

2005 ASSEMBLY BILL 424

May 12, 2005 – Introduced by Representatives CULLEN, KAUFERT, AINSWORTH, TURNER, FIELDS, MUSSER, ZIEGELBAUER, SINICKI and LEHMAN, cosponsored by Senators ROESSLER, LASSA, KANAVAS, OLSEN and BROWN. Referred to Committee on Criminal Justice and Homeland Security.

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) and 973.075 (5) (intro.); and **to create** 973.075 (1) (f) and 973.075 (1p) of the
4 statutes; **relating to:** seizure of computers used in cases of crimes against
5 children and providing a penalty.

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 a crime, including the following: 1) a vehicle used to transport property used or received in committing a felony; 2) a controlled substance or equipment used in committing a crime relating to a controlled substance; 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 or harassment restraining order or injunction; and 5) pirated, bootlegged, or counterfeit recordings and any equipment used to make them. Seized property is forfeited to the state if the state proves, in a civil case, that the person committed the offense from which the property is derived or with respect to which the property is used.

This bill authorizes the seizure of any computer used in the commission of a crime against a child or an attempt to commit such a crime. It also permits the seizure of a computer used to commit any other crime if: 1) the person pleads guilty

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to that crime; and 2) the person is charged with that crime in the same case in which he or she has been charged with committing or attempting to commit a crime against a child.

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.

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 as provided in subd. 2m. and subject to sub.
3 (1p), all vehicles, as defined in s. 939.22 (44), which are used in any of the following
4 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. (1p), any~~ property used or to be used in the
8 commission of a crime under s. 943.75 (2) or (2m), ~~but if the property is encumbered~~
9 ~~by a bona fide perfected security interest that was perfected before the date of the~~
10 ~~commission of the current violation and the holder of the security interest neither~~
11 ~~had knowledge of nor consented to the commission of that violation, the holder of the~~
12 ~~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. (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~~

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1 ~~of nor consented to the commission of that violation, the holder of the security~~
2 ~~interest shall be paid from the proceeds of the forfeiture.~~

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

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

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

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

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

20 973.075 (1) (e) Any recording, as defined in s. 943.206 (5), created, advertised,
21 offered for sale or rent, sold, rented, transported or possessed in violation of ss.
22 943.207 to 943.209 or s. 943.49 and, subject to sub. (1p), any electronic, mechanical
23 or other device for making a recording or for manufacturing, reproducing, packaging
24 or assembling a recording that was used to facilitate a violation of ss. 943.207 to
25 943.209 or s. 943.49, regardless of the knowledge or intent of the person from whom

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1 the recording or device is seized. ~~If a device subject to forfeiture under this paragraph~~
2 ~~is encumbered by a bona fide perfected security interest that was perfected before the~~
3 ~~date of the commission of the current violation and the holder of the security interest~~
4 ~~neither had knowledge of nor consented to the commission of that violation, the~~
5 ~~holder of the security interest shall be paid from the proceeds of the forfeiture.~~

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

7 973.075 (1) (f) Any computer, as defined in s. 943.70 (1) (am), used in the
8 commission of a crime under ch. 948 or used in the commission of any crime to which
9 a person pleads guilty or no contest if the person does so in a case in which he or she
10 has been charged with a crime under ch. 948. In this paragraph, “crime under ch.
11 948” includes a solicitation, conspiracy, or attempt to commit a crime under ch. 948.

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

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

19 **SECTION 10.** 973.075 (5) (intro.) of the statutes is amended to read:

20 973.075 (5) (intro.) All forfeitures under ss. 973.075 to 973.077 shall be made
21 with due provision for the rights of innocent persons under sub. subs. (1) (b) 2m., ~~(bg),~~
22 ~~(bm), (d) and (e) (1p)~~. Except as provided in sub. (5m), any property seized but not
23 forfeited shall be returned to its rightful owner. Any person claiming the right to
24 possession of property seized may apply for its return to the circuit court for the
25 county in which the property was seized. The court shall order such notice as it

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1 deems adequate to be given the district attorney and all persons who have or may
2 have an interest in the property and shall hold a hearing to hear all claims to its true
3 ownership. If the right to possession is proved to the court's satisfaction, it shall
4 order the property returned if:

5

(END)