

118TH CONGRESS
1ST SESSION

S. 412

To provide that it is unlawful to knowingly distribute private intimate visual depictions with reckless disregard for the individual’s lack of consent to the distribution, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2023

Ms. KLOBUCHAR (for herself and Mr. CORNYN) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To provide that it is unlawful to knowingly distribute private intimate visual depictions with reckless disregard for the individual’s lack of consent to the distribution, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stopping Harmful
5 Image Exploitation and Limiting Distribution Act of
6 2023” or the “SHIELD Act of 2023”.

1 **SEC. 2. CERTAIN ACTIVITIES RELATING TO INTIMATE VIS-**
 2 **UAL DEPICTIONS.**

3 (a) IN GENERAL.—Chapter 88 of title 18, United
 4 States Code, is amended by adding at the end the fol-
 5 lowing:

6 **“§ 1802. Certain activities relating to intimate visual**
 7 **depictions**

8 “(a) DEFINITIONS.—In this section:

9 “(1) COMMUNICATIONS SERVICE.—The term
 10 ‘communications service’ means—

11 “(A) a service provided by a person that is
 12 a common carrier, as that term is defined in
 13 section 3 of the Communications Act of 1934
 14 (47 U.S.C. 153), insofar as the person is acting
 15 as a common carrier;

16 “(B) an electronic communication service,
 17 as that term is defined in section 2510;

18 “(C) an information service, as that term
 19 is defined in section 3 of the Communications
 20 Act of 1934 (47 U.S.C. 153); and

21 “(D) an interactive computer service, as
 22 that term is defined in section 230(f) of the
 23 Communications Act of 1934 (47 U.S.C.
 24 230(f)).

25 “(2) INFORMATION CONTENT PROVIDER.—The
 26 term ‘information content provider’ has the meaning

1 given that term in section 230(f) of the Communica-
2 tions Act of 1934 (47 U.S.C. 230(f)).

3 “(3) INTIMATE VISUAL DEPICTION.—The term
4 ‘intimate visual depiction’ means any visual depic-
5 tion (as that term is defined in section 2256(5)) of
6 an individual who is recognizable by an individual
7 other than the depicted individual from the intimate
8 image itself or information or text displayed in con-
9 nection with the intimate image itself or information
10 or text displayed in connection with the intimate
11 image who has attained 18 years of age at the time
12 the intimate visual depiction is created and—

13 “(A) who is depicted engaging in sexually
14 explicit conduct; or

15 “(B) whose genitals, anus, pubic area, or
16 female nipple are unclothed and visible.

17 “(4) VISUAL DEPICTION OF A NUDE MINOR.—
18 The term ‘visual depiction of a nude minor’ means
19 any visual depiction (as that term is defined in sec-
20 tion 2256(5)) of an individual who is recognizable by
21 an individual other than the depicted individual from
22 the intimate image itself or information or text dis-
23 played in connection with the intimate image who
24 was under 18 years of age at the time the visual de-
25 piction was created in which the actual anus, geni-

1 tals, or pubic area, or post-pubescent female nipple,
 2 of the minor are unclothed, visible, and displayed in
 3 a manner that does not constitute sexually explicit
 4 conduct.

5 “(5) SEXUALLY EXPLICIT CONDUCT.—The term
 6 ‘sexually explicit conduct’ has the meaning given
 7 that term in section 2256(2)(A).

8 “(b) OFFENSE.—

9 “(1) IN GENERAL.—Except as provided in sub-
 10 section (d), it shall be unlawful to knowingly mail,
 11 or to distribute using any means or facility of inter-
 12 state or foreign commerce or affecting interstate or
 13 foreign commerce, an intimate visual depiction of an
 14 individual—

15 “(A) with knowledge of or reckless dis-
 16 regard for the lack of consent of the individual
 17 to the distribution;

18 “(B) where what is depicted was not volun-
 19 tarily exposed by the individual in a public or
 20 commercial setting; and

21 “(C) where what is depicted is not a mat-
 22 ter of public concern.

23 For purposes of this paragraph, the fact that the
 24 subject of the depiction consented to the creation of

1 the depiction shall not establish that that person
2 consented to its distribution.

3 “(2) MINORS.—Except as provided in sub-
4 section (d), it shall be unlawful to knowingly mail,
5 or to distribute using any means or facility of inter-
6 state or foreign commerce or affecting interstate or
7 foreign commerce, a visual depiction of a nude minor
8 with intent to abuse, humiliate, harass, or degrade
9 the minor, or to arouse or gratify the sexual desire
10 of any person.

11 “(c) PENALTY.—

12 “(1) IN GENERAL.—Any person who violates
13 subsection (b), or attempts or conspires to do so,
14 shall be fined under this title, imprisoned not more
15 than 5 years, or both.

16 “(2) FORFEITURE.—

17 “(A) IN GENERAL.—The court, in impos-
18 ing a sentence on any person convicted of a vio-
19 lation involving intimate visual depictions or
20 visual depictions of a nude minor under this
21 section, or convicted of a conspiracy of a viola-
22 tion involving intimate visual depictions or vis-
23 ual depictions of a nude minor under this sec-
24 tion, shall order, in addition to any other sen-
25 tence imposed and irrespective of any provision

of State law, that such person forfeit to the
United States—

“(i) any material distributed in viola-
tion of this section;

“(ii) such person’s interest in prop-
erty, real or personal, constituting or de-
rived from any gross proceeds of such vio-
lation, or any property traceable to such
property, obtained or retained directly or
indirectly as a result of such violation; and

“(iii) any property, real or personal,
used or intended to be used to commit or
to facilitate the commission of such of-
fense.

“(B) PROCEDURES.—Section 413 of the
Controlled Substances Act (21 U.S.C. 853),
with the exception of subsections (a) and (d),
applies to the criminal forfeiture of property
pursuant to subparagraph (A).

“(3) RESTITUTION.—Restitution shall be avail-
able as provided in section 2264 of title 18, United
States Code.

“(d) EXCEPTIONS.—

“(1) LAW ENFORCEMENT, LAWFUL REPORTING,
AND OTHER LEGAL PROCEEDINGS.—This section—

1 “(A) does not prohibit any lawfully author-
2 ized investigative, protective, or intelligence ac-
3 tivity of a law enforcement agency of the
4 United States, a State, or a political subdivision
5 of a State, or of an intelligence agency of the
6 United States;

7 “(B) shall not apply in the case of an indi-
8 vidual acting in good faith to report unlawful
9 activity or in pursuance of a legal or profes-
10 sional or other lawful obligation; and

11 “(C) shall not apply in the case of a docu-
12 ment production or filing associated with a legal
13 proceeding.

14 “(2) SERVICE PROVIDERS.—This section shall
15 not apply to any provider of a communications serv-
16 ice with regard to content provided by another infor-
17 mation content provider unless the provider of the
18 communications service intentionally solicits, or
19 knowingly and predominantly distributes, such con-
20 tent.

21 “(e) THREATS.—Any person who threatens to com-
22 mit an offense under subsection (b) shall be punished as
23 provided in subsection (c).

24 “(f) EXTRATERRITORIALITY.—There is
25 extraterritorial Federal jurisdiction over an offense under

1 this section if the defendant or the depicted individual is
2 a citizen or permanent resident of the United States.

3 “(g) CIVIL FORFEITURE.—The following shall be
4 subject to forfeiture to the United States in accordance
5 with provisions of chapter 46 and no property right shall
6 exist in them:

7 “(1) Any material distributed in violation of
8 this chapter.

9 “(2) Any property, real or personal, that was
10 used, in any manner, to commit or to facilitate the
11 commission of a violation involving intimate visual
12 depictions or visual depictions of a nude minor
13 under this section or a conspiracy of a violation in-
14 volving intimate visual depictions or visual depictions
15 of a nude minor under this section.

16 “(3) Any property, real or personal, consti-
17 tuting, or traceable to the gross proceeds obtained or
18 retained in connection with or as a result of a viola-
19 tion involving intimate visual depictions or visual de-
20 pictions of a nude minor under this section, a con-
21 spiracy of a violation involving intimate visual depic-
22 tions or visual depictions of a nude minor under this
23 section.

1 “(h) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion shall be construed to limit the application of any other
3 relevant law, including section 2252 of this title.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 for chapter 88 of title 18, United States Code, is amended
6 by inserting after the item relating to section 1801 the
7 following:

“1802. Certain activities relating to intimate visual depictions.”.

