

HB

32

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/24/01

FURTHER:

DATE TURNED IN TO OFFICE: 16 May 2001

Finance Committee considered CS FOR HOUSE BILL NO. 32(JUD) am

SEX CRIME AND PORNOGRAPHY FORFEITURES

and recommends:

- be replaced with _____ CS _____ (_____)
- add previous 5 CS CS HB 32 (JUD)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DPS	3/16/01		✓	#2
Court	3/15/01		✓	#1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Linda Green</i>			✓	
<i>Alan Curtis</i>			✓	
<i>Donald C. Olson</i>	⊗			
<i>Gregg Wilber</i>			✓	
<i>Jim Ward</i>			✓	
<i>Arnell J. Owen</i>	✓			
COCHAIR: <i>Don Doolery</i>			✓	
COCHAIR:				

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1

Bill Version: CSHB 32(JUD)

(H) Publish Date: 3/22/01

Revision Date/Time (Note if correction) _____ Dept. Affected _____
 Title Sex Crime and Pornography Forfeitures BRU Alaska Court System
 Component Trial Courts
 Sponsor Rep. Joe Hayes
 Requester House Judiciary Component No. 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

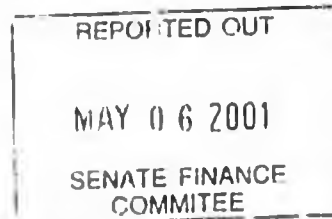
Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 32.



Prepared by: Douglas Wooliver
 Division: Alaska Court System
 Approved by: Stephanie Cole
 Agency: Alaska Court System

Phone: 433-4750
 Date/Time: 2/15/01 12:46 p.m.
 Date: 2/15/01

For distribution information, call the Governor's Legislative Office

COMMITTEE COPY

MAY 06 2001

SENATE FINANCE COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 32(JUD)
(H) Publish Date: 3/22/01

Revision Date/Time (Note if correction): _____ Dept. Affected: DPS
Title: Sex Crime and Pornography Forfeitures BRU: Alaska State Troopers
Component: AST-Detachments
Sponsor: Representative Hayes
Requester: House Judiciary Component Number: 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill is not expected to have a fiscal impact.

Prepared by: Lt. Steve Dunnaqan Phone: (907)269-4532
Division: Alaska State Troopers Date/Time: 2/16/01 12:00 AM
Approved by: Commissioner Glenn G. Godfrey Date: 2/16/01
Agency: Department of Public Safety

For distribution information, call the Governor's Legislative Office

COMMITTEE COPY

House Committees

Labor & Commerce
Military & Veterans Affairs
State Affairs
Regulation Review

Alaska State Legislature Representative Joe Hayes

119 N. Cushman, Ste. 205
Fairbanks, AK 99701
(907) 456-7423 / Fax: 451-9293
While in Juneau
State Capitol
Juneau, AK 99801-1182
(907) 465-3466 / Fax: 465-2937

Sponsor Statement

HB 32, Sex Crimes and Pornography Forfeitures

As the use of computers and the Internet expands so too do crimes involving the use of these technologies. One area of particular concern is sex crimes against children. Adults prone to abusing children will use the Internet to solicit a minor for sex or to set up a meeting with a child in order to rape or abuse the child. Further, many people, who are inclined to distribute or view child pornography, are now using their computers to do so. These are new technologies and the state still has relatively few tools for dealing with criminals using these technologies. HB32 provides us with another tool to use in combating sexual predators.

Across the country and at the federal level there are forfeiture laws in place. Several other states already have laws on the books specifically relating to the forfeiture of computers used in sex crimes. The use of computers in sex crimes is a national problem. As more and more states pass forfeiture legislation it is becoming increasingly obvious that this is a useful and valuable tool in the fight against computer crimes.

HB32 would make it possible for the police to stay on top of this rapidly changing industry without spending more state dollars. Advances in computer technologies seem to happen on a daily basis. New technology can often "outwit" last year's model, leaving the police at a large disadvantage in their attempt to curb crimes committed with the aid of the newest technology. In order for the police to combat computer and Internet crimes effectively it is imperative that they be constantly provided with new hardware.

Under AS 12.55.015 (c) the court may award forfeited property or a percentage of it to any municipal law enforcement agency involved in the arrest or conviction of the defendant. This would allow the courts to pass on seized property to the police so that the police can stay up to date with available technology in a cost-effective manner.

HB 32 is designed to help protect our children in a twofold manner: 1) forfeiture is a proven tool in the fight against crime, and 2) the forfeited property can be given to our local law enforcement agencies in order to help make sure that they have the necessary tools to protect our children. I ask for your support in passing this legislation.

District 30


representative_joe_hayes@legis.state.ak.us

House Committees
Labor & Commerce
Military & Veterans Affairs
State Affairs
Regulation Review

Alaska State Legislature
Representative
Joe Hayes

119 N. Cushman, Ste. 205
Fairbanks, AK 99701
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State Capitol
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Memorandum

To: Senator Kelly, Co-Chair Senate Finance Committee
From: Representative Joe Hayes 
Date: April 23, 2001
Re: Sectional Analysis, CS HB 32

Section 1. Provides legislative intent that in cases where the owner of the forfeited property is innocent of the crime their property is returned to them following existing procedure and as the courts deem reasonable.

Section 2. Adds a new section that authorizes forfeiture of property, specifically electronic equipment as defined in the section, used to aide in the commission of a sexual offense under AS 11.41.410 – 11.41.170 including inchoate forms of those sexual offenses.

Section 3. Adds a new section that authorizes forfeiture of property, specifically electronic equipment as defined in the section, used to aide in the commission of indecent photography or child pornography under AS 11.61.123 – 11.61.127 including inchoate forms of those offenses.



Interior Alaska FoRCES

Forensic Recovery of Computer
Evidence Specialists

*"Have you a ruffian that will commit the oldest sin;
the newest kind of rape?" Shakespeare*

February 6, 2001

Representative Joe Hayes

Dear Mr. Hayes:

My name is Marc Poeschel. I have been in law enforcement in Alaska since 1991. Through my career I have seen the damage caused by crimes against children and the long lasting effects on the family as well as the devastation to our most precious resource. In this, the most sinister type of crimes arise and are perpetrated on our youth with alarming frequency and ease through the use of the internet. The increase of child pornography, sexual abuse of minors and unlawful exploitation cases is a red flag to the problems on the horizon.

I have created a task force to combine forces against the Internet predator, the computer criminal and provide training and assistance to those sworn to protect. We have a duty to work together to send the message to molesters and criminals of the electronic realm that Alaska will not tolerate their types of crimes. HB 31 and HB 32 are a welcome addition to laws geared toward sending that message.

The ability to apply for forfeiture of computers used in crimes will tell the cyber criminal that their tools of the trade are not going to be returned for future use against other victims. It will give law enforcement the ability to use their own tools against them and provide equipment to agencies that need it. To give a child pornographer his computer back is akin to giving a drunk driver back alcohol and car keys.

There is a need to stop the crimes against children before they start. Luring a child to a meeting in an attempt to engage in sex with the child is common practice for molesters and child killers as well. There are few laws that address the specifics of Internet crimes and the ability to attack the crime before it has the chance to ruin a life is vital.

I look forward to enforcing these new laws and hope they are a hint of the progressive attack on the evil that lurks the cyber highways we depend on to bridge the vastness of this great state. Thank you for your dedication to the children of this state.

Sincerely,

Olc. Marc Poeschel, EECS
Coordinator IAF Task Force

Now: We received this / email. The original is in the mail.

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



January 26, 2001

Representative Joe Hayes
Alaska State Legislature
State Capitol Building, Room 422
Juneau, Alaska 99801-1182

Dear Representative Hayes,

On behalf of the Alaska Peace Officer's Association (APOA), I would like to thank you for introducing HB32 (22-LS0270/A) relating to the forfeiture of property as it relates to child pornography and other sexually related crimes.

At a recent meeting of the APOA Board of Directors, we unanimously agreed to endorse HB32 in its current draft format. We believe that this legislation will help law enforcement in permanently taking away the electronic tools of offenders committing such crimes and will perhaps act as a deterrent as well.

Please contact us if there is anything we can do to assist you with this bill as it proceeds through the legislative process. You may contact us at the APOA office in Anchorage at 277-0515.

Once again, thank you for sponsoring this legislation.

Sincerely,

Leo Brandlen
President

Business Manager

Joseph Young
Anchorage

Board of Directors

Leo Brandlen, President
Anchorage

Chuck Kopp, Vice President
Kenai

John Charbonneau, Past Pres
Anchorage

Kim Wannamaker, Member
Kenai
Pres. Kenai Chapter

Nick VanderVeur, Member
Anchorage
Pres. Anchorage Chapter

Angella Long, Member
Wasilla
Pres. Mat-Su Chapter

Lonnie Hatman, Member
Fairbanks
Pres. Farthest North Chapter

Jerry Nankervis, Member
Juneau
Pres. Capital City Chapter

Leroy Mestas, Member
Kelchikan
Pres. First City Chapter

James Sec, Member
Craig
Pres. Prince of Wales Chapter

John Lucking, Jr., Member
Unalaska
Pres. Aleutian Islands Chapter

Scott Chalin, Member
Wrangell
Pres. Wrangell Chapter



George P. Wuerch.
Mayor

ANCHORAGE POLICE DEPARTMENT

4501 South Bragaw Street • Anchorage, Alaska 99507-1599

Telephone (907) 786-8500

<http://www.ci.anchorage.ak.us>



Duane Udland
Chief

January 22, 2001

Representative Joe Hayes
Alaska State Legislature
State Capitol, Room 422
Juneau, AK 99801-1182

Dear Representative Hayes:

This letter is written in support of HB 32, An Act relating to the forfeiture of property used to possess or distribute child pornography, to commit indecent viewing or photography, to commit a sex offense, or to solicit the commission of, attempt to commit, or conspire to commit possession or distribution of child pornography, indecent viewing or photography, or a sexual offense.

Law enforcement agencies are often required to return equipment used in these crimes to the perpetrator or to another person whom the perpetrator has designated. Many of these items have been specially designed or adapted for no other purpose than to commit specific criminal acts. This equipment is generally costly and sometimes hard to obtain.

We feel it is necessary and appropriate to deprive those convicted of sexual crimes of the means to commit them again or allow others to use them for the same purpose. We therefore offer our support for House Bill 32. Thank you for bringing this legislation forward.

Sincerely,

Mark T. Mew
Acting Chief of Police

Public Safety Employees Association, Inc.
"Representing Alaska's Finest"

February 1, 2001

Representative Joe Hayes
State Capitol, Room 422
Juneau, AK 99801-1182

Re: HB 31 and HB 32

Dear Representative Hayes,

The Public Safety Employees Association whole-heartedly supports both House Bill 31 and House Bill 32. These bills will not only help law enforcement officials do their jobs more efficiently, but the new laws will go a long ways towards correcting some of the ills of our society.

Sex crimes are amongst the most devastating to people. Not only does the victim suffer, but the victim's family members and friends suffer as well.

Children are too often exploited, and they can become victims of predator-like individuals far too easily. HB 31 and HB 32 will help to provide the means to put such individuals on notice that our children will now have more protection. It will also help ensure that those who perpetrate such crimes shall be punished.

Moreover, I want to congratulate you for his thoughtful approach in this effort to protect Alaska's children. With the methods of law enforcement inherent in these two bills, I know many of Alaska's children will be saved from a devastating experience that some would never recover from.

I further want to encourage legislators to co-sponsor and cross-sponsor HB 31 and HB 32 and demonstrate that they have no tolerance for the crimes mentioned therein.

Please support the above-mentioned bills and ensure that they pass and become law in a timely manner.

Thank you for your support.

Sincerely,



Keith Perrin
Business Manager

FORFEITURE IS REASONABLE, AND IT WORKS

Stefan D. Cassella*

Asset forfeiture has become one of the most powerful and important tools that federal law enforcement can employ against all manner of criminals and criminal organizations -- from drug dealers to terrorists to white collar criminals who prey on the vulnerable for financial gain. Derived from the ancient practice of forfeiting vessels and contraband in Customs and Admiralty cases, forfeiture statutes are now found throughout the federal criminal code.

Why do forfeiture?

Federal law enforcement agencies use the forfeiture laws for a variety of reasons, both time-honored and new. Like the statutes the First Congress enacted in 1789, the modern laws allow the government to seize contraband -- property that is simply unlawful to possess, like illegal drugs, unregistered machine guns, pornographic materials, smuggled goods and counterfeit money.

Forfeiture is also used to abate nuisances and to take the instrumentalities of crime out of circulation. For example, if drug dealers are using a "crack house" to sell drugs to children as they pass by on the way to school, the building is a danger to the health and safety of the neighborhood. Under the forfeiture laws, we can shut it down. If a boat or truck is being used to smuggle illegal aliens across the border, we can forfeit the vessel or vehicle to prevent its use time and again for the same purpose. The same is true for an airplane used to fly cocaine from Peru into Southern California, or a printing press used to mint phony \$100 bills.

The government also uses forfeiture to take the profit out of crime, and to return property to victims. No one has the right to retain the money gained from bribery, extortion, illegal gambling, or drug dealing. With the forfeiture laws, we can separate the criminal from his profits -- and any property traceable to it -- thus removing the incentive others may have to commit similar crimes tomorrow. And if the crime is one that has victims -- like carjacking or fraud -- we can use the forfeiture laws to recover the property and restore it to the owners far more effectively than the restitution statutes permit.

Finally, forfeiture undeniably provides both a deterrent against crime and as a measure of punishment for the criminal. Many criminals fear the loss of their vacation homes, fancy cars, businesses and bloated bank accounts far more than the prospect of a jail sentence. In fact, in many cases, prosecution and incarceration are not needed to achieve the ends of justice. Not every criminal act must be answered with the slam of the jail cell door. Sometimes, return of the property to the victim and forfeiture of the means by which the crime was committed will suffice to ensure that the community is compensated and protected and the criminal is punished.

The parade of horrors

The expansion of forfeiture into all of these areas has, of course, been controversial. When laws that were designed to seize pirate ships from privateers are applied, over the course of a decade, to the seizure of homes, cars, businesses and bank accounts, there are a lot of issues to sort out. How do we protect innocent property owners? What procedures afford due process? When does forfeiture go too far, in violation of the Excessive Fines Clause of the Eighth Amendment? The ten forfeiture cases that the Supreme Court has had on its docket in the past five terms are part of this sorting out process. There are certain to be more; and Congress will need to pass legislation to fill in many of the loopholes.

An informed debate on these issues is welcome. The debate is not informed, however, if it is muddled by the misconceptions and plain old-fashioned misstatements that seem to pop up in every article critical of asset forfeiture. Roger Pilon's article, containing the usual parade of horrors, is a good example.

Once again we are told that forfeiture is based on an absurd legal "fiction" that the property is guilty of the crime, which implies that property can be forfeited without proof that a crime was committed by a real live person. We're told that the government can seize property "almost at will," i.e. without due process, and that innocent people find the process so unfair that they walk away from their property without filing claims. And we're told that even when they do file claims, innocent owners just don't have any rights. Let's see if we can't inject a little truth and understanding into the debate on these points.

The legal "fiction"

There are three types of forfeiture under federal law: administrative forfeiture, civil judicial forfeiture, and criminal forfeiture. An administrative forfeiture is essentially a default proceeding. It occurs when property is seized and no one files a claim contesting the forfeiture. By definition, all administrative forfeitures are uncontested. Between 80 (eighty) and 85 (eighty-five) percent of all forfeitures handled by the Department of Justice fall into this category.

If someone does file a claim to the property, the government has a choice (assuming Congress has provided both options by statute). It can file a civil complaint against the property in district court, thus commencing a civil judicial forfeiture; or it can include a forfeiture count in the indictment in a criminal case, which sets the stage for a criminal forfeiture. In 1995, the Justice Department began aggressively training criminal prosecutors in the use of the forfeiture laws, so that now more than half of all contested forfeitures are criminal forfeitures.

Just because a forfeiture is handled administratively or civilly, of course, doesn't mean that there isn't a related criminal case. In all forfeiture cases there must be proof that a crime was committed by someone. In fact, in more than eighty percent of all forfeitures, including administrative and civil forfeitures, there is a parallel arrest and/or criminal prosecution. There wouldn't have been such a wail and cry about forfeiture constituting a violation of the Double Jeopardy Clause a few years ago if that weren't so. (Between the Ninth Circuit's decision in *United States v. \$405,089.23* in 1994 and the Supreme Court's decision putting the double jeopardy issue to rest in *United States v. Ursery*, thousands of federal prisoners filed post-conviction actions alleging that their criminal conviction and the civil forfeiture of their property constituted double jeopardy.)

The legal "fiction" that the property is "guilty" of the crime is simply a shorthand for the way a civil forfeiture case is styled: *United States v. \$405,089.23*, *United States v. 92 Buena Vista Ave.*, and so forth. In legal parlance, the property in such a case is the "defendant." But property doesn't commit crimes; people do. If there isn't proof that a person committed a crime, there is no forfeiture. If our normally verbose legal system styled its civil forfeiture cases to set forth the full legal theory, this would be obvious. The above cases, for example, might have been called *United States v. \$405,089.23 in Proceeds Earned by Charles Arlt From Selling Methamphetamine*; or *United States v. A Residence at 92 Buena Vista Ave. Purchased with Drug Proceeds that Joseph Bienna, a Drug Dealer, Gave to His Girlfriend*.

In short, forfeiture is a way of reaching the property involved in a crime, but the focus is on the crime, without which there can be no forfeiture.

Why do civil forfeiture?

If all forfeitures involve the commission of a crime, and the vast majority involve an arrest or prosecution, why does the government use civil forfeiture at all? It is not, as many contend, because it is necessarily easier. To the contrary, the easiest way to forfeit a criminal defendant's property in many cases is not to file a separate civil action, but to present the forfeiture issue to the same jury that just convicted the defendant in the criminal case. But sometimes, criminal forfeiture isn't available or doesn't make sense.

Take the administrative forfeiture cases for example. There is no point in including a criminal forfeiture count in an indictment and presenting the issue to a jury if the defendant is not going to contest the forfeiture. If a defendant facing criminal conviction for drug trafficking thinks it pointless to contest the forfeiture of the cash seized from him as drug proceeds at the time of his arrest, it is equally pointless to clutter the indictment with a forfeiture count when administrative forfeiture will answer.

What about the contested forfeitures that are done civilly? The reasons for this are many. First, while there are over 100 civil forfeiture statutes, there are relatively few criminal forfeiture statutes. Drug proceeds can be forfeited either civilly or criminally, for example, but firearms, gambling proceeds, vehicles used to smuggle illegal aliens, and counterfeiting paraphernalia can only be forfeited civilly. See 28 U.S.C. §2461(a). This is a problem Congress needs to fix.

Second, criminal forfeiture requires a federal conviction for the crime giving rise to the forfeiture. If the defendant is dead or is a fugitive, there can be no prosecution and therefore no criminal forfeiture. If the defendant was prosecuted in a State case, the federal forfeiture has to be civil, because there is no federal prosecution for the criminal offense. And if the defendant is prosecuted for one crime, but the property was involved in a related but separate crime, the forfeiture has to be civil, because the criminal forfeiture is limited to the offense of conviction. For example, drug proceeds seized from a defendant at the time of his arrest must be forfeited civilly if the defendant is charged with possession of drugs with intent to distribute, because such money was necessarily the proceeds of an earlier drug deal, not the one for which the defendant is actually prosecuted.

Third, and perhaps most important, criminal forfeiture is limited to the property of the defendant. If the defendant uses someone else's property to commit the crime, criminal forfeiture accomplishes nothing. Only civil forfeiture will reach the property. For example, if a drug dealer uses an airplane to smuggle drugs into California, the government has an interest in seizing and forfeiting the plane. But suppose the only person arrested and prosecuted is the pilot. If he owns the plane outright, criminal forfeiture is the way to go. But if the plane is owned by a corporation, or a third-party in South America, or by the pilot jointly with his spouse, criminal forfeiture is pointless.

The same is true if we want to forfeit a crack house. We can prosecute the tenants in the building until the cows come home, but we will never be able to forfeit the building criminally if the tenants don't own it. If the building belongs to a slumlord who allowed his property to be turned into a crack house, we need civil forfeiture to shut it down.

Due Process

Whatever the reasons why civil forfeiture is essential to federal law enforcement, it goes without saying that the process must be fair. All property owners — whether they be criminal defendants or third parties — are entitled to due process of law. Mr. Pilon contends that due process is lacking. He says that the government can seize property "almost at will," that officials can "seize property, real or personal, without notice or hearing," and that innocent parties find the system so daunting that they abandon their property without filing a claim. On all points, he is greatly mistaken.

Seizures of property for forfeiture are governed by the same rules that govern seizure of property for evidence — the search and seizure requirements of the Fourth Amendment. See *United States v. Lasanta*, 978 F.2d 1300 (2d Cir. 1992). If federal agents want to seize property for forfeiture, they have to get a warrant, unless one of the recognized exceptions to the Fourth Amendment applies, like when cash is found in plain view in a vehicle that can be driven away, and there is probable cause to believe it's drug proceeds, or when property is found during a search incident to a lawful arrest. In fact, in many instances, forfeiture seizures are more limited than their evidentiary counterparts. See 18 U.S.C. §981(b) (2) (in money laundering cases, warrantless seizures are authorized during searches incident to arrest, but not in other exigent circumstances).

In real property cases, the rules are still more restrictive. In *United States v. James Daniel Good Property*, 114 S. Ct. 492 (1993), the Supreme Court held that real property may not be seized at all, even with a warrant based on a showing of probable cause, until the property owner has been given notice and an opportunity to be heard. In short, in real property cases, the Due Process Clause of the Fifth Amendment requires the government to give property owners more "process" than is due under the Fourth Amendment.

Moreover, seizing the property isn't the end of the process; it's only the beginning. If someone wants to contest a forfeiture he has a right to file a claim, thereby forcing the government to file a civil or criminal forfeiture action in federal court. If the case is civil, the claimant has all the rights that attend normal civil litigation, including the right to discovery and the right to a trial by jury. Finally, the forfeiture verdict must be based on a preponderance of the admissible evidence, not the probable cause evidence that was sufficient for the seizure.

Of course, any system can be improved. The Justice Department has proposed legislation to make the government carry the burden of proof in civil forfeiture cases. We also have suggested making it easier for people to file claims in forfeiture cases by extending the filing deadlines, and we have proposed a remedy for those whose property is damaged in government custody. (The Justice Department's legislative proposal and supporting testimony are published in the record of the Hearing on the Civil Asset Forfeiture Reform Act, H.R. 1916, House Committee on the Judiciary, 104th Congress, 2d Sess., Serial No. 94, July 22, 1996.) But it is preposterous to say that property owners are denied due process under current law.

The Uncontested Forfeitures

What should we make of the fact that so many forfeitures are uncontested? The critics, of course, see this as evidence that innocent property owners are walking away from their property without filing a claim because the procedures are unfair. But the opposite is far more likely. Four out of five forfeitures are uncontested because in most cases the evidence is so overwhelming that contesting the forfeiture would be pointless. A defendant charged with smuggling illegal aliens, for example, might see little advantage in contesting the forfeiture of the truck he was driving when he was arrested and the aliens were found. Remember, eighty percent of all forfeitures involve a parallel arrest or prosecution. Those are cases in which the defendant is in court anyway, has counsel, and yet most of the time does not object to the forfeiture.

Certainly, there are still due process issues to be worked out. One of the most nettlesome involves the current flood of post-conviction pleadings being filed by federal prisoners who contend that they didn't contest forfeiture actions because they didn't receive proper notice. See e.g. *United States v. Clark*, 84 F.3d 378 (10th Cir. 1996). Most commonly, the prisoners complain that the government sent the notice to the wrong jail or to a home address when the government knew that the person was incarcerated. Criminals have due process rights just like everyone else, so the government must find a way to provide

notice of forfeiture actions to persons being held in jail. But these are hardly cases that involve innocent claimants not filing claims because the procedures are stacked against them.

Innocent Owners

In his discussion of *Bennis v. Michigan*, Mr. Pilon makes a persuasive argument that the Constitution does not adequately protect innocent owners in civil forfeiture cases. It is an argument, however, that has little relevance to federal forfeiture law.

Bennis, it must be remembered, was a State case. Michigan, apparently, does not provide statutory protection for innocent owners, and the Supreme Court held that no such protection is required by the Due Process Clause. Fair enough. But the fact that the Constitution doesn't protect innocent owners doesn't mean that the legislature cannot do so. In fact, Congress has included an innocent owner defense in virtually all of the most widely used federal forfeiture statutes. For example, the drug statutes, 21 U.S.C. §881(a)(4) and (7), say that neither vehicles nor real property, respectively, may be forfeited if they were used to commit a crime without the knowledge or consent of the owner.

Mr. Pilon's claim that "hotels and apartment buildings are today forfeited when their owners are unable to prevent drug transactions in them" is just plain wrong. Even a property owner who "knows" that his property is being used for an illegal purpose is protected from forfeiture if he shows that he took all reasonable steps to prevent the activity. See *United States v. 141st Street Corp.*, 911 F.2d 870, 877-78 (2nd Cir. 1990) (landlord who knew building was being used for drug trafficking had opportunity to show he did not consent to such use), cert. denied, 111 S. Ct. 1017 (1991); *United States v. Parcel of Real Property Known as 6109 C.ubb Road*, 886 F.2d 618, 626 (3rd Cir. 1989) (wife who knew of husband's use of residence for drug trafficking had opportunity to show she did not consent to such use); *United States v. One Parcel of Real Estate at 1012 Germantown Road*, 963 F.2d 1496 (11th Cir. 1992).

For example, the owner of a residential hotel doesn't have to put a stop to drug transactions on his property; he just has to do what a reasonable owner would do to try to stop it, like call the police, evict tenants convicted of committing drug crimes on the premises, and install security devices like locks and adequate lighting. See *United States v. All Right, Title and Interest (Kenmore Hotel)*, 77 F.3d 648 (2d Cir. 1996).

What Congress Can Do

A key provision in the Justice Department's legislative proposal would codify this concept and thus extend the innocent owner defense to all federal forfeiture statutes. In addition to the other due process reforms discussed above, this would go a long way toward making sure that the forfeiture laws are up to date and protect the rights of all property owners. But there is more that Congress can do to enhance the forfeiture laws.

First, the criminal forfeiture statutes should be revised to make sure the government can use them in all cases where it's appropriate to do so. Criminal forfeiture should be available whenever civil forfeiture is authorized. The government also needs better tools to enforce criminal forfeiture judgments against convicted defendants, and needs to be able to restrain property subject to forfeiture, including substitute assets, pre-trial, to make sure that the assets are still around once the defendant is convicted.

Also, there is no rhyme or reason to the current forfeiture laws regarding the forfeiture of criminal proceeds. We can forfeit proceeds in drug cases, but not in fraud cases; we can forfeit the money paid to a "bag man" in a money laundering case, but not the money paid to a "hit man" in a murder-for-hire

case. All criminal proceeds should be subject to forfeiture, and the term "proceeds" should be defined to mean gross proceeds, not net profits. It is absurd that some courts have allowed heroin traffickers to deduct their overhead expenses from the amount of proceeds subject to forfeiture. See *United States v. McCarroll*, 1996 U.S. Dist. LEXIS 8975 (N.D. Ill. Jun. 19, 1996).

In these and many other ways, the forfeiture laws can be improved both to protect the rights of property owners and to allow the government to make full use of this dramatically successful law enforcement tool. Congress has that opportunity this year. If we can avoid the misstatements and misconceptions that serve only to polarize the debate, law enforcement, defense attorneys and legislators can work together to produce a genuinely comprehensive and effective body of laws to make forfeiture work for all of us.

**Stefan D. Cassella is the Assistant Chief, Asset Forfeiture and Money Laundering Section U.S. Department of Justice. The opinions expressed in this article are solely those of the author and do not necessarily reflect the views or policies of the Department of Justice.*

Wife turns in spouse for child pornography

October 15, 2000

ANCHORAGE--An Anchorage man was arrested after police say his new wife found electronic mail messages suggestive of child pornography on his computer.

Ronald Becker, 37, was arrested Thursday. He was charged with 21 counts related to child pornography. One of the counts, distribution of child pornography, is a felony punishable by up to 10 years in prison. The other 20 counts are for possession.

Police said Becker had 5,000 computer disks and CDs at his home containing sexual images of children.

Becker's wife became suspicious because he was spending an inordinate amount of money. She began nosing around their house and found the suggestive e-mails on his computer, police said.

The woman met her future husband on-line in February and married him a few months later. She went to police in September to report his behavior and they obtained a search warrant.

Becker frequented chat rooms where he posed as a 15-year-old boy, police said.

Becker was convicted of indecent assault involving minors in Pennsylvania in 1992, according to charging documents. The charge was a misdemeanor. He was put on probation and ordered to perform 200 hours of community service.

Becker was being held at the Cook Inlet Pre-Trial Facility.

Bethel Air Terminal holds grand opening

BETHEL--The former Mark Air Terminal in Bethel re-opened Saturday with a new name and a new look.

About 300 people gathered for the opening of the Bethel Air Terminal, said Dwight Lefner, whose company purchased the facility from the state last December.

Pen Air, Frontier Airlines and mail carrier Bel Air moved into the terminal earlier this year. Reeve Aleutian Airways moved into the newly-renovated building Friday.

The 21-thousand-square-foot terminal has been vacant for over three years. Lefner said he's invested \$300,000 in the building. But he said the investment promises to be a good one because passenger service and mail volume is increasing every year.

The renovated building also has a store, a restaurant and an espresso bar.

"We have overhauled completely," said Lefner, owner of Lefner Investments who has lived in Bethel for 32 years. "We are just leasing space and seeing what

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happens."

Lefner said he expects a barber shop to move into the building soon.

The state took over the facility after Mark Air filed for bankruptcy.



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Internet service worker charged with sex abuse

June 30, 2000

By BETH IPSEN
Staff Writer

A worker for a local Internet service provider has been indicted on charges of sexual abuse of two 15-year-old girls he met through an Internet chat room.

A 15-member grand jury decided the evidence was sufficient to charge Robert "Shawn" Christian, 22, with three counts of sexual abuse of a minor. The indictment was issued June 21.

Christian, a systems administrator at MosquitoNet, is charged with using the Internet and chat rooms to meet underage females to initiate sexual relationships.

The investigation arose when the sister of the second alleged victim went to police claiming her underage sister and Christian had sex the day before, said Detective Kandy Coffey of the Fairbanks Police Department.

The second victim told her sister that she and her boyfriend, Christian, had been meeting every day at lunch for "hugging and kissing" before they had sex May 18, according to the sister's testimony in search warrants.

The first two counts arose later after an investigation, Coffey said. Those charges come from incidents involving a girl Christian allegedly contacted on the Internet when he was still living in Arizona, he said. Christian, now a University of Alaska Fairbanks student, later met the girl and her family when he vacationed in Alaska, Coffey said.

The family then invited Christian to live with them for almost six months in 1997 and 1998 while "he got on his feet in Fairbanks," he said.

Christian was 19 years old at the time he allegedly had a relationship involving sex with the first victim, Coffey said. Police are researching whether he had sexual relationships with minors in Arizona.

"We believe he has made contact with other girls over the Internet," Coffey said. "We're trying to contact them now. We're requesting if anybody has any knowledge to get ahold of us."

Police, with the assistance of an interagency computer crime task force, have seized several computers and countless computer discs and files. However, they're still trying to determine where all the contacts originated, said police Sgt. Dan Hoffman.

"Some of his work on computers seem to be routed through home," he said.

MosquitoNet President Bill St. Pierre said he was surprised by the charges. Christian



has worked for the company about 18 months, he said.

"He's been a real good employee, he's a good guy," St. Pierre said. "I hope there's some confusion here that can be cleared up."

Christian didn't return telephone calls Thursday.

If found guilty of the felony charges, Christian could face up to 10 years in prison for each count, according to the District Attorney's office.

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Internet worker sentenced for sex crimes

*March 24, 2001***By BETH IPSEN**
Staff Writer

Superior Court Judge Mary Greene sentenced a 22-year-old man she called a sexual predator who met young girls in chat rooms and had cybersex that eventually led to sexual relationships with them, to spend two years in prison Friday.

Local Internet service worker Robert "Shawn" Christian was convicted Dec. 1 of having sex with a 15-year-old girl he met through an Internet chat room, and was acquitted of having sex with another underage girl.

In the case in which he was exonerated, prosecutors claimed he had sex with a 15-year-old girl between November 1997 and 1998 while he was 19 years old. However, a jury convicted Christian of having sex with the other girl two weeks before her 16th birthday when he was 22.

"I've read far too many chat rooms and seen what he has done not to believe he's ... a predator," Greene said.

The sentence of four years, with two suspended, was what Assistant District Attorney Scott Mattern asked for. Greene added five years probation, extensive sex offender treatment and a bevy of other conditions including a ban on computer use, and a ban on unsupervised contact with any girls under the age of 18. He is currently in a relationship with a 17-year-old who turns 18 on April 3.

Greene said Christian has a sexual boundary issue, evidenced by his having sexual relationships with the first 15-year-old girl and her mother during the same period of time. She also said he has shown a lack of remorse.

"He really thinks he doesn't need to be in jail and it wouldn't do any good," Greene said. The relationships were "more thrill-seeking than anything else," because he knew that the second 15-year-old girl's father was a police officer and it was two weeks before she was considered of age, Greene said.

Defense attorney Mike Kramer asked for leniency because Christian has no prior record and is a productive member of society. He also

accused Fairbanks police of extreme scrutiny because the one 15-year-old girl's father is a Fairbanks police officer.

Greene sees a pattern in Christian's current relationship.

Like the 15-year-old girl that Christian was convicted of having sex with, the 17-year-old girl was forbidden to see Christian, but continued to without her parents' knowledge, Mattern said during the sentencing.

The 17-year-old's mother testified Friday that as soon as she had heard about Christian's conviction, she told the girl and Christian that he was to be "gone from our family's life."

But the girl continued to see Christian in secret.

Police Detective Randy Coffey informed the mother Thursday that the couple was still together.

"I don't understand because she's never lied to us until she met him," the 17-year-old girl's mother said Friday.

After the mother heard her daughter was still seeing Christian, a confrontation broke out between the three. A drama unfolded the morning of the sentencing when the daughter was listed as a runaway.

The mother called the girl's school Friday, only to learn that her daughter had a forged a note to get out of school.

The daughter vehemently testified that it was her choice to pen the note and that Christian has never pressured her into doing anything during their relationship.


The girl emerged from Christian's residence Friday, Coffey testified, and called Alaska State Troopers. Mattern said that troopers are submitting a complaint charging Christian with contributing to the delinquency of a minor by harboring the girl despite efforts by Fairbanks police officers to talk him into giving her up.

Greene scolded Christian for the incident but said it didn't have any bearing on the sentencing.

"If it's one time to behave yourself, it's right before your sentencing," she said.

Defense attorney Kramer questioned the relevance to the "high drama" of the morning events because Christian had already been convicted of the one charge.

"The events today shifted the focus unfairly away from Mr. Christian's rehabilitation potential," Kramer said.



He had asked that Christian only serve 90 days with some "substantial community service" and possibly serve some time during the weekends to ensure he kept his job as a systems administrator at MosquitoNet.

Greene declined.

"Most sexual offenders have pretty good jobs, no crime records." Greene countered. "He seems to be a pretty typical offender."

Christian will remain free for a little while longer, provided he comes up with a \$1,000 bond by Tuesday and \$4,000 more within two weeks while Kramer appeals the case.

If the appeal is denied, Christian could be paroled for good behavior after serving only one-third of the sentence.

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Man charged with sex abuse of teen

Saturday August 28, 1999

Staff report

Alaska State Troopers arrested a man Friday morning on charges that he simulated having sex with a teen-age girl and photographed the act to send over the Internet, according to court documents.

Richard L. Oehrig, 44, has been charged with six felonies, including three counts of sexual abuse of a minor, unlawful exploitation, distributing child pornography and witness tampering.

Troopers said they found nude photographs of the girl on Oehrig's computer, discs and digital camera. He is also accused of soliciting her to have sex with him at his North Pole home. The acts allegedly occurred between January and July.

In one picture -- for which Oehrig allegedly wanted the girl to pose so he could send it to someone over the Internet -- it looks as if he is having intercourse with her, according to court documents. The victim told investigators that although their genitals were touching for that photograph, there was no penetration.

As the case was being investigated, Oehrig allegedly sent a computer note to the victim Aug. 16 telling her to stick to an initial account of what happened: "They don't have a thing unless you change your story."

He also threatened that if she told the truth "all hell breaks loose" and "everyone will suffer," according to court documents.

Oehrig was arrested about 11 a.m. in North Pole. Troopers had requested a warrant because he reportedly asked for a leave of absence from work and was considering leaving the state.

Bail is set at \$50,000, according to Fairbanks Correctional Center staff.

Troopers continue to investigate the case with help from a University of Alaska Fairbanks officer who specializes in Internet crime, according to court documents and UAF police.



Message Alert



You have 1 message waiting for you.

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Fort Wainwright man charged with sex crimes

January 30, 2000

By Staff report

A Fairbanks grand jury this past week indicted a Fort Wainwright man on charges that he sexually assaulted a teenage girl in North Pole.

Miguel Duque, 36, was indicted on charges of sexual abuse of a minor in the second degree, sexual abuse of a minor in the third degree, second degree sexual assault, and third-degree sexual assault.

Duque had apparently met a friend of the girl's in an Internet chat room, where he went by the name Macdaddy, Alaska State Troopers said.

In October he allegedly drove the girls either to a gravel pit or to the end of a road in North Pole, where he supplied them with alcohol, troopers said. One of the charges alleges that the girl was intoxicated at the time of the assault.

Troopers had thought the man's name might have been "Mike," and they had been looking for him over the past three months. They discovered his identity with the help of tips that came in after they distributed the man's description to the media earlier this month.



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Two Eielson airmen held on sex abuse charges

November 12, 1999

The Associated Press

SOLDOTNA—Two Eielson airmen have been charged with sexual abuse of a minor after allegedly spending a night in a Soldotna hotel room with two underaged girls they met on the Internet.

The suspects, Eielson Air Force Base airmen Angel R. Berrios, 25, and Jeremy Nguyen, 20, were indicted Friday on three counts each of sexual abuse of a minor.

Kenai Superior Court Judge Jonathan Link issued an arrest warrant for the men Tuesday. They were to be held on \$10,000 cash bail.

Neither had been arrested by Wednesday evening, according to Eielson spokesman Master Sgt. Christopher Shock. Much of the base was closed for the Veterans Day holiday Thursday and Shock did not immediately return a phone call seeking comment.

In addition to the abuse charges, the men were indicted on two misdemeanor charges each of furnishing alcohol to a minor.

Nguyen apparently struck up a relationship over the Internet with one of the girls, possibly through a chat room, said Soldotna Police Chief Shirley Warner, who investigated the case.

The two then talked on the telephone and made arrangements to meet at Soldotna's King Salmon Motel over Labor Day weekend, Warner said. Police say Nguyen and Berrios spent the night of Sept. 4 with the girls.

Warner said she could not comment further about the computers that were used or how the men hooked up with the girls over the Internet.

"Since chat rooms have become available, I think this kind of thing happens," she said. "I don't think it's anything new."

Warner said the recent indictments might serve as a wake-up call to families.

"I think this is a case where the information needs to get out to parents that this type of thing happens, so they can provide a safeguard to protect their kids," Warner said.

The indictments came about after the girls' parents started asking questions, Warner said. "We did have some parents who were on the ball and had a suspicion that things were going on and gave us the call," she said.



CALIFORNIA CODES
PENAL CODE
SECTION 311-312.7

311. As used in this chapter, the following definitions apply:

(a) "Obscene matter" means matter, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest, that, taken as a whole, depicts or describes sexual conduct in a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1) If it appears from the nature of the matter or the circumstances of its dissemination, distribution, or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the matter shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, if circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that matter is being commercially exploited by the defendant for the sake of its prurient appeal, this evidence is probative with respect to the nature of the matter and may justify the conclusion that the matter lacks serious literary, artistic, political, or scientific value.

(3) In determining whether the matter taken as a whole lacks serious literary, artistic, political, or scientific value in description or representation of those matters, the fact that the defendant knew that the matter depicts persons under the age of 16 years engaged in sexual conduct, as defined in subdivision (c) of Section 311.4, is a factor that may be considered in making that determination.

(b) "Matter" means any book, magazine, newspaper, or other printed or written material, or any picture, drawing, photograph, motion picture, or other pictorial representation, or any statue or other figure, or any recording, transcription, or mechanical, chemical, or electrical reproduction, or any other article, equipment, machine, or material. "Matter" also means live or recorded telephone messages if transmitted, disseminated, or distributed as part of a commercial transaction.

(c) "Person" means any individual, partnership, firm, association, corporation, limited liability company, or other legal entity.

(d) "Distribute" means transfer possession of, whether with or without consideration.

(e) "Knowingly" means being aware of the character of the matter or live conduct.

(f) "Exhibit" means show.

(g) "Obscene live conduct" means any physical human body activity, whether performed or engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest and is conduct that, taken as a whole, depicts or describes sexual conduct in a patently offensive way and that, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1) If it appears from the nature of the conduct or the circumstances of its production, presentation, or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of

311.2. (a) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, or prints, with intent to distribute or to exhibit to others, or who offers to distribute, distributes, or exhibits to others, any obscene matter is for a first offense, guilty of a misdemeanor. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars (\$50,000).

(b) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or to exhibit to, or to exchange with, others for commercial consideration, or who offers to distribute, distributes, or exhibits to, or exchanges with, others for commercial consideration, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony and shall be punished by imprisonment in the state prison for two, three, or six years, or by a fine not exceeding one hundred thousand dollars (\$100,000), in the absence of a finding that the defendant would be incapable of paying such a fine, or by both that fine and imprisonment.

(c) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or exhibit to, or to exchange with, a person 18 years of age or older, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person 18 years of age or older any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision. If a person has been previously convicted of a violation of this subdivision, he or she is guilty of a felony.

(d) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of

information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or exhibit to, or to exchange with, a person under 18 years of age, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person under 18 years of age any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision.

(e) Subdivisions (a) to (d), inclusive, do not apply to the activities of law enforcement and prosecuting agencies in the investigation and prosecution of criminal offenses, to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

(f) This section does not apply to matter that depicts a legally emancipated child under the age of 18 years or to lawful conduct between spouses when one or both are under the age of 18 years.

(g) It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or to perform related activities in providing telephone services.

311.3. (a) A person is guilty of sexual exploitation of a child if he or she knowingly develops, duplicates, prints, or exchanges any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip that depicts a person under the age of 18 years engaged in an act of sexual conduct.

(b) As used in this section, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals or the pubic or rectal area of any person for the purpose of sexual stimulation of the viewer.

(6) Defecation or urination for the purpose of sexual stimulation of the viewer.

(c) Subdivision (a) does not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

(d) Every person who violates subdivision (a) shall be punished by a fine of not more than two thousand dollars (\$2,000) or by

imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. If the person has been previously convicted of a violation of subdivision (a) or any section of this chapter, he or she shall be punished by imprisonment in the state prison.

(e) The provisions of this section do not apply to an employee of a commercial film developer who is acting within the scope of his or her employment and in accordance with the instructions of his or her employer, provided that the employee has no financial interest in the commercial developer by which he or she is employed.

(f) Subdivision (a) does not apply to matter that is unsolicited and is received without knowledge or consent through a facility, system, or network over which the person or entity has no control.

311.4. (a) Every person who, with knowledge that a person is a minor, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor, hires, employs, or uses the minor to do or assist in doing any of the acts described in Section 311.2, is, for a first offense, guilty of a misdemeanor. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars (\$50,000).

(b) Every person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of a minor under the age of 18 years under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, or a live performance involving, sexual conduct by a minor under the age of 18 years alone or with other persons or animals, for commercial purposes, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(c) Every person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of a minor under the age of 18 years under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, or a live performance involving, sexual conduct by a minor under the age of 18 years alone or with

other persons or animals, is guilty of a felony. It is not necessary to prove commercial purposes in order to establish a violation of this subdivision.

(d) (1) As used in subdivisions (b) and (c), "sexual conduct" means any of the following, whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, penetration of the vagina or rectum by any object in a lewd or lascivious manner, exhibition of the genitals or pubic or rectal area for the purpose of sexual stimulation of the viewer, any lewd or lascivious sexual act as defined in Section 288, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals. An act is simulated when it gives the appearance of being sexual conduct.

(2) As used in subdivisions (b) and (c), "matter" means any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, or any other computer-related equipment or computer-generated image that contains or incorporates in any manner, any film, filmstrip, photograph, negative, slide, photocopy, videotape, or video laser disc.

(e) This section does not apply to a legally emancipated minor or to lawful conduct between spouses if one or both are under the age of 18.

(f) In every prosecution under this section involving a minor under the age of 14 years at the time of the offense, the age of the victim shall be pled and proven for the purpose of the enhanced penalty provided in Section 647.6. Failure to plead and prove that the victim was under the age of 14 years at the time of the offense is not a bar to prosecution under this section if it is proven that the victim was under the age of 18 years at the time of the offense.

311.5. Every person who writes, creates, or solicits the publication or distribution of advertising or other promotional material, or who in any manner promotes, the sale, distribution, or exhibition of matter represented or held out by him to be obscene, is guilty of a misdemeanor.

311.6. Every person who knowingly engages or participates in, manages, produces, sponsors, presents or exhibits obscene live conduct to or before an assembly or audience consisting of at least one person or spectator in any public place or in any place exposed to public view, or in any place open to the public or to a segment thereof, whether or not an admission fee is charged, or whether or not attendance is conditioned upon the presentation of a membership card or other token, is guilty of a misdemeanor.

311.7. Every person who, knowingly, as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication or other merchandise, requires that the purchaser or consignee receive any obscene matter or who denies or threatens to deny a franchise, revokes or threatens to revoke, or imposes any penalty, financial or otherwise, by reason

of the failure of any person to accept obscene matter, or by reason of the return of such obscene matter, is guilty of a misdemeanor.

311.8. (a) It shall be a defense in any prosecution for a violation of this chapter that the act charged was committed in aid of legitimate scientific or educational purposes.

(b) It shall be a defense in any prosecution for a violation of this chapter by a person who knowingly distributed any obscene matter by the use of telephones or telephone facilities to any person under the age of 18 years that the defendant has taken either of the following measures to restrict access to the obscene matter by persons under 18 years of age:

(1) Required the person receiving the obscene matter to use an authorized access or identification code, as provided by the information provider, before transmission of the obscene matter begins, where the defendant has previously issued the code by mailing it to the applicant therefor after taking reasonable measures to ascertain that the applicant was 18 years of age or older and has established a procedure to immediately cancel the code of any person after receiving notice, in writing or by telephone, that the code has been lost, stolen, or used by persons under the age of 18 years or that the code is no longer desired.

(2) Required payment by credit card before transmission of the matter.

(c) Any list of applicants or recipients compiled or maintained by an information-access service provider for purposes of compliance with subdivision (b) is confidential and shall not be sold or otherwise disseminated except upon order of the court.

311.9. (a) Every person who violates Section 311.2 or 311.5, except subdivision (b) of Section 311.2, is punishable by fine of not more than one thousand dollars (\$1,000) plus five dollars (\$5) for each additional unit of material coming within the provisions of this chapter, which is involved in the offense, not to exceed ten thousand dollars (\$10,000), or by imprisonment in the county jail for not more than six months plus one day for each additional unit of material coming within the provisions of this chapter, and which is involved in the offense, such basic maximum and additional days not to exceed 360 days in the county jail, or by both such fine and imprisonment. If such person has previously been convicted of any offense in this chapter, or of a violation of Section 313.1, a violation of Section 311.2 or 311.5, except subdivision (b) of Section 311.2, is punishable as a felony.

(b) Every person who violates Section 311.4 is punishable by fine of not more than two thousand dollars (\$2,000) or by imprisonment in the county jail for not more than one year, or by both such fine and such imprisonment. If such person has been previously convicted of a violation of former Section 311.3 or Section 311.4 he is punishable by imprisonment in the state prison.

(c) Every person who violates Section 311.7 is punishable by fine of not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. For a second and subsequent offense he shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. If such person has been twice

convicted of a violation of this chapter, a violation of Section 311.7 is punishable as a felony.

311.10. (a) Any person who advertises for sale or distribution any obscene matter knowing that it depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony and is punishable by imprisonment in the state prison for two, three, or four years, or in a county jail not exceeding one year, or by a fine not exceeding fifty thousand dollars (\$50,000), or by both such fine and imprisonment.

(b) Subdivision (a) shall not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses.

311.11. (a) Every person who knowingly possesses or controls any matter, representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, the production of which involves the use of a person under the age of 18 years, knowing that the matter depicts a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a public offense and shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both the fine and imprisonment.

(b) If a person has been previously convicted of a violation of this section, he or she is guilty of a felony and shall be punished by imprisonment for two, four, or six years.

(c) It is not necessary to prove that the matter is obscene in order to establish a violation of this section.

(d) This section does not apply to drawings, figurines, statues, or any film rated by the Motion Picture Association of America, nor does it apply to live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

312. Upon the conviction of the accused, the court may, when the conviction becomes final, order any matter or advertisement, in respect whereof the accused stands convicted, and which remains in the possession or under the control of the district attorney or any law enforcement agency, to be destroyed, and the court may cause to be destroyed any such material in its possession or under its control.

312.1. In any prosecution for a violation of the provisions of this chapter or of Chapter 7.6 (commencing with Section 313), neither the prosecution nor the defense shall be required to introduce expert witness testimony concerning the obscene or harmful character of the matter or live conduct which is the subject of any the prosecution.

Any evidence which tends to establish contemporary community standards of appeal to prurient interest or of customary limits of candor in the description or representation of nudity, sex or excretion, or which bears upon the question of significant literary, artistic, political, educational, or scientific value shall, subject to the provisions of the Evidence Code, be admissible when offered by either the prosecution or by the defense.

312.3. (a) Matter that depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct as defined in Section 311.6 and that is in the possession of any city, county, city and county, or state official or agency is subject to forfeiture pursuant to this section.

(b) An action to forfeit matter described in subdivision (a) may be brought by the Attorney General, the district attorney, county counsel, or the city attorney. Proceedings shall be initiated by a petition of forfeiture filed in the superior court of the county in which the matter is located.

(c) The prosecuting agency shall make service of process of a notice regarding that petition upon every individual who may have a property interest in the alleged proceeds. The notice shall state that any interested party may file a verified claim with the superior court stating the amount of their claimed interest and an affirmation or denial of the prosecuting agency's allegation. If the notice cannot be given by registered mail or personal delivery, the notice shall be published for at least three successive weeks in a newspaper of general circulation in the county where the property is located. All notices shall set forth the time within which a claim of interest in the property seized is required to be filed.

(d) (1) Any person claiming an interest in the property or proceeds may, at any time within 30 days from the date of the first publication of the notice of seizure, or within 30 days after receipt of actual notice, file with the superior court of the county in which the action is pending a verified claim stating his or her interest in the property or proceeds. A verified copy of the claim shall be given by the claimant to the Attorney General or district attorney, county counsel, or city attorney, as appropriate.

(2) If, at the end of the time set forth in paragraph (1), an interested person has not filed a claim, the court, upon motion, shall declare that the person has defaulted upon his or her alleged interest, and it shall be subject to forfeiture upon proof of compliance with subdivision (c).

(e) The burden is on the petitioner to prove beyond a reasonable doubt that matter is subject to forfeiture pursuant to this section.

(f) It is not necessary to seek or obtain a criminal conviction prior to the entry of an order for the destruction of matter pursuant to this section. Any matter described in subdivision (a) that is in the possession of any city, county, city and county, or state official or agency, including found property, or property obtained as the result of a case in which no trial was had or that has been disposed of by way of dismissal or otherwise than by way of conviction may be ordered destroyed.

(g) A court order for destruction of matter described in subdivision (a) may be carried out by a police or sheriff's department or by the Department of Justice. The court order shall specify the agency responsible for the destruction.

(h) As used in this section, "matter" means any book, magazine,

newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation, or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines, or materials. "Matter" also means any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner any film or filmstrip.

(i) This section does not apply to a depiction of a legally emancipated minor or to lawful conduct between spouses if one or both are under the age of 18.

(j) It is a defense in any forfeiture proceeding that the matter seized was lawfully possessed in aid of legitimate scientific or educational purposes.

312.5. If any phrase, clause, sentence, section or provision of this chapter or application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other phrase, clause, sentence, section, provision or application of this chapter, which can be given effect without the invalid phrase, clause, sentence, section, provision or application and to this end the provisions of this chapter are declared to be severable.

312.6. (a) It does not constitute a violation of this chapter for a person or entity solely to provide access or connection to or from a facility, system, or network over which that person or entity has no control, including related capabilities that are incidental to providing access or connection. This subdivision does not apply to an individual or entity that is owned or controlled by, or a conspirator with, an entity actively involved in the creation, editing, or knowing distribution of communications that violate this chapter.

(b) An employer is not liable under this chapter for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his or her employment or agency and the employer has knowledge of, authorizes, or ratifies the employee's or agent's conduct.

(c) It is a defense to prosecution under this chapter and in any civil action that may be instituted based on a violation of this chapter that a person has taken reasonable, effective, and appropriate actions in good faith to restrict or prevent the transmission of, or access to, a communication specified in this chapter.

312.7. Nothing in this chapter shall be construed to apply to interstate services or to any other activities or actions for which states are prohibited from imposing liability pursuant to Paragraph (4) of subsection (g) of Section 223 of Title 47 of the United States Code.

VIRGINIA

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CHAPTER 659

An Act to amend and reenact §§ 18.2-374.1:1, 18.2-374.2, 18.2-374.3 and 19.2-298.1 of the Code of Virginia, relating to child pornography and indecent liberties with children; penalties; forfeiture.

[H 1760]

Approved March 28, 1999

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-374.1:1, 18.2-374.2, 18.2-374.3 and 19.2-298.1 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-374.1:1. Possession of child pornography; penalty.

A. Any person who knowingly possesses any sexually explicit visual material utilizing or having as a subject a person less than eighteen years of age shall be guilty of a ~~Class 1~~ misdemeanor. However, no prosecution for possession of material prohibited by this section shall lie where the prohibited material comes into the possession of the person charged from a law-enforcement officer or law-enforcement agency.

B. The provisions of this section shall not apply to any such material which is possessed for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial or other proper purpose by a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, ~~prosecutor~~ attorney, judge, or other person having a proper interest in the material.

C. All sexually explicit visual material which utilizes or has as a subject a person less than eighteen years of age shall be subject to lawful seizure and forfeiture pursuant to § 18.2-374.2.

D. Any person convicted of a first and or subsequent offense under this section shall be guilty of a Class 6 felony.

§ 18.2-374.2. Seizure and forfeiture of property used in connection with production of sexually explicit items involving children.

All audio and visual equipment, electronic equipment, devices and other personal property used in connection with the production, distribution, publication, sale, possession with intent to distribute or making of sexually explicit visual material having a person less than eighteen years of age as a subject shall be subject to lawful seizure by a law-enforcement officer and shall be subject to forfeiture to the Commonwealth pursuant to Chapter 22 (§ 19.2-369 et seq.) of Title 19.2 by order of the court in which a conviction under § 18.2-374.1 is obtained. Notwithstanding the provisions of § 19.2-381, the court shall dispose of the forfeited property as it deems proper, including awarding the property to a state agency for lawful purposes. If the property is disposed of by sale, the court shall provide that the proceeds be paid into the Literary Fund.

A forfeiture under this section shall not extinguish the rights of any person without knowledge of the illegal use of the property who (i) is the lawful owner or (ii) has a valid and perfected lien on the

property.

§ 18.2-374.3. Use of communications systems to facilitate certain offenses involving children.

A. It shall be unlawful for any person to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means for the purposes of *procuring or promoting* the use of a minor for any activity in violation of § 18.2-370 or § 18.2-374.1. A violation of this section shall be punishable as a Class 6 felony.

B. *It shall be unlawful for any person over the age of eighteen to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting any person he knows or has reason to believe is a minor for (i) any activity in violation of §§ 18.2-355, 18.2-358, 18.2-361 or § 18.2-370, (ii) any activity in violation of § 18.2-374.1, or (iii) a violation of § 18.2-374.1:1. As used in this subsection, "use a communications system" means making personal contact or direct contact through any agent or agency, any print medium, the United States mail, any common carrier or communication common carrier, any electronic communications system, or any telecommunications, wire, computer, or radio communications system. A violation of this section shall be punishable as a Class 5 felony.*

§ 19.2-298.1. Registration required of persons convicted of certain offenses.

A. For purposes of this section:

"Offense for which registration is required" means a violation or attempted violation of:

1. §§ 18.2-63, 18.2-64.1, 18.2-67.2:1, subdivision A 2 of § 18.2-67.3, subsection B of § 18.2-67.5, § 18.2-90 with the intent to commit rape, §§ 18.2-370, 18.2-370.1, 18.2-374.1 or subsection D of § 18.2-374.1:1;

2. A "sexually violent offense"; or

3. Where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation or attempted violation of subsection A of § 18.2-47, clause (iii) of § 18.2-48, subsection B of § 18.2-361 or subsection B of § 18.2-366, or subdivision B 1 of § 18.2-374.1.

"Sexually violent offense" means a violation or attempted violation of:

1. Clause (ii) of § 18.2-48, §§ 18.2-61, 18.2-67.1, 18.2-67.2, subdivision A 1 of § 18.2-67.3 or subsection A of § 18.2-67.5; or

2. §§ 18.2-63, 18.2-64.1, 18.2-67.2:1, subdivision A 2 of § 18.2-67.3, subsection B of § 18.2-67.5, § 18.2-90 with the intent to commit rape, §§ 18.2-370, 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation or attempted violation of subsection A of § 18.2-47, clause (iii) of § 18.2-48, subsection B of § 18.2-361, subsection B of § 18.2-366, or subdivision B 1 of § 18.2-374.1. Conviction of an offense listed under this subdivision shall be deemed a sexually violent offense only if the person has been convicted of any two or more such offenses occurring within a ten-year period, provided that person had been at liberty between such convictions.

B. Every person convicted on or after July 1, 1997, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269, whether sentenced as adults or juveniles, of an offense for which registration is required shall be required as a part of the sentence imposed upon conviction to register and reregister with the Department of State Police as provided in this section. The court shall remand the person to the custody of the local law-enforcement agency of the county or city for the purpose of obtaining the person's fingerprints and photographs of a type and kind specified by the Department of State Police for inclusion in the Sex Offender and Crimes Against Minors Registry established pursuant to § 19.2-390.1. The court shall order the person to provide to the local law-enforcement agency all information required by the State Police for inclusion in the Registry.

It shall be the duty of the local law-enforcement agency to forward to the State Police all the necessary registration information within seven days of the date of sentencing and to promptly provide to the State Police such information as is necessary for any reregistration.

C. Every person serving a sentence of confinement or under community supervision on July 1, 1997, for an offense for which registration is required shall be required to register with the Department of State Police and shall be given notice of the duty to register pursuant to § 53.1-116.1 or § 53.1-160.1 as appropriate.

D. Every person required to register shall register within ten days of his release from confinement in a state, local or juvenile correctional facility or, if a sentence of confinement is not imposed, within ten days of suspension of the sentence or in the case of a juvenile, of disposition. In addition, all persons convicted of violations under the laws of the United States or any other state substantially similar to an offense for which registration is required shall obtain from the local law-enforcement agency of the jurisdiction in which he has established residence two sets of fingerprints and two photographs of a type and kind specified by the State Police for inclusion in the Registry and shall provide to the local agency all necessary information for inclusion in the Registry within ten days of establishing a residence within the Commonwealth. The local law-enforcement agency shall advise the person of his duties regarding reregistration. Any person required to register shall also be required to reregister within ten days following any change of residence, whether within or without the Commonwealth. Whenever a person subject to registration changes residence to another state, the State Police shall notify the designated law-enforcement agency of that state.

The local law-enforcement agency shall promptly submit to the State Police all necessary information for registrations and reregistrations pursuant to this subsection.

E. The registration shall be maintained in the Registry established pursuant to § 19.2-390.1 and shall include the person's name, all aliases which he has used or under which he may have been known, the date and locality of the conviction for which registration is required, his fingerprints and a photograph of a type and kind specified by the State Police, his date of birth, social security number, current address and a description of the offense or offenses for which he was convicted and shall, if applicable, provide the same information on convictions prior to July 1, 1997, for any of the specified offenses or under a substantially similar law of the United States or any other state.

F. Every person required to register under this section, other than a person convicted of a sexually violent offense but including persons required to register prior to July 1, 1997, shall reregister with the State Police on an annual basis from the date of the initial registration. Every person convicted of a sexually violent offense, including persons convicted of a sexually violent offense who were

required to register prior to July 1, 1997, shall reregister with the State Police every ninety days from the date of initial registration. For purposes of this section, reregistration means that the person has notified the State Police, confirmed his then current address and provided such other information, including identifying information, which the State Police may, pursuant to this section and by regulation, require. Upon registration and as may be necessary thereafter, the State Police shall provide the person with an address verification form to be used for reregistration. The form shall contain in bold print a statement indicating that failure to comply with the registration required is punishable as a Class 1 misdemeanor or a Class 6 felony as provided in § 18.2-472.1.

Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register or reregister, the State Police shall promptly cause a warrant for the arrest of the person to be issued by the jurisdiction in which the offender last registered or reregistered or, if the offender failed to comply with the duty to register, in the jurisdiction in which the offender was last convicted of an offense for which registration or reregistration is required. The State Police shall also promptly notify the local law-enforcement agency of the jurisdiction of the offender's last known residence as shown in the records of the State Police.

Jurisdiction for prosecution of a violation of this section shall lie where the offender last registered or reregistered or, if the offender failed to comply with the duty to register, where the offender was last convicted of an offense for which registration or reregistration is required.

2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0.



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750.145d Use of internet or computer system; prohibited communication; violation; penalty; order to reimburse state or local governmental unit; definitions.

Sec. 145d. (1) A person shall not use the internet or a computer, computer program, computer network, or computer system to communicate with any person for the purpose of doing any of the following: (a) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 145a, 145c, 157c, 349, 350, 520b, 520c, 520d, 520e, or 520g, or section 5 of 1978 PA 33, MCL 722.675, in which the victim or intended victim is a minor or is believed by that person to be a minor.

(b) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 411h or 411i.

(c) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under chapter XXXIII or section 327, 327a, 328, or 411a(2).

(2) A person who violates this section is guilty of a crime as follows: (a) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of less than 1 year, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000.00, or both.

(b) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of 1 year or more but less than 2 years, the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$5,000.00, or both.

(c) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of 2 years or more but less than 4 years, the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(d) If the underlying crime is a felony with a maximum term of imprisonment of 4 years or more but less than 10 years, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000.00, or both.

(e) If the underlying crime is a felony punishable by a maximum term of imprisonment of 10 years or more but less than 15 years, the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

(f) If the underlying crime is a felony punishable by a maximum term of imprisonment of 15 years or more or for life, the person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$20,000.00, or both.

(3) The court may order that a term of imprisonment imposed under this section be served consecutively to any term of imprisonment imposed for conviction of the underlying offense.

(4) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section, including the underlying offense.

(5) This section applies regardless of whether the person is convicted of committing, attempting to commit, conspiring to commit, or soliciting another person to commit the underlying offense.

(6) A violation or attempted violation of this section occurs if the communication originates in this state, is intended to terminate in this state, or is intended to terminate with a person who is in this state.

(7) A violation or attempted violation of this section may be prosecuted in any jurisdiction in which the communication originated or terminated.

(8) The court may order a person convicted of violating this section to reimburse this state or a local unit of government of this state for expenses incurred in relation to the violation in the same manner that expenses may be ordered to be reimbursed under section 1f of chapter IX of the code of criminal procedure, 1927 PA.175, MCL 769.1f.

(9) As used in this section: (a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory

functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

(b) "Computer network" means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.

(c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(d) "Computer system" means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

(e) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

(f) "Internet" means that term as defined in section 230 of title II of the communications act of 1934, chapter 652, 110 Stat. 137, 47 U.S.C. 230.

(g) "Minor" means an individual who is less than 18 years of age.

History: Add. 1999, Act 32, Eff. Aug. 1, 1999 ;—Am. 1999, Act 235, Eff. 10, 2000 ;—Am. 2000, Act 185, Eff. Sept. 18, 2000 .

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600.4701 Definitions.

Sec. 4701. As used in this chapter: (a) "Crime" means committing, attempting to commit, conspiring to commit, soliciting another person to commit any of the following offenses in connection with which the forfeiture of property is sought: (i) A violation of part 111 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11101 to 324.11152.

(ii) A violation of part 121 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.12101 to 324.12117.

(iii) A violation of section 4, 5, or 7 of the medicaid false claim act, 1977 PA 72, MCL 400.604, 400.605, and 400.607.

(iv) A violation of section 2 or 3 of the Michigan antitrust reform act, 1984 PA 274, MCL 445.772 and 445.773.

(v) A violation described in section 409 of the uniform securities act, 1964 PA 265, MCL 451.809.

(vi) A violation of section 5 or 7 of 1978 PA 33, MCL 722.675 and 722.677.

(vii) A violation of section 49, 75, 94, 95, 96, 100, 104, 105, 106, 110, 112, 117, 118, 119, 120, 121, 124, 145c, 145d, 157q, 157r, 174, 175, 176, 180, 181, 182, 213, 214, 218, 219a, 224, 248, 249, 250, 251, 252, 253, 254, 255, 263, 264, 271, 272, 273, 274, 300, 356, 357, 357a, 359, 360, 529, 530, 531, 535, 540c, or 540g of the Michigan penal code, 1931 PA 328, MCL 750.49, 750.75, 750.94, 750.95, 750.96, 750.100, 750.104, 750.105, 750.106, 750.110, 750.112, 750.117, 750.118, 750.119, 750.120, 750.121, 750.124, 750.145c, 750.145d, 750.157q, 750.157r, 750.174, 750.175, 750.176, 750.180, 750.181, 750.182, 750.213, 750.214, 750.218, 750.219a, 750.224, 750.248, 750.249, 750.250, 750.251, 750.252, 750.253, 750.254, 750.255, 750.263, 750.264, 750.271, 750.272, 750.273, 750.274, 750.300, 750.356, 750.357, 750.357a, 750.359, 750.360, 750.529, 750.530, 750.531, 750.535, 750.540c, and 750.540g.

(viii) A violation of 1979 PA 53, MCL 752.791 to 752.797.

(b) "Instrumentality of a crime" means any property, other than real property, the use of which contributes directly and materially to the commission of a crime.

(c) "Person" means an individual, corporation, partnership, or other business entity, or an unincorporated or voluntary association.

(d) "Proceeds of a crime" means any property obtained through the commission of a crime, including any appreciation in the value of the property.

(e) "Security interest" means any interest in real or personal property that secures payment or performance of an obligation.

(f) "Substituted proceeds of a crime" means any property obtained or any gain realized by the sale or exchange of proceeds of a crime.

History: Add. 1988, Act 104, Eff. June 1, 1988 ;—Am. 1993, Act 245, Eff. Apr. 1, 1994 ;—Am. 1995, Act 229, Eff. Jan. 1, 1996 ;—Am. 1996, Act 327, Eff. Apr. 1, 1997 ;—Am. 1997, Act 156, Eff. Mar. 1, 1998 ;—Am. 1998, Act 141, Eff. Sept. 1, 1998 ;—Am. 1998, Act 547, Eff. Mar. 23, 1999 ;—Am. 2000, Act 184, Eff. Sept. 18, 2000 .

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Memorandum

To: Senator Pete Kelly, Co-Chair Senate Finance Committee
From: Representative Joe Hayes *J.H.*
Date: April 30, 2001
RE: HB 32, Sex Crime and Pornography Forfeitures

I found this article in the Fairbanks Daily News Miner this weekend. Child pornography and other sex crimes involving the use of computers are happening in our communities. HB 32 will not put an end to these crimes, but it will greatly aid our police and our criminal justice system as a whole. Police agencies and public safety organizations across the state support HB 32, including our own Fairbanks Police Department.

I would like to ask you to add this article to the bill packet and give HB 32 a hearing in your committee. We can still get this passed this year.

Thank you.

District 30

representative_joe_hayes@legis.state.ak.us

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Article last updated:
Saturday, April 28, 2001 6:34 AM MST

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Soldier sentenced for receiving child porn

The Associated Press

ANCHORAGE--A Fort Richardson soldier has been sentenced to 70 months in federal prison for receiving child pornography over the Internet.

But charges that Sgt. 1st Class Gene Yeamans sexually abused a local boy were dismissed under a plea agreement. The U.S. attorney's office determined that if the abuse charges were tested at trial, an "investigative technicality" in how evidence was obtained could result in Yeamans' acquittal or a hung jury, said Assistant U.S. Attorney Steve Skrocki.

Yeamans, a father of three, was charged with abusing the boy at a slumber party three years ago when the boy was 8.

In a hearing earlier this year, an FBI agent testified that Yeamans had downloaded child pornography since 1998.

The FBI in Anchorage started investigating Yeamans following a tip from the agency's office in Houston, Texas.

In addition to nearly six years in prison, Judge H. Russel Holland on Thursday ordered Yeamans to serve three years of supervised release and required him to undergo a mental health assessment and sex offender treatment.

Yeamans, 35, served for 17 years in the military.

The victim's father told Judge Holland that his son told his parents of the abuse, and now that those charges against Yeamans are being dropped, the boy feels he did something wrong.

Yeamans stole his son's sense of innocence, he said. The boy gets angry now and believes bad things always happen to him, he said.

"I feel justice is not being served," the father said.

Judge Holland said he had not decided if he would accept the plea agreement until he listened to the prosecutor's case on Thursday.

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Celia Hunter
Gary Moore

agreement until he listened to the prosecutor's reasoning on Thursday.

"My biggest concern is that the ... child not be victimized a second time," he told the family. "None of us can know the outcome (of the trial), but the prosecutor has a concern it won't be what you wish."

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SENATE COMMITTEE REPORT

DATE: 4/9/01

FURTHER: Finance

DATE TURNED IN TO OFFICE: 4-24-01

Judiciary Committee considered CS FOR HOUSE BILL NO. 32 (JUD) am
SEX CRIME AND PORNOGRAPHY FORFEITURES

and recommends:

- be replaced with S CS CS HB 32 (Jud)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DPS	2/16/01		<input checked="" type="checkbox"/>	2
ACS	2/16/01		<input checked="" type="checkbox"/>	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>John J. Condees</i>			<input checked="" type="checkbox"/>	
<i>Gene Kervinault</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>				
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
CHAIR: <i>John H. Taylor</i>	<input checked="" type="checkbox"/>			



Fax Cover Sheet

UNIVERSITY OF ALASKA FAIRBANKS

Police Department

PO Box 755560 * Fairbanks, Alaska 99775-5560
(907) 474-6200 * Fax (907) 474-5555

To: SENATE FINANCE COMMITTEE

Dept: ATTN: SENATOR KELLEY

Phone: _____ FAX: 907-465-2187

Precedence: URGENT PRIORITY ROUTINE

Classification: CONFIDENTIAL SENSITIVE ROUTINE

From: JAF TASK FORCE

Date: 5/4/01 Time: 1600

Sender: MARC POESCHEL

TOTAL PAGES
INCLUDING THIS COVER SHEET:

2

Comments:



May 4, 2001

Senate Finance Committee

Dear Committee members:

Before you is HB 32, a measure that will address the assets of convicted sex crime offenders. The intent of this bill is twofold. Send a message to those offenders that the good people of this great state will not tolerate these crimes and send a message to the public that the state will endeavor to prevent a second offense by giving the law enforcement agencies the tools they need to fight against these monsters. They groom our children to desensitize them to sexual discussions and acts, trade photos of children already victimized and then victimize their "prey". They openly trade in chat rooms named "Pedomoms", "14yosexpics" and "Daddaughterlove". They are monsters.

The police agencies that make up the Interior Alaska Forensic Recovery of Computer Evidence Specialists (IAF) have taken a stand and will work together to fight these criminals on their own turf, the Internet, and with computer evidence. We are at a great disadvantage in a number of ways and this bill will address one of those ways by allowing us to use their own computers against them, once they are convicted. Our goal is not the random e-mail, the mistaken website visited or family photos innocently sent to relatives or friends. Sex offense conviction is the key to this legislation.

It would show a substantial intent to violate parole or probation conditions if the offender purchases a new computer system and begins trading the pictures as opposed to turning on the old one. In closing, we are a group of agencies fighting to keep our children from harm and would greatly appreciate your being a part of our efforts. This bill needs to be in effect now to address current criminal cases that will be tried in the near future.

In a personal note, I have made every attempt to testify personally on this matter and would like to express my apologies to Representative Joe Hayes that I was unable to during the 5/3 evening session. The children of Alaska place their trust in your decision.

Sincerely,

Ofc. Marc Poschal, EECS
Coordinator IAF Task Force
<http://www.akforecs.usf.edu/>

[Fwd:]

Subject: [Fwd:]

Date: Tue, 01 May 2001 10:03:43 -0800

From: Pete Kelly <Senator_Pete_Kelly@Legis.state.ak.us>

Organization: Alaska State Legislature

To: Laura Glaiser <Laura_Glaiser@Legis.state.ak.us>

Subject:

Date: Thu, 26 Apr 2001 19:29:13 -0400

From: Polarcop@netscape.net (Interior Alaska FORCES Task Force)

To: Senator_Pete_Kelly@legis.state.ak.us

Dear Senator Kelly,

My name is Marc Poeschel, I am the founder and coordinator of the Interior Alaska FORCES Task Force. The law enforcement agencies of the interior have signed an agreement to work together on cases involving computer crimes, internet crimes against children and the forensic recovery of computer evidence in any criminal case. I am writing to you as the representative of IAF to urge your support for HB 32. As a father, an Alaskan, a police officer and a staunch supporter of children's rights, I sincerely hope you will join us in sending a strong message to your constituents and the rest of the state that sex crimes against our children will not be perpetuated by returning the implements of the crime to the convicted sex offender.

This bill makes forfeiture possible in the event of a conviction for sex crimes if the equipment is seized as an instrument of the crime. Seized computers with thousands of images of child pornography must be processed in some of these cases and then they are returned to the perpetrator to use again. This is akin to giving the alcohol back to a convicted drunk driver and handing them their car keys. Meanwhile police officers attempt to combat these criminal predators with ever shrinking budgets and rapidly antiquated equipment.

The facts show that children are the most frequent victims of computer sex crimes and the offenders routinely re-offend upon release. Couple that with the return of their equipment and there is no deterrent. This bill is a deterrent. It is a strong statement that our elected officials take the necessary steps to protect victims against repeat offenders. Please consider passing this bill a positive step and thank you for your time.

Sincerely,

--

Marc Poeschel

Coordinator IAF

<http://www.akforces.uaf.edu/>

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<http://webmail.netscape.com/>