



2005 SENATE BILL 627

February 24, 2006 - Introduced by Senators LEIBHAM, A. LASEE and ROESSLER, cosponsored by Representatives NASS, ALBERS, AINSWORTH, STRACHOTA, BIES, LEHMAN, TOWNSEND and OTT. Referred to Committee on Energy, Utilities and Information Technology.

1 **AN ACT** *to repeal* 973.075 (1) (b) 2m. c.; *to renumber and amend* 961.55 (1) (d)
2 (intro.), 961.55 (1) (d) 1., 961.55 (1) (d) 2., 961.55 (1) (d) 3., 961.55 (1) (d) 4. and
3 973.075 (4); *to amend* 961.55 (3) (intro.), 961.55 (5) (intro.), 968.20 (1) (intro.),
4 968.20 (3) (a) and (b), 973.075 (1) (b) 1m. (intro.), 973.075 (1) (bg), 973.075 (1)
5 (bj), 973.075 (1) (bm), 973.075 (1) (d), 973.075 (1) (e) and 973.075 (5) (intro.); and
6 **to create** 961.55 (1) (h), 961.55 (5) (am), 961.55 (5r), 973.075 (1) (f), 973.075 (1p)
7 and 973.075 (5r) of the statutes; **relating to:** seizure of a computer used to
8 commit a crime and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the state or a local law enforcement agency 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

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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 or a local law enforcement agency 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 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 percent 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.** 961.55 (1) (d) (intro.) of the statutes is renumbered 961.55 (1) (d)
2 1m. and amended to read:

3 961.55 (1) (d) 1m. ~~All~~ Subject to sub. (1p) and except as provided in subd. 2m.,
4 all vehicles which are used, or intended for use, to transport, or in any manner to
5 facilitate the transportation, for the purpose of sale or receipt of property described
6 in pars. (a) and (b) or for the purpose of transporting any property or weapon used
7 or to be used or received in the commission of any felony under this chapter, ~~but,~~

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

10 961.55 (1) (d) 2m. a. No vehicle used by any person as a common carrier in the
11 transaction of business as a common carrier is subject to forfeiture under this section
12 unless it appears that the owner or other person in charge of the vehicle is a
13 consenting party or privy to a violation of this chapter;

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

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1 961.55 (1) (d) 2m. b. No vehicle is subject to forfeiture under this section by
2 reason of any act or omission established by the owner thereof to have been
3 committed or omitted without the owner's knowledge or consent. This subdivision
4 subd. 2m. b. does not apply to any vehicle owned by a person who is under 16 years
5 of age on the date that the vehicle is used, or is intended for use, in the manner
6 described under ~~par. (d) (intro.) subd. 1m.~~, unless the court determines that the
7 owner is an innocent bona fide owner;

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

10 961.55 (1) (d) 2m. c. A vehicle is not subject to forfeiture for a violation of s.
11 961.41 (3g) (b) to (g); ~~and.~~

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

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

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

21 961.55 (1) (h) Subject to sub. (1p), any computer, as defined in s. 943.70 (1) (am),
22 used, with the knowledge and consent of its owner, in the commission of a crime
23 under this chapter.

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

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1 961.55 (3) (intro.) In the event of seizure under sub. (2), proceedings under sub.
2 (4) shall be instituted promptly. All dispositions and forfeitures under this section
3 and ss. 961.555 and 961.56 shall be made with due provision for the rights of innocent
4 persons under ~~sub. subs. (1) (d) 1., 2., 2m. a. and b. and 4. Any (1p).~~ Subject to sub.
5 (5r), any property seized but not forfeited shall be returned to its rightful owner. Any
6 person claiming the right to possession of property seized may apply for its return
7 to the circuit court for the county in which the property was seized. The court shall
8 order such notice as it deems adequate to be given the district attorney and all
9 persons who have or may have an interest in the property and shall hold a hearing
10 to hear all claims to its true ownership. If the right to possession is proved to the
11 court's satisfaction, it shall order the property returned, subject to sub. (5r), if:

12 **SECTION 8.** 961.55 (5) (intro.) of the statutes, as affected by 2005 Wisconsin Act
13 91, is amended to read:

14 961.55 (5) (intro.) When a computer that is described to sub. (1p) is forfeited
15 under sub. (1) (h), the agency whose officer or employee seized the property shall,
16 subject to sub. (5r), sell the computer under par. (b). When other property is forfeited
17 under this chapter, the agency whose officer or employee seized the property shall,
18 do one of the following:

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

20 961.55 (5) (am) Donate it to a nonprofit organization or a unit of state or local
21 government, if the property is a computer forfeited under sub. (1) (h);

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

23 961.55 (5r) Before selling or donating a computer seized under sub. (1) (h) or
24 before returning it to its rightful owner, the law enforcement agency that seized it
25 shall purge all data from the computer that are or represent contraband or that were

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1 used in the commission of a crime and may purge any other data or computer
2 programs from the computer if the data or programs are maintained or designed
3 primarily to facilitate the commission of a crime.

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

5 968.20 (1) (intro.) Any person claiming the right to possession of property
6 seized pursuant to a search warrant or seized without a search warrant may apply
7 for its return to the circuit court for the county in which the property was seized or
8 where the search warrant was returned. The court shall order such notice as it
9 deems adequate to be given the district attorney and all persons who have or may
10 have an interest in the property and shall hold a hearing to hear all claims to its true
11 ownership. If Subject to ss. 961.55 (5r) and 973.075 (5r), if the right to possession is
12 proved to the court's satisfaction, it shall order the property, other than contraband
13 or property covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or 968.205,
14 returned if:

15 **SECTION 12.** 968.20 (3) (a) and (b) of the statutes are amended to read:

16 968.20 (3) (a) First class cities shall dispose of dangerous weapons or
17 ammunition seized 12 months after taking possession of them if the owner,
18 authorized under sub. (1m), has not requested their return and if the dangerous
19 weapon or ammunition is not required for evidence or use in further investigation
20 and has not been disposed of pursuant to a court order at the completion of a criminal
21 action or proceeding. Disposition procedures shall be established by ordinance or
22 resolution and may include provisions authorizing an attempt to return to the
23 rightful owner any dangerous weapons or ammunition which appear to be stolen or
24 are reported stolen. If enacted, any such provision shall include a presumption that
25 if the dangerous weapons or ammunition appear to be or are reported stolen an

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

16 (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village, town or
17 county or other custodian of a seized dangerous weapon or ammunition, if the
18 dangerous weapon or ammunition is not required for evidence or use in further
19 investigation and has not been disposed of pursuant to a court order at the
20 completion of a criminal action or proceeding, shall make reasonable efforts to notify
21 all persons who have or may have an authorized rightful interest in the dangerous
22 weapon or ammunition of the application requirements under sub. (1). If, within 30
23 days after the notice, an application under sub. (1) is not made and the seized
24 dangerous weapon or ammunition is not returned by the officer under sub. (2), the
25 city, village, town or county or other custodian may retain the dangerous weapon or

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1 ammunition and authorize its use by a law enforcement agency, except that a
2 dangerous weapon used in the commission of a homicide or a handgun, as defined
3 in s. 175.35 (1) (b), may not be retained. If a dangerous weapon other than a firearm
4 is not so retained, the city, village, town or county or other custodian shall safely
5 dispose of the dangerous weapon or, if the dangerous weapon is a motor vehicle, as
6 defined in s. 340.01 (35), sell the motor vehicle following the procedure under s.
7 973.075 (4) (b). If a firearm or ammunition is not so retained, the city, village, town
8 or county or other custodian shall ship it to the state crime laboratories and it is then
9 the property of the laboratories. A person designated by the department of justice
10 may destroy any material for which the laboratories have no use or arrange for the
11 exchange of material with other public agencies. In lieu of destruction, shoulder
12 weapons for which the laboratory has no use shall be turned over to the department
13 of natural resources for sale and distribution of proceeds under s. 29.934.

14 **SECTION 13.** 973.075 (1) (b) 1m. (intro.) of the statutes is amended to read:

15 973.075 (1) (b) 1m. (intro.) ~~Except~~ Subject to sub. (1p), and except as provided
16 in subd. 2m., all vehicles, as defined in s. 939.22 (44), which are used in any of the
17 following ways:

18 **SECTION 14.** 973.075 (1) (b) 2m. c. of the statutes is repealed.

19 **SECTION 15.** 973.075 (1) (bg) of the statutes is amended to read:

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

SENATE BILL 627**SECTION 16**

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

2 973.075 (1) (bj) ~~Any Subject to sub. (1p), 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 17.** 973.075 (1) (bm) of the statutes is amended to read:

9 973.075 (1) (bm) ~~Any Subject to sub. (1p), 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 18.** 973.075 (1) (d) of the statutes is amended to read:

17 973.075 (1) (d) ~~A Subject to sub. (1p), 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 19.** 973.075 (1) (e) of the statutes is amended to read:

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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. (1p), 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 20.** 973.075 (1) (f) of the statutes is created to read:

13 973.075 (1) (f) Subject to sub. (1p), any computer, as defined in s. 943.70 (1)
14 (am), used, with the knowledge and consent of its owner, in the commission of a
15 crime.

16 **SECTION 21.** 973.075 (1p) of the statutes is created to read:

17 973.075 (1p) If any property under sub. (1) (b), (bg), (bj), (bm), (d), or (f) or any
18 device under sub. (1) (e) is encumbered by a bona fide perfected security interest that
19 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 22.** 973.075 (4) of the statutes is renumbered 973.075 (4) (a) and
24 amended to read:

SENATE BILL 627**SECTION 22**

1 973.075 (4) (a) Subject to sub. (5r), when a computer is forfeited under sub. (1)
2 (f), the agency seizing it shall sell it if sub. (1p) applies but may otherwise retain it
3 for its own use or donate it to a nonprofit organization or a unit of state or local
4 government. If a vehicle is forfeited under ss. 973.075 to 973.077, the agency may
5 retain it for official use or sell it. When other property is forfeited under ss. 973.075
6 to 973.077, the agency seizing the property may sell the property that is not it unless
7 required by law to be destroyed destroy it or transferred transfer it to another agency.
8 The agency may retain any vehicle for official use or sell the vehicle. The

9 (b) When an agency seizing the property sells property under par. (a), it may
10 deduct 50% of the amount received for administrative expenses of seizure,
11 maintenance of custody, advertising, and court costs and the costs of investigation
12 and prosecution reasonably incurred. The remainder shall be deposited in the school
13 fund as the proceeds of the forfeiture. If the property forfeited under ss. 973.075 to
14 973.077 is money, all the money shall be deposited in the school fund.

15 **SECTION 23.** 973.075 (5) (intro.) of the statutes is amended to read:

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

