

In the House of Representatives, U. S.,

September 28, 2018.

Resolved, That the bill from the Senate (S. 2152) entitled “An Act to amend title 18, United States Code, to provide for assistance for victims of child pornography, and for other purposes.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Amy, Vicky, and Andy*
3 *Child Pornography Victim Assistance Act of 2018”.*

4 ***SEC. 2. FINDINGS.***

5 *Congress finds the following:*

6 (1) *The demand for child pornography harms*
7 *children because it drives production, which involves*
8 *severe child sexual abuse and exploitation.*

9 (2) *The harms caused by child pornography*
10 *begin, but do not end, with child sex assault because*
11 *child pornography is a permanent record of that*
12 *abuse and trafficking in those images compounds the*
13 *harm to the child.*

1 (3) *In Paroline v. United States (2014)*, the Su-
 2 preme Court recognized that “every viewing of child
 3 pornography is a repetition of the victim’s abuse”.

4 (4) *The American Professional Society on the*
 5 *Abuse of Children* has stated that for victims of child
 6 pornography, “the sexual abuse of the child, the me-
 7 morialization of that abuse which becomes child por-
 8 nography, and its subsequent distribution and view-
 9 ing become psychologically intertwined and each com-
 10 pound the harm suffered by the child-victim”.

11 (5) *Victims suffer continuing and grievous harm*
 12 *as a result of knowing that a large, indeterminate*
 13 *number of individuals have viewed and will in the fu-*
 14 *ture view images of their childhood sexual abuse.*
 15 *Harms of this sort are a major reason that child por-*
 16 *nography is outlawed.*

17 (6) *The unlawful collective conduct of every indi-*
 18 *vidual who reproduces, distributes, or possesses the*
 19 *images of a victim’s childhood sexual abuse plays a*
 20 *part in sustaining and aggravating the harms to that*
 21 *individual victim.*

22 (7) *It is the intent of Congress that victims of*
 23 *child pornography be compensated for the harms re-*
 24 *sulting from every perpetrator who contributes to*
 25 *their anguish. Such an aggregate causation standard*

1 *reflects the nature of child pornography and the*
 2 *unique ways that it actually harms victims.*

3 **SEC. 3. DETERMINING RESTITUTION.**

4 *(a) DETERMINING RESTITUTION.—Section 2259(b) of*
 5 *title 18, United States Code, is amended—*

6 *(1) in paragraph (1)—*

7 *(A) by striking “The order” and inserting*
 8 *“Except as provided in paragraph (2), the*
 9 *order”; and*

10 *(B) by striking “as determined by the court*
 11 *pursuant to paragraph (2)” after “of the victim’s*
 12 *losses”;*

13 *(2) by striking paragraph (3);*

14 *(3) by redesignating paragraph (2) as para-*
 15 *graph (3); and*

16 *(4) by inserting after paragraph (1) the fol-*
 17 *lowing:*

18 *“(2) RESTITUTION FOR TRAFFICKING IN CHILD*
 19 *PORNOGRAPHY.—If the defendant was convicted of*
 20 *trafficking in child pornography, the court shall order*
 21 *restitution under this section in an amount to be de-*
 22 *termined by the court as follows:*

23 *“(A) DETERMINING THE FULL AMOUNT OF*
 24 *A VICTIM’S LOSSES.—The court shall determine*
 25 *the full amount of the victim’s losses that were*

1 *incurred or are reasonably projected to be in-*
2 *curred by the victim as a result of the trafficking*
3 *in child pornography depicting the victim.*

4 “(B) *DETERMINING A RESTITUTION*
5 *AMOUNT.—After completing the determination*
6 *required under subparagraph (A), the court shall*
7 *order restitution in an amount that reflects the*
8 *defendant’s relative role in the causal process*
9 *that underlies the victim’s losses, but which is no*
10 *less than \$3,000.*

11 “(C) *TERMINATION OF PAYMENT.—A vic-*
12 *tim’s total aggregate recovery pursuant to this*
13 *section shall not exceed the full amount of the*
14 *victim’s demonstrated losses. After the victim has*
15 *received restitution in the full amount of the vic-*
16 *tim’s losses as measured by the greatest amount*
17 *of such losses found in any case involving that*
18 *victim that has resulted in a final restitution*
19 *order under this section, the liability of each de-*
20 *fendant who is or has been ordered to pay res-*
21 *titution for such losses to that victim shall be ter-*
22 *minated. The court may require the victim to*
23 *provide information concerning the amount of*
24 *restitution the victim has been paid in other*
25 *cases for the same losses.”.*

1 (b) *ADDITIONAL DEFINITIONS.—Section 2259(c) of*
 2 *title 18, United States Code, is amended—*

3 (1) *in the heading, by striking “DEFINITION”*
 4 *and inserting “DEFINITIONS”;*

5 (2) *by striking “For purposes” and inserting the*
 6 *following:*

7 “(4) *VICTIM.—For purposes”;*

8 (3) *by striking “under this chapter, including, in*
 9 *the case” and inserting “under this chapter. In the*
 10 *case”;*

11 (4) *by inserting after “or any other person ap-*
 12 *pointed as suitable by the court,” the following: “may*
 13 *assume the crime victim’s rights under this section,”;*
 14 *and*

15 (5) *by inserting before paragraph (4), as so des-*
 16 *ignated, the following:*

17 “(1) *CHILD PORNOGRAPHY PRODUCTION.—For*
 18 *purposes of this section and section 2259A, the term*
 19 *‘child pornography production’ means conduct pro-*
 20 *scribed by subsections (a) through (c) of section 2251,*
 21 *section 2251A, section 2252A(g) (in cases in which*
 22 *the series of felony violations involves at least 1 of the*
 23 *violations listed in this subsection), section 2260(a),*
 24 *or any offense under chapter 109A or chapter 117*

1 *that involved the production of child pornography (as*
 2 *such term is defined in section 2256).*

3 “(2) *FULL AMOUNT OF THE VICTIM’S LOSSES.—*
 4 *For purposes of this subsection, the term ‘full amount*
 5 *of the victim’s losses’ includes any costs incurred, or*
 6 *that are reasonably projected to be incurred in the fu-*
 7 *ture, by the victim, as a proximate result of the of-*
 8 *fenses involving the victim, and in the case of traf-*
 9 *ficking in child pornography offenses, as a proximate*
 10 *result of all trafficking in child pornography offenses*
 11 *involving the same victim, including—*

12 “(A) *medical services relating to physical,*
 13 *psychiatric, or psychological care;*

14 “(B) *physical and occupational therapy or*
 15 *rehabilitation;*

16 “(C) *necessary transportation, temporary*
 17 *housing, and child care expenses;*

18 “(D) *lost income;*

19 “(E) *reasonable attorneys’ fees, as well as*
 20 *other costs incurred; and*

21 “(F) *any other relevant losses incurred by*
 22 *the victim.*

23 “(3) *TRAFFICKING IN CHILD PORNOGRAPHY.—*
 24 *For purposes of this section and section 2259A, the*
 25 *term ‘trafficking in child pornography’ means con-*

1 *duct proscribed by section 2251(d), 2252, 2252A(a)(1)*
 2 *through (5), 2252A(g)(in cases in which the series of*
 3 *felony violations exclusively involves violations of sec-*
 4 *tion 2251(d), 2252, 2252A(a)(1) through (5), or*
 5 *2260(b)), or 2260(b).”.*

6 *(c) CLERICAL AMENDMENT.—Section 1593(b)(3) of*
 7 *title 18, United States Code, is amended by striking “sec-*
 8 *tion 2259(b)(3)” and inserting “section 2259(c)(2)”.*

9 **SEC. 4. DEFINED MONETARY ASSISTANCE.**

10 *Section 2259 of title 18, United States Code, is amend-*
 11 *ed by adding at the end the following:*

12 *“(d) DEFINED MONETARY ASSISTANCE.—*

13 *“(1) DEFINED MONETARY ASSISTANCE MADE*
 14 *AVAILABLE AT VICTIM’S ELECTION.—*

15 *“(A) ELECTION TO RECEIVE DEFINED MON-*
 16 *ETARY ASSISTANCE.—Subject to paragraphs (2)*
 17 *and (3), when a defendant is convicted of traf-*
 18 *ficking in child pornography, any victim of that*
 19 *trafficking in child pornography may choose to*
 20 *receive defined monetary assistance from the*
 21 *Child Pornography Victims Reserve established*
 22 *under section 1402(d)(6) of the Victims of Crime*
 23 *Act of 1984 (34 U.S.C. 20101(d)).*

24 *“(B) FINDING.—To be eligible for defined*
 25 *monetary assistance under this subsection, a*

1 *court shall determine whether the claimant is a*
 2 *victim of the defendant who was convicted of*
 3 *trafficking in child pornography.*

4 *“(C) ORDER.—If a court determines that a*
 5 *claimant is a victim of trafficking in child por-*
 6 *nography under subparagraph (B) and the*
 7 *claimant chooses to receive defined monetary as-*
 8 *sistance, the court shall order payment in ac-*
 9 *cordance with subparagraph (D) to the victim*
 10 *from the Child Pornography Victims Reserve es-*
 11 *tablished under section 1402(d)(6) of the Victims*
 12 *of Crime Act of 1984.*

13 *“(D) AMOUNT OF DEFINED MONETARY AS-*
 14 *SISTANCE.—The amount of defined monetary as-*
 15 *sistance payable under this subparagraph shall*
 16 *be equal to—*

17 *“(i) for the first calendar year after the*
 18 *date of enactment of this subsection,*
 19 *\$35,000; and*

20 *“(ii) for each calendar year after the*
 21 *year described in clause (i), \$35,000 multi-*
 22 *plied by the ratio (not less than one) of—*

23 *“(I) the Consumer Price Index for*
 24 *all Urban Consumers (CPI–U, as pub-*
 25 *lished by the Bureau of Labor Statis-*

tics of the Department of Labor) for
the calendar year preceding such cal-
endar year; to

“(II) the CPI–U for the calendar
year 2 years before the calendar year
described in clause (i).

“(2) *LIMITATIONS ON DEFINED MONETARY AS-*
SISTANCE.—

“(A) *IN GENERAL.*—A victim may only ob-
tain defined monetary assistance under this sub-
section once.

“(B) *EFFECT ON RECOVERY OF OTHER RES-*
TITUTION.—A victim who obtains defined mone-
tary assistance under this subsection shall not be
barred or limited from receiving restitution
against any defendant for any offenses not cov-
ered by this section.

“(C) *DEDUCTION.*—If a victim who received
defined monetary assistance under this sub-
section subsequently seeks restitution under this
section, the court shall deduct the amount the
victim received in defined monetary assistance
when determining the full amount of the victim’s
losses.

1 “(3) *LIMITATIONS ON ELIGIBILITY.*—A victim
 2 *who has collected payment of restitution pursuant to*
 3 *this section in an amount greater than the amount*
 4 *provided for under paragraph (1)(D) shall be ineli-*
 5 *gible to receive defined monetary assistance under this*
 6 *subsection.*

7 “(4) *ATTORNEY FEES.*—

8 “(A) *IN GENERAL.*—An attorney rep-
 9 *resenting a victim seeking defined monetary as-*
 10 *sistance under this subsection may not charge,*
 11 *receive, or collect, and the court may not ap-*
 12 *prove, any payment of fees and costs that in the*
 13 *aggregate exceeds 15 percent of any payment*
 14 *made under this subsection.*

15 “(B) *PENALTY.*—An attorney who violates
 16 *subparagraph (A) shall be fined under this title,*
 17 *imprisoned not more than 1 year, or both.”.*

18 **SEC. 5. ASSESSMENTS IN CHILD PORNOGRAPHY CASES.**

19 (a) *ASSESSMENTS IN CHILD PORNOGRAPHY CASES.*—
 20 *Chapter 110 of title 18, United States Code, is amended*
 21 *by inserting after section 2259 the following:*

22 **“§ 2259A. Assessments in child pornography cases**

23 “(a) *IN GENERAL.*—In addition to any other criminal
 24 *penalty, restitution, or special assessment authorized by*
 25 *law, the court shall assess—*

1 “(1) not more than \$17,000 on any person con-
 2 victed of an offense under section 2252(a)(4) or
 3 2252A(a)(5);

4 “(2) not more than \$35,000 on any person con-
 5 victed of any other offense for trafficking in child por-
 6 nography; and

7 “(3) not more than \$50,000 on any person con-
 8 victed of a child pornography production offense.

9 “(b) *ANNUAL ADJUSTMENT.*—The dollar amounts in
 10 subsection (a) shall be adjusted annually in conformity
 11 with the Consumer Price Index.

12 “(c) *FACTORS CONSIDERED.*—In determining the
 13 amount of the assessment under subsection (a), the court
 14 shall consider the factors set forth in sections 3553(a) and
 15 3572.

16 “(d) *IMPOSITION AND IMPLEMENTATION.*—

17 “(1) *IN GENERAL.*—The provisions of subchapter
 18 C of chapter 227 (other than section 3571) and sub-
 19 chapter B of chapter 229 (relating to fines) apply to
 20 assessments under this section, except that paragraph
 21 (2) applies in lieu of any contrary provisions of law
 22 relating to fines or disbursement of money received
 23 from a defendant.

24 “(2) *EFFECT ON OTHER PENALTIES.*—Imposi-
 25 tion of an assessment under this section does not re-

1 *lieve a defendant of, or entitle a defendant to reduce*
 2 *the amount of any other penalty by the amount of the*
 3 *assessment. Any money received from a defendant*
 4 *shall be disbursed so that each of the following obliga-*
 5 *tions is paid in full in the following sequence:*

6 *“(A) A special assessment under section*
 7 *3013.*

8 *“(B) Restitution to victims of any child*
 9 *pornography production or trafficking offense*
 10 *that the defendant committed.*

11 *“(C) An assessment under this section.*

12 *“(D) Other orders under any other section*
 13 *of this title.*

14 *“(E) All other fines, penalties, costs, and*
 15 *other payments required under the sentence.”.*

16 *(b) CHILD PORNOGRAPHY VICTIMS RESERVE.—Sec-*
 17 *tion 1402(d) of the Victims of Crime Act of 1984 (34 U.S.C.*
 18 *20101(d)) is amended by adding at the end the following:*

19 *“(6)(A) The Director may set aside up to*
 20 *\$10,000,000 of the amounts remaining in the Fund in*
 21 *any fiscal year after distributing the amounts under*
 22 *paragraphs (2), (3), and (4), in a Child Pornography*
 23 *Victims Reserve, which may be used by the Attorney*
 24 *General for payments under section 2259(d) of title*
 25 *18, United States Code.*

1 “(B) *Amounts in the reserve may be carried over*
 2 *from fiscal year to fiscal year, but the total amount*
 3 *of the reserve shall not exceed \$10,000,000. Notwith-*
 4 *standing subsection (c) and any limitation on Fund*
 5 *obligations in any future Act, unless the same should*
 6 *expressly refer to this section, any such amounts car-*
 7 *ried over shall not be subject to any limitation on ob-*
 8 *ligations from amounts deposited to or available in*
 9 *the Fund.*”.

10 (c) *CHILD PORNOGRAPHY VICTIMS RESERVE.*—Chapter
 11 110 of title 18, United States Code, is amended by in-
 12 serting after section 2259A, as added by subsection (a), the
 13 following:

14 **“§ 2259B. Child pornography victims reserve**

15 “(a) *DEPOSITS INTO THE RESERVE.*—Notwith-
 16 standing any other provision of law, there shall be deposited
 17 into the Child Pornography Victims Reserve established
 18 under section 1402(d)(6) of the Victims of Crime Act of
 19 1984 (34 U.S.C. 20101(d)) all assessments collected under
 20 section 2259A and any gifts, bequests, or donations to the
 21 Child Pornography Victims Reserve from private entities
 22 or individuals.

23 “(b) *AVAILABILITY FOR DEFINED MONETARY ASSIST-*
 24 *ANCE.*—Amounts in the Child Pornography Victims Reserve
 25 shall be available for payment of defined monetary assist-

1 *ance pursuant to section 2259(d). If at any time the Child*
 2 *Pornography Victims Reserve has insufficient funds to*
 3 *make all of the payments ordered under section 2259(d),*
 4 *the Child Pornography Victims Reserve shall make such*
 5 *payments as it can satisfy in full from available funds. In*
 6 *determining the order in which such payments shall be*
 7 *made, the Child Pornography Victims Reserve shall make*
 8 *payments based on the date they were ordered, with the ear-*
 9 *liest-ordered payments made first.*

10 “(c) *ADMINISTRATION.*—*The Attorney General shall*
 11 *administer the Child Pornography Victims Reserve and*
 12 *shall issue guidelines and regulations to implement this sec-*
 13 *tion.*

14 “(d) *SENSE OF CONGRESS.*—*It is the sense of Congress*
 15 *that individuals who violate this chapter prior to the date*
 16 *of the enactment of the Amy, Vicky, and Andy Child Por-*
 17 *nography Victim Assistance Act of 2018, but who are sen-*
 18 *tenced after such date, shall be subject to the statutory*
 19 *scheme that was in effect at the time the offenses were com-*
 20 *mitted.”.*

21 “(d) *CLERICAL AMENDMENT.*—*The table of sections for*
 22 *chapter 110 of title 18, United States Code, is amended by*
 23 *inserting after the item relating to section 2259 the fol-*
 24 *lowing:*

“2259A. *Assessments in child pornography cases*
 “2259B. *Child pornography victims reserve”.*

1 **SEC. 6. CHILD PORNOGRAPHY VICTIM'S RIGHT TO EVI-**
 2 **DENCE.**

3 *Section 3509(m) of title 18, United States Code, is*
 4 *amended by adding at the end the following:*

5 *“(3) In any criminal proceeding, a victim, as*
 6 *defined under section 2259(c)(4), shall have reason-*
 7 *able access to any property or material that con-*
 8 *stitutes child pornography, as defined under section*
 9 *2256(8), depicting the victim, for inspection, viewing,*
 10 *and examination at a Government facility or court,*
 11 *by the victim, his or her attorney, and any individual*
 12 *the victim may seek to qualify to furnish expert testi-*
 13 *mony, but under no circumstances may such child*
 14 *pornography be copied, photographed, duplicated, or*
 15 *otherwise reproduced. Such property or material may*
 16 *be redacted to protect the privacy of third parties.”.*

17 **SEC. 7. CLERICAL AMENDMENTS.**

18 *(a) EXPANSION OF CIVIL REMEDIES FOR SATISFAC-*
 19 *TION OF AN UNPAID FINE.—Section 3613(c) of title 18,*
 20 *United States Code, is amended by inserting “an assess-*
 21 *ment imposed pursuant to section 2259A of this title,” after*
 22 *“pursuant to the provisions of subchapter C of chapter 227*
 23 *of this title,”.*

24 *(b) CLARIFICATION OF INTERSTATE OR FOREIGN COM-*
 25 *MERCE PROVISION REGARDING CERTAIN ACTIVITIES PER-*

1 *TRAINING TO CHILD PORNOGRAPHY.—Section 2252A (a)(2)*
 2 *of title 18, United States Code, is amended—*

3 *(1) in subparagraph (A)—*

4 *(A) by striking “using any means or facil-*
 5 *ity of interstate or foreign commerce” and in-*
 6 *serting “has been”; and*

7 *(B) by inserting “using any means or facil-*
 8 *ity of interstate or foreign commerce or” after*
 9 *“child pornography”; and*

10 *(2) in subparagraph (B)—*

11 *(A) by striking “using any means or facil-*
 12 *ity of interstate or foreign commerce” and in-*
 13 *serting “has been”; and*

14 *(B) by inserting “using any means or facil-*
 15 *ity of interstate or foreign commerce or” after*
 16 *“child pornography”.*

17 *(c) CLARIFICATION OF THE DEFINITION OF “SEXU-*
 18 *ALLY EXPLICIT CONDUCT”.—Section 2256(2) of title 18,*
 19 *United States Code, is amended—*

20 *(1) in subparagraph (A)(v)—*

21 *(A) by inserting “anus,” before “genitals”;*
 22 *and*

23 *(B) by inserting a comma after “genitals”;*
 24 *and*

25 *(2) in subparagraph (B)(iii)—*

1 (A) by inserting “anus,” before “genitals”;

2 and

3 (B) by inserting a comma after “genitals”.

4 **SEC. 8. REPORTS.**

5 *Not later than 2 years after the date of enactment of*
6 *this Act, the Attorney General shall submit to Congress a*
7 *report on the progress of the Department of Justice in im-*
8 *plementing the amendments made by sections 3 through 5,*
9 *and shall include an assessment of the funding levels for*
10 *the Child Pornography Victims Reserve.*

Attest:

Clerk.

115TH CONGRESS
2^D SESSION

S. 2152

AMENDMENT