

Intelligence Reform and Terrorism Prevention Act of 2004

The Intelligence Reform and Terrorism Prevention Act of 2004 has now become law, having been passed by the House of Representatives on December 7, by the Senate on December 8 and signed by the President on December 17. The Act implements core recommendations of the 9/11 Commission.

Highlights of the bill:

Establishes the position of Director of National Intelligence with budget and personnel authority necessary to coordinate all national intelligence efforts.

Establishes a National Counterterrorism Center (NCTC) to coordinate and unify all elements of counterterrorism intelligence operations planning.

Establishes an independent Privacy and Civil Liberties Board that will be granted access to all government agencies to review policies and practices, and be led by a Chair and Vice Chair confirmed by the Senate.

Calls for the establishment of a trusted Information Sharing Environment to facilitate sharing of terrorism-related information among government agencies.

Mandates improvements to transportation and border security, including enhanced cargo inspections, aviation security measures, and the hiring of additional border patrol agents.

Adds immigration and customs investigators, but does not contain any immigration “poison pills” such as expedited removals, increasing the burden of proof on asylum-seekers, or limiting due process for aliens.

Requires federal agencies to establish minimum standards for drivers licenses and ID necessary to board domestic commercial aircraft and gain access to federal facilities, but does not contain controversial changes to laws governing identification cards – such as creating a national ID, banning the acceptance of Matricula Consular ID cards, or altering the ability of states to decide for themselves whether to provide drivers licenses to undocumented immigrants.

Creates new crimes and criminal penalties intended to combat terrorism but does not contain any new death penalty provisions.

Key provisions - Titles I-III: Intelligence Provisions

Reform of the Intelligence Community

Creates a Director of National Intelligence

- Principal advisor to the President on Intelligence
- Responsible for directing, overseeing, managing the Intelligence Community
- Separate from the Director of Central Intelligence (DCI)
- Wields strong budget and personnel authorities, as envisioned by the 9-11 Commission
- Flexibility and authority to respond to emerging national security threats
- Authorized to create national intelligence centers

Creates a National Counterterrorism Center

- Director appointed by the President, confirmed by the Senate
- Missions and stature as envisioned by 9-11 Commission

Creates an independent Privacy and Civil Liberties Board that would, among other

things advise on the development of the privacy guidelines applicable to the information sharing environment as established in section 1016 and oversee information sharing practice.

- Private citizens, appointed by the President
- Chair and Vice Chair confirmed by the Senate
- Advises the President and the executive branch
- Provides to Congress at least annually reports that are unclassified to the greatest extent possible
- Access to information throughout the executive branch
- Attorney General may intervene when private parties fail to produce documents or witnesses
- Conducts oversight of executive branch policies to ensure privacy and civil liberties are protected

Mandates an information sharing environment for counter terrorism

- Linking intelligence, law enforcement, and homeland security information
- Linking Federal, state, local, and tribal entities and private sector
- Establishes planning deadlines and reporting requirements
- Builds in privacy and civil liberties protections
- Creates a National Counter Proliferation Center

Restructures the FBI's intelligence capability - creates an Intelligence Directorate, requires cadre dedicated to intelligence discipline; requires intelligence personnel at field offices.

Communications Interception

- Patriot Act authorities have been reinforced by changes in the Intelligence Reform and Terrorist Prevention Act (IRTPA).
- The first significant change is the Section 6001 "lone wolf" provisions. IRTPA allows FISA surveillance authorities to be used against suspected foreign terrorists who have no known affiliation with a foreign organization. The "Lone Wolf" provision expires at the end of 2005, when some of the surveillance powers in the USA PATRIOT Act also expire unless renewed.
- IRTPA gives of the new Director of National Intelligence the authority to "manage" the FISA collection program. IRTPA defines management as the allocation of resources, identification of targets. Proposals for new FISA communications intercepts against U.S. citizens still require the approval of the Attorney General and the approval of the National Security Advisor for collection against foreign powers before they can be sent to the FISA court for consideration. The reason for this change, according to Congressional staffers involved in the drafting of the legislation, is to improve the use of communications intercepts against transnational threats.

TITLE IV-VIII: Non-Intelligence Provisions

Transportation Security

Requires DHS to develop national strategy for transportation security

Requires DHS to develop guidance for biometric identification technology for airport access

Mandates testing of new advanced airline passenger prescreening system

Mandates DHS to develop, test, improve, and deploy advanced detection equipment at airports

Improves training for federal air marshals

Upgrades baggage screening procedures and baggage screening area security

Upgrades security features of pilot licenses

Requires DHS to establish standards for aviation security staffing

Requires expedited research, development and deployment of explosive detection systems

Develops strategy to counter Man-Portable weapons (stinger-type missiles)

Studies development of blast-resistant cargo and baggage containers

Authorizes funding to upgrade air cargo security

Strengthens watch-list procedures for passengers aboard vessels

Border Security

Tests advanced technology – including sensors, video, and unmanned aerial vehicles to secure northern border

Requires DHS to devise plan for systemic surveillance of the southwest border by remotely piloted aircraft

Increases the number of full-time border patrol agents by 2,000 per year for 5 years

Increases the number of full-time Immigration and Customs Enforcement

Investigators by 800 per year for 5 years

Increases the number of detention beds available to DHS for immigration detention and removal by 8,000 a year for 5 years

Strengthens visa application requirements

Criminalizes alien smuggling

Makes receipt of military-type training from designated terrorist organizations a deportable offense

Mandates GAO study on potential weaknesses in U.S. asylum system

Makes inadmissible and deportable any alien who commits acts of torture, extrajudicial killing, or atrocities abroad; establishes DOJ Office of Special Investigations

Terrorism Prevention

Provides FISA authority for “lone-wolf” terrorists, with a sunset provision

Mandates additional reporting to Congress on use of FISA authority

Authorizes funding for FINCEN and programs to combat money laundering and financial crimes

Enhances tracing of certain cross-border financial transactions

Provides new authorities to fight terrorism financing

Facilitates criminal background checks of private security officers

Allows sharing of Grand Jury information to government officials to prevent or respond to terrorism

Expands prohibitions against providing “material support” to terrorists and establishes new definitions, with a sunset provision

Criminalizes terrorist hoaxes and establishes penalty levels

Expands prohibitions involving possession or trafficking of WMD

Establishes mandatory minimum sentences for possession or trafficking in missile systems

designed to destroy aircraft and other destructive weapons

Establishes rebuttable presumption that person accused of terrorism crimes should be subject to pre-trial detention

Implementation of Additional 9/11 Commission Recommendations

Strengthens U.S. foreign policy to deny terrorist safe-havens and disrupt terrorist plots

- Increases identification and reporting on terrorist sanctuaries
- Maintains Pakistan funding, calls for assistance to promote democracy, combat extremists, and halt the spread of WMD.
- Requires plan for long-term development and security in Afghanistan and calls for increased investment in rule of law and education
- Fights the continued growth of Islamic terrorism
- Expands exchanges in the Islamic world
- Improves public education in the Middle East through International Youth Opportunity Fund
- Promotes economic development through the Middle East Partnership Initiative
- Strengthens Terrorist Travel Provisions
- Establishes counterterrorist travel intelligence strategy
- Establishes Human Smuggling and Trafficking Center
- Authorizes funding for immigration security initiative
- Requires DHS to speed implementation of biometric entry and exit data system
- Establishes minimum federal standards for birth certificates and drivers' licenses
- Enhances security of social security cards
- Establishes visa and passport security program in State Department
- Requires DHS to establish minimum ID standards to board commercial aircraft, and requires DHS to provide recommendations for ID standards to gain access to other federal facilities

Miscellaneous

- Establishes programs to enhance public safety communications interoperability
- Establishes Office of Counternarcotics Enforcement
- Requires study and development of strategy to use broadcast spectrum for public safety
- purposes
- Improves ability of Presidential Transition officials to obtain clearances