

S. 2111

To amend title 18, United States Code, to provide that it is unlawful to knowingly distribute private intimate visual depictions with reckless disregard for the individual’s lack of consent to the distribution, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 15, 2019

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

A BILL

To amend title 18, United States Code, to provide that it is unlawful to knowingly distribute private intimate visual depictions with reckless disregard for the individual’s lack of consent to the distribution, and for other purposes.

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 “Stopping Harmful Image Exploitation and Limiting Distribution Act of 2019” or the “SHIELD Act of 2019”.

SEC. 2. CERTAIN ACTIVITIES RELATING TO INTIMATE VISUAL DEPICTIONS.

(a) IN GENERAL.—[Chapter 88](#) of title 18, United States Code, is amended by adding at the end the following:

“§1802. Certain activities relating to intimate visual depictions

“(a) DEFINITIONS.—In this section:

“(1) COMMUNICATIONS SERVICE.—The term ‘communications service’ means—

“(A) a service provided by a person that is a common carrier, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153), insofar as the person is acting as a common carrier;

“(B) an electronic communication service, as that term is defined in section 2510;

“(C) an information service, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153); and

“(D) an interactive computer service, as that term is defined in section 230(f) of the Communications Act of 1934 (47 U.S.C. 230(f)).

“(2) INFORMATION CONTENT PROVIDER.—The term ‘information content provider’ has the meaning given that term in section 230(f) of the Communications Act of 1934 (47 U.S.C. 230(f)).

“(3) INTIMATE VISUAL DEPICTION.—The term ‘intimate visual depiction’ means any visual depiction (as that term is defined in section 2256(5))—

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

“(B) in which—

“(i) the individual has obtained 18 years of age and is engaging in sexually explicit conduct; or

“(ii) the naked genitals, anus, pubic area or post-pubescent female nipple of the individual are visible;

“(C) in which the content described in subparagraph (B) is not simulated; and

“(D) in original or modified format.

“(4) SEXUALLY EXPLICIT CONDUCT.—The term ‘sexually explicit conduct’ has the meaning given that term in section 2256(2)(A).

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

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

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

“(B) the reasonable expectation of the individual that the depiction would remain private; and

“(2) without an objectively reasonable belief that such distribution touches upon a matter of public concern.

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

“(d) EXCEPTIONS.—

“(1) LAW ENFORCEMENT, LAWFUL REPORTING, AND OTHER LEGAL PROCEEDINGS.—This section—

“(A) does not prohibit any lawful law enforcement, correctional, or intelligence activity;

“(B) shall not apply in the case of an individual acting in good faith to report unlawful activity or in pursuance of a legal or professional or other lawful obligation; and

“(C) shall not apply in the case of a document production or filing associated with a legal proceeding.

“(2) SERVICE PROVIDERS.—This section shall not apply to any provider of a communications service with regard to content provided by another information content provider unless the provider of the communications service intentionally solicits, or knowingly and predominantly distributes, content that the provider of the communications service actually knows is in violation of this section.

“(e) THREATS.—Any person who intentionally threatens to commit an offense under subsection (b) shall be punished as provided in subsection (c).

“(f) VENUE AND EXTRATERRITORIALITY.—A prosecution under this section may be brought in a district where the defendant or the depicted individual resides or in a district where the intimate visual depictions are distributed or made available. There is extraterritorial Federal jurisdiction over an offense under this section if the

defendant or the depicted individual is a citizen or permanent resident of the United States.”.

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

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