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# Wisconsin Legislative Council

## AMENDMENT MEMO

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**Memo published:** January 17, 2024

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### 2023 Senate Bill 314

### Senate Substitute Amendment 1 and Senate Amendment 2 to Senate Substitute Amendment 1

## BACKGROUND

State law prohibits the possession of child pornography, which generally applies to recordings of a child, meaning a person who has not attained 18 years of age. Specifically, the statutes prohibit a person from possessing, or accessing with intent to view, a recording of a child engaged in sexually explicit conduct if the person: (1) knows that he or she possesses or has accessed the material; (2) knows, or reasonably should know, that the material contains depictions of sexually explicit conduct; and (3) knows or reasonably should know that the child depicted in the material has not attained the age of 18.

## 2023 SENATE BILL 314

2023 Senate Bill 314 prohibits conduct related to the possession of obscene material that contains a depiction of a purported child engaging in sexually explicit conduct. Under the bill, a “depiction of a purported child” is defined as “a visual representation that appears to depict an actual child but does not depict an actual child.”

Under the bill, it is a Class D felony to receive, distribute, produce, possess, or access with intent to view obscene material<sup>1</sup> that contains a “depiction of a purported child” engaging in sexually explicit conduct, if both of the following circumstances apply: (1) the person knows that he or she received, distributed, produced, possessed, or accessed the material; and (2) the person knows, or reasonably should know, that the material contains a depiction of a purported child engaging in sexually explicit conduct.

## SENATE SUBSTITUTE AMENDMENT 1

Senate Substitute Amendment 1 prohibits similar conduct but does so in a newly created crime titled “Possession of Virtual Pornography,” instead of adding the newly prohibited conduct within the current law crime of child pornography, as provided under the bill.

In addition to prohibiting the conduct in a new, stand-alone crime, the substitute amendment differs from the bill in the following ways:

- Modifies the definition of “depiction of a purported child” to mean “a visual representation that appears to depict an actual child but may or may not depict an actual child.”

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<sup>1</sup> The bill defines “obscene material” as a photograph, film, motion picture, or digital or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, that: (1) the average person, applying contemporary community standards, would find appeals to the prurient interest if taken as a whole; (2) under contemporary community standards, describes or shows sexually explicit conduct in a patently offensive way; and (3) lacks serious literary, artistic, political, educational, or scientific value, if taken as a whole.

- Allows a person to be in violation of the new crime if either, rather than both, of the following conditions are met: (1) the person knows that he or she received, distributed, produced, possessed, or accessed the material; or (2) the person knows, or reasonably should know, that the material contains a depiction of a purported child engaging in sexually explicit conduct should know, that the material contains a depiction of a purported child engaging in sexually explicit conduct.
- Creates a lower felony penalty (Class I felony) if the actor is under 18 years of age when the offense occurs, similar to the penalties under current law for possession of child pornography.

## **SENATE AMENDMENT 2 TO SENATE SUBSTITUTE AMENDMENT 1**

Senate Amendment 2 modifies Senate Substitute Amendment 1 by replacing “or” with “and” among the conditions that must be met for the crime to occur.

In other words, under the amendment, a person is prohibited from engaging in certain acts involving obscene material containing a “depiction of a purported child” engaging in sexually explicit conduct, if both, rather than one, of the following circumstances apply: (1) the person knows that he or she received, distributed, produced, possessed, or accessed the material; and (2) the person knows, or reasonably should know, that the material contains a depiction of a purported child engaging in sexually explicit conduct.

## **BILL HISTORY**

Senator James offered Senate Substitute Amendment 1 on December 18, 2023. On January 10, 2024, the Senate Committee on Judiciary and Public Safety recommended adoption of the substitute amendment, and passage of the bill, as amended, on votes of Ayes, 7; Noes, 0.

Senator James offered Senate Amendment 2 on January 12, 2024. On January 16, 2024, the Senate took the following actions on voice votes: (1) adopted Senate Amendment 2 to Senate Substitute Amendment 1; (2) adopted Senate Substitute Amendment 1, as amended; and (3) passed Senate Bill 314, as amended.

For a full history of the bill, visit the Legislature’s [bill history page](#).

AO:ksm