

107TH CONGRESS  
2D SESSION

# H. R. 3482

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IN THE SENATE OF THE UNITED STATES

JULY 16, 2002

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

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 SEN-  
8 TENCING COMMISSION.—Pursuant to its authority under  
9 section 994(p) of title 28, United States Code, and in ac-  
10 cordance with this section, the United States Sentencing  
11 Commission shall review and, if appropriate, amend its  
12 guidelines and its policy statements applicable to persons  
13 convicted of an offense under section 1030 of title 18,  
14 United States Code.

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

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

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

1 (A) the potential and actual loss resulting  
2 from the offense;

3 (B) the level of sophistication and planning  
4 involved in the offense;

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

8 (D) whether the defendant acted with ma-  
9 licious intent to cause harm in committing the  
10 offense;

11 (E) the extent to which the offense violated  
12 the privacy rights of individuals harmed;

13 (F) whether the offense involved a com-  
14 puter used by the government in furtherance of  
15 national defense, national security, or the ad-  
16 ministration of justice;

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

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

23 (3) assure reasonable consistency with other  
24 relevant directives and with other sentencing guide-  
25 lines;

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

4           (5) make any necessary conforming changes to  
5           the sentencing guidelines; and

6           (6) assure that the guidelines adequately meet  
7           the purposes of sentencing as set forth in section  
8           3553(a)(2) of title 18, United States Code.

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

10       Not later than May 1, 2003, the United States Sen-  
11       tencing Commission shall submit a brief report to Con-  
12       gress that explains any actions taken by the Sentencing  
13       Commission in response to this Act and includes any rec-  
14       ommendations the Commission may have regarding statu-  
15       tory penalties for offenses under section 1030 of title 18,  
16       United States Code.

17   **SEC. 102. EMERGENCY DISCLOSURE EXCEPTION.**

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

20           (1) by striking “or” at the end of paragraph  
21           (5);

22           (2) by striking subparagraph (C) of paragraph  
23           (6);

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

1           (4) by inserting after paragraph (6) the fol-  
2       lowing:

3           “(7) to a Federal, State, or local governmental  
4       entity, if the provider, in good faith, believes that an  
5       emergency involving danger of death or serious phys-  
6       ical injury to any person requires disclosure without  
7       delay of communications relating to the emer-  
8       gency.”.

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

20      **SEC. 103. GOOD FAITH EXCEPTION.**

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

23      **SEC. 104. INTERNET ADVERTISING OF ILLEGAL DEVICES.**

24           Section 2512(1)(c) of title 18, United States Code,  
25      is amended—

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

3           (2) by inserting “knowing the content of the  
4           advertisement and” before “knowing or having rea-  
5           son to know”.

6 **SEC. 105. STRENGTHENING PENALTIES.**

7           Section 1030(c) of title 18, United States Code, is  
8           amended—

9           (1) by striking “and” at the end of paragraph  
10          (3);

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

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

16          (4) by adding at the end the following:

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

22               “(B) if the offender knowingly or recklessly  
23               causes or attempts to cause death from conduct in  
24               violation of subsection (a)(5)(A)(i), a fine under this

1 title or imprisonment for any term of years or for  
2 life, or both.”.

3 **SEC. 106. PROVIDER ASSISTANCE.**

4 (a) SECTION 2703.—Section 2703(e) of title 18,  
5 United States Code, is amended by inserting “, statutory  
6 authorization” after “subpoena”.

7 (b) SECTION 2511.—Section 2511(2)(a)(ii) of title  
8 18, United States Code, is amended by inserting “, statu-  
9 tory authorization,” after “court order” the last place it  
10 appears.

11 **SEC. 107. EMERGENCIES.**

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

14 (1) by striking “or” at the end of subparagraph  
15 (A);

16 (2) by striking the comma at the end of sub-  
17 paragraph (B) and inserting a semicolon; and

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

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

21 “(D) an ongoing attack on a protected  
22 computer (as defined in section 1030) that con-  
23 stitutes a crime punishable by a term of impris-  
24 onment greater than one year;”.

1 **SEC. 108. PROTECTING PRIVACY.**

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

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

5 (2) by redesignating paragraph (c) as para-  
6 graph (b).

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

9 (1) in paragraph (1), by inserting “, or in fur-  
10 therance of any criminal or tortious act in violation  
11 of the Constitution or laws of the United States or  
12 any State” after “commercial gain”;

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

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

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

18 “(2) in any other case—

19 “(A) a fine under this title or imprison-  
20 ment for not more than one year or both, in the  
21 case of a first offense under this paragraph;  
22 and

23 “(B) a fine under this title or imprison-  
24 ment for not more than 5 years, or both, in the  
25 case of an offense under this subparagraph that



1 occurs after a conviction of another offense  
2 under this section.”.

3 (c) PRESENCE OF OFFICER AT SERVICE AND EXECU-  
4 TION OF WARRANTS FOR COMMUNICATIONS AND CUS-  
5 TOMER RECORDS.—Section 3105 of title 18, United  
6 States Code, is amended by adding at the end the fol-  
7 lowing: “The presence of an officer is not required for  
8 service or execution of a search warrant directed to a pro-  
9 vider of electronic communication service or remote com-  
10 puting service for records or other information pertaining  
11 to a subscriber to or customer of such service.”.

## 12 **TITLE II—OFFICE OF SCIENCE** 13 **AND TECHNOLOGY**

### 14 **SEC. 201. ESTABLISHMENT OF OFFICE; DIRECTOR.**

15 (a) ESTABLISHMENT.—

16 (1) IN GENERAL.—There is hereby established  
17 within the Department of Justice an Office of  
18 Science and Technology (hereinafter in this title re-  
19 ferred to as the “Office”).

20 (2) AUTHORITY.—The Office shall be under the  
21 general authority of the Assistant Attorney General,  
22 Office of Justice Programs, and shall be independent  
23 of the National Institute of Justice.

24 (b) DIRECTOR.—The Office shall be headed by a Di-  
25 rector, who shall be an individual appointed based on ap-

1 proval by the Office of Personnel Management of the execu-  
2 tive qualifications of the individual.

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

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

5 (1) to serve as the national focal point for work  
6 on law enforcement technology; and

7 (2) to carry out programs that, through the  
8 provision of equipment, training, and technical as-  
9 sistance, improve the safety and effectiveness of law  
10 enforcement technology and improve access to such  
11 technology by Federal, State, and local law enforce-  
12 ment agencies.

13 (b) DUTIES.—In carrying out its mission, the Office  
14 shall have the following duties:

15 (1) To provide recommendations and advice to  
16 the Attorney General.

17 (2) To establish and maintain advisory groups  
18 (which shall be exempt from the provisions of the  
19 Federal Advisory Committee Act (5 U.S.C. App.)) to  
20 assess the law enforcement technology needs of Fed-  
21 eral, State, and local law enforcement agencies.

22 (3) To establish and maintain performance  
23 standards in accordance with the National Tech-  
24 nology Transfer and Advancement Act of 1995  
25 (Public Law 104–113) for, and test and evaluate

1 law enforcement technologies that may be used by,  
2 Federal, State, and local law enforcement agencies.

3 (4) To establish and maintain a program to  
4 certify, validate, and mark or otherwise recognize  
5 law enforcement technology products that conform  
6 to standards established and maintained by the Of-  
7 fice in accordance with the National Technology  
8 Transfer and Advancement Act of 1995 (Public Law  
9 104–113). The program may, at the discretion of  
10 the Office, allow for supplier’s declaration of con-  
11 formity with such standards.

12 (5) To work with other entities within the De-  
13 partment of Justice, other Federal agencies, and the  
14 executive office of the President to establish a co-  
15 ordinated Federal approach on issues related to law  
16 enforcement technology.

17 (6) To carry out research, development, testing,  
18 and evaluation in fields that would improve the safe-  
19 ty, effectiveness, and efficiency of law enforcement  
20 technologies used by Federal, State, and local law  
21 enforcement agencies, including, but not limited to—

22 (A) weapons capable of preventing use by  
23 unauthorized persons, including personalized  
24 guns;

25 (B) protective apparel;

1 (C) bullet-resistant and explosion-resistant  
2 glass;

3 (D) monitoring systems and alarm systems  
4 capable of providing precise location informa-  
5 tion;

6 (E) wire and wireless interoperable com-  
7 munication technologies;

8 (F) tools and techniques that facilitate in-  
9 vestigative and forensic work, including com-  
10 puter forensics;

11 (G) equipment for particular use in  
12 counterterrorism, including devices and tech-  
13 nologies to disable terrorist devices;

14 (H) guides to assist State and local law en-  
15 forcement agencies;

16 (I) DNA identification technologies; and

17 (J) tools and techniques that facilitate in-  
18 vestigations of computer crime.

19 (7) To administer a program of research, devel-  
20 opment, testing, and demonstration to improve the  
21 interoperability of voice and data public safety com-  
22 munications.

23 (8) To serve on the Technical Support Working  
24 Group of the Department of Defense, and on other  
25 relevant interagency panels, as requested.

1           (9) To develop, and disseminate to State and  
2           local law enforcement agencies, technical assistance  
3           and training materials for law enforcement per-  
4           sonnel, including prosecutors.

5           (10) To operate the regional National Law En-  
6           forcement and Corrections Technology Centers and,  
7           to the extent necessary, establish additional centers  
8           through a competitive process.

9           (11) To administer a program of acquisition,  
10          research, development, and dissemination of ad-  
11          vanced investigative analysis and forensic tools to as-  
12          sist State and local law enforcement agencies in  
13          combating cybercrime.

14          (12) To support research fellowships in support  
15          of its mission.

16          (13) To serve as a clearinghouse for informa-  
17          tion on law enforcement technologies.

18          (14) To represent the United States and State  
19          and local law enforcement agencies, as requested, in  
20          international activities concerning law enforcement  
21          technology.

22          (15) To enter into contracts and cooperative  
23          agreements and provide grants, which may require  
24          in-kind or cash matches from the recipient, as nec-  
25          essary to carry out its mission.

1           (16) To carry out other duties assigned by the  
2       Attorney General to accomplish the mission of the  
3       Office.

4       (c) COMPETITION REQUIRED.—Except as otherwise  
5       expressly provided by law, all research and development  
6       carried out by or through the Office shall be carried out  
7       on a competitive basis.

8       (d) INFORMATION FROM FEDERAL AGENCIES.—Fed-  
9       eral agencies shall, upon request from the Office and in  
10      accordance with Federal law, provide the Office with any  
11      data, reports, or other information requested, unless com-  
12      pliance with such request is otherwise prohibited by law.

13      (e) PUBLICATIONS.—Decisions concerning publica-  
14      tions issued by the Office shall rest solely with the Direc-  
15      tor of the Office.

16      (f) TRANSFER OF FUNDS.—The Office may transfer  
17      funds to other Federal agencies or provide funding to non-  
18      Federal entities through grants, cooperative agreements,  
19      or contracts to carry out its duties under this section.

20      (g) ANNUAL REPORT.—The Director of the Office  
21      shall include with the budget justification materials sub-  
22      mitted to Congress in support of the Department of Jus-  
23      tice budget for each fiscal year (as submitted with the  
24      budget of the President under section 1105(a) of title 31,

1 United States Code) a report on the activities of the Of-  
2 fice. Each such report shall include the following:

3 (1) For the period of 5 fiscal years beginning  
4 with the fiscal year for which the budget is  
5 submitted—

6 (A) the Director’s assessment of the needs  
7 of Federal, State, and local law enforcement  
8 agencies for assistance with respect to law en-  
9 forcement technology and other matters con-  
10 sistent with the mission of the Office; and

11 (B) a strategic plan for meeting such  
12 needs of such law enforcement agencies.

13 (2) For the fiscal year preceding the fiscal year  
14 for which such budget is submitted, a description of  
15 the activities carried out by the Office and an eval-  
16 uation of the extent to which those activities success-  
17 fully meet the needs assessed under paragraph  
18 (1)(A) in previous reports.

19 **SEC. 203. DEFINITION OF LAW ENFORCEMENT TECH-**  
20 **NOLOGY.**

21 For the purposes of this title, the term “law enforce-  
22 ment technology” includes investigative and forensic tech-  
23 nologies, corrections technologies, and technologies that  
24 support the judicial process.

1 **SEC. 204. ABOLISHMENT OF OFFICE OF SCIENCE AND**  
2 **TECHNOLOGY OF NATIONAL INSTITUTE OF**  
3 **JUSTICE; TRANSFER OF FUNCTIONS.**

4 (a) TRANSFERS FROM OFFICE WITHIN NIJ.—The  
5 Office of Science and Technology of the National Institute  
6 of Justice is hereby abolished, and all functions and activi-  
7 ties performed immediately before the date of the enact-  
8 ment of this Act by the Office of Science and Technology  
9 of the National Institute of Justice are hereby transferred  
10 to the Office.

11 (b) AUTHORITY TO TRANSFER ADDITIONAL FUNC-  
12 TIONS.—The Attorney General may transfer to the Office  
13 any other program or activity of the Department of Jus-  
14 tice that the Attorney General, in consultation with the  
15 Committee on the Judiciary of the Senate and the Com-  
16 mittee on the Judiciary of the House of Representatives,  
17 determines to be consistent with the mission of the Office.

18 (c) TRANSFER OF FUNDS.—

19 (1) IN GENERAL.—Any balance of appropria-  
20 tions that the Attorney General determines is avail-  
21 able and needed to finance or discharge a function,  
22 power, or duty of the Office or a program or activity  
23 that is transferred to the Office shall be transferred  
24 to the Office and used for any purpose for which  
25 those appropriations were originally available. Bal-  
26 ances of appropriations so transferred shall—



1 (A) be credited to any applicable appro-  
2 priation account of the Office; or

3 (B) be credited to a new account that may  
4 be established on the books of the Department  
5 of the Treasury;

6 and shall be merged with the funds already credited  
7 to that account and accounted for as one fund.

8 (2) LIMITATIONS.—Balances of appropriations  
9 credited to an account under paragraph (1)(A) are  
10 subject only to such limitations as are specifically  
11 applicable to that account. Balances of appropria-  
12 tions credited to an account under paragraph (1)(B)  
13 are subject only to such limitations as are applicable  
14 to the appropriations from which they are trans-  
15 ferred.

16 (d) TRANSFER OF PERSONNEL AND ASSETS.—With  
17 respect to any function, power, or duty, or any program  
18 or activity, that is transferred to the Office, those employ-  
19 ees and assets of the element of the Department of Justice  
20 from which the transfer is made that the Attorney General  
21 determines are needed to perform that function, power,  
22 or duty, or for that program or activity, as the case may  
23 be, shall be transferred to the Office.

24 (e) REPORT ON IMPLEMENTATION.—Not later than  
25 1 year after the date of the enactment of this Act, the

1 Attorney General shall submit to the Committee on the  
2 Judiciary of the Senate and the Committee on the Judici-  
3 ary of the House of Representatives a report on the imple-  
4 mentation of this title. The report shall—

5 (1) identify each transfer carried out pursuant  
6 to subsection (b);

7 (2) provide an accounting of the amounts and  
8 sources of funding available to the Office to carry  
9 out its mission under existing authorizations and ap-  
10 propriations, and set forth the future funding needs  
11 of the Office;

12 (3) include such other information and rec-  
13 ommendations as the Attorney General considers ap-  
14 propriate.

15 **SEC. 205. NATIONAL LAW ENFORCEMENT AND CORREC-**  
16 **TIONS TECHNOLOGY CENTERS.**

17 (a) IN GENERAL.—The Director of the Office shall  
18 operate and support National Law Enforcement and Cor-  
19 rections Technology Centers (hereinafter in this section  
20 referred to as “Centers”) and, to the extent necessary, es-  
21 tablish new centers through a merit-based, competitive  
22 process.

23 (b) PURPOSE OF CENTERS.—The purpose of the  
24 Centers shall be to—

1           (1) support research and development of law  
2 enforcement technology;

3           (2) support the transfer and implementation of  
4 technology;

5           (3) assist in the development and dissemination  
6 of guidelines and technological standards; and

7           (4) provide technology assistance, information,  
8 and support for law enforcement, corrections, and  
9 criminal justice purposes.

10       (c) ANNUAL MEETING.—Each year, the Director  
11 shall convene a meeting of the Centers in order to foster  
12 collaboration and communication between Center partici-  
13 pants.

14       (d) REPORT.—Not later than 12 months after the  
15 date of the enactment of this Act, the Director shall trans-  
16 mit to the Congress a report assessing the effectiveness  
17 of the existing system of Centers and identify the number  
18 of Centers necessary to meet the technology needs of Fed-  
19 eral, State, and local law enforcement in the United  
20 States.

21 **SEC. 206. COORDINATION WITH OTHER ENTITIES WITHIN**  
22 **DEPARTMENT OF JUSTICE.**

23       Section 102 of the Omnibus Crime Control and Safe  
24 Streets Act of 1968 (42 U.S.C. 3712) is amended in sub-

1 section (a)(5) by inserting “coordinate and” before “pro-  
2 vide”.

Passed the House of Representatives July 15, 2002.

Attest:

JEFF TRANDAHL,  
*Clerk.*