

Committee Amendment to S.2448 In the Nature of a
Substitute Proposed by

Mr. HATCH, Mr. LEAHY, AND Mr. SCHUMER

1 Viz:

2 Strike all after the enacting clause and insert the fol-
3 lowing:

4 **SECTION 1. SHORT TITLE.**

5 This Act may be cited as the “Internet Integrity and
6 Critical Infrastructure Protection Act of 2000”.

7 **SEC. 2. DEPUTY ASSISTANT ATTORNEY GENERAL FOR COM-**
8 **PUTER CRIME AND INTELLECTUAL PROP-**
9 **ERTY.**

10 (a) ESTABLISHMENT OF POSITION.—(1) Chapter 31
11 of title 28, United States Code, is amended by inserting
12 after section 507 the following new section:

13 **“§ 507a. Deputy Assistant Attorney General for Com-**
14 **puter Crime and Intellectual Property**

15 “(a) The Attorney General shall appoint a Deputy
16 Assistant Attorney General for Computer Crime and Intel-
17 lectual Property.

18 “(b) The Deputy Assistant Attorney General shall be
19 the head of the Computer Crime and Intellectual Property
20 Section (CCIPS) of the Department of Justice.

1 “(c) The duties of the Deputy Assistant Attorney
2 General shall include the following:

3 “(1) To advise Federal prosecutors and law en-
4 forcement personnel regarding computer crime and
5 intellectual property crime.

6 “(2) To coordinate national and international
7 law enforcement activities relating to combatting
8 computer crime.

9 “(3) To provide guidance and assistance to
10 Federal, State, and local law enforcement agencies
11 and personnel, and appropriate foreign entities, re-
12 garding responses to threats of computer crime and
13 cyber-terrorism.

14 “(4) To serve as the liaison of the Attorney
15 General to the National Infrastructure Protection
16 Center (NIPC), the Department of Defense, the Na-
17 tional Security Agency, and the Central Intelligence
18 Agency on matters relating to computer crime.

19 “(5) To coordinate training for Federal, State,
20 and local prosecutors and law enforcement personnel
21 on laws pertaining to computer crime.

22 “(6) To propose and comment upon legislation
23 concerning computer crime, intellectual property
24 crime, encryption, electronic privacy, and electronic

1 commerce, and concerning the search and seizure of
2 computers.

3 “(7) Such other duties as the Attorney General
4 may require, including duties carried out by the
5 head of the Computer Crime and Intellectual Prop-
6 erty Section of the Department of Justice as of the
7 date of the enactment of the Internet Integrity and
8 Critical Infrastructure Protection Act of 2000.”.

9 (2) The table of sections at the beginning of such
10 chapter is amended by inserting after the item relating
11 to section 507 the following new item:

“507a. Deputy Assistant Attorney General for Computer Crime and Intellectual
Property.”.

12 (b) FIRST APPOINTMENT TO POSITION OF DEPUTY
13 ASSISTANT ATTORNEY GENERAL.—(1) The individual
14 who holds the position of head of the Computer Crime and
15 Intellectual Property Section (CCIPS) of the Department
16 of Justice as of the date of the enactment of this Act shall
17 act as the Deputy Assistant Attorney General for Com-
18 puter Crime and Intellectual Property under section 507a
19 of title 28, United States Code, until the Attorney General
20 appoints an individual to hold the position of Deputy As-
21 sistant Attorney General for Computer Crime and Intellec-
22 tual Property under that section.

23 (2) The individual first appointed as Deputy Assist-
24 ant Attorney General for Computer Crime and Intellectual

1 Property after the date of the enactment of this Act may
2 be the individual who holds the position of head of the
3 Computer Crime and Intellectual Property Section of the
4 Department of Justice as of that date.

5 (c) AUTHORIZATION OF APPROPRIATIONS FOR
6 CCIPS.—There is hereby authorized to be appropriated
7 for the Department of Justice for fiscal year 2001,
8 \$5,000,000 for the Computer Crime and Intellectual
9 Property Section of the Department for purposes of the
10 discharge of the duties of the Deputy Assistant Attorney
11 General for Computer Crime and Intellectual Property
12 under section 507a of title 28, United States Code (as so
13 added), during that fiscal year.

14 **SEC. 3. DETERRENCE AND PREVENTION OF FRAUD, ABUSE,**
15 **AND CRIMINAL ACTS IN CONNECTION WITH**
16 **COMPUTERS.**

17 (a) CLARIFICATION OF PROTECTION OF PROTECTED
18 COMPUTERS.—Subsection (a)(5) of section 1030 of title
19 18, United States Code, is amended—

20 (1) by inserting “(i)” after “(A)”;

21 (2) by redesignated subparagraphs (B) and (C)
22 as clauses (ii) and (iii), respectively, of subparagraph
23 (A);

24 (3) by adding “and” at the end of clause (iii),
25 as so redesignated; and

1 (4) by adding at the end the following new sub-
2 paragraph:

3 “(B) the conduct described in clause (i), (ii), or
4 (iii) of subparagraph (A) caused (or, in the case of
5 an attempted offense, would, if completed, have
6 caused)—

7 “(i) loss to 1 or more persons during any
8 1-year period (including loss resulting from a
9 related course of conduct affecting 1 or more
10 other protected computers) aggregating at least
11 \$5,000 in value;

12 “(ii) the modification or impairment, or
13 potential modification or impairment, of the
14 medical examination, diagnosis, treatment, or
15 care of 1 or more individuals;

16 “(iii) physical injury to any person;

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

18 “(v) damage affecting a computer system
19 used by or for a government entity in further-
20 ance of the administration of justice, national
21 defense, or national security;”.

22 (b) PROTECTION FROM EXTORTION.—Subsection
23 (a)(7) of that section is amended by striking “, firm, asso-
24 ciation, educational institution, financial institution, gov-
25 ernmental entity, or other legal entity,”.

1 (c) PENALTIES.—Subsection (c) of that section is
2 amended—

3 (1) in paragraph (2)—

4 (A) in subparagraph (A)—

5 (i) by inserting “except as provided in
6 subparagraph (B),” before “a fine”;

7 (ii) by striking “(a)(5)(C)” and in-
8 serting “(a)(5)(A)(iii)”;

9 (iii) by striking “and” at the end;

10 (B) in subparagraph (B), by inserting “or
11 an attempt to commit an offense punishable
12 under this subparagraph,” after “subsection
13 (a)(2),” in the matter preceding clause (i); and

14 (C) in subparagraph (C), by striking
15 “and” at the end;

16 (2) in paragraph (3)—

17 (A) by striking “, (a)(5)(A), (a)(5)(B),”
18 both places it appears; and

19 (B) by striking “and” at the end; and

20 (3) by adding at the end the following new
21 paragraphs:

22 “(4)(A) a fine under this title, imprisonment
23 for not more than 10 years, or both, in the case of
24 an offense under subsection (a)(5)(A)(i), or an at-

1 tempt to commit an offense punishable under this
2 subparagraph;

3 “(B) a fine under this title, imprisonment for
4 not more than 5 years, or both, in the case of an
5 offense under subsection (a)(5)(A)(ii), or an attempt
6 to commit an offense punishable under this subpara-
7 graph;

8 “(C) a fine under this title, imprisonment for
9 not more than 20 years, or both, in the case of an
10 offense under subsection (a)(5)(A)(i) or
11 (a)(5)(A)(ii), or an attempt to commit an offense
12 punishable under this subparagraph, that occurs
13 after a conviction for another offense under this sec-
14 tion; and

15 “(5) in the case of any felony offense under this
16 section, at the discretion of the court, termination of
17 and ineligibility for any financial assistance for edu-
18 cation at a post-secondary institution that is avail-
19 able under Federal law, which punishment shall be
20 in addition to any other punishment described in
21 this subsection.”.

22 (d) DEFINITIONS.—Subsection (e) of that section is
23 amended—

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

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

6 (3) by striking paragraph (8) and inserting the
7 following new paragraph (8):

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

11 (4) in paragraph (9), by striking the period at
12 the end and inserting a semicolon; and

13 (5) by adding at the end the following new
14 paragraphs:

15 “(10) the term ‘conviction’ shall include—

16 “(A) an adjudication of juvenile delin-
17 quency for a violation of this section; and

18 “(B) a conviction under the law of any
19 State for a crime punishable by imprisonment
20 for more than 1 year, an element of which is
21 unauthorized access, or exceeding authorized
22 access, to a computer;

23 “(11) the term ‘loss’ means any reasonable cost
24 to any victim, including the cost of responding to an
25 offense, conducting a damage assessment, and re-

1 storing the data, program, system, or information to
2 its condition prior to the offense, and any revenue
3 lost, cost incurred, or other consequential damages
4 incurred because of interruption of service;

5 “(12) the term ‘person’ means any individual,
6 firm, corporation, educational institution, financial
7 institution, governmental entity, or legal or other en-
8 tity;”.

9 (e) DAMAGES IN CIVIL ACTIONS.—Subsection (g) of
10 that section is amended—

11 (1) by striking the second sentence and insert-
12 ing the following new sentences: “A suit for a viola-
13 tion of subsection (a)(5) may be brought only if the
14 conduct involves one of the factors enumerated in
15 subsection (a)(5)(B). Damages for a violation involv-
16 ing only conduct described in subsection (a)(5)(B)(i)
17 are limited to economic damages.”; and

18 (2) by adding at the end the following new sen-
19 tence: “No action may be brought under this sub-
20 section for the negligent design or manufacture of
21 computer hardware, computer software, or
22 firmware.”.

1 **SEC. 4. CRIMINAL AND CIVIL FORFEITURE FOR COMPUTER**
2 **FRAUD AND ABUSE.**

3 (a) CRIMINAL FORFEITURE.—Section 1030 of title
4 18, United States Code, as amended by section 102 of this
5 Act, is further amended—

6 (1) by redesignating subsection (h) as sub-
7 section (l); and

8 (2) by inserting after subsection (g) the fol-
9 lowing new subsection (h):

10 “(h)(1) The court, in imposing sentence on any per-
11 son convicted of a violation of this section, shall order,
12 in addition to any other sentence imposed and irrespective
13 of any provision of State law, that such person forfeit to
14 the United States—

15 “(A) the interest of such person in any personal
16 property that was used or intended to be used to
17 commit or to facilitate the commission of such viola-
18 tion; and

19 “(B) any property, whether real or personal,
20 constituting or derived from any proceeds that such
21 person obtained, whether directly or indirectly, as a
22 result of such violation.

23 “(2) The criminal forfeiture of property under this
24 subsection, any seizure and disposition thereof, and any
25 administrative or judicial proceeding relating thereto, shall
26 be governed by the provisions of section 413 of the Com-

1 prehensive Drug Abuse Prevention and Control Act of
2 1970 (21 U.S.C. 853), except subsection (d) of that sec-
3 tion.”.

4 (b) CIVIL FORFEITURE.—That section, as amended
5 by subsection (a) of this section, is further amended by
6 inserting after subsection (h) the following new subsection
7 (i):

8 “(i)(1) The following shall be subject to forfeiture to
9 the United States, and no property right shall exist in
10 them:

11 “(A) Any personal property that is used or in-
12 tended to be used to commit or to facilitate the com-
13 mission of any violation of this section.

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

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

20 **SEC. 5. ENHANCED COORDINATION OF FEDERAL AGEN-**
21 **CIES.**

22 Section 1030(d) of title 18, United States Code, is
23 amended—

24 (1) by striking “subsections (a)(2)(A),
25 (a)(2)(B), (a)(3), (a)(4), (a)(5), and (a)(6) of”; and

1 (2) by striking “which shall be entered into by”
2 and inserting “between”.

3 **SEC. 6. JUVENILE INVOLVEMENT IN COMPUTER CRIMES.**

4 Section 5032 of title 18, United States Code, is
5 amended in clause (3) of the first undesignated
6 paragraph—

7 (1) by striking “or section 1002(a)” and insert-
8 ing “section 1002(a)”; and

9 (2) by inserting after “of this title,” the fol-
10 lowing: “or is a violation of section 1030(a)(1),
11 (a)(2)(B), (a)(3), or (a)(5)(A)(i) of this title,”.

12 **SEC. 7. ADDITIONAL DEFENSE TO CIVIL ACTIONS RELAT-**
13 **ING TO PRESERVING RECORDS IN RESPONSE**
14 **TO GOVERNMENT REQUESTS.**

15 Section 2707(e)(1) of title 18, United States Code,
16 is amended by inserting after “or statutory authorization”
17 the following: “(including a request of a governmental en-
18 tity under section 2703(f) of this title)”.

19 **SEC. 8. AUTHORITY TO INTERCEPT WIRE, ORAL, AND ELEC-**
20 **TRONIC COMMUNICATIONS RELATING TO**
21 **COMPUTER FRAUD AND ABUSE.**

22 Section 2516(1)(c) of title 18, United States Code,
23 is amended by striking “and section 1341 (relating to mail
24 fraud),” and inserting “section 1341 (relating to mail

1 fraud), a felony violation of section 1030 (relating to com-
2 puter fraud and abuse),”.

3 **SEC. 9. FORFEITURE OF DEVICES USED IN COMPUTER**
4 **SOFTWARE COUNTERFEITING AND INTEL-**
5 **LECTUAL PROPERTY THEFT.**

6 (a) IN GENERAL.—Section 2318(d) of title 18,
7 United States Code, is amended—

8 (1) by inserting “(1)” before “When”;

9 (2) in paragraph (1), as so designated, by in-
10 sserting “, and of any replicator or other device or
11 thing used to copy or produce the computer program
12 or other item to which the counterfeit labels have
13 been affixed or which were intended to have had
14 such labels affixed” before the period; and

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

16 “(2) The forfeiture of property under this section, in-
17 cluding any seizure and disposition of the property, and
18 any related judicial or administrative proceeding, shall be
19 governed by the provisions of section 413 (other than sub-
20 section (d) of that section) of the Comprehensive Drug
21 Abuse Prevention and Control Act of 1970 (21 U.S.C.
22 853).”.

23 (b) CONFORMING AMENDMENT.—Section 492 of
24 such title is amended in the first undesignated paragraph
25 by striking “or 1720,” and inserting “, 1720, or 2318”.

1 **SEC. 10. SENTENCING DIRECTIVES FOR COMPUTER**
2 **CRIMES.**

3 (a) AMENDMENT OF SENTENCING GUIDELINES RE-
4 LATING TO CERTAIN COMPUTER CRIMES.—Pursuant to
5 its authority under section 994(p) of title 28, United
6 States Code, the United States Sentencing Commission
7 shall amend the Federal sentencing guidelines and, if ap-
8 propriate, shall promulgate guidelines or policy statements
9 or amend existing policy statements to address—

10 (1) the potential and actual loss resulting from
11 an offense under section 1030 of title 18, United
12 States Code (as amended by this Act);

13 (2) the level of sophistication and planning in-
14 volved in such an offense;

15 (3) the growing incidence of offenses under
16 such subsections and the need to provide an effective
17 deterrent against such offenses;

18 (4) whether or not such an offense was com-
19 mitted for purposes of commercial advantage or pri-
20 vate financial benefit;

21 (5) whether or not the defendant involved a ju-
22 venile in the commission of such an offense;

23 (6) whether or not the defendant acted with
24 malicious intent to cause harm in committing such
25 an offense;

1 (7) the extent to which such an offense violated
2 the privacy rights of individuals harmed by the of-
3 fense; and

4 (8) any other factor the Commission considers
5 appropriate in connection with any amendments
6 made by this Act with regard to such subsections.

7 (b) AMENDMENT OF SENTENCING GUIDELINES RE-
8 LATING TO CERTAIN COMPUTER FRAUD AND ABUSE.—
9 Pursuant to its authority under section 994(p) of title 28,
10 United States Code, the United States Sentencing Com-
11 mission shall amend the Federal sentencing guidelines to
12 ensure that any individual convicted of a violation of sec-
13 tion 1030(a)(5)(A)(ii) or 1030(a)(5)(A)(iii) of title 18,
14 United States Code (as amended by section 3 of this Act),
15 can be subjected to appropriate penalties, without regard
16 to any mandatory minimum term of imprisonment.

17 (c) AMENDMENT OF SENTENCING GUIDELINES RE-
18 LATING TO USE OF ENCRYPTION.—Pursuant to its au-
19 thority under section 994(p) of title 28, United States
20 Code, the United States Sentencing Commission shall
21 amend the Federal sentencing guidelines and, if appro-
22 priate, shall promulgate guidelines or policy statements or
23 amend existing policy statements to ensure that the guide-
24 lines provide sufficiently stringent penalties to deter and
25 punish persons who intentionally use encryption in connec-

1 tion with the commission or concealment of criminal acts
2 sentenced under the guidelines.

3 (d) EMERGENCY AUTHORITY.—The Commission may
4 promulgate the guidelines or amendments provided for
5 under this section in accordance with the procedures set
6 forth in section 21(a) of the Sentencing Act of 1987, as
7 though the authority under that Act had not expired.

8 **SEC. 11. ASSISTANCE TO FEDERAL, STATE, AND LOCAL**
9 **COMPUTER CRIME ENFORCEMENT AND ES-**
10 **TABLISHMENT OF NATIONAL CYBER CRIME**
11 **TECHNICAL SUPPORT CENTER.**

12 (a) NATIONAL CYBER CRIME TECHNICAL SUPPORT
13 CENTER.—

14 (1) CONSTRUCTION REQUIRED.—The Director
15 of the Federal Bureau of Investigation shall provide
16 for the construction and equipping of the technical
17 support center of the Federal Bureau of Investiga-
18 tion referred to in section 811(a)(1)(A) of the
19 Antiterrorism and Effective Death Penalty Act of
20 1996 (Public Law 104–132; 110 Stat. 1312; 28
21 U.S.C. 531 note).

22 (2) NAMING.—The technical support center
23 constructed and equipped under paragraph (1) shall
24 be known as the “National Cyber Crime Technical
25 Support Center”.

1 (3) FUNCTIONS.—In addition to any other au-
2 thorized functions, the functions of the National
3 Cyber Crime Technical Support Center shall be—

4 (A) to serve as a centralized technical re-
5 source for Federal, State, and local law enforce-
6 ment and to provide technical assistance in the
7 investigation of computer-related criminal ac-
8 tivities;

9 (B) to assist Federal, State, and local law
10 enforcement in enforcing Federal, State, and
11 local criminal laws relating to computer-related
12 crime;

13 (C) to provide training and education for
14 Federal, State, and local law enforcement per-
15 sonnel regarding investigative technologies and
16 forensic analyses pertaining to computer-related
17 crime;

18 (D) to conduct research and to develop
19 technologies for assistance in investigations and
20 forensic analyses of evidence related to com-
21 puter-related crimes;

22 (E) to facilitate and promote efficiencies in
23 the sharing of Federal law enforcement exper-
24 tise, investigative technologies, and forensic
25 analysis pertaining to computer-related crime

1 with State and local law enforcement personnel,
2 prosecutors, regional computer forensic labora-
3 tories, and multijurisdictional computer crime
4 task forces; and

5 (F) to carry out such other activities as
6 the Director considers appropriate.

7 (b) DEVELOPMENT AND SUPPORT OF COMPUTER FO-
8 RENSIC ACTIVITIES.—The Director shall take appropriate
9 actions to develop at least 10 regional computer forensic
10 laboratories, and to provide support, education, and assist-
11 ance for existing computer forensic laboratories, in order
12 that such computer forensic laboratories have the
13 capability—

14 (1) to provide forensic examinations with
15 respect to seized or intercepted computer evi-
16 dence relating to criminal activity;

17 (2) to provide training and education for
18 Federal, State, and local law enforcement per-
19 sonnel and prosecutors regarding investigations,
20 forensic analyses, and prosecutions of com-
21 puter-related crime;

22 (3) to assist Federal, State, and local law
23 enforcement in enforcing Federal, State, and
24 local criminal laws relating to computer-related
25 crime;

1 (4) to facilitate and promote the sharing of
2 Federal law enforcement expertise and informa-
3 tion about the investigation, analysis, and pros-
4 ecution of computer-related crime with State
5 and local law enforcement personnel and pros-
6 ecutors, including the use of multijurisdictional
7 task forces; and

8 (5) to carry out such other activities as the
9 Director considers appropriate.

10 (c) AUTHORIZATION OF APPROPRIATIONS.—

11 (1) AUTHORIZATION.—There is hereby author-
12 ized to be appropriated for fiscal year 2001,
13 \$100,000,000 for purposes of carrying out this sec-
14 tion, of which \$20,000,000 shall be available solely
15 for activities under subsection (b).

16 (2) AVAILABILITY.—Amounts appropriated pur-
17 suant to the authorization of appropriations in para-
18 graph (1) shall remain available until expended.