

115TH CONGRESS
1ST SESSION

S. 2162

To amend title 18, United States Code, to provide that it is unlawful to knowingly distribute a private, visual depiction of an individual's intimate parts or of an individual engaging in sexually explicit conduct, with reckless disregard for the individual's lack of consent to the distribution, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 28, 2017

Ms. HARRIS (for herself, Mr. BURR, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to provide that it is unlawful to knowingly distribute a private, visual depiction of an individual's intimate parts or of an individual engaging in sexually explicit conduct, 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 “Ending Nonconsensual
3 Online User Graphic Harassment Act of 2017” or the
4 “ENOUGH Act”.

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) DISTRIBUTE.—The term ‘distribute’ in-
4 cludes enabling access, such as by sharing a private
5 reference.

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

10 “(4) INTIMATE VISUAL DEPICTION.—The term
11 ‘intimate visual depiction’ means any visual depic-
12 tion (as that term is defined in section 2256(5))—

13 “(A) of an individual who is reasonably
14 identifiable from the visual depiction itself or
15 information displayed in connection with the
16 visual depiction;

17 “(B) in which—

18 “(i) the individual is engaging in sex-
19 ually explicit conduct; or

20 “(ii) the naked genitals or post-pubes-
21 cent female nipple of the individual are
22 visible;

23 “(C) in which the content described in sub-
24 paragraph (B) is not simulated; and

1 “(D) in original or modified format, such
2 as with a filter or text overlay.

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) OFFENSE.—Except as provided in subsection
7 (d), it shall be unlawful to knowingly use any means or
8 facility of interstate or foreign commerce to distribute an
9 intimate visual depiction of an individual—

10 “(1) with knowledge of or reckless disregard
11 for—

12 “(A) the lack of consent of the individual
13 to the distribution;

14 “(B) the reasonable expectation of the in-
15 dividual that the depiction would remain pri-
16 vate; and

17 “(C) harm that the distribution could
18 cause to the individual; and

19 “(2) without an objectively reasonable belief
20 that such distribution touches upon a matter of pub-
21 lic concern.

22 “(c) PENALTY.—Any person who violates subsection
23 (b) shall be fined under this title, imprisoned not more
24 than 5 years, or both.

25 “(d) EXCEPTIONS.—

1 “(1) LAW ENFORCEMENT AND OTHER LEGAL
2 PROCEEDINGS.—This section—

3 “(A) does not prohibit any lawful law en-
4 forcement, correctional, or intelligence activity;

5 “(B) shall not apply in the case of an indi-
6 vidual reporting unlawful activity in good faith;
7 and

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

11 “(2) SERVICE PROVIDERS.—This section shall
12 not apply to any provider of a communications serv-
13 ice with regard to content provided by another infor-
14 mation content provider unless the provider of the
15 communications service intentionally solicits, or
16 knowingly and predominantly distributes, content
17 that the provider of the communications service has
18 actual knowledge is in violation of this section.

19 “(e) THREATS AND EXTORTION.—Any person who
20 intentionally threatens to commit an offense under sub-
21 section (b), regardless of whether the threat is an act of
22 extortion, shall be punished as provided in subsection (c).

23 “(f) VENUE AND EXTRATERRITORIALITY.—A pros-
24 ecution under this section may be brought in a district
25 where the defendant or the depicted individual resides or

1 in a district where the intimate visual depictions are dis-
2 tributed or made available. There is extraterritorial Fed-
3 eral jurisdiction over an offense under this section if the
4 defendant or the depicted individual is a citizen or perma-
5 nent resident of the United States.”.

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

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

