
Wisconsin Legislative Council

AMENDMENT MEMO



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2023 Assembly Bill 315

Assembly Substitute Amendment 1 and Assembly Amendment 1 to Assembly 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 Assembly Bill 315 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 material¹ 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.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly 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.”

¹ 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.
- 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.

ASSEMBLY AMENDMENT 1 TO ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Amendment 1 modifies Assembly 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

Representative Callahan introduced Assembly Substitute Amendment 1 on December 18, 2023, and Assembly Amendment 1 to Assembly Substitute Amendment 1 on February 1, 2024. On February 8, 2024, the Assembly Committee on Criminal Justice and Public Safety voted to recommend adoption of the amendments on votes of Ayes, 14; Noes, 1; and voted to recommend adoption of the bill, as amended, on a vote of Ayes, 15; Noes, 0.

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

TK:ksm