

HOUSE

AMENDMENT NO. ___

Offered by

of

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

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

18 Further amend said bill, Page 31, Section 531.528, Line 31,
19 by inserting after all of said line the following:

20 "542.301. 1. Property which comes into the custody of an
21 officer or of a court as the result of any seizure and which has
22 not been forfeited pursuant to any other provisions of law or
23 returned to the claimant shall be disposed of as follows:

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

Action Taken _____ Date _____

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

5 (b) Upon the filing of such motion, the judge shall order
6 notice to be given to all persons interested in the property,
7 including other claimants and the person from whose possession
8 the property was seized, of the time, place and nature of the
9 hearing to be held on the motion. The notice shall be given in a
10 manner reasonably calculated to reach the attention of all
11 interested persons. Notice may be given to unknown persons and
12 to persons whose address is unknown by publication in a newspaper
13 of general circulation in the county. No property shall be
14 delivered to any claimant unless all interested persons have been
15 given a reasonable opportunity to appear and to be heard;

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

21 (d) A law enforcement officer having custody of seized
22 property may, at any time that seized property has ceased to be
23 useful as evidence, request that the prosecuting attorney of the
24 county in which property was seized file a motion with the court
25 of such county for the disposition of the seized property. If
26 the prosecuting attorney does not file such motion within sixty
27 days of the request by the law enforcement officer having custody
28 of the seized property, then such officer may request that the
29 attorney general file a written motion with the circuit court of
30 the county or judicial district in which the seizure occurred.
31 Upon filing of the motion, the court shall issue an order
32 directing the disposition of the property. Such disposition may,
33 if the property is not claimed within one year from the date of
34 the seizure or if no one establishes a right to it, and the
35 seized property has ceased to be useful as evidence, include a
36 public sale of the property. Pursuant to a motion properly filed
37 and granted under this section, the proceeds of any sale, less

1 necessary expenses of preservation and sale, shall be paid into
2 the county treasury for the use of the county. If the property
3 is not salable, the judge may order its destruction.
4 Notwithstanding any other provision of law, if no claim is filed
5 within one year of the seizure and no motion pursuant to this
6 section is filed within six months thereafter, and the seized
7 property has ceased to be useful as evidence, the property shall
8 be deemed abandoned, converted to cash and shall be turned over
9 immediately to the treasurer pursuant to section 447.543;

10 (e) If the property is a living animal or is perishable,
11 the judge may, at any time, order it sold at public sale. The
12 proceeds shall be held in lieu of the property. A written
13 description of the property sold shall be filed with the judge
14 making the order of sale so that the claimant may identify the
15 property. If the proceeds are not claimed within the time
16 limited for the claim of the property, the proceeds shall be paid
17 into the county treasury. If the property is not salable, the
18 judge may order its destruction.

19 (2) Weapons, tools, devices, computers, computer equipment,
20 computer software, computer hardware, cellular telephones, or
21 other devices capable of accessing the internet, and substances
22 other than motor vehicles, aircraft or watercraft, used by the
23 owner or with the owner's consent as a means for committing
24 felonies other than the offense of possessing burglary tools in
25 violation of section 569.180, and property, the possession of
26 which is an offense under the laws of this state or which has
27 been used by the owner, or used with the owner's acquiescence or
28 consent, as a raw material or as an instrument to manufacture
29 [or], produce, or distribute, or be used as a means of storage of
30 anything the possession of which is an offense under the laws of
31 this state, or which any statute authorizes or directs to be
32 seized, other than lawfully possessed weapons seized by an
33 officer incident to an arrest, shall be forfeited to the state of
34 Missouri.

35 2. The officer who has custody of the property shall inform
36 the prosecuting attorney of the fact of seizure and of the nature
37 of the property. The prosecuting attorney shall thereupon file a

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

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

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

35 5. If the forfeited property can be put to a lawful use, it
36 may be ordered sold after any alterations which are necessary to
37 adapt it to a lawful use have been made. In the case of

1 computers, computer equipment, computer software, computer
2 hardware, cellular telephones, or other devices capable of
3 accessing the internet, or other devices used in the acquisition,
4 possession, or distribution of child pornography or obscene
5 material, the law enforcement agency in possession of such items
6 may, upon court order, retain possession of such property and
7 convert such property to the use of the law enforcement agency
8 for use in criminal investigations. If there is a holder of a
9 bona fide lien against property which has been used as a means
10 for committing an offense or which has been used as a raw
11 material or as an instrument to manufacture or produce anything
12 which is an offense to possess, who establishes that the use was
13 without the lienholder's acquiescence or consent, the proceeds,
14 less necessary expenses of preservation and sale, shall be paid
15 to the lienholder to the amount of the lienholder's lien. The
16 remaining amount shall be paid into the county treasury.

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

21 7. When a warrant has been issued to search for and seize
22 allegedly obscene matter for forfeiture to the state, after an
23 adversary hearing, the judge, upon return of the warrant with the
24 matter seized, shall give notice of the fact to the prosecuting
25 attorney of the county in which the matter was seized and the
26 dealer, exhibitor or displayer and shall conduct further
27 adversary proceedings to determine whether the matter is subject
28 to forfeiture. If the evidence is clear and convincing that the
29 matter is obscene as defined by law and it was being held or
30 displayed for sale, exhibition, distribution or circulation to
31 the public, the judge shall declare it to be obscene and
32 forfeited to the state and order its destruction or other
33 disposition; except that, no forfeiture shall be declared without
34 the dealer, distributor or displayer being given a reasonable
35 opportunity to appear in opposition and without the judge having
36 thoroughly examined each item. If the material to be seized is
37 the same as or another copy of matter that has already been

1 determined to be obscene in a criminal proceeding against the
2 dealer, exhibitor, displayer or such person's agent, the
3 determination of obscenity in the criminal proceeding shall
4 constitute clear and convincing evidence that the matter to be
5 forfeited pursuant to this subsection is obscene. Except when
6 the dealer, exhibitor or displayer consents to a longer period,
7 or by such person's actions or pleadings willfully prevents the
8 prompt resolution of the hearing, judgment shall be rendered
9 within ten days of the return of the warrant. If the matter is
10 not found to be obscene or is not found to have been held or
11 displayed for sale, exhibition or distribution to the public, or
12 a judgment is not entered within the time provided for, the
13 matter shall be restored forthwith to the dealer, exhibitor or
14 displayer.

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

23 9. A determination of obscenity, pursuant to this
24 subsection, shall not be admissible in any criminal proceeding
25 against any person or corporation for sale or possession of
26 obscene matter; except that dealer, distributor or displayer from
27 which the obscene matter was seized for forfeiture to the state.

28 10. When allegedly obscene matter or pornographic material
29 for minors has been seized under a search warrant issued pursuant
30 to subsection 2 of section 542.281 and the matter is no longer
31 needed as evidence in a criminal proceeding the prosecuting
32 attorney of the county in which the matter was seized may file a
33 written motion with the circuit court of the county or judicial
34 district in which the seizure occurred praying for an order
35 directing the forfeiture of the matter. Upon filing of the
36 motion, the court shall set a date for a hearing. Written notice
37 of date, time, place and nature of the hearing shall be

1 personally served upon the owner, dealer, exhibitor, displayer or
2 such person's agent. Such notice shall be served no less than
3 five days before the hearing.

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

1 to the dealer, exhibitor or displayer.

2 12. If an appeal is taken by the dealer, exhibitor or
3 displayer from an adverse judgment, the case shall be assigned
4 for hearing at the earliest practicable date and expedited in
5 every way. Destruction or disposition of matter declared
6 forfeited shall be postponed until the judgment has become final
7 by exhaustion of appeal, or by expiration of the time for appeal,
8 and until the matter is no longer needed as evidence in a
9 criminal proceeding.

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

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

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

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

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

29 "566.083. 1. A person commits the crime of sexual
30 misconduct involving a child if [the] such person:

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

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

1 or

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

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

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

12 4. Sexual misconduct involving a child or attempted sexual
13 misconduct involving a child is a class D felony unless the actor
14 has previously pleaded guilty to or been found guilty of an
15 offense pursuant to this chapter or the actor has previously
16 pleaded guilty to or has been convicted of an offense against the
17 laws of another state or jurisdiction which would constitute an
18 offense under this chapter, in which case it is a class C felony.

19 566.151. 1. A person at least twenty-one years of age or
20 older commits the crime of enticement of a child in the first
21 degree if that person persuades, solicits, coaxes, entices, or
22 lures whether by words, actions or through communication via the
23 Internet or any electronic communication, any person who is less
24 than fifteen years of age for the purpose of engaging in sexual
25 conduct.

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

29 3. Enticement of a child or an attempt to commit enticement
30 of a child in the first degree is a felony for which the
31 authorized term of imprisonment shall be not less than five years
32 and not more than thirty years. No person convicted under this
33 section shall be eligible for parole, probation, conditional
34 release, or suspended imposition or execution of sentence for a
35 period of five calendar years.

36 566.152. 1. A person at least twenty-one years of age or
37 older commits the crime of enticement of a child in the second

1 degree if that person persuades, solicits, coaxes, entices, or
2 lures whether by words, actions or through communication via the
3 internet or any electronic communication, any person who is at
4 least fifteen years of age but less than seventeen years of age
5 for the purpose of engaging in sexual conduct.

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

9 3. Enticement of a child or an attempt to commit enticement
10 of a child in the second degree is a class D felony.

11 566.153. 1. A person commits the crime of age
12 misrepresentation [with intent to solicit a minor when he or she]
13 when such person knowingly misrepresents his or her age [with the
14 intent to use the Internet to engage in criminal sexual conduct
15 involving a minor] to a person less than seventeen years of age
16 or to a police officer masquerading as a person less than
17 seventeen years of age in order to commit or attempt to commit a
18 felony offense under this chapter or chapter 568.

19 2. Age misrepresentation [with intent to solicit a minor]
20 is a class D felony.

21 568.080. 1. A person commits the crime of use of a child
22 in a sexual performance if, knowing the character and content
23 thereof, the person employs, authorizes, or induces a child less
24 than seventeen years of age to engage in a sexual performance or,
25 being a parent, legal guardian, or custodian of such child,
26 consents to the participation by such child in such sexual
27 performance.

28 2. As used in this section, the following terms shall mean:

29 (1) "Sexual conduct", actual or simulated, normal or
30 perverted acts of human masturbation; deviate sexual intercourse;
31 sexual intercourse; or physical contact with a person's clothed
32 or unclothed genitals, pubic area, buttocks, or the breast of a
33 female in an act of apparent sexual stimulation or gratification;

34 (2) "Sexual performance", any performance, or part thereof,
35 which includes sexual conduct by a child who is less than
36 seventeen years of age.

37 3. Use of a child in a sexual performance is a class C

1 felony, unless in the course thereof the person inflicts serious
2 emotional injury on the child, in which case the crime is a class
3 B felony." and

4 Further amend said title, enacting clause and intersectional
5 references accordingly.