

## 2001 ASSEMBLY BILL 495

September 17, 2001 – Introduced by Representatives WALKER, SUDER, PETTIS, STARZYK, UNDERHEIM, GUNDRUM, VRAKAS, NASS, URBAN, LADWIG, TOWNSEND, OLSEN, GRONEMUS and COGGS, cosponsored by Senators ROSENZWEIG, BURKE, COWLES, HANSEN, HUELSMAN, DARLING and HARSDORF. Referred to Committee on Corrections and the Courts.

1     **AN ACT** *to renumber* 973.076 (3); *to amend* 973.075 (5) (intro.); and *to create*  
2           973.075 (1) (f) and 973.076 (3) (b) of the statutes; **relating to:** seizure of  
3           computers used in crimes against children.

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### ***Analysis by the Legislative Reference Bureau***

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 a crime relating to controlled substances; 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); and 4) pirated, bootlegged, or counterfeit recordings and any equipment used to make them.

Current law provides a specific civil procedure that applies to the seizure of such property. Under those provisions, the state, in a civil case, must prove by the greater weight of the evidence that the person committed the offense from which the property is derived or with respect to which the property is used. The state may use a record of a person's conviction in a criminal case to satisfy that requirement.

This bill authorizes the seizure of any computer that is used to facilitate the commission of a crime against a child or an attempt to commit such a crime. Under the bill, the computer may be seized if either of the following apply: 1) the state proves that a person committed the offense, either through a record of a conviction

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or through other evidence, and used the computer in doing so (the method provided for seizures under current law); or 2) a person is charged with the offense in a criminal case but pleads guilty to a different offense, and the state proves that the computer was used in the commission of the offense to which the person pleads guilty.

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

1           **SECTION 1.** 973.075 (1) (f) of the statutes is created to read:

2           973.075 (1) (f) Any computer, as defined in s. 943.70 (1) (a), used or to be used  
3 in the commission of a crime or an attempt to commit a crime under ch. 948. If a  
4 computer subject to forfeiture under this paragraph is encumbered by a bona fide  
5 perfected security interest that was perfected before the date of the commission of  
6 the current violation, and the holder of the security interest neither had knowledge  
7 of nor consented to the commission of that violation, the holder of the security  
8 interest shall be paid from the proceeds of the forfeiture.

9           **SECTION 2.** 973.075 (5) (intro.) of the statutes is amended to read:

10          973.075 (5) (intro.) All forfeitures under ss. 973.075 to 973.077 shall be made  
11 with due provision for the rights of innocent persons under sub. (1) (b) 2m., (bg), (bm),  
12 (d) ~~and~~, (e), and (f). Except as provided in sub. (5m), any property seized but not  
13 forfeited shall be returned to its rightful owner. Any person claiming the right to  
14 possession of property seized may apply for its return to the circuit court for the  
15 county in which the property was seized. The court shall order such notice as it  
16 deems adequate to be given the district attorney and all persons who have or may  
17 have an interest in the property and shall hold a hearing to hear all claims to its true  
18 ownership. If the right to possession is proved to the court's satisfaction, it shall  
19 order the property returned if:

20          **SECTION 3.** 973.076 (3) of the statutes is renumbered 973.076 (3) (a).

