

2003 DRAFTING REQUEST

Bill

Received: **06/12/2003**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Joseph Leibham (608) 266-2056**

By/Representing: **Brad**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous
Criminal Law - law enforcement**

Extra Copies: **rlr**

Submit via email: **YES**

Requester's email: **Sen.Leibham@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Seizure and disposition of computers used to commit a crime

Instructions:

See Attached

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 07/03/2003	csicilia 07/29/2003		_____			S&L
/P1			rschluet 07/29/2003	_____	sbasford 07/29/2003		S&L
/1	mdsida	csicilia	pgreensl	_____			S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	10/03/2003	10/06/2003	10/06/2003	_____			
/2	mdsida 11/14/2003	csicilia 11/24/2003	chaugen 11/25/2003	_____	lnorthro 11/25/2003	mbarman 12/10/2003	

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: **06/12/2003**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Joseph Leibham (608) 266-2056**

By/Representing: **Brad**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous
Criminal Law - law enforcement**

Extra Copies: **rlr**

Submit via email: **YES**

Requester's email: **Sen.Leibham@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Seizure and disposition of computers used to commit a crime

Instructions:

See Attached

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 07/03/2003	csicilia 07/29/2003		_____			S&L
/P1			rschlue 07/29/2003	_____	sbasford 07/29/2003		S&L
/1	mdsida	csicilia	pgreensl	_____			S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	10/03/2003	10/06/2003	10/06/2003	_____			
/2	mdsida 11/14/2003	csicilia 11/24/2003	chaugen 11/25/2003	_____	Inorthro 11/25/2003		

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 06/12/2003

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Joseph Leibham (608) 266-2056

By/Representing: Brad

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - miscellaneous
Criminal Law - law enforcement

Extra Copies: rlr

Submit via email: YES

Requester's email: Sen.Leibham@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Seizure and disposition of computers used to commit a crime

Instructions:

See Attached

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 07/03/2003	csicilia 07/29/2003					S&L
/P1			rschlue 07/29/2003		sbasford 07/29/2003		

1 jcs 10/16
03

10/6
P8
en 11/25

19/6
P8
en 11-25

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: **06/12/2003**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Joseph Leibham (608) 266-2056**

By/Representing: **Brad**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous
Criminal Law - law enforcement**

Extra Copies: **rlr**

Submit via email: **YES**

Requester's email: **Sen.Leibham@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Seizure and disposition of computers used to commit a crime

Instructions:

See Attached

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	PI cjs 7/20 03					

FE Sent For:

7-29-3

<END>

Dsida, Michael

From: Vogel, Brad
Sent: Tuesday, July 01, 2003 5:28 PM
To: Dsida, Michael
Subject: RE: Computer Forfeitures Bill

Those owned by innocent third parties should be exempt. Your definition of charities also suffices. I believe that definition is exactly what the senator had in mind.

Thanks,

Brad Vogel

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

From: Dsida, Michael
Sent: Friday, June 27, 2003 12:58 PM
To: Vogel, Brad
Subject: RE: Computer Forfeitures Bill

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

From: Dsida, Michael
Sent: Thursday, June 12, 2003 1:51 PM
To: Vogel, Brad
Subject: RE: Computer Forfeitures Bill

Do you want to exempt computers that are owned by innocent third parties?

By "charities etc.," I assume that you want to include nonprofit organizations and government agencies. Do you want to cover anyone else?

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

From: Vogel, Brad
Sent: Thursday, June 12, 2003 11:54 AM
To: Dsida, Michael
Subject: FW: Computer Forfeitures Bill

Mike -

The forwarded message below expresses the concern of a detective from the Senator's district about having to return a computer to an offender after a crime. The Senator, as I said in my last call to you, only wants to focus on allowing seized computers to be donated to charities etc. However, would you be able to jot a concise message that we could send to the detective explaining how, under 968.13 and 968.20, his department already has the power he seeks to add to 973.075? If you have a spare moment, it would be most helpful.

Thank you,

Brad Vogel
Office of Senator Leibham

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

From: Davis, Brett
Sent: Thursday, June 12, 2003 11:16 AM
To: Vogel, Brad
Subject: RE: Computer Forfeitures Bill

JKL met with Detective Mark Kolosovsky on Friday, May 2.

Det. K would like us to work with him on drafting legislation so that computers used in crimes are added to the list of subjects that are subject to seizure and forfeiture.

Dsida, Michael

From: Vogel, Brad
Sent: Thursday, June 12, 2003 11:54 AM
To: Dsida, Michael
Subject: FW: Computer Forfeitures Bill

Mike -

The forwarded message below expresses the concern of a detective from the Senator's district about having to return a computer to an offender after a crime. The Senator, as I said in my last call to you, only wants to focus on allowing seized computers to be donated to charities etc. However, would you be able to jot a concise message that we could send to the detective explaining how, under 968.13 and 968.20, his department already has the power he seeks to add to 973.075? If you have a spare moment, it would be most helpful.

Thank you,

Brad Vogel
Office of Senator Leibham

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

From: Davis, Brett
Sent: Thursday, June 12, 2003 11:16 AM
To: Vogel, Brad
Subject: RE: Computer Forfeitures Bill

JKL met with Detective Mark Kolosovsky on Friday, May 2.

Det. K would like us to work with him on drafting legislation so that computers used in crimes are added to the list of subjects that are subject to seizure and forfeiture.

Under current law, computers that are seized during a crime investigation are returned to the families or to the actual criminal after the case is complete. Det. K would like to change the law so that the computers used in crimes in cases in which the person is convicted or adjudicated would be forfeited.

The law enforcement agency involved in the case would have first option on the computer. If they did not need it, they could make it available to other non-profit groups in the county or area.

The specific statute the Detective is referring to is 973.075.

email sent 6/12

7/2
P/c to Sen Leiberman

Oh to ~~be~~ consolidate

Oh to fix lack of x-ref to (1)(b) in (5)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAV
internal x-ref
5-1-04

Repeal

1 AN ACT to repeal 973.075 (1) (b) 2m. c.; to renumber 302.116 (1) (a), 973.075 (5)
2 (a) and 973.075 (5) (b); to renumber and amend 973.075 (5) (intro.); to amend
3 29.934 (1) (d), 973.075 (1) (bg), 973.075 (1) (bj), 973.075 (1) (bm), 973.075 (1) (d),
4 973.075 (1) (e) and 973.075 (4); and to create 302.116 (1) (ad), 302.116 (1) (ag),
5 302.116 (3), 304.061, 973.075 (1) (f), 973.075 (1m), 973.075 (5) (bm) and 973.09
6 (8) of the statutes; relating to: seizure of ^a computers used ^{to commit a} ~~in cases of~~ crime
7 ~~against children and the use of a computer by a person convicted of a child sex~~
8 ~~offense~~ and providing a penalty.

AN. INS

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

9 SECTION 1. 29.934 (1) (d) of the statutes is amended to read:
10 29.934 (1) (d) The provisions of s. 973.075 (1) (b) 2m. and (5) (a) and (c) apply
11 to boats and vehicles, other than motor vehicles, under this subsection.

1 **SECTION 2.** 302.116 (1) (a) of the statutes is renumbered 302.116 (1) (ar).

2 **SECTION 3.** 302.116 (1) (ad) of the statutes is created to read:

3 302.116 (1) (ad) “Child sex offender” means a person who is convicted of a
4 serious child sex offense, as defined in s. 948.13 (1).

5 **SECTION 4.** 302.116 (1) (ag) of the statutes is created to read:

6 302.116 (1) (ag) “Computerized child pornography” means a recording of a child
7 engaged in sexually explicit conduct that may be viewed or heard by using a
8 computer.

9 **SECTION 5.** 302.116 (3) of the statutes is created to read:

10 302.116 (3) As a condition of extended supervision, a child sex offender may not
11 use a computer unless it is running software that prevents the person from accessing
12 computerized child pornography.

13 **SECTION 6.** 304.061 of the statutes is created to read:

14 **304.061 Parole condition for serious child sex offender.** As a condition
15 of parole, a child sex offender, as defined in s. 302.116 (1) (ad), may not use a computer
16 unless it is running software that prevents the person from accessing computerized
17 child pornography, as defined in s. 302.116 (1) (ag).

18 **SECTION 7.** 973.075 (1) (b) 2m. c. of the statutes is repealed.

19 **SECTION 8.** 973.075 (1) (bg) of the statutes is amended to read:

20 973.075 (1) (bg) ~~Any~~ Subject to sub. (1m), any property used or to be used in
21 the commission of a crime under s. 943.75 (2) or (2m), ~~but if the property is~~
22 ~~encumbered by a bona fide perfected security interest that was perfected before the~~
23 ~~date of the commission of the current violation and the holder of the security interest~~
24 ~~neither had knowledge of nor consented to the commission of that violation, the~~
25 ~~holder of the security interest shall be paid from the proceeds of the forfeiture.~~

INS 2/17

1 **SECTION 9.** 973.075 (1) (bj) of the statutes is amended to read:

2 973.075 (1) (bj) ~~Any Subject to sub. (1m), any property used or to be used in the~~
3 ~~commission of a crime under s. 943.74, but if the property is encumbered by a bona~~
4 ~~fide perfected security interest that was perfected before the date of the commission~~
5 ~~of the current violation and the holder of the security interest neither had knowledge~~
6 ~~of nor consented to the commission of that violation, the holder of the security~~
7 ~~interest shall be paid from the proceeds of the forfeiture.~~

8 **SECTION 10.** 973.075 (1) (bm) of the statutes is amended to read:

9 973.075 (1) (bm) ~~Any Subject to sub. (1m), any property used in the commission~~
10 ~~of a crime under s. 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 (2) or~~
11 ~~940.32, but if the property is encumbered by a bonafide perfected security interest~~
12 ~~that was perfected before the date of the commission of the current violation and the~~
13 ~~holder of the security interest neither had knowledge of nor consented to the~~
14 ~~commission of that violation, the holder of the security interest shall be paid from the~~
15 ~~proceeds of the forfeiture.~~

16 **SECTION 11.** 973.075 (1) (d) of the statutes is amended to read:

17 973.075 (1) (d) ~~A Subject to sub. (1m), a tank vessel that violates s. 299.62 (2)~~
18 ~~that is owned by a person who, within 5 years before the commission of the current~~
19 ~~violation, was previously convicted of violating s. 299.62 (2), but if the tank vessel is~~
20 ~~encumbered by a bona fide perfected security interest that was perfected before the~~
21 ~~date of the commission of the current violation and the holder of the security interest~~
22 ~~neither had knowledge of nor consented to the commission of that violation, the~~
23 ~~holder of the security interest shall be paid from the proceeds of the forfeiture.~~

24 **SECTION 12.** 973.075 (1) (e) of the statutes is amended to read:

1 973.075 (1) (e) Any recording, as defined in s. 943.206 (5), created, advertised,
 2 offered for sale or rent, sold, rented, transported or possessed in violation of ss.
 3 943.207 to 943.209 or s. 943.49 and, subject to sub. (1m), any electronic, mechanical
 4 or other device for making a recording or for manufacturing, reproducing, packaging
 5 or assembling a recording that was used to facilitate a violation of ss. 943.207 to
 6 943.209 or s. 943.49, regardless of the knowledge or intent of the person from whom
 7 the recording or device is seized. ~~If a device subject to forfeiture under this paragraph~~
 8 ~~is encumbered by a bona fide perfected security interest that was perfected before the~~
 9 ~~date of the commission of the current violation and the holder of the security interest~~
 10 ~~neither had knowledge of nor consented to the commission of that violation, the~~
 11 ~~holder of the security interest shall be paid from the proceeds of the forfeiture.~~

12 SECTION 13. 973.075 (1) (f) of the statutes is created to read:

13 973.075 (1) (f) ~~(f)~~ Subject to sub. (1m), any computer, as defined in s. 943.70 (1)
 14 (am), used ~~or to be used~~ in the commission of a crime ~~or an attempt to commit a crime~~
 15 ~~under ch. 948 or used in the commission of any crime to which a person pleads guilty~~
 16 ~~if the person does so in a case in which he or she has been charged with a crime or~~
 17 ~~attempting to commit a crime under ch. 948.~~

18 ~~2. Notwithstanding subd 1,~~ ^{no 2} a computer is not subject to forfeiture ^{under this paragraph} if its owner
 19 did not know that it was being used ~~or was to be used~~ in the commission of ~~of the~~
 20 ~~(attempt to commit) a crime (described in subd 1).~~ ^{plain}

21 SECTION 14. 973.075 (1m) of the statutes is created to read:

22 973.075 (1m) If any property under sub. (1) (b), (bg), (bj), (bm), (d), or (f) or any
 23 device under sub. (1) (e) is encumbered by a bona fide perfected security interest that
 24 was perfected before the date of the commission of the current violation and the
 25 holder of the security interest neither had knowledge of nor consented to the

INS 5/2

1 commission of that violation, the holder of the security interest shall be paid from the
2 proceeds of the forfeiture.

3 **SECTION 15.** 973.075 (4) of the statutes is amended to read:

4 973.075 (4) When property is forfeited under ss. 973.075 to 973.077, the agency
5 seizing the property may sell the property that is not required by law to be destroyed
6 or transferred to another agency. The agency may retain any vehicle for official use
7 or sell the vehicle. The agency may donate any computer forfeited under sub. (1) (f)
8 to a nonprofit organization or sell it. The agency seizing the property may deduct
9 50% of the amount received for administrative expenses of seizure, maintenance of
10 custody, advertising and court costs and the costs of investigation and prosecution
11 reasonably incurred. The remainder shall be deposited in the school fund as the
12 proceeds of the forfeiture. If the property forfeited under ss. 973.075 to 973.077 is
13 money, all the money shall be deposited in the school fund.

14 **SECTION 16.** 973.075 (5) (intro.) of the statutes is renumbered 973.075 (5) (a)
15 and amended to read:

16 973.075 (5) (a) All forfeitures under ss. 973.075 to 973.077 shall be made with
17 due provision for the rights of innocent persons under sub. (1) (b) 2m., (bg), (bj), (bm),
18 (d) and, (e), and (f).

19 (c) Except as provided in sub. (5m), any property seized but not forfeited shall
20 be returned to its rightful owner. Any person claiming the right to possession of
21 property seized may apply for its return to the circuit court for the county in which
22 the property was seized. The court shall order such notice as it deems adequate to
23 be given the district attorney and all persons who have or may have an interest in
24 the property and shall hold a hearing to hear all claims to its true ownership. If the

1 right to possession is proved to the court's satisfaction, it shall order the property
2 returned if:

3 **SECTION 17.** 973.075 (5) (a) of the statutes is renumbered 973.075 (5) (c) 1.

4 **SECTION 18.** 973.075 (5) (b) of the statutes is renumbered 973.075 (5) (c) 2.

5 **SECTION 19.** 973.075 (5) (bm) of the statutes is created to read:

6 973.075 (5) (bm) 1. If the seized property is a computer that was used or was
7 to be used by a person other than its owner in the commission of a crime described
8 in sub. (1) (f), the law enforcement agency that seized the computer shall return it
9 to its owner within 30 days after seizing it unless all of the following occur:

10 a. Within 15 days after the seizure, the agency petitions the circuit court for the
11 county in which the computer was seized or in which a prosecution for the crime
12 described in sub. (1) (f) is pending for permission to retain the computer.

13 b. The agency provides notice of its petition to the owner of the real property
14 or vehicle from which the computer was seized and to any other person claiming to
15 be the owner of the computer.

16 c. The court determines that there is probable cause to believe that the owner
17 of the computer knew that it was being used or was to be used in the commission of
18 a crime described in sub. (1) (f). The agency shall bear the burden of showing
19 probable cause. The owner of the computer may present evidence on this question.

20 2. A petition under subd. 1. may be combined with a complaint filed under s.
21 973.076, but, notwithstanding any request for an adjournment of forfeiture
22 proceedings made under s. 973.076 (2) (a), the court hearing the petition shall
23 determine whether there is probable cause under subd. 1. c. within 30 days after the
24 computer is seized.

1 3. If the court determines that there is probable cause under subd. 1. c., the
2 owner of the computer may apply for its return under s. 968.20 (1) or, if a court
3 determines under s. 973.076 that the property is not subject to forfeiture, under par.
4 (c).

5 4. Notwithstanding subd. 1., if a law enforcement agency has probable cause
6 to believe that a computer that it has seized was being used or was to be used in the
7 commission of a crime described in sub. (1) (f), the agency may copy any data from
8 the computer.

9 **SECTION 20.** 973.09 (8) of the statutes is created to read:

10 973.09 (8) If the court places a child sex offender, as defined in s. 302.116 (1)
11 (ad), on probation, the court may, as a condition of probation, prohibit the person from
12 using a computer unless it is running software that prevents the person from
13 ~~accessing computerized child pornography, as defined in 302.116 (1) (ag).~~

14 (END)

INS. 2/17

~~SEC #. AM; 973.075(1)(b) 1m.~~

Subject to sub. (1m), and except

1m. (intro.) Except, as provided in subd. 2m., all vehicles, as defined in s. 939.22 (44), which are used in any of the following ways:

(A) 973.075(1)(b)

(A) SEC #. AM; 973.075(1)(b) 1m. (intro.)

1

analysis INSERT

Under current law, the state, through a forfeiture proceeding, may retain — or seize and retain — certain property involved in the commission of crime. This authorization covers property directly or indirectly derived from the commission of a crime and certain property used to commit a crime, including: 1) a vehicle used to transport property used or received in committing a felony; 2) a vehicle used in committing a crime relating to prostitution; 3) a controlled substance or equipment used in committing a crime relating to a controlled substance; 4) property used in committing a stalking offense or a criminal violation of a domestic abuse or harassment restraining order or injunction; and 5) pirated, bootlegged, or counterfeit recordings and any equipment used to make them. Current law also permits the state to retain contraband that it has seized, which includes machines or materials (including computers) that are used to create other contraband items. ✓

Under this bill, a computer that is used in the commission of a crime is subject to forfeiture, regardless of whether it is contraband. If a computer is forfeited under the bill, the law enforcement agency that seized it may retain it for its own use, donate it to a nonprofit organization or another government agency, or sell it and retain 50% of the proceeds of the sale (with the remainder being deposited in the school fund). ✓

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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

2

INSERT 5/2

3

SECTION 1. 973.075 (4) of the statutes is amended to read:

4

973.075 (4) When property is forfeited under ss. 973.075 to 973.077, the agency

5

seizing the property may sell the property that is not required by law to be destroyed

6

or transferred to another agency. The agency may retain any vehicle for official use

7

or sell the vehicle. The agency may retain any computer forfeited under sub. (1) (f)

8

for its own use, donate it to a nonprofit organization or a unit of state or local

9

government, or sell it. The agency seizing the property may deduct 50% of the

10

amount received for administrative expenses of seizure, maintenance of custody,

1 advertising and court costs and the costs of investigation and prosecution reasonably
2 incurred. The remainder shall be deposited in the school fund as the proceeds of the
3 forfeiture. If the property forfeited under ss. 973.075 to 973.077 is money, all the
4 money shall be deposited in the school fund.

5 **History:** 1981 c. 267; 1985 a. 245, 258; 1987 a. 348; 1989 a. 263; 1993 a. 92, 169, 459, 491; 1995 a. 290, 448; 1997 a. 35, 285; 1999 a. 45, 51, 186; 2001 a. 16, 91.

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

6 973.075 (5) (intro.) All forfeitures under ss. 973.075 to 973.077 shall be made
7 with due provision for the rights of innocent persons under sub. (1) (b) 2m., (bg), (bj),
8 (bm), (d) and (e), and (f). Except as provided in sub. (5m), any property seized but
9 not forfeited shall be returned to its rightful owner. Any person claiming the right
10 to possession of property seized may apply for its return to the circuit court for the
11 county in which the property was seized. The court shall order such notice as it
12 deems adequate to be given the district attorney and all persons who have or may
13 have an interest in the property and shall hold a hearing to hear all claims to its true
14 ownership. If the right to possession is proved to the court's satisfaction, it shall
15 order the property returned if:

16 **History:** 1981 c. 267; 1985 a. 245, 258; 1987 a. 348; 1989 a. 263; 1993 a. 92, 169, 459, 491; 1995 a. 290, 448; 1997 a. 35, 285; 1999 a. 45, 51, 186; 2001 a. 16, 91.

16 **SECTION 3. Initial applicability.**

17 (1) This act first applies to crimes committed on the effective date of this
18 subsection.

Dsida, Michael

Subject: RE: Forfeiture of computers bill

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

From: Vogel, Brad
Sent: Wednesday, October 01, 2003 4:34 PM
To: Dsida, Michael
Subject: RE: Forfeiture of computers bill

Mike -

The Senator, after some discussion, has decided he would prefer to have nothing mentioned in the bill regarding multiple owners at this time. He feels he could best address the point with an amendment during the legislative process after more people have debated the issue and the office has had more time to review things like the general trend of some analagous court decisions. So, it could be put into the official draft form as soon as possible.

He would especially like to get the bill into the system yet this fall.

Thank you,

Brad
Office of Senator Joe Leibham

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

From: Dsida, Michael
Sent: Tuesday, September 16, 2003 10:03 AM
To: Vogel, Brad
Subject: Forfeiture of computers bill

In looking at the bill again last night, I noticed that the exception for owners who are unaware of the computer's illicit use may be incomplete. What about cases in which more than one person owns the computer (for example, business partners or family members)? How do you want to handle cases in which one owner knew and the other did not?

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

10/01/2003



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2837/P1
MGD:cjs:rs
7
stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓

soon

please cut

1 AN ACT to repeal 973.075 (1) (b) 2m. c.; to amend 973.075 (1) (b) 1m. (intro.),
2 973.075 (1) (bg), 973.075 (1) (bj), 973.075 (1) (bm), 973.075 (1) (d), 973.075 (1)
3 (e), 973.075 (4) and 973.075 (5) (intro.); and to create 973.075 (1) (f) and
4 973.075 (1m) of the statutes; relating to: seizure of a computer used to commit
5 a crime and providing a penalty.

acquire

Analysis by the Legislative Reference Bureau

Under current law, the state, through a forfeiture proceeding, may ~~retain or~~ ~~seize and retain~~ certain property involved in the commission of crime. This authorization covers property directly or indirectly derived from the commission of a crime and certain property used to commit a crime, including: 1) a vehicle used to transport property used or received in committing a felony; 2) a vehicle used in committing a crime relating to prostitution; 3) a controlled substance or equipment used in committing a crime relating to a controlled substance; 4) property used in committing a stalking offense or a criminal violation of a domestic abuse or harassment restraining order or injunction; and 5) pirated, bootlegged, or counterfeit recordings and any equipment used to make them. Current law also permits the state to retain contraband that it has seized, which includes machines or materials (including computers) that are used to create other contraband items.

Under this bill, a computer that is used in the commission of a crime is subject to forfeiture, regardless of whether it is contraband. If a computer is forfeited under the bill, the law enforcement agency that seized it may retain it for its own use,

with the knowledge and consent of its owner,

analysis INSERT

donate it to a nonprofit organization or another government agency, or sell it and retain 50% of the proceeds of the sale (with the remainder being deposited in the school fund).

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.** 973.075 (1) (b) 1m. (intro.) of the statutes is amended to read:

2 973.075 (1) (b) 1m. (intro.) ~~Except~~ Subject to sub. (1m), and except as provided
3 in subd. 2m., all vehicles, as defined in s. 939.22 (44), which are used in any of the
4 following ways:

5 **SECTION 2.** 973.075 (1) (b) 2m. c. of the statutes is repealed.

6 **SECTION 3.** 973.075 (1) (bg) of the statutes is amended to read:

7 973.075 (1) (bg) ~~Any~~ Subject to sub. (1m), any property used or to be used in
8 the commission of a crime under s. 943.75 (2) or (2m), ~~but if the property is~~
9 ~~encumbered by a bona fide perfected security interest that was perfected before the~~
10 ~~date of the commission of the current violation and the holder of the security interest~~
11 ~~neither had knowledge of nor consented to the commission of that violation, the~~
12 ~~holder of the security interest shall be paid from the proceeds of the forfeiture.~~

13 **SECTION 4.** 973.075 (1) (bj) of the statutes is amended to read:

14 973.075 (1) (bj) ~~Any~~ Subject to sub. (1m), any property used or to be used in the
15 commission of a crime under s. 943.74, ~~but if the property is encumbered by a bona~~
16 ~~fide perfected security interest that was perfected before the date of the commission~~
17 ~~of the current violation and the holder of the security interest neither had knowledge~~
18 ~~of nor consented to the commission of that violation, the holder of the security~~
19 ~~interest shall be paid from the proceeds of the forfeiture.~~

1 **SECTION 5.** 973.075 (1) (bm) of the statutes is amended to read:

2 973.075 (1) (bm) ~~Any~~ Subject to sub. (1m), any property used in the commission
3 of a crime under s. 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 (2) or
4 940.32, but if the ~~property is encumbered by a bonafide perfected security interest~~
5 ~~that was perfected before the date of the commission of the current violation and the~~
6 ~~holder of the security interest neither had knowledge of nor consented to the~~
7 ~~commission of that violation, the holder of the security interest shall be paid from the~~
8 ~~proceeds of the forfeiture.~~

9 **SECTION 6.** 973.075 (1) (d) of the statutes is amended to read:

10 973.075 (1) (d) ~~A~~ Subject to sub. (1m), a tank vessel that violates s. 299.62 (2)
11 that is owned by a person who, within 5 years before the commission of the current
12 violation, was previously convicted of violating s. 299.62 (2), but if the tank vessel is
13 encumbered by a bona fide perfected security interest that was perfected before the
14 date of the commission of the current violation and the holder of the security interest
15 neither had knowledge of nor consented to the commission of that violation, the
16 holder of the security interest shall be paid from the proceeds of the forfeiture.

17 **SECTION 7.** 973.075 (1) (e) of the statutes is amended to read:

18 973.075 (1) (e) Any recording, as defined in s. 943.206 (5), created, advertised,
19 offered for sale or rent, sold, rented, transported or possessed in violation of ss.
20 943.207 to 943.209 or s. 943.49 and, subject to sub. (1m), any electronic, mechanical
21 or other device for making a recording or for manufacturing, reproducing, packaging
22 or assembling a recording that was used to facilitate a violation of ss. 943.207 to
23 943.209 or s. 943.49, regardless of the knowledge or intent of the person from whom
24 the recording or device is seized. ~~If a device subject to forfeiture under this paragraph~~
25 ~~is encumbered by a bona fide perfected security interest that was perfected before the~~

and consent
with the knowledge of its owner,



1 ~~date of the commission of the current violation and the holder of the security interest~~
2 ~~neither had knowledge of nor consented to the commission of that violation, the~~
3 ~~holder of the security interest shall be paid from the proceeds of the forfeiture.~~

4 SECTION 8. 973.075 (1) (f) of the statutes is created to read:

5 973.075 (1) (f) Subject to sub. (1m), any computer, as defined in s. 943.70 (1)
6 (am), used in the commission of a crime. A computer is not subject to forfeiture under
7 this paragraph if its owner did not know that it was being used in the commission
8 of a crime.

9 SECTION 9. 973.075 (1m) of the statutes is created to read:

10 973.075 (1m) If any property under sub. (1) (b), (bg), (bj), (bm), (d), or (f) or any
11 device under sub. (1) (e) is encumbered by a bona fide perfected security interest that
12 was perfected before the date of the commission of the current violation and the
13 holder of the security interest neither had knowledge of nor consented to the
14 commission of that violation, the holder of the security interest shall be paid from the
15 proceeds of the forfeiture.

16 SECTION 10. 973.075 (4) of the statutes is amended to read:

17 973.075 (4) When property is forfeited under ss. 973.075 to 973.077, the agency
18 seizing the property may sell the property that is not required by law to be destroyed
19 or transferred to another agency. The agency may retain any vehicle for official use
20 or sell the vehicle. The agency may ^{sell} retain any computer forfeited under sub. (1) (f)
21 for its own use, ^{or} donate it to a nonprofit organization or a unit of state or local
22 government, ~~or sell it.~~ The agency seizing the property may deduct 50% of the
23 amount received for administrative expenses of seizure, maintenance of custody,
24 advertising and court costs and the costs of investigation and prosecution reasonably
25 incurred. The remainder shall be deposited in the school fund as the proceeds of the

or, unless sub. (1m) applies, retain it

1 forfeiture. If the property forfeited under ss. 973.075 to 973.077 is money, all the
2 money shall be deposited in the school fund.

3 **SECTION 11.** 973.075 (5) (intro.) of the statutes is amended to read:

4 973.075 (5) (intro.) All forfeitures under ss. 973.075 to 973.077 shall be made
5 with due provision for the rights of innocent persons under sub. (1) (b) 2m., (bg), (bj),
6 (bm), (d) ~~and~~, (e), and (f). Except as provided in sub. (5m), any property seized but
7 not forfeited shall be returned to its rightful owner. Any person claiming the right
8 to possession of property seized may apply for its return to the circuit court for the
9 county in which the property was seized. The court shall order such notice as it
10 deems adequate to be given the district attorney and all persons who have or may
11 have an interest in the property and shall hold a hearing to hear all claims to its true
12 ownership. If the right to possession is proved to the court's satisfaction, it shall
13 order the property returned if:

14 **SECTION 12. Initial applicability.**

15 (1) This act first applies to crimes committed on the effective date of this
16 subsection.

17 (END)

Insert

analysis INSERT

This bill permits the state, through forfeiture proceedings, to seize and dispose of computers that are used or that were to be used in the commission of certain child sex offenses. It also changes how law enforcement agencies may dispose of forfeited property of all types under certain circumstances and regulates the use of computers by child sex offenders who are on probation, parole, or extended supervision (ES).

Forfeiture of computers used in committing a serious child sex offense

Under current law, the state may acquire certain property involved in the commission of crime through a forfeiture proceeding, which is generally initiated after the end of the criminal case to which it relates. The forfeiture law applies to all property directly or indirectly derived from the commission of a crime. It also covers certain other property related to the commission of a crime, including: 1) an illegal controlled substance and equipment used in committing a crime relating to a controlled substance; 2) a vehicle used to transport property used or received in committing a felony; 3) a vehicle used in committing a crime relating to prostitution; 4) property used in committing a stalking offense or a criminal violation of a domestic abuse, child abuse, or harassment restraining order or injunction; and 5) pirated, bootlegged, and counterfeit recordings and any equipment used to make them. Current law also permits the state to retain contraband that it has seized, which includes machines or materials (including computers) that are used to create other contraband items.

~~In general, a law enforcement agency that seizes property that is ultimately forfeited may sell the property. (If the seized property is a vehicle, the agency may retain it for official use or sell it.) The agency may retain 50% of the amount it receives from any sale to cover its expenses. The remainder is deposited in the school fund. Current law, however, provides some protection for certain innocent owners of vehicles and for others — such as banks or finance companies — having a property interest in seized items. First, if the state seeks the forfeiture of a vehicle, but the owner of the vehicle (such as a family member or business partner) demonstrates that he or she did not consent to the vehicle's use in connection with the crime, the vehicle is not subject to forfeiture. The second protection applies if property that is forfeited and sold was securing a loan and the holder of the security interest did not consent to vehicle's use in connection with the crime. In such a case, the innocent security interest holder is to be paid the value of his or her interest in the property from the proceeds of the sale. This protection applies in cases involving vehicles, property used in committing a stalking offense or in violating a domestic abuse, child abuse, or harassment restraining order or injunction, and equipment used to make pirated, bootlegged, or counterfeit recordings.~~

Under this bill, a computer is subject to forfeiture if: 1) it is used or to be used in the commission of a serious child sex offense; or 2) it is used in the commission of any crime to which a person pleads guilty if the person does so in a case in which he or she has been charged with a serious child sex offense (a related offense). The bill

Dsida, Michael

From: Vogel, Brad
Sent: Wednesday, October 08, 2003 1:33 PM
To: Dsida, Michael
Subject: RE: Cleaning the hard drive

Mike -

We would like to require purging of any illicit data before transfer of the forfeited computer.

Thanks,

Brad Vogel
Office of Senator Joe Leibham

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

From: Dsida, Michael
Sent: Monday, October 06, 2003 1:04 PM
To: Vogel, Brad
Subject: Cleaning the hard drive

One of our editors just asked an interesting question -- if a computer is forfeited, should the law enforcement agency be required to purge any problematic data (such as personal information or images of child pornography) from the hard drive of the computer? As you may know, after a document is deleted, it may still be possible to recover it from the hard drive. I don't know how easy it is to retrieve it or how difficult it would be for a law enforcement agency to purge the data from the hard drive, but since the agency may be selling it, donating it to a nonprofit or another agency, or returning it to an innocent owner, I thought I should let you know about the issue.

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

*me -
Not under current law
or bill.*



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2837/1

MGD:cjs:pg

stays

2003 BILL

WLS

soon

*SAV
new CRV
X-ref V*

Refer cat.

1 AN ACT *to repeal* 973.075 (1) (b) 2m. c.; *to amend* 973.075 (1) (b) 1m. (intro.),
2 973.075 (1) (bg), 973.075 (1) (bj), 973.075 (1) (bm), 973.075 (1) (d), 973.075 (1)
3 (e), 973.075 (4) and 973.075 (5) (intro.); and *to create* 973.075 (1) (f) and
4 973.075 (1m) of the statutes; **relating to:** seizure of a computer used to commit
5 a crime and providing a penalty.

or a local law enforcement agency

Analysis by the Legislative Reference Bureau

Under current law, the state may acquire certain property involved in the commission of crime through a forfeiture proceeding, which is generally initiated after the end of the criminal case to which it relates. The forfeiture law applies to all property directly or indirectly derived from the commission of a crime. It also covers certain other property related to the commission of a crime, including: 1) an illegal controlled substance and equipment used in committing a crime relating to a controlled substance; 2) a vehicle used to transport property used or received in committing a felony; 3) a vehicle used in committing a crime relating to prostitution; 4) property used in committing a stalking offense or a criminal violation of a domestic abuse, child abuse, or harassment restraining order or injunction; and 5) pirated, bootlegged, and counterfeit recordings and any equipment used to make them. Current law also permits the state to retain contraband that it has seized, which includes machines or materials (including computers) that are used to create other contraband items.

Under this bill, a computer that is used, with the knowledge and consent of its owner, in the commission of a crime is subject to forfeiture, regardless of whether it

BILL

is contraband. If a computer is forfeited under the bill, the law enforcement agency that seized it may retain it for its own use, donate it to a nonprofit organization or another government agency, or sell it and retain 50% of the proceeds of the sale (with the remainder being deposited in the school fund).

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:

NS 2/0

1 SECTION 1. 973.075 (1) (b) 1m. (intro.) of the statutes is amended to read:

2 973.075 (1) (b) 1m. (intro.) ~~Except Subject to sub. (1m)~~^{1p}, and except as provided
3 in subd. 2m., all vehicles, as defined in s. 939.22 (44), which are used in any of the
4 following ways:

5 SECTION 2. 973.075 (1) (b) 2m. c. of the statutes is repealed.

6 SECTION 3. 973.075 (1) (bg) of the statutes is amended to read:

7 973.075 (1) (bg) ~~Any Subject to sub. (1m)~~^{1p}, any property used or to be used in
8 the commission of a crime under s. 943.75 (2) or (2m), ~~but if the property is~~
9 ~~encumbered by a bona fide perfected security interest that was perfected before the~~
10 ~~date of the commission of the current violation and the holder of the security interest~~
11 ~~neither had knowledge of nor consented to the commission of that violation, the~~
12 ~~holder of the security interest shall be paid from the proceeds of the forfeiture.~~

13 SECTION 4. 973.075 (1) (bj) of the statutes is amended to read:

14 973.075 (1) (bj) ~~Any Subject to sub. (1m)~~^{1p}, any property used or to be used in the
15 commission of a crime under s. 943.74, ~~but if the property is encumbered by a bona~~
16 ~~fide perfected security interest that was perfected before the date of the commission~~
17 ~~of the current violation and the holder of the security interest neither had knowledge~~
18 ~~of nor consented to the commission of that violation, the holder of the security~~
19 ~~interest shall be paid from the proceeds of the forfeiture.~~

BILL

1 **SECTION 5.** 973.075 (1) [✓](bm) of the statutes is amended to read:

2 973.075 (1) (bm) ~~Any~~ Subject to sub. ~~(1a)~~, ^{1p}any property used in the commission
3 of a crime under s. 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 (2) or
4 940.32, ~~but if the property is encumbered by a bonafide perfected security interest~~
5 ~~that was perfected before the date of the commission of the current violation and the~~
6 ~~holder of the security interest neither had knowledge of nor consented to the~~
7 ~~commission of that violation, the holder of the security interest shall be paid from the~~
8 ~~proceeds of the forfeiture.~~

9 **SECTION 6.** 973.075 (1) (d) of the statutes is amended to read:

10 973.075 (1) (d) ~~A~~ Subject to sub. ~~(1a)~~, ^{1p}a tank vessel that violates s. 299.62 (2)
11 that is owned by a person who, within 5 years before the commission of the current
12 violation, was previously convicted of violating s. 299.62 (2), ~~but if the tank vessel is~~
13 ~~encumbered by a bona fide perfected security interest that was perfected before the~~
14 ~~date of the commission of the current violation and the holder of the security interest~~
15 ~~neither had knowledge of nor consented to the commission of that violation, the~~
16 ~~holder of the security interest shall be paid from the proceeds of the forfeiture.~~

17 **SECTION 7.** 973.075 (1) [✓](e) of the statutes is amended to read:

18 973.075 (1) (e) Any recording, as defined in s. 943.206 (5), created, advertised,
19 offered for sale or rent, sold, rented, transported or possessed in violation of ss.
20 943.207 to 943.209 or s. 943.49 and, ~~subject to sub. (1a)~~, ^{1p}any electronic, mechanical
21 or other device for making a recording or for manufacturing, reproducing, packaging
22 or assembling a recording that was used to facilitate a violation of ss. 943.207 to
23 943.209 or s. 943.49, regardless of the knowledge or intent of the person from whom
24 the recording or device is seized. ~~If a device subject to forfeiture under this paragraph~~
25 ~~is encumbered by a bona fide perfected security interest that was perfected before the~~

BILL

1 date of the commission of the current violation and the holder of the security interest
 2 neither had knowledge of nor consented to the commission of that violation, the
 3 holder of the security interest shall be paid from the proceeds of the forfeiture. ✓

4 **SECTION 8.** 973.075 (1) (f) of the statutes is created to read:

5 973.075 (1) (f) Subject to sub. (1m), any computer, as defined in s. 943.70 (1)
 6 (am), used, with the knowledge and consent of its owner, in the commission of a
 7 crime. ✓

8 **SECTION 9.** 973.075 (1m) of the statutes is created to read:

9 973.075 (1m) If any property under sub. (1) (b), (bg), (bj), (bm), (d), or (f) or any
 10 device under sub. (1) (e) is encumbered by a bona fide perfected security interest that
 11 was perfected before the date of the commission of the current violation and the
 12 holder of the security interest neither had knowledge of nor consented to the
 13 commission of that violation, the holder of the security interest shall be paid from the
 14 proceeds of the forfeiture. ✓

15 **SECTION 10.** 973.075 (4) of the statutes is amended to read:

16 973.075 (4) When property is forfeited under ss. 973.075 to 973.077, the agency
 17 seizing the property may sell the property that is not required by law to be destroyed
 18 or transferred to another agency. The agency may retain any vehicle for official use
 19 or sell the vehicle. The agency may sell any computer forfeited under sub. (1) (f) or,
 20 unless sub. (1m) applies, retain it for its own use or donate it to a nonprofit
 21 organization or a unit of state or local government. The agency seizing the property
 22 may deduct 50% of the amount received for administrative expenses of seizure,
 23 maintenance of custody, advertising and court costs and the costs of investigation
 24 and prosecution reasonably incurred. The remainder shall be deposited in the school

Subject to sub. (5r),

BILL

1 fund as the proceeds of the forfeiture. If the property forfeited under ss. 973.075 to
2 973.077 is money, all the money shall be deposited in the school fund.

3 **SECTION 11.** 973.075 (5) (intro.) of the statutes is amended to read:

4 973.075 (5) (intro.) All forfeitures under ss. 973.075 to 973.077 shall be made

5 with due provision for the rights of innocent persons under sub. (1) (b) 2m., (b), (d),
6 and subject to sub. (5r).

7 (bm), (d) and (e) seized (f). Except as provided in sub. (5m), any property seized but
8 not forfeited shall be returned to its rightful owner. Any person claiming the right

9 to possession of property seized may apply for its return to the circuit court for the
10 county in which the property was seized. The court shall order such notice as it

11 deems adequate to be given the district attorney and all persons who have or may
12 have an interest in the property and shall hold a hearing to hear all claims to its true

13 ownership. If the right to possession is proved to the court's satisfaction, it shall
14 order the property returned if:

subject to sub. (5r),

SECTION 12. Initial applicability.

15 (1) This act first applies to crimes committed on the effective date of this
16 subsection.

(END)

INS 5/13

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2837/2ins
MGD:.....

1 **INSERT 2/0** ~~AX~~

2 **SECTION 1.** 961.55 (1) (d) (intro.) of the statutes is renumbered 961.55 (1) (d)
3 1m. and amended to read:

4 961.55 (1) (d) 1m. All Subject to sub. (1p) and except as provided in subd. 2m.,
5 all vehicles which are used, or intended for use, to transport, or in any manner to
6 facilitate the transportation, for the purpose of sale or receipt of property described
7 in pars. (a) and (b) or for the purpose of transporting any property or weapon used
8 or to be used or received in the commission of any felony under this chapter, ~~but:~~

History: 1971 c. 219, 307; 1981 c. 267; 1985 a. 245, 328; 1987 a. 339; 1989 a. 121; 1993 a. 118, 482; 1995 a. 448 ss. 297 to 305; Stats. 1995 s. 961.55; 1997 a. 220; 1999 a. 48, 57, 110; 2001 a. 109; 2003 a. 49.

9 **SECTION 2.** 961.55 (1) (d) 1. of the statutes is renumbered 961.55 (1) (d) 2m. a.
10 and amended to read:

11 961.55 (1) (d) 2m. a. No vehicle used by any person as a common carrier in the
12 transaction of business as a common carrier is subject to forfeiture under this section
13 unless it appears that the owner or other person in charge of the vehicle is a
14 consenting party or privy to a violation of this chapter;

History: 1971 c. 219, 307; 1981 c. 267; 1985 a. 245, 328; 1987 a. 339; 1989 a. 121; 1993 a. 118, 482; 1995 a. 448 ss. 297 to 305; Stats. 1995 s. 961.55; 1997 a. 220; 1999 a. 48, 57, 110; 2001 a. 109; 2003 a. 49.

15 **SECTION 3.** 961.55 (1) (d) 2. of the statutes is renumbered 961.55 (1) (d) 2m. b.
16 and amended to read:

17 961.55 (1) (d) 2m. b. No vehicle is subject to forfeiture under this section by
18 reason of any act or omission established by the owner thereof to have been
19 committed or omitted without the owner's knowledge or consent. This ~~subdivision~~
20 subd. 2m. b. does not apply to any vehicle owned by a person who is under 16 years
21 of age on the date that the vehicle is used, or is intended for use, in the manner

1 described under ~~par. (d) (intro.)~~ subd. (1), unless the court determines that the owner
2 is an innocent bona fide owner;

History: 1971 c. 219, 307; 1981 c. 267; 1985 a. 245, 328; 1987 a. 339; 1989 a. 121; 1993 a. 118, 482; 1995 a. 448 ss. 297 to 305; Stats. 1995 s. 961.55; 1997 a. 220; 1999 a. 48, 57, 110; 2001 a. 109; 2003 a. 49.

3 **SECTION 4.** 961.55 (1) (d) 3. of the statutes is renumbered 961.55 (1) (d) 2m. c.
4 and amended to read:

5 961.55 (1) (d) 2m. c. A vehicle is not subject to forfeiture for a violation of s.
6 961.41 (3g) (b) to (g); ~~and~~.

History: 1971 c. 219, 307; 1981 c. 267; 1985 a. 245, 328; 1987 a. 339; 1989 a. 121; 1993 a. 118, 482; 1995 a. 448 ss. 297 to 305; Stats. 1995 s. 961.55; 1997 a. 220; 1999 a. 48, 57, 110; 2001 a. 109; 2003 a. 49.

7 **SECTION 5.** 961.55 (1) (d) 4. of the statutes is renumbered 961.55 (1p) and
8 amended to read:

9 961.55 (1p) If forfeiture of a ~~vehicle~~ property encumbered by a bona fide
10 perfected security interest occurs under sub. (1) (d) or (h), the holder of the security
11 interest shall be paid from the proceeds of the forfeiture if the security interest was
12 perfected prior to the date of the commission of the felony which forms the basis for
13 the forfeiture and he or she neither had knowledge of nor consented to the act or
14 omission.

History: 1971 c. 219, 307; 1981 c. 267; 1985 a. 245, 328; 1987 a. 339; 1989 a. 121; 1993 a. 118, 482; 1995 a. 448 ss. 297 to 305; Stats. 1995 s. 961.55; 1997 a. 220; 1999 a. 48, 57, 110; 2001 a. 109; 2003 a. 49.

15 **SECTION 6.** 961.55 (1) (h) of the statutes is created to read:

16 961.55 (1) (h) Subject to sub. (1p), any computer, as defined in s. 943.70 (1) (am),
17 used, with the knowledge and consent of its owner, in the commission of a crime
18 under this chapter.

19 **SECTION 7.** 961.55 (3) (intro.) of the statutes is amended to read:

20 961.55 (3) (intro.) In the event of seizure under sub. (2), proceedings under sub.
21 (4) shall be instituted promptly. All dispositions and forfeitures under this section
22 and ss. 961.555 and 961.56 shall be made with due provision for the rights of innocent
23 persons under ~~sub.~~ subs. (1) (d) 1., 2. 2m. a. and b. and 4 (1p) Any Subject to sub.

Any Subject to sub. Any ← scored period

1m

as affected by 2003 Wisconsin Act 49

✓
 1 (5r), any property seized but not forfeited shall be returned to its rightful owner. Any
 2 person claiming the right to possession of property seized may apply for its return
 3 to the circuit court for the county in which the property was seized. The court shall
 4 order such notice as it deems adequate to be given the district attorney and all
 5 persons who have or may have an interest in the property and shall hold a hearing
 6 to hear all claims to its true ownership. If the right to possession is proved to the
 7 court's satisfaction, it shall order the property returned, subject to sub. (5r), if: ✓

History: 1971 c. 219, 307; 1981 c. 267; 1985 a. 245, 328; 1987 a. 339; 1989 a. 121; 1993 a. 118, 482; 1995 a. 448 ss. 297 to 305; Stats. 1995 s. 961.55; 1997 a. 220; 1999 a. 48, 57, 110; 2001 a. 109; 2003 a. 49.

8 **SECTION 8.** 961.55 (5) (intro.) of the statutes is amended to read:

9 961.55 (5) (intro.) When property is forfeited under this chapter, the agency
 10 whose officer or employee seized the property may, subject to sub. (5r):

History: 1971 c. 219, 307; 1981 c. 267; 1985 a. 245, 328; 1987 a. 339; 1989 a. 121; 1993 a. 118, 482; 1995 a. 448 ss. 297 to 305; Stats. 1995 s. 961.55; 1997 a. 220; 1999 a. 48, 57, 110; 2001 a. 109; 2003 a. 49.

11 **SECTION 9.** 961.55 (5) (am) of the statutes is created to read:

12 961.55 (5) (am) Donate it to a nonprofit organization or a unit of state or local
 13 government, if the property is a computer forfeited under sub. (1) (h);

14 **SECTION 10.** 961.55 (5r) of the statutes is created to read:

15 961.55 (5r) Before selling or donating a computer seized under sub. (1) (h),
 16 before returning it to its rightful owner, or before retaining it for its own use, the law
 17 enforcement agency that seized it shall purge all data from the computer that are or
 18 represent contraband or that were used in the commission of a crime and may purge
 19 any other data or computer programs from the computer if the data or programs are
 20 maintained or designed primarily to facilitate the commission of a crime. ✓

21 **SECTION 11.** 968.20 (1) (intro.) of the statutes is amended to read:

22 968.20 (1) (intro.) Any person claiming the right to possession of property
 23 seized pursuant to a search warrant or seized without a search warrant may apply

1 for its return to the circuit court for the county in which the property was seized or
 2 where the search warrant was returned. The court shall order such notice as it
 3 deems adequate to be given the district attorney and all persons who have or may
 4 have an interest in the property and shall hold a hearing to hear all claims to its true
 5 ownership. ~~If~~ Subject to ss. 961.55 (5r) and 973.075 (5r), if the right to possession is
 6 proved to the court's satisfaction, it shall order the property, other than contraband
 7 or property covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or 968.205,
 8 returned if:

History: 1977 c. 260; 1977 c. 449 s. 497; 1979 c. 221; 1981 c. 160; 1983 a. 189 s. 329 (3); 1983 a. 278; 1985 a. 29 ss. 2447 to 2449, 3200 (35); 1987 a. 203; 1987 a. 332 s. 64; 1993 a. 90, 196; 1996 a. 157; 1997 a. 192, 248; 1999 a. 185; 2001 a. 16.

9 **INSERT 5/13**

10 **SECTION 12.** 973.075 (5r) of the statutes is created to read:

11 973.075 (5r) Before selling or donating a computer seized under sub. (1) (f),
 12 before returning it to its rightful owner, or before retaining it for its own use, the law
 13 enforcement agency that seized it shall purge all data from the computer that are or
 14 represent contraband or that were used in the commission of a crime and may purge
 15 any other data or computer programs from the computer if the data or programs are
 16 maintained or designed primarily to facilitate the commission of a crime.

Northrop, Lori

From: Vogel, Brad
Sent: Wednesday, December 10, 2003 1:44 PM
To: LRB.Legal
Subject: Draft review: LRB 03-2837/2 Topic: Seizure and disposition of computers used to commit a crime

It has been requested by <Vogel, Brad> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-2837/2 Topic: Seizure and disposition of computers used to commit a crime