

106TH CONGRESS
2^D SESSION

S. 2430

To combat computer hacking through enhanced law enforcement and to protect the privacy and constitutional rights of Americans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 13, 2000

Mr. LEAHY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To combat computer hacking through enhanced law enforcement and to protect the privacy and constitutional rights of Americans, 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 “Internet Security Act
5 of 2000”.

6 **SEC. 2. AMENDMENTS TO THE COMPUTER FRAUD AND**
7 **ABUSE ACT.**

8 Section 1030 of title 18, United States Code, is
9 amended—

1 (1) in subsection (a)—

2 (A) in paragraph (5)—

3 (i) by inserting “(i)” after “(A)” and
4 redesignating subparagraphs (B) and (C)
5 as clauses (ii) and (iii), respectively;

6 (ii) in subparagraph (A)(iii), as reded-
7 igned, by adding “and” at the end; and

8 (iii) by adding at the end the fol-
9 lowing:

10 “(B) the conduct described in clause (i),
11 (ii), or (iii) of subparagraph (A)—

12 “(i) caused loss aggregating at least
13 \$5,000 in value during a 1-year period to
14 1 or more individuals;

15 “(ii) modified or impaired, or poten-
16 tially modified or impaired, the medical ex-
17 amination, diagnosis, treatment, or care of
18 1 or more individuals;

19 “(iii) caused physical injury to any
20 person; or

21 “(iv) threatened public health or safe-
22 ty;” and

23 (B) in paragraph (6), by adding “or” at
24 the end;

25 (2) in subsection (c)—

1 (A) in paragraph (2)—

2 (i) in subparagraph (A), by striking
3 “and” at the end; and

4 (ii) in subparagraph (B), by inserting
5 “or an attempted offense” after “in the
6 case of an offense”; and

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

8 “(4) forfeiture to the United States in accord-
9 ance with subsection (i) of the interest of the of-
10 fender in—

11 “(A) any personal property used or in-
12 tended to be used to commit or to facilitate the
13 commission of the offense; and

14 “(B) any property, real or personal, that
15 constitutes or that is derived from proceeds
16 traceable to any violation of this section.”;

17 (3) in subsection (d)—

18 (A) by striking “subsections (a)(2)(A),
19 (a)(2)(B), (a)(3), (a)(4), (a)(5), and (a)(6) of”;
20 and

21 (B) by striking “which shall be entered
22 into by” and inserting “between”;

23 (4) in subsection (e)—

1 (A) in paragraph (2)(B), by inserting “,
2 including computers located outside the United
3 States” before the semicolon;

4 (B) in paragraph (4), by striking the pe-
5 riod at the end and inserting a semicolon;

6 (C) in paragraph (7), by striking “and” at
7 the end;

8 (D) in paragraph (8), by striking “, that”
9 and all that follows through “; and” and insert-
10 ing a semicolon;

11 (E) in paragraph (9), by striking the pe-
12 riod at the end and inserting “; and”; and

13 (F) by adding at the end the following:

14 “(10) the term ‘loss’ includes—

15 “(A) the reasonable costs to any victim
16 of—

17 “(i) responding to the offense;

18 “(ii) conducting a damage assessment;

19 and

20 “(iii) restoring the system and data to
21 their condition prior to the offense; and

22 “(B) any lost revenue or costs incurred by
23 the victim as a result of interruption of serv-
24 ice.”;

1 (5) in subsection (g), by striking “Damages for
2 violations involving damage as defined in subsection
3 (c)(8)(A)” and inserting “losses specified in sub-
4 section (a)(5)(B)(i)”; and

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

6 “(i) PROVISIONS GOVERNING FORFEITURE.—Prop-
7 erty subject to forfeiture under this section, any seizure
8 and disposition thereof, and any administrative or judicial
9 proceeding in relation thereto, shall be governed by sub-
10 section (c) and subsections (e) through (p) of section 413
11 of the Comprehensive Drug Abuse Prevention and Control
12 Act of 1970 (21 U.S.C. 853).”.

13 **SEC. 3. SENSE OF CONGRESS.**

14 It is the sense of Congress that—

15 (1) acts that damage or attempt to damage
16 computers used in the delivery of critical infrastruc-
17 ture services such as telecommunications, energy,
18 transportation, banking and financial services, and
19 emergency and government services pose a serious
20 threat to public health and safety and cause or have
21 the potential to cause losses to victims that include
22 costs of responding to offenses, conducting damage
23 assessments, and restoring systems and data to their
24 condition prior to the offense, as well as lost revenue

1 and costs incurred as a result of interruptions of
2 service; and

3 (2) the Federal Government should have juris-
4 diction to investigate acts affecting protected com-
5 puters, as defined in section 1030(e)(2)(B) of title
6 18, United States Code, as amended by this Act,
7 even if the effects of such acts occur wholly outside
8 the United States, as in such instances a sufficient
9 Federal nexus is conferred through the inter-
10 connected and interdependent nature of computers
11 used in interstate or foreign commerce or commu-
12 nication.

13 **SEC. 4. MODIFICATION OF SENTENCING COMMISSION DI-**
14 **RECTIVE.**

15 Pursuant to its authority under section 994(p) of title
16 28, United States Code, the United States Sentencing
17 Commission shall amend the Federal sentencing guidelines
18 to ensure that any individual convicted of a violation of
19 paragraph (4) or (5) of section 1030(a) of title 18, United
20 States Code, can be subjected to appropriate penalties,
21 without regard to any mandatory minimum term of im-
22 prisonment.

1 **SEC. 5. FORFEITURE OF DEVICES USED IN COMPUTER**
2 **SOFTWARE COUNTERFEITING.**

3 Section 2318(d) of title 18, United States Code, is
4 amended by—

5 (1) inserting “(1)” before “When”;

6 (2) inserting “, and any replicator or other de-
7 vice or thing used to copy or produce the computer
8 program or other item to which the counterfeit label
9 was affixed, or was intended to be affixed” before
10 the period; and

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

12 “(2) The forfeiture of property under this section, in-
13 cluding any seizure and disposition of the property, and
14 any related judicial or administrative proceeding, shall be
15 governed by the provisions of section 413 (other than sub-
16 section (d) of that section) of the Comprehensive Drug
17 Abuse Prevention and Control Act of 1970 (21 U.S.C.
18 853).”.

19 **SEC. 6. CONFORMING AMENDMENT.**

20 Section 492 of title 18, United States Code, is
21 amended by striking “or 1720,” and inserting “, 1720,
22 or 2318”.

23 **SEC. 7. PEN REGISTERS AND TRAP AND TRACE DEVICES.**

24 Section 3123 of title 18, United States Code is
25 amended—

1 (1) by striking subsection (a) and inserting the
2 following:

3 “(a) ISSUANCE OF ORDER.—

4 “(1) REQUESTS FROM ATTORNEYS FOR THE
5 GOVERNMENT.—Upon an application made under
6 section 3122(a)(1), the court may enter an ex parte
7 order authorizing the installation and use of a pen
8 register or a trap and trace device if the court finds,
9 based on the certification by the attorney for the
10 Government, that the information likely to be ob-
11 tained by such installation and use is relevant to an
12 ongoing criminal investigation. Such order shall
13 apply to any entity providing wire or electronic com-
14 munication service in the United States whose as-
15 sistance is necessary to effectuate the order.

16 “(2) REQUESTS FROM STATE INVESTIGATIVE
17 OR LAW ENFORCEMENT OFFICERS.—Upon an appli-
18 cation made under section 3122(a)(2), the court
19 may enter an ex parte order authorizing the installa-
20 tion and use of a pen register or a trap and trace
21 device within the jurisdiction of the court, if the
22 court finds, based on the certification by the State
23 law enforcement or investigative officer, that the in-
24 formation likely to be obtained by such installation

1 and use is relevant to an ongoing criminal investiga-
2 tion.”; and

3 (2) in subsection (b)—

4 (A) in paragraph (1)—

5 (i) in subparagraph (C), by inserting
6 “authorized under subsection (a)(2)” after
7 “in the case of a trap and trace device”;
8 and

9 (ii) in subparagraph (D), by striking
10 “and” at the end;

11 (B) in paragraph (2), by striking the pe-
12 riod at the end and inserting “; and”; and

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

14 “(3) shall direct that the use of the pen register
15 or trap and trace device be conducted in such a way
16 as to minimize the recording or decoding of any elec-
17 tronic or other impulses that are not related to the
18 dialing and signaling information utilized in proc-
19 essing by the service provider upon whom the order
20 is served.”.

21 **SEC. 8. TECHNICAL AMENDMENTS TO PEN REGISTER AND**
22 **TRAP AND TRACE PROVISIONS.**

23 (a) **ISSUANCE OF AN ORDER.**—Section 3123 of title
24 18, United States Code, is amended—

1 (1) by inserting “or other facility” after “line”
2 each place that term appears;

3 (2) by inserting “or applied” after “attached”
4 each place that term appears;

5 (3) in subsection (b)(1)(C), by inserting “or
6 other identifier” after “the number”; and

7 (4) in subsection (d)(2), by striking “who has
8 been ordered by the court” and inserting “who is ob-
9 ligated by the order”.

10 (b) DEFINITIONS.—Section 3127 of title 18, United
11 States Code is amended—

12 (1) by striking paragraph (3) and inserting the
13 following:

14 “(3) the term ‘pen register’—

15 “(A) means a device or process that
16 records or decodes electronic or other impulses
17 that identify the telephone numbers or elec-
18 tronic addresses dialed or otherwise transmitted
19 by an instrument or facility from which a wire
20 or electronic communication is transmitted and
21 used for purposes of identifying the destination
22 or termination of such communication by the
23 service provider upon which the order is served;
24 and

1 “(B) does not include any device or process
2 used by a provider or customer of a wire or
3 electronic communication service for billing, or
4 recording as an incident to billing, for commu-
5 nications services provided by such provider or
6 any device or process by a provider or customer
7 of a wire communication service for cost ac-
8 counting or other like purposes in the ordinary
9 course of its business;” and

10 (2) in paragraph (4)—

11 (A) by inserting “or process” after “means
12 a device”;

13 (B) by inserting “or other identifier” after
14 “number”; and

15 (C) by striking “or device” and inserting
16 “or other facility”.

17 **SEC. 9. PEN REGISTER AND TRAP AND TRACE REPORTS.**

18 Section 3126 of title 18, United States Code, is
19 amended by inserting before the period at the end the fol-
20 lowing: “, which report shall include information
21 concerning—

22 “(1) the period of interceptions authorized by
23 the order, and the number and duration of any ex-
24 tensions of the order;

1 “(2) the offense specified in the order or appli-
2 cation, or extension of an order;

3 “(3) the number of investigations involved;

4 “(4) the number and nature of the facilities af-
5 fected; and

6 “(5) the identity, including district, of the ap-
7 plying investigative or law enforcement agency mak-
8 ing the application and the person authorizing the
9 order”.

10 **SEC. 10. ENHANCED DENIAL OF SERVICE INVESTIGATIONS.**

11 Section 2511(2)(c) of title 18, United States Code,
12 is amended to read as follows:

13 “(c)(i) It shall not be unlawful under this chapter for
14 a person acting under color of law to intercept a wire, oral,
15 or electronic communication, if such person is a party to
16 the communication or 1 of the parties to the communica-
17 tion has given prior consent to such interception.

18 “(ii) It shall not be unlawful under this chapter for
19 a person acting under color of law to intercept a wire or
20 electronic communication, if—

21 “(I) the transmission of the wire or electronic
22 communication is causing harmful interference to a
23 lawfully operating computer system;

24 “(II) any person who is not a provider of serv-
25 ice to the public and who is authorized to use the

1 facility from which the wire or electronic commu-
 2 nication is to be intercepted has given prior consent
 3 to the interception; and

4 “(III) the interception is conducted only to the
 5 extent necessary to identify the source of the harm-
 6 ful interference described in subclause (I).”.

7 **SEC. 11. ENCRYPTION REPORTING REQUIREMENTS.**

8 Section 2519(2)(b) of title 18, United States Code,
 9 is amended by striking “and (iv)” and inserting “(iv) the
 10 number of orders in which encryption was encountered
 11 and whether such encryption prevented law enforcement
 12 from obtaining the plain text of communications inter-
 13 cepted pursuant to such order, and (v)”.

14 **SEC. 12. STATE AND LOCAL COMPUTER CRIME ENFORCE-**
 15 **MENT.**

16 (a) IN GENERAL.—Subject to the availability of
 17 amounts provided in advance in appropriations Acts, the
 18 Assistant Attorney General for the Office of Justice Pro-
 19 grams of the Department of Justice shall make a grant
 20 to each State, which shall be used by the State, in conjunc-
 21 tion with units of local government, State and local courts,
 22 other States, or combinations thereof, to—

23 (1) assist State and local law enforcement in
 24 enforcing State and local criminal laws relating to
 25 computer crime;

1 (2) assist State and local law enforcement in
2 educating the public to prevent and identify com-
3 puter crime;

4 (3) assist in educating and training State and
5 local law enforcement officers and prosecutors to
6 conduct investigations and forensic analyses of evi-
7 dence and prosecutions of computer crime;

8 (4) assist State and local law enforcement offi-
9 cers and prosecutors in acquiring computer and
10 other equipment to conduct investigations and foren-
11 sic analysis of evidence of computer crimes; and

12 (5) facilitate and promote the sharing of Fed-
13 eral law enforcement expertise and information
14 about the investigation, analysis, and prosecution of
15 computer crimes with State and local law enforce-
16 ment officers and prosecutors, including the use of
17 multijurisdictional task forces.

18 (b) USE OF GRANT AMOUNTS.—Grants under this
19 section may be used to establish and develop programs
20 to—

21 (1) assist State and local law enforcement agen-
22 cies in enforcing State and local criminal laws relat-
23 ing to computer crime;

1 (2) assist State and local law enforcement agen-
2 cies in educating the public to prevent and identify
3 computer crime;

4 (3) educate and train State and local law en-
5 forcement officers and prosecutors to conduct inves-
6 tigations and forensic analyses of evidence and pros-
7 ecutions of computer crime;

8 (4) assist State and local law enforcement offi-
9 cers and prosecutors in acquiring computer and
10 other equipment to conduct investigations and foren-
11 sic analysis of evidence of computer crimes; and

12 (5) facilitate and promote the sharing of Fed-
13 eral law enforcement expertise and information
14 about the investigation, analysis, and prosecution of
15 computer crimes with State and local law enforce-
16 ment officers and prosecutors, including the use of
17 multijurisdictional task forces.

18 (c) ASSURANCES.—To be eligible to receive a grant
19 under this section, a State shall provide assurances to the
20 Attorney General that the State—

21 (1) has in effect laws that penalize computer
22 crime, such as penal laws prohibiting—

23 (A) fraudulent schemes executed by means
24 of a computer system or network;

1 (B) the unlawful damaging, destroying, al-
2 tering, deleting, removing of computer software,
3 or data contained in a computer, computer sys-
4 tem, computer program, or computer network;
5 or

6 (C) the unlawful interference with the op-
7 eration of or denial of access to a computer,
8 computer program, computer system, or com-
9 puter network;

10 (2) an assessment of the State and local re-
11 source needs, including criminal justice resources
12 being devoted to the investigation and enforcement
13 of computer crime laws; and

14 (3) a plan for coordinating the programs fund-
15 ed under this section with other federally funded
16 technical assistant and training programs, including
17 directly funded local programs such as the Local
18 Law Enforcement Block Grant program (described
19 under the heading “Violent Crime Reduction Pro-
20 grams, State and Local Law Enforcement Assist-
21 ance” of the Departments of Commerce, Justice,
22 and State, the Judiciary, and Related Agencies Ap-
23 propriations Act, 1998 (Public Law 105–119)).

24 (d) MATCHING FUNDS.—The Federal share of a
25 grant received under this section may not exceed 90 per-

1 cent of the total cost of a program or proposal funded
2 under this section unless the Attorney General waives,
3 wholly or in part, the requirements of this subsection.

4 (e) AUTHORIZATION OF APPROPRIATIONS.—

5 (1) IN GENERAL.—There is authorized to be
6 appropriated to carry out this section \$25,000,000
7 for each of fiscal years 2000 through 2003.

8 (2) LIMITATIONS.—Of the amount made avail-
9 able to carry out this section in any fiscal year not
10 more than 3 percent may be used by the Attorney
11 General for salaries and administrative expenses.

12 (3) MINIMUM AMOUNT.—Unless all eligible ap-
13 plications submitted by any State or units of local
14 government within a State for a grant under this
15 section have been funded, the State, together with
16 grantees within the State (other than Indian tribes),
17 shall be allocated in each fiscal year under this sec-
18 tion not less than 0.75 percent of the total amount
19 appropriated in the fiscal year for grants pursuant
20 to this section, except that the United States Virgin
21 Islands, American Samoa, Guam, and the Northern
22 Mariana Islands each shall be allocated 0.25 per-
23 cent.

24 (f) GRANTS TO INDIAN TRIBES.—Notwithstanding
25 any other provision of this section, the Attorney General

- 1 may use amounts made available under this section to
- 2 make grants to Indian tribes for use in accordance with
- 3 this section.

○