

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

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 of the Foreign Intel-
20 ligence Surveillance Act of 1978 (50 U.S.C. 1809) is
21 amended—

22 (1) in subsection (a), by striking “authorized by
23 statute” each place it appears in such section and
24 inserting “authorized by this Act, chapter 119, 121,
25 or 206 of title 18, United States Code, or any ex-
26 press statutory authorization that is an additional

1 exclusive means for conducting electronic surveil-
2 lance under section 112.”; and

3 (2) by adding at the end the following:

4 “(e) DEFINITION.—For the purpose of this section,
5 the term ‘electronic surveillance’ means electronic surveil-
6 lance as defined in section 101(f) of this Act regardless
7 of the limitation of section 701 of this Act.”.

8 (c) AUTHORIZATION FOLLOWING ATTACK OR DEC-
9 LARATION OF WAR.—

10 (1) IN GENERAL.—Sections 111 and 404 of the
11 Foreign Intelligence Surveillance Act of 1978 (50
12 U.S.C. 1811 and 1844) are each amended—

13 (A) in the section heading, by striking
14 “DURING TIME OF” and inserting “FOLLOWING
15 ATTACK OR DECLARATION OF”;

16 (B) by inserting “(a)” before “Notwith-
17 standing”;

18 (C) by striking “for a period” and all that
19 follows and inserting the following: “for a pe-
20 riod not to exceed 30 calendar days following—

21 “(1) a declaration of war by Congress;

22 “(2) an authorization for the use of military
23 force under the War Powers Resolution (50 U.S.C.
24 1541 et seq.); or

1 “(3) a national emergency created by an attack
2 upon the United States, if the President determines
3 that there is a threat of an additional attack against
4 the United States.

5 “(b) If the President exercises the authority under
6 this section, the President, through the Attorney General,
7 shall submit to the Foreign Intelligence Surveillance Court
8 and the congressional intelligence committees (as those
9 terms are defined in section 702)—

10 “(1) a classified written notification that the
11 use of such authority has been initiated, not later
12 than 5 days after the date of such initiation; and

13 “(2) a written report describing the exercise of
14 such authority during such period not later than 30
15 days after the date of the expiration of such author-
16 ity.”.

17 (2) ELECTRONIC SURVEILLANCE.—Section 111
18 of the Foreign Intelligence Surveillance Act of 1978
19 (50 U.S.C. 1811), as amended by paragraph (1), is
20 amended by adding at the end the following:

21 “(c) For purposes of this section, authority to con-
22 duct electronic surveillance shall also be construed as au-
23 thority to conduct the search of stored electronic commu-
24 nications and stored electronic data in the custody of an

1 electronic communication service provider (as that term
2 is defined in section 702).”.

3 (d) CONFORMING AMENDMENTS.—

4 (1) TITLE 18, UNITED STATES CODE.—Section
5 2511(2) of title 18, United States Code, is amend-
6 ed—

7 (A) in paragraph (a), by adding at the end
8 the following:

9 “(iii) If a certification under subpara-
10 graph (ii)(B) for assistance to obtain for-
11 eign intelligence information is based on
12 statutory authority, the certification shall
13 identify the specific statutory provision,
14 and shall certify that the statutory require-
15 ments have been met.”; and

16 (B) in paragraph (f), by striking “, as de-
17 fined in section 101 of such Act,” and inserting
18 “(as defined in section 101(f) of such Act re-
19 gardless of the limitation of section 701 of such
20 Act)”.

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

1 (A) striking the item relating to section
2 111 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

3 (B) striking the item relating to section
4 404 and inserting the following:

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