



The Daily Whip

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THURSDAY, JULY 21, 2005

House Meets At...	Last Vote Predicted At...
10:00 a.m.: Legislative Business Ten "One Minutes" Per Side	9:00 – 10:00 p.m.

FLOOR SCHEDULE AND BILL SUMMARY

H.R. 3199 – USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005 (*Rep. Sensenbrenner – Judiciary*) (*Subject to a Rule*). This bill makes permanent 14 of the 16 provisions of the USA PATRIOT Act (PL 107-56) that will expire at the end of this year and extends for 10 years the remaining 2 provisions. HR3199 was reported out of the Judiciary Committee on a party line vote (23-14, with 2 members voting present). The 2 sections of the PATRIOT Act extended for 10 years are:

- **Section 206 - Access to Business and Other Records.** To expand the authority under the Foreign Intelligence Surveillance Act (FISA) to access records or "any tangible item," including bookstore and library records. The measure allows anyone who receives requests for information under this provision to consult with a lawyer to challenge the request in court.
- **Section 215 - "Roving" Wiretaps.** To permit "roving" wiretap orders under FISA that do not specify a single telephone or residence to be surveilled, and allow surveillance to be conducted through a variety of measures in cases where a suspect changes communications methods or locations --- law enforcement officials are required to report back to a judge when a tap is placed on a new location.

The 14 sections of the PATRIOT Act made permanent are:

- **Section 201 - Wiretap Authority for Terrorist Cases.** To permit the use of court-supervised wiretaps in cases involving various terrorism offenses.
- **Section 202 - Wiretap Authority in Computer Fraud Cases.** To add computer fraud to the list of violations that justify a federal wiretap.
- **Section 203(b) - Authority to Share Wiretap Information.** To permit law enforcement officials to disclose wiretap evidence to various federal officials when it involves foreign intelligence, counterintelligence, or foreign intelligence information.
- **Section 203(d) - Authority to Share Foreign Intelligence Information.** To permit the disclosure of foreign intelligence information gathered through wiretaps and other sources to federal law enforcement or to intelligence, protective, immigration and military personnel.
- **Section 204 – FISA pen register/trap & trace Exceptions.** To make it clear that the general trap and trace device and pen register prohibitions do not bar use of FISA authority to use trap and trace devices and pen registers to gather foreign intelligence information.
- **Section 207 - Duration of FISA Surveillance of Agents of a Foreign Power.** A provision allowing FISA wiretap orders relating to the agent of foreign power to remain in effect for up to 120 days and may be extended at one year intervals.
- **Section 209 - Use of Search Warrant to Seize Voice Mail.** A provision that permits law enforcement to use a search warrant, rather than a wiretap, to seize unopened voice mail.
- **Section 212 - Disclosure of Internet Records in Emergencies.** To authorize internet service providers to disclose customer communications record information in emergency situations.
- **Section 214 - Access to E-mail and Internet Records.** A provision that permits the use of "pen register" and "trap-and-trace" devices, which record the numbers of outgoing and incoming telephone calls, to also acquire e-mail addresses and Internet addresses.
- **Section 217 - Interception of Computer Trespasser Communications.** To allow Internet service providers to authorize law enforcement to monitor trespassers on their computer systems.
- **Section 218 - Foreign Intelligence Investigations.** To permit FISA surveillance or physical search applications to be approved if foreign intelligence gathering is a "significant" purpose, rather than "the" purpose, of seeking the order.
- **Section 220 - Nationwide Service of Search Warrants for Electronic Evidence.** To authorize nation-wide execution of search warrants and court orders for customer communications records and the content of stored customer communications.
- **Section 223 - Civil Liability for Certain Unauthorized Disclosures.** To authorize agency heads to discipline federal officers and employees for willful or intentional disclosure or leaks of wiretap information.
- **Section 225 - Immunity for Compliance with FISA Wiretap.** To establish immunity for assistance in the execution of a FISA surveillance order.

HR3199 includes other provisions including: language to permanently extend a provision permitting wiretapping and surveillance of "lone-wolf" terrorist suspects; a provision that makes it a crime to provide material support or resources for carrying out an act of international or domestic terrorism; a provision to make it a crime to surveil, photograph, videotape, diagram or otherwise collect information with the intent to plan or assist a terrorist attack against mass transit operations; and a



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provision to permit the delay, for 180 days, of notification of an individual of a "sneak and peek" search and seizure of any property or material that constitutes evidence of a criminal offense.

The Rules Committee has recommended a restrictive rule that denies numerous important Democratic amendments including amendments that would sunset provisions made permanent by this bill. The restrictive rule provides two hours of general debate, provides one motion to recommit with or without instructions, and makes in order 20 amendments:

- **Kucinich (20 minutes).** To repeal section 505 (National Security Letters), section 507 (Educational Records), section 508 (Disclosure of information from NCES surveys), and section 802 (Definition of Domestic Terrorism) of the USA PATRIOT Act.
- **Flake/Schiff (20 minutes).** To require that the Director of the FBI personally approve any library or bookstore request for records by the FBI under section 215.
- **Issa (20 minutes).** Regarding roving wiretaps.
- **Capito (10 minutes).** Regarding standard penalties for terrorist attacks and other violence against railroad carriers and mass transportation systems on land, on water, or through the air.
- **Flake/Delahunt/Otter/Nadler (20 minutes).** Among other provisions, specifies that the recipient of a National Security Letter may consult with an attorney, and may also challenge national security letters in court.
- **Waters (20 minutes).** Establishes that under section 505 of the USA PATRIOT Act, a recipient of a National Security Letter may not be penalized for violating the nondisclosure requirement if the recipient is mentally incompetent, under undue stress, under threat of bodily harm, or a threat of being discharged from employment.
- **Delahunt/Flake/Otter (20 minutes).** Changes the reference in the forfeiture statute from 2331 (domestic terrorism) to 2332(b) and 2332b(g)(5)(B) (the federal crime of terrorism definition). The distinction between the two definitions is that one is supposed to be applied to criminal offenses and the other to administrative processes.
- **Flake/Otter (20 minutes).** 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 peek" searches.
- **Berman/Delahunt (10 minutes).** To require a report to Congress on the development and use of data-mining technology by departments and agencies of the Federal government.
- **Lungren (20 minutes).** Regarding adding certain crimes to the list of offenses that are predicates for obtaining electronic surveillance.
- **Schiff/Coble/Forbes (20 minutes).** Among other provisions, makes it a crime to use a vessel to smuggle terrorists or dangerous materials into the US; and imposes stiff criminal penalties for providing false information to a federal law enforcement officer at a port or on a vessel.
- **Coble (10 minutes).** Amends the Contraband Cigarette Trafficking Act, which makes it unlawful for any person knowingly to ship, possess, sell, distribute or purchase contraband cigarettes.
- **Carter (20 minutes).** Amends the Federal criminal code to apply the death penalty or life imprisonment for a terrorist offense that results in death.
- **Hart (10 minutes).** Regarding penalties for activities constituting terrorism-financing.
- **Jackson-Lee (10 minutes).** Allows the attachment of property and the enforcement of judgment against a judgment debtor that has engaged in planning or perpetrating any act of domestic or international terrorism under 18 USC 981.
- **Hyde (20 minutes).** Establishing a new criminal offense of narco-terrorism.
- **Meeks (NY) (10 minutes).** Sense of Congress regarding the availability of banking services to money services businesses.
- **Sessions (10 minutes).** Regarding additional protection to all aircraft in the special aircraft jurisdiction of the United States.
- **Paul (10 minutes).** Expresses the sense of Congress that no American citizen should be the target of a federal investigation solely as a result of that person's political activities.
- **Lowey/Sweeney (10 minutes).** Strikes section 1014(c) of PL 107-56 as it applies to Homeland Security Grant Funding. Adds H.R. 1544, The Faster and Smarter Funding for First Responders Act of 2005 as it was passed in the House as a new section of the bill.

TOMORROW'S OUTLOOK

The GOP Leadership has announced the following schedule: on Friday, the House will meet at 9:00 a.m. and is expected to consider **H.R. 3070 – NASA Authorization Act of 2005**; and may also appoint conferees on the **Interior and Legislative Branch FY06 Appropriations Bills**.

Daily Quote...

"Mr. Bush and Homeland Security Secretary Michael Chertoff can talk a good game [on protecting America from another terrorist attack]. They speak of new technologies and bringing a 'sense of urgency' to the challenge. But when it's time to actually pay for these upgrades, their actions fall short."

- *The Baltimore Sun*, in an editorial, responding to President Bush's speech at the Port of Baltimore