

Calendar No. 78118TH 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, Mr. CORNYN, Mr. LEE, Mr. BLUMENTHAL, Mr. GRAHAM, Mr. CRUZ, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MAY 17, 2023

Reported by Mr. DURBIN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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,*

1 **SECTION 1. SHORT TITLE.**

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

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

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

10 **“§ 1802. Certain activities relating to intimate visual**
11 **depictions**

12 “(a) DEFINITIONS.—In this section:

13 “(1) COMMUNICATIONS SERVICE.—The term
14 ‘communications service’ means—

15 “(A) a service provided by a person that is
16 a common carrier, as that term is defined in
17 section 3 of the Communications Act of 1934
18 (47 U.S.C. 153), insofar as the person is acting
19 as a common carrier;

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

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

25 “(D) an interactive computer service, as
26 that term is defined in section 230(f) of the

1 Communications Act of 1934 (47 U.S.C.
2 230(f)).

3 “(2) INFORMATION CONTENT PROVIDER.—The
4 term ‘information content provider’ has the meaning
5 given that term in section 230(f) of the Communica-
6 tions Act of 1934 (47 U.S.C. 230(f)).

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

17 “(A) who is depicted engaging in sexually
18 explicit conduct; or

19 “(B) whose genitals, anus, pubic area, or
20 female nipple are unclathed and visible.

21 “(4) VISUAL DEPICTION OF A NUDE MINOR.—
22 The term ‘visual depiction of a nude minor’ means
23 any visual depiction (as that term is defined in sec-
24 tion 2256(5)) of an individual who is recognizable by
25 an individual other than the depicted individual from

1 the intimate image itself or information or text dis-
 2 played in connection with the intimate image who
 3 was under 18 years of age at the time the visual de-
 4 piction was created in which the actual anus, geni-
 5 tals, or pubic area, or post-pubescent female nipple,
 6 of the minor are unclothed, visible, and displayed in
 7 a manner that does not constitute sexually explicit
 8 conduct.

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

12 “(b) OFFENSE.—

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

19 “(A) with knowledge of or reckless dis-
 20 regard for the lack of consent of the individual
 21 to the distribution;

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

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

3 For purposes of this paragraph, the fact that the
4 subject of the depiction consented to the creation of
5 the depiction shall not establish that that person
6 consented to its distribution.

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

15 “(e) PENALTY.—

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

20 “(2) FORFEITURE.—

21 “(A) IN GENERAL.—The court, in impos-
22 ing a sentence on any person convicted of a vio-
23 lation involving intimate visual depictions or
24 visual depictions of a nude minor under this
25 section, or convicted of a conspiracy of a viola-

1 tion involving intimate visual depictions or vis-
2 ual depictions of a nude minor under this sec-
3 tion, shall order, in addition to any other sen-
4 tence imposed and irrespective of any provision
5 of State law, that such person forfeit to the
6 United States—

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

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

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

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

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

4 “(d) EXCEPTIONS.—

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

7 “(A) does not prohibit any lawfully author-
8 ized investigative, protective, or intelligence ac-
9 tivity of a law enforcement agency of the
10 United States, a State, or a political subdivision
11 of a State, or of an intelligence agency of the
12 United States;

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

17 “(C) shall not apply in the case of a docu-
18 ment production or filing associated with a legal
19 proceeding.

20 “(2) SERVICE PROVIDERS.—This section shall
21 not apply to any provider of a communications serv-
22 ice with regard to content provided by another infor-
23 mation content provider unless the provider of the
24 communications service intentionally solicits, or

1 knowingly and predominantly distributes, such con-
2 tent.

3 “(e) ~~THREATS.~~—Any person who threatens to com-
4 mit an offense under subsection (b) shall be punished as
5 provided in subsection (e).

6 “(f) ~~EXTRATERRITORIALITY.~~—There is
7 extraterritorial Federal jurisdiction over an offense under
8 this section if the defendant or the depicted individual is
9 a citizen or permanent resident of the United States.

10 “(g) ~~CIVIL FORFEITURE.~~—The following shall be
11 subject to forfeiture to the United States in accordance
12 with provisions of chapter 46 and no property right shall
13 exist in them:

14 “(1) Any material distributed in violation of
15 this chapter.

16 “(2) Any property, real or personal, that was
17 used, in any manner, to commit or to facilitate the
18 commission of a violation involving intimate visual
19 depictions or visual depictions of a nude minor
20 under this section or a conspiracy of a violation in-
21 volving intimate visual depictions or visual depictions
22 of a nude minor under this section.

23 “(3) Any property, real or personal, consti-
24 tuting, or traceable to the gross proceeds obtained or
25 retained in connection with or as a result of a viola-

1 tion involving intimate visual depictions or visual de-
 2 pictions of a nude minor under this section; a con-
 3 spiracy of a violation involving intimate visual depie-
 4 tions or visual depictions of a nude minor under this
 5 section.

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

9 (b) **CLERICAL AMENDMENT.**—The table of sections
 10 for chapter 88 of title 18, United States Code, is amended
 11 by inserting after the item relating to section 1801 the
 12 following:

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

13 **SECTION 1. SHORT TITLE.**

14 *This Act may be cited as the “Stopping Harmful*
 15 *Image Exploitation and Limiting Distribution Act of*
 16 *2023” or the “SHIELD Act of 2023”.*

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

19 (a) *IN GENERAL.*—Chapter 88 of title 18, United
 20 States Code, is amended by adding at the end the following:

21 **“§ 1802. Certain activities relating to intimate visual**
 22 **depictions**

23 “(a) **DEFINITIONS.**—*In this section:*

24 “(1) **COMMUNICATIONS SERVICE.**—*The term*
 25 *‘communications service’ means—*

1 “(A) a service provided by a person that is
2 a common carrier, as that term is defined in sec-
3 tion 3 of the Communications Act of 1934 (47
4 U.S.C. 153), insofar as the person is acting as
5 a common carrier;

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

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

11 “(D) an interactive computer service, as
12 that term is defined in section 230(f) of the Com-
13 munications Act of 1934 (47 U.S.C. 230(f)).

14 “(2) *INFORMATION CONTENT PROVIDER.*—The
15 term ‘information content provider’ has the meaning
16 given that term in section 230(f) of the Communica-
17 tions Act of 1934 (47 U.S.C. 230(f)).

18 “(3) *INTIMATE VISUAL DEPICTION.*—The term
19 ‘intimate visual depiction’ means any visual depic-
20 tion (as that term is defined in section 2256(5)) of an
21 individual who is recognizable by an individual other
22 than the depicted individual from the intimate image
23 itself or information or text displayed in connection
24 with the intimate image who has attained 18 years

1 of age at the time the intimate visual depiction is cre-
2 ated and—

3 “(A) who is depicted engaging in sexually
4 explicit conduct; or

5 “(B) whose genitals, anus, pubic area, or fe-
6 male nipple are unclothed and visible.

7 “(4) VISUAL DEPICTION OF A NUDE MINOR.—The
8 term ‘visual depiction of a nude minor’ means any
9 visual depiction (as that term is defined in section
10 2256(5)) of an individual who is recognizable by an
11 individual other than the depicted individual from
12 the intimate image itself or information or text dis-
13 played in connection with the intimate image who
14 was under 18 years of age at the time the visual de-
15 piction was created in which the actual anus, geni-
16 tals, or pubic area, or post-pubescent female nipple,
17 of the minor are unclothed, visible, and displayed in
18 a manner that does not constitute sexually explicit
19 conduct.

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

23 “(b) OFFENSES.—

24 “(1) IN GENERAL.—Except as provided in sub-
25 section (d), it shall be unlawful to knowingly mail, or

1 *to knowingly distribute using any means or facility*
2 *of interstate or foreign commerce or affecting inter-*
3 *state or foreign commerce, an intimate visual depic-*
4 *tion of an individual—*

5 *“(A) with knowledge of the lack of consent*
6 *of the individual to the distribution;*

7 *“(B) where what is depicted was not volun-*
8 *tarily exposed by the individual in a public or*
9 *commercial setting; and*

10 *“(C) where what is depicted is not a matter*
11 *of public concern.*

12 *For purposes of this paragraph, the fact that the sub-*
13 *ject of the depiction consented to the creation of the*
14 *depiction shall not establish that that person con-*
15 *sented to its distribution.*

16 *“(2) MINORS.—Except as provided in subsection*
17 *(d), it shall be unlawful to knowingly mail, or to*
18 *knowingly distribute using any means or facility of*
19 *interstate or foreign commerce or affecting interstate*
20 *or foreign commerce, a visual depiction of a nude*
21 *minor with intent to abuse, humiliate, harass, or de-*
22 *grade the minor, or to arouse or gratify the sexual de-*
23 *sire of any person.*

24 *“(c) PENALTY.—*

1 “(1) *IN GENERAL.*—Any person who violates sub-
2 section (b), or attempts or conspires to do so, shall be
3 fined under this title, imprisoned not more than 5
4 years, or both.

5 “(2) *FORFEITURE.*—

6 “(A) *IN GENERAL.*—The court, in imposing
7 a sentence on any person convicted of a violation
8 involving intimate visual depictions or visual
9 depictions of a nude minor under this section, or
10 convicted of a conspiracy of a violation involving
11 intimate visual depictions or visual depictions of
12 a nude minor under this section, shall order, in
13 addition to any other sentence imposed and irre-
14 spective of any provision of State law, that such
15 person forfeit to the United States—

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

18 “(ii) such person’s interest in property,
19 real or personal, constituting or derived
20 from any gross proceeds of such violation,
21 or any property traceable to such property,
22 obtained or retained directly or indirectly
23 as a result of such violation; and

1 “(iii) any property, real or personal,
2 used or intended to be used to commit or to
3 facilitate the commission of such offense.

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

9 “(3) RESTITUTION.—Restitution shall be avail-
10 able as provided in section 2264 of this title.

11 “(d) EXCEPTIONS.—

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

14 “(A) does not prohibit any lawfully author-
15 ized investigative, protective, or intelligence ac-
16 tivity of a law enforcement agency of the United
17 States, a State, or a political subdivision of a
18 State, or of an intelligence agency of the United
19 States;

20 “(B) shall not apply in the case of an indi-
21 vidual acting in good faith to report unlawful or
22 unsolicited activity or in pursuance of a legal or
23 professional or other lawful obligation; and

1 “(C) shall not apply in the case of a docu-
2 ment production or filing associated with a legal
3 proceeding.

4 “(2) *SERVICE PROVIDERS.*—This section shall
5 not apply to any provider of a communications serv-
6 ice with regard to content provided by another infor-
7 mation content provider unless the provider of the
8 communications service intentionally solicits, or
9 knowingly and predominantly distributes, such con-
10 tent.

11 “(e) *THREATS.*—Any person who threatens to commit
12 an offense under subsection (b) shall be punished as pro-
13 vided in subsection (c).

14 “(f) *EXTRATERRITORIALITY.*—There is extraterritorial
15 Federal jurisdiction over an offense under this section if the
16 defendant or the depicted individual is a citizen or perma-
17 nent resident of the United States.

18 “(g) *RULE OF CONSTRUCTION.*—Nothing in this sec-
19 tion shall be construed to limit the application of any other
20 relevant law, including section 2252 of this title.”.

21 (b) *CLERICAL AMENDMENT.*—The table of sections for
22 chapter 88 of title 18, United States Code, is amended by
23 inserting after the item relating to section 1801 the fol-
24 lowing:

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

1 (c) *CONFORMING AMENDMENT.*—Section 2264(a) of
2 *title 18, United States Code, is amended by inserting “,*
3 *or under section 1802 of this title” before the period.*

Calendar No. 78

118TH CONGRESS
1ST Session
S. 412

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.

MAY 17, 2023

Reported with an amendment