

**HOUSE** \_\_\_\_\_ **AMENDMENT NO.** \_\_\_\_\_

**Offered By**

1 AMEND House Committee Substitute for House Bill No. 1256, Page 26, Section 488.5320, Line  
2 46, by inserting after all of said line the following:

3  
4 "488.5375. Upon a plea of guilty or a finding of guilt for a felony sexual offense in which  
5 computers, computer equipment, computer devices, cellular telephones, or other electronic  
6 devices were seized, the court may, in addition to imposition of any penalties provided by law,  
7 order the defendant to reimburse the state or local law enforcement agency for the costs incurred  
8 by such agency in the examination of any computer, computer equipment, computer devices,  
9 cellular telephones, or other electronic devices seized. Such costs shall include the reasonable  
10 costs of performing examinations of the seized electronic devices. Each law enforcement agency  
11 may establish a schedule of such costs; except that, the court may order the costs reduced if the  
12 court determines that the costs are excessive."; and

13  
14 Further amend said bill, Page 31, Section 537.528, Line 31, by inserting after all of said  
15 line the following:

16  
17 "542.301. 1. Property which comes into the custody of an officer or of a court as the  
18 result of any seizure and which has not been forfeited pursuant to any other provisions of law or  
19 returned to the claimant shall be disposed of as follows:

20 (1) Stolen property, or property acquired in any other manner declared an offense by  
21 chapters 569 and 570, but not including any of the property referred to in subdivision (2) of this  
22 subsection, shall be delivered by order of court upon claim having been made and established, to  
23 the person who is entitled to possession:

24 (a) The claim shall be made by written motion filed with the court with which a motion to  
25 suppress has been, or may be, filed. The claim shall be barred if not made within one year from  
26 the date of the seizure;

27 (b) Upon the filing of such motion, the judge shall order notice to be given to all persons  
28 interested in the property, including other claimants and the person from whose possession the  
29 property was seized, of the time, place and nature of the hearing to be held on the motion. The

1 notice shall be given in a manner reasonably calculated to reach the attention of all interested  
2 persons. Notice may be given to unknown persons and to persons whose address is unknown by  
3 publication in a newspaper of general circulation in the county. No property shall be delivered to  
4 any claimant unless all interested persons have been given a reasonable opportunity to appear and  
5 to be heard;

6 (c) After a hearing, the judge shall order the property delivered to the person or persons  
7 entitled to possession, if any. The judge may direct that delivery of property required as evidence  
8 in a criminal proceeding shall be postponed until the need no longer exists;

9 (d) A law enforcement officer having custody of seized property may, at any time that  
10 seized property has ceased to be useful as evidence, request that the prosecuting attorney of the  
11 county in which property was seized file a motion with the court of such county for the disposition  
12 of the seized property. If the prosecuting attorney does not file such motion within sixty days of  
13 the request by the law enforcement officer having custody of the seized property, then such officer  
14 may request that the attorney general file a written motion with the circuit court of the county or  
15 judicial district in which the seizure occurred. Upon filing of the motion, the court shall issue an  
16 order directing the disposition of the property. Such disposition may, if the property is not  
17 claimed within one year from the date of the seizure or if no one establishes a right to it, and the  
18 seized property has ceased to be useful as evidence, include a public sale of the property.

19 Pursuant to a motion properly filed and granted under this section, the proceeds of any sale, less  
20 necessary expenses of preservation and sale, shall be paid into the county treasury for the use of  
21 the county. If the property is not salable, the judge may order its destruction. Notwithstanding any  
22 other provision of law, if no claim is filed within one year of the seizure and no motion pursuant  
23 to this section is filed within six months thereafter, and the seized property has ceased to be useful  
24 as evidence, the property shall be deemed abandoned, converted to cash and shall be turned over  
25 immediately to the treasurer pursuant to section 447.543;

26 (e) If the property is a living animal or is perishable, the judge may, at any time, order it  
27 sold at public sale. The proceeds shall be held in lieu of the property. A written description of the  
28 property sold shall be filed with the judge making the order of sale so that the claimant may  
29 identify the property. If the proceeds are not claimed within the time limited for the claim of the  
30 property, the proceeds shall be paid into the county treasury. If the property is not salable, the  
31 judge may order its destruction.

32 (2) Weapons, tools, devices, computers, computer equipment, computer software,  
33 computer hardware, cellular telephones, or other devices capable of accessing the internet, and  
34 substances other than motor vehicles, aircraft or watercraft, used by the owner or with the owner's  
35 consent as a means for committing felonies other than the offense of possessing burglary tools in  
36 violation of section 569.180, and property, the possession of which is an offense under the laws of

1 this state or which has been used by the owner, or used with the owner's acquiescence or consent,  
2 as a raw material or as an instrument to manufacture [or], produce, or distribute, or be used as a  
3 means of storage of anything the possession of which is an offense under the laws of this state, or  
4 which any statute authorizes or directs to be seized, other than lawfully possessed weapons seized  
5 by an officer incident to an arrest, shall be forfeited to the state of Missouri.

6 2. The officer who has custody of the property shall inform the prosecuting attorney of the  
7 fact of seizure and of the nature of the property. The prosecuting attorney shall thereupon file a  
8 written motion with the court with which the motion to suppress has been, or may be, filed  
9 praying for an order directing the forfeiture of the property. If the prosecuting attorney of a county  
10 in which property is seized fails to file a motion with the court for the disposition of the seized  
11 property within sixty days of the request by a law enforcement officer, the officer having custody  
12 of the seized property may request the attorney general to file a written motion with the circuit  
13 court of the county or judicial district in which the seizure occurred. Upon filing of the motion,  
14 the court shall issue an order directing the disposition of the property. The signed motion shall be  
15 returned to the requesting agency. A motion may also be filed by any person claiming the right to  
16 possession of the property praying that the court declare the property not subject to forfeiture and  
17 order it delivered to the moving party.

18 3. Upon the filing of a motion either by the prosecuting attorney or by a claimant, the  
19 judge shall order notice to be given to all persons interested in the property, including the person  
20 out of whose possession the property was seized and any lienors, of the time, place and nature of  
21 the hearing to be held on the motion. The notice shall be given in a manner reasonably calculated  
22 to reach the attention of all interested persons. Notice may be given to unknown persons and to  
23 persons of unknown address by publication in a newspaper of general circulation in the county.  
24 Every interested person shall be given a reasonable opportunity to appear and to be heard as to the  
25 nature of the person's claim to the property and upon the issue of whether or not it is subject to  
26 forfeiture.

27 4. If the evidence is clear and convincing that the property in issue is in fact of a kind  
28 subject to forfeiture under this subsection, the judge shall declare it forfeited and order its  
29 destruction or sale. The judge shall direct that the destruction or sale of property needed as  
30 evidence in a criminal proceeding shall be postponed until this need no longer exists.

31 5. If the forfeited property can be put to a lawful use, it may be ordered sold after any  
32 alterations which are necessary to adapt it to a lawful use have been made. In the case of  
33 computers, computer equipment, computer software, computer hardware, cellular telephones, or  
34 other devices capable of accessing the internet, or other devices used in the acquisition,  
35 possession, or distribution of child pornography or obscene material, the law enforcement agency  
36 in possession of such items may, upon court order, retain possession of such property and convert

1 such property to the use of the law enforcement agency for use in criminal investigations. If there  
2 is a holder of a bona fide lien against property which has been used as a means for committing an  
3 offense or which has been used as a raw material or as an instrument to manufacture or produce  
4 anything which is an offense to possess, who establishes that the use was without the lienholder's  
5 acquiescence or consent, the proceeds, less necessary expenses of preservation and sale, shall be  
6 paid to the lienholder to the amount of the lienholder's lien. The remaining amount shall be paid  
7 into the county treasury.

8 6. If the property is perishable the judge may order it sold at a public sale or destroyed, as  
9 may be appropriate, prior to a hearing. The proceeds of a sale, less necessary expenses of  
10 preservation and sale, shall be held in lieu of the property.

11 7. When a warrant has been issued to search for and seize allegedly obscene matter for  
12 forfeiture to the state, after an adversary hearing, the judge, upon return of the warrant with the  
13 matter seized, shall give notice of the fact to the prosecuting attorney of the county in which the  
14 matter was seized and the dealer, exhibitor or displayer and shall conduct further adversary  
15 proceedings to determine whether the matter is subject to forfeiture. If the evidence is clear and  
16 convincing that the matter is obscene as defined by law and it was being held or displayed for  
17 sale, exhibition, distribution or circulation to the public, the judge shall declare it to be obscene  
18 and forfeited to the state and order its destruction or other disposition; except that, no forfeiture  
19 shall be declared without the dealer, distributor or displayer being given a reasonable opportunity  
20 to appear in opposition and without the judge having thoroughly examined each item. If the  
21 material to be seized is the same as or another copy of matter that has already been determined to  
22 be obscene in a criminal proceeding against the dealer, exhibitor, displayer or such person's agent,  
23 the determination of obscenity in the criminal proceeding shall constitute clear and convincing  
24 evidence that the matter to be forfeited pursuant to this subsection is obscene. Except when the  
25 dealer, exhibitor or displayer consents to a longer period, or by such person's actions or pleadings  
26 willfully prevents the prompt resolution of the hearing, judgment shall be rendered within ten days  
27 of the return of the warrant. If the matter is not found to be obscene or is not found to have been  
28 held or displayed for sale, exhibition or distribution to the public, or a judgment is not entered  
29 within the time provided for, the matter shall be restored forthwith to the dealer, exhibitor or  
30 displayer.

31 8. If an appeal is taken by the dealer, exhibitor or displayer from an adverse judgment, the  
32 case should be assigned for hearing at the earliest practicable date and expedited in every way.  
33 Destruction or disposition of a matter declared forfeited shall be postponed until the judgment has  
34 become final by exhaustion of appeal, or by expiration of the time for appeal, and until the matter  
35 is no longer needed as evidence in a criminal proceeding.

36 9. A determination of obscenity, pursuant to this subsection, shall not be admissible in any

1 criminal proceeding against any person or corporation for sale or possession of obscene matter;  
2 except that dealer, distributor or displayer from which the obscene matter was seized for forfeiture  
3 to the state.

4 10. When allegedly obscene matter or pornographic material for minors has been seized  
5 under a search warrant issued pursuant to subsection 2 of section 542.281 and the matter is no  
6 longer needed as evidence in a criminal proceeding the prosecuting attorney of the county in  
7 which the matter was seized may file a written motion with the circuit court of the county or  
8 judicial district in which the seizure occurred praying for an order directing the forfeiture of the  
9 matter. Upon filing of the motion, the court shall set a date for a hearing. Written notice of date,  
10 time, place and nature of the hearing shall be personally served upon the owner, dealer, exhibitor,  
11 displayer or such person's agent. Such notice shall be served no less than five days before the  
12 hearing.

13 11. If the evidence is clear and convincing that the matter is obscene as defined by law,  
14 and that the obscene material was being held or displayed for sale, exhibition, distribution or  
15 circulation to the public or that the matter is pornographic for minors and that the pornographic  
16 material was being held or displayed for sale, exhibition, distribution or circulation to minors, the  
17 judge shall declare it to be obscene or pornographic for minors and forfeited to the state and order  
18 its destruction or other disposition. A determination that the matter is obscene in a criminal  
19 proceeding as well as a determination that such obscene material was held or displayed for sale,  
20 exhibition, distribution or circulation to the public or a determination that the matter is  
21 pornographic for minors in a criminal proceeding as well as a determination that such  
22 pornographic material was held or displayed for sale, exhibition, distribution or circulation to  
23 minors shall be clear and convincing evidence that such material should be forfeited to the state;  
24 except that, no forfeiture shall be declared without the dealer, distributor or displayer being given  
25 a reasonable opportunity to appear in opposition and without a judge having thoroughly examined  
26 each item. A dealer, distributor or displayer shall have had reasonable opportunity to appear in  
27 opposition if the matter the prosecutor seeks to destroy is the same matter that formed the basis of  
28 a criminal proceeding against the dealer, distributor or displayer where the dealer, distributor or  
29 displayer has been charged and found guilty of holding or displaying for sale, exhibiting,  
30 distributing or circulating obscene material to the public or pornographic material for minors to  
31 minors. If the matter is not found to be obscene, or if obscene material is not found to have been  
32 held or displayed for sale, exhibition, distribution or circulation to the public, or if the matter is  
33 not found to be pornographic for minors or if pornographic material is not found to have been  
34 held or displayed for sale, exhibition, distribution or circulation to minors, the matter shall be  
35 restored forthwith to the dealer, exhibitor or displayer.

36 12. If an appeal is taken by the dealer, exhibitor or displayer from an adverse judgment,

1 the case shall be assigned for hearing at the earliest practicable date and expedited in every way.  
2 Destruction or disposition of matter declared forfeited shall be postponed until the judgment has  
3 become final by exhaustion of appeal, or by expiration of the time for appeal, and until the matter  
4 is no longer needed as evidence in a criminal proceeding.

5 13. A determination of obscenity shall not be admissible in any criminal proceeding  
6 against any person or corporation for sale or possession of obscene matter.

7 14. An appeal by any party shall be allowed from the judgment of the court as in other  
8 civil actions.

9 15. All other property still in the custody of an officer or of a court as the result of any  
10 seizure and which has not been forfeited pursuant to this section or any other provision of law  
11 after three years following the seizure and which has ceased to be useful as evidence shall be  
12 deemed abandoned, converted to cash and shall be turned over immediately to the treasurer  
13 pursuant to section 447.543.

14 16. In fiscal year 2003, the commissioner of administration shall estimate the amount of  
15 any additional state revenue received pursuant to this section and section 447.532, shall transfer  
16 an equivalent amount of general revenue to the schools of the future fund created in section  
17 163.005."; and

18  
19 Further amend said bill, Page 36, Section 559.105, Line 28, by inserting after all of said  
20 line the following:

21  
22 "566.083. 1. A person commits the crime of sexual misconduct involving a child if [the]  
23 such person:

24 (1) Knowingly exposes his or her genitals to a child less than fifteen years of age under  
25 circumstances in which he or she knows that his or her conduct is likely to cause affront or alarm  
26 to the child;

27 (2) Knowingly exposes his or her genitals to a child less than fifteen years of age for the  
28 purpose of arousing or gratifying the sexual desire of any person, including the child; or

29 (3) Knowingly coerces or induces a child less than fifteen years of age to expose the  
30 child's genitals or breasts of a female child for the purpose of arousing or gratifying the sexual  
31 desire of any person, including the child.

32 2. The provisions of this section shall apply regardless of whether the person violates [the]  
33 this section in person or via the Internet or other electronic means.

34 3. It is not an affirmative defense to prosecution for a violation of this section that the  
35 other person was a peace officer masquerading as a minor.

36 4. Sexual misconduct involving a child or attempted sexual misconduct involving a child

1 is a class D felony unless the actor has previously pleaded guilty to or been found guilty of an  
2 offense pursuant to this chapter or the actor has previously pleaded guilty to or has been convicted  
3 of an offense against the laws of another state or jurisdiction which would constitute an offense  
4 under this chapter, in which case it is a class C felony.

5 566.151. 1. A person at least twenty-one years of age or older commits the crime of  
6 enticement of a child in the first degree if that person persuades, solicits, coaxes, entices, or lures  
7 whether by words, actions or through communication via the Internet or any electronic  
8 communication, any person who is less than fifteen years of age for the purpose of engaging in  
9 sexual conduct.

10 2. It is not an affirmative defense to a prosecution for a violation of this section that the  
11 other person was a peace officer masquerading as a minor.

12 3. Enticement of a child or an attempt to commit enticement of a child in the first degree  
13 is a felony for which the authorized term of imprisonment shall be not less than five years and not  
14 more than thirty years. No person convicted under this section shall be eligible for parole,  
15 probation, conditional release, or suspended imposition or execution of sentence for a period of  
16 five calendar years.”; and

17  
18 Further amend said bill by amending the title, enacting clause, and intersectional references  
19 accordingly.