

Legislative Language

Law Enforcement Provisions Related to Computer Security

Part 1: Specific Criminalization of Damaging Critical Infrastructure Computers

Title 18, United States Code, is hereby amended to add the following section –

§ 1030A. Aggravated Damage to a Critical Infrastructure Computer

(a) Offense.—

(1) Whoever, during and in relation to a felony violation of section 1030 of this title knowingly causes or attempts to cause damage to a critical infrastructure computer, and such damage results in (or, in the case of an attempted offense, would, if completed have resulted in) the substantial impairment—

(A) of the operation of the critical infrastructure computer; or

(B) of the critical infrastructure associated with such computer,

shall, in addition to the term of punishment provided for such felony, be sentenced to a term of imprisonment of 3 years.

(b) Consecutive sentence.—Notwithstanding any other provision of law—

(1) a court shall not place on probation any person convicted of a violation of this section;

(2) except as provided in paragraph (4), no term of imprisonment imposed on a person under this section shall run concurrently with any other term of imprisonment, including any term of imprisonment imposed on the person under any other provision of law, including any term of imprisonment imposed for the felony violation of Title 18, United States Code, Section 1030;

(3) in determining any term of imprisonment to be imposed for the felony violation of Title 18, United States Code, Section 1030, a court shall not in any way reduce the term to be imposed for such crime so as to compensate for, or otherwise take into account, any separate term of imprisonment imposed or to be imposed for a violation of this section; and

(4) a term of imprisonment imposed on a person for a violation of this section may, in the discretion of the court, run concurrently, in whole or in part, only with another term of imprisonment that is imposed by the court at the same time on that person for an additional violation of this section, provided that such discretion shall be exercised

in accordance with any applicable guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28.

(c) Definitions.—In this section—

(1) the terms “damage” and “computer” have the meanings set forth for such terms in section 1030 of this title; and

(2) the term “critical infrastructure computer” means a computer that manages or controls systems or assets vital to national defense, national security, national economic security, public health or safety, or any combination of those matters, whether publicly or privately owned or operated, including gas and oil production, storage, and delivery systems; water supply systems; telecommunication networks; electrical power delivery systems; finance and banking systems; emergency services; transportation systems and services; and government operations that provide essential services to the public.

Part 2: Clarifying the Scope and Penalties for Offenses under the Computer Fraud and Abuse Act

[Changes to existing law are in shown in italics, bold, and strikethrough format]

18 U.S.C. § 1961(1).

(1) “racketeering activity” means ... (B) any act which is indictable under any of the following provisions of title 18, United States Code: ... section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), *section 1030 (relating to fraud and related activity in connection with computers) if the act indictable under section 1030 is felonious*, section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), ...

18 U.S.C. § 1030. Fraud and Related Activity in Connection with Computers

(a) Whoever —

...

(6) knowingly and with intent to defraud traffics (as defined in section 1029) in any password or similar information, *or means of access* through which a *protected* computer may be accessed without authorization, if—

(A) such trafficking affects interstate or foreign commerce; or

(B) such computer is used by or for the Government of the United States;

...

(b) Whoever conspires to commit or attempts to commit an offense under subsection (a) of this section shall be punished as provided *for the completed offense*, in subsection (c) of this section.

(c)

(1)

(A) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(1) of this section which does not occur after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph; and

(B) a fine under this title or imprisonment for not more than twenty years, or both, in the case of an offense under *subsection paragraph* (a)(1) of this section which occurs after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph;

(2)

(A) except as provided in subparagraph (B), a fine under this title or imprisonment for not more than ~~one~~ *three* years, or both, in the case of an offense under *subsection paragraph* (a)(2), ~~(a)(3), or (a)(6)~~ of this section which does not occur after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph;

(B) a fine under this title or imprisonment for not more than ~~5~~ *ten* years, or both, in the case of an offense under *subsection paragraph* (a)(2) of this section, or an attempt to commit an offense punishable under this subparagraph, if—

- (i) the offense was committed for purposes of commercial advantage or private financial gain;
- (ii) the offense was committed in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or of any State; or
- (iii) the value of the information obtained exceeds \$5,000; and

~~(C) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(2), (a)(3) or (a)(6) of this section which occurs after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph;~~

(3)

~~(A) a fine under this title or imprisonment for not more than five years, or both, in the case of an offense under subsection (a)(4) or (a)(7) of this section which does not occur after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph; and~~

~~(B) a fine under this title or imprisonment for not more than ten twenty years, or both, in the case of an offense under subsection (a)(4), or (a)(7) of this section which occurs after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph;~~

a fine under this title or imprisonment for not more than one year, or both, in the case of an offense under paragraph (a)(3) of this section;

(4)

~~(A) except as provided in subparagraphs (E) and (F), a fine under this title, imprisonment for not more than 5 years, or both, in the case of—~~

~~(i) an offense under subsection (a)(5)(B), which does not occur after a conviction for another offense under this section, if the offense caused (or, in the case of an attempted offense, would, if completed, have caused)—~~

~~(I) loss to 1 or more persons during any 1-year period (and, for purposes of an investigation, prosecution, or other proceeding brought by the United States only, loss resulting~~

~~from a related course of conduct affecting 1 or more other protected computers) aggregating at least \$5,000 in value;~~

~~(II) the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of 1 or more individuals;~~

~~(III) physical injury to any person;~~

~~(IV) a threat to public health or safety;~~

~~(V) damage affecting a computer used by or for an entity of the United States Government in furtherance of the administration of justice, national defense, or national security; or~~

~~(VI) damage affecting 10 or more protected computers during any 1-year period; or~~

~~(ii) an attempt to commit an offense punishable under this subparagraph;~~

~~(B) except as provided in subparagraphs (E) and (F), a fine under this title, imprisonment for not more than 10 years, or both, in the case of —~~

~~(i) an offense under subsection (a)(5)(A), which does not occur after a conviction for another offense under this section, if the offense caused (or, in the case of an attempted offense, would, if completed, have caused) a harm provided in subclauses (I) through (VI) of subparagraph (A)(i); or~~

~~(ii) an attempt to commit an offense punishable under this subparagraph;~~

~~(C) except as provided in subparagraphs (E) and (F), a fine under this title, imprisonment for not more than 20 years, or both, in the case of —~~

~~(i) an offense or an attempt to commit an offense under subparagraphs (A) or (B) of subsection (a)(5) that occurs after a conviction for another offense under this section; or~~

~~(ii) an attempt to commit an offense punishable under this subparagraph;~~

~~(D) a fine under this title, imprisonment for not more than 10 years, or both, in the case of—~~

~~(i) an offense or an attempt to commit an offense under subsection (a)(5)(C) that occurs after a conviction for another offense under this section; or~~

~~(ii) an attempt to commit an offense punishable under this subparagraph;~~

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

~~(F) if the offender attempts to cause or knowingly or recklessly causes death from conduct in violation of subsection (a)(5)(A), a fine under this title, imprisonment for any term of years or for life, or both; or~~

~~(G) a fine under this title, imprisonment for not more than 1 year, or both, for—~~

~~(i) any other offense under subsection (a)(5); or~~

~~(ii) an attempt to commit an offense punishable under this subparagraph.~~

a fine under this title or imprisonment for not more than twenty years, or both, in the case of an offense under paragraph (a)(4) of this section;

(5)

(A) Except as provided in subparagraph (D), a fine under this title, imprisonment for not more than twenty years, or both, in the case of an offense under subparagraph (a)(5)(A) of this section, if the offense caused—

(i) loss to 1 or more persons during any 1-year period (and, for purposes of an investigation, prosecution, or other proceeding brought by the United States only, loss resulting from a related course of conduct affecting 1 or more other protected computers) aggregating at least \$5,000 in value;

(ii) the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of one or more individuals;

(iii) physical injury to any person;

(iv) a threat to public health or safety;

(v) damage affecting a computer used by or for an entity of the United States Government in furtherance of the administration of justice, national defense, or national security; or

(vi) damage affecting ten or more protected computers during any one-year period; or

(B) a fine under this title, imprisonment for not more than ten years, or both, in the case of an offense under subparagraph (a)(5)(B), if the offense caused a harm provided in (i) through (vi) of subparagraph (A) of this subsection; or

(C) if the offender attempts to cause or knowingly or recklessly causes death from conduct in violation of subparagraph (a)(5)(A), a fine under this title, imprisonment for any term of years or for life, or both; or

(D) a fine under this title, imprisonment for not more than one year, or both, for any other offense under paragraph (a)(5);

(6) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under paragraph (a)(6) of this section;

(7) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under paragraph (a)(7) of this section.

...

(i) Criminal Forfeiture

(1) The court, in imposing sentence on any person convicted of a violation of this section, or convicted of conspiracy to violate this section, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person forfeit to the United States—

(A) such person's interest in any ~~personal~~ property, *real or personal*, that was used or intended to be used to commit or to facilitate the commission of such violation; and

(B) any property, real or personal, constituting or derived from; any *gross* proceeds, *or any property traceable to such property*, that such person obtained; directly or indirectly; as a result of such violation.

(2) The criminal forfeiture of property under this subsection, *including* any seizure and disposition *of the property thereof*, and any *related* judicial or *administrative* proceeding ~~in relation thereto~~, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except subsection (d) of that section.

(j) *Civil Forfeiture*

~~(1) For purposes of subsection (i),~~ The following shall be subject to forfeiture to the United States and no property right shall exist in them:

~~(1A)~~ Any ~~personal~~ property, *real or personal*, *that was* used or intended to be used to commit or to facilitate the commission of any violation of this section, or a conspiracy to violate this section.

~~(2B)~~ Any property, real or personal, ~~which constitutes~~ *constituting* or is derived from *any gross* proceeds *obtained directly or indirectly*, *or any property* traceable to *such property*, *as a result of the commission of* any violation of this section, or a conspiracy to violate this section.

(2) *Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of title 18, United States Code, relating to civil forfeitures, except that such duties as are imposed on the Secretary of the Treasury under the customs laws described in section 981(d) of title 18 shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Secretary of Homeland Security or the Attorney General.*