

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
 TO H.R. 3482
 OFFERED BY MR. SMITH OF TEXAS**

Strike all after the enacting clause and insert the following:

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 The United States Sentencing Commission shall
 8 amend the Federal sentencing guidelines and, if appro-
 9 priate, promulgate guidelines or policy statements or
 10 amend existing policy statements to address—

11 (1) the potential and actual loss resulting from
 12 an offense under section 1030 of title 18, United
 13 States Code;

14 (2) the level of sophistication and planning in-
 15 volved in the offense;

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



1 (4) whether or not the offense was committed
2 for purposes of commercial advantage or private fi-
3 nancial benefit;

4 (5) whether or not the defendant acted with
5 malicious intent to cause harm in committing the of-
6 fense;

7 (6) the extent to which the offense violated the
8 privacy rights of individuals harmed by the offense;

9 (7) whether the offense involved a computer
10 used by the Government in furtherance of national
11 defense, national security, or the administration of
12 justice; and

13 (8) any other factor the Commission considers
14 appropriate.

15 **SEC. 102. EMERGENCY DISCLOSURE EXCEPTION.**

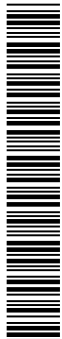
16 Section 2702(b) of title 18, United States Code, is
17 amended—

18 (1) by striking “or” at the end of paragraph

19 (5);

20 (2) by striking subparagraph (C) of paragraph
21 (6); and

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



1 (4) by striking the period at the end of para-
2 graph (6) and inserting “; or”; and

3 (5) by inserting after paragraph (6) the fol-
4 lowing:

5 “(7) to a governmental entity, if the provider,
6 in good faith, believes that an emergency involving
7 danger of death or serious physical injury to any
8 person requires disclosure of the information without
9 delay.”.

10 **SEC. 103. GOOD FAITH EXCEPTION.**

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

13 **SEC. 104. NATIONAL INFRASTRUCTURE PROTECTION CEN-**
14 **TER.**

15 (a) IN GENERAL.—The Attorney General shall estab-
16 lish and maintain a National Infrastructure Protection
17 Center (hereinafter in this section referred to as the “Cen-
18 ter”) to serve as a national focal point for threat assess-
19 ment, warning, investigation, and response to attacks on
20 the Nation’s critical infrastructure for both physical and
21 cyber sources.

22 (b) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated for fiscal year 2003 to
24 carry out this section, \$125,000,000.



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

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

4 (1) by inserting “or disseminates by electronic
5 means” after “or other publication”;

6 (2) by inserting “knowing the content of the
7 advertisement and” before “knowing or having rea-
8 son to know”;

9 (3) by inserting “or transmitted” after “trans-
10 ported”; and

11 (4) by inserting “or communication” after “for-
12 eign commerce”.

13 **SEC. 106. STRENGTHENING PENALTIES.**

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

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

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

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

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

24 “(5)(A) if the offender knowingly or recklessly
25 causes or attempts to cause serious bodily injury
26 from conduct in violation of subsection (a)(5)(A)(i),



1 a fine under this title or imprisonment for not more
2 than 20 years, or both; and

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

8 **SEC. 107. PROVIDER ASSISTANCE.**

9 (a) SECTION 2703.—

10 (1) Section 2703(e) of title 18, United States
11 Code, is amended by inserting “, statutory author-
12 ization” after “subpoena”.

13 (2) Section 2703(f) of title 18, United States
14 Code, is amended by adding at the end the fol-
15 lowing:

16 “(3) REMEDIES.—If a provider of wire or elec-
17 tronic communication services or a remote com-
18 puting service intentionally fails to comply with a re-
19 quest under this subsection, the requesting govern-
20 mental entity may obtain appropriate relief in a civil
21 action, in addition to any other remedy or cause of
22 action that entity may have.”.

23 (b) SECTION 2511.—Section 2511(2)(a)(ii) of title 18,
24 United States Code, is amended by inserting “, statutory



1 authorization,” after “court order” the last place it ap-
2 pears.

3 (c) SECTION 2706.—

4 (1) Section 2706(a) of title 18, United States
5 Code, is amended by inserting “requesting or” after
6 “entity” the first place it appears.

7 (2) Section 2706(b) of title 18, United States
8 Code, is amended by inserting “assembling or” after
9 “person or entity”.

10 **SEC. 108. EMERGENCIES.**

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

13 (1) by striking “or” at the end of subparagraph

14 (a);

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

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

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

20 “(D) an ongoing attack on a protected
21 computer that constitutes a crime punishable by
22 a term of imprisonment greater than one
23 year;”.



1 **SEC. 109. PROTECTING PRIVACY.**

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

4 (1) in paragraph (a), by striking “paragraph
5 (b) of this subsection or”;

6 (2) by striking paragraph (b); and

7 (3) by redesignating paragraph (c) as para-
8 graph (b).

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

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

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

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

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

20 “(2) in any other case—

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

25 “(B) a fine under this title or imprison-
26 ment for not more than 5 years, or both, in the



1 case of an offense under this subparagraph that
2 occurs after a conviction of another offense
3 under this section.”.

4 **TITLE II—OFFICE OF SCIENCE**
5 **AND TECHNOLOGY**

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

7 (a) ESTABLISHMENT.—

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

12 (2) AUTHORITY.—The Office shall be under the
13 general authority of the Assistant Attorney General,
14 Office of Justice Programs, and shall be independent
15 of the National Institute of Justice.

16 (b) DIRECTOR.—The Office shall be headed by a Di-
17 rector, who shall be an individual appointed based on ap-
18 proval by the Office of Personnel Management of the execu-
19 tive qualifications of the individual.

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

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

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

24 (2) to carry out programs that, through the
25 provision of equipment, training, and technical as-



1 sistance, improve the safety and effectiveness of law
2 enforcement technology and improve access to such
3 technology by Federal, State, and local law enforce-
4 ment agencies.

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

7 (1) To provide recommendations and advice to
8 the Attorney General.

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

14 (3) To establish and maintain performance
15 standards in accordance with the National Tech-
16 nology Transfer and Advancement Act of 1995
17 (Public Law 104–113) for, and test and evaluate
18 law enforcement technologies that may be used by,
19 Federal, State, and local law enforcement agencies.

20 (4) To establish and maintain a program to
21 certify, validate, and mark or otherwise recognize
22 law enforcement technology products that conform
23 to standards used by the Office in accordance with
24 the National Technology Transfer and Advancement
25 Act of 1995 (Public Law 104–113), which may, in



1 the discretion of the Office, allow for supplier dec-
2 laration of conformity with such standards.

3 (5) To work with other entities within the De-
4 partment of Justice, other Federal agencies, and the
5 executive office of the President to establish a co-
6 ordinated Federal approach on issues related to law
7 enforcement technology.

8 (6) To carry out research, development, testing,
9 and evaluation in fields that would improve the safe-
10 ty, effectiveness, and efficiency of law enforcement
11 technologies used by Federal, State, and local law
12 enforcement agencies, including, but not limited to—

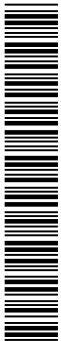
13 (A) weapons capable of preventing use by
14 unauthorized persons, including personalized
15 guns;

16 (B) protective apparel;

17 (C) bullet-resistant and explosion-resistant
18 glass;

19 (D) monitoring systems and alarm systems
20 capable of providing precise location informa-
21 tion;

22 (E) wire and wireless interoperable com-
23 munication technologies;



1 (F) tools and techniques that facilitate in-
2 vestigative and forensic work, including com-
3 puter forensics;

4 (G) equipment for particular use in
5 counterterrorism, including devices and tech-
6 nologies to disable terrorist devices;

7 (H) guides to assist State and local law en-
8 forcement agencies;

9 (I) DNA identification technologies; and

10 (J) tools and techniques that facilitate in-
11 vestigations of computer crime.

12 (7) To administer a program of research, devel-
13 opment, testing, and demonstration to improve the
14 interoperability of voice and data public safety com-
15 munications.

16 (8) To serve on the Technical Support Working
17 Group of the Department of Defense, and on other
18 relevant interagency panels, as requested.

19 (9) To develop, and disseminate to State and
20 local law enforcement agencies, technical assistance
21 and training materials for law enforcement per-
22 sonnel, including prosecutors.

23 (10) To operate the regional National Law En-
24 forcement and Corrections Technology Centers and,



1 to the extent necessary, establish additional centers
2 through a competitive process.

3 (11) To administer a program of acquisition,
4 research, development, and dissemination of ad-
5 vanced investigative analysis and forensic tools to as-
6 sist State and local law enforcement agencies in
7 combating cybercrime.

8 (12) To support research fellowships in support
9 of its mission.

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

12 (14) To represent the United States and State
13 and local law enforcement agencies, as requested, in
14 international activities concerning law enforcement
15 technology.

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

20 (16) To carry out other duties assigned by the
21 Attorney General to accomplish the mission of the
22 Office.

23 (c) COMPETITION REQUIRED.—Except as otherwise
24 expressly provided by law, all research and development



1 carried out by or through the Office shall be carried out
2 on a competitive basis.

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

8 (e) PUBLICATIONS.—Decisions concerning publica-
9 tions issued by the Office shall rest solely with the Direc-
10 tor of the Office.

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

15 (g) ANNUAL REPORT.—The Director of the Office
16 shall include with the budget justification materials sub-
17 mitted to Congress in support of the Department of Jus-
18 tice budget for each fiscal year (as submitted with the
19 budget of the President under section 1105(a) of title 31,
20 United States Code) a report on the activities of the Of-
21 fice. Each such report shall include the following:

22 (1) For the period of 5 fiscal years beginning
23 with the fiscal year for which the budget is
24 submitted—



1 (A) the Director's assessment of the needs
2 of Federal, State, and local law enforcement
3 agencies for assistance with respect to law en-
4 forcement technology and other matters con-
5 sistent with the mission of the Office; and

6 (B) a strategic plan for meeting such
7 needs of such law enforcement agencies.

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

14 **SEC. 203. DEFINITION OF LAW ENFORCEMENT TECH-**
15 **NOLOGY.**

16 For the purposes of this title, the term "law enforce-
17 ment technology" includes investigative and forensic tech-
18 nologies, corrections technologies, and technologies that
19 support the judicial process.

20 **SEC. 204. ABOLISHMENT OF OFFICE OF SCIENCE AND**
21 **TECHNOLOGY OF NATIONAL INSTITUTE OF**
22 **JUSTICE; TRANSFER OF FUNCTIONS.**

23 (a) TRANSFERS FROM OFFICE WITHIN NIJ.—The
24 Office of Science and Technology of the National Institute
25 of Justice is hereby abolished, and all functions and activi-



1 ties performed immediately before the date of the enact-
2 ment of this Act by the Office of Science and Technology
3 of the National Institute of Justice are hereby transferred
4 to the Office.

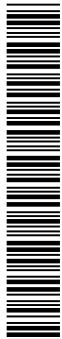
5 (b) AUTHORITY TO TRANSFER ADDITIONAL FUNC-
6 TIONS.—The Attorney General may transfer to the Office
7 any other program or activity of the Department of Jus-
8 tice that the Attorney General, in consultation with the
9 Committee on the Judiciary of the Senate and the Com-
10 mittee on the Judiciary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

12 (c) TRANSFER OF FUNDS.—

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

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

23 (B) be credited to a new account that may
24 be established on the books of the Department
25 of the Treasury;



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

3 (2) LIMITATIONS.—Balances of appropriations
4 credited to an account under paragraph (1)(A) are
5 subject only to such limitations as are specifically
6 applicable to that account. Balances of appropri-
7 tions credited to an account under paragraph (1)(B)
8 are subject only to such limitations as are applicable
9 to the appropriations from which they are trans-
10 ferred.

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

19 (e) REPORT ON IMPLEMENTATION.—Not later than
20 1 year after the date of the enactment of this Act, the
21 Attorney General shall submit to the Committee on the
22 Judiciary of the Senate and the Committee on the Judici-
23 ary of the House of Representatives a report on the imple-
24 mentation of this title. The report shall—



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

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

8 (3) include such other information and rec-
9 ommendations as the Attorney General considers ap-
10 propriate.

11 **SEC. 205. NATIONAL LAW ENFORCEMENT AND CORREC-**
12 **TIONS TECHNOLOGY CENTERS.**

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

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

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

23 (2) support the transfer and implementation of
24 technology;



1 (3) assist in the development and dissemination
2 of guidelines and technological standards; and

3 (4) provide technology assistance, information,
4 and support for law enforcement, corrections, and
5 criminal justice purposes.

6 (c) ANNUAL MEETING.—Each year, the Director
7 shall convene a meeting of the Centers in order to foster
8 collaboration and communication between Center partici-
9 pants.

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

17 **SEC. 206. COORDINATION WITH OTHER ENTITIES WITHIN**
18 **DEPARTMENT OF JUSTICE.**

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

