence purposes when seeking to open a FISA investigation and thereafter as it proceeds. This change will expedite decisions to open an investigation.

Section 153 amends 50 U.S.C. § 1804(a)(7)(B) and 1823(a)(7)(B) to require that the officials listed above certify that obtaining a foreign intelligence order from the FISA court is for a significant purpose of the investigation. The application will still be reviewed by a judge and subject to any limitations or periods of time as may be ordered and the target of the investigation must still be identified or described.

This bill language represents a compromise between current law and what the Administration had proposed in its “Consultation Discussions” draft.

The sunset provision in section ____ would sunset this section on December 31, 2003.

Sec. 154. Foreign Intelligence Information Sharing

Currently, the Wiretap Statute (18 U.S.C. § 2510 *et. seq.*) limits disclosure and dissemination of information obtained for law enforcement purposes.

This new language in Section 154 of the bill makes it lawful for foreign intelligence information that is obtained as a result of a criminal investigation to be shared with specified law-enforcement, intelligence, protective, immigration, or national-defense personnel where they are performing official duties.

While these are exceptions to current law, it is virtually impossible for criminal investigators to share information with the intelligence community (even when it is foreign intelligence information), including information gathered from a wiretap authorized under the criminal code.

Similar problems under criminal law exist where intercepts are used to collect overseas data and to monitor unknown intruders. These intruders may be subject to direction of a foreign power which then must pursue other investigative techniques to obtain the same records or information. Section 154 of the bill permits sharing information gathered in a criminal investigation which constitutes foreign intelligence information to appropriate federal officials in the performance of their official duties that are

intimately involved in transnational terrorism investigations.

The sunset provision in section ____ would sunset this section on December 31, 2003.

Sec. 155. Pen Register and Trap and Trace Authority

Section 155 seeks to amend, §1824(c) of FISA (50 U.S.C. § 1824(c)(the pen register and trap and trace provisions) to mirror similar provisions which currently exist in criminal law (18 U.S.C. § 3121 *et. seq.*). The “pen register” and “trap and trace” provisions of FISA currently require not only a certification of relevance, but additionally require that the communication device has been used to contact a “foreign power.” This is a greater burden than currently exists in even a minor criminal investigation.

Section 155 clarifies that an application for pen registers and trap and trace authority under FISA will be the same as the pen register and trap and trace authority defined in the criminal law (18 U.S.C. § 3123). It will require the attorney for the government to certify to the court that the information sought is relevant to an ongoing FISA investigation. The current statutory burden of having to show that the telephone line is being used by an agent of a foreign power is eliminated to conform to the existing and less burdensome criminal standards. Moreover, it still must be relevant to an ongoing FISA investigation which continues to be directed at an agent of a foreign power.

The sunset provision in section ____ would sunset this section on December 31, 2003.

Sec. 156. Business Records

The Administration had sought administrative subpoena authority without having to go to court. Instead, section 156 amends 50 U.S.C. §1861 by providing for an application to the FISA court for an order directing the production of tangible items such as books, records, papers, documents and other items upon certification to the court that the records sought are relevant to an ongoing foreign intelligence investigation. The amendment also provides a good faith defense for persons producing items pursuant to this section which does not constitute a waiver of any privilege in any other proceeding.

The sunset provision in section ____ would sunset this section on December 31, 2003.

Sec. 157. Miscellaneous National Security Authorities

Section 2709 of title 18 permits the Director of the FBI to request subscriber information and toll billing records of a wire or electronic communication service provider. The certified request must include specific and articulable facts that the records sought are related to an authorized foreign counterintelligence investigation and that the communication facilities listed on the records have been

used to be in communication with an agent of a foreign power may be involved in the violation of U.S. criminal statutes. This showing of the nexus between the equipment used and the agent of the foreign power and a possible violation of a criminal statute is extremely burdensome, especially in the course of fast-moving terrorism investigation.

Section 157 amends title 18 U.S.C. § 2709 to permit a National Security Letter (NSL) to be issued when it is “relevant to an authorized foreign counterintelligence investigation.” This harmonizes this provision **with existing criminal law** where an Assistant United States Attorney may issue a grand jury subpoena for all such records in a criminal case.

The sunset provision in section ____ would sunset this section on December 31, 2003.

Section 158. Proposed Legislation

Section 158 of the bill provides that no later than August 31, 2003, the President shall propose legislation relating to the provisions set to expire by section 160 of the Act as the President may judge to necessary and expedient.

Sec. 159. Presidential Authority

50 U.S.C. § 1702 grants to the President the power to exercise certain authorities to deal with any unusual and extraordinary threats to the United States. Section 159 of this bill adds new authorities to the statute which allows the President to block, during the pendency of an investigation for a period of not more than 90 days, the importing or exporting of currency or securities. The President is also authorized, after a determination that a foreign country, organization or national has used force to attack the United States to use these authorities.

Once the President has made the determination above, he may direct that all property may be confiscated, held, sold, liquidated or otherwise disposed of and the proceeds placed in a separate account. Any assets so disposed of and placed in the account can only be used in accordance with a statute authorizing the expenditure of such proceeds or assets.

Section 160. Sunset

This section would sunset the provisions of this title (other than section 109 and 159 relating to the Communications Act) on December 31, 2003.

Title II – Aliens Engaging in Terrorist Activity
Subtitle A – Detention and Removal of Aliens Engaging in Terrorist Activity

Section 201: Changes in Classes of Aliens who Are Ineligible for Admission and Deportable Due to Terrorist Activity

Under current law, unless otherwise specified, an alien is inadmissible and deportable for engaging in terrorist activity only when the alien has used explosives or firearms. The Act eliminates this limitation. A terrorist can use any object – including a knife, a box-cutter, or an airplane – in a terrorist act.

Under current law, there is no general prohibition against an alien contributing funds or other material support to a terrorist organization, while there is a prohibition against soliciting membership in or funds from others for a terrorist organization. The Act provides that an alien is inadmissible and deportable for contributing funds or material support to or soliciting funds for or membership in an organization that has been designated as a terrorist organization by the Secretary of State, or for contributing to, or soliciting in or for, any non-designated terrorist organization if the alien knows or reasonably should know that the funds, material support or solicitation will further terrorist activity.

Current immigration law does not define “terrorist organization” for purposes of making an alien inadmissible and deportable. The Act defines such an organization to include 1) an organization so designated by the Secretary of State (under a process provided for under current law) and 2) any group of two or more individuals which commits terrorist activities or plans or prepares to commit (including locating targets for) terrorist activities. This latter category includes any group which has a significant subgroup that carries out such activities.

The Act provides that an alien will not be admitted into the United States if the alien is a representative of a political, social or other similar group whose public endorsement of terrorism undermines the effort of the U.S. to eliminate or reduce terrorism. Also inadmissible will be an alien who has used his or her prominence to endorse or espouse terrorism or to persuade others to support terrorism if this would undermine the efforts of the U.S. to reduce or eliminate terrorism, and an alien who is associated with a terrorist organization and intends while in the U.S. to engage in activities that could endanger the welfare, safety, or security of the U.S. These provisions are similar to current law’s “foreign policy” ground of inadmissibility, barring entry to an alien whose entry or proposed activities in the U.S. would have potentially serious adverse foreign policy consequences for the U.S.

The Act makes 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. These definitions meet the constitutional standard of Brandenburg v. U.S.

Section 202. Changes in Designation of Foreign Terrorist Organizations

Current law provides a process whereby the Secretary of State can designate an organization as a foreign terrorist organization. The Act clarifies that the Secretary of State can redesignate an organization as a terrorist organization and can revoke a designation or redesignation.

Section 203. Mandatory Detention of Suspected Terrorists; Habeas Corpus; Judicial Review

Under the current regulatory regime, the INS can detain an alien for 48 hours before making a decision as to charging the alien with a crime or removable offense (except that in the event of emergency or other extraordinary circumstance, an additional reasonable time is allowed). The INS uses this time to establish an alien's true identity, to check domestic and foreign databases for information about the alien, and to liaise with law enforcement agencies.

The Act provides a mechanism whereby the INS can detain an suspected terrorist alien for seven days before charging. If no charges are filed, the alien must be released. The Attorney General or the INS Commissioner (with no power of delegation) may certify an alien as a terrorist if they have reasonable grounds to believe that the alien is a terrorist. Judicial review as to certification or detention is limited to habeas corpus review in the U.S. District Court for the District of Columbia. Such judicial review shall include review of the merits of the decision to certify an alien as a terrorist. The Attorney General must submit a report to Congress on the use of this section every six months.

Section 204. Multilateral Cooperation Against Terrorists

Under current law, the records of the State Department pertaining to the issuance of or refusal to issue visas to enter the U.S. are confidential and can be used only in the formulation and enforcement of U.S. law. The Act provides that these records can be provided to a foreign government on a case-by-case basis for the purpose of preventing, investigating, or punishing acts of terrorism.

Section 205. Changes in Conditions for Granting Asylum and Asylum Procedures

Under current law, alien terrorists cannot receive asylum in the U.S. However, it is extremely difficult for the INS to prove that an alien is a terrorist because confidentiality restrictions prevent the INS from gathering information on the alien from his or her home government. The Act provides that such confidentiality provisions shall not apply if the disclosure of information is made in the course of an investigation of an alien to determine if the alien is a terrorist and if the Attorney General has reasonable grounds to believe that the alien is a terrorist. Any disclosure of information to a foreign government must be made by State Department officials.

Section 206. Protection of Northern Border

The Act authorizes the appropriation of funds necessary to triple the number of Border Patrol personnel in each State along the northern border and the number of INS inspectors at each port of entry along the northern border. The Act also authorizes \$50 million to the INS for purposes of making improvements in technology for monitoring the northern border and acquiring additional equipment at the northern border.

Section 207. Requiring Sharing by the Federal Bureau of Investigation of Certain Criminal Record Extracts with other Federal Agencies in Order to Enhance Border Security

The Act provides that the Justice Department shall provide to the State Department and the INS access to the criminal history record information contained in the National Crime Information Center's Interstate Identification Index, Wanted Persons File, and to any other files maintained by the NCIC that may be mutually agreed upon by the Justice Department and the official to be provided access, for purposes of determining whether a visa applicant or an applicant for admission has a criminal history record. Such access shall be provided by means of extracts of the records for placement in the State Department's automated visa lookout database or other appropriate database. The State Department shall establish the conditions for the use of the information in order to limit the redissemination of the information, to ensure that it is used solely to determine whether to issue a visa, to ensure the security, confidentiality and destruction of the information, and to protect any privacy rights of the subjects of the information.

Title II – Aliens Engaging in Terrorist Activity

Subtitle B– Preservation of Immigration Benefits for Victims of Terrorism

It is certain that some aliens fell victim to the terrorist attacks on the U.S. on September 11. This subtitle endeavors to modify the immigration laws to provide humanitarian relief to these victims and their family members.

Section 211. Special Immigrant Status

The Act provides permanent resident status through the special immigrant program to an alien who was the beneficiary of a petition filed (on or before September 11) to grant the alien permanent residence as a family or employer sponsored immigrant or to grant the alien a nonimmigrant visa as the spouse or the fiancé (and their children) of a U.S. citizen, or to an alien who was the beneficiary of an application for labor certification filed on or before September 11, if the petition or application would otherwise have been rendered null because of the death or disability of a petitioner, applicant or another beneficiary, or because of loss of employment due to physical damage of, or destruction of, the business of the petitioner or applicant, as a direct result of the terrorist attacks on September 11. Spouses and children of the beneficiary would also be granted permanent residence. The section also provides

permanent resident status to the grandparents of a child both of whose parents died as a result of the terrorist attacks, if either of such deceased parents was a citizen of the U.S. or a permanent resident.

Section 212. Extension of Filing or Reentry Deadlines

The Act provides that an alien who was legally in a nonimmigrant status and was disabled as a direct result of the terrorist attacks on September 11 (and his or her spouse and children) may remain lawfully in the U.S. (and receive work authorization) until the later of the date that his or her status normally terminates or September 11, 2002. Such status is also provided to the nonimmigrant spouse and children of an alien who died as a direct result of the terrorist attacks.

The Act provides that an alien who was lawfully present as a nonimmigrant at the time of the terrorist attacks will be granted 60 additional days to file an application for extension or change of status if the alien was prevented from so filing as a direct result of the terrorist attacks. Also, an alien who was lawfully present as a nonimmigrant at the time of the attacks but was then unable to timely depart the U.S. as a direct result of the attacks will be considered to have departed legally if doing so before November 11. An alien who was in lawful nonimmigrant status at the time of the attacks (and his or her spouse and children) but not in the U.S. at that time and was then prevented from returning to the U.S. in order to file a timely application for an extension of status as a direct result of the terrorist attacks will be given 60 additional days to file an application and will have his or her status extended 60 days beyond the original due date of the application.

Under current law, winners of the fiscal year 2001 diversity visa lottery must enter the U.S. or adjust status by September 30, 2001. The Act provides that such an alien may enter the U.S. or adjust status until April 1, 2002, if the alien was prevented from doing so by September 30 as a direct result of the terrorist attacks. If the visa quota for the 2001 diversity visa program has already been exceeded, the alien shall be counted under the 2002 program. Also, if a winner of the 2001 lottery died as a direct result of the terrorist attacks, the spouse and children of the alien shall still be eligible for permanent residence under the program. The ceiling placed on the number of diversity immigrants shall not be exceeded in any case.

Under the Act, in the case of an alien who was issued an immigrant visa that expires before December 31, 2001, if the alien was unable to timely enter the U.S. as a direct result of the terrorist attacks, the validity shall be extended until December 31.

Under the Act, in the case of an alien who was granted parole that expired on or after September 11, if the alien was unable to enter the U.S. prior to the expiration date as a direct result of the terrorist attacks, the parole is extended an additional 90 days.

Under the Act, in the case of an alien granted voluntary departure that expired between September 11 and October 11, 2001, voluntary departure is extended an additional 30 days.

Section 213. Humanitarian Relief for Certain Surviving Spouses and Children

Current law provides that an alien who was the spouse of a U.S. citizen for at least two years before the citizen died shall remain eligible for immigrant status as an immediate relative. This also applies to the children of the alien. The Act provides that if the citizen dies as a direct result of the terrorist attacks, the two year requirement is waived.

The Act provides that if an alien spouse, child, or unmarried adult son or daughter had been the beneficiary of an immigrant visa petition filed by a permanent resident who died as a direct result of the terrorist attacks, the alien will still be eligible for permanent residence. In addition, if an alien spouse, child, or unmarried adult son or daughter of a permanent resident who died as a direct result of the terrorist attacks was present in the U.S. on September 11 but had not yet been petitioned for, the alien can self-petition for permanent residence.

The Act provides that an alien spouse or child of an alien who 1) died as a direct result of the terrorist attacks and 2) was a permanent resident (petitioned-for by an employer) or an applicant for adjustment of status for an employment-based immigrant visa, may have his or her application for adjustment adjudicated despite the death (if the application was filed prior to the death).

Section 214. "Age-Out" Protection for Children

Under current law, certain visas are only available to an alien until the alien's 21st birthday. The Act provides that an alien whose 21st birthday occurs this September and who is a beneficiary for a petition or application filed on or before September 11 shall be considered to remain a child for 90 days after the alien's 21st birthday. For an alien whose 21st birthday occurs after this September, the alien shall be considered to remain a child for 45 days after the alien's 21st birthday.

Section 215. Temporary Administrative Relief

The Act provides that temporary administrative relief may be provided to an alien who was lawfully present on September 10, was on that date the spouse, parent or child of someone who died or was disabled as a direct result of the terrorist attacks, and is not otherwise entitled to relief under any other provision of Subtitle B.

Section 216. Evidence of Death, Disability, or Loss of Employment

The Attorney General shall establish appropriate standards for evidence demonstrating that a death, disability, or loss of employment due to physical damage to, or destruction of, a business, occurred as a direct result of the terrorist attacks on September 11. The Attorney General is not required to promulgate regulations prior to implementing Subtitle B.

Section 217. No Benefit to Terrorists or Family Members of Terrorists

No benefit under Subtitle B shall be provided to anyone culpable for the terrorist attacks on September 11 or to any family member of such an individual.

Section 218. Definitions

The term “specified terrorist activity” means any terrorist activity conducted against the Government or the people of the U.S. on September 11, 2001.

Title III – Criminal Justice
Subtitle A-Substantive Criminal Law

Section 301: Statute of Limitations for Prosecuting Terrorism Offenses

Current law provides that certain offenses, which are generally associated with terrorist activity, are subject to either a five year or eight year statute of limitations (18 U.S.C. 3282 and 18 U.S.C. 3286). This section amends current law to provide no statute of limitations for certain of these crimes (the most serious) and a 15 year statute of limitation for others.

Specifically, under this section, the prosecution may bring a case at any time for any “Federal terrorism offense”, which must be shown to be “calculated to influence or affect the conduct of government by intimidation or coercion or to retaliate against government conduct”.

The prosecution may bring a case at any time for any of the underlying offenses listed in this section that are generally the most serious crimes related to terrorism (without regard to the “calculated to influence” element). The prosecution may bring a case within 15 years for any other crimes listed in this section that are typically related to terrorist activities.

This provision applies to any crime committed before, on, or after enactment of this section.

Section 302: Alternative Maximum Penalties for Terrorism Crimes

Under current law, penalties for certain offenses associated with terrorist activity are capped at twenty years imprisonment (some are even capped at ten years). This section changes current law to allow a judge to sentence a terrorist to prison for any number of years up to life for any offense that is defined as a “Federal terrorism offense.” To prove a “Federal terrorism offense,” the prosecution must prove both the elements of the underlying crime and that the crime was calculated to influence or affect the

conduct of government by intimidation or coercion or to retaliate against government conduct.

This section does not impose a mandatory life sentence; it simply gives discretion to allow increased penalties by stating “may be sentenced to life imprisonment.”

Section 303: Penalties for Terrorist Conspiracies

Under current law, many, but not all, of the crimes that are considered to be linked to terrorism include provisions to allow prosecution for attempts or conspiracies to commit such offenses. This section brings the remaining terrorists related crimes into conformity with existing provisions of the law to ensure that any person who attempts to commit or conspires to commit a “Federal terrorism offense” or any crime related to terrorism (included in section 309(2)) will be subject to the same penalties as those who actually commit that offense, including the new enhanced penalties listed above (in section 301).

This is also consistent with current and long-standing drug laws under Title 21 of the U.S. Code.

Section 304: Terrorism Crimes as RICO Predicates

Terrorism, like traditional organized crime, is often characterized by a continuing pattern of criminal activity. This provision gives prosecutors the same tools to bring terrorists to justice as they have for organized crime.

This provision would allow any “Federal terrorism offense” or any of the most serious crimes related to terrorism to be prosecuted using the Racketeer Influenced and Corrupt Organization provisions of the 1970 Organized Crime Control Act of 1970. The RICO provisions do not prohibit any crime that is not already prohibited in the law. These provisions merely enhance the civil and criminal consequences of crimes listed as RICO crimes by Congress.

RICO may currently be used against any person who invests in or acquires an interest in, or conducts or participates in the affairs of an enterprise which engages in or whose activities affect interstate or foreign commerce through the collection of an unlawful debt or the patterned commission of various state and federal crimes. Violations of law prosecuted under RICO are subject to fines, forfeitures, or imprisonment for not more than 20 years or life, depending on the penalties allowed under the predicate offenses. Anyone injured by a RICO violation may recover treble damages, court costs, and attorney fees under the civil RICO laws.

The pattern of activity element of RICO requires the commission of two or more predicate offenses that are clearly related and suggest either a continuity of criminal activity or the threat of such continuity of criminal activity. This provision allows the prosecution to establish a pattern of activity related to terrorism.

Section 305: Biological Weapons

Under current law, anyone who knowingly develops, produces, stockpiles, transfers, acquires retains or possesses any biological agent, toxin or delivery system for knowingly assists a foreign state or organization to do so or attempt, threatens, or conspires to do so, may be fined or imprisoned or both.

This section changes the definition of what is considered to be prohibited behavior “for use as a weapon” to include the development, production, transfer, acquisition, retention or possession of any biological agent, toxin or delivery system other than for prophylactic, protective or other peaceful purposes. This changes current law by expanding the scope of the crime to possess any biological materials or transfer any such materials where no legitimate purpose can be shown.

This section also creates a new offense punishable by a fine or up to 10 years in prison for knowingly possessing a biological agent or toxin of any type or quantity that is not reasonably justified for any peaceful purpose. This prohibition does not apply to governmental activity authorized under the National Security Act of 1947.

This section of the legislation prohibits any alien from a country recognized by the Secretary of State as supporting international terrorism from possessing, receiving or transporting a biological agent or toxin. It also prohibits possession, receipt or transportation of biological agents or toxins by many of those who are forbidden to own firearms under United States law. Penalties for violation of this section range from a fine to 10 years imprisonment or both.

Section 306: Support of Terrorism Through Expert Advice or Assistance

Under current law, it is a crime to provide material support for certain terrorist activities. This section expands the list of terrorist related crimes for which assistance is prohibited (see section 309 below).

The definition of providing material support to terrorists is expanded to include providing “expert advice or assistance”. This will only be a crime if it is provided “knowing or intending that they be used in preparation for, or in carrying out,” any “Federal terrorism offense” or any of the crimes related to terrorism listed under section 309(2).

Section 307: Prohibition Against Harboring

Under current law, Title 18, section 792, it is a crime punishable by up to 10 years in prison to harbor or conceal an individual one knows or has reason to believe has committed or is about to commit a crime of espionage against the United States. This section amends the U.S. Code to create a similar prohibition against harboring someone who one knows has committed or is about to commit any of the enumerated crimes generally associated with terrorist activity.

This section also provides extraterritorial jurisdiction over any violation of this section.

Section 308: Post-Release Supervision of Terrorists

Currently, under section 3583, Title 18, the length of time for post-release supervision is based on the Class of felony. This section changes current law to allow a person convicted of a “Federal terrorism offense” to be under supervision for as long as the sentencing judge determines is necessary up to life.

Section 309: Definition

This section adds a new section to current law under Title 18 to define “Federal terrorism offense”. It uses the current definition of a “Federal crime of terrorism” included in 18 U.S.C. 2332b(g)(5) and expands it to include underlying crimes related to biological weapons; possession, production or transfer of chemical weapons; harboring terrorists; fraud, theft or extortion related to computers; disclosure of identities of covert agents; assault on a flight crew member with a dangerous weapon; endangering human life by carrying an explosive or incendiary device on an aircraft; or homicide or attempted homicide committed on an aircraft.

Under this section, a crime is only considered to be “Federal terrorism offense” if it can be proven to be “calculated to influence or affect the conduct of government by intimidation or coercion; or to retaliate against government conduct.”

Additionally, any attempt or conspiracy to commit any violation of this section is considered a “Federal terrorism offense” and therefore will be subject to the same penalties.

Sec. 310. Civil Damages.

This section amends §2707(c) that allows for civil damages against those who violate the provisions of §2703. Under current law, in no case shall a person entitled to recover damages receive less than the sum of \$1,000. This section would increase that amount to \$10,000.

Title III – Criminal Justice
Subtitle B- Criminal Procedure

Section 351. Single-jurisdiction Search Warrants for Terrorism

Rule 41(a) currently requires a search warrant to be obtained within that judicial district. (The only exception is where property or a person now in the district might leave before the warrant is executed). This restriction often causes unnecessary delays and burdens on law enforcement officers investigating

terrorist activities that have occurred across multiple judicial districts. These delay can have serious adverse consequences.

Section 351 amends Rule 41(a) of the Federal Rules of Criminal Procedure to provide that search warrants can be obtained “in any district in which activities related to the terrorism may have occurred, for a search of property for a person within or outside of the district” regardless of where the warrants will be executed. It permits the prosecution to obtain a warrant from the judge in the district where the investigation is being conducted, regardless of where the property to be searched is located.

Section 352. Notice

[This section has been deleted from the Committee print]

Section 353. DNA Identification of Terrorists

42 U.S.C. 14135(d) currently provides for the collection of DNA samples from felons convicted of a list of federal crimes listed in the statute. However, under present law, DNA samples cannot be collected even from persons federally convicted of terrorist-related murders in most circumstances. Offenses relating to murders on high-jacked aircraft, blowing up buildings or murder of U.S. nationals abroad are not now qualifying federal offenses for purposes of DNA sample collection.

This new section extends DNA sample collection to all persons convicted of federal felonies. Many States now authorize collection of DNA samples from all felons and the United States Senate passed legislation (S.254) in 1999 permitting sample collection from all federal felons. Section 353 amends Section 3(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135b(d)) which governs the collection of DNA samples from convicted federal offenders by adding a number of federal offenses that are most likely to be committed by terrorists. This change in section 3(d) will increase the probability of identifying terrorists who commit federal crimes and aid in their apprehension.

Section 354. Grand Jury Matters

Rule 6(e) of the Federal Rules of Criminal Procedure sets forth the procedures for the disclosure of matters before a grand jury. Rule 6(e)(3)(A) of the Federal Rules of Criminal Procedure provides for an exception to the otherwise prohibited disclosure of matters before the grand jury.

Section 354 makes a change to Rule 6(e) of the Federal Rules of Criminal Procedure to permit, **in national security and terrorism cases, court-ordered disclosure** of grand jury information to any Federal law enforcement, intelligence, national security, national defense, protective, immigration personnel or the President and Vice President of the United States **in the official performance of their duties.**

Rule 6(e) provides that “the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct.” This is a change from the Administration proposal that would have permitted disclosure to such entities without having to seek court authorization. The bills section require obtaining court approval for such disclosures.

Section 355. Extraterritoriality

Chapter 113B of title 18 (18 U.S.C. § 2331 et. seq.) sets forth the crimes of terrorism, including acts of terrorism transcending national boundaries. Under current law, certain terrorism crimes can be prosecuted by the United States regardless of where they are committed. For example, section 2333b (terrorism transcending national boundaries) and section 2332a (use of weapons of mass destruction). There are, however, no explicit extraterritoriality provisions in other statutes that may be committed by terrorists.

The amendment made by Section 355 ensures that terrorist acts committed anywhere outside the United States can be prosecuted by specifying the extraterritorial nexus created by the amendment.

Section 356. Jurisdiction over crimes committed at the United States facilities abroad.

Section 357. Special Agent authorities.

Title IV - Financial Infrastructure

Section 401. Laundering the proceeds of terrorism

This section would amend 18 U.S.C. 1956(c)(7)(D), which prohibits conducting or attempting to conduct a financial transaction knowing that the property involved represents the proceeds of a specified unlawful activity, by adding a further predicate offense to the list of specified unlawful activities in order to provide a more comprehensive coverage of the crime of money-laundering related to terrorism. 18 U.S.C. 2339B, which prohibits providing material support or resources to foreign terrorist organizations, would be added to the list of crimes which define the term “specified unlawful activity.”

Section 402. Material support for terrorism

This section would amend 18 U.S.C. 2339A to amend the definition of the term “material support or resources.” The term is currently defined as “currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities,

weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.” This section would replace the term “other financial securities” with the phrase “monetary instruments or financial securities.” This change would allow for a broader range of monetary instruments to be included within the scope of “material support or resources.”

Section 403. Assets of Terrorist Organizations

This section would amend 18 U.S.C. 981 to expressly provide that any property used to commit or facilitate the commission of, derived from, or otherwise involved in a Federal crime of terrorism is subject to civil forfeiture provisions. Currently, only the “proceeds” of a crime of terrorism are subject to civil forfeiture provisions.

Section 404. Technical clarification relating to provision of material support to terrorism

This section would clarify that the exceptions for food and agricultural products to the nation’s Trade Sanctions Programs provided for in the Trade Sanctions Reform and Export Enhancement Act of 2000 shall not limit the provisions of 18 U.S.C. 2339A or 2339B which prohibit providing material support or resources to terrorists and terrorist organizations. With this section, it is clear that anyone who provides food and agricultural products in support of terrorist activity will still be subject to criminal prosecution under sections 2339A and 2339B and will not be able to hide behind the exceptions to the Trade Sanctions Program.

Section 405. Disclosure of Tax Information

This section amends 26 U.S.C. 6103(i)(3) to permit the disclosure of taxpayer identity information from returns by the Internal Revenue Service to the extent necessary to the head of any Federal law enforcement agency in order to assist in the investigation of terrorist incidents, threats, or activities. The disclosure may also be made upon the particularized request of the head of a Federal law enforcement agency. The section also states that returns and return information shall be open to inspection by, or disclosure to, officers and employees of the Department of Justice and the Department of Treasury engaged in the collection or analysis of intelligence information concerning terrorist organizations or activities and such information may be disseminated to other agencies only for use in analysis of and investigation into terrorist activities.

Section 406. Extraterritorial Jurisdiction

Generally, 18 U.S.C. 1029 prohibits the production, use, or trafficking of counterfeit access devices. Access devices are any card, code, account number, pin number or other means of account access that can be used to obtain money, goods, services, or any other thing of value. This section would add a new paragraph that would make any person outside the jurisdiction of the United States criminally liable

for a violation of 18 U.S.C. 1029 if the offense involves an access device issued , owned, managed, or controlled by a financial institution within the jurisdiction of the United States and the person transports, delivers, conveys, or otherwise stores, or holds within the jurisdiction of the United States, the proceeds of such offense or property derived therefrom. Depending on the persons level of involvement, the maximum penalty ranges from 10 to 20 years imprisonment.

Title V-Emergency Authorizations

Section 501: Office of Justice Programs

This section removes any caps or limitations available under the Victim's of Crime Fund to address the needs of the victims of the terrorists attacks of September 11, 2001. This provision specifically allows the funds allocated for responding to the needs of victims of terrorism within the United States to be awarded to victim service organizations, public agencies (Federal, state and local), and non-governmental organizations that provide assistance to victims of crime. This section makes changes to the public safety officer benefits (PSOB) programs to provide for public safety officers disabled in the September 11, 2001, terrorist acts and the rescue efforts associated with those.

Section 502: Attorney General's Authority to Pay Rewards

This section specifies that any reward offered by the Attorney General in connection with hijackings or terrorist acts shall not be subject to spending limitations or count toward any aggregate spending limitations.

Section 503: Limited Authority to Pay Overtime

Under the Department of Justice Appropriations Act for FY 2001, overtime pay for INS agents was limited to \$30,000. This section removes the limitation on overtime pay contained in DOJ Appropriations Act for 2001 for border patrol and other INS agents.

Section 504: Secretary of State's Authority to Pay Rewards

This section amends the reward program operated by the Secretary of State, which provides rewards for information that assists in the prevention of acts of terrorism, narcotics trafficking, and other criminal activities. In addition to the information the Secretary of State is authorized to make rewards for, this section would authorize the Secretary to offer rewards for information that leads to "dismantling an organization" or information regarding the "identification or location of an individual holding a leadership position in a terrorist organization." This section also amends the Secretary of States rewards program to increase the maximum payment allowed to \$10 million or more if the Secretary personally determines that a offer or payment is essential to the national security interests of the United States.

Title VI - Dam Security

Section 601. Security of Reclamation Dams, Facilities, and Resources

Section 2805(a) of the Reclamation Recreation Management Act of 1992 (16 U.S.C. 4601-33(a)) provides that the Secretary of the Interior shall promulgate such regulations as are necessary to ensure the protection and well-being of the public with respect to the use of Reclamation lands and ensure the protection of resource values. This section of the bill provides that any person who violates any regulation promulgated by the Secretary of the Interior under 16 U.S.C. 4601-33(a) shall be fined, imprisoned not more than 6 months, or both. This section also provides that the Secretary may authorize law enforcement personnel from the Department of the Interior, other Federal agencies, or law enforcement personnel of any State or local government to act as law enforcement officers within a Reclamation project or on Reclamation lands. This will ensure that an appropriate penalty will be attached to any violation of regulations intended to protect the public safety on Reclamation lands and that law enforcement officers will be available to enforce those regulations.

Title VII - Miscellaneous

Section 701. Employment of Translators by the Federal Bureau of Investigations

There is a great need to increase the number of translators available to the Federal Bureau of Investigation in order to assist in the war on terrorism. This section authorizes the Director of the Federal Bureau of Investigation to expedite the employment of personnel as translators to support counterterrorism investigations and operations. This section also directs the FBI to establish such security requirements as are necessary for these translators and to report to Congress regarding the status of translators employed by the Department of Justice.

Section 702. Review of the Department of Justice

In the wake of several significant incidents of security lapses and breach of regulations, there has arisen the need for independent oversight of the Federal Bureau of Investigations. Oversight of the Federal Bureau of Investigations is currently under the jurisdiction of the Department of Justice Office of Professional Responsibility. This section directs the Inspector General of the Department of Justice to appoint a Deputy Inspector General for the Federal Bureau of Investigations and Civil Rights who shall be responsible for supervising independent oversight of the FBI until September 30, 2004. This section also directs the Deputy Inspector to review all information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by employees of the Department of Justice.