

# Terrorism Legislation Comparison

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Latest version available on the Electronic Frontier Foundation website at:

<http://www.eff.org/Privacy/Surveillance/terrorbillscompare.html>

This chart compares and contrasts various Congressional anti-terrorism legislative proposals only as related to civil liberties and the Internet or other electronic media. See additional notes below table.

Bill	Law as of 9-11-2001	Provide Appropriate Tools Required to Intercept and Obstruct Terrorism	Anti-Terrorism Act formerly Mobilization Against Terrorism Act	Uniting and Strengthening of America Act	Combating Terrorism Act	Public Safety and Cyber Security Enhancement Act
Abbreviation	NA	PATRIOT	ATA, formerly MATA	USAA	CTA	PSCSEA
Proposed By	NA	Representative Sensenbrenner	Attorney General John Ashcroft	Senator Patrick Leahy	Senator Orrin Hatch	Representative Smith
Bill Number	NA	Not assigned	Not assigned	Not assigned	S.A. 1562 to H.R. 2500 (Sections 832-834)	H.R. 2915
Status	Current law	Passed by House Judiciary Committee on 03Oct2001	Under consideration by House and Senate Judiciary Committees?	Under consideration by House and Senate Judiciary Committees?	Passed by Senate on 13Sep01, House-Senate conference committee to resolve differences	Referred to House Judiciary committee on 20Sep01
Sponsor(s) and Cosponsor(s)	NA	Representative Sensenbrenner, Representative Conyers	?	Senator Patrick Leahy	Senator Orrin Hatch	Representative Smith, Representative Lamar
Title III Provisions (18 USC §2510 et seq.):						
Voicemail surveillance	Requires Title III court order	Only a search warrant required instead of Title III court order (§102)	Only a search warrant required instead of Title III court order (§102)	Title III court order still required	No provision	No provision
Disclosure of wiretap surveillance	Not permitted?	To certain law enforcement, intelligence, immigration, and other federal employees only when related to foreign intelligence (§103)	To ANY employee of Executive branch (§103)	To US intelligence agency personnel	No provision	No provision
Surveillance obtained through foreign governments	Permitted as long as would not violate domestic	No provision	Permitted even if would violated 4 <sup>th</sup> Amendment of US Constitution (§105)	No provision	No provision	No provision

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	surveillance laws?					
Interception of computer trespass communications	?	When authorized by computer owner and relevant to lawful investigation (§105)	When authorized by computer owner and relevant to lawful investigation (§106)	No provision	?	When authorized by computer owner and relevant to lawful investigation (§2)
Cable operators	Not included under Title III	Added to scope of Title III, except for surveillance of content viewed by subscriber (§109)	Added to scope of Title III, except for surveillance of content viewed by subscriber (§109)	No provision	?	No provision
Court use of illegally obtained electronic communications	Prohibited as evidence?	Prohibited as evidence except in prosecuting cases of unlawful surveillance (§111)	No provision	No provision	?	No provision
Foreign Intelligence Surveillance Act (FISA) Provisions (18 USC §1801 et seq):						
Roving wiretaps	?	Compelled to assist as directed by court order (§152)	Compelled to assist as directed by court order (§152)	Compelled to assist as directed by court order (§207)	No provision	No provision
Wiretaps beyond just intelligence surveillance	Requires “primary” surveillance purpose	Requires only “significant” not “primary” surveillance purpose (§153)	No longer requires “primary” surveillance purpose (§153)	No provision	No provision	No provision
Domestic surveillance under FISA	Only non-US citizens or organizations may be targeted?	Permitted if government attorney certifies to court the relevancy to an ongoing FISA investigation (§155)	President may designate any “foreign-directed” person or organization as target, even if US citizen or organization	Only non-US citizens or organizations may be targeted?	No provision	No provision
Surveillance of foreign governments	Yes, but not for agents of foreign governments?	Extended to officers and employees of foreign governments and members of international terrorist cells (§151)	Extended to officers and employees of foreign governments and members of international terrorist cells (§151)	Extended to officers and employees of foreign governments and members of international terrorist cells (§208)	No provision	No provision
Term of surveillance of	90 day limit before FISA	Extended from 90 day to 1 year limit before FISA court	Extended from 90 day to 1 year limit before	Extended from 90 day to 1 year limit before FISA	No provision	No provision

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foreign governments	court extension required	extension required (§151)	FISA court extension required (§151)	court extension required (§208)		
Physical search of foreign agents	45 day limit	Extended from 45 day to 90 day limit (§151)	Extended from 45 day to 90 day limit (§151)	No provision	No provision	No provision
Electronic Communications Privacy Act Provisions (18 USC §2701 et seq.):						
Nationwide scope	Separate warrant required for each jurisdiction	With search warrant from court that has jurisdiction over investigation (§108)	With search warrant from court that has jurisdiction over investigation (§108)	No provision	No provision	No provision
Subpoena for financial transactions	?	Permitted for domestic (§107) and foreign (§157) investigations	Permitted for domestic (§107) and foreign (§157) investigations	?	No provision	No provision
Subpoena for session times and durations	?	Permitted for domestic (§107) and foreign (§157) investigations	Permitted for domestic (§107) and foreign (§157) investigations	?	No provision	No provision
Subpoena for network addresses	?	Permitted for domestic (§107) and foreign (§157) investigations	Permitted for domestic (§107) and foreign (§157) investigations	?	No provision	No provision
Emergency disclosure of content	?	Permitted in case of immediate danger of death or serious injury (§110)	Permitted in case of immediate danger of death or serious injury (§110)	?	No provision	No provision
Pen/Trap Provisions (18 USC §3121-3127):						
Nationwide scope (multiple communication service providers)	?	With court order (§101)	With court order (§101)	With court order (§204)	With court order	With court order (§3)
Formalize extension of	Not formalized	With pen/trap court order (§101)	With pen/trap court order (§101)	Requires factual basis for court order	With pen/trap court order	With pen/trap court order (§3)

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pen/trap orders to Internet (including email header and web browsing surveillance)						
Extend pen/trap surveillance authority to local US Attorneys	No	No provision	No provision	No provision	Yes	Yes (§3)
Encryption Provisions:						
Strong encryption without “back door” or key escrow system	Permits domestic use	No provision	No provision	No provision	No provision	No provision
Other Provisions:						
Adds Computer Fraud and Abuse Act violations to definition of “federal terrorism offense”	No	Yes, only if calculated to intimidate, coerce, or retaliate against government conduct would low-level computer intrusions result in potential lifetime prison sentences (§301, 302, 309) [what about case of student defacing public school website?]	Yes, so that low-level computer intrusions could result in potential lifetime prison sentences without parole	No provision	No provision	No provision
“Expert advice” to terrorists	Permitted?	Banned (has serious First Amendment implications especially with terrorism redefinition) (§306)	Banned (has serious First Amendment implications especially with terrorism redefinition) (§306)	No provision	No provision	No provision
Criminal investigation disclosures	?	Permitted to certain law enforcement, intelligence, immigration, and other federal employees when in performance of their duties (§?)	?	?	?	?
Grand jury disclosures	Permitted only with court order?	Permitted with court order to certain law enforcement, intelligence, immigration, and other federal employees	Permitted <u>without</u> court order to certain law enforcement, intelligence,	Permitted only with court order	?	?

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		when in performance of their duties (§354)	immigration, and other federal employees investigating terrorism (§354)			
Federal DNA database	Pertains only to ?	Extended to all federal felons, including those convicted of low-level computer intrusions calculated to intimidate, coerce, or retaliate against government conduct (§353)	Extended to all federal felons, including those convicted of low-level computer intrusions (§353)	?	?	?
Equates conspiracy to commit act with actually committing that act	?	Yes (§303,309)	Yes (§303,309)	?	?	?
Justice Department provides criminal history records to State Department and INS	?	Yes, with respect for privacy of records (§207)	Yes, with respect for privacy of records (§206)	?	?	?
Sunset provision	NA	Sunsets much of bill on December 31, 2003 (§160)	No provision	No provision	No provision	No provision
Bill Location (see note)	NA	20011001_patriot_bill_draft.html	20010919_ata_bill_draft.html	20010921_usaa_bill_draft.html	20010913_sa1562_hr2500_amendment.html	20010920_pscsea_bill_draft.html
Detailed Analysis (see note)	NA	20011001_house_patriot_analysis.html	By EFF: 20010927_eff_ata_analysis.html By DOJ: 20010919_doj_ata_analysis.html	20010921_leahy_usaa_summary.html 20010921_leahy_usaa_analysis.html	By EFF: 20010919_eff_sa1562_analysis.html	NA

*Note on bill locations and detailed analysis:* All of the documents appear within <http://www.eff.org/Privacy/Surveillance/> and government versions of those bills assigned bill numbers are available by searching at <http://thomas.loc.gov> . Other bills under consideration or passed by Congress in response to the attack include the Intelligence to Prevent Terrorism Act (IPTA) [proposed by Senator Bob Graham as S. 1448 and heard by the Senate Intelligence Committee hearing on September 24, 2001] and others, many of which are available at <http://thomas.loc.gov/home/terrorleg.htm> or elsewhere on <http://thomas.loc.gov> .

*Note on hierarchy of surveillance orders:* Here are the various types of surveillance orders listed in order from most difficult to easiest to obtain: Title III wiretap order, Search warrant, Pen/Trap court order (usually a rubberstamp), Subpoena (not even a court order)