



1995 ASSEMBLY BILL 1055

March 21, 1996 - Introduced by Representatives F. LASEE, POWERS, UNDERHEIM, OURADA, AINSWORTH, DUFF, GREEN, KLUSMAN, HANDRICK, COLEMAN, LAZICH, HARS DORF, BRANDEMUEHL, LEHMAN, KAUFERT, NASS, VRAKAS, WARD, PORTER, URBAN, GOETSCH, OTTE, OWENS, HAHN, SILBAUGH, JOHNSRUD, SKINDRUD, OTT, HUEBSCH, FREESE, DOBYNS, LADWIG, GUNDERSON, ZUKOWSKI, MUSSER, WALKER, RYBA, VANDER LOOP, HASENOHRL, HANSON and SCHNEIDER, cosponsored by Senators PANZER, ADELMAN, C. POTTER and JAUCH, by request of Attorney General James Doyle. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT to renumber and amend** 945.06; **to amend** 939.641 (intro.), 943.70 (4),
2 945.03 (7) and 945.06 (title); and **to create** 161.55 (1) (h), 945.01 (4m), 945.06
3 (2), 948.15, 973.075 (1) (d) and 973.111 of the statutes; **relating to:** the use of
4 computers to commit certain crimes, allowing the forfeiture of computers used
5 to commit a crime and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill relates to the use of computers in the commission of crime. Specifically, the bill does the following:

Penalty enhancement for concealing identity using computer

Under current law, if a person commits a crime while his or her usual appearance has been concealed, disguised or altered with the intent to make it less likely that he or she will be identified with the crime, the penalties for the crime may be increased. If the crime is a misdemeanor, the maximum fine may be increased by not more than \$10,000 and the maximum imprisonment may be increased so that the revised maximum term is one year in jail. If the crime is a felony, the maximum fine may be increased by not more than \$10,000 and the maximum imprisonment may be increased by not more than 5 years.

This bill provides that if a person commits a crime while his or her identity is concealed or disguised by use of a computer or other electronic communication device with the intent to make it less likely that he or she will be identified with the crime, the penalties for the crime may be increased in the same manner as that provided under current law for a person who commits a crime with his or her usual appearance concealed, disguised or altered.

Computer use restrictions for persons convicted of committing a crime

Under current law, if a person commits a computer offense (generally the unauthorized copying, modification, destruction or gaining of access to a computer, computer program or computer system or to computer data or supplies), a judge may place restrictions on the person's use of computers. A judge may impose computer use restrictions in addition to the penalties of forfeitures (civil monetary penalties), fines, imprisonment or probation provided by law. A computer use restriction may not last longer than the maximum period of time for which the person could have been imprisoned, except that if the offense provides only for a forfeiture (a civil monetary penalty) the restrictions may not last longer than 90 days.

This bill provides that if a person is convicted of any crime and a court finds that the person used a computer to commit the crime or to aid the commission of the crime, the court may impose restrictions on the person's computer use in addition to imposing any other penalties provided for the crime. As under current law, the duration of any computer use restrictions placed on a person may not exceed the maximum period for which the person could have been imprisoned, except that if the only penalty provided for a crime is a fine, and not imprisonment, the restriction may not exceed the period for which the person could be placed on probation.

Seizure of computer used in committing a crime

Current law authorizes the seizure of any property directly or indirectly derived from the commission of a crime. Current law also authorizes the seizure of certain property used in the commission of certain crimes, including the following: 1) vehicles used to transport stolen property; 2) controlled substances, materials or equipment used in the commission of crime relating to controlled substances; and 3) vehicles, equipment and devices used in the commission of a crime relating to a submerged cultural resource (an archaeological site or historic property that is located beneath the surface of a lake or stream). Current law provides a specific civil procedure that applies to the seizure of property derived from or used in a crime.

This bill provides for the seizure of any computer that is used in the commission of any crime. Seizure of computers used in the commission of a crime is governed by the same civil procedure that applies to seizure of property used in or derived from a crime under current law.

Using computers to engage in gambling or to transmit or receive child pornography or material harmful to children

Current law prohibits commercial gambling, which includes using a wire communication facility to: 1) transmit or receive information that assists in the placing of a bet or an offer to bet on any sporting event or contest; or 2) transmit a wire communication which entitles the recipient to receive money or credit as a result of a bet or offer to bet. A person convicted of commercial gambling may be fined not more than \$10,000 or imprisoned for not more than 2 years or both. This bill provides that commercial gambling also includes the use of an interactive computer service to: 1) transmit or receive information that assists in the placing of a bet or an offer to bet on any sporting event or contest; or 2) transmit an electronic communication which entitles the recipient to receive money or credit as a result of a bet or offer to bet.

Also, under current law, if a public utility, common or contract carrier or railroad is notified in writing by a law enforcement agency that any facility furnished by the public utility, common or contract carrier or railroad is being used or will be used by a person for the purpose of transmitting or receiving gambling information in violation of state law, the public utility, common or contract carrier or railroad must, after reasonable notice to the person, discontinue or refuse to furnish the facility to the person. A person may seek a determination from a court or agency as to whether the facility should not be discontinued or should be restored or furnished.

The bill expands the coverage of current law relating to facilities used to transmit or receive gambling information by providing that an interactive computer service that provides access to a certain site or area must block access to that site or area if it is notified by a law enforcement agency that the site or area is being used or will be used to transmit or receive gambling information in violation of state law. The interactive computer service must give reasonable notice to persons who subscribe to its service that access to the site or area is to be blocked. As under current law, a person may seek a determination from a court or agency as to whether access to the site or area should not be blocked or should be restored.

In addition, the bill provides for the restriction of access to an interactive computer service in certain situations involving child pornography or other unlawful material that is harmful to children (certain material depicting nudity, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality). Under the bill, if an interactive computer service is notified in writing by a law enforcement agency that any site or area provided by the interactive computer service is being used or will be used by a person for the purpose of transmitting or receiving child pornography or other unlawful material that is harmful to children, the interactive computer service must, after reasonable notice to persons who subscribe to the service, block the access to the site or area through its service. In addition, if a law enforcement officer notifies an interactive computer service that a particular person is using the service to gain access to a site or area for the purpose of transmitting or receiving child pornography or other unlawful material that is harmful to children, the interactive computer service must discontinue its service to that person. A person may seek a determination from a court as to whether access to a site or area should not be blocked or should be restored or whether the person's access to the interactive computer service should not be discontinued or should be restored.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 161.55 (1) (h) of the statutes is created to read:
- 2 161.55 (1) (h) Any computer, as defined in s. 943.70 (1) (a), that is used in the
- 3 commission of any crime under this chapter.

1 **SECTION 2.** 939.641 (intro.) of the statutes is amended to read:

2 **939.641 Penalty; concealing identity.** (intro.) If a person commits a crime
3 while his or her usual appearance has been concealed, disguised or altered, or while
4 his or her identity is concealed or disguised by use of a computer or other electronic
5 communication device, with intent to make it less likely that he or she will be
6 identified with the crime, the penalties for the underlying crime may be increased
7 as follows:

8 **SECTION 3.** 943.70 (4) of the statutes is amended to read:

9 **943.70 (4) COMPUTER USE RESTRICTION.** ~~In addition to the other penalties~~
10 ~~provided for violation of this section, a~~ A judge may place restrictions on the
11 offender's use of computers. ~~The duration of any such restrictions may not exceed~~
12 ~~the maximum period for which the offender could have been imprisoned; by a person~~
13 who violates this section as provided under s. 973.111, except that if the offense
14 violation is punishable by forfeiture, the duration of the restrictions may not exceed
15 90 days.

16 **SECTION 4.** 945.01 (4m) of the statutes is created to read:

17 **945.01 (4m) INTERACTIVE COMPUTER SERVICE.** An interactive computer service
18 is an information service, system or access software provider that provides or enables
19 computer access by multiple users to a computer server, including an information
20 service, system or access software provider that provides access to the Internet and
21 an information service, system or access software provider that is operated or offered
22 by a library or educational institution.

23 **SECTION 5.** 945.03 (7) of the statutes is amended to read:

24 **945.03 (7)** For gain, uses a wire communication facility or interactive computer
25 service for the transmission or receipt of information assisting in the placing of a bet

1 or offer to bet on any sporting event or contest, or for the transmission of a wire
2 communication or electronic communication which entitles the recipient to receive
3 money or credit as a result of a bet or offer to bet.

4 **SECTION 6.** 945.06 (title) of the statutes is amended to read:

5 **945.06 (title) Public utilities and computer services to cease service.**

6 **SECTION 7.** 945.06 of the statutes is renumbered 945.06 (1) and amended to
7 read:

8 945.06 (1) When any public utility, common carrier, contract carrier, or
9 railroad, subject to the jurisdiction of the public service commission, office of the
10 commissioner of railroads or department of transportation of this state, is notified
11 in writing by a federal, state or local law enforcement agency, acting within its
12 jurisdiction, that any facility furnished by ~~it~~ the public utility, common carrier,
13 contract carrier or railroad is being used or will be used for the purpose of
14 transmitting or receiving gambling information in violation of the laws of this state
15 ~~it, the public utility, common carrier, contract carrier or railroad~~ shall discontinue or
16 refuse the leasing, furnishing or maintaining of such facility, after reasonable notice
17 to the subscriber, ~~but not~~.

18 **(3)** No damages, penalty or forfeiture, civil or criminal, shall be found against
19 any such public utility, common carrier, contract carrier ~~or~~, railroad, or interactive
20 computer service for any act done in compliance with ~~any a~~ notice received from a law
21 enforcement agency under ~~this section~~ sub. (1) or (2).

22 **(4)** Nothing in this section shall be deemed to prejudice the right of any person
23 affected ~~thereby~~ by an action taken under sub. (1) or (2) to secure an appropriate
24 determination, as otherwise provided by law in any court or tribunal or agency, ~~that~~

1 such as to whether a facility or access to a site or area should not be discontinued,
2 blocked or removed, or should be restored.

3 **SECTION 8.** 945.06 (2) of the statutes is created to read:

4 945.06 (2) When any interactive computer service is notified in writing by a
5 federal, state or local law enforcement agency acting within its jurisdiction that any
6 site or area to which the interactive computer service provides access is being used
7 or will be used for the purpose of transmitting or receiving gambling information in
8 violation of the laws of this state, the interactive computer service shall, after giving
9 reasonable notice to the subscribers to its service, use all technological means
10 possible to block access to the site or area through its service.

11 **SECTION 9.** 948.15 of the statutes is created to read:

12 **948.15 Interactive computer services to cease service.** (1) In this
13 subsection:

14 (a) "Child pornography" means any undeveloped film, photographic negative,
15 photograph, motion picture, videotape or other pictorial reproduction or audio
16 recording of a child engaged in sexually explicit conduct.

17 (b) "Computer" has the meaning given in s. 943.70 (1) (a).

18 (c) "Harmful material" has the meaning given in s. 948.11 (1) (a).

19 (d) "Interactive computer service" has the meaning given in s. 945.01 (4m).

20 (2) When any interactive computer service is notified in writing by a federal,
21 state or local law enforcement agency acting within its jurisdiction that a site or area
22 to which the interactive computer service provides access is being used or will be used
23 for the purpose of transmitting or receiving harmful material in violation of s. 948.11
24 or child pornography in violation of s. 948.05 (1) or 948.12, the interactive computer

1 service shall, after reasonable notice to the persons who subscribe to its service, use
2 all technological means possible to block access to the site or area through its service.

3 (3) When any interactive computer service is notified in writing by a federal,
4 state or local law enforcement agency acting within its jurisdiction that a site or area
5 to which the interactive computer service provides access is being used or will be used
6 by a person for the purpose of transmitting or receiving harmful material in violation
7 of s. 948.11 or child pornography in violation of s. 948.05 (1) or 948.12, the interactive
8 computer service shall, after reasonable notice to the person, discontinue or refuse
9 to provide its service to that person.

10 (4) No interactive computer service may be subject to any civil damages or to
11 any civil or criminal penalty or forfeiture for any act done in compliance with a notice
12 received from a law enforcement agency acting under sub. (2) or (3).

13 (5) This section does not restrict the right of a person affected by an action
14 taken under this section to secure an appropriate determination, as otherwise
15 provided by law, from a court as to whether access to a site or area should not be
16 blocked or should be restored, or as to whether an interactive computer service
17 should not discontinue service to a person or should restore service to a person.

18 **SECTION 10.** 973.075 (1) (d) of the statutes is created to read:

19 973.075 (1) (d) Any computer, as defined in s. 943.70 (1) (a), that is used in the
20 commission of a crime.

21 **SECTION 11.** 973.111 of the statutes is created to read:

22 **973.111 Restriction on computer use. (1)** In this section, "computer" has
23 the meaning given in s. 943.70 (1) (a).

24 (2) If a person is convicted of a crime and the court finds that the person used
25 a computer to commit the crime or to aid the commission of the crime, the court may,

1 in addition to the other penalties provided for the crime, place restrictions on the
2 person's use of computers.

3 (3) (a) Except as provided in par. (b) and s. 943.70 (4), the duration of any
4 computer use restrictions imposed on a person under sub. (2) may not exceed the
5 maximum period for which the person could have been imprisoned for the crime.

6 (b) If the crime for which a person is convicted is punishable only by a fine, the
7 duration of the restrictions may not exceed the maximum period for which the person
8 could be placed on probation under s. 973.09 (2).

9 **SECTION 12. Initial applicability.**

10 (1) The treatment of sections 161.55 (1) (h), 939.641 (intro.), 945.03 (7), 973.075
11 (1) (d) and 973.111 of the statutes first applies to acts occurring on the effective date
12 of this subsection.

13 (END)