

Union Calendar No. 297

107TH CONGRESS
2^D SESSION

H. R. 3482

[Report No. 107-497]

To provide greater cybersecurity.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 13, 2001

Mr. SMITH of Texas (for himself and Mr. BOEHLERT) introduced the following bill; which was referred to the Committee on the Judiciary

JUNE 11, 2002

Additional sponsors: Mr. GOODLATTE, Mr. INSLEE, Mr. BRADY of Texas, Ms. HART, Mr. FORBES, Mr. ENGLISH, Mr. OXLEY, Mr. GRUCCI, Mr. SAM JOHNSON of Texas, Mr. GREEN of Wisconsin, Mr. ISSA, Mr. CUNNINGHAM, Mr. WELLER, Mr. CALVERT, Mr. COMBEST, Mr. GEKAS, Ms. JACKSON-LEE of Texas, Mr. SESSIONS, Mr. GALLEGLY, Mr. SCHIFF, Mr. DUNCAN, Mr. RODRIGUEZ, Mr. NORWOOD, and Mr. BLUNT

JUNE 11, 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on December 13, 2001]

A BILL

To provide greater cybersecurity.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Cyber Security En-*
3 *hancement Act of 2002”.*

4 **TITLE I—COMPUTER CRIME**

5 **SEC. 101. AMENDMENT OF SENTENCING GUIDELINES RE-**
6 **LATING TO CERTAIN COMPUTER CRIMES.**

7 *(a) DIRECTIVE TO THE UNITED STATES SENTENCING*
8 *COMMISSION.—Pursuant to its authority under section*
9 *994(p) of title 28, United States Code, and in accordance*
10 *with this section, the United States Sentencing Commission*
11 *shall review and, if appropriate, amend its guidelines and*
12 *its policy statements applicable to persons convicted of an*
13 *offense under section 1030 of title 18, United States Code.*

14 *(b) REQUIREMENTS.—In carrying out this section, the*
15 *Sentencing Commission shall—*

16 *(1) ensure that the sentencing guidelines and*
17 *policy statements reflect the serious nature of the of-*
18 *fenses described in subsection (a), the growing inci-*
19 *dence of such offenses, and the need for an effective de-*
20 *terrent and appropriate punishment to prevent such*
21 *offenses;*

22 *(2) consider the following factors and the extent*
23 *to which the guidelines may or may not account for*
24 *them—*

25 *(A) the potential and actual loss resulting*
26 *from the offense;*

1 (B) the level of sophistication and planning
2 involved in the offense;

3 (C) whether the offense was committed for
4 purposes of commercial advantage or private fi-
5 nancial benefit;

6 (D) whether the defendant acted with mali-
7 cious intent to cause harm in committing the of-
8 fense;

9 (E) the extent to which the offense violated
10 the privacy rights of individuals harmed;

11 (F) whether the offense involved a computer
12 used by the government in furtherance of na-
13 tional defense, national security, or the adminis-
14 tration of justice;

15 (G) whether the violation was intended to
16 or had the effect of significantly interfering with
17 or disrupting a critical infrastructure; and

18 (H) whether the violation was intended to
19 or had the effect of creating a threat to public
20 health or safety, or injury to any person;

21 (3) assure reasonable consistency with other rel-
22 evant directives and with other sentencing guidelines;

23 (4) account for any additional aggravating or
24 mitigating circumstances that might justify excep-
25 tions to the generally applicable sentencing ranges;

1 (5) *make any necessary conforming changes to*
2 *the sentencing guidelines; and*

3 (6) *assure that the guidelines adequately meet*
4 *the purposes of sentencing as set forth in section*
5 *3553(a)(2) of title 18, United States Code.*

6 **SEC. 101A. STUDY AND REPORT ON COMPUTER CRIMES.**

7 *Not later than May 1, 2003, the United States Sen-*
8 *tencing Commission shall submit a brief report to Congress*
9 *that explains any actions taken by the Sentencing Commis-*
10 *sion in response to this Act and includes any recommenda-*
11 *tions the Commission may have regarding statutory pen-*
12 *alties for offenses under section 1030 of title 18, United*
13 *States Code.*

14 **SEC. 102. EMERGENCY DISCLOSURE EXCEPTION.**

15 (a) *IN GENERAL.*—*Section 2702(b) of title 18, United*
16 *States Code, is amended—*

17 (1) *by striking “or” at the end of paragraph (5);*

18 (2) *by striking subparagraph (C) of paragraph*

19 (6);

20 (3) *in paragraph (6), by inserting “or” at the*
21 *end of subparagraph (A); and*

22 (4) *by inserting after paragraph (6) the fol-*
23 *lowing:*

24 “(7) *to a Federal, State, or local governmental*
25 *entity, if the provider, in good faith, believes that an*

1 *emergency involving danger of death or serious phys-*
2 *ical injury to any person requires disclosure without*
3 *delay of communications relating to the emergency.”.*

4 **(b) REPORTING OF DISCLOSURES.**—*A government en-*
5 *tity that receives a disclosure under this section shall file,*
6 *no later than 90 days after such disclosure, a report to the*
7 *Attorney General stating the subparagraph under which the*
8 *disclosure was made, the date of the disclosure, the entity*
9 *to which the disclosure was made, the number of customers*
10 *or subscribers to whom the information disclosed pertained,*
11 *and the number of communications, if any, that were dis-*
12 *closed. The Attorney General shall publish all such reports*
13 *into a single report to be submitted to Congress one year*
14 *after enactment of the bill.*

15 **SEC. 103. GOOD FAITH EXCEPTION.**

16 *Section 2520(d)(3) of title 18, United States Code, is*
17 *amended by inserting “or 2511(2)(i)” after “2511(3)”.*

18 **SEC. 104. NATIONAL INFRASTRUCTURE PROTECTION CEN-**

19 **TER.**

20 **(a) IN GENERAL.**—*The Attorney General shall estab-*
21 *lish and maintain a National Infrastructure Protection*
22 *Center (hereinafter in this section referred to as the “Cen-*
23 *ter”)* *to serve as a national focal point for threat assess-*
24 *ment, warning, investigation, and response to attacks on*

1 *the Nation's critical infrastructure for both physical and*
2 *cyber sources.*

3 **(b) AUTHORIZATION OF APPROPRIATIONS.**—*There are*
4 *authorized to be appropriated for fiscal year 2003 to carry*
5 *out this section, \$125,000,000.*

6 **SEC. 105. INTERNET ADVERTISING OF ILLEGAL DEVICES.**

7 *Section 2512(1)(c) of title 18, United States Code, is*
8 *amended—*

9 (1) *by inserting “or disseminates by electronic*
10 *means” after “or other publication”; and*

11 (2) *by inserting “knowing the content of the ad-*
12 *vertisement and” before “knowing or having reason to*
13 *know”.*

14 **SEC. 106. STRENGTHENING PENALTIES.**

15 *Section 1030(c) of title 18, United States Code, is*
16 *amended—*

17 (1) *by striking “and” at the end of paragraph*
18 *(3);*

19 (2) *in each of subparagraphs (A) and (C) of*
20 *paragraph (4), by inserting “except as provided in*
21 *paragraph (5),” before “a fine under this title”;*

22 (3) *by striking the period at the end of para-*
23 *graph (4)(C) and inserting “; and”; and*

24 (4) *by adding at the end the following:*

1 “(5)(A) if the offender knowingly or recklessly
2 causes or attempts to cause serious bodily injury from
3 conduct in violation of subsection (a)(5)(A)(i), a fine
4 under this title or imprisonment for not more than 20
5 years, or both; and

6 “(B) if the offender knowingly or recklessly
7 causes or attempts to cause death from conduct in
8 violation of subsection (a)(5)(A)(i), a fine under this
9 title or imprisonment for any term of years or for
10 life, or both.”.

11 **SEC. 107. PROVIDER ASSISTANCE.**

12 (a) SECTION 2703.—Section 2703(e) of title 18, United
13 States Code, is amended by inserting “, statutory author-
14 ization” after “subpoena”.

15 (b) SECTION 2511.—Section 2511(2)(a)(ii) of title 18,
16 United States Code, is amended by inserting “, statutory
17 authorization,” after “court order” the last place it appears.

18 **SEC. 108. EMERGENCIES.**

19 Section 3125(a)(1) of title 18, United States Code, is
20 amended—

21 (1) by striking “or” at the end of subparagraph
22 (A);

23 (2) by striking the comma at the end of subpara-
24 graph (B) and inserting a semicolon; and

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

1 “(C) an immediate threat to a national se-
2 curity interest; or

3 “(D) an ongoing attack on a protected com-
4 puter (as defined in section 1030) that con-
5 stitutes a crime punishable by a term of impris-
6 onment greater than one year;”.

7 **SEC. 109. PROTECTING PRIVACY.**

8 (a) SECTION 2511.—Section 2511(4) of title 18,
9 United States Code, is amended—

10 (1) by striking paragraph (b); and

11 (2) by redesignating paragraph (c) as paragraph
12 (b).

13 (b) SECTION 2701.—Section 2701(b) of title 18, United
14 States Code, is amended—

15 (1) in paragraph (1), by inserting “, or in fur-
16 therance of any criminal or tortious act in violation
17 of the Constitution or laws of the United States or
18 any State” after “commercial gain”;

19 (2) in paragraph (1)(A), by striking “one year”
20 and inserting “5 years”;

21 (3) in paragraph (1)(B), by striking “two years”
22 and inserting “10 years”; and

23 (4) so that paragraph (2) reads as follows:

24 “(2) in any other case—

1 “(A) a fine under this title or imprisonment
2 for not more than one year or both, in the case
3 of a first offense under this paragraph; and

4 “(B) a fine under this title or imprison-
5 ment for not more than 5 years, or both, in the
6 case of an offense under this subparagraph that
7 occurs after a conviction of another offense under
8 this section.”.

9 (c) *PRESENCE OF OFFICER AT SERVICE AND EXECU-*
10 *TION OF WARRANTS FOR COMMUNICATIONS AND CUSTOMER*
11 *RECORDS.*—Section 3105 of title 18, United States Code,
12 *is amended by adding at the end the following: “The pres-*
13 *ence of an officer is not required for service or execution*
14 *of a warrant under section 2703 when the provider of elec-*
15 *tronic communications service or remote computing service*
16 *produces the information required in the warrant.”.*

17 **TITLE II—OFFICE OF SCIENCE**
18 **AND TECHNOLOGY**

19 **SEC. 201. ESTABLISHMENT OF OFFICE; DIRECTOR.**

20 (a) *ESTABLISHMENT.*—

21 (1) *IN GENERAL.*—There is hereby established
22 within the Department of Justice an Office of Science
23 and Technology (hereinafter in this title referred to as
24 the “Office”).

1 (2) *AUTHORITY.*—*The Office shall be under the*
2 *general authority of the Assistant Attorney General,*
3 *Office of Justice Programs, and shall be independent*
4 *of the National Institute of Justice.*

5 (b) *DIRECTOR.*—*The Office shall be headed by a Direc-*
6 *tor, who shall be an individual appointed based on ap-*
7 *proval by the Office of Personnel Management of the execu-*
8 *tive qualifications of the individual.*

9 **SEC. 202. MISSION OF OFFICE; DUTIES.**

10 (a) *MISSION.*—*The mission of the Office shall be—*

11 (1) *to serve as the national focal point for work*
12 *on law enforcement technology; and*

13 (2) *to carry out programs that, through the pro-*
14 *vision of equipment, training, and technical assist-*
15 *ance, improve the safety and effectiveness of law en-*
16 *forcement technology and improve access to such tech-*
17 *nology by Federal, State, and local law enforcement*
18 *agencies.*

19 (b) *DUTIES.*—*In carrying out its mission, the Office*
20 *shall have the following duties:*

21 (1) *To provide recommendations and advice to*
22 *the Attorney General.*

23 (2) *To establish and maintain advisory groups*
24 *(which shall be exempt from the provisions of the Fed-*
25 *eral Advisory Committee Act (5 U.S.C. App.)) to as-*

1 *sess the law enforcement technology needs of Federal,*
2 *State, and local law enforcement agencies.*

3 *(3) To establish and maintain performance*
4 *standards in accordance with the National Tech-*
5 *nology Transfer and Advancement Act of 1995 (Pub-*
6 *lic Law 104–113) for, and test and evaluate law en-*
7 *forcement technologies that may be used by, Federal,*
8 *State, and local law enforcement agencies.*

9 *(4) To establish and maintain a program to cer-*
10 *tify, validate, and mark or otherwise recognize law*
11 *enforcement technology products that conform to*
12 *standards used by the Office in accordance with the*
13 *National Technology Transfer and Advancement Act*
14 *of 1995 (Public Law 104–113), which may, in the*
15 *discretion of the Office, allow for supplier declaration*
16 *of conformity with such standards.*

17 *(5) To work with other entities within the De-*
18 *partment of Justice, other Federal agencies, and the*
19 *executive office of the President to establish a coordi-*
20 *nated Federal approach on issues related to law en-*
21 *forcement technology.*

22 *(6) To carry out research, development, testing,*
23 *and evaluation in fields that would improve the safe-*
24 *ty, effectiveness, and efficiency of law enforcement*

1 *technologies used by Federal, State, and local law en-*
2 *forcement agencies, including, but not limited to—*

3 *(A) weapons capable of preventing use by*
4 *unauthorized persons, including personalized*
5 *guns;*

6 *(B) protective apparel;*

7 *(C) bullet-resistant and explosion-resistant*
8 *glass;*

9 *(D) monitoring systems and alarm systems*
10 *capable of providing precise location informa-*
11 *tion;*

12 *(E) wire and wireless interoperable commu-*
13 *nication technologies;*

14 *(F) tools and techniques that facilitate in-*
15 *vestigative and forensic work, including com-*
16 *puter forensics;*

17 *(G) equipment for particular use in*
18 *counterterrorism, including devices and tech-*
19 *nologies to disable terrorist devices;*

20 *(H) guides to assist State and local law en-*
21 *forcement agencies;*

22 *(I) DNA identification technologies; and*

23 *(J) tools and techniques that facilitate in-*
24 *vestigations of computer crime.*

1 (7) *To administer a program of research, devel-*
2 *opment, testing, and demonstration to improve the*
3 *interoperability of voice and data public safety com-*
4 *munications.*

5 (8) *To serve on the Technical Support Working*
6 *Group of the Department of Defense, and on other rel-*
7 *evant interagency panels, as requested.*

8 (9) *To develop, and disseminate to State and*
9 *local law enforcement agencies, technical assistance*
10 *and training materials for law enforcement personnel,*
11 *including prosecutors.*

12 (10) *To operate the regional National Law En-*
13 *forcement and Corrections Technology Centers and, to*
14 *the extent necessary, establish additional centers*
15 *through a competitive process.*

16 (11) *To administer a program of acquisition, re-*
17 *search, development, and dissemination of advanced*
18 *investigative analysis and forensic tools to assist*
19 *State and local law enforcement agencies in com-*
20 *bating cybercrime.*

21 (12) *To support research fellowships in support*
22 *of its mission.*

23 (13) *To serve as a clearinghouse for information*
24 *on law enforcement technologies.*

1 (14) *To represent the United States and State*
2 *and local law enforcement agencies, as requested, in*
3 *international activities concerning law enforcement*
4 *technology.*

5 (15) *To enter into contracts and cooperative*
6 *agreements and provide grants, which may require*
7 *in-kind or cash matches from the recipient, as nec-*
8 *essary to carry out its mission.*

9 (16) *To carry out other duties assigned by the*
10 *Attorney General to accomplish the mission of the Of-*
11 *fice.*

12 (c) *COMPETITION REQUIRED.—Except as otherwise ex-*
13 *pressly provided by law, all research and development car-*
14 *ried out by or through the Office shall be carried out on*
15 *a competitive basis.*

16 (d) *INFORMATION FROM FEDERAL AGENCIES.—Fed-*
17 *eral agencies shall, upon request from the Office and in ac-*
18 *cordance with Federal law, provide the Office with any*
19 *data, reports, or other information requested, unless compli-*
20 *ance with such request is otherwise prohibited by law.*

21 (e) *PUBLICATIONS.—Decisions concerning publica-*
22 *tions issued by the Office shall rest solely with the Director*
23 *of the Office.*

24 (f) *TRANSFER OF FUNDS.—The Office may transfer*
25 *funds to other Federal agencies or provide funding to non-*

1 *Federal entities through grants, cooperative agreements, or*
2 *contracts to carry out its duties under this section.*

3 (g) *ANNUAL REPORT.*—*The Director of the Office shall*
4 *include with the budget justification materials submitted to*
5 *Congress in support of the Department of Justice budget*
6 *for each fiscal year (as submitted with the budget of the*
7 *President under section 1105(a) of title 31, United States*
8 *Code) a report on the activities of the Office. Each such*
9 *report shall include the following:*

10 (1) *For the period of 5 fiscal years beginning*
11 *with the fiscal year for which the budget is*
12 *submitted—*

13 (A) *the Director’s assessment of the needs of*
14 *Federal, State, and local law enforcement agen-*
15 *cies for assistance with respect to law enforce-*
16 *ment technology and other matters consistent*
17 *with the mission of the Office; and*

18 (B) *a strategic plan for meeting such needs*
19 *of such law enforcement agencies.*

20 (2) *For the fiscal year preceding the fiscal year*
21 *for which such budget is submitted, a description of*
22 *the activities carried out by the Office and an evalua-*
23 *tion of the extent to which those activities successfully*
24 *meet the needs assessed under paragraph (1)(A) in*
25 *previous reports.*

1 **SEC. 203. DEFINITION OF LAW ENFORCEMENT TECH-**
2 **NOLOGY.**

3 *For the purposes of this title, the term “law enforce-*
4 *ment technology” includes investigative and forensic tech-*
5 *nologies, corrections technologies, and technologies that sup-*
6 *port the judicial process.*

7 **SEC. 204. ABOLISHMENT OF OFFICE OF SCIENCE AND TECH-**
8 **NOLOGY OF NATIONAL INSTITUTE OF JUS-**
9 **TICE; TRANSFER OF FUNCTIONS.**

10 *(a) TRANSFERS FROM OFFICE WITHIN NIJ.—The Of-*
11 *fice of Science and Technology of the National Institute of*
12 *Justice is hereby abolished, and all functions and activities*
13 *performed immediately before the date of the enactment of*
14 *this Act by the Office of Science and Technology of the Na-*
15 *tional Institute of Justice are hereby transferred to the Of-*
16 *fice.*

17 *(b) AUTHORITY TO TRANSFER ADDITIONAL FUNC-*
18 *TIONS.—The Attorney General may transfer to the Office*
19 *any other program or activity of the Department of Justice*
20 *that the Attorney General, in consultation with the Com-*
21 *mittee on the Judiciary of the Senate and the Committee*
22 *on the Judiciary of the House of Representatives, deter-*
23 *mines to be consistent with the mission of the Office.*

24 *(c) TRANSFER OF FUNDS.—*

25 *(1) IN GENERAL.—Any balance of appropria-*
26 *tions that the Attorney General determines is avail-*

1 *able and needed to finance or discharge a function,*
2 *power, or duty of the Office or a program or activity*
3 *that is transferred to the Office shall be transferred to*
4 *the Office and used for any purpose for which those*
5 *appropriations were originally available. Balances of*
6 *appropriations so transferred shall—*

7 *(A) be credited to any applicable appro-*
8 *priation account of the Office; or*

9 *(B) be credited to a new account that may*
10 *be established on the books of the Department of*
11 *the Treasury;*

12 *and shall be merged with the funds already credited*
13 *to that account and accounted for as one fund.*

14 *(2) LIMITATIONS.—Balances of appropriations*
15 *credited to an account under paragraph (1)(A) are*
16 *subject only to such limitations as are specifically ap-*
17 *licable to that account. Balances of appropriations*
18 *credited to an account under paragraph (1)(B) are*
19 *subject only to such limitations as are applicable to*
20 *the appropriations from which they are transferred.*

21 *(d) TRANSFER OF PERSONNEL AND ASSETS.—With re-*
22 *spect to any function, power, or duty, or any program or*
23 *activity, that is transferred to the Office, those employees*
24 *and assets of the element of the Department of Justice from*
25 *which the transfer is made that the Attorney General deter-*

1 *mines are needed to perform that function, power, or duty,*
2 *or for that program or activity, as the case may be, shall*
3 *be transferred to the Office.*

4 *(e) REPORT ON IMPLEMENTATION.—Not later than 1*
5 *year after the date of the enactment of this Act, the Attorney*
6 *General shall submit to the Committee on the Judiciary of*
7 *the Senate and the Committee on the Judiciary of the House*
8 *of Representatives a report on the implementation of this*
9 *title. The report shall—*

10 *(1) identify each transfer carried out pursuant*
11 *to subsection (b);*

12 *(2) provide an accounting of the amounts and*
13 *sources of funding available to the Office to carry out*
14 *its mission under existing authorizations and appro-*
15 *priations, and set forth the future funding needs of*
16 *the Office;*

17 *(3) include such other information and rec-*
18 *ommendations as the Attorney General considers ap-*
19 *propriate.*

20 **SEC. 205. NATIONAL LAW ENFORCEMENT AND CORREC-**
21 **TIONS TECHNOLOGY CENTERS.**

22 *(a) IN GENERAL.—The Director of the Office shall op-*
23 *erate and support National Law Enforcement and Correc-*
24 *tions Technology Centers (hereinafter in this section re-*

1 *ferred to as “Centers”)* and, to the extent necessary, estab-
2 *lish new centers through a merit-based, competitive process.*

3 *(b) PURPOSE OF CENTERS.—The purpose of the Cen-*
4 *ters shall be to—*

5 *(1) support research and development of law en-*
6 *forcement technology;*

7 *(2) support the transfer and implementation of*
8 *technology;*

9 *(3) assist in the development and dissemination*
10 *of guidelines and technological standards; and*

11 *(4) provide technology assistance, information,*
12 *and support for law enforcement, corrections, and*
13 *criminal justice purposes.*

14 *(c) ANNUAL MEETING.—Each year, the Director shall*
15 *convene a meeting of the Centers in order to foster collabora-*
16 *tion and communication between Center participants.*

17 *(d) REPORT.—Not later than 12 months after the date*
18 *of the enactment of this Act, the Director shall transmit*
19 *to the Congress a report assessing the effectiveness of the*
20 *existing system of Centers and identify the number of Cen-*
21 *ters necessary to meet the technology needs of Federal, State,*
22 *and local law enforcement in the United States.*

1 **SEC. 206. COORDINATION WITH OTHER ENTITIES WITHIN**
2 **DEPARTMENT OF JUSTICE.**

3 *Section 102 of the Omnibus Crime Control and Safe*
4 *Streets Act of 1968 (42 U.S.C. 3712) is amended in sub-*
5 *section (a)(5) by inserting “coordinate and” before “pro-*
6 *vide”.*

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