

of Health and Human Services to carry out a national project to prevent and cure Parkinson's, to be known as the National Parkinson's Project, and for other purposes.

S. 1068

At the request of Mr. CRUZ, the name of the Senator from Alabama (Mrs. BRITT) was added as a cosponsor of S. 1068, a bill to ensure that State and local law enforcement officers are permitted to cooperate with Federal officials to protect our communities from violent criminals and suspected terrorists who are illegally present in the United States.

S. 1125

At the request of Mr. TESTER, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1125, a bill to authorize an electronic health record modernization program of the Department of Veterans Affairs and increase oversight and accountability of the program to better serve veterans, medical professionals of the Department, and taxpayers, and for other purposes.

S. 1152

At the request of Mr. DURBIN, the name of the Senator from Wisconsin (Ms. BALDWIN) was added as a cosponsor of S. 1152, a bill to focus limited Federal resources on the most serious offenders.

S. 1184

At the request of Mrs. BLACKBURN, the names of the Senator from Montana (Mr. DAINES) and the Senator from Florida (Mr. SCOTT) were added as cosponsors of S. 1184, a bill to direct the Comptroller General of the United States to conduct a study to evaluate the activities of sister city partnerships operating within the United States, and for other purposes.

S. CON. RES. 7

At the request of Mr. CARDIN, the names of the Senator from Minnesota (Ms. KLOBUCHAR), the Senator from Illinois (Mr. DURBIN) and the Senator from Virginia (Mr. KAINE) were added as cosponsors of S. Con. Res. 7, a concurrent resolution condemning Russia's unjust and arbitrary detention of Russian opposition leader Vladimir Kara-Murza who has stood up in defense of democracy, the rule of law, and free and fair elections in Russia.

S. RES. 128

At the request of Ms. KLOBUCHAR, the names of the Senator from Rhode Island (Mr. WHITEHOUSE) and the Senator from Oklahoma (Mr. LANKFORD) were added as cosponsors of S. Res. 128, a resolution condemning the Russian Federation's kidnapping of Ukrainian children.

S. RES. 133

At the request of Ms. BALDWIN, the name of the Senator from West Virginia (Mr. MANCHIN) was added as a cosponsor of S. Res. 133, a resolution honoring the 30th anniversary of the National Guard Youth Challenge Program.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HAGERTY (for himself, Mr. RISCH, Mr. LEE, Ms. LUMMIS, Mrs. HYDE-SMITH, Mrs. BLACKBURN, Mr. MARSHALL, Mr. DAINES, Mr. BUDD, Mr. CRAPO, and Mr. YOUNG):

S. 1192. A bill to amend the Public Health Service Act to provide the Secretary of Health and Human Services with the authority to suspend the right to introduce certain persons or property into the United States in the interest of the public health; to the Committee on Health, Education, Labor, and Pensions.

Mr. HAGERTY. Madam President, in February, the Biden administration argued to the U.S. Supreme Court that title 42 will terminate in May of 2023 with the expiration of the COVID-19 public health emergency.

Removing one of the last tools available to Border Patrol agents during a record-shattering border crisis is intolerable. Congress should not stand by and refuse to address this obvious problem.

Title 42 authority was initially based on the pandemic, and while I agree that the pandemic is over, the border crisis and the deadly drug overdose crisis that it fuels are worse than ever.

Whether to maintain border security policy should not depend on whether there is a pandemic. That is why I am reintroducing the Stop Fentanyl Border Crossings Act today. This legislation would preserve continued use of title 42 authority to combat drug trafficking at the border.

Clearly, the deadly epidemic has not ended. Deadly fentanyl is flooding American communities—deadly fentanyl, produced with the help of the Chinese Communist Party and smuggled by drug cartels across our southern border.

More than 100,000 Americans died of drug overdoses in the last 12 months, most of them from synthetic opioids like fentanyl. It is the No. 1 cause of death for Americans between the ages of 18 and 45.

The rise in fentanyl overdoses and deaths affects every State and congressional district. It kills the young and the old, the rich and the poor, in cities and in small towns alike. It is not a partisan issue, and finding a solution shouldn't be partisan either.

When I talk to Tennessee sheriffs, they tell me that fentanyl is becoming more and more lethal, how a so-called "bad batch" can kill dozens of people. Once this deadly substance arrives in American communities, it is too late. We have to stop it before it crosses our borders. That is why I have reintroduced this legislation to combat drug smuggling.

When I travel to the border, Border Patrol agents tell me that the cartels use human waves of illegal border crossers as cover to transport fentanyl and other deadly narcotics. While Border Patrol agents are diverted to man-

age caravans of border crossers, the gap in coverage is then exploited by the smugglers. In many cases, these are well-planned and carefully coordinated occurrences.

The agents told me that "the people don't stay at the border, and the drugs don't either." They also told me that title 42 is the last tool the Border Patrol has left to partially slow this ongoing tidal wave of illegal crossings. We can't afford to take away this tool in the midst of a crisis.

Letting title 42 end without creating a permanent, new authority to replace it empowers drug cartels. It enables them to send migrants across the border at strategic points, bogging down Border Patrol agents with paperwork and processing that takes five times longer without title 42. This dramatic increase in processing times absent title 42 will significantly decrease the scarce resources available to actually patrol our southern border. Cartels will then use the longer and more frequent enforcement gaps to move more fentanyl across the southern border. We cannot allow this to happen.

My legislation simply adds drug smuggling as an additional basis for using title 42 authority. It would help Border Patrol stop drug traffickers.

This should not be controversial. Yet, last Congress, Democrats blocked its passage three times on the Senate floor. Now that we are staring down at the end of title 42, it is time to pass this bill. I hope my colleagues across the aisle will not let title 42 expire without action. We must protect the border security tools we have to stop the fentanyl flowing across our southern border before more lives are lost.

By Mr. DURBIN:

S. 1199. A bill to combat the sexual exploitation of children by supporting victims and promoting accountability and transparency by the tech industry; to the Committee on the Judiciary.

Mr. DURBIN. Madam President, there is a grave threat to America's future lurking online. Big Tech giants and other online platforms are working every day to capture the minds of our children in order to pad their profits.

Toddlers, before they can walk or barely talk, have learned to reach out and touch that bright little screen. Mothers and fathers on car rides and plane trips trust that little screen will buy them quiet time. Captivated, mesmerized, even hypnotized, the screen experience continues. And unless parents are very careful, it can go from bad to worse. It starts with music and games, which many of the parents find harmless. As the child grows up and graduates to a cell phone, there is an opportunity to move to a new level of information and communication.

Let's face it, even the most caring, conscientious parent struggles to keep up with all the apps and options. And the producers of these online experiences are determined to work on the brains of these children, capture their

little customers in the process, and pad their profits.

So who is protecting our kids from internet profiteers and predators? I am sorry to say, almost no one. In fact, our laws are written to protect the predators, not the kids.

Clearly, every child can benefit from a safe online experience. They can make friends, expand their knowledge, learn skills. But social media, we all know, has a dangerous dark side. Innocent children are lured into online environments and powerful algorithms working to keep them there. Unsuspecting kids can be sexually exploited and their childhood images captured forever by predators and profit-taking abusers.

Drug pushers no longer search for playgrounds to sell deadly narcotics. Two clicks on the internet bring them their new young customers. Many children are bullied and harassed online or pressured into dangerous, deadly behavior.

Rose Bronstein is a mother from Chicago. She knows how cruel and dangerous the online world can be. Rose's son Nate was a 10th grader at a private school when he started being taunted by classmates using texts and Snapchat. The bullying of her son was vicious, and it included messages urging Nate to kill himself. Nate died by suicide at the age of 15.

We have known for years about the online dangers to children's privacy and safety. We have talked a lot about them. We have even held hearings in Congress about them. Journalists have written so many articles about the dangers, but the problem has only grown worse.

Research into exactly how social media use affects children is still in its early stage, largely because of Big Tech's failure to adequately monitor, report, and prevent violation of children's online privacy and safety. But a picture is emerging, and it is alarming.

This chart tells a story. The gold line you see here shows the amount of time teenagers spend scrolling through social media and watching online videos. According to Common Sense, a group that tracks media use by young kids and teens, kids spend an average of nearly 3 hours a day on sites like Instagram, Snapchat, TikTok, and YouTube. That is a nearly 60-percent increase in the last 6 years.

This white line shows that an increase in teens' use of social media has been accompanied by a sharp spike in teen depression. According to the CDC, between 2013 and 2021, the percentage of teens who reported persistent feelings of sadness or hopelessness shot up 42 percent—between 2013 and 2021.

The blue line shows what happens with girls' mental health. Today, nearly one in three girls in America say they have seriously considered suicide. That is a 34-percent spike in the past decade.

We have given tech companies nearly three decades to police themselves.

They have failed miserably, and our children are paying the price. Our teenagers are in a mental health crisis.

Congress must impose stronger, enforceable online protections for kids. Our children are not commodities, and we can't continue to expect parents and victims alone to stand up to Big Tech with few ways to hold tech companies accountable.

Two months ago, the Senate Judiciary Committee, which I chair, held a hearing on online threats to children's safety. We heard powerful testimony from those working to increase children's privacy and safety online. They included law enforcement, the National Center for Missing & Exploited Children, the American Psychological Association, and the child internet safety advocacy organization known as Fairplay.

We also heard from victims. The stories were frightening, frightening to every parent and every grandparent, and heartbreaking.

Charlotte—and I am using a pseudonym here—didn't attend the hearing, but she has allowed me to tell her story in the hope that it may help others who have been victimized online, as she has been, by sexual predators.

Charlotte was 16 years old when she first visited a social media site that a friend told her about. It sounded so exciting, she said, a place where she could meet people from all over the world. I won't use the name of the site, but you would recognize it immediately. It is used by tens of millions of people every single day.

Among the people Charlotte met online was a man who showered her with attention and compliments, gained her trust, and eventually enticed Charlotte into performing sex acts for him over the webcam and sending explicit videos to him.

Maybe that sounds shocking to you, but be prepared. Research shows that over one-third of teenagers today believe that it is normal to share the same sorts of images and videos that Charlotte shared online—one-third.

She was still in high school when the online harassment began. First came anonymous emails, then a phone call to her parents' house calling her vile names. Eventually, the images she shared with that man she thought was a friend would be posted on more than 100 websites across the world, often with her name and identifiable information included.

Charlotte filed her first of six police reports about the images when she reached the age of 18. Eventually, she, her mother, her boyfriend, and child safety groups would file hundreds of reports with social media providers around the world trying to get these horrible images taken down, often to no avail.

While she was in college studying to be a teacher—her lifelong dream—the images were posted again, along with her name and the name of her college. When the university found out about

it, it canceled her student teaching placement and threatened to withhold her degree.

She was a teacher of special education at a middle school when one of her students saw the images again online. Charlotte told her principal. She was fired a few days later.

Again and again, it was Charlotte who was blamed, not the abusers who tormented her online. Over the years, Charlotte tried three times to take her own life. It has now been 14 years since she met that predator online, but the images continue to circulate again and again. The abuse never stops, and Charlotte says she doubts she will ever feel safe again.

This Senate can help Charlotte and countless other young people who are sexually abused online each year by passing a bill that I am introducing today. It is called the Stop CSAM Act. CSAM, C-S-A-M, stands for "child sexual abuse material." Federal law still uses the old term—"pornography," "child pornography"—but that is misleading because pornography implies consent, and children under the age of 18 cannot legally consent to the creation or sharing of sexually explicit images of themselves.

So these images are, by definition, evidence of a crime. Yet, under current law, it is extremely difficult to bring lawsuits against tech companies that allow child sexual abuse materials to be posted on their websites.

How can this be, you ask? Here is how. The Communications Decency Act of 1996—remember that year—contains a section, section 230, that offers near-total immunity to Big Tech. As a result, victims like Charlotte have no way to force tech companies to remove content posted on their sites—not even these child sexual abuse horrible images.

My bill, the Stop CSAM Act, is going to change that. It would protect victims and promote accountability within the tech industry. Companies that fail to remove CSAM and related imagery after being notified about them would face significant fines. They would also be required to produce annual reports detailing their efforts to keep children safe from online sex predators, and any company that promotes or facilitates online child exploitation could face new criminal and civil penalties.

When section 230 was created in 1996, Mark Zuckerberg was in the sixth grade. Facebook and social media sites didn't even exist. It is time that we rewrite the law to reflect the reality of today's world.

A bipartisan bill sponsored by Senators Graham and Blumenthal would also help to do that. It is called the EARN IT Act, and it would let CSAM victims—these child sexual abuse victims—have their day in court by amending section 230 to eliminate Big Tech's near-total immunity from liability and responsibility.

When we learned two decades ago that Big Tobacco was lying about their

efforts to hook kids on smoking, Congress took action to establish reasonable guardrails to protect public health, and the courts held Big Tobacco accountable for the damage and death it had caused.

Now, Big Tech is using the same playbook in order to profit by hooking America's kids on its dangerous products. It is time to hold them accountable just as we did with Big Tobacco.

I will close with one more story from our committee hearing. Kristin Bride is a mother from Oregon. After being bullied relentlessly by supposed friends using Snapchat and anonymous messaging apps, Kristin's 16-year-old son Carson hanged himself in his family's garage. After his death, Kristin discovered the online taunts they had been throwing at her son. She sued the anonymous messaging apps in California State court for failing to enforce even their own safety standard.

The court dismissed the lawsuit, and what did they cite? Section 230, our law from 1996.

As Kristin told our committee, "It shouldn't take grieving parents filing lawsuits to hold the industry accountable for their dangerous and addictive product design."

We have the bipartisan support in the Senate to protect our children and grandchildren online. It is time that we use it.

Madam President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 1199

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 "Strengthening Transparency and Obligations to Protect Children Suffering from Abuse and Mistreatment Act of 2023" or the "STOP CSAM Act of 2023".

SEC. 2. MANDATORY REPORTING OF CHILD ABUSE.

(a) IN GENERAL.—Section 226 of the Victims of Child Abuse Act of 1990 (34 U.S.C. 20341) is amended—

(1) in subsection (a)(2)—

(A) by striking "A covered individual" and inserting the following:

"(A) IN GENERAL.—A covered individual"; and

(B) by adding at the end the following:

"(B) GEOGRAPHIC APPLICABILITY.—Subparagraph (A) shall apply with respect to an incident of child abuse that—

"(i) occurred within the United States; or

"(ii) (I) occurred outside the United States; and

"(II) was committed by a United States citizen or an alien lawfully admitted for permanent residence.";

(2) in subsection (b)(8), by inserting "and computer repair technicians" after "photo processors";

(3) in subsection (c)—

(A) in paragraph (1), by striking "physical or mental injury" and inserting "physical injury, psychological abuse";

(B) by striking paragraph (3) and inserting the following:

"(3) the term 'psychological abuse' includes—

"(A) a pattern of acts, threats of acts, or coercive tactics intended to degrade, humiliate, intimidate, or terrorize a child; and

"(B) the infliction of trauma on a child through—

"(i) isolation;

"(ii) the withholding of food or other necessities in order to control behavior;

"(iii) physical restraint; or

"(iv) confinement of the child without the child's consent and in degrading conditions;"

(C) in paragraph (5)(D)—

(i) by striking "genitals" and inserting "anus, genitals,"; and

(ii) by striking "or animal";

(D) in paragraph (6), by striking "child prostitution" and inserting "child sex trafficking";

(E) in paragraph (8), by striking "the term 'child abuse'" and inserting "the terms 'physical injury' and 'psychological abuse'";

(F) in paragraph (9)—

(i) in subparagraph (A)—

(I) by striking "minor" and inserting "child"; and

(II) by striking "or" at the end;

(i) in subparagraph (B), by adding "or" at the end; and

(iii) by adding at the end the following:

"(C) is authorized to interact with a child by a covered program that is providing any care, treatment, education, training, instruction, religious guidance, supervision, or recreational opportunities to that child";

(G) in paragraph (11), by striking "and" at the end;

(H) in paragraph (12), by striking the period and inserting a semicolon; and

(I) by adding at the end the following:

"(13) the term 'child' means a person who is under the age of 18;

"(14) the term 'computer' has the meaning given the term in section 1030 of title 18, United States Code;

"(15) the term 'covered program' means any program that receives, in any 1-year period, benefits in excess of \$10,000 under a Federal program involving a grant (not including a formula grant to a State, territory, or Tribe), contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance to provide any care, treatment, education, training, instruction, religious guidance, supervision, or recreational opportunities to a child; and

"(16) the term 'privileged communication' means any communication between 2 parties that, under any applicable law where the communication takes place—

"(A) is recognized as privileged;

"(B) is not subject to any exception; and

"(C) is not subject to a reporting requirement regardless of any applicable privilege.";

(4) in subsection (d)—

(A) in the first sentence, by striking "an agency" and inserting "one or more agencies"; and

(B) by striking "and law enforcement personnel" and inserting "law enforcement personnel, and children's advocacy center personnel in a multidisciplinary team setting";

(5) in subsection (i)—

(A) in the heading, by striking "RULE" and inserting "RULES";

(B) by striking "Nothing" and inserting the following:

"(1) APPLICABILITY TO VICTIMS.—Nothing"; and

(C) by adding at the end the following:

"(2) APPLICABILITY TO ATTORNEYS.—Nothing in this section shall be construed to require a licensed attorney to take any action that would violate any applicable rule of professional conduct.

"(3) PRIVILEGED COMMUNICATIONS.—Nothing in this section shall be construed to require a covered individual described in subsection (c)(9)(C) who engages in privileged communication through the covered individual's work for the covered program, whether or not for compensation, to report any information exclusively received in the context of a privileged communication."; and

(6) by adding at the end the following:

"(j) OUTREACH TO COVERED PROGRAMS.—

"(1) IN GENERAL.—Each Federal agency that has provided Federal assistance to a program that may cause the program to qualify as a covered program shall make reasonable efforts to promote awareness of the reporting requirements under subsection (a) among such programs.

"(2) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed to require individual notice to each program to which a Federal agency has provided Federal assistance as described in that paragraph."

(b) CONFORMING AMENDMENT TO TITLE 18, UNITED STATES CODE.—Section 2258 of title 18, United States Code, is amended to read as follows:

"§ 2258. Failure to report child abuse

"(a) DEFINITIONS.—In this section, the terms 'child abuse' and 'covered individual' have the meanings given those terms in section 226 of the Victims of Child Abuse Act of 1990 (34 U.S.C. 20341).

"(b) OFFENSES.—

"(1) COVERED PROFESSIONALS.—It shall be unlawful for a person who, while engaged in a professional capacity or activity described in subsection (b) of section 226 of the Victims of Child Abuse Act of 1990 (34 U.S.C. 20341) on Federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, to knowingly fail to make a timely report as required by subsection (a)(1) of that section.

"(2) COVERED INDIVIDUALS.—It shall be unlawful for a covered individual who learns of facts that give reason to suspect that a child has suffered an incident of child abuse described in subsection (c) to knowingly fail to make a timely report as required by subsection (a)(2) of section 226 of the Victims of Child Abuse Act of 1990 (34 U.S.C. 20341).

"(c) INCIDENTS OF CHILD ABUSE THAT COVERED INDIVIDUALS MUST REPORT.—An incident of child abuse referred to in subsection (b)(2) is an incident of child abuse that—

"(1) occurred within the United States; or

"(2)(A) occurred outside the United States; and

"(B) was committed by a United States citizen or an alien lawfully admitted for permanent residence.

"(d) PENALTY.—A person or individual who violates subsection (b) shall be fined under this title or imprisoned not more than 1 year or both."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a) and (b) shall take effect on the date that is 120 days after the date of enactment of this Act.

(2) OUTREACH.—The amendment made by subsection (a)(5) shall take effect on the date of enactment of this Act.

(d) ICAC TASK FORCE SUPPLEMENTAL GRANT PROGRAM.—

(1) DEFINITIONS.—In this subsection:

(A) CHILD.—The term "child" means an individual who has not attained 18 years of age.

(B) CHILD ABUSE.—The term "child abuse"—

(i) has the meaning given the term under any applicable State law requiring reporting of child abuse or neglect by individuals; or

(ii) in the case of a State in which a law described in clause (i) that defines “child abuse” is not in effect, has the meaning given the term in section 226(c) of the Victims of Child Abuse Act of 1990 (34 U.S.C. 20341(c)).

(C) COVERED ENTITY.—The term “covered entity” means any institution, program, or organization that provides any care, treatment, education, training, instruction, religious guidance, supervision, or recreational opportunities to a child.

(D) ICAC GRANT PROGRAM.—The term “ICAC Grant Program” means the grant program under section 106 of the PROTECT Our Children Act of 2008 (34 U.S.C. 21116).

(E) ICAC TASK FORCE.—The term “ICAC Task Force” means a task force that is part of the National Internet Crimes Against Children Task Force Program established under section 102 of the PROTECT Our Children Act of 2008 (34 U.S.C. 21112).

(F) ELIGIBLE ICAC TASK FORCE.—The term “Eligible ICAC Task Force” means an ICAC Task Force that—

(i) was established on or before the date of enactment of this Act; and

(ii) is located in a State that, as of the last day of the preceding fiscal year, had in effect a law that, at a minimum—

(I) with respect to a mandatory reporter who learns of facts that give reason to suspect that a child has suffered an incident of child abuse, requires the mandatory reporter to report the suspected child abuse to a law enforcement agency, a child protective services agency, or both;

(II) requires the report described in subclause (I) to be made as soon as possible, and in any event not later than 48 hours after the mandatory reporter learns of the facts that give reason to suspect that a child has suffered an incident of child abuse;

(III) prohibits a covered entity from—

(aa) taking any action to prevent or discourage reporting of child abuse; or

(bb) retaliating against a mandatory reporter for making a report described in subclause (I); and

(IV) provides a criminal, civil, or administrative penalty for the knowing failure by a mandatory reporter to submit a report in accordance with the requirement described in subclause (I).

(G) MANDATORY REPORTER.—The term “mandatory reporter” means an individual who—

(i) has attained the age of 18 years; and

(ii) is authorized to interact with a child by a covered entity that is providing any care, treatment, education, training, instruction, religious guidance, supervision, or recreational opportunities to that child.

(H) PRIVILEGED COMMUNICATION.—The term “privileged communication” means any communication between 2 parties that, under any applicable law where the communication takes place—

(i) is recognized as privileged;

(ii) is not subject to any exception; and

(iii) is not subject to a reporting requirement regardless of any applicable privilege.

(2) WAIVER OF MATCH FOR ELIGIBLE ICAC TASK FORCES.—The Attorney General shall waive the matching requirement for an Eligible ICAC Task Force under section 106(a)(3)(B) of the PROTECT Our Children Act of 2008 (34 U.S.C. 21116(a)(3)(B)) for not more than 4 fiscal years in accordance with this subsection.

(3) ESTABLISHMENT OF ICAC TASK FORCE SUPPLEMENTAL GRANT PROGRAM.—

(A) SUPPLEMENTAL GRANT PROGRAM ESTABLISHED.—There is established an ICAC Task Force Supplemental Grant Program within the Department of Justice, under which the Attorney General shall award grants (referred to in this subsection as “supplemental

grants”) to an Eligible ICAC Task Force in addition to any grants distributed to the Eligible ICAC Task Force under the ICAC Grant Program.

(B) GRANT AMOUNT.—The amount of a supplemental grant awarded to an Eligible ICAC Task Force shall be not less than 10 percent of the average amount of the 3 most recent awards to the Eligible ICAC Task Force under the ICAC Grant Program.

(C) REMAINING FUNDS.—Any amounts appropriated to carry out this subsection that are not used for supplemental grants shall be distributed to any Eligible ICAC Task Force in accordance with section 106(a)(3)(A) of the PROTECT Our Children Act of 2008 (34 U.S.C. 21116(a)(3)(A)).

(D) NUMBER OF SUPPLEMENTAL GRANTS.—The Attorney General may provide a supplemental grant to an Eligible ICAC Task Force for not more than 4 fiscal years.

(4) APPLICATION.—An Eligible ICAC Task Force seeking the waiver described in paragraph (2) or a supplemental grant shall submit an application to the Attorney General at such time, in such manner, and containing such information as the Attorney General may reasonably require, including information about the law described in paragraph (1)(F)(ii).

(5) RULE OF CONSTRUCTION.—Nothing in paragraph (1)(F)(ii) shall be construed to require a State to have in effect a law that requires an individual who engages in privileged communication through the individual’s work for a covered entity, whether or not for compensation, to report any information exclusively received in the context of a privileged communication.

(6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$25,000,000 for each of fiscal years 2024 through 2029.

SEC. 3. PROTECTING CHILD VICTIMS AND WITNESSES IN FEDERAL COURT.

(a) IN GENERAL.—Section 3509 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2)(A), by striking “or exploitation” and inserting “exploitation, or kidnapping, including international parental kidnapping”;

(B) in paragraph (3), by striking “physical or mental injury” and inserting “physical injury, psychological abuse”;

(C) by striking paragraph (5) and inserting the following:

“(5) the term ‘psychological abuse’ includes—

“(A) a pattern of acts, threats of acts, or coercive tactics intended to degrade, humiliate, intimidate, or terrorize a child; and

“(B) the infliction of trauma on a child through—

“(i) isolation;

“(ii) the withholding of food or other necessities in order to control behavior;

“(iii) physical restraint; or

“(iv) the confinement of the child without the child’s consent and in degrading conditions.”;

(D) in paragraph (6), by striking “child prostitution” and inserting “child sex trafficking”;

(E) by striking paragraph (7) and inserting the following:

“(7) the term ‘multidisciplinary child abuse team’ means a professional unit of individuals working together to investigate child abuse and provide assistance and support to a victim of child abuse, composed of representatives from—

“(A) health, social service, and legal service agencies that represent the child;

“(B) law enforcement agencies and prosecutorial offices; and

“(C) children’s advocacy centers.”;

(F) in paragraph (9)(D)—

(i) by striking “genitals” and inserting “anus, genitals.”; and

(ii) by striking “or animal”;

(G) in paragraph (11), by striking “and” at the end;

(H) in paragraph (12)—

(i) by striking “the term ‘child abuse’ does not” and inserting “the terms ‘physical injury’ and ‘psychological abuse’ do not”; and

(ii) by striking the period and inserting a semicolon; and

(I) by adding at the end the following:

“(13) the term ‘covered person’ means a person of any age who—

“(A) is or is alleged to be—

“(i) a victim of a crime of physical abuse, sexual abuse, exploitation, or kidnapping, including international parental kidnapping; or

“(ii) a witness to a crime committed against another person; and

“(B) was under the age of 18 when the crime described in subparagraph (A) was committed; and

“(14) the term ‘protected information’, with respect to a covered person, includes—

“(A) personally identifiable information of the covered person, including—

“(i) the name of the covered person;

“(ii) an address;

“(iii) a phone number;

“(iv) a user name or identifying information for an online, social media, or email account; and

“(v) any information that can be used to distinguish or trace the identity of the covered person, either alone or when combined with other information that is linked or linkable to the covered person;

“(B) medical, dental, behavioral, psychiatric, or psychological information of the covered person;

“(C) educational or juvenile justice records of the covered person; and

“(D) any other information concerning the covered person that is deemed ‘protected information’ by order of the court under subsection (d)(5).”;

(2) in subsection (b)—

(A) in paragraph (1)(C), by striking “minor” and inserting “child”; and

(B) in paragraph (2)—

(i) in the heading, by striking “VIDEOTAPED” and inserting “RECORDED”;

(ii) in subparagraph (A), by striking “that the deposition be recorded and preserved on videotape” and inserting “that a video recording of the deposition be made and preserved”;

(iii) in subparagraph (B)—

(I) in clause (ii), by striking “that the child’s deposition be taken and preserved by videotape” and inserting “that a video recording of the child’s deposition be made and preserved”;

(II) in clause (iii)—

(aa) in the matter preceding subclause (I), by striking “videotape” and inserting “recorded”; and

(bb) in subclause (IV), by striking “videotape” and inserting “recording”; and

(III) in clause (v)—

(aa) in the heading, by striking “VIDEO TAPE” and inserting “VIDEO RECORDING”;

(bb) in the first sentence, by striking “made and preserved on video tape” and inserting “recorded and preserved”; and

(cc) in the second sentence, by striking “videotape” and inserting “video recording”;

(iv) in subparagraph (C), by striking “child’s videotaped” and inserting “video recording of the child’s”;

(v) in subparagraph (D)—

(I) by striking “videotaping” and inserting “deposition”; and

(II) by striking “videotaped” and inserting “recorded”;

(vi) in subparagraph (E), by striking “videotaped” and inserting “recorded”; and
 (vii) in subparagraph (F), by striking “videotape” each place the term appears and inserting “video recording”;

(3) in subsection (d)—

(A) in paragraph (1)(A)—

(i) in clause (i), by striking “the name of or any other information concerning a child” and inserting “a covered person’s protected information”; and

(ii) in clause (ii)—

(I) by striking “documents described in clause (i) or the information in them that concerns a child” and inserting “a covered person’s protected information”; and

(II) by striking “, have reason to know such information” and inserting “(including witnesses or potential witnesses), have reason to know each item of protected information to be disclosed”;

(B) in paragraph (2)—

(i) by striking “the name of or any other information concerning a child” each place the term appears and inserting “a covered person’s protected information”;

(ii) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and adjusting the margins accordingly;

(iii) by striking “All papers” and inserting the following:

“(A) IN GENERAL.—All papers”; and

(iv) by adding at the end the following:

“(B) ENFORCEMENT OF VIOLATIONS.—The court may address a violation of subparagraph (A) in the same manner as disobedience or resistance to a lawful court order under section 401(3).”;

(C) in paragraph (3)—

(i) in subparagraph (A)—

(I) by striking “a child from public disclosure of the name of or any other information concerning the child” and inserting “a covered person’s protected information from public disclosure”; and

(II) by striking “, if the court determines that there is a significant possibility that such disclosure would be detrimental to the child”;

(ii) in subparagraph (B)—

(I) in clause (i)—

(aa) by striking “a child witness, and the testimony of any other witness” and inserting “any witness”;

(bb) by striking “the name of or any other information concerning a child” and inserting “the covered person’s protected information”; and

(II) in clause (ii), by striking “child” and inserting “covered person”; and

(iii) by adding at the end the following:

“(C)(i) For purposes of this paragraph, there shall be a presumption that public disclosure of a covered person’s protected information would be detrimental to the covered person.

“(ii) The court shall deny a motion for a protective order under subparagraph (A) only if the court finds that the party opposing the motion has rebutted the presumption under clause (i) of this subparagraph.”;

(D) in paragraph (4)—

(i) by striking “This subsection” and inserting the following:

“(A) DISCLOSURE TO CERTAIN PARTIES.—This subsection”;

(ii) in subparagraph (A), as so designated—

(I) by striking “the name of or other information concerning a child” and inserting “a covered person’s protected information”; and

(II) by striking “or an adult attendant, or to” and inserting “an adult attendant, a law enforcement agency for any intelligence or investigative purpose, or”; and

(iii) by adding at the end the following:

“(B) REQUEST FOR PUBLIC DISCLOSURE.—If any party requests public disclosure of a covered person’s protected information to fur-

ther a public interest, the court shall deny the request unless the court finds that—

“(i) the party seeking disclosure has established that there is a compelling public interest in publicly disclosing the covered person’s protected information;

“(ii) there is a substantial probability that the public interest would be harmed if the covered person’s protected information is not disclosed;

“(iii) the substantial probability of harm to the public interest outweighs the harm to the covered person from public disclosure of the covered person’s protected information; and

“(iv) there is no alternative to public disclosure of the covered person’s protected information that would adequately protect the public interest.”;

(E) by adding at the end the following:

“(5) OTHER PROTECTED INFORMATION.—The court may order that information shall be considered to be ‘protected information’ for purposes of this subsection if the court finds that the information is sufficiently personal, sensitive, or identifying that it should be subject to the protections and presumptions under this subsection.”;

(4) by striking subsection (f) and inserting the following:

“(f) VICTIM IMPACT STATEMENT.—

“(1) PROBATION OFFICER.—In preparing the presentence report pursuant to rule 32(c) of the Federal Rules of Criminal Procedure, the probation officer shall request information from the multidisciplinary child abuse team, if applicable, or other appropriate sources to determine the impact of the offense on a child victim and any other children who may have been affected by the offense.

“(2) GUARDIAN AD LITEM.—A guardian ad litem appointed under subsection (h) shall—

“(A) make every effort to obtain and report information that accurately expresses the views of a child victim, and the views of family members as appropriate, concerning the impact of the offense; and

“(B) use forms that permit a child victim to express the child’s views concerning the personal consequences of the offense, at a level and in a form of communication commensurate with the child’s age and ability.”;

(5) in subsection (h), by adding at the end the following:

“(4) AUTHORIZATION OF APPROPRIATIONS.—

“(A) IN GENERAL.—There is authorized to be appropriated to the United States courts to carry out this subsection \$25,000,000 for each fiscal year.

“(B) SUPERVISION OF PAYMENTS.—Payments from appropriations authorized under subparagraph (A) shall be made under the supervision of the Director of the Administrative Office of the United States Courts.”;

(6) in subsection (i)—

(A) by striking “A child testifying at or attending a judicial proceeding” and inserting the following:

“(1) IN GENERAL.—A child testifying at a judicial proceeding, including in a manner described in subsection (b).”;

(B) in paragraph (1), as so designated—

(i) in the third sentence, by striking “proceeding” and inserting “testimony”; and

(ii) by striking the fifth sentence; and

(C) by adding at the end the following:

“(2) RECORDING.—If the adult attendant is in close physical proximity to or in contact with the child while the child testifies—

“(A) at a judicial proceeding, a video recording of the adult attendant shall be made and shall become part of the court record; or

“(B) in a manner described in subsection (b), the adult attendant shall be visible on the closed-circuit television or in the recorded deposition.

“(3) COVERED PERSONS ATTENDING PROCEEDING.—A covered person shall have the

right to be accompanied by an adult attendant when attending any judicial proceeding.”;

(7) in subsection (j)—

(A) by striking “child” each place the term appears and inserting “covered person”; and

(B) in the fourth sentence—

(i) by striking “and the potential” and inserting “the potential”;

(ii) by striking “child’s” and inserting “covered person’s”; and

(iii) by inserting before the period at the end the following: “, and the necessity of the continuance to protect the defendant’s rights”;

(8) in subsection (k), by striking “child” each place the term appears and inserting “covered person”; and

(9) in subsection (l), by striking “child” each place the term appears and inserting “covered person”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to conduct that occurred before, on, or after the date of enactment of this Act.

SEC. 4. FACILITATING PAYMENT OF RESTITUTION; TECHNICAL AMENDMENTS TO RESTITUTION STATUTES.

Title 18, United States Code, is amended—

(1) in section 1593(c)—

(A) by inserting “(1)” after “(c)”;

(B) by striking “chapter, including, in” and inserting the following: “chapter.

“(2) In”; and

(C) in paragraph (2), as so designated, by inserting “may assume the rights of the crime victim under this section” after “suitable by the court”;

(2) in section 2248(c)—

(A) by striking “For purposes” and inserting the following:

“(1) IN GENERAL.—For purposes”;

(B) by striking “chapter, including, in” and inserting the following: “chapter.

“(2) ASSUMPTION OF CRIME VICTIM’S RIGHTS.—In”; and

(C) in paragraph (2), as so designated, by inserting “may assume the rights of the crime victim under this section” after “suitable by the court”;

(3) in section 2259—

(A) in subsection (b)—

(i) in paragraph (1), by striking “DIRECTIONS.—Except as provided in paragraph (2), the” and inserting “RESTITUTION FOR CHILD PORNOGRAPHY PRODUCTION.—If the defendant was convicted of child pornography production, the”; and

(ii) in paragraph (2)(B), by striking “\$3,000.” and inserting the following: “—

“(i) \$3,000; or

“(ii) 10 percent of the full amount of the victim’s losses, if the full amount of the victim’s losses is less than \$3,000.”; and

(B) in subsection (c)—

(i) by striking paragraph (1) and inserting the following:

“(1) CHILD PORNOGRAPHY PRODUCTION.—For purposes of this section and section 2259A, the term ‘child pornography production’ means—

“(A) a violation of subsection (a), (b), or (c) of section 2251, or an attempt or conspiracy to violate any of those subsections under subsection (e) of that section;

“(B) a violation of section 2251A;

“(C) a violation of section 2252(a)(4) or 2252A(a)(5), or an attempt or conspiracy to violate either of those sections under section 2252(b)(2) or 2252A(b)(2), to the extent such conduct involves child pornography—

“(i) produced by the defendant; or

“(ii) that the defendant attempted or conspired to produce;

“(D) a violation of section 2252A(g) if the series of felony violations involves not fewer than 1 violation—

“(i) described in subparagraph (A), (B), (E), or (F) of this paragraph;

“(ii) of section 1591; or

“(iii) of section 1201, chapter 109A, or chapter 117, if the victim is a minor;

“(E) a violation of subsection (a) of section 2260, or an attempt or conspiracy to violate that subsection under subsection (c)(1) of that section;

“(F)(i) a violation of section 2260B(a)(2) for promoting or facilitating an offense—

“(I) described in subparagraph (A), (B), (D), or (E) of this paragraph; or

“(II) under section 2422(b); or

“(i) attempting or conspiring to promote or facilitate an offense described in clause (i) of this subparagraph under section 2260B(b); and

“(G) a violation of chapter 109A or chapter 117, if the offense involves the production or attempted production of, or conspiracy to produce, child pornography.”; and

(ii) by striking paragraph (3) and inserting the following:

“(3) **TRAFFICKING IN CHILD PORNOGRAPHY.**—For purposes of this section and section 2259A, the term ‘trafficking in child pornography’ means—

“(A) a violation of subsection (d) of section 2251 or an attempt or conspiracy to violate that subsection under subsection (e) of that section;

“(B) a violation of paragraph (1), (2), or (3) of subsection (a) of section 2252, or an attempt or conspiracy to violate any of those paragraphs under subsection (b)(1) of that section;

“(C) a violation of section 2252(a)(4) or 2252A(a)(5), or an attempt or conspiracy to violate either of those sections under section 2252(b)(2) or 2252A(b)(2), to the extent such conduct involves child pornography—

“(i) not produced by the defendant; or

“(ii) that the defendant did not attempt or conspire to produce;

“(D) a violation of paragraph (1), (2), (3), (4), or (6) of subsection (a) of section 2252A, or an attempt or conspiracy to violate any of those paragraphs under subsection (b)(1) of that section;

“(E) a violation of subsection (a)(7) of section 2252A, or an attempt or conspiracy to violate that subsection under subsection (b)(3) of that section;

“(F) a violation of section 2252A(g) if the series of felony violations exclusively involves violations described in this paragraph;

“(G) a violation of subsection (b) of section 2260, or an attempt or conspiracy to violate that subsection under subsection (c)(2) of that section;

“(H)(i) a violation of subsection (a)(1) of section 2260B, or a violation of subsection (a)(2) of that section for promoting or facilitating an offense described in this paragraph; or

“(ii) an attempt or conspiracy to commit the conduct described in clause (i) of this subparagraph under section 2260B(b).”;

(4) in section 2259A(a)—

(A) in paragraph (1), by striking “under section 2252(a)(4) or 2252A(a)(5)” and inserting “described in section 2259(c)(3)(C)”; and

(B) in paragraph (2), by striking “any other offense for trafficking in child pornography” and inserting “any offense for trafficking in child pornography other than an offense described in section 2259(c)(3)(C)”;;

(5) in section 2429—

(A) in subsection (b)(3), by striking “2259(b)(3)” and inserting “2259(c)(2)”; and

(B) in subsection (d)—

(i) by inserting “(1)” after “(d)”;;

(ii) by striking “chapter, including, in” and inserting the following: “chapter.

“(2) In”; and

(iii) in paragraph (2), as so designated, by inserting “may assume the rights of the crime victim under this section” after “suitable by the court”;; and

(6) in section 3664, by adding at the end the following:

“(q) **TRUSTEE OR OTHER FIDUCIARY.**—

“(1) **IN GENERAL.**—

“(A) **APPOINTMENT OF TRUSTEE OR OTHER FIDUCIARY.**—When the court issues an order of restitution under section 1593, 2248, 2259, 2429, or 3663, or subparagraphs (A)(i) and (B) of section 3663A(c)(1), for a victim described in subparagraph (B) of this paragraph, the court, at its own discretion or upon motion by the Government, may appoint a trustee or other fiduciary to hold any amount paid for restitution in a trust or other official account for the benefit of the victim.

“(B) **COVERED VICTIMS.**—A victim referred to in subparagraph (A) is a victim who is—

“(i) under the age of 18 at the time of the proceeding;

“(ii) incompetent or incapacitated; or

“(iii) subject to paragraph (3), a foreign citizen or stateless person residing outside the United States.

“(2) **ORDER.**—When the court appoints a trustee or other fiduciary under paragraph (1), the court shall issue an order specifying—

“(A) the duties of the trustee or other fiduciary, which shall require—

“(i) the administration of the trust or maintaining an official account in the best interests of the victim; and

“(ii) disbursing payments from the trust or account—

“(I) to the victim; or

“(II) to any individual or entity on behalf of the victim;

“(B) that the trustee or other fiduciary—

“(i) shall avoid any conflict of interest;

“(ii) may not profit from the administration of the trust or maintaining an official account for the benefit of the victim other than as specified in the order; and

“(iii) may not delegate administration of the trust or maintaining the official account to any other person;

“(C) if and when the trust or the duties of the other fiduciary will expire; and

“(D) the fees payable to the trustee or other fiduciary to cover expenses of administering the trust or maintaining the official account for the benefit of the victim, and the schedule for payment of those fees.

“(3) **FACT-FINDING REGARDING FOREIGN CITIZENS AND STATELESS PERSON.**—In the case of a victim who is a foreign citizen or stateless person residing outside the United States and is not under the age of 18 at the time of the proceeding or incompetent or incapacitated, the court may appoint a trustee or other fiduciary under paragraph (1) only if the court finds it necessary to—

“(A) protect the safety or security of the victim; or

“(B) provide a reliable means for the victim to access or benefit from the restitution payments.

“(4) **PAYMENT OF FEES.**—

“(A) **IN GENERAL.**—The court may, with respect to the fees of the trustee or other fiduciary—

“(i) pay the fees in whole or in part; or

“(ii) order the defendant to pay the fees in whole or in part.

“(B) **APPLICABILITY OF OTHER PROVISIONS.**—With respect to a court order under subparagraph (A)(ii) requiring a defendant to pay fees—

“(i) subsection (f)(3) shall apply to the court order in the same manner as that subsection applies to a restitution order;

“(ii) subchapter C of chapter 227 (other than section 3571) shall apply to the court

order in the same manner as that subchapter applies to a sentence of a fine; and

“(iii) subchapter B of chapter 229 shall apply to the court order in the same manner as that subchapter applies to the implementation of a sentence of a fine.

“(C) **EFFECT ON OTHER PENALTIES.**—Imposition of payment under subparagraph (A)(ii) shall not relieve a defendant of, or entitle a defendant to a reduction in the amount of, any special assessment, restitution, other fines, penalties, or costs, or other payments required under the defendant’s sentence.

“(D) **SCHEDULE.**—Notwithstanding any other provision of law, if the court orders the defendant to make any payment under subparagraph (A)(ii), the court may provide a payment schedule that is concurrent with the payment of any other financial obligation described in subparagraph (C).

“(5) **AUTHORIZATION OF APPROPRIATIONS.**—

“(A) **IN GENERAL.**—There is authorized to be appropriated to the United States courts to carry out this subsection \$15,000,000 for each fiscal year.

“(B) **SUPERVISION OF PAYMENTS.**—Payments from appropriations authorized under subparagraph (A) shall be made under the supervision of the Director of the Administrative Office of the United States Courts.”.

SEC. 5. CYBERTIPLINE IMPROVEMENTS, AND ACCOUNTABILITY AND TRANSPARENCY BY THE TECH INDUSTRY.

(a) **IN GENERAL.**—Chapter 110 of title 18, United States Code, is amended—

(1) in section 2258A—

(A) by striking subsections (a), (b), and (c) and inserting the following:

“(a) **DUTY TO REPORT.**—

“(1) **DUTY.**—In order to reduce the proliferation of online child exploitation and to prevent the online sexual exploitation of children, as soon as reasonably possible after obtaining actual knowledge of any facts or circumstances described in paragraph (2) or any apparent child pornography on the provider’s service, network, or platform, and in any event not later than 60 days after obtaining such knowledge, a provider shall—

“(A) submit to the CyberTipline of NCMEC, or any successor to the CyberTipline operated by NCMEC, a report containing—

“(i) the mailing address, telephone number, facsimile number, electronic mailing address of, and individual point of contact for, such provider; and

“(ii) information described in subsection (b) concerning such facts or circumstances or apparent child pornography; and

“(B) if applicable, remove the apparent child pornography that is the subject of the report described in subparagraph (A), if such child pornography is publicly available.

“(2) **FACTS OR CIRCUMSTANCES.**—The facts or circumstances described in this paragraph are any facts or circumstances indicating an apparent, planned, or imminent violation of section 2251, 2251A, 2252, 2252A, 2252B, or 2260.

“(3) **PERMITTED ACTIONS BASED ON REASONABLE BELIEF.**—In order to reduce the proliferation of online child exploitation and to prevent the online sexual exploitation of children, if a provider has a reasonable belief that any facts or circumstances described in paragraph (2) exist, the provider may submit to the CyberTipline of NCMEC, or any successor to the CyberTipline operated by NCMEC, a report described in paragraph (1)(A).

“(b) **CONTENTS OF REPORT.**—

“(1) **IN GENERAL.**—In an effort to prevent the future sexual victimization of children, and to the extent the information is within the custody or control of a provider, each report provided under subsection (a)(1)(A)—

“(A) shall include, to the extent that it is applicable and reasonably available—

“(i) identifying information regarding any individual who is the subject of the report, including name, address, electronic mail address, user or account identification, Internet Protocol address, and uniform resource locator;

“(ii) the terms of service in effect at the time of—

“(I) the apparent violation; or

“(II) the detection of apparent child pornography or a planned or imminent violation;

“(iii) a copy of any apparent child pornography that is the subject of the report that was identified in a publicly available location;

“(iv) for each item of apparent child pornography included in the report under clause (iii) or paragraph (2)(C), information indicating whether—

“(I) the reported child pornography was publicly available; or

“(II) the provider, in its sole discretion, viewed the reported child pornography, or any copy thereof, at any point concurrent with or prior to the submission of the report; and

“(v) for each item of apparent child pornography that is the subject of the report, an indication as to whether the child pornography—

“(I) has previously been the subject of a report under paragraph (1)(A) or (3) of subsection (a); or

“(II) is the subject of multiple contemporaneous reports due to rapid and widespread distribution; and

“(B) may, at the sole discretion of the provider, include the information described in paragraph (2) of this subsection.

“(2) OTHER INFORMATION.—The information referred to in paragraph (1)(B) is the following:

“(A) HISTORICAL REFERENCE.—Information relating to when and how a customer or subscriber of a provider uploaded, transmitted, or received content relating to the report or when and how content relating to the report was reported to, or discovered by the provider, including a date and time stamp and time zone.

“(B) GEOGRAPHIC LOCATION INFORMATION.—Information relating to the geographic location of the involved individual or website, which may include the Internet Protocol address or verified address, or, if not reasonably available, at least one form of geographic identifying information, including area code or zip code, provided by the customer or subscriber, or stored or obtained by the provider.

“(C) APPARENT CHILD PORNOGRAPHY.—Any apparent child pornography not described in paragraph (1)(A)(iii), or other content related to the subject of the report.

“(D) COMPLETE COMMUNICATION.—The complete communication containing any apparent child pornography or other content, including—

“(i) any data or information regarding the transmission of the communication; and

“(ii) any visual depictions, data, or other digital files contained in, or attached to, the communication.

“(E) TECHNICAL IDENTIFIER.—An industry-standard hash value or other similar industry-standard technical identifier for any reported visual depiction as it existed on the provider's service, network, or platform.

“(F) DESCRIPTION.—For any item of apparent child pornography that is the subject of the report, an indication of whether—

“(i) the depicted sexually explicit conduct involves—

“(I) genital, oral, or anal sexual intercourse;

“(II) bestiality;

“(III) masturbation;

“(IV) sadistic or masochistic abuse; or

“(V) lascivious exhibition of the anus, genitals, or pubic area of any person; and

“(ii) the depicted minor is—

“(I) an infant or toddler;

“(II) prepubescent;

“(III) pubescent;

“(IV) post-pubescent; or

“(V) of an indeterminate age or developmental stage.”;

“(c) FORWARDING OF REPORT AND OTHER INFORMATION TO LAW ENFORCEMENT.—

“(1) IN GENERAL.—Pursuant to its clearinghouse role as a private, nonprofit organization, and at the conclusion of its review in furtherance of its nonprofit mission, NCMEC shall make available each report submitted under paragraph (1)(A) or (3) of subsection (a) to one or more of the following law enforcement agencies:

“(A) Any Federal law enforcement agency that is involved in the investigation of child sexual exploitation, kidnapping, or enticement crimes.

“(B) Any State or local law enforcement agency that is involved in the investigation of child sexual exploitation.

“(C) A foreign law enforcement agency designated by the Attorney General under subsection (d)(3) or a foreign law enforcement agency that has an established relationship with the Federal Bureau of Investigation, Immigration and Customs Enforcement, or INTERPOL, and is involved in the investigation of child sexual exploitation, kidnapping, or enticement crimes.

“(2) TECHNICAL IDENTIFIERS.—If a report submitted under paragraph (1)(A) or (3) of subsection (a) contains an industry-standard hash value or other similar industry-standard technical identifier—

“(A) NCMEC may compare that hash value or identifier with any database or repository of visual depictions owned or operated by NCMEC; and

“(B) if the comparison under subparagraph (A) results in a match, NCMEC may include the matching visual depiction from its database or repository when forwarding the report to an agency described in subparagraph (A) or (B) of paragraph (1).”;

“(B) in subsection (d)—

“(i) in paragraph (2), by striking “subsection (c)(1)” and inserting “subsection (c)(1)(A)”;

“(ii) in paragraph (3)—

“(I) in subparagraph (A), by striking “subsection (c)(3)” and inserting “subsection (c)(1)(C)”;

“(II) in subparagraph (C), by striking “subsection (c)(3)” and inserting “subsection (c)(1)(C)”;

“(C) by striking subsection (e) and inserting the following:

“(e) FAILURE TO COMPLY WITH REQUIREMENTS.—

“(1) CRIMINAL PENALTY.—

“(A) OFFENSE.—It shall be unlawful for a provider to knowingly—

“(i) fail to submit a report under subsection (a)(1)(A) within the time period required by that subsection; or

“(ii) fail to preserve material as required under subsection (h).

“(B) PENALTY.—

“(i) IN GENERAL.—A provider that violates subparagraph (A) shall be fined—

“(I) in the case of an initial violation, not more than \$150,000; and

“(II) in the case of any second or subsequent violation, not more than \$300,000.

“(ii) HARM TO INDIVIDUALS.—The maximum fine under clause (i) shall be tripled if an individual is harmed as a direct and proximate result of the applicable violation.

“(2) CIVIL PENALTY.—

“(A) VIOLATIONS RELATING TO CYBERTIPLINE REPORTS, CONTENT REMOVAL, AND MATERIAL

PRESERVATION.—A provider shall be liable to the United States Government for a civil penalty in an amount of not less than \$50,000 and not more than \$100,000 if the provider knowingly—

“(i) fails to submit a report under subsection (a)(1)(A) within the time period required by that subsection;

“(ii) fails to remove apparent child pornography as required under subsection (a)(1)(B);

“(iii) fails to preserve material as required under subsection (h); or

“(iv) submits a report under subsection (a)(1)(A) that—

“(I) contains materially false or fraudulent information; or

“(II) omits information described in subsection (b)(1)(A) that is reasonably available.

“(B) ANNUAL REPORT VIOLATIONS.—A provider shall be liable to the United States Government for a civil penalty in an amount of not less than \$100,000 and not more than \$1,000,000 if the provider knowingly—

“(i) fails to submit an annual report as required under subsection (i); or

“(ii) submits an annual report under subsection (i) that—

“(I) contains a materially false, fraudulent, or misleading statement; or

“(II) omits information described in subsection (i)(1) that is reasonably available.

“(C) HARM TO INDIVIDUALS.—The amount of a civil penalty under subparagraph (A) or (B) shall be tripled if an individual is harmed as a direct and proximate result of the applicable violation.

“(D) COSTS OF CIVIL ACTIONS.—A provider that commits a violation described in subparagraph (A) or (B) shall be liable to the United States Government for the costs of a civil action brought to recover a civil penalty under that subparagraph.

“(E) ENFORCEMENT.—This paragraph shall be enforced in accordance with sections 3731, 3732, and 3733 of title 31, except that a civil action to recover a civil penalty under subparagraph (A) or (B) of this paragraph may only be brought by the United States Government.

“(3) DEPOSIT OF FINES AND PENALTIES.—Notwithstanding any other provision of law, any criminal fine or civil penalty collected under this subsection shall be deposited into the Child Pornography Victims Reserve as provided in section 2259B.”;

“(D) in subsection (f), by striking paragraph (3) and inserting the following:

“(3) affirmatively search, screen, or scan for—

“(A) facts or circumstances described in subsection (a)(2);

“(B) information described in subsection (b)(2); or

“(C) any apparent child pornography, including any copy of apparent child pornography removed pursuant to subsection (a)(1)(B).”;

“(E) in subsection (g)—

“(i) in paragraph (2)(A)—

“(I) in clause (iii), by inserting “or personnel at a children's advocacy center” after “State”;

“(II) in clause (iv), by striking “State or subdivision of a State” and inserting “State, subdivision of a State, or children's advocacy center”;

“(ii) in paragraph (3), in the matter preceding subparagraph (A), by inserting “paragraph (1)(A) or (3) of” before “subsection (a)”;

“(iii) in paragraph (4), by striking “subsection (a)(1)” and inserting “paragraph (1)(A) or (3) of subsection (a)”;

“(F) in subsection (h)—

“(i) in paragraph (1), by striking “subsection (a)(1)” and inserting “paragraph (1)(A) or (3) of subsection (a)”;

“(ii) by adding at the end the following:

“(5) RELATION TO REPORTING REQUIREMENT.—Submission of a report as required under paragraph (1)(A) or (3) of subsection (a) does not satisfy the obligations under this subsection.”; and

(G) by adding at the end the following:

“(i) ANNUAL REPORT.—

“(1) IN GENERAL.—Not later than March 31 of the second year beginning after the date of enactment of the STOP CSAM Act of 2023, and of each year thereafter, a provider that had more than 1,000,000 unique monthly visitors or users during each month of the preceding year and accrued revenue of more than \$50,000,000 during the preceding year shall submit to the Attorney General and the Chair of the Federal Trade Commission a report, disaggregated by subsidiary, that provides the following information for the preceding year to the extent such information is applicable and reasonably available:

“(A) CYBERTIPLINE DATA.—

“(i) The total number of reports that the provider submitted under paragraph (1)(A) or (3) of subsection (a).

“(ii) The total number of publicly available items of apparent child pornography that the provider removed under subsection (a)(1)(B).

“(iii) Which items of information described in subsection (b)(2) are routinely included in the reports submitted by the provider under paragraph (1)(A) or (3) of subsection (a).

“(B) REPORT AND REMOVE DATA.—With respect to section 7 of the STOP CSAM Act of 2023—

“(i) a description of the provider’s designated reporting system;

“(ii) the number of notifications received;

“(iii) the number of proscribed visual depictions involving a minor that were removed; and

“(iv) the total amount of any fine ordered and paid.

“(C) OTHER REPORTING TO THE PROVIDER.—

“(i) The measures the provider has in place to receive other reports concerning child sexual exploitation and abuse using the provider’s product or on the provider’s service, platform, or network.

“(ii) The average time for responding to reports described in clause (i).

“(iii) The number of reports described in clause (i) that the provider received.

“(iv) A summary description of the actions taken upon receipt of the reports described in clause (i).

“(D) POLICIES.—

“(i) A description of the policies of the provider with respect to the commission of child sexual exploitation and abuse using the provider’s product or on the provider’s service, platform, or network, including how child sexual exploitation and abuse is defined.

“(ii) A description of possible consequences for violations of the policies described in clause (i).

“(iii) The methods of informing users of the policies described in clause (i).

“(iv) The process for adjudicating potential violations of the policies described in clause (i).

“(E) CULTURE OF SAFETY.—

“(i) The measures and technologies that the provider deploys to protect the safety of children using the provider’s product, service, platform, or network.

“(ii) The measures and technologies that the provider deploys to prevent the use of the provider’s product, service, platform, or network by individuals seeking to commit child sexual exploitation and abuse.

“(iii) Factors that interfere with the provider’s ability to detect or evaluate instances of child sexual exploitation and abuse.

“(iv) An assessment of the efficacy of the measures and technologies described in

clauses (i) and (ii) and the impact of the factors described in clause (iii).

“(F) SAFETY BY DESIGN.—The measures that the provider takes before launching a new product, service, platform, or network to assess—

“(i) the safety risks for children; and

“(ii) whether and how individuals could use the new product, service, platform, or network to commit child sexual exploitation and abuse.

“(G) TRENDS AND PATTERNS.—Any information concerning emerging trends and changing patterns with respect to online child safety and the commission of child sexual exploitation and abuse.

“(2) AVOIDING DUPLICATION.—For purposes of subparagraphs (D) through (G) of paragraph (1), in the case of any report submitted under that paragraph after the initial report, a provider shall only be required to submit new or updated information described in those subparagraphs.

“(3) LIMITATION.—Nothing in paragraph (1) shall require the disclosure of trade secrets or other proprietary information.

“(4) PUBLICATION.—

“(A) IN GENERAL.—The Attorney General and the Chair of the Federal Trade Commission shall publish the reports received under this subsection.

“(B) REDACTION.—A provider may request the redaction of any information that is law enforcement sensitive or otherwise not suitable for public distribution, and the Attorney General and Chair of the Federal Trade Commission may, in their discretion, redact any such information, whether or not requested.”;

(2) in section 2258B—

(A) in subsection (a)—

(i) by striking “may not be brought in any Federal or State court”; and

(ii) by striking “Except as provided in subsection (b), a civil claim or criminal charge” and inserting the following:

“(1) LIMITED LIABILITY.—Except as provided in subsection (b), a civil claim or criminal charge described in paragraph (2) may not be brought in any Federal or State court.

“(2) COVERED CLAIMS AND CHARGES.—A civil claim or criminal charge referred to in paragraph (1) is a civil claim or criminal charge”; and

(B) in subsection (b)(1), by inserting “or knowingly failed to comply with a requirement under section 2258A” after “misconduct”;

(3) in section 2258C—

(A) in subsection (a)(1), by inserting “use of the provider’s products, services, platforms, or networks to commit” after “stop the”;

(B) in subsection (b)—

(i) by striking “Any provider” and inserting the following:

“(1) IN GENERAL.—Any provider”;

(ii) in paragraph (1), as so designated, by striking “receives” and inserting “, in its sole discretion, obtains”; and

(iii) by adding at the end the following:

“(2) LIMITATION ON SHARING WITH OTHER ENTITIES.—A provider that obtains elements under subsection (a)(1) may not distribute those elements, or make those elements available, to any other entity, except for the sole and exclusive purpose of stopping the online sexual exploitation of children.”; and

(C) in subsection (c)—

(i) by striking “subsections” and inserting “subsection”;

(ii) by striking “providers receiving” and inserting “a provider to obtain”;

(iii) by inserting “, or” after “NCMEC”; and

(iv) by inserting “use of the provider’s products, services, platforms, or networks to commit” after “stop the”;

(4) in section 2258E(6), by striking “electronic communication service provider” and inserting “electronic communication service”;

(5) in section 2259B(a), by inserting “, any fine or penalty collected under section 2258A(e) or subparagraph (A) of section 7(g)(24) of the STOP CSAM Act of 2023 (except as provided in clauses (i) and (ii)(I) of subparagraph (B) of such section 7(g)(24)),” after “2259A”; and

(6) by adding at the end the following:

“§ 2260B. Liability for certain child exploitation offenses

“(a) OFFENSE.—It shall be unlawful for a provider of an interactive computer service, as that term is defined in section 230 of the Communications Act of 1934 (47 U.S.C. 230), that operates through the use of any facility or means of interstate or foreign commerce or in or affecting interstate or foreign commerce, through such service to knowingly—

“(1) host or store child pornography or make child pornography available to any person; or

“(2) otherwise knowingly promote or facilitate a violation of section 2251, 2251A, 2252, 2252A, or 2422(b).

“(b) PENALTY.—A provider of an interactive computer service that violates subsection (a)—

“(1) subject to paragraph (2), shall be fined not more than \$1,000,000; and

“(2) if the offense involves a conscious or reckless risk of serious personal injury or an individual is harmed as a direct and proximate result of the violation, shall be fined not more than \$5,000,000.

“(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to apply to any action by a provider of an interactive computer service that is necessary to comply with a valid court order, subpoena, search warrant, statutory obligation, or preservation request from law enforcement.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 110 of title 18, United States Code, is amended by adding at the end the following:

“2260B. Liability for certain child exploitation offenses.”.

SEC. 6. EXPANDING CIVIL REMEDIES FOR VICTIMS OF ONLINE CHILD SEXUAL EXPLOITATION.

Section 2255 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking “a violation of section 1589, 1590, 1591, 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title” and inserting “a child exploitation violation or conduct relating to child exploitation”;

(B) by inserting “or conduct” after “as a result of such violation”; and

(C) by striking “sue in any” and inserting “bring a civil action in the”; and

(2) by adding at the end the following:

“(d) DEFINITIONS.—In this section—

“(1) the term ‘child exploitation violation’ means a violation of section 1589, 1590, 1591, 1594(a) (involving a violation of section 1589, 1590, or 1591), 1594(b) (involving a violation of section 1589 or 1590), 1594(c), 2241, 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title;

“(2) the term ‘conduct relating to child exploitation’ means—

“(A) with respect to a provider of an interactive computer service or a software distribution service operating through the use of any means or facility of interstate or foreign commerce, or in or affecting interstate or foreign commerce, the intentional, knowing, reckless, or negligent promotion or facilitation of conduct that violates section

1591, 1594(c), 2251, 2251A, 2252, 2252A, or 2422(b) of this title; and

“(B) with respect to a provider of an interactive computer service operating through the use of any means or facility of interstate or foreign commerce, or in or affecting interstate or foreign commerce, the intentional, knowing, reckless, or negligent hosting or storing of child pornography or making child pornography available to any person;

“(3) the term ‘interactive computer service’ has the meaning given that term in section 230(f) of the Communications Act of 1934 (47 U.S.C. 230(f)); and

“(4) the term ‘software distribution service’ means an online service, whether or not operated for pecuniary gain, from which individuals can purchase, obtain, or download software that—

“(A) can be used by an individual to communicate with another individual, by any means, to store, access, distribute, or receive any visual depiction, or to transmit any live visual depiction; and

“(B) was not developed by the software distribution service.

“(e) RELATION TO SECTION 230 OF THE COMMUNICATIONS ACT OF 1934.—Nothing in section 230 of the Communications Act of 1934 (47 U.S.C. 230) shall be construed to impair or limit any claim brought under this section for conduct relating to child exploitation.

“(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to apply to any action by a provider of an interactive computer service that is necessary to comply with a valid court order, subpoena, search warrant, statutory obligation, or preservation request from law enforcement.”

SEC. 7. REPORTING AND REMOVAL OF PROSCRIBED VISUAL DEPICTIONS RELATING TO CHILDREN; ESTABLISHMENT OF CHILD ONLINE PROTECTION BOARD.

(a) FINDINGS.—Congress finds the following:

(1) Over 40 years ago, the Supreme Court of the United States ruled in *New York v. Ferber*, 458 U.S. 747 (1982), that child sexual abuse material (referred to in this subsection as “CSAM”) is a “category of material outside the protections of the First Amendment.” The Court emphasized that children depicted in CSAM are harmed twice: first through the abuse and exploitation inherent in the creation of the materials, and then through the continued circulation of the imagery, which inflicts its own emotional and psychological injury.

(2) The Supreme Court reiterated this point 9 years ago in *Paroline v. United States*, 572 U.S. 434 (2014), when it explained that CSAM victims suffer “continuing and grievous harm as a result of [their] knowledge that a large, indeterminate number of individuals have viewed and will in the future view images of the sexual abuse [they] endured.”

(3) In these decisions, the Supreme Court noted that the distribution of child sexual abuse material invades the privacy interests of the victims.

(4) The co-mingling online of CSAM with other, non-explicit depictions of the victims links the victim’s identity with the images of their abuse. This further invades a victim’s privacy and disrupts their sense of security, thwarting what the Supreme Court has described as “the individual interest in avoiding disclosure of personal matters.”

(5) The internet is awash with child sexual abuse material. In 2021, the CyberTipline, operated by the National Center for Missing & Exploited Children to combat online child sexual exploitation, received reports about 39,900,000 images and 44,800,000 videos depicting child sexual abuse.

(6) Since 2017, Project Arachnid, operated by the Canadian Centre for Child Protection,

has sent over 26,000,000 notices to online providers about CSAM and other exploitive material found on their platforms. According to the Canadian Centre, some providers are slow to remove the material, or take it down only for it to be reposted again a short time later.

(7) This legislation is needed to create an easy-to-use and effective procedure to get CSAM and harmful related imagery quickly taken offline and kept offline to protect children, stop the spread of illegal and harmful content, and thwart the continued invasion of the victims’ privacy.

(b) IMPLEMENTATION.—

(1) IMPLEMENTATION.—Except as provided in paragraph (2), not later than 1 year after the date of enactment of this Act, the Child Online Protection Board established under subsection (d), shall begin operations, at which point providers shall begin receiving notifications as set forth in subsection (c)(2).

(2) EXTENSION.—The Commission may extend the deadline under paragraph (1) by not more than 180 days if the Commission provides notice of the extension to the public and to Congress.

(c) REPORTING AND REMOVAL OF PROSCRIBED VISUAL DEPICTIONS RELATING TO CHILDREN.—

(1) IN GENERAL.—If a provider receives a complete notification as set forth in paragraph (2)(A) that the provider is hosting a proscribed visual depiction relating to a child, not later than 48 hours after such notification is received by the provider (or, in the case of a small provider, not later than 2 business days after such notification is received by the small provider) the provider shall—

(A)(i) remove the proscribed visual depiction relating to a child; and

(ii) notify the complainant that it has done so; or

(B) notify the complainant that the provider—

(i) is unable to remove the proscribed visual depiction relating to a child using reasonable means; or

(ii) has determined that the notification is duplicative under paragraph (2)(C)(i).

(2) NOTIFICATION REQUIREMENTS.—

(A) IN GENERAL.—To be complete under this subsection, a notification must be a written communication to the designated reporting system of the provider (or, if the provider does not have a designated reporting system, a written communication that is served on the provider in accordance with subparagraph (F)) that includes the following:

(i) An identification of, and information reasonably sufficient to permit the provider to locate, the alleged proscribed visual depiction relating to a child. Such information may include, at the option of the complainant, a copy of the alleged proscribed visual depiction relating to a child or the uniform resource locator where such proscribed visual depiction is located.

(ii) The complainant’s name and contact information, to include a mailing address, telephone number, and an electronic mail address, except that, if the complainant is the victim depicted in the alleged proscribed visual depiction relating to a child, the complainant may elect to use an alias, including for purposes of the signed statement described in clause (v), and omit a mailing address.

(iii) If applicable, a statement indicating that the complainant has previously notified the provider about the alleged proscribed visual depiction relating to a child which may, at the option of the complainant, include a copy of the previous notification.

(iv) A statement indicating that the complainant has a good faith belief that the information in the notification is accurate.

(v) A signed statement under penalty of perjury indicating that the notification is submitted by—

(I) the victim depicted in the alleged proscribed visual depiction relating to a child;

(II) an authorized representative of the victim depicted in the alleged proscribed visual depiction relating to a child; or

(III) a qualified organization.

(B) INCLUSION OF MULTIPLE VISUAL DEPICTIONS IN SAME NOTIFICATION.—A notification may contain information about more than one proscribed visual depiction relating to a child, but shall only be effective with respect to each proscribed visual depiction relating to a child included in the notification to the extent that the notification includes sufficient information to identify and locate such visual depiction.

(C) LIMITATION ON DUPLICATIVE NOTIFICATIONS.—

(i) IN GENERAL.—After a complainant has submitted a notification to a provider, the complainant may submit additional notifications at any time only if the subsequent notifications involve—

(I) a different proscribed visual depiction relating to a minor;

(II) the same proscribed visual depiction relating to a minor that is in a different location; or

(III) recidivist hosting.

(ii) NO OBLIGATION.—A provider who receives any additional notifications that do not comply with clause (i) shall not be required to take any additional action except—

(I) as may be required with respect to the original notification; and

(II) to notify the complainant as provided in paragraph (1)(B)(ii).

(D) INCOMPLETE OR MISDIRECTED NOTIFICATION.—

(i) REQUIREMENT TO CONTACT COMPLAINANT REGARDING INSUFFICIENT INFORMATION.—

(I) REQUIREMENT TO CONTACT COMPLAINANT.—If a notification that is submitted to a provider under this subsection does not contain sufficient information under subparagraph (A)(i) to identify or locate the visual depiction that is the subject of the notification but does contain the complainant contact information described in subparagraph (A)(ii), the provider shall, not later than 48 hours after receiving the notification (or, in the case of a small provider, not later than 2 business days after such notification is received by the small provider), contact the complainant via electronic email address to obtain such information.

(II) EFFECT OF COMPLAINANT PROVIDING SUFFICIENT INFORMATION.—If the provider is able to contact the complainant and obtain sufficient information to identify or locate the visual depiction that is the subject of the notification, the provider shall then proceed as set forth in paragraph (1), except that the applicable timeframes described in such paragraph shall commence on the day the provider receives the information needed to identify or locate the visual depiction.

(III) EFFECT OF COMPLAINANT INABILITY TO PROVIDE SUFFICIENT INFORMATION.—If the provider is able to contact the complainant but does not obtain sufficient information to identify or locate the visual depiction that is the subject of the notification, the provider shall so notify the complainant not later than 48 hours after the provider determines that it is unable to identify or locate the visual depiction (or, in the case of a small provider, not later than 2 business days after the small provider makes such determination), after which no further action by the provider is required and receipt of the notification shall not be considered in determining whether the provider has actual knowledge of any information described in the notification.

(IV) EFFECT OF COMPLAINANT FAILURE TO RESPOND.—If the complainant does not respond to the provider's attempt to contact the complainant under this clause within 14 days of such attempt, no further action by the provider is required and receipt of the notification shall not be considered in determining whether the provider has actual knowledge of any information described in the notification.

(ii) TREATMENT OF INCOMPLETE NOTIFICATION WHERE COMPLAINANT CANNOT BE CONTACTED.—If a notification that is submitted to a provider under this subsection does not contain sufficient information under subparagraph (A)(i) to identify or locate the visual depiction that is the subject of the notification and does not contain the complainant contact information described in subparagraph (A)(ii) (or if the provider is unable to contact the complainant using such information), no further action by the provider is required and receipt of the notification shall not be considered in determining whether the provider has actual knowledge of any information described in the notification.

(iii) TREATMENT OF NOTIFICATION NOT SUBMITTED TO DESIGNATED REPORTING SYSTEM.—If a provider has a designated reporting system, and a complainant submits a notification under this subsection to the provider without using such system, the provider shall not be considered to have received the notification.

(E) OPTION TO CONTACT COMPLAINANT REGARDING THE PROSCRIBED VISUAL DEPICTION INVOLVING A MINOR.—

(i) CONTACT WITH COMPLAINANT.—If the provider believes that the proscribed visual depiction involving a minor referenced in the notification does not meet the definition of such term as provided in subsection (r)(10), the provider may, not later than 48 hours after receiving the notification (or, in the case of a small provider, not later than 2 business days after such notification is received by the small provider), contact the complainant via electronic mail address to so indicate.

(ii) FAILURE TO RESPOND.—If the complainant does not respond to the provider within 14 days after receiving the notification, no further action by the provider is required and receipt of the notification shall not be considered in determining whether the provider has actual knowledge of any information described in the notification.

(iii) COMPLAINANT RESPONSE.—If the complainant responds to the provider within 14 days after receiving the notification, the provider shall then proceed as set forth in paragraph (1), except that the applicable timeframes described in such paragraph shall commence on the day the provider receives the complainant's response.

(F) SERVICE OF NOTIFICATION WHERE PROVIDER HAS NO DESIGNATED REPORTING SYSTEM; PROCESS WHERE COMPLAINANT CANNOT SERVE PROVIDER.—

(i) NO DESIGNATED REPORTING SYSTEM.—If a provider does not have a designated reporting system, a complainant may serve the provider with a notification under this subsection to the provider in the same manner that petitions are required to be served under subsection (g)(4).

(ii) COMPLAINANT CANNOT SERVE PROVIDER.—If a provider does not have a designated reporting system and a complainant cannot reasonably serve the provider with a notification as described in clause (i), the complainant may bring a petition under subsection (g)(1) without serving the provider with the notification.

(G) RECIDIVIST HOSTING.—If a provider engages in recidivist hosting of a proscribed visual depiction relating to a child, in addition to any action taken under this section,

a complainant may submit a report concerning such recidivist hosting to the CyberTipline operated by the National Center for Missing and Exploited Children, or any successor to the CyberTipline operated by the National Center for Missing and Exploited Children.

(H) PRESERVATION.—A provider that receives a complete notification under this subsection shall preserve the information in such notification in accordance with the requirements of sections 2713 and 2258A(h) of title 18, United States Code. For purposes of this subparagraph, the period for which providers shall be required to preserve information in accordance with such section 2258A(h) may be extended in 90 day increments on written request by the complainant or order of the Board.

(I) NON-DISCLOSURE.—Except as otherwise provided in subsection (g)(19)(C), for 180 days following receipt of a notification under this subsection, a provider may not disclose the existence of the notification to any person or entity except to an attorney for purposes of obtaining legal advice, the Board, the Commission, a law enforcement agency described in subparagraph (A), (B), or (C) of section 2258A(g)(3) of title 18, United States Code, the National Center for Missing and Exploited Children, or as necessary to respond to legal process. Nothing in the preceding sentence shall be construed to infringe on the provider's ability to communicate general information about terms of service violations.

(d) ESTABLISHMENT OF CHILD ONLINE PROTECTION BOARD.—

(1) IN GENERAL.—There is established in the Federal Trade Commission a Child Online Protection Board, which shall administer and enforce the requirements of subsection (e) in accordance with this section.

(2) OFFICERS AND STAFF.—The Board shall be composed of 3 full-time Child Online Protection Officers who shall be appointed by the Commission in accordance with paragraph (5)(A). A vacancy on the Board shall not impair the right of the remaining Child Online Protection Officers to exercise the functions and duties of the Board.

(3) CHILD ONLINE PROTECTION ATTORNEYS.—Not fewer than 2 full-time Child Online Protection Attorneys shall be hired to assist in the administration of the Board.

(4) TECHNOLOGICAL ADVISER.—One or more technological advisers may be hired to assist with the handling of digital evidence and consult with the Child Online Protection Officers on matters concerning digital evidence and technological issues.

(5) QUALIFICATIONS.—

(A) OFFICERS.—

(i) IN GENERAL.—Each Child Online Protection Officer shall be an attorney duly licensed in at least 1 United States jurisdiction who has not fewer than 7 years of legal experience concerning child sexual abuse material and technology-facilitated crimes against children.

(ii) EXPERIENCE.—Two of the Child Online Protection Officers shall have substantial experience in the evaluation, litigation, or adjudication of matters relating to child sexual abuse material or technology-facilitated crimes against children.

(B) ATTORNEYS.—Each Child Online Protection Attorney shall be an attorney duly licensed in at least 1 United States jurisdiction who has not fewer than 3 years of substantial legal experience concerning child sexual abuse material and technology-facilitated crimes against children.

(C) TECHNOLOGICAL ADVISER.—A technological adviser shall have at least one year of specialized experience with digital forensic analysis.

(6) COMPENSATION.—

(A) CHILD ONLINE PROTECTION OFFICERS.—

(i) DEFINITION.—In this subparagraph, the term "senior level employee of the Federal Government" means an employee, other than employee in the Senior Executive Service, the position of whom is classified above GS-15 of the General Schedule.

(ii) PAY RANGE.—Each Child Online Protection Officer shall be compensated at a rate of pay that is not less than the minimum, and not more than the maximum, rate of pay payable for senior level employees of the Federal Government, including locality pay, as applicable.

(B) CHILD ONLINE PROTECTION ATTORNEYS.—Each Child Online Protection Attorney shall be compensated at a rate of pay that is not more than the maximum rate of pay payable for level 10 of GS-15 of the General Schedule, including locality pay, as applicable.

(C) TECHNOLOGICAL ADVISER.—A technological adviser of the Board shall be compensated at a rate of pay that is not more than the maximum rate of pay payable for level 10 of GS-14 of the General Schedule, including locality pay, as applicable.

(7) VACANCY.—If a vacancy occurs in the position of Child Online Protection Officer, the Commission shall act expeditiously to appoint an Officer for that position.

(8) SANCTION OR REMOVAL.—Subject to subsection (e)(2), the Chair of the Commission or the Commission may sanction or remove a Child Online Protection Officer.

(9) ADMINISTRATIVE SUPPORT.—The Commission shall provide the Child Online Protection Officers and Child Online Protection Attorneys with necessary administrative support, including technological facilities, to carry out the duties of the Officers and Attorneys under this section. The Department of Justice may provide equipment and guidance on the storage and handling of proscribed visual depictions relating to children.

(10) LOCATION OF BOARD.—The offices and facilities of the Child Online Protection Officers and Child Online Protection Attorneys shall be located at the headquarters or other office of the Commission.

(e) AUTHORITY AND DUTIES OF THE BOARD.—

(1) FUNCTIONS.—

(A) OFFICERS.—Subject to the provisions of this section and applicable regulations, the functions of the Officers of the Board shall be as follows:

(i) To render determinations on petitions that may be brought before the Officers under this section.

(ii) To ensure that petitions and responses are properly asserted and otherwise appropriate for resolution by the Board.

(iii) To manage the proceedings before the Officers and render determinations pertaining to the consideration of petitions and responses, including with respect to scheduling, discovery, evidentiary, and other matters.

(iv) To request, from participants and non-participants in a proceeding, the production of information and documents relevant to the resolution of a petition or response.

(v) To conduct hearings and conferences.

(vi) To facilitate the settlement by the parties of petitions and responses.

(vii) To impose fines as set forth in subsection (g)(24).

(viii) To provide information to the public concerning the procedures and requirements of the Board.

(ix) To maintain records of the proceedings before the Officers, certify official records of such proceedings as needed, and, as provided in subsection (g)(19)(A), make the records in such proceedings available to the public.

(x) To carry out such other duties as are set forth in this section.

(xi) When not engaged in performing the duties of the Officers set forth in this section, to perform such other duties as may be assigned by the Chair of the Commission or the Commission.

(B) ATTORNEYS.—Subject to the provisions of this section and applicable regulations, the functions of the Attorneys of the Board shall be as follows:

(i) To provide assistance to the Officers of the Board in the administration of the duties of those Officers under this section.

(ii) To provide assistance to complainants, providers, and members of the public with respect to the procedures and requirements of the Board.

(iii) When not engaged in performing the duties of the Attorneys set forth in this section, to perform such other duties as may be assigned by the Commission.

(C) DESIGNATED SERVICE AGENTS.—The Board may maintain a publicly available directory of service agents designated to receive service of petitions filed with the Board.

(2) INDEPENDENCE IN DETERMINATIONS.—

(A) IN GENERAL.—The Board shall render the determinations of the Board in individual proceedings independently on the basis of the records in the proceedings before it and in accordance with the provisions of this section, judicial precedent, and applicable regulations of the Commission.

(B) PERFORMANCE APPRAISALS.—Notwithstanding any other provision of law or any regulation or policy of the Commission, any performance appraisal of an Officer or Attorney of the Board may not consider the substantive result of any individual determination reached by the Board as a basis for appraisal except to the extent that result may relate to any actual or alleged violation of an ethical standard of conduct.

(3) DIRECTION BY COMMISSION.—Subject to paragraph (2), the Officers and Attorneys shall, in the administration of their duties, be under the supervision of the Chair of the Commission.

(4) INCONSISTENT DUTIES BARRED.—An Officer or Attorney of the Board may not undertake any duty that conflicts with the duties of the Officer or Attorney in connection with the Board.

(5) RECUSAL.—An Officer or Attorney of the Board shall recuse himself or herself from participation in any proceeding with respect to which the Officer or Attorney, as the case may be, has reason to believe that he or she has a conflict of interest.

(6) EX PARTE COMMUNICATIONS.—Except as may otherwise be permitted by applicable law, any party or interested owner involved in a proceeding before the Board shall refrain from ex parte communications with the Officers of the Board and the Commission relevant to the merits of such proceeding before the Board.

(7) JUDICIAL REVIEW.—Actions of the Officers and the Commission under this section in connection with the rendering of any determination are subject to judicial review as provided under subsection (g)(28).

(f) CONDUCT OF PROCEEDINGS OF THE BOARD.—

(1) IN GENERAL.—Proceedings of the Board shall be conducted in accordance with this section and regulations established by the Commission under this section, in addition to relevant principles of law.

(2) RECORD.—The Board shall maintain records documenting the proceedings before the Board.

(3) CENTRALIZED PROCESS.—Proceedings before the Board shall—

(A) be conducted at the offices of the Board without the requirement of in-person appearances by parties or others;

(B) take place by means of written submissions, hearings, and conferences carried out through internet-based applications and other telecommunications facilities, except that, in cases in which physical or other non-testimonial evidence material to a proceeding cannot be furnished to the Board through available telecommunications facilities, the Board may make alternative arrangements for the submission of such evidence that do not prejudice any party or interested owner; and

(C) be conducted and concluded in an expeditious manner without causing undue prejudice to any party or interested owner.

(4) REPRESENTATION.—

(A) IN GENERAL.—A party or interested owner involved in a proceeding before the Board may be, but is not required to be, represented by—

(i) an attorney; or

(ii) a law student who is qualified under applicable law governing representation by law students of parties in legal proceedings and who provides such representation on a pro bono basis.

(B) REPRESENTATION OF VICTIMS.—

(i) IN GENERAL.—A petition involving a victim under the age of 16 at the time the petition is filed shall be filed by an authorized representative, qualified organization, or a person described in subparagraph (A).

(ii) NO REQUIREMENT FOR QUALIFIED ORGANIZATIONS TO HAVE CONTACT WITH, OR KNOWLEDGE OF, VICTIM.—A qualified organization may submit a notification to a provider or file a petition on behalf of a victim without regard to whether the qualified organization has contact with the victim or knows the identity, location, or contact information of the victim.

(g) PROCEDURES TO CONTEST A FAILURE TO REMOVE A PROSCRIBED VISUAL DEPICTION RELATING TO A CHILD OR A NOTIFICATION REPORTING A PROSCRIBED VISUAL DEPICTION RELATING TO A CHILD.—

(1) PROCEDURE TO CONTEST A FAILURE TO REMOVE.—

(A) COMPLAINANT PETITION.—A complainant may file a petition to the Board claiming that, as applicable—

(i) the complainant submitted a complete notification to a provider concerning a proscribed visual depiction relating to a child, and that—

(I) the provider—

(aa) did not remove the proscribed visual depiction relating to a child within the timeframe required under subsection (c)(1)(A)(i); or

(bb) incorrectly claimed that—

(AA) the visual depiction at issue could not be located or removed through reasonable means;

(BB) the notification was incomplete; or

(CC) the notification was duplicative under subsection (c)(2)(C)(i); and

(II) did not file a timely petition to contest the notification with the Board under paragraph (2); or

(ii) a provider is hosting a proscribed visual depiction relating to a child, does not have a designated reporting system, and the complainant was unable to serve a notification on the provider under this subsection despite reasonable efforts.

(B) ADDITIONAL CLAIM.—As applicable, a petition filed under subparagraph (A) may also claim that the proscribed visual depiction relating to a child at issue in the petition involves recidivist hosting.

(C) TIMEFRAME.—

(i) IN GENERAL.—A petition under this paragraph shall be considered timely if it is filed within 30 days of the applicable start date, as defined under clause (ii).

(ii) APPLICABLE START DATE.—For purposes of clause (i), the term “applicable start date” means—

(I) in the case of a petition under subparagraph (A)(i) claiming that the visual depiction was not removed or that the provider made an incorrect claim relating to the visual depiction or notification, the day that the provider's option to file a petition has expired under paragraph (2)(B); and

(II) in the case of a petition under subparagraph (A)(ii) related to a notification that could not be served, the last day of the 2-week period that begins on the day on which the complainant first attempted to serve a notification on the provider involved.

(D) IDENTIFICATION OF VICTIM.—Any petition filed to the Board by the victim or an authorized representative of the victim shall include the victim's legal name. A petition filed to the Board by a qualified organization may, but is not required to, include the victim's legal name. Any petition containing the victim's legal name shall be filed under seal. The victim's legal name shall be redacted from any documents served on the provider and interested owner or made publicly available.

(E) FAILURE TO REMOVE VISUAL DEPICTIONS IN TIMELY MANNER.—A complainant may file a petition under subparagraph (A)(i) claiming that a visual depiction was not removed even if the visual depiction was removed prior to the petition being filed, so long as the petition claims that the visual depiction was not removed within the timeframe specified in subsection (c)(1).

(2) PROCEDURE TO CONTEST A NOTIFICATION.—

(A) PROVIDER PETITION.—If a provider receives a complete notification as described in subsection (c)(2) through its designated reporting system or in accordance with subsection (c)(2)(F)(i), the provider may file a petition to the Board claiming that the provider has a good faith belief that, as applicable—

(i) the visual depiction that is the subject of the notification does not constitute a proscribed visual depiction relating to a child;

(ii) the notification is frivolous or was submitted with an intent to harass the provider or any person;

(iii) the alleged proscribed visual depiction relating to a child cannot reasonably be located by the provider;

(iv) for reasons beyond the control of the provider, the provider cannot remove the proscribed visual depiction relating to a child using reasonable means; or

(v) the notification was duplicative under subsection (c)(2)(C)(i).

(B) TIMEFRAME.—

(i) IN GENERAL.—Subject to clauses (ii) and (iii), a petition contesting a notification under this paragraph shall be considered timely if it is filed by a provider not later than 14 days after the day on which the provider receives the notification or the notification is made complete under subsection (c)(2)(D)(i).

(ii) NO DESIGNATED REPORTING SYSTEM.—Subject to clause (iii), if a provider does not have a designated reporting system, a petition contesting a notification under this paragraph shall be considered timely if it is filed by a provider not later than 7 days after the day on which the provider receives the notification or the notification is made complete under subsection (c)(2)(D)(i).

(iii) SMALL PROVIDERS.—In the case of a small provider, each of the timeframes applicable under clauses (i) and (ii) shall be increased by 48 hours.

(C) TEMPORARY REMOVAL OF ALLEGED PROSCRIBED VISUAL DEPICTION RELATING TO A CHILD.—

(i) IN GENERAL.—If a provider files a petition to the Board contesting a notification solely on the basis of the reason described in subparagraph (A)(i), the provider shall disable public and user access to the alleged proscribed visual depiction relating to a child that is the subject of the notification prior to the submission of the petition and during the pendency of the adjudication, including judicial review as provided in subsection (g)(28). Such petition shall include a statement, under the penalty of perjury, that public and user access to the alleged proscribed visual depiction relating to a child has been disabled.

(ii) EFFECT OF FAILURE TO REMOVE.—

(I) IN GENERAL.—If a provider fails to comply with clause (i), the Board may—

(aa) dismiss the petition with prejudice; and

(bb) refer the matter to the Attorney General.

(II) EFFECT OF DISMISSAL.—If a provider's petition is dismissed under clause (I)(aa), the complainant may bring a petition under paragraph (1) as if the provider did not file a petition within the timeframe specified in subparagraph (B).

(iii) EFFECT ON TIMING.—The Board shall prioritize the issuance of a determination concerning any petition subject to this subparagraph to the extent possible without causing undue prejudice to any party or interested owner.

(3) COMMENCEMENT OF PROCEEDING.—

(A) IN GENERAL.—In order to commence a proceeding under this section, a petitioning party shall, subject to such additional requirements as may be prescribed in regulations established by the Commission, file a petition with the Board, that includes a statement of claims and material facts in support of each claim in the petition. A petition may set forth more than one claim. A petition shall also include information establishing that it has been filed within the applicable timeframe.

(B) REVIEW OF PETITIONS BY CHILD ONLINE PROTECTION ATTORNEYS.—Child Online Protection Attorneys may review petitions to assess whether they are complete. The Board may permit a petitioning party to refile a defective petition. The Attorney may assist the petitioning party in making any corrections.

(C) DISMISSAL.—The Board may dismiss, with or without prejudice, any petition that fails to comply with subparagraph (A).

(4) SERVICE OF PROCESS REQUIREMENTS FOR PETITIONS.—

(A) IN GENERAL.—For purposes of petitions under paragraphs (1) and (2), the petitioning party shall, at or before the time of filing a petition, serve a copy on the other party. A corporation, partnership, or unincorporated association that is subject to suit in courts of general jurisdiction under a common name shall be served by delivering a copy of the petition to its service agent, if one has been so designated.

(B) MANNER OF SERVICE.—

(i) SERVICE BY NONDIGITAL MEANS.—Service by nondigital means may be any of the following:

(I) Personal, including delivery to a responsible person at the office of counsel.

(II) By priority mail.

(III) By third-party commercial carrier for delivery within 3 days.

(ii) SERVICE BY DIGITAL MEANS.—Service of a paper may be made by sending it by any digital means, including through a provider's designated reporting system.

(iii) WHEN SERVICE IS COMPLETED.—Service by mail or by commercial carrier is complete 3 days after the mailing or delivery to the carrier. Service by digital means is complete on filing or sending, unless the party making

service is notified that the paper was not received by the party served.

(C) PROOF OF SERVICE.—A petition filed under paragraph (1) or (2) shall contain—

(i) an acknowledgment of service by the person served;

(ii) proof of service consisting of a statement by the person who made service certifying—

(I) the date and manner of service;

(II) the names of the persons served; and

(III) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service; or

(iii) a statement indicating that service could not reasonably be completed.

(D) ATTORNEYS FEES AND COSTS.—Except as otherwise provided in this subsection, all parties to a petition shall bear their own attorney fees and costs.

(5) SERVICE OF OTHER DOCUMENTS.—Documents submitted or relied upon in a proceeding, other than the petition, shall be served in accordance with regulations established by the Commission.

(6) NOTIFICATION OF RIGHT TO OPT OUT.—In order to effectuate service on a responding party, the petition shall notify the responding party of their right to opt out of the proceeding before the Board, and the consequences of opting out and not opting out, including a prominent statement that by not opting out the respondent—

(A) loses the opportunity to have the dispute decided by a court created under article III of the Constitution of the United States; and

(B) waives the right to a jury trial regarding the dispute.

(7) OPT-OUT PROCEDURE.—Within 1 week of completion of service of the petition under paragraph (4), 1 or more Officers of the Board shall hold a conference to explain that the responding party has a right to opt out of the proceeding before the Board, and describe the consequences of opting out and not opting out as described in paragraph (6). A responding party shall have a period of 30 days, beginning on the date of conference, in which to provide written notice of such choice to the petitioning party and the Child Online Protection Board. If the responding party does not submit an opt-out notice to the Child Online Protection Board within that 30-day period, the proceeding shall be deemed an active proceeding and the responding party shall be bound by the determination in the proceeding. If the responding party opts out of the proceeding during that 30-day period, the proceeding shall be dismissed without prejudice.

(8) SCHEDULING.—Upon receipt of a complete petition and at the conclusion of the opt out procedure described in paragraph (7), the Board shall issue a schedule for the future conduct of the proceeding. A schedule issued by the Board may be amended by the Board in the interests of justice.

(9) CONFERENCES.—One or more Officers of the Board may hold a conference to address case management or discovery issues in a proceeding, which shall be noted upon the record of the proceeding and may be recorded or transcribed.

(10) PARTY SUBMISSIONS.—A proceeding of the Board may not include any formal motion practice, except that, subject to applicable regulations and procedures of the Board—

(A) the parties to the proceeding and an interested owner may make requests to the Board to address case management and discovery matters, and submit responses thereto; and

(B) the Board may request or permit parties and interested owners to make submissions addressing relevant questions of fact or

law, or other matters, including matters raised sua sponte by the Officers of the Board, and offer responses thereto.

(11) DISCOVERY.—

(A) IN GENERAL.—Discovery in a proceeding shall be limited to the production of relevant information and documents, written interrogatories, and written requests for admission, as provided in regulations established by the Commission, except that—

(i) upon the request of a party, and for good cause shown, the Board may approve additional relevant discovery, on a limited basis, in particular matters, and may request specific information and documents from parties in the proceeding, consistent with the interests of justice;

(ii) upon the request of a party or interested owner, and for good cause shown, the Board may issue a protective order to limit the disclosure of documents or testimony that contain confidential information;

(iii) after providing notice and an opportunity to respond, and upon good cause shown, the Board may apply an adverse inference with respect to disputed facts against a party or interested owner who has failed to timely provide discovery materials in response to a proper request for materials that could be relevant to such facts; and

(iv) an interested owner shall only produce or receive discovery to the extent it relates to whether the visual depiction at issue constitutes a proscribed visual depiction relating to a child.

(B) PRIVACY.—Any alleged proscribed visual depiction relating to a child received by the Board or the Commission as part of a proceeding shall be filed under seal and shall remain in the care, custody, and control of the Board or the Commission. For purposes of discovery, the Board or Commission shall make the proscribed visual depiction relating to a child reasonably available to the parties and interested owner but shall not provide copies. The privacy protections described in section 3509(d) of title 18, United States Code, shall apply to the Board, Commission, provider, complainant, and interested owner.

(12) RESPONSES.—The responding party may refute any of the claims or factual assertions made by the petitioning party, and may also claim that the petition was not filed in the applicable timeframe or is barred under subsection (h). If a complainant is the petitioning party, a provider may claim in response that the notification was incomplete and could not be made complete under subsection (c)(2)(D)(i). The petitioning party may refute any responses submitted by the responding party.

(13) INTERESTED OWNER.—An individual notified under paragraph (19)(C)(ii) may, within 14 days of being so notified, file a motion to join the proceeding for the limited purpose of claiming that the visual depiction at issue does not constitute a proscribed visual depiction relating to a child. The Board shall serve the motion on both parties. Such motion shall include a factual basis and a signed statement, submitted under penalty of perjury, indicating that the individual produced or created the visual depiction at issue. The Board shall dismiss any motion that does not include the signed statement or that was submitted by an individual who did not produce or create the visual depiction at issue. If the motion is granted, the interested owner may also claim that the notification and petition were filed with an intent to harass the interested owner. Any party may refute the claims and factual assertions made by the interested owner.

(14) EVIDENCE.—The Board may consider the following types of evidence in a proceeding, and such evidence may be admitted

without application of formal rules of evidence:

(A) Documentary and other nontestimonial evidence that is relevant to the petitions or responses in the proceeding.

(B) Testimonial evidence, submitted under penalty of perjury in written form or in accordance with paragraph (15), limited to statements of the parties and nonexpert witnesses, that is relevant to the petitions or responses in a proceeding, except that, in exceptional cases, expert witness testimony or other types of testimony may be permitted by the Board for good cause shown.

(15) HEARINGS.—Unless waived by all parties, the Board shall conduct a hearing to receive oral presentations on issues of fact or law from parties and witnesses to a proceeding, including oral testimony, subject to the following:

(A) Any such hearing shall be attended by not fewer than two of the Officers of the Board.

(B) The hearing shall be noted upon the record of the proceeding and, subject to subparagraph (C), may be recorded or transcribed as deemed necessary by the Board.

(C) A recording or transcript of the hearing shall be made available to any Officer of the Board who is not in attendance.

(16) VOLUNTARY DISMISSAL.—

(A) BY PETITIONING PARTY.—Upon the written request of a petitioning party, the Board shall dismiss the petition, with or without prejudice.

(B) BY RESPONDING PARTY OR INTERESTED OWNER.—Upon written request of a responding party or interested owner, the Board shall dismiss any responses to the petition, and shall consider all claims and factual assertions in the petition to be true.

(17) FACTUAL FINDINGS.—Subject to paragraph (11)(A)(iii), the Board shall make factual findings based upon a preponderance of the evidence.

(18) DETERMINATIONS.—

(A) NATURE AND CONTENTS.—A determination rendered by the Board in a proceeding shall—

(i) be reached by a majority of the Board;

(ii) be in writing, and include an explanation of the factual and legal basis of the determination; and

(iii) include a clear statement of all fines, costs, and other relief awarded.

(B) DISSENT.—An Officer of the Board who dissents from a decision contained in a determination under subparagraph (A) may append a statement setting forth the grounds for that dissent.

(19) PUBLICATION AND DISCLOSURE.—

(A) PUBLICATION.—Each final determination of the Board shall be made available on a publicly accessible website, except that the final determination shall be redacted to protect confidential information that is the subject of a protective order under paragraph (11)(A)(ii) or information protected pursuant to paragraph (11)(B) and any other information protected from public disclosure under the Federal Trade Commission Act or any other applicable provision of law.

(B) FREEDOM OF INFORMATION ACT.—All information relating to proceedings of the Board under this section is exempt from disclosure to the public under section 552(b)(3) of title 5, except for determinations, records, and information published under subparagraph (A). Any information that is disclosed under this subparagraph shall have redacted any information that is the subject of a protective order under paragraph (11)(A)(ii) or protected pursuant to paragraph (11)(B).

(C) EFFECT OF PETITION ON NON-DISCLOSURE PERIOD.—

(i) Submission of a petition extends the non-disclosure period under subsection (c)(2)(I) for the pendency of the proceeding.

The provider may submit an objection to the Board that nondisclosure is contrary to the interests of justice. The complainant may, but is not required to, respond to the objection. The Board should sustain the objection unless there is reason to believe that the circumstances in section 3486(a)(6)(B) of title 18, United States Code, exist and outweigh the interests of justice.

(ii) If the Board sustains an objection to the nondisclosure period, the provider or the Board may notify the apparent owner of the visual depiction in question about the proceeding, and include instructions on how the owner may move to join the proceeding under paragraph (13).

(iii) If applicable, the nondisclosure period expires 120 after the Board's determination becomes final, except it shall expire immediately upon the Board's determination becoming final if the Board finds that the visual depiction is not a proscribed visual depiction relating to a minor.

(iv) The interested owner of a visual depiction may not bring any legal action against any party related to the proscribed visual depiction relating to a child until the Board's determination is final. Once the determination is final, the owner of the visual depiction may pursue any legal relief available under the law, subject to subsections (h), (k), and (l).

(20) RESPONDING PARTY'S DEFAULT.—If the Board finds that service of the petition on the responding party could not reasonably be completed, or the responding party has failed to appear or has ceased participating in a proceeding, as demonstrated by the responding party's failure, without justifiable cause, to meet one or more deadlines or requirements set forth in the schedule adopted by the Board, the Board may enter a default determination, including the dismissal of any responses asserted by the responding party, as follows and in accordance with such other requirements as the Commission may establish by regulation:

(A) The Board shall require the petitioning party to submit relevant evidence and other information in support of the petitioning party's claims and, upon review of such evidence and any other requested submissions from the petitioning party, shall determine whether the materials so submitted are sufficient to support a finding in favor of the petitioning party under applicable law and, if so, the appropriate relief and damages, if any, to be awarded.

(B) If the Board makes an affirmative determination under subparagraph (A), the Board shall prepare a proposed default determination, and shall provide written notice to the responding party at all addresses, including email addresses, reflected in the records of the proceeding before the Board, of the pendency of a default determination by the Board and of the legal significance of such determination. Such notice shall be accompanied by the proposed default determination and shall provide that the responding party has a period of 30 days, beginning on the date of the notice, to submit any evidence or other information in opposition to the proposed default determination.

(C) If the responding party responds to the notice provided under subparagraph (B) within the 30-day period provided in such subparagraph, the Board shall consider responding party's submissions and, after allowing the petitioning party to address such submissions, maintain, or amend its proposed determination as appropriate, and the resulting determination shall not be a default determination.

(D) If the respondent fails to respond to the notice provided under subparagraph (B), the Board shall proceed to issue the default determination. Thereafter, the respondent may

only challenge such determination to the extent permitted under paragraph (28).

(21) PETITIONING PARTY OR INTERESTED OWNER'S FAILURE TO PROCEED.—If a petitioning party or interested owner who has joined the proceeding fails to proceed, as demonstrated by the failure, without justifiable cause, to meet one or more deadlines or requirements set forth in the schedule adopted by the Board, the Board may, upon providing written notice to the petitioning party or interested owner and a period of 30 days, beginning on the date of the notice, to respond to the notice, and after considering any such response, issue a determination dismissing the claims made by the petitioning party or interested owner. The Board may order the petitioning party to pay attorneys' fees and costs under paragraph (26)(B), if appropriate. Thereafter, the petitioning party may only challenge such determination to the extent permitted under paragraph (28).

(22) REQUEST FOR RECONSIDERATION.—A party or interested owner may, within 30 days after the date on which the Board issues a determination under paragraph (18), submit to the Board a written request for reconsideration of, or an amendment to, such determination if the party or interested owner identifies a clear error of law or fact material to the outcome, or a technical mistake. After providing the other parties an opportunity to address such request, the Board shall either deny the request or issue an amended determination.

(23) REVIEW BY COMMISSION.—If the Board denies a party or interested owner a request for reconsideration of a determination under paragraph (22), the party or interested owner may, within 30 days after the date of such denial, request review of the determination by the Commission in accordance with regulations established by the Commission. After providing the other party or interested owner an opportunity to address the request, the Commission shall either deny the request for review, or remand the proceeding to the Board for reconsideration of issues specified in the remand and for issuance of an amended determination. Such amended determination shall not be subject to further consideration or review, other than under paragraph (28).

(24) FAVORABLE RULING ON COMPLAINANT PETITION.—

(A) IN GENERAL.—If the Board grants a complainant's petition filed under this section, notwithstanding any other law, the Board shall—

(i) order the provider to immediately remove the proscribed visual depiction relating to a child, and to permanently delete all copies of the visual depiction known to and under the control of the provider unless the Board orders the provider to preserve the visual depiction;

(ii) impose a fine of \$50,000 per proscribed visual depiction relating to a child covered by the determination, but if the Board finds that—

(I) the provider removed the proscribed visual depiction relating to a child after the period set forth in subsection (c)(1)(A)(i), but before the complainant filed a petition, such fine shall be \$25,000;

(II) the provider has engaged in recidivist hosting for the first time with respect to the proscribed visual depiction relating to a child in question, such fine shall be \$100,000 per proscribed visual depiction relating to a child; or

(III) the provider has engaged in recidivist hosting of the proscribed visual depiction relating to a child in question 2 or more times, such fine shall be \$200,000 per proscribed visual depiction relating to a child;

(iii) order the provider to pay reasonable costs to the complainant; and

(iv) refer any matters involving intentional or willful conduct by a provider with respect to a proscribed visual depiction relating to a child, or recidivist hosting, to the Attorney General for prosecution under any applicable laws.

(B) PROVIDER PAYMENT OF FINE AND COSTS.—Notwithstanding any other law, the Board shall direct a provider to promptly pay fines and costs imposed under subparagraph (A) as follows:

(i) If the petition was filed by a victim, such fine and costs shall be paid to the victim.

(ii) If the petition was filed by an authorized representative of a victim—

(I) 30 percent of such fine shall be paid to the authorized representative and 70 percent of such fine paid to the victim; and

(II) costs shall be paid to the authorized representative.

(iii) If the petition was filed by a qualified organization—

(I) the fine shall be paid to the Child Pornography Victims Reserve as provided in section 2259B of title 18, United States Code; and

(II) costs shall be paid to the qualified organization.

(25) EFFECT OF DENIAL OF PROVIDER PETITION.—

(A) IN GENERAL.—If the Board denies a provider's petition to contest a notification filed under paragraph (2), it shall order the provider to immediately remove the proscribed visual depiction relating to a child, and to permanently delete all copies of the visual depiction known to and under the control of the provider unless the Board orders the provider to preserve the visual depiction.

(B) REFERRAL FOR FAILURE TO REMOVE MATERIAL.—If a provider does not remove and, if applicable, permanently delete a proscribed visual depiction relating to a child within 48 hours of the Board issuing a determination under subparagraph (A), or not later than 2 business days of the Board issuing a determination under subparagraph (A) concerning a small provider, the Board shall refer the matter to the Attorney General for prosecution under any applicable laws.

(C) COSTS FOR FRIVOLOUS PETITION.—If the Board finds that a provider filed a petition under paragraph (2) for a harassing or improper purpose or without reasonable basis in law or fact, the Board shall order the provider to pay the reasonable costs of the complainant.

(26) EFFECT OF DENIAL OF COMPLAINANT'S PETITION OR FAVORABLE RULING ON PROVIDER'S PETITION.—

(A) RESTORATION.—If the Board grants a provider's petition filed under paragraph (2) or if the Board denies a petition filed by the complainant under paragraph (1), the provider may restore access to any visual depiction that was at issue in the proceeding.

(B) COSTS FOR INCOMPLETE OR FRIVOLOUS NOTIFICATION AND HARASSMENT.—If, in granting or denying a petition as described in subparagraph (A), the Board finds that the notification contested in the petition could not be made complete under subsection (c)(2)(D), is frivolous, or is duplicative under subsection (c)(2)(C)(i), the Board may order the complainant to pay costs to the provider and any interested owner, which shall not exceed a total of \$10,000, or, if the Board finds that the complainant filed the notification with an intent to harass the provider or any person, a total of \$15,000.

(27) CIVIL ACTION; OTHER RELIEF.—

(A) IN GENERAL.—Whenever any provider or complainant fails to comply with a final determination of the Board issued under paragraph (18), the Department of Justice may commence a civil action in a district court

of the United States to enforce compliance with such determination.

(B) SAVINGS CLAUSE.—Nothing in this section shall be construed to limit the authority of the Commission or Department of Justice under any other provision of law.

(28) CHALLENGES TO THE DETERMINATION.—

(A) BASES FOR CHALLENGE.—Not later than 45 days after the date on which the Board issues a determination or amended determination in a proceeding, or not later than 45 days after the date on which the Board completes any process of reconsideration or the Commission completes a review of the determination, whichever occurs later, a party may seek an order from a district court, located where the provider or complainant conducts business or resides, vacating, modifying, or correcting the determination of the Board in the following cases:

(i) If the determination was issued as a result of fraud, corruption, misrepresentation, or other misconduct.

(ii) If the Board exceeded its authority or failed to render a determination concerning the subject matter at issue.

(iii) In the case of a default determination or determination based on a failure to prosecute, if it is established that the default or failure was due to excusable neglect.

(B) PROCEDURE TO CHALLENGE.—

(i) NOTICE OF APPLICATION.—Notice of the application to challenge a determination of the Board shall be provided to all parties to the proceeding before the Board, in accordance with the procedures applicable to service of a motion in the court where the application is made.

(ii) STAYING OF PROCEEDINGS.—For purposes of an application under this paragraph, any judge who is authorized to issue an order to stay the proceedings in an any other action brought in the same court may issue an order, to be served with the notice of application, staying proceedings to enforce the award while the challenge is pending.

(29) FINAL DETERMINATION.—A determination of the Board shall be final on the date that all opportunities for a party or interested owner to seek reconsideration or review of a determination under paragraph (22) or (23), or for a party to challenge the determination under paragraph (28), have expired or are exhausted.

(h) EFFECT OF PROCEEDING.—

(1) SUBSEQUENT PROCEEDINGS.—The issuance of a final determination by the Board shall preclude the filing by any party of any subsequent petition that is based on the notification at issue in the final determination. This paragraph shall not limit the ability of any party to file a subsequent petition based on any other notification.

(2) DETERMINATION.—Except as provided in paragraph (1), the issuance of a final determination by the Board, including a default determination or determination based on a failure to prosecute, shall not preclude re-litigation of any factual matter in any subsequent legal action or proceeding before any court, tribunal, or the Board, and any determination of the Board may not be cited or relied upon as legal precedent in any such legal action or proceeding except that—

(A) no party or interested owner may re-litigate any allegation, factual claim, or response that was properly asserted and considered by the Board in any subsequent proceeding before the Board involving the same parties or interested owner and the same proscribed visual depiction relating to a minor; and

(B) a finding by the Board that a visual depiction constitutes a proscribed visual depiction relating to a child may not be re-litigated in any civil proceeding brought by an interested owner.

(3) OTHER MATERIALS IN PROCEEDING.—A submission or statement of a party, interested owner, or witness made in connection with a proceeding before the Board, including a proceeding that is dismissed, may not serve as the basis of any action or proceeding before any court or tribunal except for any legal action related to perjury or for conduct described in subsection (k)(2). A statement of a party, interested owner, or witness may be received as evidence, in accordance with applicable rules, in any subsequent legal action or proceeding before any court, tribunal, or the Board.

(4) FAILURE TO ASSERT RESPONSE.—Except as provided in paragraph (1), the failure or inability to assert any allegation, factual claim, or response in a proceeding before the Board shall not preclude the assertion of that response in any subsequent legal action or proceeding before any court, tribunal, or the Board.

(i) ADMINISTRATION.—The Commission may issue regulations in accordance with section 553 of title 5, United States Code, to implement this section.

(j) STUDY.—

(1) IN GENERAL.—Not later than 3 years after the date on which Child Online Protection Board issues the first determination under this section, the Commission shall conduct, and report to Congress on, a study that addresses the following:

(A) The use and efficacy of the Child Online Protection Board in expediting the removal of proscribed visual depictions relating to children and resolving disputes concerning said visual depictions, including the number of proceedings the Child Online Protection Board could reasonably administer with current allocated resources.

(B) Whether adjustments to the authority of the Child Online Protection Board are necessary or advisable, including with respect to permissible claims, responses, fines, costs, and joinder by interested parties;

(C) Whether the Child Online Protection Board should be permitted to expire, be extended, or be expanded.

(D) Such other matters as the Commission believes may be pertinent concerning the Child Online Protection Board.

(2) CONSULTATION.—In conducting the study and completing the report required under paragraph (1), the Commission shall, to the extent feasible, consult with complainants, victims, and providers to include their views on the matters addressed in the study and report.

(k) LIMITED LIABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), a civil claim or criminal charge against the Board, a provider, a complainant, interested owner, or representative under subsection (f)(4), for distributing, receiving, accessing, or possessing a proscribed visual depiction relating to a child for the sole and exclusive purpose of complying with the requirements of this section, or for the sole and exclusive purpose of seeking or providing legal advice in order to comply with this section, may not be brought in any Federal or State court.

(2) INTENTIONAL, RECKLESS, OR OTHER MISCONDUCT.—Paragraph (1) shall not apply to a claim against the Board, a provider, a complainant, interested owner, or representative under subsection (f)(4)—

(A) for any conduct unrelated to compliance with the requirements of this section;

(B) if the Board, provider, complainant, interested owner, or representative under subsection (f)(4) (as applicable)—

(i) engaged in intentional misconduct; or

(ii) acted, or failed to act—

(I) with actual malice; or

(II) with reckless disregard to a substantial risk of causing physical injury without legal justification; or

(C) in the case of a claim against a complainant, if the complainant falsely claims to be a victim, an authorized representative of a victim, or a qualified organization.

(3) MINIMIZING ACCESS.—The Board, a provider, a complainant, an interested owner, or a representative under subsection (f)(4) shall—

(A) minimize the number of individuals that are provided access to any alleged, contested, or actual proscribed visual depictions relating to a child under this section;

(B) ensure that any alleged, contested, or actual proscribed visual depictions relating to a child are transmitted and stored in a secure manner and are not distributed to or accessed by any individual other than as needed to implement this section; and

(C) ensure that all copies of any proscribed visual depictions relating to a child are permanently deleted upon a request from the Board, Commission, or the Federal Bureau of Investigation.

(1) PROVIDER IMMUNITY FROM CLAIMS BASED ON REMOVAL OF VISUAL DEPICTION.—A provider shall not be liable to any person for any claim based on the provider's good faith removal of any alleged proscribed visual depiction relating to a child pursuant to a notification under this section, regardless of whether the visual depiction is found to be a proscribed visual depiction relating to a child by the Board.

(m) CONTINUED APPLICABILITY OF FEDERAL, STATE, AND TRIBAL LAW.—

(1) IN GENERAL.—This Act shall not be construed to impair, supersede, or limit a provision of Federal, State, or Tribal law.

(2) NO PREEMPTION.—Nothing in this Act shall prohibit a State or Tribal government from adopting and enforcing a provision of law governing child sex abuse material that is at least as protective of the rights of a victim as this section.

(n) DISCOVERY.—Nothing in this Act affects discovery, a subpoena or any other court order, or any other judicial process otherwise in accordance with Federal or State law.

(o) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to relieve a provider from any obligation imposed on the provider under section 2258A of title 18, United States Code.

(p) FUNDING.—There are authorized to be appropriated such sums as may be necessary to pay the costs incurred by the Commission under this section, including the costs of establishing and maintaining the Board and its facilities.

(q) SUNSET.—Except for subsections (a), (h), (k), (l), (m), (n), (o), and (r), this section shall expire 5 years after the date on which the Child Online Protection Board issues its first determination under this section.

(r) DEFINITIONS.—In this section:

(1) BOARD.—The term “Board” means the Child Online Protection Board established under subsection (e).

(2) CHILD SEXUAL ABUSE MATERIAL.—The term “child sexual abuse material” has the meaning provided in section 2256(8) of title 18, United States Code.

(3) COMMISSION.—The term “Commission” means the Federal Trade Commission.

(4) COMPLAINANT.—The term “complainant” means—

(A) the victim appearing in the proscribed visual depiction relating to a child;

(B) an authorized representative of the victim appearing in the proscribed visual depiction relating to a child; or

(C) a qualified organization.

(5) DESIGNATED REPORTING SYSTEM.—The term “designated reporting system” means a

digital means of submitting a notification to a provider under this subsection that is publicly and prominently available, easily accessible, and easy to use.

(6) HOST.—The term “host” means to store or make a visual depiction available or accessible to the public or any users through digital means or on a system or network controlled or operated by or for a provider.

(7) IDENTIFIABLE PERSON.—The term “identifiable person” means a person who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature.

(8) INTERESTED OWNER.—The term “interested owner” means an individual who has joined a proceeding before the Board under subsection (g)(13).

(9) PARTY.—The term “party” means the complainant or provider.

(10) PROSCRIBED VISUAL DEPICTION RELATING TO A CHILD.—The term “proscribed visual depiction relating to a child” means child sexual abuse material or a related exploitative visual depiction.

(11) PROVIDER.—The term “provider” means a provider of an interactive computer service, as that term is defined in section 230 of the Communications Act of 1934 (47 U.S.C. 230), and for purposes of subsections (k) and (l), includes any director, officer, employee, or agent of such provider.

(12) QUALIFIED ORGANIZATION.—The term “qualified organization” means an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from tax under section 501(a) of that Code that works to address child sexual abuse material and to support victims of child sexual abuse material.

(13) RECIDIVIST HOSTING.—The term “recidivist hosting” means, with respect to a provider, that the provider removes a proscribed visual depiction relating to a child pursuant to a notification or determination under this subsection, and then subsequently hosts a visual depiction that has the same hash value or other technical identifier as the visual depiction that had been so removed.

(14) RELATED EXPLOITIVE VISUAL DEPICTION.—The term “related exploitive visual depiction” means a visual depiction of an identifiable person of any age where the visual depiction does not constitute child sexual abuse material but is published and associated with child sexual abuse material depicting that person.

(15) SMALL PROVIDER.—The term “small provider” means a provider that, for the most recent calendar year, averaged less than 10,000,000 active users on a monthly basis in the United States.

(16) VICTIM.—

(A) IN GENERAL.—The term “victim” means an individual of any age who is depicted in child sexual abuse material while under 18 years of age.

(B) ASSUMPTION OF RIGHTS.—In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by a court, may assume the victim's rights to submit a notification or file a petition under this section, but in no event shall an individual who produced or conspired to produce the child sexual abuse material depicting the victim be named as such representative or guardian.

(17) VISUAL DEPICTION.—The term “visual depiction” has the meaning provided in section 2256(5) of title 18, United States Code.

SEC. 8. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such

provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act and the amendments made by this Act, and the application of the provision or amendment to any other person or circumstance, shall not be affected.

By Mr. THUNE (for himself, Mr. BRAUN, Mr. SCOTT of South Carolina, and Mr. TUBERVILLE):

S. 1213. A bill to require the Secretary of Labor to implement the industry-recognized apprenticeship program process, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. THUNE. Madam President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 1213

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 “Training America's Workforce Act”.

SEC. 2. INDUSTRY-RECOGNIZED APPRENTICESHIP PROGRAMS.

The Act of August 16, 1937 (commonly known as the “National Apprenticeship Act”; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.) is amended—

(1) by redesignating section 4 as section 5; and

(2) by inserting after section 3 the following:

“SEC. 4. INDUSTRY-RECOGNIZED APPRENTICESHIP PROGRAMS.

“(a) DEFINITIONS.—In this section:

“(1) INDUSTRY-RECOGNIZED APPRENTICESHIP PROGRAM.—The term ‘industry-recognized apprenticeship program’—

“(A) means a high-quality, competency-based apprenticeship program that is—

“(i) recognized by a standards recognition entity; and

“(ii) developed or delivered by an entity such as a trade or industry group, corporation, nonprofit organization, institution of higher education, labor organization, or labor-management organization (among other entities, as determined appropriate by the Secretary); and

“(B) may include a program that meets the requirements of subparagraph (A) and trains apprentices to perform construction activities.

“(2) SECRETARY.—The term ‘Secretary’ means the Secretary of Labor.

“(3) STANDARDS RECOGNITION ENTITY.—The term ‘standards recognition entity’ means a private sector or public sector entity that—

“(A) is recognized by the Secretary (acting through the Administrator of the Office of Apprenticeship of the Department of Labor) for purposes of recognizing apprenticeship programs as industry-recognized apprenticeship programs;

“(B) has a demonstrated ability to ensure an industry-recognized apprenticeship program meets the standards described in subsection (d); and

“(C) has the capacity to perform the oversight necessary to ensure the ongoing compliance of an industry-recognized apprenticeship program with such standards.

“(b) RECOGNITION OF INDUSTRY-RECOGNIZED APPRENTICESHIP PROGRAMS.—

“(1) IN GENERAL.—By not later than 1 year after the date of enactment of the Training America's Workforce Act, the Secretary,