

115TH CONGRESS
2D SESSION

H. R. 6845

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 2018

Mr. GOWDY (for himself and Mr. GOODLATTE) introduced the following bill; which was 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 2018”.

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
10 severe child sexual abuse and exploitation.

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

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

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

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

24 (6) The unlawful collective conduct of every in-
25 dividual who reproduces, distributes, or possesses

1 the images of a victim’s childhood sexual abuse plays
2 a part in sustaining and aggravating the harms to
3 that individual victim.

4 (7) It is the intent of Congress that victims of
5 child pornography be compensated for the harms re-
6 sulting from every perpetrator who contributes to
7 their anguish. Such an aggregate causation standard
8 reflects the nature of child pornography and the
9 unique ways that it actually harms victims.

10 **SEC. 3. DETERMINING RESTITUTION.**

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

13 (1) in paragraph (1)—

14 (A) by striking “The order” and inserting
15 “Except as provided in paragraph (2), the
16 order”; and

17 (B) by striking “as determined by the
18 court pursuant to paragraph (2)” after “of the
19 victim’s losses”;

20 (2) by striking paragraph (3);

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

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

1 “(2) RESTITUTION FOR TRAFFICKING IN CHILD
2 PORNOGRAPHY.—If the defendant was convicted of
3 trafficking in child pornography, the court shall
4 order restitution under this section in an amount to
5 be determined by the court as follows:

6 “(A) DETERMINING THE FULL AMOUNT OF
7 A VICTIM’S LOSSES.—The court shall determine
8 the full amount of the victim’s losses that were
9 incurred or are reasonably projected to be in-
10 curred by the victim as a result of the traf-
11 ficking in child pornography depicting the vic-
12 tim.

13 “(B) DETERMINING A RESTITUTION
14 AMOUNT.—After completing the determination
15 required under subparagraph (A), the court
16 shall order restitution in an amount that re-
17 flects the defendant’s relative role in the causal
18 process that underlies the victim’s losses, but
19 which is no less than \$3,000.

20 “(C) TERMINATION OF PAYMENT.—A vic-
21 tim’s total aggregate recovery pursuant to this
22 section shall not exceed the full amount of the
23 victim’s demonstrated losses. After the victim
24 has received restitution in the full amount of
25 the victim’s losses as measured by the greatest

1 amount of such losses found in any case involv-
2 ing that victim that has resulted in a final res-
3 titution order under this section, the liability of
4 each defendant who is or has been ordered to
5 pay restitution for such losses to that victim
6 shall be terminated. The court may require the
7 victim to provide information concerning the
8 amount of restitution the victim has been paid
9 in other cases for the same losses.”.

10 (b) ADDITIONAL DEFINITIONS.—Section 2259(e) of
11 title 18, United States Code, is amended—

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

14 (2) by striking “For purposes” and inserting
15 the following:

16 “(4) VICTIM.—For purposes”;

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

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

24 (5) by inserting before paragraph (4), as so
25 designated, the following:

1 “(1) CHILD PORNOGRAPHY PRODUCTION.—For
2 purposes of this section and section 2259A, the term
3 ‘child pornography production’ means conduct pro-
4 scribed by subsections (a) through (c) of section
5 2251, section 2251A, section 2252A(g) (in cases in
6 which the series of felony violations involves at least
7 1 of the violations listed in this subsection), section
8 2260(a), or any offense under chapter 109A or
9 chapter 117 that involved the production of child
10 pornography (as such term is defined in section
11 2256).

12 “(2) FULL AMOUNT OF THE VICTIM’S
13 LOSSES.—For purposes of this subsection, the term
14 ‘full amount of the victim’s losses’ includes any costs
15 incurred, or that are reasonably projected to be in-
16 curred in the future, by the victim, as a proximate
17 result of the offenses involving the victim, and in the
18 case of trafficking in child pornography offenses, as
19 a proximate result of all trafficking in child pornog-
20 raphy offenses involving the same victim, includ-
21 ing—

22 “(A) medical services relating to physical,
23 psychiatric, or psychological care;

24 “(B) physical and occupational therapy or
25 rehabilitation;

1 “(C) necessary transportation, temporary
2 housing, and child care expenses;

3 “(D) lost income;

4 “(E) reasonable attorneys’ fees, as well as
5 other costs incurred; and

6 “(F) any other relevant losses incurred by
7 the victim.

8 “(3) **TRAFFICKING IN CHILD PORNOGRAPHY.**—

9 For purposes of this section and section 2259A, the
10 term ‘trafficking in child pornography’ means con-
11 duct proscribed by section 2251(d), 2252, 2252A(a)
12 (1) through (5), 2252A(g) (in cases in which the se-
13 ries of felony violations exclusively involves violations
14 of section 2251(d), 2252, 2252A(a) (1) through (5),
15 or 2260(b)), or 2260(b).”.

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

19 **SEC. 4. DEFINED MONETARY ASSISTANCE.**

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

22 “(d) **DEFINED MONETARY ASSISTANCE.**—

23 “(1) **DEFINED MONETARY ASSISTANCE MADE**
24 **AVAILABLE AT VICTIM’S ELECTION.**—

1 “(A) ELECTION TO RECEIVE DEFINED
2 MONETARY ASSISTANCE.—Subject to para-
3 graphs (2) and (3), when a defendant is con-
4 victed of trafficking in child pornography, any
5 victim of that trafficking in child pornography
6 may choose to receive defined monetary assist-
7 ance from the Child Pornography Victims’ Re-
8 serve established under section 1402(d)(6) of
9 the Victims of Crime Act of 1984 (34 U.S.C.
10 20101(d)).

11 “(B) FINDING.—To be eligible for defined
12 monetary assistance under this subsection, a
13 court shall determine whether the claimant is a
14 victim of the defendant who was convicted of
15 trafficking in child pornography.

16 “(C) ORDER.—If a court determines that
17 a claimant is a victim of trafficking in child
18 pornography under subparagraph (B) and the
19 claimant chooses to receive defined monetary
20 assistance, the court shall order payment in ac-
21 cordance with subparagraph (D) to the victim
22 from the Child Pornography Victims’ Reserve
23 established under section 1402(d)(6) of the Vic-
24 tims of Crime Act of 1984.

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

5 “(i) for the first calendar year after
6 the date of enactment of this subsection,
7 \$35,000; and

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

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

17 “(II) the CPI-U for the calendar
18 year 2 years before the calendar year
19 described in clause (i).

20 “(2) LIMITATIONS ON DEFINED MONETARY AS-
21 SISTANCE.—

22 “(A) IN GENERAL.—A victim may only ob-
23 tain defined monetary assistance under this
24 subsection once.

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

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

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

20 “(4) ATTORNEY FEES.—

21 “(A) IN GENERAL.—An attorney rep-
22 resenting a victim seeking defined monetary as-
23 sistance under this subsection may not charge,
24 receive, or collect, and the court may not ap-
25 prove, any payment of fees and costs that in

1 the aggregate exceeds 15 percent of any pay-
2 ment made under this subsection.

3 “(B) PENALTY.—An attorney who violates
4 subparagraph (A) shall be fined under this title,
5 imprisoned not more than 1 year, or both.”.

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

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

10 **“§ 2259A. Assessments in child pornography cases**

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

14 “(1) not more than \$17,000 on any person con-
15 victed of an offense under section 2252(a)(4) or
16 2252A(a)(5);

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

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

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

1 “(c) FACTORS CONSIDERED.—In determining the
2 amount of the assessment under subsection (a), the court
3 shall consider the factors set forth in sections 3553(a) and
4 3572.

5 “(d) IMPOSITION AND IMPLEMENTATION.—

6 “(1) IN GENERAL.—The provisions of sub-
7 chapter C of chapter 227 (other than section 3571)
8 and subchapter B of chapter 229 (relating to fines)
9 apply to assessments under this section, except that
10 paragraph (2) applies in lieu of any contrary provi-
11 sions of law relating to fines or disbursement of
12 money received from a defendant.

13 “(2) EFFECT ON OTHER PENALTIES.—Imposi-
14 tion of an assessment under this section does not re-
15 lieve a defendant of, or entitle a defendant to reduce
16 the amount of any other penalty by the amount of
17 the assessment. Any money received from a defend-
18 ant shall be disbursed so that each of the following
19 obligations is paid in full in the following sequence:

20 “(A) A special assessment under section
21 3013.

22 “(B) Restitution to victims of any child
23 pornography production or trafficking offense
24 that the defendant committed.

25 “(C) An assessment under this section.

1 “(D) Other orders under any other section
2 of this title.

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

5 (b) CHILD PORNOGRAPHY VICTIMS RESERVE.—Sec-
6 tion 1402(d) the Victims of Crime Act of 1984 (34 U.S.C.
7 20101(d)) is amended by adding at the end the following:

8 “(6)(A) The Director may set aside up to
9 \$10,000,000 of the amounts remaining in the Fund
10 in any fiscal year after distributing the amounts
11 under paragraphs (2), (3), and (4), in a Child Por-
12 nography Victims Reserve, which may be used by
13 the Attorney General for payments under section
14 2259(d) of title 18, United States Code.

15 “(B) Amounts in the reserve may be carried
16 over from fiscal year to fiscal year, but the total
17 amount of the reserve shall not exceed \$10,000,000.
18 Notwithstanding subsection (c) and any limitation
19 on Fund obligations in any future Act, unless the
20 same should expressly refer to this section, any such
21 amounts carried over shall not be subject to any lim-
22 itation on obligations from amounts deposited to or
23 available in the Fund.”.

24 (c) CHILD PORNOGRAPHY VICTIMS RESERVE.—
25 Chapter 110 of title 18, United States Code, is amended

1 by inserting after section 2259A, as added by subsection
2 (a), the following:

3 **“§ 2259B. Child pornography victims reserve**

4 “(a) DEPOSITS INTO THE RESERVE.—Notwith-
5 standing any other provision of law, there shall be depos-
6 ited into the Child Pornography Victims Reserve estab-
7 lished under section 1402(d)(6) of the Victims of Crime
8 Act of 1984 (34 U.S.C. 20101(d)) all assessments col-
9 lected under section 2259A and any gifts, bequests, or do-
10 nations to the Child Pornography Victims Reserve from
11 private entities or individuals.

12 “(b) AVAILABILITY FOR DEFINED MONETARY AS-
13 SISTANCE.—Amounts in the Child Pornography Victims
14 Reserve shall be available for payment of defined monetary
15 assistance pursuant to section 2259(d). If at any time the
16 Child Pornography Victims Reserve has insufficient funds
17 to make all of the payments ordered under section
18 2259(d), the Child Pornography Victims Reserve shall
19 make such payments as it can satisfy in full from available
20 funds. In determining the order in which such payments
21 shall be made, the Child Pornography Victims Reserve
22 shall make payments based on the date they were ordered,
23 with the earliest-ordered payments made first.

24 “(c) ADMINISTRATION.—The Attorney General shall
25 administer the Child Pornography Victims Reserve and

1 shall issue guidelines and regulations to implement this
2 section.

3 “(d) SENSE OF CONGRESS.—It is the sense of Con-
4 gress that individuals who violate this chapter prior to the
5 date of the enactment of the Amy, Vicky, and Andy Child
6 Pornography Victim Assistance Act of 2018, but who are
7 sentenced after such date, shall be subject to the statutory
8 scheme that was in effect at the time the offenses were
9 committed.”.

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

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

14 **SEC. 6. CHILD PORNOGRAPHY VICTIM’S RIGHT TO EVI-**
15 **DENCE.**

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

18 “(3) In any criminal proceeding, a victim, as
19 defined under section 2259(c)(4), shall have reason-
20 able access to any property or material that con-
21 stitutes child pornography, as defined under section
22 2256(8), depicting the victim, for inspection, view-
23 ing, and examination at a Government facility or
24 court, by the victim, his or her attorney, and any in-

1 dividual the victim may seek to qualify to furnish ex-
2 pert testimony, but under no circumstances may
3 such child pornography be copied, photographed, du-
4 plicated, or otherwise reproduced. Such property or
5 material may be redacted to protect the privacy of
6 third parties.”.

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

8 (a) **EXPANSION OF CIVIL REMEDIES FOR SATISFAC-**
9 **TION OF AN UNPAID FINE.**—Section 3613(c) of title 18,
10 United States Code, is amended by inserting “an assess-
11 ment imposed pursuant to section 2259A of this title,”
12 after “pursuant to the provisions of subchapter C of chap-
13 ter 227 of this title,”.

14 (b) **CLARIFICATION OF INTERSTATE OR FOREIGN**
15 **COMMERCE PROVISION REGARDING CERTAIN ACTIVITIES**
16 **PERTAINING TO CHILD PORNOGRAPHY.**—Section 2252A
17 (a)(2) of title 18, United States Code, is amended—

18 (1) in subparagraph (A)—

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

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

25 (2) in subparagraph (B)—

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

4 (B) by inserting “using any means or facil-
5 ity of interstate or foreign commerce or” after
6 “child pornography”.

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

10 (1) in subparagraph (A)(v)—

11 (A) by inserting “anus,” before “genitals”;
12 and

13 (B) by inserting a comma after “genitals”;
14 and

15 (2) in subparagraph (B)(iii)—

16 (A) by inserting “anus,” before “genitals”;
17 and

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

19 **SEC. 8. REPORTS.**

20 Not later than 2 years after the date of enactment
21 of this Act, the Attorney General shall submit to Congress
22 a report on the progress of the Department of Justice in
23 implementing the amendments made by sections 3

1 through 5, and shall include an assessment of the funding
2 levels for the Child Pornography Victims Reserve.

○