



## **Significant Provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act ("USA Patriot Act"), P.L. 107-56, signed October 26, 2001**

**Highlights:** Expanded definition of "terrorism" offenses; surveillance and searches to be authorized in secret and under looser standards applicable to Foreign Intelligence searches; more law enforcement discretion to obtain warrants to search electronic communications, in all criminal cases; secret searches (no advance notice required to subject) in all criminal cases; intelligence agencies have access to grand jury information; expansions of offenses relating to money laundering, racketeering, telemarketing fraud; new offenses of computer hacking, interference with mass transportation, "harboring" terrorists, "domestic terrorism"; numerous increased sentences; indefinite detention of alien "terrorist" suspects; and lifetime supervision of individuals who have been released from prison following completion of a sentence for a terrorism-related offense.

### **Surveillance**

**Roving Wiretaps** (sec. 206): Issued in secret by Foreign Intelligence Surveillance Court; applicable not to a particular phone, but to any phone that a particular person might use, even if the phone belongs to another person. This provision was rejected in the 1996 terrorism act (AEDPA). Sunsets in four years.

**Nationwide search warrants** – issued in one jurisdiction, good in any jurisdiction where evidence may be found. Covers voice mail (sec. 209) and e-mail (220) in all criminal cases, and for any type of search in a terrorism investigation (219).

**"Sneak and peak" searches** (sec. 213): No prior notice necessary for searches if judge finds possibility of "any adverse result" of giving notice (e.g., loss of evidence or jeopardizing an investigation). Notice can be delayed for any "reasonable period" after the search, which can be extended for good cause. *Applies to all federal criminal cases.*

**Lower standards (under FISA) for surveillance and document production** (sec. 218 and 215): Wiretaps or other surveillance can be obtained for any criminal investigation under the lower standards of the Foreign Intelligence Surveillance Act (FISA) if the FBI certifies that "a significant" purpose of the surveillance is to gather intelligence information (i.e., though the primary purpose is for a criminal case). Instead of showing probable cause before an Article III judge, the required showing

would be just “reasonable suspicion” before the Foreign Intelligence Surveillance Court, which meets in secret, with no notice to suspects. Similar secret procedures are extended to warrants for production of documents and things, under sec. 215. Evisceration of probable cause requirement for searches raises Fourth Amendment questions. Sunsets in four years.

**Surveillance of Internet communications** (sec. 216): Strip judges of discretion to refuse a law enforcement request to install pen register or trap-and-trace device (to track phone numbers in and out), as long as law enforcement certifies that the devices are “*relevant*” to any criminal investigation. Would extend to phones, e-mail addresses, and web sites visited, though not to the *content* of communications. Warrants for searches of ISPs can, for the first time, be executed in any jurisdiction in the country, and need not describe specifically the thing to be searched or seized.

**Sharing of grand jury information** (sec. 203): Change the traditional rule that grand jury evidence can be used only for criminal law purposes, to allow it to be shared with other federal officials, including intelligence, military, national security, protective, or immigration officials. No court order required. Criminal investigation need not be the only or primary purpose of the grand jury; raises possibility of grand jury process being commandeered by intelligence or other agencies, as long as some purpose of the investigation relates to a suspected criminal offense. Sunsets in four years.

### **Money laundering**

Greatly increases the range of offenses which can be called “money laundering” and subjected to 20 year sentences. New predicate offenses include computer fraud, bribery, any type of property destruction, firearms sales, or – a potentially enormous category, subject to nonstatutory amendment – any extraditable offense (sec. 315). This title eases the government’s burden of proving intent with regard to operating an illegal money transmitting business (sec. 373). It broadens the definition of counterfeiting and significantly increases penalties (sec. 374-75).

### **Immigration**

**Indefinite detention** (sec. 412): DOJ must file criminal or immigration charges against alien within 7 days of detention (the charges need not relate to terrorism), but detention can be extended indefinitely if 1) removal of alien is “unlikely” (e.g., alien’s country declines repatriation), and 2) the AG determines, in his sole discretion every 6 months, that the release of the alien would threaten national security or “the safety of the community or any person.” No requirement for a hearing. Reviewable only in habeas corpus. Circularity problem: AG’s certification of a person as a threat to national security will make the person’s country less likely to take him back. The process is also open to manipulation by other countries: by listing a political dissident or opponent as a “terrorist,” or simply refusing to take a particular person back, a country could mandate indefinite detention in the U.S. at no cost to the other country.

**Associational activities** (sec. 219): Non-citizen members of an organization designated by the State Department as engaged in domestic terrorism will be subject to deportation or exclusion. No terrorist act by the individual is required; payment of dues to the organization is enough. Sec. 411 allows detention and deportation for providing material support or contributions to a terrorist organization, placing the burden on the individual to prove lack of knowledge or intent to further terrorism. Broadly

enough worded to cover property damage, such as by the Vieques protesters, or humanitarian aid to foreign groups.

### **“Removing Obstacles to Investigating Terrorism”**

**DNA samples to be collected from federal offenders** (sec. 503): Adds hundreds of offenses triggering DNA sample collection, including any offense involving force against person or property, or conspiracy related thereto.

**Law enforcement sharing of records and documents:** FISA information can be shared with other federal law enforcement (sec. 505): Information and materials obtained under the secret, reduced-standard FISA searches, including telephone, financial, and consumer reporting records, can be shared with federal law enforcement personnel, with a token proviso that such an investigation of a U.S. citizen shall not be conducted “solely” on the basis of activities protected by the First Amendment. Includes access to education records (sec. 507, 508).

### **Criminal law amendments**

**Interference with mass transportation** (sec. 801): New 20-year felony not just for damage or destruction, but for minor acts such as interfering with a maintenance worker with the intent to endanger the safety of any passenger, damaging a railroad crossing signal, or conveying hoax information about any such act. The transportation vehicle or device need not be occupied; if it is, a life sentence is applicable.

**New offense of “domestic terrorism”** (sec. 802): Includes acts “dangerous to human life” (i.e., no intent requirement) which “appear” to be intended to “intimidate or coerce a civilian population” or “influence the policy of a government by intimidation or coercion.” This could convert into “terrorism” any protest activities which could endanger human life, including the protesters’ own lives, such as WTO protests or any protest activity involving physical obstruction or interference, an unruly crowd, or police overreaction. “Terrorism” is defined for immigration purposes to include various types of speech, membership, financial contribution indicating any support or affinity for an organization or cause defined by the State Department as “terrorist” (sec. 411).

**Expanded definition of “Federal crime of terrorism”** (sec. 808): Adds offenses such as the following, if committed for the purpose of influencing or affecting the conduct of government by intimidation or coercion, or to retaliate against government conduct: unauthorized computer access to sensitive government information, spreading computer viruses (computer crimes are greatly expanded in sec. 814), and various assaults on airline personnel.

**Harboring terrorists** (sec. 803): New 10-year felony for harboring someone the defendant has “reason to know” has committed or will commit a terrorist offense.

**Material support for terrorism** (sec. 805): Expands the list of offenses with relation to which it is a 10-year felony to knowingly provide support such as lodging, transportation, false ID’s, communications equipment, money, expert advice or assistance, etc.

**Civil forfeiture** (sec. 805): Extends civil forfeiture to a wide range of terrorism-related offenses.

**No statute of limitations** on terrorist offenses entailing foreseeable risk of serious bodily injury (sec. 809). Applies retroactively.

**Increased penalties** (sec. 810): Arson maximum is increased from 20 years to life. Doubles the sentence for damage to an energy facility or to any military “material” or “premises”, from 10 to 20 years. Increases penalties for conspiracy to commit many offenses which do not require terrorist intent (e.g., to influence government action or intimidate civilian populations), such as damaging communication lines or systems, damaging a train or train station, or arson.

**Lifetime supervision of released offenders** (sec. 811): Any person who has served a prison sentence for a “terrorist” offense entailing a foreseeable risk of serious bodily injury and has been released may be subject to supervised release for the rest of her life.

**All terrorism becomes racketeering** (sec. 812): Amend the RICO statute to make any “terrorist” offense also a RICO predicate. Two “terrorist” acts can be prosecuted as “racketeering,” earning an additional 20-year sentence.

**Expansion of computer crimes** (sec. 814): Now includes any hacking resulting in \$5,000 in damage (a 10-year offense, 20 for a second offense), or any damage to a computer used in the administration of justice.

**New federal forensic lab for computer crimes** (sec. 816) to help state and local prosecutions as well as federal ones. Cost: \$50 million.

**Civil liberties complaint department** (sec. 1001): The Attorney General must designate one DOJ employee to receive and review complaints from citizens about civil rights and civil liberties abuses by DOJ employees. The designated person has no authority to take any action other than write a semi-annual report to Congress.

**New telemarketing fraud offenses** (sec. 1011) presumably motivated by, but not limited to, phony fund-raising for the September 11 victims.