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## U.S. May Ease Police Spy Rules

More Federal Intelligence Changes Planned

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The [Justice Department](#) has proposed a new domestic spying measure that would make it easier for state and local police to collect intelligence about Americans, share the sensitive data with federal agencies and retain it for at least 10 years.

The proposed changes would revise the federal government's rules for police intelligence-gathering for the first time since 1993 and would apply to any of the nation's 18,000 state and local police agencies that receive roughly \$1.6 billion each year in federal grants.

Quietly unveiled late last month, the proposal is part of a flurry of domestic intelligence changes issued and planned by the Bush administration in its waning months. They include a recent executive order that guides the reorganization of federal spy agencies and a pending Justice Department overhaul of [FBI](#) procedures for gathering intelligence and investigating terrorism cases within U.S. borders.

Taken together, critics in Congress and elsewhere say, the moves are intended to lock in policies for Bush's successor and to enshrine controversial post-Sept. 11 approaches that some say have fed the greatest expansion of executive authority since the Watergate era.

Supporters say the measures simply codify existing counterterrorism practices and policies that are endorsed by lawmakers and independent experts such as the [9/11 Commission](#). They say the measures preserve civil liberties and are subject to internal oversight.

[White House](#) spokesman [Tony Fratto](#) said the administration agrees that it needs to do everything possible to prevent unwarranted encroachments on civil liberties, adding that it succeeds the overwhelming majority of the time.

Bush homeland security adviser [Kenneth L. Wainstein](#) said, "This is a continuum that started back on 9/11 to reform law enforcement and the intelligence community to focus on the terrorism threat."

Under the Justice Department proposal for state and local police, published for public comment July 31, law enforcement agencies would be allowed to target groups as well as individuals, and to launch a criminal intelligence investigation based on the suspicion that a target is engaged in terrorism or providing material support to terrorists. They also could share results with a constellation of federal law enforcement and intelligence agencies, and others in many cases.

Criminal intelligence data starts with sources as basic as public records and the Internet, but also includes law enforcement databases, confidential and undercover sources, and active surveillance.

Jim McMahan, deputy executive director of the International Association of Chiefs of Police, said the proposed changes "catch up with reality" in that those who investigate crimes such as money laundering, drug

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trafficking and document fraud are best positioned to detect terrorists. He said the rule maintains the key requirement that police demonstrate a "reasonable suspicion" that a target is involved in a crime before collecting intelligence.

"It moves what the rules were from 1993 to the new world we live in, but it maintains civil liberties," McMahon said.

However, Michael German, policy counsel for the [American Civil Liberties Union](#), said the proposed rule may be misunderstood as permitting police to collect intelligence even when no underlying crime is suspected, such as when a person gives money to a charity that independently gives money to a group later designated a terrorist organization.

The rule also would allow criminal intelligence assessments to be shared outside designated channels whenever doing so may avoid danger to life or property -- not only when such danger is "imminent," as is now required, German said.

On the day the police proposal was put forward, the White House announced it had updated Reagan-era operating guidelines for the U.S. intelligence community. The revised Executive Order 12333 established guidelines for overseas spying and called for better sharing of information with local law enforcement. It directed the [CIA](#) and other spy agencies to "provide specialized equipment, technical knowledge or assistance of expert personnel" to support state and local authorities.

And last week, [Attorney General Michael B. Mukasey](#) said that the Justice Department will release new guidelines within weeks to streamline and unify FBI investigations of criminal law enforcement matters and national security threats. The changes will clarify what tools agents can employ and whose approval they must obtain.

The recent moves continue a steady expansion of the intelligence role of U.S. law enforcement, breaking down a wall erected after congressional hearings in 1976 to rein in such activity.

The push to transform FBI and local police intelligence operations has triggered wider debate over who will be targeted, what will be done with the information collected and who will oversee such activities.

Many security analysts faulted U.S. authorities after the 2001 terrorist attacks, saying the FBI was not combating terrorist plots before they were carried out and needed to proactively use intelligence. In the years since, civil liberties groups and some members of Congress have criticized the administration for unilaterally expanding surveillance and moving too fast to share sensitive information without safeguards.

Critics say preemptive law enforcement in the absence of a crime can violate the Constitution and due process. They cite the administration's long-running warrantless-surveillance program, which was set up outside the courts, and the FBI's acknowledgment that it abused its intelligence-gathering privileges in hundreds of cases by using inadequately documented administrative orders to obtain telephone, e-mail, financial and other personal records of U.S. citizens without warrants.

Former Justice Department official Jamie S. Gorelick said the new FBI guidelines on their own do not raise alarms. But she cited the recent disclosure that undercover [Maryland State Police](#) agents spied on death penalty opponents and antiwar groups in 2005 and 2006 to emphasize that the policies would require close oversight.

"If properly implemented, this should assure the public that people are not being investigated by agencies who are not trained in how to protect constitutional rights," said the former deputy attorney general. "The FBI will need to be vigilant -- both in its policies and its practices -- to live up to that promise."

German, an FBI agent for 16 years, said easing established limits on intelligence-gathering would lead to abuses against peaceful political dissenters. In addition to the Maryland case, he pointed to reports in the past six years that undercover New York police officers infiltrated protest groups before the 2004 [Republican National Convention](#); that California state agents eavesdropped on peace, animal rights and labor activists; and that [Denver police](#) spied on [Amnesty International](#) and others before being discovered.

"If police officers no longer see themselves as engaged in protecting their communities from criminals and instead as domestic intelligence agents working on behalf of the CIA, they will be encouraged to collect more information," German said. "It turns police officers into spies on behalf of the federal government."

Civil liberties groups also have warned that forthcoming Justice Department rules for the FBI may permit the use of terrorist profiles that could single out religious or ethnic groups such as Muslims or Arabs for investigation.

Mukasey said the changes will give the next president "some of the tools necessary to keep us safe" and will not alter Justice rules that prohibit investigations based on a person's race, religion or speech. He said the new guidelines will make it easier for the FBI to use informants, conduct physical and photographic surveillance, and share data in intelligence cases, on the grounds that doing so should be no harder than in investigations of ordinary crimes.

[Rep. Bennie Thompson](#) (D-Miss.), chairman of the [House Homeland Security Committee](#), said that updating police intelligence rules is a move "in the right direction. However, the vagueness of the provisions giving broad access to criminal intelligence to undefined agencies . . . is very troubling."

*Staff writers Joby Warrick and Ellen Nakashima contributed to this report.*

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