

## STOP CSAM Act: Section-by-Section Summary Senate Judiciary Chair Dick Durbin (D-IL)

**Section 1: Short title.** This section provides that the bill may be cited as the “Strengthening Transparency and Obligations to Protect Children Suffering from Abuse and Mistreatment (STOP CSAM) Act of 2023.”

**Section 2: Mandatory child abuse reporting.** Following the Larry Nassar scandal, Congress acted quickly to impose a child abuse reporting requirement on youth and amateur sports organizations. But this has left a gap in the national safety net, as there is not a comparable reporting requirement for organizations that provide services or care to children. This means that children who play Little League have greater protections under federal law than those who join the Cub Scouts. And state laws are inconsistent with respect to whether and how individuals who interact with children through child-serving organizations must report child abuse.<sup>1</sup> The risk to children is very real, as has been shown time and again by organizations that systemically failed in their responsibility to protect children from sexual exploitation and abuse. For example, on April 5, 2023, the Maryland Attorney General released a report that found that over 600 children were abused over the course of 80 years within the Archdiocese of Baltimore.<sup>2</sup>

This section closes this gap in two ways. First, the legislation mandates that suspected child abuse be reported to law enforcement by individuals working for organizations that receive qualifying discretionary federal grants of more than \$10,000 in a one-year period to provide services to children. To do this, the legislation amends 34 U.S.C. § 20341 to expand the definition of a “covered individual” who must report suspected abuse. Under the legislation, a “covered individual” will include a person who is authorized to interact with a child by a program that receives a \$10,000+ federal grant to provide any care, treatment, education, training, instruction, religious guidance, supervision, or recreational opportunities to that child. The legislation specifies that the reporting requirement applies to suspected conduct committed outside the United States if committed by a U.S. citizen or lawful permanent resident. The legislation also makes clear that the statute does not require the disclosure of information exclusively received in the context of a privileged communication (which is defined by reference

---

<sup>1</sup> See Child Welfare Information Gateway, *Mandatory Reporters of Child Abuse and Neglect*, available at <https://www.childwelfare.gov/pubpdfs/manda.pdf>.

<sup>2</sup> See Lea Skene, Brian Witte, and Sarah Brumfield, *Report Details Staggering Church Sex Abuse in Maryland*, ASSOCIATED PRESS (Apr. 5, 2023), available at <https://apnews.com/article/baltimore-archdiocese-sex-abuse-report-7d5d3af098da59a1c9313a246566638c>. See also, Randall Chase, *Judge Upholds Boy Scouts’ \$2.4 Billion Bankruptcy Plan*, ASSOCIATED PRESS (Mar. 28, 2023), available at <https://www.pbs.org/newshour/nation/judge-upholds-boy-scouts-2-4-billion-bankruptcy-reorganization-plan> (involving a settlement that resolves claims of over 80,000 victims of child abuse); Daniel Burke and Susannah Cullinane, *Report Details Sexual Abuse by More than 300 Priests in Pennsylvania’s Catholic Church*, CNN (Aug. 15, 2018), available at <https://www.cnn.com/2018/08/14/us/pennsylvania-catholic-church-grand-jury/index.html> (concerning the sexual abuse of over 1,000 children over the course of 70 years); Ruth Graham and Elizabeth Dias, *Southern Baptist Sex Abuse Report Stuns, from Pulpit to Pews*, NY TIMES (May 23, 2022), available at <https://www.nytimes.com/2022/05/23/us/southern-baptist-sex-abuse-report.html> (concerning abuse by hundreds of priests and church workers over two decades); Michael Rezendes, *Seven Years of Sex Abuse: How Mormon Officials Let it Happen*, ASSOCIATED PRESS (Aug. 4, 2022), available at <https://apnews.com/article/Mormon-church-sexual-abuse-investigation-e0e39cf9aa4fbe0d8c1442033b894660> (describing how church officials discouraged reporting of child sexual abuse to law enforcement, which allowed the abuse to continue).

to state law), and that it does not require attorneys to disclose information in violation of applicable professional standards.

This section also includes technical amendments to Section 20341, which include defining a child as a person under the age of 18; replacing the definition of “mental injury” with a more precise definition of “psychological abuse”; imposing a child abuse reporting requirement on computer repair technicians working in federal facilities; and updating other terminology and statutory terms. This section further: (1) makes conforming amendments to 18 U.S.C. § 2258, which provides a criminal penalty for failure to report child abuse; and (2) specifies that the provision only applies to knowing failures to report.

Second, in order to encourage the enactment of state laws that require the reporting of child abuse by individuals working for entities that provide services to children, the legislation creates a supplemental grant program to support the Internet Crimes Against Children (ICAC) Task Forces. Under this provision, the current grant matching requirement is waived for ICAC Task Forces in states with the requisite laws in place, and such Task Forces may receive an additional 10% in grant funds from a supplemental fund authorized to be appropriated at \$25 million per year. This provision is modeled on three recently enacted bipartisan bills that use grant funds to encourage states to enact laws to protect the custody rights of rape survivors, close the law enforcement consent loophole, and adopt a bill of rights for sexual assault survivors.<sup>3</sup>

**Section 3: Expanded protections for child victims in federal court.** This section makes improvements to 18 U.S.C. § 3509, which provides special protections to certain child victims and witnesses in federal court.

First, the bill updates the privacy protections in Section 3509(d), creating a more robust definition of protected information, creating a presumption in favor of keeping protected information under seal, and providing the court with remedies against any attorney who does not comply with the privacy provisions.

Next, the legislation closes a gap in the statute. Currently, Section 3509 applies to child victims of physical abuse, sexual abuse, or exploitation. This legislation extends the statutory protections to child victims of kidnapping, including international parental kidnapping. This revision brings Section 3509 in line with other federal provisions addressing crimes committed against children.<sup>4</sup>

In addition, because an individual victimized as a child may have turned 18 by the time court proceedings are underway, the legislation clarifies that certain protections in Section 3509 (such as the privacy provision) should continue to apply even when the victim has become an adult. This legislation also, for the first time, authorizes appropriations for guardians ad litem for child victims and witnesses. Finally, the legislation updates terminology and statutory terms, including making the same revision described above that replaces the definition of “mental

---

<sup>3</sup> See Chapter 213 of Title 34, United States Code; 34 U.S.C. 60106; and the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, Title LIX, Subtitle A § 5903 (2022).

<sup>4</sup> See 18 U.S.C. §§ 3142 (pre-trial detention and conditions of release), 3299 (statute of limitations), and 3583(k) (conditions of supervised release).

injury” with one for “psychological abuse”, and adding children’s advocacy centers to the definition of “multidisciplinary child abuse team.”

**Section 4: Facilitating restitution for certain victims of child exploitation, human trafficking, sexual assault, and crimes of violence.** Restitution is an important aspect of obtaining justice for the victim. Under federal law, restitution is mandatory for victims of child exploitation, human trafficking, sexual assault, and crimes of violence involving physical injury or pecuniary loss. However, in certain circumstances, there are obstacles to ensuring that restitution is safely and properly available to the victim. For example, if the victim is still under the age of 18, or is incompetent or incapacitated, restitution may be received by a parent or guardian on behalf of the victim. But once that money is remitted, there is no method to ensure that the parent or guardian actually spends the money for the benefit of the child. For foreign victims residing abroad, particularly those in impoverished countries, payment of restitution can be difficult, dangerous, or both. Some foreign victims may not have access to a reliable banking system in their country. And the sudden influx of even a modest amount of cash may make a foreign victim a target for extortion, robbery, or fraud.

While federal prosecutors can arrange for a trustee to collect and disburse restitution in those situations, the lack of a statutory framework hinders the process. This legislation addresses this problem by explicitly authorizing courts to appoint a trustee to manage restitution payments for certain victims and offenses. To do this, the legislation amends 18 U.S.C. § 3664, which sets forth the procedures for ordering and enforcing restitution in federal criminal cases, to indicate that when ordering restitution under specified statutes, the court may appoint a trustee or other fiduciary to collect and disburse restitution. This provision only applies if the victim is under the age of 18 at the time of the proceeding, is incompetent or incapacitated, or is a foreign citizen or stateless person residing outside the United States (for foreign citizens or stateless persons, the court must find that the trustee or other fiduciary is necessary to protect the victim or to ensure their access to the restitution payments). The specified restitution statutes are 18 U.S.C. §§ 1593 (restitution for human trafficking offenses), 2248 (restitution for sexual assault offenses), 2259 (restitution for offenses involving child sexual abuse material), 2429 (restitution for illegal sexual activity and related crimes), 3663 (discretionary restitution), and 3663A(c)(1)(A)(i) and (B) (restitution for crimes of violence).

This section articulates the conditions that must be followed by a trustee or other fiduciary, and indicates that the costs for the trustee or fiduciary may be paid by the court, by the defendant, or by a combination of the two. To that end, the legislation authorizes appropriations to cover the costs of the trustees or fiduciaries, and indicates the factors the court should consider when ordering a defendant to pay for this cost and the means of enforcing that order.

The section also includes certain technical amendments to these provisions. The definition of “victim” in Sections 1593, 2248, and 2429 is amended to be brought in line with other federal statutes. The legislation also corrects a statutory cross-reference in Section 2429; adds additional statutory references and clarifying detail to definitions in Sections 2259 and 2259A; and provides further instruction on the allocation of low amounts of restitution in cases involving trafficking of child sexual abuse material.

**Section 5.** This section contains a number of amendments to make the CyberTipline a more powerful tool to fight online child sexual exploitation, and to promote accountability and transparency by tech platforms with respect to online child safety.

**CyberTipline Revisions.** Under federal law, online providers are required to send a report to NCMEC if they have “actual knowledge” of an “apparent” violation of federal laws pertaining to CSAM.<sup>5</sup> The CyberTipline is a vital source of information concerning online child sexual exploitation, but there are statutory gaps to be filled in order to make the CyberTipline more robust.

This section broadens the reporting regime by requiring tech companies to report planned and imminent child exploitation offenses (currently, the reporting of planned or imminent offenses is discretionary). It also requires reporting whenever a provider finds CSAM, regardless of whether the provider has any information about the underlying conduct of a potential offender. It gives providers the discretion to report information whenever they have a reasonable belief that a relevant violation has occurred or will occur. The legislation also adds the commonsense mandate that providers must submit a report within 60 days of when the provider learned about the facts triggering the reporting obligation, and they must remove any publicly available CSAM that is the subject of a report.

The legislation also makes the content of CyberTips more comprehensive by requiring providers to include basic information in the report, and by outlining additional categories of information that can be included in a CyberTip.

In order to facilitate the processing of CyberTips, the legislation authorizes NCMEC to provide domestic law enforcement with a copy of an image from its databases if the hash value matches the hash value provided in a CyberTip. The legislation also clarifies that submission of a CyberTip is not sufficient on its own to satisfy the preservation requirement, and that CyberTips may be disclosed to personnel at children’s advocacy centers.

The legislation also includes technical amendments to make clear that providers who want to obtain information from NCMEC to be used to search their platforms for CSAM do so at their own initiative and to specify that providers may not redistribute certain information received from NCMEC unless it is to help combat child sexual exploitation.

**Provider Transparency.** Despite the power and influence of tech platforms on modern society, there is no easy way to assess a company’s approach and commitment to online child safety. Transparency around online child safety is vital to inform consumers and lawmakers and to educate and motivate companies in the tech industry to do more to protect children. Tech platforms should showcase effective measures they have taken to combat online child sexual exploitation and abuse, and the federal government should ensure that those tech companies that disregard child safety cannot do so in silence.

In order to create greater transparency around how tech providers approach online child safety, this section creates an annual reporting requirement in which certain providers must describe

---

<sup>5</sup> See 18 U.S.C. §§ 2258A-2258E.

their efforts to promote a culture of safety for children on their platform. The reports are to be submitted to the Department of Justice and the FTC, who shall make the reports public. This reporting requirement applies to providers that receive more than 1,000,000 unique monthly visitors for each of the 12 months in the preceding year, and accrue revenue of more than \$50,000,000, in the reporting period. The providers may request that certain information be redacted from the published reports, and DOJ and FTC may redact any information they deem necessary.

**Accountability Measures.** The efficacy of the CyberTipline is weakened if there are not appropriate tools to address situations where providers decline to comply with the mandates. To ensure there are adequate measures to remedy non-compliance, the legislation creates criminal penalties for the failure to preserve information and the failure to remove publicly available CSAM that is the subject of a CyberTip. The legislation also enacts civil penalties for the failure to report, remove, preserve, or comply with the annual reporting requirement, as well as the submission of a report with a material misstatement or omission. The legislation eliminates the need to prove that the provider acted willfully in order to impose a penalty for failure to report, ensuring that evidence of a knowing failure is sufficient for the penalty to be imposed. Criminal and civil penalties are increased if an individual is directly and proximately harmed by the failure, misstatement, or omission. The penalties are paid into the “Child Pornography Victims Reserve,” which is used to pay defined monetary assistance to victims of trafficking in CSAM.

Finally, to address the worst offenders in the tech industry, a criminal provision is enacted which prohibits a tech platform from promoting or facilitating online child sexual exploitation; hosting or storing CSAM; or making it available to any person. This provision does not apply to actions taken by online platforms to comply with valid legal process or statutory requirements.

**Section 6. Civil Liability.** The legislation expands 18 U.S.C. § 2255, which currently provides a civil cause of action for victims who suffered sexual abuse or sexual exploitation as children, to enable such victims of to file suit against online platforms and app stores that intentionally, knowingly, recklessly, or negligently promote or facilitate online child sexual exploitation. Victims are able to recover actual damages or liquidated damages in the amount of \$150,000, as well as punitive damages and equitable relief. This provision does not apply to actions taken by online platforms to comply with valid legal process or statutory requirements. The legislation specifies that such causes of action are not barred by section 230 of the Communications Act of 1934 (47 U.S.C. 230).

**Section 7. Report and Remove.** The internet is awash in child sexual abuse material. For example, in 2021, the CyberTipline, operated by the National Center for Missing & Exploited Children (NCMEC) to combat online child sexual exploitation, received reports about 39,900,000 images and 44,800,000 videos depicting child sexual abuse.<sup>6</sup> Similarly, Project Arachnid has sent over 26 million notices to online providers that child sexual abuse material was found on their platforms.<sup>7</sup> As the Supreme Court recognized four decades ago, child sexual

---

<sup>6</sup> See <https://www.missingkids.org/gethelpnow/cybertipline/cybertiplinedata>.

<sup>7</sup> Developed by the Canadian Centre for Child Protection and launched in 2017, Project Arachnid is an innovative tool to combat child sexual abuse material (CSAM) on the internet. Using hashing technology, this victim-centered

abuse material (CSAM) is inherently illegal because “the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the child.”<sup>8</sup> The Supreme Court further noted the unique harm caused by the distribution of CSAM, as it is a constant intrusion on the victim’s privacy and security.<sup>9</sup>

In addition to CSAM, victims are also harmed by the online distribution of “related exploitive visual depictions” (REVD). These are visual depictions of an identifiable person of any age, where the visual depictions do not constitute CSAM, but they are published or associated with CSAM depicting that person. For example, one website asks “where are they now,” posting CSAM alongside non-explicit photos of the victims as adults. These visual depictions cause a great deal of ancillary harm, even if they are not inherently illegal the way that CSAM is. REVDs invade a victim’s privacy and disrupt their sense of security by linking the victim’s identity with the images of their abuse.

The criminal and civil justice systems are not well suited for rapid action to halt the proliferation of CSAM and REVD, particularly because they are primarily focused on holding offenders accountable. Indeed, criminal and civil actions can only proceed when the offenders are identified and located, but much, if not most, online CSAM and REVD is not traceable to any individual. Further, such legal actions are not processes that can be controlled by the victims. And the criminal and civil justice systems do not address REVDs at all. This leaves victims without good options when they know CSAM or REVD depicting them is available online, and they simply want it taken down. Many countries are working to fix this problem by developing tools to support victims and quickly get this contraband removed from online platforms.<sup>10</sup>

This section empowers victims by making it easier for them to ask internet platform providers to remove CSAM and REVD and by creating an administrative process to address a provider’s failure to comply with a removal request. This process is implemented by a newly created Child Online Protection Board (Board), housed within the Federal Trade Commission (FTC). Specifically, the legislation creates a quick, easy-to-use tool for victims to seek removal of these images through the following steps:

1. A complainant sends a notification to a provider informing them they are hosting CSAM and/or REVD (collectively referred to in the legislation as “proscribed visual depictions involving a minor”).
2. The provider must take the material down within 48 hours, or file a petition with the Board in 14 days arguing that it cannot do so or that the image is not CSAM or REVD. The provider also has the option, before taking the material down or filing a petition, to contact the complainant to dispute whether the notification concerns a proscribed visual depiction involving a minor. If the complainant does not respond, no further action is required.

---

tool searches the clear and dark web in search of CSAM. When CSAM or harmful-abusive content is detected, a removal request is sent to the hosting provider. More information is available at <https://projectarachnid.ca/en/>.

<sup>8</sup> *New York v. Ferber*, 458 U.S. 747, 758 (1982).

<sup>9</sup> *Ferber*, 458 U.S. at 759 and n. 10.

<sup>10</sup> For an example from the United Kingdom, see <https://www.nspcc.org.uk/keeping-children-safe/online-safety/online-reporting/report-remove/>.

3. If the provider does none of those things, the complainant can file a petition with the Board arguing that the provider failed to remove the CSAM or REVD.
4. Upon receipt of either petition, the Board confirms that all parties waive their right to have the matter resolved before a jury in an Article III court, and if so, conducts expedited factfinding and can impose a fine on providers that fail to remove the CSAM or REVD.

The amount of the fine increases if the notification involved “recidivist hosting,” which takes place when a visual depiction is reposted after it had been removed pursuant to a Board determination. Recidivist hosting is a significant problem—according to the Canadian Centre for Child Protection, almost half of CSAM detected via Project Arachnid had previously been referenced in a removal notice.<sup>11</sup> The legislation includes a mechanism by which the creator of the visual depiction at issue can join the proceeding for the limited purpose of claiming that the depiction at issue does not constitute CSAM or REVD.

The legislation requires a report to Congress three years after the legislation is implemented to assess how it is working and whether changes are needed. The report and remove program sunsets five years after implementation.

---

<sup>11</sup> See <https://www.protectchildren.ca/en/press-and-media/news-releases/2021/project-arachnid-csam-online-availability>.