

114TH CONGRESS
1ST SESSION

S. 295

To amend section 2259 of title 18, United States Code, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2015

Mr. HATCH (for himself, Mr. SCHUMER, Ms. AYOTTE, Mr. BLUMENTHAL, Mr. BLUNT, Ms. CANTWELL, Mrs. CAPITO, Mr. CARPER, Mr. CASEY, Mr. COONS, Mr. CORNYN, Mr. DAINES, Mrs. FEINSTEIN, Mr. FRANKEN, Mrs. GILLIBRAND, Mr. GRAHAM, Mr. GRASSLEY, Mr. INHOFE, Mr. ISAKSON, Mr. KIRK, Ms. KLOBUCHAR, Mr. LEE, Mr. MARKEY, Mr. MCCAIN, Mrs. MURRAY, Mr. PERDUE, Mr. PORTMAN, Mr. ROBERTS, Mr. RUBIO, Mr. THUNE, Mr. TOOMEY, Mr. UDALL, Mr. VITTER, Ms. WARREN, Mr. WHITEHOUSE, and Mr. MANCHIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend section 2259 of title 18, United States Code,
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 and Vicky Child
5 Pornography Victim Restitution Improvement Act of
6 2015”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) The demand for child pornography harms
4 children because it drives production, which involves
5 severe and often irreparable child sexual abuse and
6 exploitation.

7 (2) The harms caused by child pornography are
8 more extensive than the harms caused by child sex
9 abuse alone because child pornography is a perma-
10 nent record of the abuse of the depicted child, and
11 the harm to the child is exacerbated by its circula-
12 tion. Every viewing of child pornography is a repeti-
13 tion of the victim's original childhood sexual abuse.

14 (3) Victims suffer continuing and grievous
15 harm as a result of knowing that a large, indetermi-
16 nate number of individuals have viewed and will in
17 the future view images of their childhood sexual
18 abuse. Harms of this sort are a major reason that
19 child pornography is outlawed.

20 (4) The unlawful collective conduct of every in-
21 dividual who reproduces, distributes, or possesses
22 the images of a victim's childhood sexual abuse plays
23 a part in sustaining and aggravating the harms to
24 that individual victim. Multiple actors independently
25 commit intentional crimes that combine to produce
26 an indivisible injury to a victim.

1 (5) It is the intent of Congress that victims of
2 child pornography be fully compensated for all the
3 harms resulting from each and every perpetrator
4 who contributes to their anguish.

5 (6) Congress intends to adopt and hereby
6 adopts an aggregate causation standard to address
7 the unique crime of child pornography and the
8 unique harms caused by child pornography.

9 (7) Victims should not be limited to receiving
10 restitution from defendants only for losses caused by
11 each defendant's own offense of conviction. Courts
12 must apply a less restrictive aggregate causation
13 standard in child pornography cases, while also rec-
14 ognizing appropriate constitutional limits and pro-
15 tections for defendants.

16 **SEC. 3. MANDATORY RESTITUTION.**

17 Section 2259 of title 18, United States Code, is
18 amended—

19 (1) in subsection (b), by striking paragraph (3)
20 and inserting the following:

21 “(3) DEFINITION.—(A) For purposes of this
22 subsection, the term ‘full amount of the victim’s
23 losses’ includes any costs incurred by the victim
24 for—

1 “(i) lifetime medical services relating to
2 physical, psychiatric, or psychological care;

3 “(ii) lifetime physical and occupational
4 therapy or rehabilitation;

5 “(iii) necessary transportation, temporary
6 housing, and child care expenses;

7 “(iv) lifetime lost income; and

8 “(v) attorneys’ fees, as well as other costs
9 incurred.

10 “(B) For purposes of this subsection, the term
11 ‘full amount of the victim’s losses’ also includes any
12 other losses suffered by the victim, in addition to the
13 costs listed in subparagraph (A), if those losses are
14 a proximate result of the offense.

15 “(C) For purposes of this subsection, the term
16 ‘full amount of the victim’s losses’ also includes any
17 losses suffered by the victim from any sexual act or
18 sexual conduct (as those terms are defined in section
19 2246) in preparation for or during the production of
20 child pornography depicting the victim involved in
21 the offense.”;

22 (2) by redesignating subsection (c) as sub-
23 section (d);

24 (3) by inserting after subsection (b) the fol-
25 lowing:

1 “(c) DETERMINING RESTITUTION.—

2 “(1) HARMED BY ONE DEFENDANT.—If the vic-
3 tim was harmed as a result of the commission of an
4 offense under section 2251, 2251A, 2252, 2252A, or
5 2260 by 1 defendant, the court shall determine the
6 full amount of the victim’s losses caused by the de-
7 fendant and enter an order of restitution for an
8 amount that is not less than the full amount of the
9 victim’s losses.

10 “(2) HARMED BY MORE THAN ONE DEFEND-
11 ANT.—If the victim was harmed as a result of of-
12 fenses under section 2251, 2251A, 2252, 2252A, or
13 2260 by more than 1 person, regardless of whether
14 the persons have been charged, prosecuted, or con-
15 victed in any Federal or State court of competent ju-
16 risdiction within the United States, the court shall
17 determine the full amount of the victim’s losses
18 caused by all such persons, or reasonably expected
19 to be caused by such persons, and enter an order of
20 restitution against the defendant in favor of the vic-
21 tim for—

22 “(A) the full amount of the victim’s losses;

23 or

1 “(B) an amount that is not more than the
2 amount described in subparagraph (A) and not
3 less than—

4 “(i) \$250,000 for any offense or of-
5 fenses under section 2251(a), 2251(b),
6 2251(c), 2251A, 2252A(g), or 2260(a);

7 “(ii) \$150,000 for any offense or of-
8 fenses under section 2251(d), 2252(a)(1),
9 2252(a)(2), 2252(a)(3), 2252A(a)(1),
10 2252A(a)(2), 2252A(a)(3), 2252A(a)(4),
11 2252A(a)(6), 2252A(a)(7), or 2260(b); or

12 “(iii) \$25,000 for any offense or of-
13 fenses under section 2252(a)(4) or
14 2252A(a)(5).

15 “(3) MAXIMUM AMOUNT OF RESTITUTION.—No
16 order of restitution issued under this section may ex-
17 ceed the full amount of the victim’s losses.

18 “(4) JOINT AND SEVERAL LIABILITY.—Each
19 defendant against whom an order of restitution is
20 issued under paragraph (2)(A) shall be jointly and
21 severally liable to the victim with all other defend-
22 ants against whom an order of restitution is issued
23 under paragraph (2)(A) in favor of such victim.

24 “(5) CONTRIBUTION.—Each defendant who is
25 ordered to pay restitution under paragraph (2)(A),

1 and has made full payment to the victim equal to or
2 exceeding the statutory minimum amount described
3 in paragraph (2)(B), may recover contribution from
4 any defendant who is also ordered to pay restitution
5 under paragraph (2)(A). Such claims shall be
6 brought in accordance with this section and the Fed-
7 eral Rules of Civil Procedure. In resolving contribu-
8 tion claims, the court may allocate payments among
9 liable parties using such equitable factors as the
10 court determines are appropriate so long as no pay-
11 ments to victims are reduced or delayed. No action
12 for contribution may be commenced more than 5
13 years after the date on which the defendant seeking
14 contribution was ordered to pay restitution under
15 this section.”;

16 (4) in subsection (d), as redesignated, by strik-
17 ing “a commission of a crime under this chapter,”
18 and inserting “or by the commission of (i) an of-
19 fense under this chapter or (ii) a series of offenses
20 under this chapter committed by the defendant and
21 other persons causing aggregated losses,”; and

22 (5) by adding at the end the following:

23 “(e) REPORT.—Not later than 1 year after the date
24 of enactment of the Amy and Vicky Child Pornography
25 Victim Restitution Improvement Act of 2015, the Attor-

1 ney General shall submit to Congress a report on the
2 progress, if any, of the Department of Justice in obtaining
3 restitution for victims of any offense under section 2251,
4 2251A, 2252, 2252A, or 2260.”.

○