

Calendar No. 16

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, Mr. MANCHIN, Mr. MERKLEY, and Mr. COTTON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

FEBRUARY 9, 2015

Reported by Mr. GRASSLEY, without amendment

A BILL

To amend section 2259 of title 18, United States Code,
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 “Amy and Vicky Child
3 Pornography Victim Restitution Improvement Act of
4 2015”.

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

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

11 (2) The harms caused by child pornography are
12 more extensive than the harms caused by child sex
13 abuse alone because child pornography is a perma-
14 nent record of the abuse of the depicted child, and
15 the harm to the child is exacerbated by its circula-
16 tion. Every viewing of child pornography is a repeti-
17 tion of the victim’s original childhood sexual abuse.

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

24 (4) The unlawful collective conduct of every in-
25 dividual who reproduces, distributes, or possesses
26 the images of a victim’s childhood sexual abuse plays

1 a part in sustaining and aggravating the harms to
2 that individual victim. Multiple actors independently
3 commit intentional crimes that combine to produce
4 an indivisible injury to a victim.

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

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

13 (7) Victims should not be limited to receiving
14 restitution from defendants only for losses caused by
15 each defendant's own offense of conviction. Courts
16 must apply a less restrictive aggregate causation
17 standard in child pornography cases, while also rec-
18 ognizing appropriate constitutional limits and pro-
19 tections for defendants.

20 **SEC. 3. MANDATORY RESTITUTION.**

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

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

1 “(3) DEFINITION.—(A) For purposes of this
2 subsection, the term ‘full amount of the victim’s
3 losses’ includes any costs incurred by the victim
4 for—

5 “(i) lifetime medical services relating to
6 physical, psychiatric, or psychological care;

7 “(ii) lifetime physical and occupational
8 therapy or rehabilitation;

9 “(iii) necessary transportation, temporary
10 housing, and child care expenses;

11 “(iv) lifetime lost income; and

12 “(v) attorneys’ fees, as well as other costs
13 incurred.

14 “(B) For purposes of this subsection, the term
15 ‘full amount of the victim’s losses’ also includes any
16 other losses suffered by the victim, in addition to the
17 costs listed in subparagraph (A), if those losses are
18 a proximate result of the offense.

19 “(C) For purposes of this subsection, the term
20 ‘full amount of the victim’s losses’ also includes any
21 losses suffered by the victim from any sexual act or
22 sexual conduct (as those terms are defined in section
23 2246) in preparation for or during the production of
24 child pornography depicting the victim involved in
25 the offense.”;

1 (2) by redesignating subsection (c) as sub-
2 section (d);

3 (3) by inserting after subsection (b) the fol-
4 lowing:

5 “(c) DETERMINING RESTITUTION.—

6 “(1) HARMED BY ONE DEFENDANT.—If the vic-
7 tim was harmed as a result of the commission of an
8 offense under section 2251, 2251A, 2252, 2252A, or
9 2260 by 1 defendant, the court shall determine the
10 full amount of the victim’s losses caused by the de-
11 fendant and enter an order of restitution for an
12 amount that is not less than the full amount of the
13 victim’s losses.

14 “(2) HARMED BY MORE THAN ONE DEFEND-
15 ANT.—If the victim was harmed as a result of of-
16 fenses under section 2251, 2251A, 2252, 2252A, or
17 2260 by more than 1 person, regardless of whether
18 the persons have been charged, prosecuted, or con-
19 victed in any Federal or State court of competent ju-
20 risdiction within the United States, the court shall
21 determine the full amount of the victim’s losses
22 caused by all such persons, or reasonably expected
23 to be caused by such persons, and enter an order of
24 restitution against the defendant in favor of the vic-
25 tim for—

1 “(A) the full amount of the victim’s losses;

2 or

3 “(B) an amount that is not more than the
4 amount described in subparagraph (A) and not
5 less than—

6 “(i) \$250,000 for any offense or of-
7 fenses under section 2251(a), 2251(b),
8 2251(c), 2251A, 2252A(g), or 2260(a);

9 “(ii) \$150,000 for any offense or of-
10 fenses under section 2251(d), 2252(a)(1),
11 2252(a)(2), 2252(a)(3), 2252A(a)(1),
12 2252A(a)(2), 2252A(a)(3), 2252A(a)(4),
13 2252A(a)(6), 2252A(a)(7), or 2260(b); or

14 “(iii) \$25,000 for any offense or of-
15 fenses under section 2252(a)(4) or
16 2252A(a)(5).

17 “(3) MAXIMUM AMOUNT OF RESTITUTION.—No
18 order of restitution issued under this section may ex-
19 ceed the full amount of the victim’s losses.

20 “(4) JOINT AND SEVERAL LIABILITY.—Each
21 defendant against whom an order of restitution is
22 issued under paragraph (2)(A) shall be jointly and
23 severally liable to the victim with all other defend-
24 ants against whom an order of restitution is issued
25 under paragraph (2)(A) in favor of such victim.

1 “(5) CONTRIBUTION.—Each defendant who is
 2 ordered to pay restitution under paragraph (2)(A),
 3 and has made full payment to the victim equal to or
 4 exceeding the statutory minimum amount described
 5 in paragraph (2)(B), may recover contribution from
 6 any defendant who is also ordered to pay restitution
 7 under paragraph (2)(A). Such claims shall be
 8 brought in accordance with this section and the Fed-
 9 eral Rules of Civil Procedure. In resolving contribu-
 10 tion claims, the court may allocate payments among
 11 liable parties using such equitable factors as the
 12 court determines are appropriate so long as no pay-
 13 ments to victims are reduced or delayed. No action
 14 for contribution may be commenced more than 5
 15 years after the date on which the defendant seeking
 16 contribution was ordered to pay restitution under
 17 this section.”;

18 (4) in subsection (d), as redesignated, by strik-
 19 ing “a commission of a crime under this chapter,”
 20 and inserting “or by the commission of (i) an of-
 21 fense under this chapter or (ii) a series of offenses
 22 under this chapter committed by the defendant and
 23 other persons causing aggregated losses,”; and

24 (5) by adding at the end the following:

1 “(e) REPORT.—Not later than 1 year after the date
2 of enactment of the Amy and Vicky Child Pornography
3 Victim Restitution Improvement Act of 2015, the Attor-
4 ney General shall submit to Congress a report on the
5 progress, if any, of the Department of Justice in obtaining
6 restitution for victims of any offense under section 2251,
7 2251A, 2252, 2252A, or 2260.”.

Calendar No. 16

114TH CONGRESS
1ST Session

S. 295

A BILL

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

FEBRUARY 9, 2015

Reported without amendment