

2005 DRAFTING REQUEST

Bill

Received: **11/10/2004**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **David Cullen (608) 267-9836**

By/Representing: **Ritch**

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

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - crimes agnst kids**
Criminal Law - procedure

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Cullen@legis.state.wi.us**

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us**
cathlene.hanaman@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Forfeiture of computer equipment used in committing a crime against a child

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 11/24/2004	kfollett 12/17/2004		_____			S&L Crime
/1			chaugen 12/20/2004	_____	lemery 12/20/2004	lnorthro 01/07/2005	

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

Received: 11/10/2004

Received By: **mdsida**

Wanted: As time permits

Identical to LRB:

For: **David Cullen (608) 267-9836**

By/Representing: **Ritch**

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

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - crimes agnst kids
Criminal Law - procedure**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Cullen@legis.state.wi.us**

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us
cathlene.hanaman@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Forfeiture of computer equipment used in committing a crime against a child

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 11/24/2004	kfollett 12/17/2004		_____			S&L Crime
/1			chaugen 12/20/2004	_____	lemery 12/20/2004		

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

Received: 11/10/2004

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: David Cullen (608) 267-9836

By/Representing: Ritch

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - crimes agnst kids
Criminal Law - sex offenses
Criminal Law - procedure

Extra Copies:

Submit via email: YES

Requester's email: Rep.Cullen@legis.state.wi.us

Carbon copy (CC:) to: robin.ryan@legis.state.wi.us
cathlene.hanaman@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

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

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>
1/?	mdsida	11 kf 12/17	ch 12-20	ch 12-20 p5			

FE Sent For:

<END>

Dsida, Michael

From: Williams, Ritch
Sent: Wednesday, November 10, 2004 4:21 PM
To: Dsida, Michael
Subject: Drafting Request for Rep. David Cullen

Mike -

Rep. Cullen would like to have a bill drafted that makes it possible for computers used in the commission of a crime committed against a child to be seized. You drafted LRB 3365/1 (2001 AB 495) for former Rep. Scott Walker. We'd like to have that same bill drafted for Rep. Cullen. If you have any questions or concerns, please feel free to contact me.

Ritch Williams
Office of Rep. David Cullen
7-9836

p/c to Ritch -

Ok to consolidate BFP provisions

0742/1
KSF

12/20

PWF

2003 BILL

Regen

1 AN ACT *to renumber and amend* 973.075 (1) (bg), 973.075 (1) (bj), 973.075 (1)
 2 (bm) and 973.075 (1) (d); *to amend* 973.075 (1) (e) and 973.075 (5) (intro.); and
 3 *to create* 973.075 (1) (bt) 1. (intro.), 973.075 (1) (bt) 1. e., 973.075 (1) (bt) 1. f.
 4 and 973.075 (1) (bt) 2. of the statutes; **relating to:** seizure of computers used
 5 in cases of crimes against 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.

* This bill authorizes the seizure of any computer used ~~or to be 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 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.

Seized property is forfeited to the state
if the state proves, insert A

BILL

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) (bg) of the statutes is renumbered 973.075 (1) (bt) 1. a.
2 and amended to read:

3 973.075 (1) (bt) 1. a. Any property used or to be used in the commission of a
4 crime under s. 943.75 (2) or (2m), but if the property 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 (1) (bj) of the statutes is renumbered 973.075 (1) (bt) 1. b.
10 and amended to read:

11 973.075 (1) (bt) 1. b. Any property used or to be used in the commission of a
12 crime under s. 943.74, but if the property is encumbered by a bona fide perfected
13 security interest that was perfected before the date of the commission of the current
14 violation and the holder of the security interest neither had knowledge of nor
15 consented to the commission of that violation, the holder of the security interest shall
16 be paid from the proceeds of the forfeiture.

17 **SECTION 3.** 973.075 (1) (bm) of the statutes is renumbered 973.075 (1) (bt) 1.
18 c. and amended to read:

INS
2/0
←

BILL

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

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

9 973.075 (1) (bt) 1. (intro.) Subject to subd. 2., any of the following:

10 SECTION 5. 973.075 (1) (bt) 1. e. of the statutes is created to read:

11 973.075 (1) (bt) 1. e. Any electronic, mechanical, or other device for making a
 12 recording or for manufacturing, reproducing, packaging, or assembling a recording
 13 that was used to facilitate a violation of ss. 943.207 to 943.209 or s. 943.49, regardless
 14 of the knowledge or intent of the person from whom the device is seized.

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

16 973.075 (1) (bt) 1. f. Any computer, as defined in s. 943.70 (1) (am), used or to
 17 be used in the commission of a crime or an attempt to commit a crime under ch. 948
 18 or used in the commission of any crime to which a person pleads guilty if the person
 19 does so in a case in which he or she has been charged with a crime or attempting to
 20 commit a crime under ch. 948.

or no contest

21 SECTION 7. 973.075 (1) (bt) 2. of the statutes is created to read:

22 973.075 (1) (bt) 2. If any property under subd. 1. is encumbered by a bona fide
 23 perfected security interest that was perfected before the date of the commission of
 24 the current violation and the holder of the security interest neither had knowledge

In this paragraph, "crime under ch. 948" includes a solicitation, conspiracy, or attempt to commit a crime under ch. 948.

Handwritten notes and signatures on the left margin, including "S. 948" and "D. 948".

Handwritten initials "D.F." with an arrow pointing to the text.

INS 3/20

BILL

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 8.** 973.075 (1) (d) of the statutes is renumbered 973.075 (1) (bt) 1. d.
4 and amended to read:

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

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

13 973.075 (1) (e) Any recording, as defined in s. 943.206 (5), created, advertised,
14 offered for sale or rent, sold, rented, transported or possessed in violation of ss.
15 943.207 to 943.209 or s. 943.49 and any electronic, mechanical or other device for
16 making a recording or for manufacturing, reproducing, packaging or assembling a
17 recording that was used to facilitate a violation of ss. 943.207 to 943.209 or s. 943.49,
18 regardless of the knowledge or intent of the person from whom the recording or
19 device is seized. If a device subject to forfeiture under this paragraph is encumbered
20 by a bona fide perfected security interest that was perfected before the date of the
21 commission of the current violation and the holder of the security interest neither
22 had knowledge of nor consented to the commission of that violation, the holder of the
23 security interest shall be paid from the proceeds of the forfeiture.

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

✓
subs.

BILL

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

11

(END)

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 HARS DORF. 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.

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.

Insert A
~~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

BILL

1 action or proceeding. Disposition procedures shall be established by ordinance or
2 resolution and may include provisions authorizing an attempt to return to the
3 rightful owner any dangerous weapons or ammunition which appear to be stolen or
4 are reported stolen. If enacted, any such provision shall include a presumption that
5 if the dangerous weapons or ammunition appear to be or are reported stolen an
6 attempt will be made to return the dangerous weapons or ammunition to the
7 authorized rightful owner. If the return of a seized dangerous weapon other than a
8 firearm is not requested by its rightful owner under sub. (1) and is not returned by
9 the officer under sub. (2), the city shall safely dispose of the dangerous weapon or,
10 if the dangerous weapon is a motor vehicle, as defined in s. 340.01 (35), sell the motor
11 vehicle following the procedure under s. 973.075 (4) (c) or authorize a law
12 enforcement agency to retain and use the motor vehicle. If the return of a seized
13 firearm or ammunition is not requested by its authorized rightful owner under sub.
14 (1) and is not returned by the officer under sub. (2), the seized firearm or ammunition
15 shall be shipped to and become property of the state crime laboratories. A person
16 designated by the department of justice may destroy any material for which the
17 laboratory has no use or arrange for the exchange of material with other public
18 agencies. In lieu of destruction, shoulder weapons for which the laboratories have
19 no use shall be turned over to the department of natural resources for sale and
20 distribution of proceeds under s. 29.934.

21 **SECTION 10.** 973.075 (1) (b) 1m. (intro.) of the statutes is amended to read:

22 973.075 (1) (b) 1m. (intro.) Except as provided in subd. 2m. and subject to sub.
23 (1p), all vehicles, as defined in s. 939.22 (44), which are used in any of the following
24 ways:

25 **SECTION 11.** 973.075 (1) (b) 2m. c. of the statutes is repealed.

Insert
2/0

BILL

1 SECTION ~~12~~¹². 973.075 (1) (bg) of the statutes is amended to read:

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

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

9 973.075 (1) (bj) Any Subject to sub. (1p). any property used or to be used in the
10 commission of a crime under s. 943.74, ~~but if the property is encumbered by a bona~~
11 ~~fide perfected security interest that was perfected before the date of the commission~~
12 ~~of the current violation and the holder of the security interest neither had knowledge~~
13 ~~of nor consented to the commission of that violation, the holder of the security~~
14 ~~interest shall be paid from the proceeds of the forfeiture.~~

15 SECTION ~~14~~¹⁴. 973.075 (1) (bm) of the statutes is amended to read:

16 973.075 (1) (bm) Any Subject to sub. (1p). any property used in the commission
17 of a crime under s. 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 (2) or
18 940.32, ~~but if the property is encumbered by a bonafide perfected security interest~~
19 ~~that was perfected before the date of the commission of the current violation and the~~
20 ~~holder of the security interest neither had knowledge of nor consented to the~~
21 ~~commission of that violation, the holder of the security interest shall be paid from the~~
22 ~~proceeds of the forfeiture.~~

23 SECTION ~~15~~¹⁵. 973.075 (1) (d) of the statutes is amended to read:

24 973.075 (1) (d) ~~A~~ Subject to sub. (1p). a tank vessel that violates s. 299.62 (2)
25 that is owned by a person who, within 5 years before the commission of the current

NS 2/0

BILL

1 violation, was previously convicted of violating s. 299.62 (2), ~~but if the tank vessel is~~
 2 ~~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 16.** 973.075 (1) (e) of the statutes is amended to read:

7 973.075 (1) (e) Any recording, as defined in s. 943.206 (5), created, advertised,
 8 offered for sale or rent, sold, rented, transported or possessed in violation of ss.
 9 943.207 to 943.209 or s. 943.49 and, subject to sub. (1p), any electronic, mechanical
 10 or other device for making a recording or for manufacturing, reproducing, packaging
 11 or assembling a recording that was used to facilitate a violation of ss. 943.207 to
 12 943.209 or s. 943.49, regardless of the knowledge or intent of the person from whom
 13 the recording or device is seized. ~~If a device subject to forfeiture under this paragraph~~
 14 ~~is encumbered by a bona fide perfected security interest that was perfected before the~~
 15 ~~date of the commission of the current violation and the holder of the security interest~~
 16 ~~neither had knowledge of nor consented to the commission of that violation, the~~
 17 ~~holder of the security interest shall be paid from the proceeds of the forfeiture.~~

18 **SECTION 17.** 973.075 (1) (f) of the statutes is created to read:

19 973.075 (1) (f) 1. Subject to sub. (1p) and except as provided in subd. 2., any
 20 computer, as defined in s. 943.70 (1) (am), used or to be used in the commission of a
 21 serious child sex offence, as defined in s. 302.116 (1) (aq), or an attempt to commit
 22 a serious child sex offence or used in the commission of any crime to which a person
 23 pleads guilty if the person does so in a case in which he or she has been charged with
 24 a serious child sex offence or attempting to commit a serious child sex offence.

INS 2/0

BILL

1 2. A computer is not subject to forfeiture under subd. 1. if an owner did not know
2 that it was being used or was to be used or consent to it being used in the commission
3 of or an attempt to commit a crime described in subd. 1.

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

5 973.075 (1p) If any property under sub. (1) (b), (bg), (bj), (bm), (d), or (f) or any
6 device under sub. (1) (e) is encumbered by a bona fide perfected security interest that
7 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 19.** 973.075 (4) of the statutes is renumbered 973.075 (4) (a) and
12 amended to read:

13 973.075 (4) (a) When property is forfeited under ss. 973.075 to 973.077, the
14 agency seizing the property may sell the property that is not required by law to be
15 destroyed or transferred to another agency. The agency may retain any vehicle for
16 official use or sell the vehicle. The Subject to sub. (5r), the agency may sell any
17 computer forfeited under sub. (1) (f) or, unless it is property described in sub. (1m),
18 donate it to a nonprofit organization.

19 (c) If the agency sells property forfeited under ss. 973.075 to 973.077, the
20 agency seizing the property may deduct 50% of the amount received for
21 administrative expenses of seizure, maintenance of custody, advertising and court
22 costs and the costs of investigation and prosecution reasonably incurred. The
23 remainder shall be deposited in the school fund as the proceeds of the forfeiture. If
24 the property forfeited under ss. 973.075 to 973.077 is money, all the money shall be
25 deposited in the school fund.

INS
3/20

Northrop, Lori

From: Williams, Ritch
Sent: Friday, January 07, 2005 12:02 PM
To: LRB.Legal
Subject: Draft review: LRB 05-0742/1 Topic: Forfeiture of computer equipment used in committing a crime against a child

It has been requested by <Williams, Ritch> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-0742/1 Topic: Forfeiture of computer equipment used in committing a crime against a child