

Patriot Act II

DOMESTIC SECURITY ENHANCEMENT ACT OF 2003

Executive summary.

General Introduction

The Domestic Security Enhancement Act of 2003 otherwise known as, Patriot II, enhances the original Patriot Act. The original Patriot Act was drawn up, debated, and passed by Oct. 26, 2001, just weeks after the attacks of September 11, 2001. Since then, the Justice Department has been looking to fine tune the Patriot Act, and the bulk of the new proposals simply clarify the original's technically unclear passages and expand sections to include provisions that other Titles and Sections already include. An example of this is to include powers and penalties that drug enforcement already makes use of. One would think that investigators and prosecutors of terrorism should have at least the tools of those who fight drug trafficking. Some of the sections address problems that have arisen since the original Patriot Act was passed. One such problem was the "Shoe Bomber" who had one charge dismissed because the term "vehicle" was not defined and therefore did not specifically refer to "aircraft." The act also redefines the qualifications for expatriation and adds stiffer penalties for illegal aliens who commit crimes.

The act itself is broken up into five titles, with subtitles and numerous sections.

Title I: Enhancing National Security Authorities

This title has two main objectives. The first, make several FISA (Foreign Intelligence Surveillance Act) amendments and second, enhance of LE (Law Enforcement) tools for investigation. The first, mostly just redefines some terms; such as a "foreign power" is now any person who engages in international terrorism, and the second, creates allowances for such things as nationwide warrants, and easier access to credit reports.

Title II: Protecting National Security Information

Allows for restriction of sensitive information that might be useful to terrorists

Title III: Enhancing Investigations of Terrorist Plots

Most importantly, this allows for the creation of a terrorism identification database; a large database holding information about known and suspected terrorists and terrorist organizations.

Title IV: Enhancing Prosecution and Prevention of Terrorist Crimes

This does several new things. Such as, adding five years to the sentence of criminals using encryption to conceal evidence, and prosecution of terrorist hoaxes and the aid in financing terrorist organizations. Also, allowances are made for the post release supervision of terrorists and suspected terrorists.

Title V: Enhancing Immigration and Border Security

Among other things, this increases penalties toward criminal aliens and expedites the removal of criminal aliens.

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A detailed discription of the act, specifically the parts which we found to be interesting.

Title I: Enhancing National Security Authorities

Subtitle A: Foreign Intelligence Surveillance Act Amendments

Section 101: Individual Terrorists as Foreign Powers.

Basically just redefines and expands the notion of a 'foreign power' to include *all* persons, regardless of whether or not they are affiliated with an international terrorist group, who engage in international terrorism.”

Section 102: Clandestine Intelligence Activities by Agent of a Foreign Power.

Again they are just expanding the current definition of an agent of a foreign power to “Any person who engages in clandestine intelligence gathering activities for a foreign power would qualify as an "agent of a foreign power," regardless of whether those activities are federal crimes.”

Currently, it is necessary for a person to actually commit a crime to gain this status.

Section 103: Strengthening Wartime Authorities Under FISA.

Allows for certain things that were authorized (for only 15 days) after a Congressional declaration of war, to instead be authorized after Congress approved the use of military force.

The certain things: electronic surveillance, physical searches, and the use of pen registers.

Section 104: Strengthening FISA's Presidential Authorization Exception.

Currently the Attorney General can authorize the surveillance of communications of foreign powers, between foreign governments, and between a foreign government and its embassy, but this excludes spoken

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communication. This bill drops the exception allowing for the surveillance of spoken comm. of foreign powers and governments.

Section 105: Law Enforcement Use of FISA Information.

Allows for the use of FISA information in a criminal context.

Section 107: Pen Registers in FISA Investigations.

“Specifically, FISA pen registers would be available in investigations of both U.S. persons and non-U.S. persons whenever they could be used ‘to obtain foreign intelligence information.’ ”

Sec. 109: Enforcement of Foreign Intelligence Surveillance Court Orders.

Gives the FISC the ability to impose sanctions. For example, if a person refuses to comply with an order of the court to cooperate in the installation of a pen register or trap and trace device, then they can now be fined.

Subtitle B: Enhancement of Law Enforcement Investigative Tools

Section 121: Definition of Terrorist Activities.

Specifies that "criminal investigations" include all investigations of criminal terrorist activities.

Section 123: Extension of Authorized Periods Relating to Surveillance and Searches in Investigations of Terrorist Activities.

Extends the normal duration of electronic surveillance orders in investigations of terrorist activities from 30 days to 90 days.

Required progress reports of electronic surveillance orders can not required at shorter intervals than 30 days in investigations of terrorist activities.

This extends the normal authorization periods for pen registers and trap and trace devices in investigations of terrorist activities from 60 days to 120 days.

Section 125: Nationwide Search Warrants in Terrorism Investigations.

This provision would expand the types of terrorism crimes for which judges may issue search warrants that are valid nationwide. Specifically, it would authorize nationwide search warrants in investigations of the offenses listed in 18 U.S.C. § 2332b(g)(5)(B), including computer crimes, attacks on communications infrastructure, and providing material support to terrorists or terrorist organizations.

Section 126: Equal Access to Consumer Credit Reports.

To allow LEOs to obtain credit reports upon their certification that they will use the information only in connection with their duties to enforce federal law. {This certification parallels the existing requirement that a private entity must have a "legitimate business need" before obtaining a credit report.}

In addition, to avoid alerting terrorists that they are under investigation, this provision would prohibit disclosing to a consumer the fact that law enforcement has sought his credit report.

Title II: Protecting National Security Information

Section 201 – 206

Allows for restriction of sensitive information that might useful to terrorists.

Title III: Enhancing Investigations of Terrorist Plots

Subtitle A: Terrorism Identification Database

Section 302: Collection and Use of Identification Information from Suspected Terrorists and Other Sources.

Current law permits the FBI to establish an index to collect DNA identification records of persons convicted of certain crimes, and DNA samples recovered from crime scenes and unidentified human remains.

This allows for the same to be applied to "suspected terrorists"--i.e., (1) persons suspected of engaging in terrorism or persons conspiring or attempting to do so; (2) enemy combatants or other battlefield detainees;

(3) persons suspected of being members of a terrorist organization; and (4) certain classes of aliens including those engaged in activity that endangers national security.

Section 306: Conditions of Release.

A suspected terrorist in custody of the US must cooperate in the collection of a DNA sample as a condition of release.

Section 313: Disclosure of Information.

This provision provides protection against civil liability for businesses and their personnel who voluntarily provide information to federal law enforcement agencies to assist in the investigation and prevention of terrorist activities. The purpose of the provision is to encourage voluntary cooperation and assistance in counter terrorism efforts by private entities and individuals.

Subtitle C: Facilitating International Terrorism Investigations

Section 321: Authority to Seek Search Warrants and Orders to Assist Foreign States.

This provision would modify federal law to clarify that the United States may seek search warrants, pen/trap orders, and ECPA orders, in response to the requests of foreign governments.

Section 322: Extradition Without Treaties and for Offenses Not Covered by an Existing Treaty.

This provision would amend current extradition law to: (1) authorize the U.S. to extradite offenders to treaty partners for modern crimes that may not be included in our older list treaties with those countries; and (2) provide for on a case-by-case basis and with the approval of the Attorney General and the Secretary of State extradition from the United States for serious crimes even in the absence of an extradition treaty.

Title IV: Enhancing Prosecution and Prevention of Terrorist Crimes

Subtitle A: Increased Penalties and Protections Against Terrorist Acts

Section 401: Terrorism Hoaxes.

1) Make it unlawful to knowingly convey false or misleading information, where the information reasonably may be believed, and concerns criminal activity relating to weapons of mass destruction; (2) require criminal defendants to reimburse any person, including the United States, State and local first responders who incur expenses incident to an emergency or investigative response to the terrorism hoax; and (3) authorize a civil action for such expenses.

I.e. large fines for terrorism hoaxes.

Section 404: Use of Encryption to Conceal Criminal Activity.

This proposal would amend federal law to provide that any person who, during the commission of or the attempt to commit a federal felony, knowingly and willfully uses encryption technology to conceal any incriminating communication or information relating to that felony, be imprisoned for an additional period of not fewer than 5 years. These additional penalties are warranted to deter the use of encryption technology to conceal criminal activity. In addition, it does not address the issue of whether software companies and ISPs (internet service providers) should give law enforcement access to "keys" for the purposes of decoding intercepted communications.

Section 406: "Mass Transportation Vehicle" Technical Correction.

This adds airplanes to the mass transportation vehicle list. The person who brought a bomb onto a plane in his shoe got off because this was not included.

Section 407: Acts of Terrorism Transcending National Boundaries.

Federal jurisdiction exists if the offense affects interstate or foreign commerce.

Section 408: Post release Supervision of Terrorists.

Authorizes up to lifetime post release supervision for the perpetrators of terrorist offenses.

Section 409: Suspension, Revocation, and Denial of Certificates for Civil Aviation or National Security Reasons.

This section provides procedures for the suspension, revocation, and denial of pilot certificates in relation to persons who pose a threat to civil aviation or national security.

Section 410: No Statute of Limitations for Terrorism Crimes.

The title is clear.

Section 411: Penalties for terrorist murders.

This will make the option of capital punishment available for terrorists.

Subtitle B: Incapacitating Terrorism Financing

Section 421: Increased Penalties for Terrorism Financing.

This proposal therefore would amend IEEPA to increase the maximum civil penalty amount from \$10,000 per violation to \$50,000 per violation.

Section 423: Suspension of Tax-Exempt Status of Designated Foreign Terrorist Organizations.

A group that the United States formally designates as a "terrorist organization" has their tax-exempt status is automatically revoked, and is liable, among many measures, to have their assets frozen and their members barred from entering the United States.

Section 427: Assets of Persons Committing Terrorist Acts Against Foreign Countries or International Organizations.

A new forfeiture provision pertaining to the assets of any person planning or perpetrating an act of terrorism against a foreign state or international organization while acting within the jurisdiction of the United States.

Title V: Enhancing Immigration and Border Security

Section 501: Expatriation of Terrorists.

Specifically, this proposal would make service in a hostile army or terrorist group prima facie evidence of intent to renounce citizenship.

Section 502: Enhanced Criminal Penalties for Violations of Immigration and Nationality Act.

Increased the penalties for a number of immigration crimes.

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Section 504: Expedited Removal of Criminal Aliens.

This requires for quicker removal of illegal aliens.

In conclusion this, quite massive act does much to improve our national security against terrorists and terrorists crimes. Before the Patriot Acts 1 and 2, many crimes perpetrated by terrorists incurred far less penalties than drug trafficking. Many people are for it and many are against it, but we can be quite certain that few have actually read the Act, except to take excerpts from it and print them out of context. After having spent many hours reading through this document and paraphrasing it's contents, we are certain that most of what is in here is for the benefit of national security . Patriot II will have some effect (albeit minimal) on privacy, the benefits will outweigh the detractors. We would hope to see a bit more refinement in the act to tone it down a bit. But not being overly familiar with law, it is difficult to predict how, in the long run, each section will be interpreted in the courts. Ultimately it will be left up to the courts to decide how strict or how loose to enforce these regulations, if this act were to be passed. Despite what alarmists may say, the 4th Amendment will still be effective and it is unlikely that LEOs will attempt to perform "unreasonable" searches or seizures.

Various copies of the Patriot Act II can be found at these locations.

<http://www.pbs.org/now/politics/patriot2-hi.pdf>

<http://www.mr-boo.com/archived/patriot2draft.html>

<http://www.dailyrotten.com/source-docs/patriot2draft.html>