

106TH CONGRESS  
2D SESSION

# S. 2092

To amend title 18, United States Code, to modify authorities relating to the use of pen registers and trap and trace devices, to modify provisions relating to fraud and related activities in connection with computers, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2000

Mr. SCHUMER (for himself and Mr. KYL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to modify authorities relating to the use of pen registers and trap and trace devices, to modify provisions relating to fraud and related activities in connection with computers, 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,*

1 **SECTION 1. MODIFICATION OF AUTHORITIES RELATING TO**  
2 **USE OF PEN REGISTERS AND TRAP AND**  
3 **TRACE DEVICES.**

4 (a) GENERAL LIMITATION ON USE BY GOVERN-  
5 MENTAL AGENCIES.—Section 3121(c) of title 18, United  
6 States Code, is amended—

7 (1) by inserting “or trap and trace device”  
8 after “pen register”;

9 (2) by inserting “, routing, addressing,” after  
10 “dialing”; and

11 (3) by striking “call processing” and inserting  
12 “the processing and transmitting of wire and elec-  
13 tronic communications”.

14 (b) ISSUANCE OF ORDERS.—

15 (1) IN GENERAL.—Subsection (a) of section  
16 3123 of that title is amended to read as follows:

17 “(a) IN GENERAL.—(1) Upon an application made  
18 under section 3122(a)(1) of this title, the court shall enter  
19 an ex parte order authorizing the installation and use of  
20 a pen register or trap and trace device if the court finds  
21 that the attorney for the Government has certified to the  
22 court that the information likely to be obtained by such  
23 installation and use is relevant to an ongoing criminal in-  
24 vestigation. The order shall, upon service of the order,  
25 apply to any entity providing wire or electronic commu-

1 nication service in the United States whose assistance is  
 2 required to effectuate the order.

3 “(2) Upon an application made under section  
 4 3122(a)(2) of this title, the court shall enter an ex parte  
 5 order authorizing the installation and use of a pen register  
 6 or trap and trace device within the jurisdiction of the court  
 7 if the court finds that the State law enforcement or inves-  
 8 tigative officer has certified to the court that the informa-  
 9 tion likely to be obtained by such installation and use is  
 10 relevant to an ongoing criminal investigation.”.

11 (2) CONTENTS OF ORDER.—Subsection (b)(1)  
 12 of that section is amended—

13 (A) in subparagraph (A)—

14 (i) by inserting “or other facility”  
 15 after “telephone line”; and

16 (ii) by inserting before the semicolon  
 17 at the end “or applied”; and

18 (B) by striking subparagraph (C) and in-  
 19 serting the following new subparagraph (C):

20 “(C) a description of the communications  
 21 to which the order applies, including the num-  
 22 ber or other identifier and, if known, the loca-  
 23 tion of the telephone line or other facility to  
 24 which the pen register or trap and trace device  
 25 is to be attached or applied, and, in the case of

1 an order authorizing installation and use of a  
 2 trap and trace device under subsection (a)(2),  
 3 the geographic limits of the order; and”.

4 (3) NONDISCLOSURE REQUIREMENTS.—Sub-  
 5 section (d)(2) of that section is amended—

6 (A) by inserting “or other facility” after  
 7 “the line”; and

8 (B) by striking “or who has been ordered  
 9 by the court” and inserting “or applied or who  
 10 is obligated by the order”.

11 (c) EMERGENCY INSTALLATION.—Section  
 12 3125(a)(1) of that title is amended—

13 (1) in subparagraph (A), by striking “or” at  
 14 the end;

15 (2) in subparagraph (B), by striking the comma  
 16 at the end and inserting a semicolon; and

17 (3) by inserting after subparagraph (B) the fol-  
 18 lowing new subparagraphs:

19 “(C) immediate threat to the national se-  
 20 curity interests of the United States;

21 “(D) immediate threat to public health or  
 22 safety; or

23 “(E) an attack on the integrity or avail-  
 24 ability of a protected computer which attack

1 would be an offense punishable under section  
2 1030(c)(2)(C) of this title.”.

3 (d) DEFINITIONS.—

4 (1) COURT OF COMPETENT JURISDICTION.—

5 Paragraph (2) of section 3127 of that title is  
6 amended by striking subparagraph (A) and inserting  
7 the following new subparagraph (A):

8 “(A) any district court of the United  
9 States (including a magistrate judge of such a  
10 court) or any United States Court of Appeals  
11 having jurisdiction over the offense being inves-  
12 tigated; or”.

13 (2) PEN REGISTER.—Paragraph (3) of that sec-  
14 tion is amended—

15 (A) by striking “electronic or other im-  
16 pulses” and all that follows through “is at-  
17 tached” and inserting “dialing, routing, ad-  
18 dressing, or signalling information transmitted  
19 by an instrument or facility from which a wire  
20 or electronic communication is transmitted”;  
21 and

22 (B) by inserting “or process” after “de-  
23 vice” each place it appears.

24 (3) TRAP AND TRACE DEVICE.—Paragraph (4)  
25 of that section is amended—

1 (A) by inserting “or process” after “a de-  
 2 vice”; and

3 (B) by striking “of an instrument” and all  
 4 that follows through the end and inserting “or  
 5 other dialing, routing, addressing, and signal-  
 6 ling information relevant to identifying the  
 7 source of a wire or electronic communication;”.

8 **SEC. 2. MODIFICATION OF PROVISIONS RELATING TO**  
 9 **FRAUD AND RELATED ACTIVITY IN CONNEC-**  
 10 **TION WITH COMPUTERS.**

11 (a) PENALTIES.—Subsection (c) of section 1030 of  
 12 title 18, United States Code, is amended—

13 (1) in paragraph (2)—

14 (A) in subparagraph (A)—

15 (i) by inserting “except as provided in  
 16 subparagraphs (B) and (C),” before “a  
 17 fine”;

18 (ii) by striking “(a)(5)(C),” and in-  
 19 serting “(a)(5),”; and

20 (iii) by striking “and” at the end;

21 (B) in subparagraph (B)—

22 (i) by inserting “or an attempt to  
 23 commit an offense punishable under this  
 24 subparagraph,” after “subsection (a)(2),”  
 25 in the matter preceding clause (i); and

1 (ii) by adding “and” at the end; and

2 (C) by striking subparagraph (C) and in-  
3 serting the following new subparagraph (C):

4 “(C) a fine under this title or imprisonment for  
5 not more than 10 years, or both, in the case of an  
6 offense under subsection (a)(5)(A) or (a)(5)(B), or  
7 an attempt to commit an offense punishable under  
8 this subparagraph, if the offense caused (or, in the  
9 case of an attempted offense, would, if completed,  
10 have caused)—

11 “(i) loss to one or more persons during any  
12 one-year period (including loss resulting from a  
13 related course of conduct affecting one or more  
14 other protected computers) aggregating at least  
15 \$5,000 in value;

16 “(ii) the modification or impairment, or  
17 potential modification or impairment, of the  
18 medical examination, diagnosis, treatment, or  
19 care of one or more individuals;

20 “(iii) physical injury to any person;

21 “(iv) a threat to public health or safety; or

22 “(v) damage affecting a computer system  
23 used by or for a government entity in further-  
24 ance of the administration of justice, national  
25 defense, or national security; and”;

1           (2) by redesignating subparagraph (B) of para-  
2       graph (3) as paragraph (4);

3           (3) in paragraph (3)—

4               (A) by striking “(A)” at the beginning;

5           and

6               (B) by striking “, (a)(5)(A), (a)(5)(B),”;

7           and

8           (4) in paragraph (4), as designated by para-  
9       graph (2) of this subsection, by striking “(a)(4),  
10      (a)(5)(A), (a)(5)(B), (a)(5)(C),” and inserting  
11      “(a)(2), (a)(3), (a)(4), (a)(6),”.

12      (b) DEFINITIONS.—Subsection (e) of that section is  
13   amended—

14           (1) in paragraph (2)(B), by inserting “, includ-  
15      ing a computer located outside the United States”  
16      before the semicolon;

17           (2) in paragraph (7), by striking “and” at the  
18      end;

19           (3) by striking paragraph (8) and inserting the  
20      following new paragraph (8):

21               “(8) the term ‘damage’ means any impairment  
22      to the integrity or availability of data, a program, a  
23      system, or information;”;

24           (4) in paragraph (9), by striking the period at  
25      the end and inserting “; and”; and



1           (5) by adding at the end the following new  
2 paragraphs:

3           “(10) the term ‘conviction’ shall include an ad-  
4 judication of juvenile delinquency for a violation of  
5 this section; and

6           “(11) the term ‘loss’ means any reasonable cost  
7 to any victim, including the cost of responding to an  
8 offense, conducting a damage assessment, and re-  
9 storing the data, program, system, or information to  
10 its condition prior to the offense, and any revenue  
11 lost or cost incurred because of interruption of serv-  
12 ice.”.

13       (c) DAMAGES IN CIVIL ACTIONS.—Subsection (g) of  
14 that section is amended in the second sentence by striking  
15 “involving damage” and all that follows through the pe-  
16 riod and inserting “of subsection (a)(5) shall be limited  
17 to loss unless such action includes one of the elements set  
18 forth in clauses (ii) through (v) of subsection (c)(2)(C).”.

19       (d) CRIMINAL FORFEITURE.—That section is further  
20 amended by adding at the end the following new sub-  
21 section:

22       “(i)(1) The court, in imposing sentence on any person  
23 convicted of a violation of this section, shall order, in addi-  
24 tion to any other sentence imposed and irrespective of any

1 provision of State law, that such person forfeit to the  
2 United States—

3 “(A) the interest of such person in any prop-  
4 erty, whether real or personal, that was used or in-  
5 tended to be used to commit or to facilitate the com-  
6 mission of such violation; and

7 “(B) any property, whether real or personal,  
8 constituting or derived from any proceeds that such  
9 person obtained, whether directly or indirectly, as a  
10 result of such violation.

11 “(2) The criminal forfeiture of property under this  
12 subsection, any seizure and disposition thereof, and any  
13 administrative or judicial proceeding relating thereto, shall  
14 be governed by the provisions of section 413 of the Con-  
15 trolled Substances Act (21 U.S.C. 853), except subsection  
16 (d) of that section.”.

17 (e) CIVIL FORFEITURE.—That section, as amended  
18 by subsection (d) of this section, is further amended by  
19 adding at the end the following new subsection:

20 “(j)(1) The following shall be subject to forfeiture to  
21 the United States, and no property right shall exist in  
22 them:

23 “(A) Any property, whether real or personal,  
24 that is used or intended to be used to commit or to

1 facilitate the commission of any violation of this sec-  
 2 tion.

3 “(B) Any property, whether real or personal,  
 4 that constitutes or is derived from proceeds trace-  
 5 able to any violation of this section.

6 “(2) The provisions of chapter 46 of this title relating  
 7 to civil forfeiture shall apply to any seizure or civil for-  
 8 feiture under this subsection.”.

9 **SEC. 3. JUVENILE DELINQUENCY.**

10 Clause (3) of the first paragraph of section 5032 of  
 11 title 18, United States Code, is amended—

12 (1) by striking “or” before “section 1002(a)”;

13 (2) by striking “or” before “section 924(b)”;

14 and

15 (3) by inserting after “or (h) of this title,” the  
 16 following: “or section 1030(a)(1), (a)(2)(B), or  
 17 (a)(3) of this title, or is a felony violation of section  
 18 1030(a)(5) of this title where such violation of such  
 19 section 1030(a)(5) is punishable under clauses (ii)  
 20 through (v) of section 1030(c)(5)(C) of this title,”.

21 **SEC. 4. AMENDMENT TO SENTENCING GUIDELINES.**

22 Section 805(c) of the Antiterrorism and Effective  
 23 Death Penalty Act of 1996 (Public Law 104–132; 28  
 24 U.S.C. 994 note) is amended by striking “paragraph (4)

1 or (5)” and inserting “paragraph (4) or a felony violation  
2 of paragraph (5)(A)”.

