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106TH CONGRESS  
2D 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.

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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

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## 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)Ð
- 2 (A) in paragraph (5)Ð
- 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 redes-
- 7 ignating, 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)Ð
- 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)Ð

- 1 (A) in paragraph (2)Ð
- 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 inÐ
- 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)Ð
- 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)Ð

- 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           (e)(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. Property  
7           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 (e) 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 byÐ

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 amendedÐ

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

3       “(a) ISSUANCE OF ORDER.Ð

4           “(1) REQUESTS FROM ATTORNEYS FOR THE  
5 GOVERNMENT.Ð 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.Ð 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)Ð

4 (A) in paragraph (1)Ð

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 proce-  
 19 ssing 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.Ð Section 3123 of title  
 24 18, United States Code, is amendedÐ

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 ices 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 subelause (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          sive 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.Ð Grants under this  
19          section may be used to establish and develop programs  
20          toÐ

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          sive 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.Ð To be eligible to receive a grant  
19          under this section, a State shall provide assurances to the  
20          Attorney General that the StateÐ

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

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.Ð

5 (1) IN GENERAL.Ð 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.Ð 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.Ð 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.Ð 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.

