

115TH CONGRESS
1ST SESSION

S. 2152

To amend title 18, United States Code, to provide for assistance for victims of child pornography, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 16, 2017

Mr. HATCH (for himself, Mrs. FEINSTEIN, Mr. GRASSLEY, Ms. KLOBUCHAR, Mr. CORNYN, and Mr. TOOMEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to provide for assistance for victims of child pornography, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Amy, Vicky, and Andy
5 Child Pornography Victim Assistance Act of 2017”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The demand for child pornography harms
9 children because it drives production, which involves

1 severe and often irreparable child sexual abuse and
2 exploitation.

3 (2) The harms caused by child pornography
4 begin, but do not end, with child sex abuse because
5 child pornography is a permanent record of that
6 abuse and trafficking in those images compounds
7 the harm to the child.

8 (3) In *Paroline v. United States* (2014), the
9 Supreme Court recognized that “every viewing of
10 child pornography is a repetition of the victim’s
11 abuse”.

12 (4) The American Professional Society on the
13 Abuse of Children has stated that for victims of
14 child pornography, “the sexual abuse of the child,
15 the memorialization of that abuse which becomes
16 child pornography, and its subsequent distribution
17 and viewing become psychologically intertwined and
18 each compound the harm suffered by the child-vic-
19 tim”.

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

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

8 (7) It is the intent of Congress that victims of
9 child pornography be fully compensated for all the
10 harms resulting from every perpetrator who contrib-
11 utes to their anguish. Such an aggregate causation
12 standard reflects the nature of child pornography
13 and the unique ways that it actually harms victims.

14 **SEC. 3. DETERMINING RESTITUTION.**

15 (a) DETERMINING RESTITUTION.—Section 2259(b)
16 of title 18, United States Code, is amended—

17 (1) in paragraph (1)—

18 (A) by striking “The order” and inserting
19 “Except as provided in paragraph (2), the
20 order”; and

21 (B) by striking “as determined by the
22 court pursuant to paragraph (2)” after “of the
23 victim’s losses”;

24 (2) by striking paragraph (3);

1 (3) by redesignating paragraph (2) as para-
2 graph (3); and

3 (4) by inserting after paragraph (1) the fol-
4 lowing:

5 “(2) RESTITUTION FOR TRAFFICKING IN CHILD
6 PORNOGRAPHY.—If the defendant was convicted for
7 trafficking in child pornography, the order of res-
8 titution under this section shall direct the defendant
9 to pay the victim (through the appropriate court
10 mechanism) an amount of restitution determined by
11 the court as follows:

12 “(A) DETERMINING THE FULL AMOUNT OF
13 A VICTIM’S LOSSES.—The court shall determine
14 the full amount of the victim’s losses that were
15 incurred or are reasonably projected to be in-
16 curred by the victim as a result of the traf-
17 ficking in child pornography.

18 “(B) DETERMINING A RESTITUTION
19 AMOUNT.—After completing the determination
20 required under subparagraph (A), the court
21 shall enter an order of restitution against the
22 defendant in favor of the victim in an amount
23 which is not less than \$3000 and not greater
24 than 1 percent of the full amount of the vic-

1 tim’s losses when the full amount of a victim’s
2 losses are greater than \$300,000.

3 “(C) TERMINATION OF PAYMENT.—A vic-
4 tim’s total aggregate recovery pursuant to this
5 section shall not exceed the full amount of the
6 victim’s demonstrated losses. After the victim
7 has received restitution in the full amount of
8 the victim’s losses as measured by the greatest
9 amount of such losses found in any case involv-
10 ing that victim that has resulted in a final res-
11 titution order under this section, the liability of
12 each defendant who is or has been ordered to
13 pay restitution for such losses to that victim
14 shall be terminated. The court may direct the
15 victim to provide information concerning the
16 amount of restitution the victim has been paid
17 in other cases for the same losses.”.

18 (b) ADDITIONAL DEFINITIONS.—Section 2259(c) of
19 title 18, United States Code, is amended—

20 (1) in the heading, by striking “DEFINITION”
21 and inserting “DEFINITIONS”;

22 (2) by striking “For purposes” and inserting
23 the following:

24 “(4) VICTIM.—For purposes”;

1 (3) by striking “under this chapter, including,
2 in the case” and inserting “under this chapter. In
3 the case”;

4 (4) by inserting after “or any other person ap-
5 pointed as suitable by the court,” the following:
6 “may assume the crime victim’s rights under this
7 section,”; and

8 (5) by inserting before paragraph (4), as so
9 designated, the following:

10 “(1) CHILD PORNOGRAPHY PRODUCTION.—For
11 purposes of this section and section 2259A, the term
12 ‘child pornography production’ means conduct pro-
13 scribed by section 2251, section 2251A, section
14 2252A(g) if at least one of the offenses listed in this
15 section is charged as part of a series of offenses, sec-
16 tion 2260(a), or any offense under chapter 109A or
17 chapter 117 that involved the production of child
18 pornography, as defined in section 2256.

19 “(2) FULL AMOUNT OF THE VICTIM’S
20 LOSSES.—For purposes of this section, the term ‘full
21 amount of the victim’s losses’ includes any costs in-
22 curred, or reasonably projected to be incurred in the
23 future, by the victim, and in the case of a trafficking
24 in child pornography conviction, as a proximate re-

1 sult of all trafficking in child pornography offenses
2 involving the same victim, including—

3 “(A) medical services relating to physical,
4 psychiatric, or psychological care;

5 “(B) physical and occupational therapy or
6 rehabilitation;

7 “(C) necessary transportation, temporary
8 housing, and child care expenses;

9 “(D) lost income;

10 “(E) attorneys’ fees, as well as other costs
11 incurred; and

12 “(F) any other relevant losses incurred by
13 the victim.

14 “(3) TRAFFICKING IN CHILD PORNOGRAPHY.—
15 For purposes of this section and section 2259A, the
16 term ‘trafficking in child pornography’ means con-
17 duct proscribed by section 2252, 2252A, section
18 2252A(g) if at least one of the offenses listed in this
19 section is charged as part of a series of offenses, or
20 section 2260(b)).”.

21 (c) CLERICAL AMENDMENT.—Section 1593(b)(3) of
22 title 18, United States Code, is amended by striking “sec-
23 tion 2259(b)(3)” and inserting “section 2259(c)(2)”.

1 **SEC. 4. DEFINED MONETARY ASSISTANCE.**

2 Section 2259 of title 18, United States Code, is
3 amended by adding at the end the following:

4 “(d) DEFINED MONETARY ASSISTANCE.—

5 “(1) DEFINED MONETARY ASSISTANCE MADE
6 AVAILABLE AT VICTIM’S ELECTION.—

7 “(A) ELECTION TO RECEIVE DEFINED
8 MONETARY ASSISTANCE.—Subject to para-
9 graphs (2) and (3), if the defendant was con-
10 victed of child pornography production, the vic-
11 tim of child pornography production may choose
12 to receive defined monetary assistance from the
13 Child Pornography Victims’ Reserve established
14 under section 1402(d)(6) of the Victims of
15 Crime Act of 1984.

16 “(B) FINDING.—To be eligible for defined
17 monetary assistance under this subsection, a
18 court shall determine whether the claimant is a
19 victim of the defendant who was convicted of
20 child pornography production.

21 “(C) ORDER.—If a court determines that
22 a claimant is a victim of child pornography pro-
23 duction under subparagraph (B) and the claim-
24 ant chooses to receive defined monetary assist-
25 ance, the court shall order payment in accord-
26 ance with subparagraph (D) to the victim from

1 the Child Pornography Victims' Reserve estab-
2 lished under section 1402(d)(6) of the Victims
3 of Crime Act of 1984.

4 “(D) AMOUNT OF DEFINED MONETARY AS-
5 SISTANCE.—The amount of defined monetary
6 assistance payable under this subparagraph
7 shall be equal to—

8 “(i) for first calendar year after the
9 date of enactment of this subsection,
10 \$35,000; and

11 “(ii) for each calendar year after the
12 year described in clause (i), \$35,000 multi-
13 plied by the ratio (not less than one) of—

14 “(I) the Consumer Price Index
15 for all Urban Consumer (CPI-U, as
16 published by the Bureau of Labor
17 Statistics of the Department of
18 Labor) for the calendar year pre-
19 ceding such calendar year; to

20 “(II) the CPI-U for the calendar
21 year 2 years before the calendar year
22 described in clause (i).

23 “(2) LIMITATIONS ON DEFINED MONETARY AS-
24 SISTANCE.—

1 “(A) IN GENERAL.—A victim may only ob-
2 tain defined monetary assistance under this
3 subsection once.

4 “(B) EFFECT ON RECOVERY OF OTHER
5 RESTITUTION.—A victim who obtains defined
6 monetary assistance under this subsection shall
7 not be barred or limited from receiving restitu-
8 tion against any defendant for any offenses not
9 covered by this section.

10 “(C) DEDUCTION.—If a victim who re-
11 ceived defined monetary assistance under this
12 subsection subsequently seeks restitution under
13 this section, the court shall deduct the amount
14 the victim received in defined monetary assist-
15 ance when determining the full amount of the
16 victim’s losses.

17 “(3) LIMITATIONS ON ELIGIBILITY.—A victim
18 who has collected payment of restitution pursuant to
19 this section in an amount greater than the amount
20 provided for under paragraph (1)(D) shall be ineli-
21 gible to receive defined monetary assistance under
22 this subsection.

23 “(4) GUARDIAN AD LITEM.—

24 “(A) IN GENERAL.—In all cases alleging
25 child pornography production, the court shall

1 appoint a guardian ad litem, who shall be an
2 attorney, for each identified victim of the child
3 pornography production, pursuant to section
4 3509(h).

5 “(B) FEES.—A guardian ad litem ap-
6 pointed pursuant to this subsection may not
7 charge, receive, or collect, without court ap-
8 proval for good cause shown, any fees or pay-
9 ment of expenses that in the aggregate exceed
10 10 percent of any defined monetary assistance
11 payment made under this subsection.

12 “(C) PENALTY.—Any guardian ad litem
13 who violates subparagraph (B) shall be fined
14 under this title, imprisoned for not more than
15 one year, or both.”.

16 **SEC. 5. ASSESSMENTS IN CHILD PORNOGRAPHY CASES.**

17 (a) ASSESSMENTS IN CHILD PORNOGRAPHY
18 CASES.—Chapter 110 of title 18, United States Code, is
19 amended by inserting after section 2259 the following:

20 **“§ 2259A. Assessments in child pornography cases**

21 “(a) IN GENERAL.—In addition to any other criminal
22 penalty, restitution, or special assessment authorized by
23 law, the court shall assess—

1 “(1) not more than \$17,000 on any person con-
2 victed of an offense under section 2252(a)(4) or
3 2252A(a)(5);

4 “(2) not more than \$35,000 on any person con-
5 victed of any other offense for trafficking in child
6 pornography; and

7 “(3) not more than \$50,000 on any person con-
8 victed of a child pornography production offense.

9 “(b) ANNUAL ADJUSTMENT.—The dollar amounts in
10 subsection (a) shall be adjusted annually in conformity
11 with the Consumer Price Index.

12 “(c) FACTORS CONSIDERED.—In determining the
13 amount of the assessment under subsection (a), the court
14 shall consider the factors set forth in sections 3553(a) and
15 3572.

16 “(d) IMPOSITION AND IMPLEMENTATION.—

17 “(1) IN GENERAL.—The provisions of sub-
18 chapter C of chapter 227 (other than section 3571)
19 and subchapter B of chapter 229 (relating to fines)
20 apply to assessments under this section, except that
21 paragraph (2) applies in lieu of any contrary provi-
22 sions of law relating to fines or disbursement of
23 money received from a defendant.

24 “(2) EFFECT ON OTHER PENALTIES.—Imposi-
25 tion of an assessment under this section does not re-

1 lieve a defendant of, or entitle a defendant to reduce
2 the amount of any other penalty by the amount of
3 the assessment. Any money received from a defend-
4 ant shall be disbursed so that each of the following
5 obligations is paid in full in the following sequence:

6 “(A) A special assessment under section
7 3013.

8 “(B) Restitution to victims of any child
9 pornography production offense that the de-
10 fendant committed.

11 “(C) An assessment under this section and
12 restitution to victims of any trafficking in child
13 pornography offenses.

14 “(D) Other orders under any other section
15 of this title.

16 “(E) All other fines, penalties, costs, and
17 other payments required under the sentence.”.

18 (b) CHILD PORNOGRAPHY VICTIMS RESERVE.—Sec-
19 tion 1402(d) the Victims of Crime Act of 1984 (34 U.S.C.
20 20101(d)) is amended by adding at the end the following:

21 “(6)(A) The Director may set aside up to
22 \$10,000,000 of the amounts remaining in the Fund in any
23 fiscal year after distributing the amounts under para-
24 graphs (2), (3), and (4), in a Child Pornography Victims
25 Reserve, which may be used by the Attorney General for

1 payments under section 2259(d) of title 18, United States
2 Code.

3 “(B) Amounts in the reserve may be carried over
4 from fiscal year to fiscal year, but the total amount of
5 the reserve shall not exceed \$10,000,000. Notwithstanding
6 subsection (c) and any limitation on Fund obligations in
7 any future Act, unless the same should expressly refer to
8 this section, any such amounts carried over shall not be
9 subject to any limitation on obligations from amounts de-
10 posited to or available in the Fund.”.

11 (c) CHILD PORNOGRAPHY VICTIMS RESERVE.—
12 Chapter 110 of title 18, United States Code, is amended
13 by inserting after section 2259A, as added by subsection
14 (a), the following:

15 **“§ 2259B. Child pornography victims reserve**

16 “(a) DEPOSITS INTO THE RESERVE.—Notwith-
17 standing any other provision of law, there shall be depos-
18 ited into the Child Pornography Victims Reserve estab-
19 lished under section 1402(d)(6) of the Victims of Crime
20 Act of 1984 all assessments collected under section 2259A
21 and any gifts, bequests, or donations to the Child Pornog-
22 raphy Victims Reserve from private entities or individuals.

23 “(b) AVAILABILITY FOR DEFINED MONETARY AS-
24 SISTANCE.—Amounts in the Child Pornography Victims
25 Reserve shall be available for payment of defined monetary

1 assistance pursuant to section 2259(d). If at any time the
2 Child Pornography Victims Reserve has insufficient funds
3 to make all of the payments ordered under section
4 2259(d), the Child Pornography Victims Reserve shall
5 make such payments as it can satisfy in full from available
6 funds. In determining the order in which such payments
7 shall be made, the Child Pornography Victims Reserve
8 shall make payments based on the date they were ordered,
9 with the earliest-ordered payments made first.

10 “(c) ADMINISTRATION.—The Attorney General shall
11 administer the Child Pornography Victims Reserve and
12 shall issue guidelines and regulations to implement this
13 section.

14 “(d) SENSE OF CONGRESS.—It is the sense of Con-
15 gress that individuals who violate this chapter before this
16 legislation is enacted, but who are sentenced after this leg-
17 islation is enacted, shall be subject to the statutory scheme
18 that was in effect at the time the offenses were com-
19 mitted.”.

20 (d) CLERICAL AMENDMENT.—The table of sections
21 for chapter 110 of title 18, United States Code, is amend-
22 ed by inserting after the item relating to section 2259 the
23 following:

“2259A. Assessments in child pornography cases.
“2259B. Child pornography victims reserve.”.

1 **SEC. 6. CHILD PORNOGRAPHY VICTIM'S RIGHT TO EVI-**
2 **DENCE.**

3 Section 3509(m) of title 18, United States Code, is
4 amended by adding at the end the following:

5 “(3)(A) In any criminal proceeding, a victim of
6 trafficking in child pornography or child pornog-
7 raphy production, as those terms are defined in sec-
8 tion 2259(c), shall have access to any property or
9 material that constitutes child pornography, as de-
10 fined by section 2256, depicting the victim, for in-
11 spection, viewing, and examination at a Government
12 facility, by the victim, his or her attorney, and any
13 individual the victim may seek to qualify to furnish
14 expert testimony.

15 “(B) A victim of trafficking in child pornog-
16 raphy or child pornography production, as those
17 terms are defined in section 2259(c), his or her at-
18 torney, and any individual the victim may seek to
19 qualify to furnish expert testimony may not copy,
20 photograph, duplicate, or otherwise reproduce any
21 property or material that constitutes child pornog-
22 raphy, as defined by section 2256 of this title, so
23 long as the Government makes the property or mate-
24 rial reasonably available to the victim, his or her at-
25 torney, and any individual the victim may seek to
26 qualify to furnish expert testimony.”.

1 **SEC. 7. CLERICAL AMENDMENTS.**

2 (a) EXPANSION OF CIVIL REMEDIES FOR SATISFAC-
3 TION OF AN UNPAID FINE.—Section 3613(c) of title 18,
4 United States Code, is amended by inserting “an assess-
5 ment imposed pursuant to section 2259A of this title,”
6 after “pursuant to the provisions of subchapter C of chap-
7 ter 227 of this title,”.

8 (b) CLARIFICATION OF INTERSTATE OR FOREIGN
9 COMMERCE PROVISION REGARDING CERTAIN ACTIVITIES
10 PERTAINING TO CHILD PORNOGRAPHY.—Section 2252A
11 (a)(2) of title 18, United States Code, is amended—

12 (1) in subparagraph (A)—

13 (A) by striking “using any means or facil-
14 ity of interstate or foreign commerce” and in-
15 serting “has been”; and

16 (B) by inserting “using any means or facil-
17 ity of interstate or foreign commerce or” after
18 “child pornography”; and

19 (2) in subparagraph (B)—

20 (A) by striking “using any means or facil-
21 ity of interstate or foreign commerce” and in-
22 serting “has been”; and

23 (B) by inserting “using any means or facil-
24 ity of interstate or foreign commerce or” after
25 “child pornography”.

1 (c) CLARIFICATION OF THE DEFINITION OF “SEXU-
2 ALLY EXPLICIT CONDUCT”.—Section 2256(2) of title 18,
3 United States Code, is amended—

4 (1) in subparagraph (A)(v)—

5 (A) by inserting “anus,” before “genitals”;

6 and

7 (B) by inserting a comma after “genitals”;

8 and

9 (2) in subparagraph (B)(iii)—

10 (A) by inserting “anus,” before “genitals”;

11 and

12 (B) by inserting a comma after “genitals”.

13 (d) CLARIFICATION OF THE EXTENT OF THE OF-
14 FENSE OF COERCION AND ENTICEMENT OF A MINOR.—
15 Section 3559(e)(2)(A) of title 18, United States Code, is
16 amended by striking “into prostitution”.

17 **SEC. 8. REPORT ON IMPLEMENTATION.**

18 Not later than 24 months after the date of enactment
19 of this Act, the Attorney General shall submit to Congress
20 a report on the progress of the Department of Justice in
21 implementing the amendments made by sections 3
22 through 5.

○