

2009 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB280)

Received: **09/25/2009**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Terry Van Akkeren (608) 266-0656**

By/Representing: **Carol**

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

Drafter: **chanaman**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous
Criminal Law - procedure**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.VanAkkeren@legis.wisconsin.gov**

Carbon copy (CC:) to: **don.dyke@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Seizure of computers

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>
/?	chanaman 09/25/2009	bkraft 09/28/2009		_____			
/1			rschluet 09/28/2009	_____	lparisi 09/28/2009	lparisi 09/28/2009	

FE Sent For:

<END>

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PH MD

FE Sent For:

9/28

<END>

Hanaman, Cathlene

From: Reineking, Carol
Sent: Thursday, September 24, 2009 12:06 PM
To: Hanaman, Cathlene
Subject: AB 280 substitute amendment request

Hi Cathlene:

Due to a number of issues raised last week on session day, Rep. Van Akkeren would like to get a substitute amendment drafted to AB 280;

These are the changes we would like to the bill:

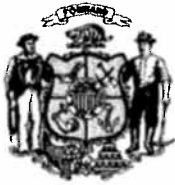
- Limit the seizure to felonies only.
- Clarify that if the person committing the crime is not the owner, the computer can only be seized if the owner knew the computer was being used to commit a felony (a point was made that the way it is currently drafted, it could be interpreted that the owner knew the individual was using their computer..not necessarily that they knew it was being used to commit a crime).
- Before law enforcement agencies could use, sell or donate a seized computer, the owner would have the ability to retrieve information/files from the computer, unless that information is connected with the crime.
- Before law enforcement agencies could use, sell or donate a computer and after owners have the ability to retrieve data, a law enforcement agency would be required to delete all files/information from a computer, other than the computer's operating system.
- Computers owned by a business would not be subject to seizure, unless the business is a sole proprietor or the all of the owners of the business knew the computer was being used in the commission of a crime.

Let me know if you have any questions.

Thanks much!

Carol

*Carol Reineking
Office of Rep. Terry Van Akkeren
608-266-0656
1-888-529-0026*



FROM
2515/1

50132/1
LRB 2515/1
CMH:bjk:jf
stay

ASA

2009 ASSEMBLY BILL 280

Inserts

MONDAY
please

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May 21, 2009 - Introduced by Representatives VAN AKKEREN, KERKMAN, STASKUNAS, TOWNSEND, SPANBAUER, GUNDERSON, SUDER, BIES and LEMAHIEU, cosponsored by Senators LEIBHAM and OLSEN. Referred to Committee on Criminal Justice.

referred

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

felony

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

ASSEMBLY BILL 280

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 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, in general, 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 amended to read:

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

7 SECTION 2. 961.55 (1) (d) 3. of the statutes is amended to read:

8 961.55 (1) (d) 3. A vehicle is not subject to forfeiture for a violation of s. 961.41
9 (3g) (b) to (g); and,

described described in sub (1)(d) or (h) that in

10 SECTION 3. 961.55 (1) (d) 4. of the statutes is renumbered 961.55 (1p) and
11 amended to read:

12 961.55 (1p) If forfeiture of a vehicle property encumbered by a bona fide
13 perfected security interest occurs under sub. (1) (d) or (h), the holder of the security
14 interest shall be paid from the proceeds of the forfeiture if the security interest was

ASSEMBLY BILL 280

1 perfected prior to the date of the commission of the felony which forms the basis for
2 the forfeiture and he or she neither had knowledge of nor consented to the act or
3 omission.

4 **SECTION 4.** 961.55 (1) (h) of the statutes is created to read:

5 961.55 (1) (h) ~~Subject to sub. (1p), any computer, as defined in s. 943.70 (1) (am),~~
6 ~~used with the knowledge and consent of its owner, in the commission of a crime under~~
7 ~~this chapter.~~ *no more than a felony*

8 **SECTION 5.** 961.55 (3) (intro.) of the statutes is amended to read:

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

20 **SECTION 6.** 961.55 (5) (intro.) of the statutes is amended to read:

21 961.55 (5) (intro.) When property other than a computer is forfeited under this
22 chapter, the agency whose officer or employee seized the property shall do one of the
23 following:

24 **SECTION 7.** 961.55 (5b) of the statutes is created to read:

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described in
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961.55 (5b) If a computer is forfeited under sub. (1) (h) the agency whose officer or employee seized the property shall, subject to sub. (5r), do one of the following:

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(a) If the computer is one described in sub. (1p), sell that which is not required to be destroyed by law and which is not harmful to the public. If, after the conditions of sub. (1p) are satisfied, proceeds remain, the agency may use 50 percent of the remainder for payment of forfeiture expenses. Then, any remainder shall be deposited in the school fund as proceeds of the forfeiture. In this paragraph, "forfeiture expenses" include all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs and the costs of investigation and prosecution reasonably incurred.

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(b) If the computer is not one described in sub. (1p) donate it to a nonprofit organization or a unit of state or local government.

retain it for the agency's use of

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SECTION 8. 961.55 (5r) of the statutes is created to read:

14

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

or retaining a forfeited

described in

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SECTION 9. 968.20 (1) (intro.) of the statutes is amended to read:

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968.20 (1) (intro.) Any person claiming the right to possession of property seized pursuant to a search warrant or seized without a search warrant may apply for its return to the circuit court for the county in which the property was seized or where the search warrant was returned. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may

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ASSEMBLY BILL 280

(a)

1 have an interest in the property and shall hold a hearing to hear all claims to its true
2 ownership. If the right to possession is proved to the court's satisfaction, it shall
3 order the property, other than contraband or property covered under sub. (1m) or (1r)
4 or s. 173.12, 173.21 (4), or 968.205, returned, subject to ss. 961.55 (5r) and 973.075

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(5r) if:

6 **SECTION 10.** 968.20 (3) (a) of the statutes is amended to read:

7 968.20 (3) (a) First class cities shall dispose of dangerous weapons or
8 ammunition seized 12 months after taking possession of them if the owner,
9 authorized under sub. (1m), has not requested their return and if the dangerous
10 weapon or ammunition is not required for evidence or use in further investigation
11 and has not been disposed of pursuant to a court order at the completion of a criminal
12 action or proceeding. Disposition procedures shall be established by ordinance or
13 resolution and may include provisions authorizing an attempt to return to the
14 rightful owner any dangerous weapons or ammunition which appear to be stolen or
15 are reported stolen. If enacted, any such provision shall include a presumption that
16 if the dangerous weapons or ammunition appear to be or are reported stolen an
17 attempt will be made to return the dangerous weapons or ammunition to the
18 authorized rightful owner. If the return of a seized dangerous weapon other than a
19 firearm is not requested by its rightful owner under sub. (1) and is not returned by
20 the officer under sub. (2), the city shall safely dispose of the dangerous weapon or,
21 if the dangerous weapon is a motor vehicle, as defined in s. 340.01 (35), sell the motor
22 vehicle following the procedure under s. 973.075 (4) (b) or authorize a law
23 enforcement agency to retain and use the motor vehicle. If the return of a seized
24 firearm or ammunition is not requested by its authorized rightful owner under sub.
25 (1) and is not returned by the officer under sub. (2), the seized firearm or ammunition

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1 shall be shipped to and become property of the state crime laboratories. A person
2 designated by the department of justice may destroy any material for which the
3 laboratory has no use or arrange for the exchange of material with other public
4 agencies. In lieu of destruction, shoulder weapons for which the laboratories have
5 no use shall be turned over to the department of natural resources for sale and
6 distribution of proceeds under s. 29.934 or for use under s. 29.938.

7 **SECTION 11.** 968.20 (3) (b) of the statutes is amended to read:

8 968.20 (3) (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village,
9 town or county or other custodian of a seized dangerous weapon or ammunition, if
10 the dangerous weapon or ammunition is not required for evidence or use in further
11 investigation and has not been disposed of pursuant to a court order at the
12 completion of a criminal action or proceeding, shall make reasonable efforts to notify
13 all persons who have or may have an authorized rightful interest in the dangerous
14 weapon or ammunition of the application requirements under sub. (1). If, within 30
15 days after the notice, an application under sub. (1) is not made and the seized
16 dangerous weapon or ammunition is not returned by the officer under sub. (2), the
17 city, village, town or county or other custodian may retain the dangerous weapon or
18 ammunition and authorize its use by a law enforcement agency, except that a
19 dangerous weapon used in the commission of a homicide or a handgun, as defined
20 in s. 175.35 (1) (b), may not be retained. If a dangerous weapon other than a firearm
21 is not so retained, the city, village, town or county or other custodian shall safely
22 dispose of the dangerous weapon or, if the dangerous weapon is a motor vehicle, as
23 defined in s. 340.01 (35), sell the motor vehicle following the procedure under s.
24 973.075 (4) (b). If a firearm or ammunition is not so retained, the city, village, town
25 or county or other custodian shall ship it to the state crime laboratories and it is then

ASSEMBLY BILL 280

1 the property of the laboratories. A person designated by the department of justice
2 may destroy any material for which the laboratories have no use or arrange for the
3 exchange of material with other public agencies. In lieu of destruction, shoulder
4 weapons for which the laboratory has no use shall be turned over to the department
5 of natural resources for sale and distribution of proceeds under s. 29.934 or for use
6 under s. 29.938.

7 **SECTION 12.** 973.075 (1) (b) 1m. (intro.) of the statutes is amended to read:

8 973.075 (1) (b) 1m. (intro.) ~~Except Subject to sub. (1p) and except as provided~~
9 in subd. 2m., all vehicles, as defined in s. 939.22 (44), which are used in any of the
10 following ways:

11 **SECTION 13.** 973.075 (1) (b) 2m. c. of the statutes is repealed.

12 **SECTION 14.** 973.075 (1) (bg) of the statutes is amended to read:

13 973.075 (1) (bg) ~~Any Subject to sub. (1p), any~~ property used or to be used in the
14 commission of a crime under s. 943.75 (2) or (2m), ~~but if the property is encumbered~~
15 ~~by a bona fide perfected security interest that was perfected before the date of the~~
16 ~~commission of the current violation and the holder of the security interest neither~~
17 ~~had knowledge of nor consented to the commission of that violation, the holder of the~~
18 ~~security interest shall be paid from the proceeds of the forfeiture.~~

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

20 973.075 (1) (bj) ~~Any Subject to sub. (1p), any~~ property used or to be used in the
21 commission of a crime under s. 943.74, ~~but if the property is encumbered by a bona~~
22 ~~fide perfected security interest that was perfected before the date of the commission~~
23 ~~of the current violation and the holder of the security interest neither had knowledge~~
24 ~~of nor consented to the commission of that violation, the holder of the security~~
25 ~~interest shall be paid from the proceeds of the forfeiture.~~

ASSEMBLY BILL 280**SECTION 16**

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

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

10 973.075 (1) (d) ~~A Subject to sub. (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 18.** 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. (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~~

ASSEMBLY BILL 280

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.

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~~SECTION 19. 973.075 (1) (f) of the statutes is created to read:
973.075 (1) (f) Subject to sub. (1p), any computer, as defined in s. 943.70 (1)
(am), used, with the knowledge and consent of its owner, in the commission of a
crime~~

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SECTION 20. 973.075 (1p) of the statutes is created to read:

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973.075 (1p) 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 21. 973.075 (4) of the statutes is renumbered 973.075 (4) (a) 3. and
16 amended to read:

17

973.075 (4) (a) 3. When property, other than property specified in subd. 1. or
18 2., is forfeited under ss. 973.075 to 973.077, the agency seizing the property may sell
19 the property that ~~is not required by~~ unless the law requires it to be destroyed or
20 transferred to another agency. ~~The agency may retain any vehicle for official use or~~
21 ~~sell the vehicle.~~ The

22

(b) When an agency seizing the sells property under par. (a), it shall satisfy the
23 conditions of sub. (1p). If proceeds remain, it may deduct 50% of the amount received
24 for administrative expenses of seizure, maintenance of custody, advertising and
25 court costs and the costs of investigation and prosecution reasonably incurred. The

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

4 **SECTION 22.** 973.075 (4) (a) 1. and 2. of the statutes are created to read:

5 973.075 (4) (a) 1. Subject to sub. (5r), when a computer is forfeited under sub.
6 (1) (f), the agency seizing it shall sell it if sub. (1p) applies but may otherwise retain
7 it for its own use or donate it to a nonprofit organization or a unit of state or local
8 government.

9 2. If a vehicle is forfeited under ss. 973.075 to 973.077, the agency may retain
10 it for official use or sell it.

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

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

22 **SECTION 24.** 973.075 (5r) of the statutes is created to read:

23 973.075 (5r) ~~Before selling or donating a computer seized under sub. (1) (f) 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~~

ASSEMBLY BILL 280

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

SECTION 25. Initial applicability.

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

(END)

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11-4

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB
CMH:.....

1 Insert 3-8

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

3 961.55 (1) (h) Subject to sub. (1p), any computer, as defined in s. 943.70 (1) (am),
4 used in the commission of a felony under this chapter if the following conditions are
5 met:

6 1. If the computer is owned by an individual, the individual had knowledge of

7 and consented to ^{the} use of the computer in the commission of ^{the} a felony.
_{re}

8 2. If the computer is owned by an entity, all owners of the entity had knowledge

9 of and consented to ^{the} use of the computer in the commission of ^{the} a felony.
_{re}

10

11 Insert 4-20

12 **SECTION 2.** 961.55 (5r) of the statutes is created to read:

13 961.55 (5r) (a) Before selling, donating, or retaining a forfeited computer
14 described in sub. (1) (h) or before returning it to its rightful owner, the law
15 enforcement agency that seized it shall purge all data from the computer that are or
16 represent contraband or that were used in the commission of a crime and all
17 programs that are maintained or designed primarily to facilitate the commission of
18 a crime.

19 (b) Before selling, donating, or retaining a forfeited computer described in sub.

20 (1) (h) and after purging all data as required under par. (a), the law enforcement

21 agency that seized it shall provide the owner an opportunity to retrieve from the

22 computer any remaining data or programs and shall purge all other data or programs

23 except the computer's operating system.

1

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Insert 9-8

3

SECTION 3. 973.075 (1) (f) of the statutes is created to read:

4

973.075 (1) (f) Subject to sub. (1p), any computer, as defined in s. 943.70 (1)

5

(am), used in the commission of a felony under this chapter if the following conditions

6

are met:

7

1. If the computer is owned by an individual, the individual had knowledge of

8

and consented to use of the computer in the commission of a felony.

9

2. If the computer is owned by an entity, all owners of the entity had knowledge

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of and consented to use of the computer in the commission of a felony.

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Insert 11-4

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SECTION 4. 973.075 (5r) of the statutes is created to read:

14

973.075 (5r) (a) Before selling, donating, or retaining a forfeited computer

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described in sub. (1) (f) or before returning it to its rightful owner, the law

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enforcement agency that seized it shall purge all data from the computer that are or

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represent contraband or that were used in the commission of a crime and all

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programs that are maintained or designed primarily to facilitate the commission of

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a crime.

20

(b) Before selling, donating, or retaining a forfeited computer described in sub.

21

(1) (f) and after purging all data as required under par. (a), the law enforcement

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agency that seized it shall provide the owner an opportunity to retrieve from the

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computer any remaining data or programs and shall purge all other data or programs

24

except the computer's operating system.

end of inserts