

**COMPARISON OF THE PAA, THE SENATE BILL (FEB), HOUSE BILL (MARCH), AND THE COMPROMISE BILL**

**Title I: Surveillance Authority**

	<b>Protect America Act</b>	<b>Senate Bill 2/08</b>	<b>House Bill 3/08</b>	<b>Compromise Bill 6/08</b>
<b>Role of FISA Court in Approving Surveillance</b>	FISA Court limited to after-the-fact review of surveillance ordered by the AG and DNI.	FISA Court limited to after-the-fact review of surveillance ordered by the AG and DNI. Targeting procedures must be submitted to FISA Court 5 days <u>after</u> surveillance begins.	FISA Court must approve surveillance <u>prior</u> to the start of collection. Court must approve targeting and minimization procedures before surveillance can begin.	FISA Court must approve surveillance <u>prior</u> to the start of collection. Court must approve targeting and minimization procedures before surveillance can begin.
<b>Emergency Surveillance</b>	Permitted whenever “immediate action by the Government is required.” No requirement of notification to Congress or the courts.	Permitted whenever the AG and DNI determine that “immediate action by the Government is required.” Allows surveillance for up to 12 days before notifying the FISA Court.	Permitted if the AG and DNI determine that “that an emergency situation exists [and] immediate action by the Government is required”. Allows surveillance for up to 7 days before the FISA Court must be notified.	Permitted if the AG and DNI determine that exigent circumstances exist because, “without immediate implementation of an authorization, intelligence important to the national security of the United States may be lost or not timely acquired.”. Allows surveillance for up to 7 days before the FISA Court must be notified.
<b>Exclusivity</b>	None.	Contained simple restatement of provision in 1978 FISA.	Significantly tightens FISA’s exclusivity provision, explicitly requiring and requires that any future statute expressly authorize surveillance if the government is going to rely on it to conduct domestic surveillance.	Significantly tightens FISA’s exclusivity provision, explicitly requiring and requires that any future statute expressly authorize surveillance if the government is going to rely on it to conduct domestic surveillance.
<b>Sunshine on Directives/Requests</b>	None.	None.	Requests for cooperation with surveillance under 18 U.S.C. 2511 must identify the statutory basis of legality of request.	Requests for cooperation with surveillance under 18 U.S.C. 2511 must identify the statutory basis of legality of request.
<b>“Reverse Targeting” Guidelines</b>	None.	General prohibition against reverse targeting without any guidelines.	Requires submission to Congress and the FISA Court of reverse targeting guidelines that determine whether the “significant purpose” of the surveillance is to acquire communications of a specific U.S. person.	Establishes a general prohibition against reverse targeting, <u>and</u> a requirement that guidelines be promulgated to carry out prohibition. Guidelines must be submitted to Congress and the FISA Court.
<b>Sunset</b>	N/a (already expired).	6 years (December 2013).	2 years (December 2009).	4 years (December 2012).

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<b>Definition of Electronic Surveillance</b>	Redefined Electronic Surveillance to carve out targeting of persons outside the United States.	Redefines Electronic Surveillance to carve out targeting of persons outside the United States.	Maintains FISA definitions of Electronic Surveillance	Maintains FISA definitions of Electronic Surveillance
<b>Reports to Congress</b>	Limited to descriptions of non-compliance with procedures, and the number of certifications and directives issued during the reporting period.	Semiannual assessment of targeting and minimization procedures, provided only to intelligence committees and FISC.  Each intelligence agency to do Annual Review including accounting of US persons identified, disseminated, targets later found to be in US, and procedures to assess acquisition of US person communications. Review to be used to evaluate adequacy of minimization procedures. Provided to Intelligence Committees, AG, DNI, & FISC	Semiannual assessment of targeting and minimization procedures, <u>and</u> compliance with reverse targeting guidelines. Reports to <u>both</u> intelligence and judiciary committees as well as to the FISA Court.  Requires each intelligence agency to do an Annual Review including accounting of how U.S.-person information identified, disseminated, targets later found to be in US, and procedures to assess acquisition of US person communications. Provided to Intelligence <i>and</i> Judiciary Committees, AG, DNI, and FISC.	Semiannual assessment of targeting and minimization procedures, <u>and</u> compliance with reverse targeting guidelines. Reports to <u>both</u> intelligence and judiciary committees as well as to the FISA Court.  Requires each intelligence agency to do an Annual Review including accounting of how U.S.-person information identified, disseminated, targets later found to be in US, and procedures to assess acquisition of US person communications. Provided to Intelligence <i>and</i> Judiciary Committees, AG, DNI, and FISC.
<b>Ongoing Inspector General Assessment</b>	None.	IGs to review compliance with targeting and minimization procedures; dissemination or US person identities; and acquisitions of targets who turned out to be in USA.  IG review to be provided to AG, DNI, and Intel Committees	IGs to review compliance with targeting and minimization procedures; compliance with reverse targeting guidelines; dissemination of US person identities; and acquisitions of targets who turned out to be in USA.  IG review to be provided to AG, DNI, and Intel and Judiciary Committees	IGs to review compliance with targeting and minimization procedures; compliance with reverse targeting guidelines; dissemination of US person identities; and acquisitions of targets who turned out to be in USA.  IG review to be provided to AG, DNI, and Intel and Judiciary Committees
<b>Compliance Reviews by FISA Court</b>	None	Language from Senator Whitehouse declaring that nothing shall prohibit the FISA Court from exercising its inherent power to assess compliance.	Language from Senator Whitehouse declaring that nothing shall prohibit the FISA Court from exercising its inherent power to assess compliance.	Language from Senator Whitehouse declaring that nothing shall prohibit the FISA Court from exercising its inherent power to assess compliance.
<b>Individual FISA Order for Overseas Americans Abroad</b>	No statutory proscription of warrantless surveillance of US persons located outside the United States	Requires an individual probable cause determination by the FISA Court for surveillance of U.S. persons located outside the United States.	Requires an individual probable cause determination by the FISA Court for surveillance of U.S. persons located outside the United States.	Requires an individual probable cause determination by the FISA Court for surveillance of U.S. persons located outside the United States.

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<b>Provision for WMD Proliferation</b>	None	Includes WMD proliferators in FISA's definition of "agent of a foreign power". Dramatically expands the definition of WMD, to include conventional explosives as small as 4 ounces.	Includes WMD proliferators in FISA's definition of "agent of a foreign power", but limits the definition to common understanding of WMD (nuclear, biological, radiological weapons, or explosives capable of causing a "mass casualty incident").	Includes WMD proliferators in FISA's definition of "agent of a foreign power", but limits the definition to common understanding of WMD (nuclear, biological, radiological weapons, or explosives capable of causing a "mass casualty incident").

**Title II: Telecom Liability Litigation Procedures**

	<b>Senate Bill 2/08</b>	<b>House Bill 3/08</b>	<b>Compromise Bill</b>
<b>Immunity</b>	Full immunity for any telecom company where the AG certifies that assistance was requested	Court to assess immunities and defenses.	Cases dismissed against telecom companies where AG certifies that assistance was pursuant to FISC order, a request under 18 USC 2511, a request in which the government certified legality of the request, or that the company did not do what was alleged.
<b>Court Review</b>	Limits the court to reviewing such certifications only for abuse of discretion.	Court review not limited to certification.	Court reviews certifications for whether there is substantial evidence supporting them.
<b>Court Access to Underlying Materials</b>	Did not provide mechanism for Court to review the actual directives and requests given to carriers.	Government permitted to intervene. AG may submit any information in any appropriate form and Court considers such submissions. Any party may submit to the court evidence, briefs, arguments, or other information on any matter with respect to which a privilege based on state secrets is asserted, and Court to review in keeping with procedures of FISA 106(f).	Guarantees that Court can review underlying directives and requests, and additional supplemental material
<b>Plaintiff's Participation</b>	Did not provide mechanisms for plaintiffs' participation in determination.	Provides plaintiffs' access to court process while guaranteeing reasonable protections to ensure classified information not disclosed	Provides plaintiffs' access to court process while guaranteeing reasonable protections to ensure classified information not disclosed
<b>Prospective Liability Protection</b>	Provides prospective liability protection for telecom companies that assist with lawful surveillance activities.	Provides prospective liability protection for telecom companies that assist with lawful surveillance activities. Also, ensures that companies complying with the PAA have liability protection for lawful surveillance that occurred after expiration of PAA.	Provides prospective liability protection for telecom companies that assist with lawful surveillance activities. Also, ensures that companies complying with the PAA have liability protection for lawful surveillance that occurred after expiration of PAA.

**Title III - Review of TSP**

<b>Investigation of Bush Warrantless Spying</b>	No provision for any fact-finding or review.	Creates Commission on Warrantless Electronic Surveillance Activities akin to 9/11 Commission to review President's program.	Provides for Senate-confirmed Inspectors General to conduct an investigation of the President's extra-legal warrantless wiretapping program and to release their findings to the public and to Congress.
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