

118TH CONGRESS
1ST SESSION

H. R. 3686

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 HOUSE OF REPRESENTATIVES

MAY 25, 2023

Ms. DEAN of Pennsylvania (for herself, Ms. PLASKETT, Mr. FITZPATRICK, and Ms. MACE) introduced the following bill; which was 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 who has attained 18 years of age at the time
9 the intimate visual depiction is created and—

10 “(A) who is depicted engaging in sexually
11 explicit conduct; or

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

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

1 a manner that does not constitute sexually explicit
2 conduct.

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

6 “(b) OFFENSES.—

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

13 “(A) with knowledge of the lack of consent
14 of the individual to the distribution;

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

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

20 For purposes of this paragraph, the fact that the
21 subject of the depiction consented to the creation of
22 the depiction shall not establish that that person
23 consented to its distribution.

24 “(2) MINORS.—Except as provided in sub-
25 section (d), it shall be unlawful to knowingly mail,

1 or to knowingly distribute using any means or facil-
2 ity of interstate or foreign commerce or affecting
3 interstate or foreign commerce, a visual depiction of
4 a nude minor with intent to abuse, humiliate, har-
5 ass, or degrade the minor, or to arouse or gratify
6 the sexual desire of any person.

7 “(c) PENALTY.—

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

12 “(2) FORFEITURE.—

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

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

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

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

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

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

18 “(d) EXCEPTIONS.—

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

21 “(A) does not prohibit any lawfully author-
22 ized investigative, protective, or intelligence ac-
23 tivity of a law enforcement agency of the
24 United States, a State, or a political subdivision

1 of a State, or of an intelligence agency of the
2 United States;

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

7 “(C) shall not apply in the case of a docu-
8 ment production or filing associated with a legal
9 proceeding.

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

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

20 “(f) EXTRATERRITORIALITY.—There is
21 extraterritorial Federal jurisdiction over an offense under
22 this section if the defendant or the depicted individual is
23 a citizen or permanent resident of the United States.

1 “(g) 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.”.

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

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