

117TH CONGRESS
2D SESSION

S. _____

To amend title 18, United States Code, to require that notice of criminal surveillance orders be eventually provided to targets, to reform the use of non-disclosure orders to providers, to prohibit indefinite sealing of criminal surveillance orders, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. WYDEN (for himself, Mr. DAINES, Mr. LEE, and Mr. BOOKER) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend title 18, United States Code, to require that notice of criminal surveillance orders be eventually provided to targets, to reform the use of non-disclosure orders to providers, to prohibit indefinite sealing of criminal surveillance orders, and for other purposes.

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 “Government Surveil-
5 lance Transparency Act of 2022”.

1 **SEC. 2. CRIMINAL SURVEILLANCE ORDERS.**

2 (a) IN GENERAL.—Part II of title 18, United States
3 Code, is amended by inserting after chapter 206 the fol-
4 lowing:

5 **“CHAPTER 206A—CRIMINAL**
6 **SURVEILLANCE ORDERS**

“Sec.

“3131. Definitions.

“3132. Criminal surveillance orders.

“3133. Request for unsealing or challenging redactions.

7 **“§ 3131. Definitions**

8 “In this chapter:

9 “(1) APPLICATION.—The term ‘application’—

10 “(A) means an application for a criminal
11 surveillance order; and

12 “(B) includes all supporting affidavits and
13 exhibits.

14 “(2) PEN REGISTER; TRAP AND TRACE DE-
15 VICE.—The terms ‘pen register’, and ‘trap and trace
16 device’ have the meanings given the terms in section
17 3127.

18 “(3) CRIMINAL SURVEILLANCE ORDER.—The
19 term ‘criminal surveillance order’ means—

20 “(A) an order authorizing or approving the
21 interception of a wire communication, oral com-
22 munication, or electronic communication under
23 chapter 119 or under an equivalent State law;

1 “(B) an order authorizing or approving the
2 installation and use of a pen register or a trap
3 and trace device under chapter 206 or under an
4 equivalent State law;

5 “(C) an order for the installation of a mo-
6 bile tracking device under section 3117;

7 “(D) an order for disclosure under chapter
8 121;

9 “(E) an order for a delay of notification or
10 nondisclosure under section 2705;

11 “(F) a search or seizure warrant issued
12 using the procedures described in the Federal
13 Rules of Criminal Procedure or in the case of
14 a State or Tribal court, issued using State or
15 Tribal warrant procedures;

16 “(G) in the case of a court-martial or other
17 proceeding under chapter 47 of title 10 (Uni-
18 form Code of Military Justice), a warrant or
19 order issued under section 846 of that title;

20 “(H) a warrant under section 3103a;

21 “(I) an order under section 1651 of title
22 28;

23 “(J) an order for third party assistance
24 under section 2518(4) or section 3124; or

1 “(K) an order to enforce the assistance ca-
2 pability and capacity requirements under sec-
3 tion 2522.

4 “(4) ELECTRONIC COMMUNICATION; ORAL COM-
5 MUNICATION; WIRE COMMUNICATION.—The terms
6 ‘electronic communication’, ‘oral communication’,
7 and ‘wire communication’ have the meanings given
8 the terms in section 2510.

9 “(5) INDIAN TRIBE.—the term ‘Indian Tribe’
10 has the meaning given such term in section 102 of
11 the Federally Recognized Indian Tribe List Act of
12 1994 (25 U.S.C. 5130); and

13 “(6) INVENTORY.—The term ‘inventory’ means
14 the inventory and other materials—

15 “(A) returned to a Federal, State, or Trib-
16 al court or a court-martial or other proceeding
17 under chapter 47 of title 10 (Uniform Code of
18 Military Justice) in connection with the execu-
19 tion of a criminal surveillance order (including
20 under paragraph (1)(D) or (2)(B) of rule 41(f)
21 of the Federal Rules of Criminal Procedure,
22 under comparable State warrant procedures, or
23 under procedures applicable to a court-martial
24 or other proceeding under chapter 47 of title
25 10); or

1 “(B) provided to persons and other parties
2 described in section 2518(8)(d).

3 “(7) STATE.—The term ‘State’ means each of
4 the several States of the United States, the District
5 of Columbia, the Commonwealth of Puerto Rico,
6 American Samoa, the Commonwealth of the North-
7 ern Mariana Islands, Guam, and the United States
8 Virgin Islands.

9 “(8) SUBSTANTIALLY PREVAILS.—The term
10 ‘substantially prevails’ has the meaning given the
11 term in section 552(a)(4)(E) of title 5.

12 **“§ 3132. Criminal surveillance orders**

13 “(a) LIMITATION ON SEALING.—

14 “(1) IN GENERAL.—Except as provided in para-
15 graph (2), a court may not seal a criminal surveil-
16 lance order, application, or inventory for a period
17 that extends after the later of—

18 “(A) date the order is executed; or

19 “(B) the date on which the authorized sur-
20 veillance ends.

21 “(2) EXCEPTIONS.—

22 “(A) IN GENERAL.—An applicant for a
23 criminal surveillance order may file a written
24 request for the court to seal the criminal sur-
25 veillance order, the application, or the inventory

1 for a period not to exceed 180 days after the
2 later of the date the order is executed or the
3 date on which the authorized surveillance ends,
4 which request the court shall grant if the appli-
5 cant certifies that there is reason to believe that
6 failure to seal will have an adverse result de-
7 scribed in subparagraph (B).

8 “(B) ADVERSE RESULT.—

9 “(i) IN GENERAL.—An adverse result
10 described in this subparagraph is—

11 “(I) endangering the life or phys-
12 ical safety of an individual;

13 “(II) flight from prosecution;

14 “(III) destruction of or tam-
15 pering with evidence;

16 “(IV) intimidation of potential
17 witnesses; or

18 “(V) otherwise seriously jeopard-
19 izing the investigation to which the
20 criminal surveillance order relates or
21 unduly delaying a trial resulting from
22 the investigation.

23 “(ii) OTHER REQUIREMENTS.—

24 “(I) IN GENERAL.—When certi-
25 fying an adverse result, the applicant

1 shall certify that there is reason to be-
2 lieve that the person whose informa-
3 tion is targeted by the order does not
4 know—

5 “(aa) about the investiga-
6 tion; and

7 “(bb) that they are a target
8 or person of interest in the inves-
9 tigation.

10 “(II) FAILURE TO CERTIFY.—If
11 the applicant does not satisfy the re-
12 quirements of subclause (I)—

13 “(aa) the applicant must fol-
14 low the higher standard of judi-
15 cial review required by subpara-
16 graph (C)(ii); and

17 “(bb) the failure to satisfy
18 such requirements shall be dis-
19 closed in both the criminal sur-
20 veillance order and any pre-
21 clusion of notice order issued for
22 that criminal surveillance order.

23 “(iii) REVIEW BY COURT.—The court
24 may, in its discretion, require the govern-
25 ment to provide the factual basis for the

1 certification described in clause (i) and
2 may review that factual basis for suffi-
3 ciency.

4 “(iv) NOTIFICATION.—

5 “(I) IN GENERAL.—For any
6 criminal surveillance order, applica-
7 tion, or inventory that is sealed at the
8 Government’s request, the Govern-
9 ment shall promptly notify the court if
10 the Government no longer has reason
11 to believe that removal of a seal will
12 have an adverse result described in
13 this subparagraph.

14 “(II) UNSEALING.—After being
15 notified by the Government under
16 subclause (I), the court shall unseal
17 the criminal surveillance order, appli-
18 cation, or inventory.

19 “(C) EXTENSIONS.—

20 “(i) IN GENERAL.—The court may
21 grant a single extension of a sealing order
22 for up to 180 days, upon the applicant’s
23 motion, based on a renewed certification
24 that failure to extend the sealing period

1 will have an adverse result described in
2 subparagraph (B).

3 “(ii) HEIGHTENED JUDICIAL REVIEW
4 OF SUBSEQUENT EXTENSIONS.—

5 “(I) IN GENERAL.—For any ex-
6 tension after an extension under
7 clause (i), the court may grant an ex-
8 tension of a sealing order for up to
9 180 days, upon the applicant’s mo-
10 tion, if the applicant—

11 “(aa) demonstrates—

12 “(AA) a particularized
13 showing that failure to ex-
14 tend the sealing period will
15 have an adverse result de-
16 scribed in subparagraph (B);
17 and

18 “(BB) a particularized
19 showing that the adverse re-
20 sult would not be avoided by
21 redaction of specified words,
22 phrases, or passages in the
23 criminal surveillance order,
24 application, or inventory;
25 and

1 “(bb) details—

2 “(AA) the nature of the
3 investigation;

4 “(BB) the suspected
5 crimes;

6 “(CC) the name of the
7 target; and

8 “(DD) specific facts
9 that substantiate the need
10 for the extension.

11 “(II) REDACTED DOCUMENTS.—

12 “(aa) IN GENERAL.—If the
13 court determines that an appli-
14 cant has met the requirements of
15 subitem (AA) of subclause
16 (I)(aa), but not the requirements
17 of subitem (BB) of subclause
18 (I)(aa), the court shall order the
19 applicant to submit proposed
20 redactions to each sealed docu-
21 ment.

22 “(bb) DISPOSITION.—After
23 considering the proposed
24 redactions of the applicant, if
25 any, the court may order the ap-

1 “(ii) HEIGHTENED STANDARD.—If an
2 order under this paragraph or a preclusion
3 of notice order for a subpoena or emer-
4 gency request is issued earlier than 1 year
5 before the date on which a challenge under
6 clause (i) is made, the requirements of
7 subparagraph (C)(ii) shall apply to a war-
8 rant or order sealed in accordance with
9 chapter 206A or the subpoena or emer-
10 gency request.

11 “(iii) COSTS.—If a person substan-
12 tially prevails in a challenge under this
13 subparagraph, the court shall order the ap-
14 plicant for the criminal surveillance order
15 at issue to pay the litigation costs of the
16 person (including reasonable attorney’s
17 fees).

18 “(b) DOCKETING AND PUBLICATION OF CRIMINAL
19 SURVEILLANCE ORDERS, APPLICATIONS, INVENTORIES,
20 AND ASSOCIATED DOCKET RECORDS.—

21 “(1) DOCKET RECORDS.—Except as provided in
22 paragraph (2), regardless of whether a court seals a
23 criminal surveillance order or application under this
24 section, the public docket record for any criminal
25 surveillance case shall—

1 “(A) be made available as an open Govern-
2 ment data asset and under an open license, as
3 such terms are defined in section 3502 of title
4 44, and in a manner that facilitates
5 downloading docket records in bulk, in accord-
6 ance with rules promulgated by the Judicial
7 Conference of the United States, after consulta-
8 tion with the National Institute of Standards
9 and Technology, the Administrator of General
10 Services, the Electronic Public Access Public
11 User Group, private entities offering electronic
12 case management software, the National Center
13 for State Courts, and the National American
14 Indian Court Judges Association, on the
15 website of the court; and

16 “(B) include, at a minimum—

17 “(i) the date and time the application
18 was filed, the order was entered, and the
19 warrant was returned to the court, where
20 applicable.

21 “(ii) the type of order, including—

22 “(I) the statutory authority
23 under which the order was issued; and

24 “(II) the type of crime under in-
25 vestigation;

1 “(III) the investigating agency;

2 “(IV) the duration of the re-
3 quested surveillance if any;

4 “(V) whether sealing and de-
5 ferred notice were requested, if so for
6 how long;

7 “(VI) whether an order for third
8 party assistance was requested; and

9 “(VII) disposition by the court,
10 whether granted, modified, or denied;

11 “(iii) an index describing any subse-
12 quent filings or orders related to the case;

13 “(iv) the unique case number in ac-
14 cordance with paragraph (3); and

15 “(v) the date on which the seal will
16 expire (unless extended pursuant to sub-
17 section (a)(2)(C)).

18 “(2) SHOWING OF ADVERSE RESULT.—If an
19 applicant in a sealed case demonstrates that public
20 disclosure of any docket item listed in paragraph
21 (1)(B)(ii) will have an adverse result described in
22 subsection (a)(2)(B), the court may direct the clerk
23 to withhold that item from the public docket record
24 until the sealing order expires.

25 “(3) CASE NUMBER AND CAPTION.—

1 “(A) IN GENERAL.—A court shall assign
2 for each application—

3 “(i) a unique case number for every
4 identified target, including for each unique
5 street address, parcel, person, phone num-
6 ber, device, or account targeted; and

7 “(ii) a case caption providing only ge-
8 neric information about the type of order
9 sought and the target of the order.

10 “(B) REQUIREMENTS.—A court shall as-
11 sign a case number and case caption under sub-
12 paragraph (A) in accordance with rules promul-
13 gated by the Judicial Conference of the United
14 States, in consultation with the Electronic Pub-
15 lic Access Public User Group, or in the case of
16 a State court, in accordance with rules promul-
17 gated by the highest court of the State, and in
18 the case of a Tribal court, in accordance with
19 rules promulgated by the highest court of the
20 Indian Tribe.

21 “(4) COMPLIANCE WITH THE REHABILITATION
22 ACT OF 1973.—Each criminal surveillance order, ap-
23 plication, inventory, and public docket record for any
24 criminal surveillance case required under this sub-
25 section shall be published in a form that complies

1 with section 508 of the Rehabilitation Act of 1973
2 (29 U.S.C. 794d).

3 “(5) NONDISCLOSURE ORDERS.—When apply-
4 ing for an order for nondisclosure under section
5 2705, to prevent the disclosure of a subpoena—

6 “(A) the applicant for the order shall in-
7 clude a copy of the subpoena; and

8 “(B) the court shall docket the subpoena
9 as part of the application for the order.

10 “(6) AUTOMATIC UNSEALING AND NOTIFICA-
11 TION.—The court shall employ a technical mecha-
12 nism to automatically—

13 “(A) unseal criminal surveillance orders
14 not later than the end of the next business day
15 after the seal expires; and

16 “(B) provide notice, 10 business days be-
17 fore scheduled unsealing, to the law enforce-
18 ment agency that filed the application for the
19 criminal surveillance order.

20 “(c) FILING.—An application and the inventory shall
21 be filed electronically.

22 **“§ 3133. Request for unsealing or challenging**
23 **redactions**

24 “(a) IN GENERAL.—Any person may submit a re-
25 quest to a court to—

1 “(1) unseal an application for a criminal sur-
2 veillance order, a criminal surveillance order, or an
3 inventory; or

4 “(2) challenge a redaction under section
5 3132(a)(2)(C)(ii)(II).

6 “(b) FORM.—A request described in subsection (a)
7 may be submitted as part of—

8 “(1) the particular criminal surveillance matter,
9 including as a motion to unseal; or

10 “(2) as a stand-alone, separate case.

11 “(c) MULTIPLE APPLICATIONS AND ORDERS UN-
12 SEALED.—A request described in subsection (a) may in-
13 clude more than 1 application for a criminal surveillance
14 order, criminal surveillance order, or an inventory.”.

15 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

16 (1) IN GENERAL.—Title 18, United States
17 Code, is amended—

18 (A) in section 2518(8)—

19 (i) by striking paragraph (b); and

20 (ii) by redesignating paragraphs (c)

21 and (d) as subparagraphs (b) and (c), re-
22 spectively;

23 (B) in section 3123, by striking subsection

24 (d); and

25 (C) in section 3103a(b)(1)—

1 (i) by striking “2705” and inserting
2 “3132”); and

3 (ii) by striking “trial)” and inserting
4 “trial”.

5 (2) E-GOVERNMENT ACT OF 2002.—

6 (A) IN GENERAL.—Section 205 of the E-
7 Government Act of 2002 (44 U.S.C. 3501 note)
8 is amended—

9 (i) in subsection (a), by adding at the
10 end the following:

11 “(8) Access to the substance of all applications
12 for criminal surveillance orders, criminal surveillance
13 orders, and inventories in a text searchable format
14 in accordance with chapter 206A of title 18, United
15 States Code.”; and

16 (ii) in subsection (c)—

17 (I) by striking paragraph (2) and
18 inserting the following:

19 “(2) EXCEPTIONS.—

20 “(A) IN GENERAL.—Documents that are
21 filed that are not otherwise available to the
22 public, such as documents filed under seal, shall
23 not be made available online.

24 “(B) CRIMINAL SURVEILLANCE ORDERS.—
25 Subparagraph (A) shall not apply to applica-

1 tions for criminal surveillance orders, criminal
 2 surveillance orders, and inventories that are
 3 publicly available in accordance with chapter
 4 206A of title 18, United States Code.”; and

5 (II) in paragraph (3), by adding
 6 at the end the following:

7 “(D) The Supreme Court shall update the
 8 rules prescribed under subparagraph (A) to ad-
 9 dress personal information included in criminal
 10 surveillance orders, applications, and inventories
 11 that are made available to the public.”.

12 (3) TABLE OF CHAPTERS.—The table of chap-
 13 ters for part II of title 18, United States Code, is
 14 amended by inserting after the item relating to
 15 chapter 206 the following:

“206A . Criminal surveillance orders 3121”.

16 (c) EFFECTIVE DATE.—

17 (1) IN GENERAL.—Except as provided in para-
 18 graphs (2) and (3), the amendments made by this
 19 section shall take effect on the date that is 2 years
 20 after the date of enactment of this Act.

21 (2) DELAYED APPLICABILITY FOR CERTAIN
 22 STATE AND TRIBAL COURTS.—

23 (A) IN GENERAL.—Subsections (b)(1)(A)
 24 and (c) of section 3132 of title 18, United
 25 States Code, as added by subsection (a) of this

1 section, shall apply on and after the date that
2 is 4 years after the date of enactment of this
3 Act—

4 (i) to a State or Tribal court that, on
5 the date of enactment of this Act, does not
6 offer electronic docketing or public online
7 access to dockets; or

8 (ii) any State or Tribal court that cer-
9 tifies that the court needs more time to
10 comply with the requirements of those sub-
11 sections.

12 (3) AUTHORITY TO DELAY ELECTRONIC FIL-
13 ING.—

14 (A) CERTIFICATION.—

15 (i) FEDERAL COURTS.—The applica-
16 tion of subsection (c) of section 3132 of
17 title 18, United States Code, as added by
18 subsection (a) of this section, to Federal
19 courts under paragraph (1) of this sub-
20 section shall be delayed for 1 year if the
21 Director of the Administrative Office of
22 the United States Courts certifies that the
23 system used by Federal courts for elec-
24 tronic filing is not sufficiently secure.

1 (ii) STATE AND TRIBAL COURTS.—

2 The application of subsection (c) of section
3 3132 of title 18, United States Code, as
4 added by subsection (a) of this section, to
5 a State or Tribal court under paragraph
6 (1) or (2) of this subsection, as applicable,
7 shall be delayed for 1 year if the chief
8 judge of the highest court of the State or
9 Tribe certifies that the system used by the
10 State or Tribal court for electronic filing is
11 not sufficiently secure.

12 (B) CONTENTS.—A certification under
13 subparagraph (A) shall include an estimate of
14 the date by which the electronic filing system of
15 the applicable court will be sufficiently secure.

16 (C) RENEWAL OF DELAY.—The delay of
17 the application of subsection (c) of section 3132
18 of title 18, United States Code, as added by
19 subsection (a) of this section, to Federal courts
20 or to a State or Tribal court may be delayed for
21 1 or more additional 1-year periods if the Di-
22 rector of the Administrative Office of the
23 United States Courts or the chief judge of the
24 highest court of the State or Tribe, respectively,

1 submits an additional certification in accord-
2 ance with subparagraphs (A) and (B).

3 (D) PUBLICATION.—Any certification
4 under this paragraph shall be—

5 (i) made available on the website of
6 the court system with respect to which the
7 certification is submitted; and

8 (ii) submitted to the Committee on
9 the Judiciary of the Senate and the Com-
10 mittee on the Judiciary of the House of
11 Representatives.

12 (d) APPLICABILITY.—

13 (1) DEFINITIONS.—In this subsection, the
14 terms “application”, “criminal surveillance order”,
15 and “inventory” have the meanings given such terms
16 in section 3131 of title 18, United States Code, as
17 added by subsection (a).

18 (2) APPLICATION.—The amendments made by
19 this section shall apply to—

20 (A) any application filed or inventory re-
21 turned on or after the date described in sub-
22 section (d); and

23 (B) any criminal surveillance order entered
24 on or after the date described in subsection (d).

1 (3) RULE OF CONSTRUCTION REGARDING
2 UNSEALING.—Nothing in the amendments made by
3 this section shall be construed to prohibit a court
4 from unsealing—

5 (A) a criminal surveillance order entered or
6 inventory returned before the date described in
7 subsection (d); or

8 (B) an application for a criminal surveil-
9 lance order made before the date described in
10 subsection (d).

11 (4) RULE OF CONSTRUCTION REGARDING IN-
12 TERPRETATION.—The amendments made by this
13 section shall be liberally construed in favor of public
14 access to documents, to the extent possible.

15 **SEC. 3. NOTICE TO COURTS OF UNLAWFUL SURVEILLANCE.**

16 (a) REQUIRED DISCLOSURE OF CUSTOMER COMMU-
17 NICATIONS OR RECORDS.—Section 2703(d) of title 18,
18 United States Code, is amended—

19 (1) by striking “A court order” and inserting
20 the following:

21 “(1) IN GENERAL.—A court order”; and

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

23 “(2) REQUIRED INVENTORY.—A court order for
24 disclosure issued under subsection (b) or (c) shall re-
25 quire an inventory described in rule 41(f)(1)(B) of

1 the Federal Rules of Criminal Procedure, or any
2 successor thereto, be promptly returned to the court
3 if the provider disclosed to the government any data
4 not authorized by the court.”.

5 (b) ISSUANCE OF AN ORDER FOR A PEN REGISTER
6 OR A TRAP AND TRACE DEVICE.—Section 3123(b) of title
7 18, United States Code, is amended—

8 (1) in paragraph (1)(D), by striking “and” at
9 the end;

10 (2) in paragraph (2), by striking the period at
11 the end and inserting “; and”; and

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

13 “(3) shall require an inventory described in rule
14 41(f)(1)(B) of the Federal Rules of Criminal Proce-
15 dure, or any successor thereto, be promptly returned
16 to the court if—

17 “(A) the provider disclosed to the govern-
18 ment any electronic data not authorized by the
19 court; or

20 “(B) the government obtained dialing,
21 routing, addressing, or signaling information
22 that was not authorized by the court or in a
23 manner that exceeded the authorization granted
24 by the court.”.

1 (c) RULE 41.—Rule 41(f)(1)(B) of the Federal Rules
2 of Criminal Procedure is amended by inserting after the
3 period at the end the following:

4 “If an inventory is required pursuant to this rule, or
5 if an inventory is required by section 2703(d)(2) of
6 title 18, United States Code, or section 3123(b)(3)
7 of that title, the inventory shall—

8 (i) disclose whether the provider dis-
9 closed to the government any electronic
10 data not authorized by the court and, if so,
11 provide detailed information regarding the
12 disclosure; and

13 (ii) disclose whether the government
14 searched persons or property, including ac-
15 counts or electronic devices, or obtained di-
16 aling, routing, addressing, or signaling in-
17 formation not authorized by the court or in
18 a manner that exceeded the authorization
19 granted by the court and, if so, provide de-
20 tailed information regarding the search.”.

21 **SEC. 4. NOTICE TO SUBJECTS OF LAW ENFORCEMENT SUR-**
22 **VEILLANCE.**

23 (a) IN GENERAL.—Section 2703 of title 18, United
24 States Code, is amended—

25 (1) in subsection (a), in the first sentence—

1 (A) by inserting “and in accordance with
2 the requirements for executing and returning a
3 warrant” after “the procedures”;

4 (B) by inserting “and execution and re-
5 turn” after “State warrant”; and

6 (C) by inserting “and in accordance with
7 the requirements for executing and returning
8 such a warrant” after “that title”;

9 (2) in subsection (b)—

10 (A) in paragraph (1)

11 (i) in subparagraph (A)—

12 (I) by striking “without required
13 notice to the subscriber or customer,”;

14 (II) by inserting “and in accord-
15 ance with the requirements for exe-
16 cuting and returning a warrant” after
17 “the procedures”;

18 (III) by inserting “and execution
19 and return” after “State warrant”;
20 and

21 (IV) by inserting “and in accord-
22 ance with the requirements for exe-
23 cuting and returning such a warrant”
24 after “that title”; and

25 (ii) in subparagraph (B)—

1 (I) in clause (ii), by striking the
2 semicolon at the end and inserting a
3 period; and

4 (II) in the matter following
5 clause (ii), by striking “except that
6 delayed notice may be given pursuant
7 to section 2705 of this title.”; and

8 (B) by adding at the end the following:

9 “(3) Notice may not be delayed pursuant to section
10 2705 for a disclosure under paragraph (1)(B)(i).”;

11 (3) in subsection (c)—

12 (A) in paragraph (1)(A)—

13 (i) by inserting “and in accordance
14 with the requirements for executing and
15 returning a warrant” after “the proce-
16 dures”;

17 (ii) by inserting “and execution and
18 return” after “State warrant”; and

19 (iii) by inserting “and in accordance
20 with the requirements for executing and
21 returning such a warrant” after “that
22 title”; and

23 (B) by striking paragraph (3);

24 (4) in subsection (d), as amended by section
25 3(a) of this Act, by adding at the end the following:

1 “(3) REQUIREMENTS.—Orders under this sub-
2 section shall be issued in accordance with the re-
3 quirements for executing and returning a warrant
4 under the Federal Rules of Criminal Procedure.”;
5 and

6 (5) by adding at the end the following:

7 “(i) SERVICE.—

8 “(1) IN GENERAL.—A governmental entity re-
9 ceiving records or information under subsection (a),
10 (b), or (c) of this section or seeking an order under
11 section 3123 shall provide notice prior to conducting
12 the court-authorized surveillance to the subscriber or
13 customer or the person described in subsection
14 (b)(1)(A) of that section, as applicable, unless notice
15 is delayed in accordance with section 2705. If prior
16 notice is infeasible due to inadequate contact infor-
17 mation, the governmental entity shall provide the re-
18 quired notice within 7 days after receipt of adequate
19 contact information from the provider.

20 “(2) OTHER REQUIREMENTS.—For purposes of
21 serving a copy of a warrant or order described in
22 this section and a receipt for the warrant or order—

23 “(A) the person or persons whose wire or
24 electronic communications are obtained under
25 the warrant or order shall be the person or per-

1 sons whose property was searched or who pos-
2 sessed the information that was seized or cop-
3 ied; and

4 “(B) service of the copy of the warrant or
5 order and the receipt may only be delayed in
6 accordance with section 2705.”.

7 (b) WRITS.—Section 1651 of title 28, United States
8 Code, is amended by adding at the end the following:

9 “(c) In seeking an order to a third party under this
10 section, the Federal Government shall comply with any re-
11 quirement for notice applicable to warrants issued under
12 the Federal Rules of Criminal Procedure.”.

13 (c) VOLUNTARY DISCLOSURE OF CUSTOMER COMMU-
14 NICATIONS OR RECORDS.—Section 2702 of title 18,
15 United States Code, is amended by adding at the end the
16 following:

17 “(e) NOTICE.—If a governmental entity requests and
18 receives a voluntary disclosure from a provider described
19 in subsection (a)—

20 “(1) the contents of communications pursuant
21 to subsection (b)(8); or

22 “(2) a record or other information pertaining to
23 a subscriber to or customer of such service pursuant
24 to subsection (c)(4);

1 the governmental entity shall within 7 days provide notice
2 to the subscriber or customer, unless notice is delayed in
3 accordance with section 2705.”.

4 **SEC. 5. DELAY AND PRECLUSION OF REQUIRED NOTICE.**

5 (a) IN GENERAL.—Section 2705 of title 18, United
6 States Code, is amended to read as follows:

7 **“§ 2705. Delay and preclusion of notice**

8 “(a) DELAY OF REQUIRED NOTICE TO CUSTOMER OR
9 SUBSCRIBER.—

10 “(1) IN GENERAL.—A governmental entity act-
11 ing under section 2702, 2703, or section 3123 may
12 apply to a court for an order delaying the required
13 notice to the person whose wire or electronic commu-
14 nications or records or information are obtained.

15 “(2) WARRANTS AND ORDERS.—The court may
16 enter an order described in paragraph (1) with re-
17 spect to a warrant or order only if the warrant or
18 order is sealed in accordance with chapter 206A,
19 and only for the period during which the sealing
20 order is in effect.

21 “(3) SUBPOENAS AND EMERGENCY RE-
22 QUESTS.—

23 “(A) IN GENERAL.—The court shall enter
24 an order described in paragraph (1) with re-
25 spect to a subpoena or emergency request for a

1 period not to exceed 180 days after the return
2 date of the subpoena or the emergency request
3 if the governmental entity certifies that there is
4 reason to believe that failure to issue the order
5 will have an adverse result described in section
6 3132(a)(2)(B).

7 “(B) EXTENSIONS.—

8 “(i) IN GENERAL.—The court shall
9 grant a single extension of an order de-
10 scribed in paragraph (1) with respect to a
11 subpoena or emergency request for a pe-
12 riod not to exceed 180 days upon the gov-
13 ernmental entity’s motion, based on a re-
14 newed certification that failure to extend
15 the order will have an adverse result de-
16 scribed in section 3132(a)(2)(B).

17 “(ii) SUBSEQUENT EXTENSIONS.—

18 “(I) IN GENERAL.—For any ex-
19 tension after an extension under
20 clause (i), the court may grant an ex-
21 tension of an order described in para-
22 graph (1) with respect to a subpoena
23 or emergency request for up to 180
24 days, upon the governmental entity’s
25 motion, if the governmental entity

1 demonstrates a particularized showing
2 described in subitems (AA) and (BB)
3 of section 3132(a)(2)(C)(I)(aa) and
4 details the information described in
5 item (bb) of section 3132(a)(2)(C)(I).

6 “(II) REDACTED DOCUMENTS.—
7 The court shall consider and order
8 redactions under this clause in accord-
9 ance with the procedures under sec-
10 tion 3132(a)(2)(C)(II).

11 “(C) REVIEW BY COURT.—The court may,
12 in its discretion, require the governmental enti-
13 ty to provide the factual basis for the certifi-
14 cation described in subparagraph (A) and may
15 review that factual basis for sufficiency.

16 “(D) NOTIFICATION.—

17 “(i) IN GENERAL.—A governmental
18 entity shall promptly notify the court once
19 the governmental entity no longer has rea-
20 son to believe that the order is necessary
21 to prevent an adverse result described in
22 section 3132(a)(2)(B).

23 “(ii) REVOCATION.—After being noti-
24 fied by the governmental entity under
25 clause (i), the court shall revoke the order.

1 “(b) PRECLUSION OF NOTICE TO SUBJECT OF GOV-
2 ERNMENTAL ACCESS.—

3 “(1) AUTHORITY.—

4 “(A) IN GENERAL.—Except as provided in
5 paragraph (2) a governmental entity acting
6 under section 2703 or section 3123 may apply
7 to a court for—

8 “(i) an order commanding a provider
9 of electronic communications service or re-
10 mote computing service to whom a crimi-
11 nal surveillance order, as defined in section
12 3131, or subpoena is directed, not to notify
13 any other person of the existence of the
14 criminal surveillance order or subpoena; or

15 “(ii) an order commanding a person
16 owning or leasing the line or other facility
17 to which the pen register or a trap and
18 trace device is attached or applied, or who
19 is obligated by the order to provide assist-
20 ance to the applicant, not to notify any
21 other person of the existence of a pen reg-
22 ister or trap and trace device, as such
23 terms are defined in section 3127.

24 “(B) CRIMINAL SURVEILLANCE ORDERS.—

25 The court may enter an order described in sub-

1 paragraph (A) with respect to a criminal sur-
2 veillance order only if the criminal surveillance
3 order is sealed in accordance with chapter
4 206A, and only for the period during which the
5 sealing order is in effect.

6 “(C) SUBPOENAS.—

7 “(i) IN GENERAL.—The court shall
8 enter an order described in subparagraph
9 (A) with respect to a subpoena for a period
10 not to exceed 180 days after the return
11 date of the subpoena if the governmental
12 entity certifies that there is reason to be-
13 lieve that failure to issue the order will
14 have an adverse result described in section
15 3132(a)(2)(B).

16 “(ii) EXTENSIONS.—

17 “(I) IN GENERAL.—The court
18 shall grant a single extension of an
19 order described in subparagraph (A)
20 with respect to a subpoena for a pe-
21 riod not to exceed 180 days upon the
22 governmental entity’s motion, based
23 on a renewed certification that failure
24 to extend the order will have an ad-

1 verse result described in section
2 3132(a)(2)(B).

3 “(II) SUBSEQUENT EXTEN-
4 SIONS.—

5 “(aa) IN GENERAL.—For
6 any extension after an extension
7 under subclause (I), the court
8 may grant an extension of an
9 order described in subparagraph
10 (A) with respect to a subpoena
11 for up to 180 days, upon the gov-
12 ernmental entity’s motion, if the
13 governmental entity demonstrates
14 a particularized showing de-
15 scribed in subitems (AA) and
16 (BB) of section
17 3132(a)(2)(C)(I)(aa) and details
18 the information described in item
19 (bb) of section 3132(a)(2)(C)(I).

20 “(bb) REDACTED DOCU-
21 MENTS.—The court shall con-
22 sider and order redactions under
23 this subclause in accordance with
24 the procedures under section
25 3132(a)(2)(C)(II).

1 “(iii) REVIEW BY COURT.—The court
2 may, in its discretion, require the govern-
3 mental entity to provide the factual basis
4 for the certification described in clause (i)
5 and may review that factual basis for suffi-
6 ciency.

7 “(iv) NOTIFICATION.—

8 “(I) IN GENERAL.—A govern-
9 mental entity shall promptly notify
10 the court once the governmental enti-
11 ty no longer has reason to believe that
12 the order is necessary to prevent an
13 adverse result described in section
14 3132(a)(2)(B).

15 “(II) REVOCATION.—After being
16 notified by the governmental entity,
17 the court shall revoke the order.

18 “(D) LIMITATIONS.—Preclusion of notice
19 orders that may be issued only under subpara-
20 graph (A)(i) to criminal surveillance orders or
21 subpoenas that are listed in the preclusion of
22 notice order.

23 “(2) EXCEPTIONS.—Paragraph (1) shall not
24 apply to—

1 “(A) any person to whom disclosure is nec-
2 essary in order to comply with the request;

3 “(B) an attorney in order to obtain legal
4 advice or assistance regarding the request; or

5 “(C) any other person as permitted by the
6 court.

7 “(3) RULE OF CONSTRUCTION.—Nothing in
8 this subsection may be construed to prohibit a re-
9 cipient of an order under this subsection from chal-
10 lenging the order on grounds that the order violates
11 the Constitution of the United States or, in the case
12 of an order issued by a State or Tribal court, the
13 State or Tribal constitution.

14 “(c) REPORTS CONCERNING PRECLUSION OF NOTICE
15 ORDERS.—

16 “(1) IN GENERAL.—In January of each year,
17 any judge who has issued an order (or an extension
18 thereof) under subsection (b) that expired during the
19 preceding year, or who has denied approval of a re-
20 quest for a preclusion of notice order, shall report to
21 the Administrative Office of the United States
22 Courts—

23 “(A) the fact that an order or extension
24 was applied for;

1 “(B) the fact that the order or extension
2 was granted as applied for, was modified, or
3 was denied;

4 “(C) the period of the preclusion of notice
5 required by the order, and the number and du-
6 ration of any extensions of the order;

7 “(D) the nature of the offense or criminal
8 investigation that was the basis for the under-
9 lying criminal surveillance order;

10 “(E) the name of each provider of elec-
11 tronic communication service or remote com-
12 puting service served with the order, if so
13 granted; and

14 “(F) the investigative or law enforcement
15 agency that submitted the application.

16 “(2) PUBLIC REPORT.—In June of each year,
17 the Director of the Administrative Office of the
18 United States Courts shall publish on the website of
19 the Administrative Office of the United States
20 Courts and include in the report required under sec-
21 tion 2519(3)—

22 “(A) a full and complete report con-
23 cerning—

24 “(i) the number of applications for or-
25 ders authorizing or approving the pre-

1 clusion of notice pursuant to this section;

2 and

3 “(ii) the number of orders and exten-

4 sions granted or denied pursuant to this

5 section during the preceding calendar year;

6 and

7 “(B) a detailed summary and analysis of

8 each category of data required to be reported

9 under paragraph (1).

10 “(3) FORMAT.—Not later than 180 days after

11 the date of enactment of this section, the Director

12 of the Administrative Office of the United States

13 Courts shall, in consultation with the National Insti-

14 tute of Standards and Technology and the Adminis-

15 trator of General Services, private entities offering

16 electronic case management software, the National

17 Center for State Courts, and the National American

18 Indian Court Judges Association, publish a machine

19 readable form that shall be used for any report re-

20 quired under paragraph (1).

21 “(4) REGULATIONS.—The Director of the Ad-

22 ministrative Office of the United States Courts may

23 promulgate regulations with respect to the content

24 and form of the reports required under paragraph

25 (1).

1 “(d) DURATION.—Any order issued under subsection
2 (a) or (b) before the effective date of chapter 206A shall
3 be for a period of not longer than 180 days.”.

4 (b) ADDITIONAL GROUNDS FOR ISSUING WAR-
5 RANT.—Section 3103a of title 18, United States Code, is
6 amended—

7 (1) in subsection (b)(3), by inserting “, not to
8 exceed 180 days,” after “certain”;

9 (2) in subsection (c), by inserting “, not to ex-
10 ceed 180 days” before the period at the end; and

11 (3) in subsection (d)(1)—

12 (A) in subparagraph (C), by striking
13 “and” at the end;

14 (B) in subparagraph (D), by striking the
15 period at the end and inserting “; and”; and

16 (C) by adding at the end the following:

17 “(E) the identification of the statute or
18 rule of law authorizing the search and seizure
19 of property or material.”.

20 (c) TECHNICAL AND CONFORMING AMENDMENT.—

21 The table of sections for chapter 121 of title 18, United
22 States Code, is amended by striking the item relating to
23 section 2705 and inserting the following:

“2705. Delay and preclusion of notice.”.

1 **SEC. 6. INCENTIVES FOR STATE AND TRIBAL COURTS TO**
2 **IMPLEMENT REQUIREMENTS.**

3 (a) AMENDMENTS.—

4 (1) STORED COMMUNICATIONS.—Chapter 121
5 of title 18, United States Code, is amended—

6 (A) in section 2703, as amended by section
7 4(a) of this Act, by inserting after “return pro-
8 cedures” each place the term appears the fol-
9 lowing: “and containing a certification that the
10 court is acting in compliance with chapter
11 206A”; and

12 (B) in section 2711(3)(B), by inserting
13 “that is acting in compliance with chapter
14 206A” after “search warrants”.

15 (2) WIRETAPPING.—Section 2516(2) of title
16 18, United States Code, is amended by striking
17 “The principal prosecuting attorney of any State”
18 and inserting “If a State requires that courts in the
19 state comply with chapter 206A, the principal pros-
20 ecuting attorney of that State”.

21 (3) PEN REGISTERS AND TRAP AND TRACE DE-
22 VICES.—Section 3122(a)(2) of title 18, United
23 States Code, is amended by inserting “and if the
24 State requires that courts in the state comply with
25 chapter 206A,” after “law,”.

1 (4) FULL FAITH AND CREDIT.—The third un-
2 designated paragraph of section 1738 of title 28,
3 United States Code, is amended by inserting “, pro-
4 vided that any criminal surveillance order, as defined
5 in section 3131 of title 18, shall be entitled to full
6 faith and credit only if the order contains a certifi-
7 cation that the court that issued the order is acting
8 in compliance with the requirements of chapter
9 206A of title 18” before the period at the end.

10 (b) EFFECTIVE DATE.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the amendments made by subsection (a)
13 shall take effect on the date that is 2 years after the
14 date of enactment of this Act.

15 (2) DELAYED APPLICABILITY FOR CERTAIN
16 STATE AND TRIBAL COURTS.—The amendments
17 made by subsection (a) shall apply on and after the
18 date that is 4 years after the date of enactment of
19 this Act—

20 (A) to a State or Tribal court that, on the
21 date of enactment of this Act, does not offer
22 electronic docketing or public online access to
23 dockets; or

1 (B) to any State or Tribal court that cer-
2 tifies that the court needs more time to comply
3 with the requirements of the subsection.

4 **SEC. 7. MODERNIZING CRIMINAL SURVEILLANCE REPORTS.**

5 (a) REPORTS CONCERNING ACCESS TO CUSTOMER
6 COMMUNICATIONS OR RECORDS.—

7 (1) IN GENERAL.—Section 2703 title 18,
8 United States Code, as amended by section 4(5) of
9 this Act, is amended by adding at the end the fol-
10 lowing:

11 “(j) REPORTS CONCERNING ACCESS TO CUSTOMER
12 COMMUNICATIONS OR RECORDS.—

13 “(1) IN GENERAL.—In January of each year,
14 any judge who has issued an order under this sec-
15 tion or a warrant to obtain records described in this
16 section, or who has denied approval of an application
17 under this section during the preceding year, shall
18 report to the Administrative Office of the United
19 States Courts—

20 “(A) the fact that the order or warrant
21 was applied for;

22 “(B) the type of records sought in the
23 order or warrant;

24 “(C) whether the order or warrant was—

25 “(i) granted as applied for;

1 “(ii) granted as modified; or

2 “(iii) denied;

3 “(D) the subsection of this section under
4 which the application for the order or warrant
5 was filed;

6 “(E) the nature of the offense or criminal
7 investigation that was the basis for the applica-
8 tion for the order or warrant;

9 “(F) the name of each provider of elec-
10 tronic communication service or remote com-
11 puting service served with the order or warrant,
12 if so granted; and

13 “(G) the investigative or law enforcement
14 agency that submitted the application.

15 “(2) PUBLIC REPORT.—In June of each year,
16 the Director of the Administrative Office of the
17 United States Courts shall publish on the website of
18 the Administrative Office of the United States
19 Courts and include in the report required under sec-
20 tion 2519(3)—

21 “(A) a full and complete report concerning
22 the number of applications for orders or war-
23 rants requiring the disclosure of, during the
24 preceding calendar year—

1 “(i) the contents of wire or electronic
2 communications in electronic storage under
3 subsection (a);

4 “(ii) the contents of wire or electronic
5 communications in a remote computer
6 service under subsection (b); and

7 “(iii) records concerning electronic
8 communication service or remote computer
9 service under subsection (c);

10 “(B) the number of orders and warrants
11 granted or denied under this section during the
12 preceding calendar year; and

13 “(C) a detailed summary and analysis of
14 each category of data required to be filed with
15 the Administrative Office of the United States
16 Courts under paragraph (1).

17 “(3) **FORMAT.**—Not later than 180 days after
18 the date of enactment of the Government Surveil-
19 lance Transparency Act of 2022, the Director of the
20 Administrative Office of the United States Courts
21 shall, in consultation with the National Institute of
22 Standards and Technology, the Administrator of
23 General Services, the Electronic Public Access Pub-
24 lic User Group, private entities offering electronic
25 case management software, the National Center for

1 State Courts, and the National American Indian
2 Court Judges Association, publish a machine read-
3 able form that shall be used for any report required
4 under paragraph (1).

5 “(4) REGULATIONS.—The Director of the Ad-
6 ministrative Office of the United States Courts may
7 issue binding regulations with respect to the content
8 and form of the reports required under paragraph
9 (1).”.

10 (2) TECHNICAL AND CONFORMING AMEND-
11 MENT.—Section 2519(3) of title 18, United States
12 Code, is amended, in the first sentence, by inserting
13 “publish on the website of the Administrative Office
14 of the United States Courts” before “transmit”.

15 (b) REPORTS CONCERNING PEN REGISTERS AND
16 TRAP AND TRACE DEVICES.—Section 3126 of title 18,
17 United States Code, is amended to read as follows:

18 “§ 3126. **Reports concerning pen registers and trap**
19 **and trace devices**

20 “(a) IN GENERAL.—In January of each year, any
21 judge who has issued an order (or an extension thereof)
22 under section 3123 that expired during the preceding
23 year, or who has denied approval of an installation and
24 use of a pen register or trap and trace device during that

1 year, shall report to the Administrative Office of the
2 United States Courts—

3 “(1) the fact that an order or extension was ap-
4 plied for;

5 “(2) the kind of order or extension applied for;

6 “(3) the fact that the order or extension was
7 granted as applied for, was modified, or was denied;

8 “(4) the period of installation and use of a pen
9 register or trap and trace device authorized by the
10 order, and the number and duration of any exten-
11 sions of the order;

12 “(5) the offense specified in the order or appli-
13 cation, or extension of an order;

14 “(6) the precise nature of the facilities affected
15 and the precise nature of the information sought;
16 and

17 “(7) the investigative or law enforcement agen-
18 cy that submitted the application.

19 “(b) PUBLIC REPORT.—In June of each year, the Di-
20 rector of the Administrative Office of the United States
21 Courts shall publish on the website of the Administrative
22 Office of the United States Courts and include in the re-
23 port required under section 2519(3)—

24 “(1) a full and complete report concerning—

1 “(A) the number of applications for orders
2 authorizing or approving the installation and
3 use of a pen register or trap and trace device
4 pursuant to this chapter; and

5 “(B) the number of orders and extensions
6 granted or denied pursuant to this chapter dur-
7 ing the preceding calendar year; and

8 “(2) a detailed summary and analysis of each
9 category of data required to be reported under sub-
10 section (a).

11 “(c) **FORMAT.**—Not later than 180 days after the
12 date of enactment of the Government Surveillance Trans-
13 parency Act of 2022, the Director of the Administrative
14 Office of the United States Courts shall, in consultation
15 with the National Institute of Standards and Technology
16 and the Administrator of General Services, private entities
17 offering electronic case management software, the Na-
18 tional Center for State Courts, and the National American
19 Indian Court Judges Association, publish a machine read-
20 able form that shall be used for any report required under
21 subsection (a).

22 “(d) **REGULATIONS.**—The Director of the Adminis-
23 trative Office of the United States Courts may issue bind-
24 ing regulations with respect to the content and form of
25 the reports required under subsection (a).”.

1 (c) REPORTING OF EMERGENCY DISCLOSURES.—
2 Section 2702(d) of title 18, United States Code, is amend-
3 ed, in the matter preceding paragraph (1), by inserting
4 “and publish on the website of the Department of Justice”
5 after “Senate”.

6 **SEC. 8. GRANTS.**

7 (a) DEFINITIONS.—In this section—

8 (1) the term “Indian Tribe” has the meaning
9 given such term in section 102 of the Federally Rec-
10 ognized Indian Tribe List Act of 1994 (25 U.S.C.
11 5130); and

12 (2) the term “State” means each of the several
13 States of the United States, the District of Colum-
14 bia, the Commonwealth of Puerto Rico, American
15 Samoa, the Commonwealth of the Northern Mariana
16 Islands, Guam, and the United States Virgin Is-
17 lands.

18 (b) AUTHORITY.—The Attorney General shall make
19 grants to State and Tribal court systems for the cost of
20 implementing the requirements under the amendments
21 made by this Act for the 5-year period beginning on the
22 date of enactment of this Act.

23 (c) MAXIMUM AMOUNT.—The total amount of grants
24 awarded under this section shall be not greater than
25 \$25,000,000.

1 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated—

3 (1) \$1,000,000 to the Administrative Office of
4 the United States Courts to implement the require-
5 ments of this Act and the amendments made by this
6 Act; and

7 (2) \$25,000,000 to carry out the grant program
8 under section 8.

9 **SEC. 10. SEVERABILITY.**

10 If any provision of this Act, an amendment made by
11 this Act, or the application of such a provision or amend-
12 ment to any person or circumstance, is held to be uncon-
13 stitutional, the remaining provisions of and amendments
14 made by this Act, and the application of the provision or
15 amendment held to be unconstitutional to any other per-
16 son or circumstance, shall not be affected thereby.