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# Wisconsin Legislative Council

## ACT MEMO

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**2023 Wisconsin Act 224**  
[2023 Senate Bill 314]

**Possession of Virtual Child  
Pornography**

### BACKGROUND

State law prohibits the possession of child pornography. This prohibition applies to recordings of a “child,” defined as 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 WISCONSIN ACT 224

2023 Wisconsin Act 224 creates a new crime, titled *Possession of virtual child pornography*, that prohibits certain acts relating to obscene material<sup>1</sup> that contains a “depiction of a purported child,” defined as a visual representation that appears to depict an actual child but may or may not depict an actual child.

Specifically, the new crime prohibits receiving, distributing, producing, or possessing, or accessing in any way with the intent to view, obscene material that contains a depiction of a purported child engaging in sexually explicit conduct, if the person: (1) knows that he or she received, distributed, produced, possessed, or accessed the material; and (2) knows, or reasonably should know, that the material contains a depiction of a purported child engaging in sexually explicit conduct.

Under the act, violations of the new crime are punishable as a Class D felony or, if the actor is under 18 years of age when the offense occurs, a Class I felony. The act imposes consequences for violations of the new crime that are similar to those that apply when an individual is convicted of possession of child pornography. Those consequences include a mandatory three-year minimum period of confinement in prison as part of the individual’s sentence, a requirement that the individual register as a sex offender with the Department of Corrections, and payment of a child pornography surcharge of \$500 for each image or copy of an image associated with the crime.

**Effective date:** March 29, 2024

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

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<sup>1</sup> The act 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.