

~~"PART A"~~

~~AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3199~~

~~OFFERED BY M. _____~~

~~Showing the merged text of H.R. 3199 for purposes of floor
consideration~~

Strike all after the enacting clause and insert the
following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "USA PATRIOT and
3 Terrorism Prevention Reauthorization Act of 2005".

4 **SEC. 2. REFERENCES TO USA PATRIOT ACT.**

5 A reference in this Act to the USA PATRIOT ACT
6 shall be deemed a reference to the Uniting and Strength-
7 ening America by Providing Appropriate Tools Required
8 to Intercept and Obstruct Terrorism (USA PATRIOT
9 ACT) Act of 2001.

10 **SEC. 3. USA PATRIOT ACT SUNSET PROVISIONS.**

11 (a) IN GENERAL.—Section 224 of the USA PA-
12 TRIOT ACT is repealed.

13 (b) SECTIONS 206 AND 215 SUNSET.—Effective De-
14 cember 31, 2015, the Foreign Intelligence Surveillance
15 Act of 1978 is amended so that sections 501, 502, and
16 105(c)(2) read as they read on October 25, 2001.



1 **SEC. 4. REPEAL OF SUNSET PROVISION RELATING TO INDI-**
2 **VIDUAL TERRORISTS AS AGENTS OF FOR-**
3 **EIGN POWERS.**

4 Section 6001 of the Intelligence Reform and Ter-
5 rorism Prevention Act of 2004 (Public Law 108-458; 118
6 Stat. 3742) is amended by—

- 7 (1) striking subsection (b); and
8 (2) striking “(a)” and all that follows through
9 “Section” and inserting “Section”.

10 **SEC. 5. REPEAL OF SUNSET PROVISION RELATING TO SEC-**
11 **TION 2332B AND THE MATERIAL SUPPORT**
12 **SECTIONS OF TITLE 18, UNITED STATES**
13 **CODE.**

14 Section 6603 of the Intelligence Reform and Ter-
15 rorism Prevention Act of 2004 (Public Law 108-458; 118
16 Stat. 3762) is amended by striking subsection (g).

17 **SEC. 6. SHARING OF ELECTRONIC, WIRE, AND ORAL INTER-**
18 **CEPTION INFORMATION UNDER SECTION**
19 **203(B) OF THE USA PATRIOT ACT.**

20 Section 2517(6) of title 18, United States Code, is
21 amended by adding at the end the following: “Within a
22 reasonable time after a disclosure of the contents of a
23 communication under this subsection, an attorney for the
24 Government shall file, under seal, a notice with a judge
25 whose order authorized or approved the interception of
26 that communication, stating the fact that such contents



1 were disclosed and the departments, agencies, or entities
2 to which the disclosure was made.”.

3 **SEC. 7. DURATION OF FISA SURVEILLANCE OF NON-UNITED**
4 **STATES PERSONS UNDER SECTION 207 OF**
5 **THE USA PATRIOT ACT.**

6 (a) **ELECTRONIC SURVEILLANCE.**—Section 105(e) of
7 the Foreign Intelligence Surveillance Act of 1978 (50
8 U.S.C. 1805(e)) is amended—

9 (1) in paragraph (1)(B), by striking “, as de-
10 fined in section 101(b)(1)(A)” and inserting “who is
11 not a United States person”; and

12 (2) in subsection (2)(B), by striking “as defined
13 in section 101(b)(1)(A)” and inserting “who is not
14 a United States person”.

15 (b) **PHYSICAL SEARCH.**—Section 304(d) of such Act
16 (50 U.S.C. 1824(d)) is amended—

17 (1) in paragraph (1)(B), by striking “as defined
18 in section 101(b)(1)(A)” and inserting “who is not
19 a United States person”; and

20 (2) in paragraph (2), by striking “as defined in
21 section 101(b)(1)(A)” and inserting “who is not a
22 United States person”.

23 (c) **PEN REGISTERS, TRAP AND TRACE DEVICES.**—
24 Section 402(e) of such Act (50 U.S.C. 1842(e)) is
25 amended—



1 (1) by striking “(e) An” and inserting “(e)(1)
2 Except as provided in paragraph (2), an”; and

3 (2) by adding at the end the following new
4 paragraph:

5 “(2) In the case of an application under subsection
6 (c) where the applicant has certified that the information
7 likely to be obtained is foreign intelligence information not
8 concerning a United States person, an order, or an exten-
9 sion of an order, under this section may be for a period
10 not to exceed one year.”.

11 **SEC. 8. ACCESS TO CERTAIN BUSINESS RECORDS UNDER**
12 **SECTION 215 OF THE USA PATRIOT ACT.**

13 (a) **ESTABLISHMENT OF RELEVANCE STANDARD.—**
14 Subsection (b)(2) of section 501 of the Foreign Intel-
15 ligence Surveillance Act of 1978 (50 U.S.C. 1861) is
16 amended by striking “to obtain” and all that follows and
17 inserting “and that the information likely to be obtained
18 from the tangible things is reasonably expected to be (A)
19 foreign intelligence information not concerning a United
20 States person, or (B) relevant to an ongoing investigation
21 to protect against international terrorism or clandestine
22 intelligence activities.”.

23 (b) **CLARIFICATION OF JUDICIAL DISCRETION.—**
24 Subsection (c)(1) of such section is amended to read as
25 follows:



1 “(c)(1) Upon an application made pursuant to this
2 section, if the judge finds that the application meets the
3 requirements of subsections (a) and (b), the judge shall
4 enter an ex parte order as requested, or as modified, ap-
5 proving the release of records.”.

6 (c) AUTHORITY TO DISCLOSE TO ATTORNEY.—Sub-
7 section (d) of such section is amended to read as follows:

8 “(d)(1) No person shall disclose to any person (other
9 than a qualified person) that the United States has sought
10 or obtained tangible things under this section.

11 “(2) An order under this section shall notify the per-
12 son to whom the order is directed of the nondisclosure re-
13 quirement under paragraph (1).

14 “(3) Any person to whom an order is directed under
15 this section who discloses that the United States has
16 sought to obtain tangible things under this section to a
17 qualified person with respect to the order shall inform
18 such qualified person of the nondisclosure requirement
19 under paragraph (1) and that such qualified person is also
20 subject to such nondisclosure requirement.

21 “(4) A qualified person shall be subject to any non-
22 disclosure requirement applicable to a person to whom an
23 order is directed under this section in the same manner
24 as such person.



1 “(5) In this subsection, the term ‘qualified person’
2 means—

3 “(A) any person necessary to produce the tan-
4 gible things pursuant to an order under this section;
5 or

6 “(B) an attorney to obtain legal advice with re-
7 spect to an order under this section.”.

8 (d) JUDICIAL REVIEW.—

9 (1) PETITION REVIEW PANEL.—Section 103 of
10 the Foreign Intelligence Surveillance Act of 1978
11 (50 U.S.C. 1803) is amended by adding at the end
12 the following new subsection:

13 “(e)(1) Three judges designated under subsection (a)
14 who reside within 20 miles of the District of Columbia,
15 or if all of such judges are unavailable, other judges of
16 the court established under subsection (a) as may be des-
17 ignated by the Presiding Judge of such court (who is des-
18 ignated by the Chief Justice of the United States from
19 among the judges of the court), shall comprise a petition
20 review panel which shall have jurisdiction to review peti-
21 tions filed pursuant to section 501(f)(1).

22 “(2) Not later than 60 days after the date of the en-
23 actment of the USA PATRIOT and Terrorism Prevention
24 Reauthorization Act of 2005, the court established under
25 subsection (a) shall develop and issue procedures for the



1 review of petitions filed pursuant to section 501(f)(1) by
2 the panel established under paragraph (1). Such proce-
3 dures shall provide that review of a petition shall be con-
4 ducted ex parte and in camera and shall also provide for
5 the designation of an Acting Presiding Judge.”.

6 (2) PROCEEDINGS.—Section 501 of the Foreign
7 Intelligence Surveillance Act of 1978 (50 U.S.C.
8 1861) is further amended by adding at the end the
9 following new subsection:

10 “(f)(1) A person receiving an order to produce any
11 tangible thing under this section may challenge the legal-
12 ity of that order by filing a petition in the panel estab-
13 lished by section 103(e)(1). The Presiding Judge shall
14 conduct an initial review of the petition. If the Presiding
15 Judge determines that the petition is frivolous, the Pre-
16 siding Judge shall immediately deny the petition and
17 promptly provide a written statement of the reasons for
18 the determination for the record. If the Presiding Judge
19 determines that the petition is not frivolous, the Presiding
20 Judge shall immediately assign the petition to one of the
21 judges serving on such panel. The assigned judge shall
22 promptly consider the petition in accordance with proce-
23 dures developed and issued pursuant to section 103(e)(2).
24 The judge considering the petition may modify or set aside
25 the order only if the judge finds that the order does not



1 meet the requirements of this section or is otherwise un-
2 lawful. If the judge does not modify or set aside the order,
3 the judge shall immediately affirm the order and order the
4 recipient to comply therewith. A petition for review of a
5 decision to affirm, modify, or set aside an order by the
6 United States or any person receiving such order shall be
7 to the court of review established under section 103(b),
8 which shall have jurisdiction to consider such petitions.
9 The court of review shall immediately provide for the
10 record a written statement of the reasons for its decision
11 and, on petition of the United States or any person receiv-
12 ing such order for writ of certiorari, the record shall be
13 transmitted under seal to the Supreme Court, which shall
14 have jurisdiction to review such decision.

15 “(2) Judicial proceedings under this subsection shall
16 be concluded as expeditiously as possible. The judge con-
17 sidering a petition filed under this subsection shall provide
18 for the record a written statement of the reasons for the
19 decision. The record of proceedings, including petitions
20 filed, orders granted, and statements of reasons for deci-
21 sion, shall be maintained under security measures estab-
22 lished by the Chief Justice of the United States in con-
23 sultation with the Attorney General and the Director of
24 National Intelligence.



1 “(3) All petitions under this subsection shall be filed
2 under seal, and the court, upon the government’s request,
3 shall review any government submission, which may in-
4 clude classified information, as well as the government’s
5 application and related materials, ex parte and in cam-
6 era.”.

7 **SEC. 9. REPORT ON EMERGENCY DISCLOSURES UNDER**
8 **SECTION 212 OF THE USA PATRIOT ACT.**

9 Section 2702 of title 18, United States Code, is
10 amended by adding at the end the following:

11 “(d) REPORT.—On an annual basis, the Attorney
12 General shall submit to the Committees on the Judiciary
13 of the House and the Senate a report containing—

14 “(1) the number of accounts from which the
15 Department of Justice has received voluntary disclo-
16 sures under subsection (b)(8); and

17 “(2) a summary of the basis for disclosure in
18 those instances where—

19 “(A) voluntary disclosure under subsection
20 (b)(8) was made to the Department of Justice;
21 and

22 “(B) the investigation pertaining to those
23 disclosures was closed without the filing of
24 criminal charges.”.



1 **SEC. 10. SPECIFICITY AND NOTIFICATION FOR ROVING**
2 **SURVEILLANCE AUTHORITY UNDER SECTION**
3 **206 OF THE USA PATRIOT ACT.**

4 (a) INCLUSION OF SPECIFIC FACTS IN APPLICA-
5 TION.—Section 105(c)(2)(B) of the Foreign Intelligence
6 Surveillance Act of 1978 (50 U.S.C. 1805(c)(2)(B)) is
7 amended by striking “where the Court finds” and insert-
8 ing “where the Court finds, based upon specific facts pro-
9 vided in the application,”.

10 (b) NOTIFICATION OF SURVEILLANCE OF NEW FA-
11 CILITY OR PLACE.—Section 105(c)(2) of such Act is
12 amended—

13 (1) in subparagraph (C), by striking “and” at
14 the end;

15 (2) in subparagraph (D), by striking the period
16 at the end and inserting “; and”; and

17 (3) by adding at the end the following new sub-
18 paragraph:

19 “(E) that, in the case of electronic surveil-
20 lance directed at a facility or place that is not
21 known at the time the order is issued, the appli-
22 cant shall notify a judge having jurisdiction
23 under section 103 within a reasonable period of
24 time, as determined by the court, after elec-
25 tronic surveillance begins to be directed at a
26 new facility or place, and such notice shall con-

1 tain a statement of the facts and circumstances
2 relied upon by the applicant to justify the belief
3 that the facility or place at which the electronic
4 surveillance is or was directed is being used, or
5 is about to be used, by the target of electronic
6 surveillance.”.

7 **SEC. 11. PROHIBITION ON PLANNING TERRORIST ATTACKS**
8 **ON MASS TRANSPORTATION.**

9 Section 1993(a) of title 18, United States Code, is
10 amended—

- 11 (1) by striking “or” at the of paragraph (7);
12 (2) by redesignating paragraph (8) as para-
13 graph (9); and
14 (3) by inserting after paragraph (7) the fol-
15 lowing:
16 “(8) surveils, photographs, videotapes, dia-
17 grams, or otherwise collects information with the in-
18 tent to plan or assist in planning any of the acts de-
19 scribed in the paragraphs (1) through (7); or”.

20 **SEC. 12. ENHANCED REVIEW OF DETENTIONS.**

21 Section 1001 of the USA PATRIOT ACT is amended
22 by—

- 23 (1) inserting “(A)” after “(1)”; and
24 (2) inserting after “Department of Justice” the
25 following: “, and (B) review detentions of persons



1 under section 3144 of title 18, United States Code,
2 including their length, conditions of access to coun-
3 sel, frequency of access to counsel, offense at issue,
4 and frequency of appearance before a grand jury”.

5 **SEC. 13. FORFEITURE.**

6 Section 981(a)(1)(B)(i) of title 18, United States
7 Code, is amended by inserting “trafficking in nuclear,
8 chemical, biological, or radiological weapons technology or
9 material, or” after “involves”.

10 **SEC. 14. ADDING OFFENSES TO THE DEFINITION OF FED-**
11 **ERAL CRIME OF TERRORISM.**

12 Section 2332b)(g)(5)(B)(i) of title 18, United States
13 Code, is amended—

14 (1) by inserting “, 2339D (relating to military-
15 type training from a foreign terrorist organization)”
16 before “, or 2340A” ; and

17 (2) by inserting “832 (relating to nuclear and
18 weapons of mass destruction threats),” after “831
19 (relating to nuclear materials),”.

20 **SEC. 15. AMENDMENTS TO SECTION 2516(1) OF TITLE 18,**
21 **UNITED STATES CODE.**

22 (a) PARAGRAPH (c) AMENDMENT.—Section
23 2516(1)(c) of title 18, United States Code, is amended—

24 (1) by inserting “section 37 (relating to violence
25 at international airports), section 175b (relating to



1 biological agents or toxins)” after “the following sec-
2 tions of this title”;

3 (2) by inserting “section 832 (relating to nu-
4 clear and weapons of mass destruction threats), sec-
5 tion 842 (relating to explosive materials), section
6 930 (relating to possession of weapons in Federal fa-
7 cilities),” after “section 751 (relating to escape),”;

8 (3) by inserting “section 1114 (relating to offi-
9 cers and employees of the United States), section
10 1116 (relating to protection of foreign officials), sec-
11 tions 1361–1363 (relating to damage to government
12 buildings and communications), section 1366 (relat-
13 ing to destruction of an energy facility), ” after
14 “section 1014 (relating to loans and credit applica-
15 tions generally; renewals and discounts),”;

16 (4) by inserting “section 1993 (relating to ter-
17 rorist attacks against mass transportation), sections
18 2155 and 2156 (relating to national-defense utili-
19 ties), sections 2280 and 2281 (relating to violence
20 against maritime navigation),” after “section 1344
21 (relating to bank fraud),”; and

22 (5) by inserting “section 2340A (relating to tor-
23 ture),” after “section 2321 (relating to trafficking in
24 certain motor vehicles or motor vehicle parts),”.



1 (b) PARAGRAPH (p) AMENDMENT.—Section
2 2516(1)(p) is amended by inserting “, section 1028A (re-
3 lating to aggravated identity theft)” after “other docu-
4 ments”.

5 (c) PARAGRAPH (q) AMENDMENT.—Section
6 2516(1)(q) of title 18 United States Code is amended—
7 (1) by inserting “2339” after “2232h”; and
8 (2) by inserting “2339D” after “2339C”.

9 **SEC. 16. DEFINITION OF PERIOD OF REASONABLE DELAY**
10 **UNDER SECTION 213 OF THE USA PATRIOT**
11 **ACT.**

12 Section 3103a(b)(3) of title 18, United States Code,
13 is amended—

14 (1) by striking “of its” and inserting “, which
15 shall not be more than 180 days, after its”; and

16 (2) by inserting “for additional periods of not
17 more than 90 days each” after “may be extended”.

