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114TH CONGRESS
1ST SESSION

S. 295

To amend section 2259 of title 18, United States Code, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2015

Mr. HATCH (for himself, Mr. SCHUMER, Ms. AYOTTE, Mr. BLUMENTHAL, Mr. BLUNT, Ms. CANTWELL, Mrs. CAPITO, Mr. CARPER, Mr. CASEY, Mr. COONS, Mr. CORNYN, Mr. DAINES, Mrs. FEINSTEIN, Mr. FRANKEN, Mrs. GILLIBRAND, Mr. GRAHAM, Mr. GRASSLEY, Mr. INHOFE, Mr. ISAKSON, Mr. KIRK, Ms. KLOBUCHAR, Mr. LEE, Mr. MARKEY, Mr. MCCAIN, Mrs. MURRAY, Mr. PERDUE, Mr. PORTMAN, Mr. ROBERTS, Mr. RUBIO, Mr. THUNE, Mr. TOOMEY, Mr. UDALL, Mr. VITTER, Ms. WARREN, Mr. WHITEHOUSE, and Mr. MANCHIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend section 2259 of title 18, United States Code, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Amy and Vicky Child Pornography Victim Restitution Improvement Act of 2015".

SEC. 2. FINDINGS.

Congress finds the following:

(1) The demand for child pornography harms children because it drives production, which involves severe and often irreparable child sexual abuse and exploitation.

(2) The harms caused by child pornography are more extensive than the harms caused by child sex abuse alone because child pornography is a permanent record of the abuse of the depicted child, and the harm to the child is exacerbated by its circulation. Every viewing of child pornography is a repetition of the victim's original childhood sexual abuse.

(3) Victims suffer continuing and grievous harm as a result of knowing that a large, indeterminate number of individuals have viewed and will in the future view images of their childhood sexual abuse. Harms of this sort are a major reason that child pornography is outlawed.

(4) The unlawful collective conduct of every individual who reproduces, distributes, or possesses the images of a victim's childhood sexual abuse plays a part in sustaining and aggravating the harms to that individual victim. Multiple actors independently commit intentional crimes that combine to produce an indivisible injury to a victim.

(5) It is the intent of Congress that victims of child pornography be fully compensated for all the harms resulting from each and every perpetrator who contributes to their anguish.

(6) Congress intends to adopt and hereby adopts an aggregate causation standard to address the unique crime of child pornography and the unique harms caused by child pornography.

(7) Victims should not be limited to receiving restitution from defendants only for losses caused by each defendant's own offense of conviction. Courts must apply a less restrictive aggregate causation standard in child pornography cases, while also recognizing appropriate constitutional limits and protections for defendants.

SEC. 3. MANDATORY RESTITUTION.

Section 2259 of title 18, United States Code, is amended—

(1) in subsection (b), by striking paragraph (3) and inserting the following:

"(3) DEFINITION.—(A) For purposes of this subsection, the term 'full amount of the victim's losses' includes any costs incurred by the victim for—

"(i) lifetime medical services relating to physical, psychiatric, or psychological care;

"(ii) lifetime physical and occupational therapy or rehabilitation;

"(iii) necessary transportation, temporary housing, and child care expenses;

"(iv) lifetime lost income; and

"(v) attorneys' fees, as well as other costs incurred.

"(B) For purposes of this subsection, the term 'full amount of the victim's losses' also includes any other losses suffered by the victim, in addition to the costs listed in subparagraph (A), if those losses are a proximate result of the offense.

"(C) For purposes of this subsection, the term 'full amount of the victim's losses' also includes any losses suffered by the victim from any sexual act or sexual conduct (as those terms are defined in section 2246) in preparation for or during the production of child pornography depicting the victim involved in the offense.";

(2) by redesignating subsection (c) as subsection (d);

(3) by inserting after subsection (b) the following:

"(c) DETERMINING RESTITUTION.—

"(1) HARMED BY ONE DEFENDANT.—If the victim was harmed as a result of the commission of an offense under section 2251, 2251A, 2252, 2252A, or 2260 by 1 defendant, the court shall determine the full amount of the victim's losses caused by the defendant and enter an order of restitution for an amount that is not less than the full amount of the victim's losses.

"(2) HARMED BY MORE THAN ONE DEFENDANT.—If the victim was harmed as a result of offenses under section 2251, 2251A, 2252, 2252A, or 2260 by more than 1 person, regardless of whether the persons have been charged, prosecuted, or convicted in any Federal or State court of competent jurisdiction within the United States, the court shall determine the full amount of the victim's losses caused by all such persons, or reasonably expected to be caused by such persons, and enter an order of restitution against the defendant in favor of the victim for—

"(A) the full amount of the victim's losses; or

"(B) an amount that is not more than the amount described in subparagraph (A) and not less than—

"(i) $250,000 for any offense or offenses under section 2251(a), 2251(b), 2251(c), 2251A, 2252A(g), or 2260(a);

"(ii) $150,000 for any offense or offenses under section 2251(d), 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2252A(a)(6), 2252A(a)(7), or 2260(b); or

"(iii) $25,000 for any offense or offenses under section 2252(a)(4) or 2252A(a)(5).

"(3) MAXIMUM AMOUNT OF RESTITUTION.—No order of restitution issued under this section may exceed the full amount of the victim's losses.

"(4) JOINT AND SEVERAL LIABILITY.—Each defendant against whom an order of restitution is issued under paragraph (2)(A) shall be jointly and severally liable to the victim with all other defendants against whom an order of restitution is issued under paragraph (2)(A) in favor of such victim.

"(5) CONTRIBUTION.—Each defendant who is ordered to pay restitution under paragraph (2)(A),

and has made full payment to the victim equal to or exceeding the statutory minimum amount described in paragraph (2)(B), may recover contribution from any defendant who is also ordered to pay restitution under paragraph (2)(A). Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure. In resolving contribution claims, the court may allocate payments among liable parties using such equitable factors as the court determines are appropriate so long as no payments to victims are reduced or delayed. No action for contribution may be commenced more than 5 years after the date on which the defendant seeking contribution was ordered to pay restitution under this section.'';

(4) in subsection (d), as redesignated, by striking ''a commission of a crime under this chapter,'' and inserting ''or by the commission of (i) an offense under this chapter or (ii) a series of offenses under this chapter committed by the defendant and other persons causing aggregated losses,''; and

(5) by adding at the end the following:

''(e) REPORT.—Not later than 1 year after the date of enactment of the Amy and Vicky Child Pornography Victim Restitution Improvement Act of 2015, the Attor-

ney General shall submit to Congress a report on the progress, if any, of the Department of Justice in obtaining restitution for victims of any offense under section 2251, 2251A, 2252, 2252A, or 2260.''.

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