



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-4223/1  
PJH:ahe

## 2015 SENATE BILL 546

January 8, 2016 - Introduced by Senators WANGGAARD, COWLES, GUDEX, LASSA, MARKLEIN, MOULTON and OLSEN, cosponsored by Representatives KLEEFISCH, BALLWEG, E. BROOKS, DUCHOW, HEATON, HORLACHER, JORGENSEN, KAHL, KREMER, KULP, T. LARSON, MACCO, MURPHY, NOVAK, A. OTT, QUINN, RIPP, RODRIGUEZ, ROHRKASTE, SANFELIPPO, SPIROS, TITTL and ZAMARRIPA. Referred to Committee on Judiciary and Public Safety.

1     **AN ACT to amend** 46.07, 301.32 (1), 302.13 and 303.01 (8) (b); and **to create**  
2             20.455 (2) (gj), 165.505, 303.01 (8) (c) 7r., 303.065 (5) (ck), 814.75 (7m), 814.76  
3             (5m) and 973.0425 of the statutes; **relating to:** administrative subpoena for  
4             investigating Internet crimes against children, creating an Internet crimes  
5             against children surcharge, and making an appropriation.

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### *Analysis by the Legislative Reference Bureau*

This bill creates an Internet crimes against children surcharge. Under the bill, if a court imposes a sentence on a person or places a person on probation for committing a crime, the court imposes a surcharge of \$20 for each misdemeanor conviction and \$40 for each felony conviction. Under the bill, the Department of Justice uses the moneys received from the surcharge to fund the activities of task forces on Internet crimes against children, and to fund criminal investigations, law enforcement, and prosecutions relating to Internet crimes against children.

The bill also authorizes the attorney general or his or her designee to issue an administrative subpoena to a provider of an electronic communication service or remote computing service that would compel the provider to produce documents or records helpful to an investigation of an Internet crime against a child. The bill allows the person issued the subpoena to motion a circuit court to limit or quash the subpoena and allows the attorney general or his or her designee to request that the subpoena be kept confidential until after all requested documents and records are produced.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 20.455 (2) (gj) of the statutes is created to read:

2           20.455 (2) (gj) *Internet crimes against children surcharge.* All moneys received  
3 from any Internet crimes against children surcharge imposed under s. 973.0425 for  
4 criminal investigative operations and law enforcement relating to Internet crimes  
5 against children, prosecution of Internet crimes against children, and activities of  
6 state and local Internet crimes against children task forces.

7           **SECTION 2.** 46.07 of the statutes is amended to read:

8           **46.07 Property of patients or residents.** All money including wages and  
9 other property delivered to an officer or employee of any institution for the benefit  
10 of a patient or resident shall immediately be delivered to the steward, who shall enter  
11 the money upon the steward's books to the credit of the patient or resident. The  
12 property shall be used only under the direction and with the approval of the  
13 superintendent and for the crime victim and witness assistance surcharge under s.  
14 973.045 (4), the delinquency victim and witness assistance surcharge under s. 938.34  
15 (8d) (c), the deoxyribonucleic acid analysis surcharge under s. 973.046 (1r), the child  
16 pornography surcharge under s. 973.042, the Internet crimes against children  
17 surcharge under s. 973.0425, the drug offender diversion surcharge under s. 973.043,  
18 or the benefit of the patient or resident. If, after paying any applicable surcharge,  
19 the money remains uncalled for for one year after the patient's or resident's death or  
20 departure from the institution, the superintendent shall deposit the money in the  
21 general fund. If any patient or resident leaves property, other than money, uncalled

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1 for at an institution for one year, the superintendent shall sell the property, and the  
2 proceeds shall be deposited in the general fund. If any person satisfies the  
3 department, within 5 years after the deposit, of his or her right to the deposit, the  
4 department shall direct the department of administration to draw its warrant in  
5 favor of the claimant and it shall charge the same to the appropriation made by s.  
6 20.913 (3) (c).

7 **SECTION 3.** 165.505 of the statutes is created to read:

8 **165.505 Internet crimes against children; administrative subpoena.**

9 **(1)** In this section:

10 (a) "Internet crime against a child" means the commission of, or the solicitation,  
11 conspiracy, or attempt to commit, any of the following:

12 1. A violation of s. 948.05, 948.075, 948.11, or 948.12.

13 2. A sex offense or a violation of ch. 948 that involves the use of a device that  
14 permits the transmission of wire or electronic communications or images through an  
15 electronic communications service, as defined in s. 968.27 (5), or a remote computing  
16 service, as defined in s. 968.27 (14g).

17 (b) "Sex offense" has the meaning given in s. 301.45 (1d) (b).

18 **(2)** The attorney general or his or her designee may issue and cause to be served  
19 a subpoena, in substantially the form authorized under s. 885.02, upon a provider  
20 of an electronic communication service or a remote computing service to compel the  
21 production of records, information, and documentary evidence if all of the following  
22 apply:

23 (a) The subpoena relates to an investigation of an Internet crime against a  
24 child.

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1 (b) The attorney general or his or her designee has reasonable cause to believe  
2 that an Internet or electronic service account provided by an electronic  
3 communication service or a remote computing service has been used in the crime.

4 (3) The attorney general or his or her designee issuing a subpoena under sub.  
5 (2) shall ensure that the subpoena describes each record or other information  
6 pertaining to a customer or subscriber of the service to be produced and prescribes  
7 a reasonable return date by which the person served with the subpoena must  
8 assemble each record or other information and make them available.

9 (4) A person who is duly served a subpoena issued under sub. (2) shall, if  
10 requested, provide the following information about the customer or subscriber:

11 (a) Name.

12 (b) Address.

13 (c) Local and long distance telephone connection records, satellite-based  
14 Internet service provider connection records, or records of session times and  
15 durations.

16 (d) Duration of an applicable service, including the start date for the service  
17 and the type of service used.

18 (e) Telephone or instrument number or other subscriber number or identity,  
19 including a temporarily assigned network address.

20 (f) Means and source of payment for the electronic communication service or  
21 remote computing service, including credit card or any bank account number.

22 (5) A person served with a subpoena under sub. (2) may, before the return date  
23 indicated under sub. (3), petition a circuit court in the county where the subpoena  
24 was issued for an order to modify or quash the subpoena or to prohibit disclosure of  
25 information by the court.

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1           **(6)** If the investigation into an Internet crime against a child specified under  
2 sub. (2) does not result in a prosecution or other proceeding against a person, the  
3 attorney general or his or her designee shall either destroy, or return to the person  
4 who produced, the records and information requested by the subpoena.

5           **(7)** The attorney general or his or her designee may order a provider of an  
6 electronic communication service or remote computing service not to notify or  
7 disclose the existence of the subpoena to the customer or subscriber or any other  
8 person, except an attorney for the purpose of obtaining legal advice or a circuit court,  
9 for a period of 90 days after the provider produces the requested records and  
10 information or files a petition under sub. (5) if the attorney general or his or her  
11 designee has reason to believe that the victim of the Internet crime against a child  
12 investigated under sub. (2) is under 18 years of age, and that notification or  
13 disclosure of the existence of the subpoena will do any of the following:

14           (a) Endanger the life or physical safety of an individual.

15           (b) Lead to flight from prosecution.

16           (c) Lead to the destruction or tampering with evidence.

17           (d) Lead to the intimidation of a potential witness.

18           (e) Otherwise seriously jeopardize the investigation.

19           **(8)** Records and information produced in response to a subpoena issued under  
20 sub. (2) are not subject to inspection or copying under s. 19.35 (1), except that the  
21 attorney general or his or her designee may, upon request, disclose the records and  
22 information to another law enforcement agency, Internet crimes against children  
23 task force, or a district attorney.

24           **SECTION 4.** 301.32 (1) of the statutes is amended to read:

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1           301.32 (1) PROPERTY DELIVERED TO WARDEN OR SUPERINTENDENT; CREDIT AND DEBIT.

2 All money and other property delivered to an employee of any state correctional  
3 institution for the benefit of a prisoner or resident shall be delivered to the warden  
4 or superintendent, who shall enter the property upon his or her accounts to the credit  
5 of the prisoner or resident. The property may be used only under the direction and  
6 with the approval of the superintendent or warden and for the crime victim and  
7 witness assistance surcharge under s. 973.045 (4), the delinquency victim and  
8 witness assistance surcharge under s. 938.34 (8d) (c), the deoxyribonucleic acid  
9 analysis surcharge under s. 973.046 (1r), the child pornography surcharge under s.  
10 973.042, the Internet crimes against children surcharge under s. 973.0425, the drug  
11 offender diversion surcharge under s. 973.043, or the benefit of the prisoner or  
12 resident. If the money remains uncalled for for one year after the prisoner's or  
13 resident's death or departure from the state correctional institution, the  
14 superintendent shall deposit it in the general fund. If any prisoner or resident leaves  
15 property, other than money, uncalled for at a state correctional institution for one  
16 year, the superintendent shall sell the property and deposit the proceeds in the  
17 general fund, donate the property to a public agency or private, nonprofit  
18 organization or destroy the property. If any person satisfies the department, within  
19 5 years after the deposit, of his or her right to the deposit, the department shall direct  
20 the department of administration to draw its warrant in favor of the claimant and  
21 it shall charge the same to the appropriation made by s. 20.913 (3) (bm).

22           **SECTION 5.** 302.13 of the statutes is amended to read:

23           **302.13 Preservation of property an inmate brings to prison.** The  
24 department shall preserve money and effects, except clothes, in the possession of an  
25 inmate when admitted to the prison and, subject to the crime victim and witness

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1 assistance surcharge under s. 973.045 (4), the deoxyribonucleic acid analysis  
2 surcharge under s. 973.046 (1r), the child pornography surcharge under s. 973.042,  
3 the Internet crimes against children surcharge under s. 973.0425, and the drug  
4 offender diversion surcharge under s. 973.043, shall restore the money and effects  
5 to the inmate when discharged.

6 **SECTION 6.** 303.01 (8) (b) of the statutes is amended to read:

7 303.01 (8) (b) The department shall distribute earnings of an inmate or  
8 resident, other than an inmate or resident employed under sub. (2) (em), for the crime  
9 victim and witness assistance surcharge under s. 973.045 (4), for the delinquency  
10 victim and witness assistance surcharge under s. 938.34 (8d) (c), for the  
11 deoxyribonucleic acid analysis surcharge under s. 973.046 (4) and for compliance  
12 with s. 303.06 (2) and may distribute earnings for the support of the inmate's or  
13 resident's dependents and for other obligations either acknowledged by the inmate  
14 or resident in writing or which have been reduced to judgment that may be satisfied  
15 according to law. The department may also distribute earnings for the child  
16 pornography surcharge under s. 973.042, the Internet crimes against children  
17 surcharge under s. 973.0425, or the drug offender diversion surcharge under s.  
18 973.043, but only if the inmate or resident has first provided for the reasonable  
19 support of his or her dependents.

20 **SECTION 7.** 303.01 (8) (c) 7r. of the statutes is created to read:

21 303.01 (8) (c) 7r. Payment of the Internet crimes against children surcharge  
22 under s. 973.0425.

23 **SECTION 8.** 303.065 (5) (ck) of the statutes is created to read:

24 303.065 (5) (ck) Payment of the Internet crimes against children surcharge  
25 under s. 973.0425.

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1           **SECTION 9.** 814.75 (7m) of the statutes is created to read:

2           814.75 **(7m)** The Internet crimes against children surcharge under s. 973.0425.

3           **SECTION 10.** 814.76 (5m) of the statutes is created to read:

4           814.76 **(5m)** The Internet crimes against children surcharge under s. 973.0425.

5           **SECTION 11.** 973.0425 of the statutes is created to read:

6           **973.0425 Internet crimes against children surcharge.** (1) If a court  
7 imposes a sentence or places a person on probation, the court shall impose an  
8 Internet crimes against children surcharge in the following amount:

9           (a) For each misdemeanor conviction, \$20.

10          (b) For each felony conviction, \$40.

11          **(2)** After determining the amount due, the clerk of court shall collect and  
12 transmit the amount to the county treasurer under s. 59.40 (2) (m). The county  
13 treasurer shall then make payment to the secretary of administration under s. 59.25  
14 (3) (f) 2.

15          **(3)** The secretary of administration shall credit the surcharge to the  
16 appropriation account under s. 20.455 (2) (gj).

17          **(4)** If an inmate in a state prison or a person sentenced to a state prison has  
18 not paid the Internet crimes against children surcharge under this section, the  
19 department shall assess and collect the amount owed from the inmate's wages or  
20 other moneys. Any amount collected under this subsection shall be transmitted to  
21 the secretary of administration.

22           **SECTION 12. Initial applicability.**

23           (1) This act first applies to persons who are sentenced or placed on probation  
24 on the effective date of this subsection.

25

(END)