



State of Wisconsin  
2023 - 2024 LEGISLATURE

LRB-3103/1  
CMH:cjs

## 2023 SENATE BILL 314

May 24, 2023 - Introduced by Senators JAMES, BALLWEG, HUTTON, TOMCZYK and WANGGAARD, cosponsored by Representatives CALLAHAN, BEHNKE, BINSFELD, BODDEN, BRANDTJEN, DONOVAN, DUCHOW, HURD, S. JOHNSON, MAXEY, MICHALSKI, MURPHY, O'CONNOR, OHNSTAD, RETTINGER, SUBECK and WICHGERS. Referred to Committee on Judiciary and Public Safety.

- 1     **AN ACT** *to amend* 939.617 (2) (b); and *to create* 948.12 (4) of the statutes;  
2           **relating to:** possession of child pornography and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

Under current law, a person is guilty of possession of child pornography if he or she knowingly possesses, or accesses with the intent to view, film, photographic negatives, photographs, motion pictures, videotapes, or other recordings of a child engaged in actual or simulated sexually explicit conduct. To be convicted the person has to know or reasonably should know that the depicted child is under the age of 18. Possession of child pornography is a Class D felony and has a three-year mandatory minimum period of confinement in prison if the person is at least 18 and at least 48 months older than the child who is depicted.

Under this bill, a person is guilty of possession of child pornography if he or she knowingly receives, distributes, produces, possesses, or accesses with the intent to view, obscene photographs, film, motion pictures, or digital or computer-generated images or pictures that contain a visual representation that appears to depict an actual child engaged in sexually explicit conduct although the representation does not depict an actual child. Material is "obscene" if 1) the average person, applying contemporary community standards, would find that it appeals to the prurient interest if taken as a whole; 2) using contemporary community standards, it describes or shows sexually explicit conduct in a patently offensive way; and 3) it lacks serious literary, artistic, political, educational, or scientific value, if taken as a whole. The felony created under this bill is a Class D felony; it has a three-year mandatory minimum period of confinement in prison if the person is at least 18.

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Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

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

1           **SECTION 1.** 939.617 (2) (b) of the statutes is amended to read:

2           939.617 **(2)** (b) If the person is convicted of a violation of s. 948.12 (1m) or (2m),  
3 the person is no more than 48 months older than the child who engaged in the  
4 sexually explicit conduct.

5           **SECTION 2.** 948.12 (4) of the statutes is created to read:

6           948.12 **(4)** (a) In this subsection:

7           1. “Depiction of a purported child” means a visual representation that appears  
8 to depict an actual child but does not depict an actual child.

9           2. “Obscene material” means a photograph, film, motion picture, or digital or  
10 computer-generated image or picture, whether made or produced by electronic,  
11 mechanical, or other means, that:

12           a. The average person, applying contemporary community standards, would  
13 find appeals to the prurient interest if taken as a whole.

14           b. Under contemporary community standards, describes or shows sexually  
15 explicit conduct in a patently offensive way.

16           c. Lacks serious literary, artistic, political, educational, or scientific value, if  
17 taken as a whole.

18           (b) Whoever receives, distributes, produces, possesses, or accesses in any way  
19 with the intent to view, obscene material that contains a depiction of a purported

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1 child engaging in sexually explicit conduct is guilty of a Class D felony if all of the  
2 following circumstances apply:

3 1. The person knows that he or she received, distributed, produced, possessed,  
4 or accessed the material.

5 2. The person knows, or reasonably should know, that the material contains a  
6 depiction of a purported child engaging in sexually explicit conduct.

7 (END)