



2005 ASSEMBLY BILL 988

February 7, 2006 - Introduced by Representatives VUKMIR, STASKUNAS, GRONEMUS, MONTGOMERY, JESKEWITZ, STRACHOTA, ALBERS and GUNDERSON, cosponsored by Senators ROESSLER, GROTHMAN and LAZICH. Referred to Committee on Criminal Justice and Homeland Security.

1 **AN ACT** *to renumber* 302.116 (1) (a), 973.075 (5) (a) and 973.075 (5) (b); *to*
2 *renumber and amend* 973.075 (5) (intro.); *to amend* 29.934 (1) (d), 968.20 (1)
3 (intro.) and 973.075 (4); and *to create* 301.03 (20), 302.116 (1) (ac), 302.116 (1)
4 (ae), 302.116 (1) (ag), 302.116 (1) (aq), 302.116 (3), 304.061, 973.075 (1) (f),
5 973.075 (4m), 973.075 (5) (bm), 973.075 (5r) and 973.09 (8) of the statutes;
6 **relating to:** seizure of a computer used in committing a child sex offense, the
7 disposition of certain forfeited property, the use of a computer by a person
8 convicted of a child sex offense, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill permits the state and local law enforcement agencies, through forfeiture proceedings, to seize and dispose of computers that were 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. In addition, it 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 and local law enforcement agencies may acquire certain property involved in the commission of crime through a forfeiture proceeding,

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which is generally initiated after the end of the criminal case. 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 a state or 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.

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 percent 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 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 or no contest 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 defines “serious child sex offense” to mean certain forms of sexual assault or sexual exploitation of a child, incest, certain forms of child enticement, using a computer to facilitate a child sex crime, or possession of child pornography. The bill, however, provides protections for innocent owners and innocent security interest holders like those provided under current law with respect to vehicles. The bill also requires that the computer be returned to an owner (such as a spouse, a business partner, or an employer of the person committing the offense) within 30 days after being seized, unless a court determines, at the request of the agency that seized the computer, that there is probable cause to believe that the owner of the computer knew that it was being used or was to be used in the commission of the crime.

The bill contains two provisions related to data on seized computers. First, regardless of whether it is required to return the computer to an owner, the agency

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may copy any data from the computer if it has probable cause to believe that the computer was being used or was to be used in the commission of a serious child sex crime or a related offense. Second, if a computer is forfeited under the bill, the agency that seized the computer must purge data that are or represent contraband or that relate to serious child sex offenses from it before selling it or, as discussed in the next section of this analysis, returning it to an innocent security interest holder.

Disposition of forfeited property generally and innocent security interest holders

This bill restricts the right of a law enforcement agency to sell forfeited property of any type under certain circumstances. Under the bill, if forfeited property is subject to a security interest, there is only one innocent security interest holder, and that person and the agency believe that the proceeds of any sale of the forfeited property will be less than the amount of the security interest, the agency must turn over the forfeited property to the innocent security interest holder.

Restrictions on and monitoring of the use of computers by child sex offenders

Under current law, a person released from the Wisconsin state prisons is generally subject to supervision by the Department of Corrections (DOC), through either parole (for offenses committed before December 31, 1999) or ES (for offenses committed on or after that date). DOC may impose conditions on a person released to parole, and DOC and the court may impose conditions on a person released to ES. DOC and the court may also impose conditions on persons placed on probation. Current law specifies certain conditions that may or must be imposed in certain types of cases, including several for cases involving sex offenses.

This bill restricts the use of a computer by a person who has committed a serious child sex offense (a child sex offender) and who is placed on parole or ES. Under the bill, as a condition of parole or ES, a child sex offender may not use a computer unless it is running software that prevents the person from accessing computerized child pornography or that records any such access for review by the person's parole or ES agent. The bill also specifies that, if it places a child sex offender on probation, the court may impose the same prohibition as a condition of probation. In addition, the bill mandates all of the following for each child sex offender who is placed on parole, ES, or probation: 1) he or she must consent to DOC searching his or her computer at any time; 2) he or she must allow DOC to monitor and review his or her use of any computer to communicate with others; and 3) he or she must allow DOC to install and use software, on any computer that he or she uses, to help prevent the computer from being used to entice a child. Finally, the bill requires DOC to monitor the use of computers by child sex offenders who are placed on parole, ES, or probation.

Other information

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.

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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.** 29.934 (1) (d) of the statutes is amended to read:

2 29.934 (1) (d) The provisions of s. 973.075 (1) (b) 2m. and (5) (am) and (c) apply
3 to boats and vehicles, other than motor vehicles, under this subsection.

4 **SECTION 2.** 301.03 (20) of the statutes is created to read:

5 301.03 (20) Monitor the use of computers, as defined in s. 943.70 (1) (am), by
6 child sex offenders, as defined in s. 302.116 (1) (ac), who are on probation, parole, or
7 extended supervision.

8 **SECTION 3.** 302.116 (1) (a) of the statutes is renumbered 302.116 (1) (at).

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

10 302.116 (1) (ac) “Child sex offender” means a person who has been convicted
11 of a serious child sex offense.

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

13 302.116 (1) (ae) “Computer” has the meaning given in s. 943.70 (1) (am).

14 **SECTION 6.** 302.116 (1) (ag) of the statutes is created to read:

15 302.116 (1) (ag) “Computerized child pornography” means an audio recording,
16 a video recording, or an image of a child engaged in sexually explicit conduct, as
17 defined in s. 948.01 (7), that may be viewed or heard by using a computer, as defined
18 in s. 943.70 (1) (am).

19 **SECTION 7.** 302.116 (1) (aq) of the statutes is created to read:

20 302.116 (1) (aq) “Serious child sex offense” means any of the following:

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1 1. A crime under s. 940.22 (2) or 940.225 (2) (c) or (cm), if the victim is under
2 18 years of age at the time of the offense, or a crime under s. 948.02 (1) or (2), 948.025
3 (1), 948.05 (1) or (1m), 948.06, 948.07 (1), (2), (3), or (4), 948.075, or 948.12.

4 2. A crime under federal law, under the law of any other state, or, if committed
5 before the effective date of this subdivision [revisor inserts date], under the law
6 of this state, if the crime is comparable to a crime specified in subd. 1.

7 3. A conspiracy, solicitation, or attempt to commit an offense under subd. 1. or
8 2.

9 **SECTION 8.** 302.116 (3) of the statutes is created to read:

10 302.116 (3) All of the following shall be conditions of extended supervision for
11 each child sex offender:

12 (a) He or she may not use a computer unless it is running software that
13 prevents him or her from obtaining access to computerized child pornography or that
14 records any such access for review by his or her extended supervision agent.

15 (b) He or she shall consent to a search by the department, at any time, of any
16 computer that he or she uses and shall consent to the use of anything seized from the
17 computer as evidence in any administrative or court proceeding.

18 (c) He or she shall allow the department to monitor and review his or her use
19 of any computer to communicate with others.

20 (d) He or she shall allow the department to install and use software, on any
21 computer that he or she uses, for the purpose of preventing the computer from being
22 used in preparation for or in conjunction with a violation of s. 948.07 or 948.075.

23 **SECTION 9.** 304.061 of the statutes is created to read:

24 **304.061 Parole conditions for a serious child sex offender.** (1) In this
25 section:

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1 (a) "Child sex offender" has the meaning given in s. 302.116 (1) (ac).

2 (b) "Computer" has the meaning given in s. 943.70 (1) (am).

3 **(2)** All of the following shall be conditions of parole for each child sex offender:

4 (a) He or she may not use a computer unless it is running software that
5 prevents him or her from obtaining access to computerized child pornography, as
6 defined in s. 302.116 (1) (ag), or that records any such access for review by his or her
7 parole agent.

8 (b) He or she shall consent to a search by the department, at any time, of any
9 computer that he or she uses and shall consent to the use of anything seized from the
10 computer as evidence in any administrative or court proceeding.

11 (c) He or she shall allow the department to monitor and review his or her use
12 of any computer to communicate with others.

13 (d) He or she shall allow the department to install and use software, on any
14 computer that he or she uses, for the purpose of preventing the computer from being
15 used in preparation for or in conjunction with a violation of s. 948.07 or 948.075.

16 **SECTION 10.** 968.20 (1) (intro.) of the statutes is amended to read:

17 968.20 (1) (intro.) Any person claiming the right to possession of property
18 seized pursuant to a search warrant or seized without a search warrant may apply
19 for its return to the circuit court for the county in which the property was seized or
20 where the search warrant was returned. The court shall order such notice as it
21 deems adequate to be given the district attorney and all persons who have or may
22 have an interest in the property and shall hold a hearing to hear all claims to its true
23 ownership. If Subject to s. 973.075 (5r), if the right to possession is proved to the
24 court's satisfaction, it shall order the property, other than contraband or property
25 covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or 968.205, returned if:

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1 **SECTION 11.** 973.075 (1) (f) of the statutes is created to read:

2 973.075 (1) (f) 1. Except as provided in subd. 2. and subject to subd. 3., any
3 computer, as defined in s. 943.70 (1) (am), used in the commission of a serious child
4 sex offense, as defined in s. 302.116 (1) (aq), or a conspiracy, a solicitation, or an
5 attempt to commit a serious child sex offense or used in the commission of any crime
6 to which a person pleads guilty or no contest if the person does so in a case in which
7 he or she has been charged with a serious child sex offense or a conspiracy. a
8 solicitation, or an attempt to commit a serious child sex offense.

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

12 3. If a computer forfeited under subd. 1. 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 12.** 973.075 (4) of the statutes is amended to read:

18 973.075 (4) ~~When~~ Subject to subs. (4m) and (5r), when property is forfeited
19 under ss. 973.075 to 973.077, the agency seizing the property may sell the property
20 that is not required by law to be destroyed or transferred to another agency. The
21 agency may retain any vehicle for official use or sell the vehicle. The agency seizing
22 the property may deduct ~~50%~~ 50 percent of the amount received for administrative
23 expenses of seizure, maintenance of custody, advertising and court costs and the
24 costs of investigation and prosecution reasonably incurred. The remainder shall be
25 deposited in the school fund as the proceeds of the forfeiture. If the property forfeited

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

3 **SECTION 13.** 973.075 (4m) of the statutes is created to read:

4 973.075 (4m) Subject to sub. (5r), if the forfeited property is subject to a bona
5 fide perfected security interest and all of the following apply, the agency shall turn
6 over the forfeited property to the person holding the perfected security interest if the
7 person and the agency believe that the proceeds of any sale of the forfeited property
8 will be less than the amount of the security interest:

9 (a) There is only one person holding such a security interest.

10 (b) The security interest was perfected before the date of the current violation.

11 (c) The holder of the security interest neither had knowledge of nor consented
12 to the commission of that violation.

13 (d) The property was forfeited under sub. (1) (bg), (bj), (bm), (d), or (f), is a
14 vehicle that was forfeited under sub. (1), or is a device that was forfeited under sub.
15 (1) (e).

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

18 973.075 (5) (am) All forfeitures under ss. 973.075 to 973.077 shall be made with
19 due provision for the rights of innocent persons under ~~sub.~~ subs. (1) (b) 2m., (bg),
20 (bm), (d) ~~and (e), and (f) 2. and (3).~~

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

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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 returned if:

4 **SECTION 15.** 973.075 (5) (a) of the statutes is renumbered 973.075 (5) (c) 1.

5 **SECTION 16.** 973.075 (5) (b) of the statutes is renumbered 973.075 (5) (c) 2.

6 **SECTION 17.** 973.075 (5) (bm) of the statutes is created to read:

7 973.075 (5) (bm) 1. In this paragraph, "innocent owner" means an owner of a
8 computer with respect to whom a court has not made a finding of probable cause
9 under subd. 2. c.

10 2. If the seized property is a computer described in sub. (1) (f), the law
11 enforcement agency that seized the computer shall return it to an innocent owner
12 within 30 days after seizing it, subject to sub. (5r), unless all of the following occur:

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

16 b. The agency provides notice of its petition to each owner of the real property
17 or vehicle from which the computer was seized and to any other person claiming to
18 be an owner of the computer.

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

24 3. A petition under subd. 2. may be combined with a complaint filed under s.
25 973.076, but, notwithstanding any request for an adjournment of forfeiture

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1 proceedings made under s. 973.076 (2) (a), the court hearing the petition shall
2 determine whether there is probable cause under subd. 2. c. within 30 days after the
3 computer is seized.

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

8 5. Notwithstanding subd. 2., if a law enforcement agency has probable cause
9 to believe that the computer was being used or was to be used in the commission of
10 a crime described in sub. (1) (f), the agency may copy any data from the computer.
11 The agency shall preserve any data it copies until the completion of the criminal and
12 forfeiture proceedings.

13 **SECTION 18.** 973.075 (5r) of the statutes is created to read:

14 973.075 (5r) Before selling a computer seized under sub. (1) (f), turning it over
15 to a person holding a bona fide perfected security interest under sub. (4m), or
16 returning it to its owner, the law enforcement agency that seized it shall purge all
17 data from the computer that are or represent contraband, that were used in the
18 commission of a serious child sex offense, as defined in s. 302.116 (1) (aq), or that, in
19 the agency's opinion, were compiled for the purpose of committing a serious child sex
20 offense.

21 **SECTION 19.** 973.09 (8) of the statutes is created to read:

22 973.09 (8) (a) In this subsection:

23 1. "Child sex offender" has the meaning given in s. 302.116 (1) (ac).

24 2. "Computer" has the meaning given in s. 943.70 (1) (am).

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1 (b) If the court places a child sex offender on probation, the court may, as a
2 condition of probation, prohibit the person from using a computer unless it is running
3 software that prevents the person from accessing computerized child pornography,
4 as defined in 302.116 (1) (ag), or that records any such access for review by the
5 person's probation agent.

6 (c) All of the following shall be conditions of probation for each child sex
7 offender:

8 1. He or she shall consent to a search by the department, at any time, of any
9 computer that he or she uses and shall consent to the use of anything seized from the
10 computer as evidence in any administrative or court proceeding.

11 2. He or she shall allow the department to monitor and review his or her use
12 of any computer to communicate with others.

13 3. He or she shall allow the department to install and use software, on any
14 computer that he or she uses, for the purpose of preventing the computer from being
15 used in preparation for or in conjunction with a violation of s. 948.07 or 948.075.

SECTION 20. Initial applicability.

16
17 (1) The treatment of section 302.116 (3) and (4) of the statutes first applies to
18 persons who are released from prison to extended supervision on the effective date
19 of this subsection.

20 (2) The treatment of section 304.061 of the statutes first applies to persons who
21 are released from prison to parole on the effective date of this subsection.

22 (3) The treatment of sections 29.934 (1) (d), 968.20 (1) (intro.) and (3) (a), and
23 973.075 (1) (f), (4), (4m), (5) (intro.), (a), (b), and (bm), and (5r) of the statutes first
24 applies to crimes committed on the effective date of this subsection.

25 (END)