

**2001 DRAFTING REQUEST**

**Bill**

Received: 05/25/2001

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Scott Walker (608) 266-9180

By/Representing: Missy

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - crimes agust kids

Extra Copies: rlr

Submit via email: NO

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Forfeiture of computer equipment used by child enticement and child pornography offenders

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 07/23/2001	wjackson 07/26/2001					
/P1		gilfokm 08/29/2001	pgreensl 08/06/2001		lrb_docadmin 08/06/2001		
/1			rschluet 08/29/2001		lrb_docadmin 08/29/2001	lrb_docadmin 09/14/2001	

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FE Sent For:

8.29-1 <END>

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Requester's email:

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/?	mdsida	1/pt Wlj 7/26	8/6 pg	8/6 Self			

FE Sent For:

<END>

**Dsida, Michael**

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**From:** Gilbert, Melissa  
**Sent:** Thursday, May 24, 2001 10:54 AM  
**To:** Dsida, Michael  
**Subject:** FW: seizure of computers used for child pornography

Also, we would like to seize the computers of people who use the internet for child enticement. Thanks.

-----Original Message-----

**From:** Gilbert, Melissa  
**Sent:** Wednesday, May 23, 2001 4:16 PM  
**To:** Dsida, Michael  
**Subject:** seizure of computers used for child pornography

Hi Mike,

How's life? You knew we couldn't go too long without submitting another drafting request, right? We'd like to make computer equipment used by child pornographers in the commission of their crime subject to seizure under Ch. 973.075. This would apply to anyone who is convicted or who pleas down. I guess similar proposals have been drafted in the past, but I don't have any copies. Let me know if you need further direction.

Thanks!  
Missy

**Melissa Gilbert**  
**Research Assistant**  
**Office of Rep. Scott Walker**

**Dsida, Michael**

---

**From:** Gilbert, Melissa  
**Sent:** Monday, July 23, 2001 8:51 AM  
**To:** Dsida, Michael  
**Subject:** RE: forfeiture of computers

Hey Mike,

I had a wonderful weekend up north. Hope you found some time to relax as well.

"Yes" to both questions. I think that makes the most sense.

Thanks,  
Missy

-----Original Message-----

**From:** Dsida, Michael  
**Sent:** Friday, July 20, 2001 4:13 PM  
**To:** Gilbert, Melissa  
**Subject:** forfeiture of computers

Hope you had a nice weekend.

Here are my remaining questions about this draft:

1. Some property that is subject to forfeiture under current law may be the subject of a secured loan (for example, a car). In that case, the lender (assuming s/he was not involved in the offense) is paid from the proceeds of the forfeiture. Do you want the same treatment for computers?
2. If a person pleads guilty to a related offense, I would leave open the possibility of the state proving that the computers were used in connection with the sex offense if it could prove (in the civil case) that the sex offense occurred. But since the state may not be able to prove -- or may not want to prove -- that the sex offense occurred, it probably makes sense to permit the state to show that the computers were used in connection with the offense to which the person pleads guilty. Is that okay?

Mike Dsida  
Legislative Reference Bureau  
608/266-9867  
michael.dsida@legis.state.wi.us



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-3365/2

MGD: /:....

Wlj

PI

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

GEN

1 AN ACT ...; relating to: seizure of computers used in crimes against children.

*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 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 any of the following offenses: 1) sexual exploitation of a child (creating a recording of a child engaged in sexually explicit conduct); 2) child enticement; or 3) possession of child pornography. Under the bill, the computer may be seized if either of the following apply: 1) the state proves that the person committed the offense, either through a record of conviction or through other evidence, and used the computer in doing so (the method provided for seizures under current law); or 2) the person is charged with the offense in a criminal case but pleads guilty to a different

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offense, and the state proves that the computer was used in the commission of the offense to which the person <sup>pleads</sup> pled guilty.

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

1 SECTION 1. 973.075 (1) (f) <sup>✓</sup> of the statutes is created to read:

2 973.075 (1) (f) Any computer, as defined in s. 943.70 (1) (a) <sup>✓</sup>, used or to be used  
3 in the commission of a crime in violation of s. 948.08, 948.07, or 948.12. If a computer  
4 subject to forfeiture under this paragraph is encumbered by a bona fide perfected  
5 security interest that was perfected before the date of the commission of the current  
6 violation <sup>✓</sup> and the holder of the security interest neither had knowledge of nor  
7 consented to the commission of that violation, the holder of the security interest shall  
8 be paid from the proceeds of the forfeiture.

9 SECTION 2. 973.075 (5) (intro.) <sup>✓</sup> 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 History: 1981 c. 267; 1985 a. 245, 258; 1987 a. 348; 1989 a. 268; 1993 a. 92, 169, 459, 491; 1995 a. 290, 448; 1997 a. 35, 285; 1999 a. 45, 51, 186. <sup>✓</sup>  
SECTION 3. 973.076 (3) <sup>✓</sup> of the statutes is renumbered 973.076 (3) (a).



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SECTION 4. 973.076 (3) (b) of the statutes is created to read:

973.076 (3) (b) Notwithstanding par. (a), if the state seeks the forfeiture of property described in s. 973.075 (1) (f), it is not required to prove that a person committed an offense listed in s. 973.075 (1) (f) if all of the following apply:

- 1. A person, after having been charged with an offense listed in <sup>s.</sup> 973.075 (1) (f), ~~has pled~~<sup>pleads</sup> guilty to another offense in the same criminal case.
- 2. The state proves to a reasonable certainty by the greater weight of the credible evidence that the property was used in the offense to which the person ~~has~~<sup>pleads</sup> pled/guilty.

(END)

**Dsida, Michael**

---

**From:** Dsida, Michael  
**Sent:** Wednesday, August 29, 2001 9:58 AM  
**To:** Gilbert, Melissa  
**Subject:** RE: Computer Seizure bill draft LRB-3365/P1

That's fine. I'll just refer to ch. 948 crimes then.

-----Original Message-----

**From:** Gilbert, Melissa  
**Sent:** Tuesday, August 28, 2001 12:19 PM  
**To:** Dsida, Michael  
**Subject:** RE: Computer Seizure bill draft LRB-3365/P1

The only problem with that is that people could get creative and find some way to committ a crime that we haven't thought of and thus would not be subjected to the computer seizure. I think we want to make sure we've got all of our bases covered.

-----Original Message-----

**From:** Dsida, Michael  
**Sent:** Tuesday, August 28, 2001 12:17 PM  
**To:** Gilbert, Melissa  
**Subject:** RE: Computer Seizure bill draft LRB-3365/P1

I would list the crimes by section number.

-----Original Message-----

**From:** Gilbert, Melissa  
**Sent:** Tuesday, August 28, 2001 12:16 PM  
**To:** Dsida, Michael  
**Subject:** RE: Computer Seizure bill draft LRB-3365/P1

Would you list the crimes or simply say that all other crimes in that chapter that could be committed with a computer would be subject to the penalty?

-----Original Message-----

**From:** Dsida, Michael  
**Sent:** Tuesday, August 28, 2001 12:11 PM  
**To:** Gilbert, Melissa  
**Subject:** RE: Computer Seizure bill draft LRB-3365/P1

I could certainly draft it the way you suggest. Another alternative would be to expand the list so that it includes all other crimes in ch. 948 that could be committed using a computer. The specificity with that approach would probably be a plus from the perspective of people using the statute.

-----Original Message-----

**From:** Gilbert, Melissa  
**Sent:** Tuesday, August 28, 2001 12:07 PM  
**To:** Dsida, Michael  
**Subject:** RE: Computer Seizure bill draft LRB-3365/P1

I guess so, even though I'm not sure how a comptuer would be used to perform a "strip search by school personnel" or "leave or

store a firearm within easy reach or access to a child," etc. Is this going to be complicated, or can we just create a section that says all ch. 948 crimes are subject to computer seizure if a computer was involved in the commission of the crime or attempted crime?

-----Original Message-----

**From:** Dsida, Michael  
**Sent:** Tuesday, August 28, 2001 11:55 AM  
**To:** Gilbert, Melissa  
**Subject:** RE: Computer Seizure bill draft LRB-3365/P1

So do you want to cover all crimes in ch. 948?

-----Original Message-----

**From:** Gilbert, Melissa  
**Sent:** Monday, August 27, 2001 9:58 AM  
**To:** Dsida, Michael  
**Subject:** FW: Computer Seizure bill draft LRB-3365/P1

Hi Mike,

Could you make the changes suggested below to our computer seizure bill?

Thanks -- and happy Monday!

Missy

-----Original Message-----

**From:** Walker, Scott  
**Sent:** Tuesday, August 21, 2001 8:48 AM  
**To:** Gilbert, Melissa  
**Subject:** FW: Computer Seizure bill draft LRB-3365/P1

-----Original Message-----

**From:** Alan Kesner [mailto:akesner@ci.wauwatosa.wi.us]  
**Sent:** Tuesday, August 21, 2001 8:44 AM  
**To:** Walker, Scott  
**Cc:** Harry Kohal  
**Subject:** Computer Seizure bill draft LRB-3365/P1

Missy (or Scott):

First, let me re-introduce myself. I am Alan Kesner. I was formerly an Assistant AG at DOJ there in Madison, dealing with technology and gambling issues. We had a few dealings with each other at that time. Now, I am the City Attorney for Wauwatosa, so we may have even more opportunity to work together. If you need anything from the City, please feel free to call me, and I will do what I can.

Harry Kohal brought me the above bill draft for my review. It is very similar to a portion of Jeffren Olsen's 1995 draft which I believe was numbered 1995 AB 1055 (I think that is the right session and bill number, anyway. My notes on it have long since disappeared.).

I think the draft does mostly what was intended by the request that was made to you, within the limits of our Wisconsin forfeiture laws. I might make two suggestions:

(1) The crimes covered in Section 1 might be a bit broader. There are, conceivably, ways that computers could be used as a tool in almost all of the sex crimes against children in ch. 948, although the draft covers the most obvious.

(2) Also, it might be important to include "attempts" when discussing 948.08 and 948.12 ("Attempt" is included in the definition of Child Enticement under 948.07, so it needs no specific reference otherwise).

Other than those minor concerns (and I note that the bill would be a huge step even without these suggested additions), I think the bill is well-tailored for its goal. If you have any further questions or concerns, please do not hesitate to call me.

Alan.

Alan R. Kesner, City Attorney  
Wauwatosa, Wisconsin  
414-479-8905



*E. King*  
①

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*Thurs 8/30*

*9 am*

*Retrieve from hold*

*Gen. Conf.*

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.

**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.

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*a crime against a child or an attempt to commit such a crime*

*or an attempt to commit a crime  
under ch. 948*

either through a record of a conviction 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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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  
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19 order the property returned if:

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7 (f), pleads guilty to another offense in the same criminal case.

8           2. The state proves to a reasonable certainty by the greater weight of the  
9 credible evidence that the property was used in the offense to which the person  
10 pleads guilty.

11

(END)



# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET  
5TH FLOOR  
MADISON, WI 53701-2037

STEPHEN R. MILLER  
CHIEF

LEGAL SECTION: (608) 266-3561  
LEGAL FAX: (608) 264-6948

August 29, 2001

### MEMORANDUM

To: Representative Walker

From: Michael Dsida, Legislative Attorney

Re: LRB-3365/1 Forfeiture of computer equipment used by child enticement and child pornography offenders

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY     JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-9867 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.