

Legislative Bulletin.....July 21, 2005

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H.R. 3199 — the USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005 — Part I

H.R. 3199, the USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005, is scheduled to be considered on the House floor on Thursday, July 21, 2005, subject to a structured rule ([H. RES.369](#)). Below are the summaries of the first 10 of 21 amendments made in order under the rule. Note: summaries are based on RSC staff's review of actual amendment text. For a summary of the underlying bill, see a separate RSC document released earlier this morning.

1. Kucinich (D-OH) #27: Repeals as of December 31st of this year the following four sections of the PATRIOT Act by adding to each a sunset of December 31, 2005: sections 505 (National Security Letters), 507 (educational records), 508 (disclosure of information from NCES surveys), and 802 (Definition of Domestic Terrorism).

2. Flake/Schiff (R-AZ/D-CA) #59: Requires that the Director of the FBI personally approve the use of Section 215 (access to records) to obtain library or bookstore record information. Current law allows for a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) to approve Section 215 orders.

3. Issa (R-CA) #30: Specifies that under current law regarding roving wiretaps, a "reasonable period of time," in which federal officials are required to notify a judge when an object of surveillance has changed from one facility to another, cannot be more than 15 days; requires federal officials to specify the total number of electronic surveillances that have been or are being conducted under an order.

4. Capito (R-WV) #1: Modifies and expands the acts which constitute a criminal attack against a railroad carrier or mass transportation system; includes a prison up to 20 years in jail for violence against a rail or mass transit vehicle; requires a minimum prison sentence of 30 years if the vehicle is carrying spent nuclear fuel or high level radioactive waste; requires a mandatory life sentence with death penalty eligibility if the attack results in the death of a person. The prison terms listed above are consistent with current law, but the amendment would apply those prison sentences to the expanded list of offences included in the amendment.

5. Flake/Delahunt/Otter/Nadler (R-AZ/D-MA/R-ID/D-NY) #54: Specifies that the recipient of a national security letter may consult with an attorney, and may also challenge national security letters in court; authorizes a judge to reject the national security letter request by the government “if compliance would be unreasonable or oppressive” to the recipient of the national security letter; allows the recipient to challenge the non-disclosure requirement (gag order) of the national security letter request; permits a court to modify or remove the non-disclosure requirement of the national security letter request “if it finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person;” modifies the non-disclosure requirement so that recipients may tell individuals with whom they work about the national security letter request in order to comply with the national security request; contains additional penalties for individuals who violate the non-disclosure requirements of a national security letter; and requires that reports on national security letters by federal agencies to Congress must also be sent to the House and Senate Judiciary Committees.

6. Waters (D-CA) #33: Establishes that under section 505 and section 215 of the USA PATRIOT Act, someone who has received a non-disclosure order in connection with the release of records, may not be penalized for violating the nondisclosure requirement “if the disclosing person is mentally incompetent or under undue stress, or... [under] threat of bodily harm” or a threat of being fired. **The amendment does not define “mentally incompetent” or “undue stress.”** To qualify for this exemption, the person who disclosed under these circumstances must notify the FBI immediately of these circumstances. (20 minutes)

7. Delahunt/Flake/Otter (D-MA/R-AZ/R-ID) #57: The amendment changes the reference in the federal criminal code *that deals with civil forfeiture* (18 U.S.C. 981 (a)(1)(G)) to strike the current definition of domestic or international terrorism (section 2331) and replace it with a different definition of terrorism that is found in the U.S. Code regarding “Acts of terrorism transcending national boundaries” (2332b(g)(5)(B)).

The sponsors contend, “the federal crime of terrorism is a much more focused term which lists all terrorism crimes specifically, whereas people have complained that the term “domestic terrorism” is too broad.

Provision of US Code as would be amended by Delahunt amendment:

(G) All assets, foreign or domestic -

(i) of any individual, entity, or organization engaged in planning or perpetrating any act of domestic or international terrorism (as defined in ~~section 2331~~ **2332b(g)(5)(B)**) against the United States, citizens or residents of the United States, or their property, and all assets, foreign or domestic, affording any person a source of influence over any such entity or organization;

(ii) acquired or maintained by any person with the intent and for the purpose of supporting, planning, conducting, or concealing an act of domestic or international terrorism (as defined in ~~section 2331~~ **2332b(g)(5)(B)**) against the United States, citizens or residents of the United States, or their property;
or

(iii) derived from, involved in, or used or intended to be used to commit any act of domestic or international terrorism (as defined in ~~section 2331-2332b(g)(5)(B))~~ against the United States, citizens or residents of the United States, or their property.

The definition of terrorism in section 2331 that will be deleted from the forfeiture criminal statute if this amendment is enacted can be found here:

http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00002331----000-.html

The definition of terrorism in section 2332b(g)(5)(B)) that will be added to the forfeiture criminal statute if this amendment is enacted can be found here:

http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00002332---b000-.html

8. Flake/Otter (R-AZ/R-ID) #58: Modifies Section 213 (“sneak and peak” searches) of the PATRIOT Act to restrict the ability of the court to delay notification of a search if the only reason for the delayed notification is that it may delay a related trial. Currently, a court may grant delayed notification if it “finds reasonable cause to believe that providing immediate notification of the execution of the warrant may have an *adverse result*” [*emphasis added*]. Thus, under this amendment the “adverse result” may not only be a delayed trial. Also requires reporting by the Administrative Office of the Courts on search warrants and also eliminates the provision “unduly delaying trial” in the delayed notification section of the Patriot Act for “sneak and peak” searches.

9. Berman/Delahunt (D-CA/D-MA) #22: Requires the Attorney General report to Congress information collected from each federal department or agency on the development and use of data-mining technology, and stipulates specific content the report must include.

10. Lungren (R-CA) #29: Expands the list of offenses that are predicates for obtaining an electronic surveillance order (wiretap) to include additional offenses related to terrorism. Specifically, sections added include offenses regarding arson within special maritime and territorial jurisdiction, plastic explosives, conspiracy to harm persons or property overseas, destruction of a natural gas pipeline, and explosion or endangering human life by means of a weapon on an aircraft.

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