

106TH CONGRESS
2D SESSION

S. 3205

To enhance the capability of the United States to deter, prevent, thwart, and respond to international acts of terrorism against United States nationals and interests.

IN THE SENATE OF THE UNITED STATES

OCTOBER 12 (legislative day, SEPTEMBER 22), 2000

Mr. KYL (for himself and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To enhance the capability of the United States to deter, prevent, thwart, and respond to international acts of terrorism against United States nationals and interests.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Counterterrorism Act
5 of 2000”.

6 **SEC. 2. SENSE OF CONGRESS ON THE ATTACK ON THE**
7 **U.S.S. COLE.**

8 (a) FINDINGS.—Congress makes the following find-
9 ings:

1 (1) On October 12, 2000, the United States
2 naval vessel U.S.S. Cole was attacked in Aden,
3 Yemen.

4 (2) The attack occurred while the U.S.S. Cole
5 was refueling, and was unprovoked.

6 (3) At least 5 United States sailors were killed
7 in the attack, and at least 36 were injured.

8 (b) SENSE OF CONGRESS.—It is the sense of Con-
9 gress that the United States Government should—

10 (1) take immediate actions to investigate rap-
11 idly the unprovoked attack on the United States
12 naval vessel U.S.S. Cole;

13 (2) ensure that the perpetrators of this cow-
14 ardly act are swiftly brought to justice; and

15 (3) take appropriate actions to protect from ter-
16 rorist attack all other members and units of the
17 United States Armed Forces that are deployed over-
18 seas.

19 **SEC. 3. FINDINGS.**

20 Congress makes the following findings:

21 (1) The Commission on National Security in
22 the 21st Century, chaired by former Senators Hart
23 and Rudman, concluded that “[s]tates, terrorists,
24 and other disaffected groups will acquire weapons of
25 mass destruction and mass disruption, and some will

1 use them. Americans will likely die on American soil,
2 possibly in large number.”.

3 (2) United States counterterrorism efforts must
4 be improved to meet the evolving threat of inter-
5 national terrorism against United States nationals
6 and interests. The bipartisan National Commission
7 of Terrorism chaired by Ambassador Paul Bremer
8 and Maurice Sonnenberg was mandated by Congress
9 to evaluate current United States policy and make
10 recommendations on improvements. This Act stems
11 from the findings and recommendations of that
12 Commission.

13 (3) The face of terrorism has changed signifi-
14 cantly over the last 25 years. With the fall of the
15 Soviet Union, many state-sponsored terrorist groups
16 have been replaced by more loosely knit organiza-
17 tions with varying motives. These transnational ter-
18 rorist networks are more difficult to track and pene-
19 trate than state sponsored terrorist groups, and
20 their actions are more difficult to predict.

21 (4) State support of terrorism has not dis-
22 appeared. Despite political change in Iran, the coun-
23 try continues to be the foremost state sponsor of ter-
24 rorism in the world. In April 2000, the Department
25 of State issued “Patterns of Global Terrorism”,

1 which provides a detailed account of Iran's contin-
2 ued support of terrorism.

3 (5) According to the report of the National
4 Commission on Terrorism, there are indications of
5 Iranian involvement in the 1996 bombing of the
6 Khobar Towers complex in Saudi Arabia, in which
7 19 United States soldiers were killed and more than
8 500 injured. In October 1999, President Clinton of-
9 ficially requested cooperation from Iran in the inves-
10 tigation of the bombing. Thus far, Iran has not re-
11 sponded to this request.

12 (6) Terrorist attacks are becoming more lethal.
13 A growing number of terrorist attacks are designed
14 to kill the maximum number of people. Although
15 conventional explosives have remained the weapon of
16 choice, terrorist groups are investing in the acquisi-
17 tion of unconventional weapons such as nuclear,
18 chemical, and biological agents.

19 (7) Syria was placed on the first list of state-
20 sponsors of terrorism by the United States Govern-
21 ment in 1979, due to its long history of using ter-
22 rorism to advance its interests. Syria continues to
23 support terrorist training and logistics.

24 (8) Under section 40A of the Arms Export
25 Control Act (22 U.S.C. 2781), enacted by Congress

1 in 1996, the President is authorized to designate as
2 “not cooperating fully” states whose behavior is ob-
3 jectionable but not so egregious as to warrant des-
4 ignation as a state sponsor of terrorism. That provi-
5 sion has not been used effectively. To date, only Af-
6 ghanistan has been so designated under that provi-
7 sion, which designation arises from the legal dif-
8 ficulty of putting Afghanistan on the list of state
9 sponsors of terrorism without appearing to recognize
10 the Taliban as the legitimate government of Afghan-
11 istan.

12 (9) According to the National Commission on
13 Terrorism, the 1995 guidelines of the Central Intel-
14 ligence Agency on the use of terrorists as informants
15 set up complex procedures for seeking approval to
16 recruit as informants terrorists who have been in-
17 volved in human rights violations. That Commission
18 found that these guidelines have inhibited the re-
19 cruitment of essential, if sometimes unsavory, ter-
20 rorist informants. As a result, that Commission con-
21 cluded that the United States has relied too heavily
22 on foreign intelligence services in attempting to un-
23 cover information about terrorist organizations.

24 (10) No other country, much less any sub-
25 national organization, can match United States sci-

1 entific and technological prowess (including quality
2 control) in biotechnology and pharmaceutical pro-
3 duction, electronics, computer science, and other
4 pursuits that could help overcome and defeat the
5 technologies used by future terrorists.

6 (11) Currently, the United States focuses its ef-
7 forts to discourage private financial support to ter-
8 rorists on prosecutions under the provisions of the
9 Antiterrorism and Effective Death Penalty Act of
10 1996 (Public Law 104–132) and the amendments
11 made by that Act. Under an amendment made by
12 that Act, section 219 of the Immigration and Na-
13 tionality Act (8 U.S.C. 1189) requires the Secretary
14 of State to designate groups that threaten United
15 States interests and security as Foreign Terrorist
16 Organizations (FTOs). There are 28 organizations
17 on the most recent list of FTOs, issued in October
18 of 1999 by the Secretary of State. Current practice
19 is to update the list of FTOs every two years, al-
20 though terrorist groups, and the threats they pose,
21 may emerge more frequently.

22 (12) It is in the interest of the United States
23 that the Federal Government take a broader ap-
24 proach to cutting off the flow of financial support
25 for terrorism from within the United States. Anyone

1 providing to terrorist organizations funds that he or
2 she knows will be used to support terrorist acts
3 should be prosecuted under all relevant statutes, in-
4 cluding statutes addressing money laundering, con-
5 spiracy, and tax or fraud violations. In addition,
6 Federal agencies such as the Office of Foreign As-
7 sets Control (OFAC) of the Internal Revenue Serv-
8 ice and the Customs Service should be better utilized
9 to thwart terrorist fundraising. Such activities
10 should not violate constitutional rights and values.

11 (13) Current controls on the transfer and pos-
12 session of biological pathogens that could be used in
13 biological weapons are inadequate. Such controls
14 were designed to prevent accidents, not theft. Con-
15 trols on the equipment needed to turn such patho-
16 gens into weapons are virtually nonexistent. The Na-
17 tional Commission on Terrorism concluded that the
18 standards for the storage, transport, and handling of
19 biological pathogens should be as rigorous as the
20 current standards for the physical protection and se-
21 curity of critical nuclear materials.

22 **SEC. 4. SYRIA.**

23 It is the sense of Congress that the United States
24 should keep Syria on the list of countries who sponsor ter-
25 rorism until Syria—

1 (1) shuts down training camps and other ter-
2 rorist support facilities in Syrian-controlled territory;
3 and

4 (2) prohibits financial or other support of ter-
5 rorists through Syrian-controlled territory.

6 **SEC. 5. IRAN.**

7 It is the sense of Congress that the United States
8 should keep Iran on the list of countries who sponsor ter-
9 rorism, and make no concessions to Iran, until Iran—

10 (1) demonstrates that it has stopped supporting
11 terrorism; and

12 (2) cooperates fully with the United States in
13 the investigation into the 1996 bombing of the
14 Khobar Towers complex in Saudi Arabia.

15 **SEC. 6. GUIDELINES ON RECRUITMENT OF TERRORIST IN-**
16 **FORMANTS.**

17 (a) REPORT ON GUIDELINES.—Not later than six
18 months after the date of the enactment of this Act, the
19 Director of Central Intelligence shall submit to Congress,
20 including the Committees on the Judiciary of the Senate
21 and the House of Representatives, a report on the Direc-
22 tor's response to the findings of the National Commission
23 on Terrorism regarding the recruitment of terrorist in-
24 formants.

1 (b) REPORT ELEMENTS.—The report under sub-
2 section (a) shall set forth the following:

3 (1) A detailed response to the findings referred
4 to in that subsection, and a detailed description of
5 any other policy considerations that prompted the
6 1995 guidelines of the Central Intelligence Agency
7 on the use of terrorists as informants.

8 (2) Recommendations, if any, for legislation to
9 enhance the recruitment of terrorist informants, in-
10 cluding any limitations that may be necessary to as-
11 sure that the United States does not encourage
12 human rights abuse abroad.

13 **SEC. 7. REVIEW OF AUTHORITY OF FEDERAL AGENCIES TO**
14 **ADDRESS CATASTROPHIC TERRORIST AT-**
15 **TACKS.**

16 (a) REVIEW REQUIRED.—The Attorney General shall
17 conduct a review of the legal authority of various Federal
18 agencies, including the Department of Defense, to respond
19 to, and to prevent, pre-empt, detect, and interdict, cata-
20 strophic terrorist attacks.

21 (b) REPORT.—Not later than one year after the date
22 of the enactment of this Act, the Attorney General shall
23 submit to the appropriate committees of Congress a report
24 on the review conducted under subsection (a). The report
25 shall include any recommendations that the Attorney Gen-

1 eral considers appropriate, including recommendations
2 whether additional legal authority for particular Federal
3 agencies is advisable in order to enhance the capability
4 of the Federal Government to respond to, and to prevent,
5 pre-empt, detect, and interdict, catastrophic terrorist at-
6 tacks.

7 (c) DEFINITIONS.—In this section:

8 (1) APPROPRIATE COMMITTEES OF CON-
9 GRESS.—The term “appropriate committees of Con-
10 gress” means the following:

11 (A) The Committees on Appropriations
12 and the Judiciary and the Select Committee on
13 Intelligence of the Senate.

14 (B) The Committees on Appropriations
15 and the Judiciary of the House of Representa-
16 tives.

17 (2) CATASTROPHIC TERRORIST ATTACK.—The
18 term “catastrophic terrorist attack” means a ter-
19 rorist attack against the United States perpetrated
20 by a state, substate, or nonstate actor that involves
21 mass casualties or the use of a weapon of mass de-
22 struction.

1 **SEC. 8. LONG-TERM RESEARCH AND DEVELOPMENT TO AD-**
2 **DRESS CATASTROPHIC TERRORIST ATTACKS.**

3 (a) SENSE OF CONGRESS.—It is the sense of Con-
4 gress that—

5 (1) there has not been sufficient emphasis on
6 long-term research and development on technologies
7 useful in fighting terrorism; and

8 (2) the United States should make better use of
9 its considerable accomplishments in science and
10 technology to prevent or address terrorist attacks in
11 the future, particularly attacks involving chemical,
12 biological, or nuclear agents.

13 (b) ESTABLISHMENT OF PROGRAM.—Not later than
14 one year after the date of the enactment of this Act, the
15 President shall establish a comprehensive program (in-
16 cluding a comprehensive set of requirements for the pro-
17 gram) of long-term research and development relating to
18 science and technology necessary to prevent, pre-empt, de-
19 tect, interdict, and respond to catastrophic terrorist at-
20 tacks.

21 (c) REPORT ON PROPOSED PROGRAM.—Not later
22 than 30 days before the commencement of the program
23 required by subsection (b), the President shall submit to
24 Congress a report on the program. The report on the pro-
25 gram shall include the following:

1 the elements of the intelligence community information
2 collected and assembled by the Bureau on international
3 terrorism and other national security matters.

4 (b) REPORT ELEMENTS.—The report under sub-
5 section (a) shall include the following:

6 (1) A description of the requirements applicable
7 to the creation of the function referred to in that
8 subsection, including the funding required for the
9 function.

10 (2) A discussion of the legal and policy issues,
11 including any reasonable restrictions on the sharing
12 of information and the potential effects on open
13 criminal investigations, associated with dissemi-
14 nating to the elements of the intelligence community
15 law enforcement information relating to inter-
16 national terrorism and other national security mat-
17 ters.

18 **SEC. 10. DISCLOSURE BY LAW ENFORCEMENT AGENCIES**
19 **OF CERTAIN INTELLIGENCE OBTAINED BY**
20 **INTERCEPTION OF COMMUNICATIONS.**

21 (a) REPORT ON AUTHORITIES RELATING TO SHAR-
22 ING OF CRIMINAL WIRETAP INFORMATION.—Not later
23 than 180 days after the date of the enactment of this Act,
24 the President shall submit to Congress a report on the
25 legal authorities that govern the sharing of criminal wire-

1 tap information under relevant United States laws, includ-
2 ing section 104 of the National Security Act of 1947 (50
3 U.S.C. 403–4). The report shall include—

4 (1) a description of the type of information that
5 can be shared by the Department of Justice or other
6 United States law enforcement agencies with ele-
7 ments of the United States intelligence community,
8 including a description of all such information that
9 the Department of Justice or other such law en-
10 forcement agencies currently share with elements of
11 the United States intelligence community and the
12 legal limitations if any, that apply to the use of such
13 information by elements of the intelligence commu-
14 nity; and

15 (2) recommendations, if any, for such legislative
16 language as the President considers appropriate to
17 improve the capability of the Department of Justice,
18 or other law enforcement agencies, to share foreign
19 intelligence information or counterintelligence infor-
20 mation with elements of the United States intel-
21 ligence community on matters such as
22 counterterrorism.

23 (b) DEFINITIONS.—As used in this section, the terms
24 “foreign intelligence” and “counterintelligence” have the
25 meanings given those terms in paragraphs (2) and (3),

1 respectively, of section 3 of the National Security Act of
2 1947 (50 U.S.C. 401a).

3 **SEC. 11. JOINT TASK FORCE ON TERRORIST FUNDRAISING.**

4 (a) SENSE OF CONGRESS.—It is the sense of the Con-
5 gress that—

6 (1) many terrorist groups secretly solicit and
7 exploit the resources of international nongovern-
8 mental organizations, companies, and wealthy indi-
9 viduals;

10 (2) the Federal Government could do more to
11 utilize all the tools available to the Federal Govern-
12 ment to prevent, deter, and disrupt the fundraising
13 activities of international terrorist organizations; and

14 (3) the employment of any such tools to combat
15 terrorism must not violate speech, association, and
16 equal protection rights guaranteed by the Constitu-
17 tion of the United States.

18 (b) ESTABLISHMENT OF JOINT TASK FORCE.—Not
19 later than six months after the date of the enactment of
20 this Act, the President shall establish a joint task force
21 for purposes of developing and implementing a broad ap-
22 proach toward discouraging the fundraising activities of
23 international terrorist organizations. The approach shall
24 utilize all criminal, civil, and administrative sanctions
25 available under Federal law, including sanctions for money

1 laundering, tax and fraud violations, and conspiracy. The
2 approach shall not infringe upon constitutional and civil
3 rights in the United States.

4 (c) REPORT.—Not later than one year after the date
5 of the enactment of this Act, the joint task force estab-
6 lished under subsection (b) shall submit to Congress a re-
7 port on the activities of the joint task force. The report
8 shall include any findings and recommendations (including
9 recommendations for modifications of United States law
10 or policy) that the joint task force considers appropriate
11 regarding United States efforts to thwart the fundraising
12 activities of international terrorist organizations while pro-
13 tecting constitutional and civil rights in the United States.

14 **SEC. 12. IMPROVEMENT OF CONTROLS ON PATHOGENS**
15 **AND EQUIPMENT FOR PRODUCTION OF BIO-**
16 **LOGICAL WEAPONS.**

17 (a) REPORT ON IMPROVEMENT OF CONTROLS.—(1)
18 Not later than one year after the date of the enactment
19 of this Act, the Attorney General shall submit to Congress
20 a report on the means of improving United States controls
21 of biological pathogens and the equipment necessary to de-
22 velop, produce, or deliver biological weapons.

23 (2) Subject to paragraph (3), the report under para-
24 graph (1) should include the following:

1 (A) A list of the equipment identified by the At-
2 torney General, in consultation with the Secretary of
3 Defense, the Director of Central Intelligence, other
4 appropriate Federal officials, and other appropriate
5 members of public and private organizations, as crit-
6 ical to the development, production, or delivery of bi-
7 ological weapons.

8 (B) Recommendations, if any, for such legisla-
9 tive language as the Attorney General considers ap-
10 propriate to make illegal the possession of the bio-
11 logical pathogens by anyone who is not properly cer-
12 tified for the possession of such pathogens, or for
13 other than a legitimate purpose.

14 (C) Recommendations, if any, for such legisla-
15 tive language as the Attorney General considers ap-
16 propriate to control the domestic sale and transfer
17 of the equipment identified under subparagraph (A),
18 including any appropriate steps to track, tag, or oth-
19 erwise mark or monitor such equipment.

20 (3) The recommendations of the Attorney General
21 under paragraph (2) shall take into consideration the im-
22 pact of additional controls on legitimate industrial or med-
23 ical activities, and shall include an assessment of the eco-
24 nomic and scientific effects of such controls on such activi-
25 ties.

1 (b) IMPROVED SECURITY OF FACILITIES.—Not later
2 than one year after the date of the enactment of this Act,
3 the Secretary of Health and Human Services, in consulta-
4 tion with other appropriate Federal officials and appro-
5 priate members of public and private organizations, shall
6 submit to Congress a report with detailed analysis and
7 recommendations for appropriate regulations, or modifica-
8 tions to current law, to enhance the standards for the
9 physical protection and security of the biological patho-
10 gens described in subsection (a) at research laboratories
11 and other facilities in the United States that create, pos-
12 sess, handle, store, or transport such pathogens in order
13 to protect against the theft or other diversion for illegit-
14 imate purposes of such pathogens from such laboratories
15 and facilities.

16 **SEC. 13. REIMBURSEMENT OF PERSONNEL PERFORMING**
17 **COUNTERTERRORISM DUTIES FOR PROFES-**
18 **SIONAL LIABILITY INSURANCE.**

19 (a) REQUIREMENT FOR FULL REIMBURSEMENT.—
20 (1) Notwithstanding any other provision of law and sub-
21 ject to paragraph (2), the head of an agency employing
22 a qualified employee shall reimburse the qualified em-
23 ployee for the costs incurred by the qualified employee for
24 professional liability insurance.

1 (2) Reimbursement of a qualified employee under
2 paragraph (1) shall be contingent on the submission by
3 the qualified employee to the head of the agency concerned
4 of such information or documentation as the head of the
5 agency concerned shall require.

6 (3) Amounts for reimbursements under paragraph
7 (1) shall be derived from amounts available to the agency
8 concerned for salaries and expenses.

9 (b) QUALIFIED EMPLOYEE.—For purposes of this
10 section, the term “qualified employee” means an employee
11 of an agency whose position is that of—

12 (1) a law enforcement officer performing official
13 counterterrorism duties; or

14 (2) an official of an element of the intelligence
15 community performing official counterterrorism du-
16 ties outside the United States.

17 (c) DEFINITIONS.—In this section:

18 (1) AGENCY.—The term “agency” means any
19 Executive agency, as that term is defined in section
20 105 of title 5, United States Code, and includes any
21 agency of the Legislative Branch of Government.

22 (2) ELEMENT OF THE INTELLIGENCE COMMU-
23 NITY.—The term “element of the intelligence com-
24 munity” means any element of the intelligence com-
25 munity specified or designated under section 3(4) of

1 the National Security Act of 1947 (50 U.S.C.
2 401a(4)).

3 (3) LAW ENFORCEMENT OFFICER; PROFES-
4 SIONAL LIABILITY INSURANCE.—The terms “law en-
5 forcement officer” and “professional liability insur-
6 ance” have the meanings given those terms in sec-
7 tion 636(e) of the Treasury, Postal Service, and
8 General Government Appropriations Act, 1997 (5
9 U.S.C. prec. 5941 note).

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