

A ROADMAP TO FIGHT CHILD EXPLOITATION FOR THE TRUMP WHITE HOUSE & 119th CONGRESS



**STOP CHILD
PREDATORS**

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THE PROBLEM

Child sexual exploitation has become a global problem. As the world of child protection has shifted from real world to cyberspace concerns (with significant overlap that has created even more gaps in surveillance) policy responses and law enforcement have not kept pace. While tech companies remain virtually the sole reporters of abuse on the internet the lack of robust law enforcement in this space has also made them convenient targets for criticism. In 2022, the CyberTipline, the main vehicle for reporting online CSAM (Child Sex Abuse Material) received 32,059,029 reports regarding 88,377,207 digital files. For perspective, that's **more than one report per second**.^[1] And it's a number that has doubled over only three years.^[2]

Unfortunately, only a small percent of reports are investigated and, thus, very few reports lead to arrests or convictions. But while some policymakers seek to shift responsibility for these failures to tech, private companies cannot issue search warrants, arrest or prosecute criminal actors. So how do we change this dynamic and create meaningful responses to this growing problem?

[1] The National Center for Missing and Exploited Children (2023). "CyberTipline 2022 Report." CyberTipline Data. <https://www.missingkids.org/gethelpnow/cybertipline/cybertiplinedata>.

[2] The National Center for Missing and Exploited Children (2020). "2019 CyberTipline Reports by Electronic Service Providers (ESP)." <https://www.missingkids.org/content/dam/missingkids/pdfs/2019-reports-by-esp.pdf>

ENFORCE EXISTING LAW

In the rush to attack what seem increasingly like a poorly understood problem and introduce a variety of bills that will be ineffectual and potentially unenforceable, Congress has overlooked a more obvious solution to child exploitation online – enforcing existing law. Most egregiously, the failure to fund and ensure the implementation of the *PROTECT Our Children (PROTECT) Act of 2008* [3] in particular, a law designed to update and modernize law enforcement online, illustrates that the legislative response to online child exploitation has been misguided.

A 2022 report from the Government Accountability Office (GAO) found that the Department of Justice (DOJ) “has not met a number of the requirements of the 2008 Act, due in part to it not making the strategy a priority. Moreover, the 2008 strategy is not up to date on key technology advances that are making it more difficult to catch perpetrators.”[4] The DOJ responded, describing the situation as a “crisis” and citing lack of funding as well as the redirection of funds. Nevertheless, members of Congress - including those who requested the GAO report - have failed to demand that DOJ do its job and make protecting children a priority.

ACTION ITEM: Fully implement the *PROTECT Act of 2008*.

[3] S.1738 - 110th Congress (2007-2008): PROTECT Our Children Act of 2008. (2008, October 13). <https://www.congress.gov/bill/110th-congress/senate-bill/1738/all-info>

[4] The Government Accountability Office (December 14, 2022). Online Exploitation of Children: Department of Justice Leadership and Updated National Strategy Needed to Address Challenges. Available at <https://www.gao.gov/products/gao-23-105260>

PROVIDE TIMELY OVERSIGHT

While Congress has held numerous hearings grilling tech executives, it has been less focused on the DOJ and FBI. Unfortunately, that is where much of the responsibility for failed policies resides. Yet, Congress has failed to hold government officials accountable for obvious negligence. When the victims of Olympic gymnastics coach Larry Nassar directly reported their abuse to the local FBI office, the DOJ responded by doing nothing. Finally, a civil suit forced them – or rather, taxpayers – to pay \$138.7 million to Nassar’s victims for the FBI’s inaction.[5] A caustic report by the Office of the Inspector General (OIG) further found that, “when the FBI’s handling of the Nassar matter came under scrutiny from the public, Congress, the media, and FBI headquarters in 2017 and 2018, Indianapolis Field Office officials did not take responsibility for their failures. Instead, they provided incomplete and inaccurate information to make it appear that they had been diligent in responding to the sexual abuse allegations.” Instead of arresting predators and protecting children, the FBI protected itself.[6]

This kind of negligence, coupled with a failure to carry out the mandates of the *PROTECT Act* have created a recipe for disaster that laid the groundwork for today’s problems. Imagine how many children could have been protected from harm if DOJ and the FBI had implemented this groundbreaking law and if Congress had held them accountable in real time when they failed.

ACTION ITEMS: Hold oversight hearings into DOJ’s plans to implement the *PROTECT Act* and the FBI’s handling of child predator cases.

[5] The Department of Justice Office of Public Affairs. (April 23, 2024). Justice Department Reaches Civil Settlement with Victims Abused by Lawrence Nassar. Available at <https://www.justice.gov/opa/pr/justice-department-reaches-civil-settlement-victims-abused-lawrence-nassar>

[6] The Department of Justice Office of the Inspector General. (July 14, 2021). Investigation and Review of the Federal Bureau of Investigation’s Handling of Allegations of Sexual Abuse by Former USA Gymnastics Physician Lawrence Gerard Nassar. Available at <https://oig.justice.gov/reports/investigation-and-review-federal-bureau-investigations-handling-allegations-sexual-abuse>

INVEST IN LAW ENFORCEMENT

As the volume and complexity of online criminal activity grows, the spending on law enforcement has not kept pace. Recent legislative efforts like the *Kids Online Safety Act* [7], a cleverly named but misguided vehicle, ignore law enforcement completely preferring to target the only reliable reporters of child exploitation in tech while letting predators roam freely and without consequences.

Bills like the *Invest in Child Safety Act* [8] provide the only serious, sustainable support for every aspect of law enforcement needed to investigate, prosecute and convict criminals. This sweeping package was developed specifically to bolster implementation of the *PROTECT Act* while updating and engaging in capacity building across a range of law enforcement and victims' services systems.

This is the only way to get to the root of this problem and fortunately this enlightened and thorough response to this problem will be reintroduced in the 119th Congress.

ACTION ITEM: Pass the *Invest in Child Safety Act*.

[7] H.R.7891 - 118th Congress (2023-2024): *Kids Online Safety Act*. (2024, September 18).
<https://www.congress.gov/bill/118th-congress/house-bill/7891/text>

[8] S.3689 - 118th Congress (2023-2024): *Invest in Child Safety Act of 2024*. (2024, January 30).
<https://www.congress.gov/bill/118th-congress/senate-bill/3689/text>

EMPHASIZE OUTCOME MEASUREMENT

While the DOJ has failed to implement the *PROTECT Act*, there have been other concerns raised about its overall performance in fighting crime. In a recent blog post, former Assistant U.S. Attorney Rod Rosenstein points out an overall drop in successful prosecutions across a range of crime categories in the federal system.[9] Child exploitation wasn't even listed as a priority.

A cursory glance at the volume of cybertips vs. the numbers of arrests and convictions of predators in the federal system reveals a shocking disparity between allegations of wrongdoing and holding predators accountable. In a recent 90-day period, there were 99,172 IP addresses throughout the US distributing known CSAM images and videos through peer-to-peer networks. Law enforcement only had the capacity to investigate 782, less than 1%, even though 75% of similar cases result in successful prosecutions.[10]

You can't manage what you can't measure. Before we pursue more bills that ignore this vicious criminal activity, we must connect the dots between reporting and eliminating risks to children.

ACTION ITEM: Create an annual scorecard of cybertip outcomes.

[9] Rosenstein, Rod. (January 14, 2024). A Closer Look At The Federal Criminal Enforcement Slump. Law360. Available at <https://www.law360.com/articles/1783198/a-closer-look-at-the-federal-criminal-enforcement-slump>

[10] Public Testimony on Protecting Our Children Online, Before the Senate Judiciary Committee, 118th Congress (February 14, 2023). John Pizzuro. Commander, New Jersey Internet Crimes Against Children (Ret.) New Jersey State Police (Ret.). Available at <https://www.judiciary.senate.gov/imo/media/doc/2023-02-14%20-%20Testimony%20-%20Pizzuro.pdf>

PROMOTE PUBLIC EDUCATION & AWARENESS

Florida State Representative Brad Yeager had a simple idea: If kids have to take driver's education classes to get a driver's license, then perhaps school curricula should include digital literacy. Promoting this "digital drivers ed" will help kids and their parents more safely navigate the internet. Yeager's bill, CS/HB 379 (2023): *Technology in K-12 Public Schools* [11], was signed into law in Florida and is in the process of being implemented.

This approach bolsters child safety complements law enforcement activity and provides a value a service to help all parties understand how to avoid risk and use the Internet safely. Nationally scalable, Congress should create a national initiative that replicates the Florida program around the country.

ACTION ITEM: Create a national public awareness campaign about internet safety.

[11] CS/HB 379 (2023). *Technology in K-12 Public Schools* (2023, July 21). <https://www.flsenate.gov/Session/Bill/2023/379/BillText/er/PDF>

ENSURE THAT POLICY DOES NOT CONFLICT WITH EXISTING CHILD WELFARE LAW

The backbone of child welfare law in America is the *Child Abuse Prevention & Treatment Act of 1974*, (CAPTA)[12]. This landmark legislation established important operating principles that have been the backbone of American child protection for decades. Most importantly, CAPTA created the mandated reporting system that ensures that incidents of child endangerment are reported to authorities for investigation. To encourage full participation in the program is also set a precedent to exempt mandated reporters from civil, but not criminal, liability. The main exception to the civil liability shield would be a failure to report.

Subsequently, The *PROTECT Act* made tech companies mandated reporters. Like schoolteachers, doctors, coaches and pastors, they too are afforded civil liability protection. As they are literally the only meaningful reporters of child exploitation online current efforts to strip away their liability shield are both reckless and counterproductive. It should be noted that they are not immune from responsibility. If tech engages in conspiracies w/ bad actors the federal criminal code is readily available to hold them accountable.

The other major precedent set by *CAPTA* is that parents – not the government or private companies – have the responsibility to protect their children from abuse, neglect, exploitation and deadly harm. As some outside groups seek to turn child protection into product liability torts, they undermine this fundamental principle of child welfare law and with it the rights of parents everywhere. All of these policies share a simple operating principle. Parents should have fundamental rights and responsibilities to raise their children as they see fit, as long as they are protecting them from harm.

It is our view that bills like the *Kids Online Safety Act* are in conflict with *CAPTA*. We also believe that efforts to detach child protection from longstanding child welfare norms dangerously undermine the ability of appropriate authorities to effectively enforce the law and protect children. Ultimately, there is little point in creating new laws if existing statutes and current child welfare policy are ignored especially in those cases where online child exploitation converge with real world activity and perpetrators.

ACTION ITEM: Adhere to child welfare best practices in policy development.

[12] DRAFT – The Child Abuse Prevention and Treatment Act (CAPTA) with amendments made by sec. 133 within Title I of the Trafficking Victims Prevention and Protection Reauthorization Act of 2022, P.L. 117-348, enacted January 5, 2023. Available at <https://www.acf.hhs.gov/sites/default/files/documents/cb/capta.pdf>

CONCLUSION

Animosity toward the tech companies and an apparent desire to “protect children” are two separate issues that have been conflated with potentially dire consequences for children. Imagine if Mothers Against Drunk Driving took the position that the answer to drunk driving fatalities was suing automakers while leaving drunk drivers on the road to kill again. Yet that is precisely what is being proposed by some in Congress. We believe the hard work of enforcing existing criminal law should be the primary focus of policy development on this issue. By keeping a sharp eye on outcomes from cybertip reporting and ensuring that law enforcement has the tools it needs to wage a war that only they can carry out effectively will be the first line of defense when it comes to child protection. Taking predators off the street is the key to keeping children safe. Without making that our Number One priority the cycle of abuse will only continue and grow.

**For inquiries, please contact
Maureen Flatley at
mo@stopchildpredators.org**

www.stopchildpredators.org