

AMENDMENT NO.

Calendar No.

Purpose: To provide a statement of the exclusive means by which electronic surveillance and interception of certain communications may be conducted, and for other purposes.

IN THE SENATE OF THE UNITED STATES—110th Cong., 2d Sess.

**S. 2248**

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mrs. FEINSTEIN  
(for herself, Mr. ROCKEFELLER, and Mr. BOND)

Viz:

- 1 Strike section 102, and insert the following:
- 2 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**
- 3 **ELECTRONIC SURVEILLANCE AND INTERCEP-**
- 4 **TION OF CERTAIN COMMUNICATIONS MAY BE**
- 5 **CONDUCTED.**
- 6 (a) STATEMENT OF EXCLUSIVE MEANS.—Title I of
- 7 the Foreign Intelligence Surveillance Act of 1978 (50

1 U.S.C. 1801 et seq.) is amended by adding at the end  
2 the following new section:

3 "STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-  
4 TRONIC SURVEILLANCE AND INTERCEPTION OF CER-  
5 TAIN COMMUNICATIONS MAY BE CONDUCTED

6 "SEC. 112. (a) Except as provided in subsection (b),  
7 the procedures of chapters 119, 121 and 206 of title 18,  
8 United States Code, and this Act shall be the exclusive  
9 means by which electronic surveillance (as defined in sec-  
10 tion 101(f), regardless of the limitation of section 701)  
11 and the interception of domestic wire, oral, or electronic  
12 communications may be conducted.

13 "(b) Only an express statutory authorization for elec-  
14 tronic surveillance or the interception of domestic wire,  
15 oral, or electronic communications, other than as an  
16 amendment to this Act or chapters 119, 121, or 206 of  
17 title 18, United States Code, shall constitute an additional  
18 exclusive means for the purpose of subsection (a)."

19 (b) OFFENSE.—Section 109(a) of the Foreign Intel-  
20 ligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is  
21 amended by striking "authorized by statute" each place  
22 it appears in such section and inserting "authorized by  
23 this Act, chapter 119, 121, or 206 of title 18, United  
24 States Code, or any express statutory authorization that  
25 is an additional exclusive means for conducting electronic  
26 surveillance under section 112."

1 (c) AUTHORIZATION FOLLOWING ATTACK OR DEC-  
2 LARATION OF WAR.—The Foreign Intelligence Surveil-  
3 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended  
4 by—

5 (1) striking section 111 and inserting the fol-  
6 lowing:

7 “AUTHORIZATION FOLLOWING ATTACK OR DECLARATION  
8 OF WAR

9 “SEC. 111. (a) Notwithstanding any other law, the  
10 President, through the Attorney General, may authorize  
11 electronic surveillance or a physical search of stored elec-  
12 tronic communications or stored electronic data that is in  
13 the custody of an electronic communication service pro-  
14 vider without a court order to acquire foreign intelligence  
15 information, if such electronic surveillance or physical  
16 search of stored electronic communications or stored elec-  
17 tronic data that is in the custody of an electronic commu-  
18 nication service provider is reasonably related to the appli-  
19 cable circumstance described in paragraph (1), (2), or (3),  
20 for a period of not more than 45 days after the date of—

21 “(1) a national emergency created by an attack  
22 by a foreign power or agent of a foreign power on  
23 the United States that prevents—

24 “(A) either House of Congress from ob-  
25 taining the presence of a majority of the Mem-  
26 bers of that House to constitute a quorum to do

1 business, in order to enact a declaration of war,  
2 authorization for the use of military force, or  
3 other legislation; or

4 “(B) the Foreign Intelligence Surveillance  
5 Court from receiving applications and issuing  
6 orders under this Act;

7 “(2) an authorization for the use of military  
8 force under the War Powers Resolution (50 U.S.C.  
9 1541 et seq.); or

10 “(3) a declaration of war by the Congress.

11 “(b) If the President determines to exercise the au-  
12 thority under subsection (a), the President, through the  
13 Attorney General, shall, not later than 5 days after mak-  
14 ing that determination, submit to the Foreign Intelligence  
15 Surveillance Court and the congressional intelligence com-  
16 mittees a written notification that sets forth the cir-  
17 cumstances necessitating the use of such authority.

18 “(c) The President, through the Attorney General,  
19 may authorize 1 extension of any electronic surveillance  
20 or physical search of stored electronic communications or  
21 stored electronic data that is in the custody of an elec-  
22 tronic communication service provider authorized under  
23 subsection (a) for a period of not more than 45 days.

24 “(d) Not later than 30 days after the end of the pe-  
25 riod for which electronic surveillance or a physical search

1 of stored electronic communications or stored electronic  
2 data that is in the custody of an electronic communication  
3 service provider is authorized under subsection (a) or ex-  
4 tended under subsection (c), the President, through the  
5 Attorney General, shall submit to the Foreign Intelligence  
6 Surveillance Court and the congressional intelligence com-  
7 mittees a written report describing the exercise of such  
8 authority during such period.

9 “(e) In this section—

10 “(1) the term ‘congressional intelligence com-  
11 mittees’ means the Select Committee on Intelligence  
12 of the Senate and the Permanent Select Committee  
13 on Intelligence of the House of Representatives;

14 “(2) the term ‘electronic communication service  
15 provider’ has the meaning given that term in section  
16 801; and

17 “(3) the term ‘Foreign Intelligence Surveillance  
18 Court’ means the court established under section  
19 103(a).”; and

20 (2) striking section 404 and inserting the fol-  
21 lowing:

22 “AUTHORIZATION FOLLOWING ATTACK OR DECLARATION  
23 OF WAR

24 “SEC. 404. (a) Notwithstanding any other law, the  
25 President, through the Attorney General, may authorize  
26 the use of a pen register or trap and trace device without

1 a court order to acquire foreign intelligence information,  
2 if such use of a pen register or trap and trace device is  
3 reasonably related to the applicable circumstance de-  
4 scribed in paragraph (1), (2), or (3), for a period of not  
5 more than 45 days after the date of—

6           “(1) a national emergency created by an attack  
7 by a foreign power or agent of a foreign power on  
8 the United States that prevents—

9           “(A) either House of Congress from ob-  
10 taining the presence of a majority of the Mem-  
11 bers of that House to constitute a quorum to do  
12 business, in order to enact a declaration of war,  
13 authorization for the use of military force, or  
14 other legislation; or

15           “(B) the Foreign Intelligence Surveillance  
16 Court from receiving applications and issuing  
17 orders under this Act;

18           “(2) an authorization for the use of military  
19 force under the War Powers Resolution (50 U.S.C.  
20 1541 et seq.); or

21           “(3) a declaration of war by the Congress.

22           “(b) If the President determines to exercise the au-  
23 thority under subsection (a), the President, through the  
24 Attorney General, shall, not later than 5 days after mak-  
25 ing that determination, submit to the Foreign Intelligence

1 Surveillance Court and the congressional intelligence com-  
2 mittees a written notification that sets forth the cir-  
3 cumstances necessitating the use of such authority.

4 “(c) The President, through the Attorney General,  
5 may authorize 1 extension of the use of a pen register  
6 or trap and trace device authorized under subsection (a)  
7 for a period of not more than 45 days.

8 “(d) Not later than 30 days after the end of the pe-  
9 riod for which the use of a pen register or trap and trace  
10 device is authorized under subsection (a) or extended  
11 under subsection (c), the President, through the Attorney  
12 General, shall submit to the Foreign Intelligence Surveil-  
13 lance Court and the congressional intelligence committees  
14 a written report describing the exercise of such authority  
15 during such period.

16 “(e) In this section—

17 “(1) the term ‘congressional intelligence com-  
18 mittees’ means the Select Committee on Intelligence  
19 of the Senate and the Permanent Select Committee  
20 on Intelligence of the House of Representatives; and

21 “(2) the term ‘Foreign Intelligence Surveillance  
22 Court’ means the court established under section  
23 103(a).”.

24 (d) CONFORMING AMENDMENTS.—

1           (1) IN GENERAL.—Section 2511(2) of title 18,  
2           United States Code, is amended—

3                   (A) in paragraph (a), by adding at the end  
4           the following:

5           “(iii) If a certification under subparagraph (ii)(B) for  
6           assistance to obtain foreign intelligence information is  
7           based on statutory authority, the certification shall iden-  
8           tify the specific statutory provision, and shall certify that  
9           the statutory requirements have been met.”; and

10                   (B) in paragraph (f), by striking “, as de-  
11           fined in section 101 of such Act,” and inserting  
12           “(as defined in section 101(f) of such Act re-  
13           gardless of the limitation of section 701 of such  
14           Act)”.

15           (2) TABLE OF CONTENTS.—The table of con-  
16           tents in the first section of the Foreign Intelligence  
17           Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)  
18           is amended by—

19                   (A) striking the item relating to section  
20           111 and inserting the following:

“Sec. 111. Authorization following attack or declaration of war.

“Sec. 112. Statement of exclusive means by which electronic surveillance and  
interception of certain communications may be conducted.”;  
and

21                   (B) striking the item relating to section  
22           404 and inserting the following:

“Sec. 404. Authorization following attack or declaration of war.”.