

118TH CONGRESS
2D SESSION

S. 412

AN ACT

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—

11 “(A) who has attained 18 years of age at
12 the time the intimate visual depiction is cre-
13 ated;

14 “(B) who is recognizable to a third party
15 from the intimate image itself or information or
16 text displayed in connection with the intimate
17 image itself or information or text displayed in
18 connection with the intimate image; and

19 “(C)(i) who is depicted engaging in sexu-
20 ally explicit conduct; or

21 “(ii) whose genitals, anus, pubic area, or
22 female nipple are unclothed and visible.

23 “(4) MINOR.—The term ‘minor’ has the mean-
24 ing given that term in section 2256.

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

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

17 “(b) OFFENSES.—

18 “(1) IN GENERAL.—Except as provided in sub-
19 section (d), it shall be unlawful to knowingly mail,
20 or to knowingly distribute using any means or facil-
21 ity of interstate or foreign commerce or affecting
22 interstate or foreign commerce, an intimate visual
23 depiction of an individual—

24 “(A) that was obtained or created under
25 circumstances in which the actor knew or rea-

1 sonably should have known the individual de-
2 picted had a reasonable expectation of privacy;

3 “(B) where what is depicted was not volun-
4 tarily exposed by the individual in a public or
5 commercial setting;

6 “(C) where what is depicted is not a mat-
7 ter of public concern; and

8 “(D) if the distribution—

9 “(i) is intended to cause harm; or

10 “(ii) causes harm, including psycho-
11 logical, financial, or reputational harm, to
12 the individual depicted.

13 For purposes of this paragraph, the fact that the
14 subject of the depiction consented to the creation of
15 the depiction shall not establish that that person
16 consented to its distribution.

17 “(2) INVOLVING MINORS.—Except as provided
18 in subsection (d), it shall be unlawful to knowingly
19 mail, or to knowingly distribute using any means or
20 facility of interstate or foreign commerce or affect-
21 ing interstate or foreign commerce, a visual depic-
22 tion of a nude minor with intent to abuse, humiliate,
23 harass, or degrade the minor, or to arouse or gratify
24 the sexual desire of any person.

25 “(c) PENALTY.—

1 “(1) IN GENERAL.—

2 “(A) VISUAL DEPICTION OF A NUDE
3 MINOR.—Any person who violates subsection
4 (b)(2) shall be fined under this title, imprisoned
5 not more than 3 years, or both.

6 “(B) INTIMATE VISUAL DEPICTION.—Any
7 person who violates subsection (b)(1) shall be
8 fined under this title, imprisoned for not more
9 than 2 years, or both.

10 “(2) FORFEITURE.—

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

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

24 “(ii) such person’s interest in prop-
25 erty, real or personal, constituting or de-

1 rived from any gross proceeds of such vio-
2 lation, or any property traceable to such
3 property, obtained or retained directly or
4 indirectly as a result of such violation; and

5 “(iii) any personal property of the
6 person used, or intended to be used, in any
7 manner or part, to commit or to facilitate
8 the commission of such violation.

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

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

16 “(d) EXCEPTIONS.—

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

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

1 “(B) shall not apply to distributions that
2 are made reasonably and in good faith—

3 “(i) to report unlawful or unsolicited
4 activity or in pursuance of a legal or pro-
5 fessional or other lawful obligation;

6 “(ii) to seek support or help with re-
7 spect to the receipt of an unsolicited inti-
8 mate visual depiction;

9 “(iii) relating to an individual who
10 possesses or distributes a visual depiction
11 of himself or herself engaged in nudity or
12 sexually explicit conduct;

13 “(iv) to assist the depicted individual;

14 “(v) for legitimate medical, scientific,
15 or educational purposes; or

16 “(vi) as part of a document produc-
17 tion or filing associated with a legal pro-
18 ceeding.

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

1 “(e) THREATS.—Any person who intentionally
 2 threatens to commit an offense under subsection (b) for
 3 the purpose of intimidation, coercion, extortion, or to cre-
 4 ate mental distress shall be punished as provided in sub-
 5 section (c).

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) RULE OF CONSTRUCTION.—Nothing in this sec-
 11 tion shall be construed to limit the application of any other
 12 relevant law, including section 2252 of this title.”.

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

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

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

Passed the Senate July 10, 2024.

Attest:

Secretary.

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