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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.

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ``Internet Security Act of 2000''.

SEC. 2. AMENDMENTS TO THE COMPUTER FRAUD AND ABUSE ACT.

Section 1030 of title 18, United States Code, is amendedÐ

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(1) in subsection (a)Ð

(A) in paragraph (5)Ð

(i) by inserting ``(i)'' after ``(A)'' and redesignating subparagraphs (B) and (C) as clauses (ii) and (iii), respectively;

(ii) in subparagraph (A)(iii), as redesignated, by adding ``and'' at the end; and

(iii) by adding at the end the following:

``(B) the conduct described in clause (i), (ii), or (iii) of subparagraph (A)Ð

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

``(ii) modified or impaired, or potentially modified or impaired, the medical examination, diagnosis, treatment, or care of 1 or more individuals;

``(iii) caused physical injury to any person; or

``(iv) threatened public health or safety;''; and

(B) in paragraph (6), by adding ``or'' at the end;

(2) in subsection (c)Ð

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(A) in paragraph (2)Ð

(i) in subparagraph (A), by striking ``and'' at the end; and

(ii) in subparagraph (B), by inserting ``or an attempted offense'' after ``in the case of an offense''; and

(B) by adding at the end the following:

``(4) forfeiture to the United States in accordance with subsection (i) of the interest of the offender inÐ

``(A) any personal property used or intended to be used to commit or to facilitate the commission of the offense; and

``(B) any property, real or personal, that constitutes or that is derived from proceeds traceable to any violation of this section.'';

(3) in subsection (d)Ð

(A) by striking ``subsections (a)(2)(A), (a)(2)(B), (a)(3), (a)(4), (a)(5), and (a)(6) of''; and

(B) by striking ``which shall be entered into by'' and inserting ``between'';

(4) in subsection (e)Ð

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(A) in paragraph (2)(B), by inserting ``, including computers located outside the United States'' before the semicolon;

(B) in paragraph (4), by striking the period at the end and inserting a semicolon;

(C) in paragraph (7), by striking ``and'' at the end;

(D) in paragraph (8), by striking ``, that'' and all that follows through ``; and'' and inserting a semicolon;

(E) in paragraph (9), by striking the period at the end and inserting ``; and''; and

(F) by adding at the end the following:

``(10) the term `loss' includesÐ

``(A) the reasonable costs to any victim ofÐ

``(i) responding to the offense;

``(ii) conducting a damage assessment; and

``(iii) restoring the system and data to their condition prior to the offense; and

``(B) any lost revenue or costs incurred by the victim as a result of interruption of service.'';

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(5) in subsection (g), by striking ``Damages for violations involving damage as defined in subsection (c)(8)(A)'' and inserting ``losses specified in subsection (a)(5)(B)(i)''; and

(6) by adding at the end the following:

``(i) PROVISIONS GOVERNING FORFEITURE.Ð Property subject to forfeiture under this section, any seizure and disposition thereof, and any administrative or judicial proceeding in relation thereto, shall be governed by subsection (c) and subsections (e) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853).''.

SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress thatÐ

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

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

(2) the Federal Government should have jurisdiction to investigate acts affecting protected computers, as defined in section 1030(e)(2)(B) of title 18, United States Code, as amended by this Act, even if the effects of such acts occur wholly outside the United States, as in such instances a sufficient Federal nexus is conferred through the interconnected and interdependent nature of computers used in interstate or foreign commerce or communication.

SEC. 4. MODIFICATION OF SENTENCING COMMISSION DIRECTIVE.

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

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SEC. 5. FORFEITURE OF DEVICES USED IN COMPUTER SOFTWARE COUNTERFEITING.

Section 2318(d) of title 18, United States Code, is amended byÐ

(1) inserting ``(1)'' before ``When'';

(2) inserting ``, and any replicator or other device or thing used to copy or produce the computer program or other item to which the counterfeit label was affixed, or was intended to be affixed'' before the period; and

(3) by adding at the end the following:

``(2) The forfeiture of property under this section, including any seizure and disposition of the property, and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 (other than subsection (d) of that section) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853).''.

SEC. 6. CONFORMING AMENDMENT.

Section 492 of title 18, United States Code, is amended by striking ``or 1720,'' and inserting ``, 1720, or 2318''.

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

Section 3123 of title 18, United States Code is amendedÐ

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

``(a) ISSUANCE OF ORDER.Ð

``(1) REQUESTS FROM ATTORNEYS FOR THE GOVERNMENT.Ð Upon an application made under section 3122(a)(1), the court may enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device if the court finds, based on the certification by the attorney for the Government, that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation. Such order shall apply to any entity providing wire or electronic communication service in the United States whose assistance is necessary to effectuate the order.

``(2) REQUESTS FROM STATE INVESTIGATIVE OR LAW ENFORCEMENT OFFICERS.Ð Upon an application made under section 3122(a)(2), the court may enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court, if the court finds, based on the certification by the State law enforcement or investigative officer, that the information likely to be obtained by such installation

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and use is relevant to an ongoing criminal investigation.''; and

(2) in subsection (b)Ð

(A) in paragraph (1)Ð

(i) in subparagraph (C), by inserting ``authorized under subsection (a)(2)'' after ``in the case of a trap and trace device''; and

(ii) in subparagraph (D), by striking ``and'' at the end;

(B) in paragraph (2), by striking the period at the end and inserting ``; and''; and

(C) by adding at the end the following:

``(3) shall direct that the use of the pen register or trap and trace device be conducted in such a way as to minimize the recording or decoding of any electronic or other impulses that are not related to the dialing and signaling information utilized in processing by the service provider upon whom the order is served.''.

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

(a) ISSUANCE OF AN ORDER.Ð Section 3123 of title 18, United States Code, is amendedÐ

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(1) by inserting ``or other facility'' after ``line'' each place that term appears;

(2) by inserting ``or applied'' after ``attached'' each place that term appears;

(3) in subsection (b)(1)(C), by inserting ``or other identifier'' after ``the number''; and

(4) in subsection (d)(2), by striking ``who has been ordered by the court'' and inserting ``who is obligated by the order''.

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

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

``(3) the term `pen register'—

``(A) means a device or process that records or decodes electronic or other impulses that identify the telephone numbers or electronic addresses dialed or otherwise transmitted by an instrument or facility from which a wire or electronic communication is transmitted and used for purposes of identifying the destination or termination of such communication by the service provider upon which the order is served; and

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``(B) does not include any device or process used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device or process by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;''; and

(2) in paragraph (4)Ð

(A) by inserting ``or process'' after ``means a device'';

(B) by inserting ``or other identifier'' after ``number''; and

(C) by striking ``or device'' and inserting ``or other facility''.

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

Section 3126 of title 18, United States Code, is amended by inserting before the period at the end the following: ``, which report shall include information concerningÐ

``(1) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;

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``(2) the offense specified in the order or application, or extension of an order;

``(3) the number of investigations involved;

``(4) the number and nature of the facilities affected; and

``(5) the identity, including district, of the applying investigative or law enforcement agency making the application and the person authorizing the order''.

SEC. 10. ENHANCED DENIAL OF SERVICE INVESTIGATIONS.

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

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

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

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

``(II) any person who is not a provider of service to the public and who is authorized to use the

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facility from which the wire or electronic communication is to be intercepted has given prior consent to the interception; and

``(III) the interception is conducted only to the extent necessary to identify the source of the harmful interference described in subclause (I).''.

SEC. 11. ENCRYPTION REPORTING REQUIREMENTS.

Section 2519(2)(b) of title 18, United States Code, is amended by striking ``and (iv)'' and inserting ``(iv) the number of orders in which encryption was encountered and whether such encryption prevented law enforcement from obtaining the plain text of communications intercepted pursuant to such order, and (v)''.

SEC. 12. STATE AND LOCAL COMPUTER CRIME ENFORCEMENT.

(a) IN GENERAL.Ð Subject to the availability of amounts provided in advance in appropriations Acts, the Assistant Attorney General for the Office of Justice Programs of the Department of Justice shall make a grant to each State, which shall be used by the State, in conjunction with units of local government, State and local courts, other States, or combinations thereof, toÐ

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

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(2) assist State and local law enforcement in educating the public to prevent and identify computer crime;

(3) assist in educating and training State and local law enforcement officers and prosecutors to conduct investigations and forensic analyses of evidence and prosecutions of computer crime;

(4) assist State and local law enforcement officers and prosecutors in acquiring computer and other equipment to conduct investigations and forensic analysis of evidence of computer crimes; and

(5) facilitate and promote the sharing of Federal law enforcement expertise and information about the investigation, analysis, and prosecution of computer crimes with State and local law enforcement officers and prosecutors, including the use of multijurisdictional task forces.

(b) USE OF GRANT AMOUNTS.Ð Grants under this section may be used to establish and develop programs toÐ

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

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(2) assist State and local law enforcement agencies in educating the public to prevent and identify computer crime;

(3) educate and train State and local law enforcement officers and prosecutors to conduct investigations and forensic analyses of evidence and prosecutions of computer crime;

(4) assist State and local law enforcement officers and prosecutors in acquiring computer and other equipment to conduct investigations and forensic analysis of evidence of computer crimes; and

(5) facilitate and promote the sharing of Federal law enforcement expertise and information about the investigation, analysis, and prosecution of computer crimes with State and local law enforcement officers and prosecutors, including the use of multijurisdictional task forces.

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

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

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

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(B) the unlawful damaging, destroying, altering, deleting, removing of computer software, or data contained in a computer, computer system, computer program, or computer network; or

(C) the unlawful interference with the operation of or denial of access to a computer, computer program, computer system, or computer network;

(2) an assessment of the State and local resource needs, including criminal justice resources being devoted to the investigation and enforcement of computer crime laws; and

(3) a plan for coordinating the programs funded under this section with other federally funded technical assistant and training programs, including directly funded local programs such as the Local Law Enforcement Block Grant program (described under the heading ``Violent Crime Reduction Programs, State and Local Law Enforcement Assistance'' of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Public Law 105±119)).

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

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

(e) AUTHORIZATION OF APPROPRIATIONS.—

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

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

(3) MINIMUM AMOUNT.—Unless all eligible applications submitted by any State or units of local government within a State for a grant under this section have been funded, the State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this section not less than 0.75 percent of the total amount appropriated in the fiscal year for grants pursuant to this section, except that the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands each shall be allocated 0.25 percent.

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

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

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