

HB

52

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. John Coghill
Rep. Jim Holm
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
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House Judiciary Committee

Memorandum

To: Leg. Legal

From: Vanessa Tondini, Committee Aide
House Judiciary Committee

Date: February 19, 2003

Re: CS Request

Please create a House Judiciary Committee Substitute for work order # 23-LS0234\A, HB 52: Sex Crimes and Pornography Forfeitures, incorporating the attached two amendments.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

Proposed Amendment #1

House Bill 52 - "An Act relating to the forfeiture of property used to possess or distribute child pornography"

INTENT. The forfeitures contemplated by this Act are intended to be forfeitures imposed in connection with conviction for a crime. The legislature intends for the forfeiture to be ordered to the commissioner of public safety or other law enforcement agency. Further, the legislature intends for the courts to continue to provide hearings to interested persons who have an ownership interest in equipment subject to forfeiture under this Act and to allow for remission to innocent nonnegligent third parties as applied in State v. Rice, 626 P.2d 104 (Alaska 1981), Fehir v. State, 755 P.2d 1107 (Alaska 1988), and Baum v. State, 24 P.3d 577 (Alaska App. 2001).

Proposed Amendment #2

House Bill 52 - "An Act relating to the forfeiture of property used to possess or distribute child pornography"

Pg. 2, Sec. 2, Lines 4 & 5

Sec. 11.41.468. Forfeiture of property used in sexual offense. (a) Property used to aid a violation of ~~AS 11.41.410 - 11.41.470~~ AS 11.41.410 - 11.41.458 or to aid the solicitation of, attempt to commit, or conspiracy to commit a violation of ~~AS 11.41.410 - 11.41.470~~ AS 11.41.410 - 11.41.458 may be forfeited to the state upon the conviction of the offender.

Alaska State Legislature

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State Capitol
Juneau, AK 99801
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Interim:
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Representative Lesil McGuire
Chair, Judiciary Committee

House Bill 52

“An Act relating to the forfeiture of property used to possess or distribute child pornography”

Sponsor Statement and Sectional Analysis

While providing instant access to useful and valuable information for business and academic research, the expansion of the Internet and corresponding development of computer technology have also created an environment in which new types of criminal enterprise are flourishing. Perhaps the most pernicious and predatory are the ever-increasing crimes against children.

It is becoming far more common for pedophiles to seek new victims through on-line chatrooms and email and for child pornography profiteers to use these technologies as a means to distribute their materials. HB 52 will provide the state courts and law enforcement agencies another tool to combat these sexual predators by giving the courts additional punitive sentencing options and, in turn, awarding forfeited computer technology back to law enforcement agencies for ongoing monitoring operations.

HB 52 will make it possible for law enforcement to stay on top of this rapidly changing industry without spending more government dollars. Advances in technology seem to happen on an almost daily basis, and new technology can frequently outperform previous models. This creates greater restrictions for police detection and monitoring operations thus leaving them at a disadvantage. In order for law enforcement to effectively combat computer crime, they must have access to the necessary hardware.

There are forfeiture laws in place across the country and at the federal level. Several other states already have similar laws on the books relating to the forfeiture of computers used in sex crimes. The use of computers in the commission of sex crimes is a national problem, and Alaska can look toward other states' laws in this area to draw realistic conclusions about the likely impact here in our own state.

HB 52 will amend AS 11.41 and AS 11.61, respectively, by adding the necessary statutory language for the forfeiture of hardware used either in a sexual offense or in indecent viewing or photography or child pornography.

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Chair, Judiciary Committee

HB 52 – Sectional Analysis

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 aid in the commission of a sexual offense under AS 11.41.410 – 11.41.470 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 aid in the commission of indecent photography or child pornography under AS 11.61.123 – 11.61.127 including inchoate forms of those offenses.



U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

101 E. Sixth Avenue
Anchorage, Alaska 99501

February 4, 2003

State Representative Lesil McGuire
716 West Fourth Avenue, Suite 300
Anchorage, Alaska 99501-2133

Dear Representative McGuire:

I have been informed that you intend to reintroduce House Bill 23, commonly referred to as the "Computer Forfeiture for Sex Crimes" bill. This bill would allow for the forfeiture of computers used in the commission of sex crimes against children, to include child pornography.

By way of background, as a FBI Supervisory Special Agent in Houston, and later as an Assistant Special Agent in Charge in Albany, New York, I created multi-agency task forces under the FBI's "Innocent Images" initiative. Innocent Images is a nation wide pro-active, on-line undercover investigation targetting pedophiles and child pornography collectors. In furtherance of our investigations and prosecutions these task forces routinely utilized Title 18, U. S. C. Sections 2253 and 2254 to seize and eventually forfeit computers used by the subjects of our cases. Forfeiting the very instruments used by sexual predators to commit crimes against children makes good sense and is consistent with federal statutes in this important area of concern.

I support your effort to reintroduce House Bill 23 and wish you the best of luck.

Sincerely yours,

Thomas C. McClenaghan
Special Agent in Charge



George P. Wuerch,
Mayor

Municipality of Anchorage

Anchorage Police Department

Walt Monegan, Chief



February 6, 2003

Representative Lesil McGuire, Chair
House Judiciary Committee
716 W. 4th Avenue, Suite 300
Anchorage, AK 99501-2133

Dear Representative McGuire:

This letter is written in support of HB 52, *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 52. Thank you for bringing this legislation forward.

Sincerely,

William Miller
Deputy Chief

Fairbanks Daily News-Miner

Man accused of molesting two enters plea agreement

By Associated Press

Tuesday, February 11, 2003 -

FAIRBANKS

A North Pole man arrested in August on charges of taking pornographic pictures of four minor teenage boys and molesting two of them faces a maximum of nine years in prison after agreeing to a plea deal in Fairbanks Superior Court.

Theodore Jenkins Jr., 29, who was originally facing 41 charges ranging from sexual abuse of a minor to viewing indecent photography, pleaded no contest to six of the charges Monday. He will be sentenced on May 15.

By entering no contest pleas, Jenkins is considered formally convicted of the charges.

The plea agreement also calls for Superior Court Judge Charles Pengilly to determine whether Jenkins is guilty of one count of first-degree sexual abuse of a minor in connection with an allegation that he molested one boy, a family member, while he was sleeping.

To render a verdict, Pengilly will review the transcript of the grand jury proceedings during which Jenkins was formally charged with the crimes as well as evidence presented to the grand jury.

Pengilly said Monday that he expects to make a decision in the next couple of days. Although a guilty decision would likely increase Jenkins' sentence, the most time the judge could give Jenkins to serve in jail for the entire case is nine years.

Alaska State Troopers said the case against Jenkins was opened in June when troopers received a report that he was taking photographs of a nude family member and saving the digital pictures on computer discs.

The boy was interviewed and identified himself and several of his friends in pornographic photographs provided to an investigator, according to a criminal complaint filed in the case.

After interviewing Jenkins, troopers also searched his property, discovering computer discs and videotapes that Jenkins admitted contained child pornography, computer equipment and a digital camera, the court document states.

Troopers have said that Jenkins gained access to the boys while they spent the night at the house where Jenkins was staying. He was charged with molesting both the family member and another boy in their sleep.

FAIRBANKS

Jury indicts man on several charges of sexual abuse of a minor

A 26-year-old man has been indicted on charges that he had sex in August with a 13-year-old North Pole girl he met over the Internet.

A grand jury indicted Jason R. Richards on four counts of second-degree sexual abuse of a

minor and two counts of third-degree sexual abuse of a minor, all stemming from the Aug. 17 encounter.

After meeting over the Internet, the two then talked for about two months before having sex at a North Pole residence Aug. 17, Alaska State Troopers Investigator Lantz Dahlke told the Fairbanks Daily News-Miner.

The accusations surfaced when troopers received a report from a crisis line that the girl called hours after the encounter, said trooper Michael Wery, who initially investigated the case before he was transferred to Bethel in December. The girl called a toll-free telephone

number that connected her to an agency in the Lower 48. That agency called troopers to report the incident, Wery said.

Richards, who Wery said is listed as a transient but has been staying with friends after living in abandoned houses in North Pole, is not in custody but has been issued a summons to appear in court today.

—The Associated Press

7-03-03

Anchorage Daily News

Cyber cops

Internet investigators trigger debate over computer privacy

By JOHN FRANK
The Virginian-Pilot

VERGINIA BEACH, Va. — When 48-year-old Richard O. Temple engaged an Internet chat room called "Daddy's Law" last week, he thought he'd meet young girls.

History long, he met one who claimed to be 16. He sent her messages sporadically with X-rated pictures and transmitted pictures depicting sex acts between youthful-looking girls and men.

Temple, a 18-year-old chat room friend turned foe, is a 44-year-old police officer William Ernie, who was working undercover for the Illinois State Attorney's Office.

Ernie saved the latest messages. He read them Nov. 13 in Virginia Beach Circuit Court, where Temple was found guilty of sending indecent liberties with a minor. He is to serve a term of up to 10 years in prison and a hefty fine. He is scheduled to be sentenced Feb. 10.

Increasingly, Internet communication has become a place of its own. The attention of law enforcement "cyber cops" who crime the World Wide Web in search of illegal activity. These electronic investigators have created a debate within the legal community.

Are these cybercops setting up high-tech traps for lawbreaking adults?

Or are they members of new-age police patrolling a virtual red-light district where crime alone means 347?

Both sides thank their advocates. Civil liberties activists worry that the government is not only entering private lives but also invading the privacy and autonomy of people who have little or no experience of being on-line. They fear that the government is using its power to invade the privacy of people who are not even suspected of a crime.

Child advocates counter that such investigations are needed to protect the young and to prevent the electronic superpredators from preying on the vulnerable with perfect digital ease.

It is a question that has a great impact on how law enforcement should behave. Some people are angry for the National Computer Law Enforcement and Children in Northern Virginia. Others are angry for legal activities on-line.

James A. McInnis, a spokesman for the state attorney general's office, said the government should not be using its power to invade the privacy of people who are not even suspected of a crime.

If the government does not have a good reason for intruding, but merely wants to engage in a "fishing expedition" on the Internet, it should not be doing it. McInnis said.

Temple's attorney, George J. Pappas, said his client is claiming his client was not a predator. He said his client was a "victim" of a predator who was using his power to invade the privacy of people who are not even suspected of a crime.



Lawlike crimes are more easily prosecuted.

Because these investigations tend to be conducted by police officers working solely in cyberspace, state lines are irrelevant, Kerr said. Perpetrators may be far away from the investigators who catch them.

In Virginia, law enforcement investigators are coordinated by a task force based in Bedford County, just east of Roanoke.

The task force has worked in 1998, according to the state attorney general's office, including the Virginia Beach Police Department.

The task force began work in 1998, according to its leader, Lt. Michael V. Harrison of the Bedford County Sheriff's Office.

Because cybercrime is "a global problem," Harrison said, the Virginia task force has great reach, working cases with Great Britain and a Scotland Yard, the FBI and U.S. Postal Service inspectors.

Harrison said his task force has worked more than 100 cases. More than 50 such task forces are operating nationwide, Harrison said.

Although it may appear that people are being "harassed" by these computer dragnets, federal appellate courts have so far supported most of the investigations, Kerr said.

Two issues commonly are raised on appeal, Kerr said. The first is that the investigators do not have the right to be in someone's home.

This has been "universally rejected in these types of cases," Kerr said.

The second issue — "entrapment" — has been marginally more successful, Kerr said.

In at least one case, a conviction was overturned when a court determined that police actively attempted to "trap" a suspect into having sex with a teenage girl.

The perpetrator answered a "pop culture" advertisement, according to Kerr. That advertisement was switched by investigators into a proposal to engage in sex with the under-age girl.

The court determined that the police actively enticed the defendant.

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FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 52
(H) Publish Date: 2/12/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title An Act related to forfeiture of property BRU Legal and Advocacy Services
used in sexual offense Component Public Defender Agency
Sponsor Rep. McGuire
Requester (H) STA Component No. 1531

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 |
|------------------------|------------|------------|------------|------------|------------|------------|
| 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 | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|-----------------------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill would have some effect on Agency operations, simply because if the state requests forfeiture, it will make the sentencing more complicated in some cases. However we do not anticipate much of an impact.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
Division Public Defender Agency Date/Time 2/11/03 7:07 AM
Approved by: Mike Miller, Commissioner Date 2/11/2003
Agency Department of Administration

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 52
(H) Publish Date: 2/12/03

Revision Date/Time (Note if correction): N/A Dept. Affected: Public Safety
Title: An act relating to the forfeiture of property used BRU: AST Detachment
to possess or distribute child pornography.... Component: AST Detachment
Sponsor: Representative McGuire
Requester: House State Affairs Component No.: 2325

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 |
|------------------------|------------|------------|------------|------------|------------|------------|
| 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 |

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|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
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| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|-----------------------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact to the department.

Prepared by: Lieutenant Matthew Leveque
Division: Alaska State Troopers
Approved by: William Tandeske, Commissioner
Agency: Department of Public Safety

Phone 907 269-0390
Date/Time 2/11/03 8:09 AM
Date 2/11/2003