

THE 2023 SHIELD (S.412) ACT: AN EXPLAINER

1. In simple terms, what does the SHIELD Act ([S. 412](#)) do?

The Stopping Harmful Image Exploitation and Limiting Distribution (SHIELD) Act of 2023 prohibits the distribution of private, sexually explicit images without consent, sometimes colloquially described as “revenge porn” but more accurately referred to as “nonconsensually distributed intimate imagery” (NDII). The bill addresses abuses against adult victims and survivors as well as abuses against minors that are not already covered by existing federal criminal law.

2. What is the harm of NDII?

The nonconsensual distribution of intimate imagery (NDII) is a [destructive and serious](#) violation of privacy and a form of image-based sexual abuse. The unauthorized disclosure of nude or sexually explicit photos and videos can inflict immediate and irreparable damage to victims’ reputations, psychological health, intimate relationships, and educational and employment opportunities. Victims are routinely threatened with sexual assault, stalked, harassed, fired from jobs, and forced to change schools. Some victims have died by suicide.

3. How prevalent is NDII?

According to the Cyber Civil Rights Initiative’s [2017 nationwide survey](#),

- 1 in 8 social media users have been targets of NDII.
- 1 in 20 social media users have perpetrated NDII.
- Women and girls were 1.7 times more likely to be targeted by NDII.
- Bisexual women were victimized at higher rates than any other group, with 17.9% of women identifying as bisexual having been victimized by NDII.

In addition to being distributed via social media, texts, blogs, emails, DVDs, and hard copies, NDII is featured on thousands of websites.

4. If this is a “revenge porn” bill, why doesn’t it require that the perpetrator act with the intent to harm the victim?

“Revenge porn” is not a legal or technical term, and it creates the false impression that all or even most cases involve personal vengeance. While some cases do involve domestic abusers attempting to control or punish their current or former intimate partners, in many cases the perpetrator does not know the victim at all. A nationwide study by the Cyber Civil Rights Initiative (CCRI) demonstrates that [nearly 80% of perpetrators act with no particular intent](#) to harm. Similar to other privacy violations, whether the perpetrator intends to harm the victim-survivor or not is irrelevant to the magnitude of the harm caused.

A more accurate term for this abuse is “nonconsensually distributed intimate imagery” (NDII), which highlights that this abuse, like other forms of sexual abuse, is fundamentally about the **victim’s lack of consent**, not the **perpetrator’s intent**.

5. What are some examples of NDII that do not involve “intent to harm”?

- Individuals distributing private, intimate photos stolen from celebrities’ [hacked accounts](#) in the hopes of obtaining Bitcoin or elevating their social status;
- A California Highway Patrol officer passing around intimate pictures obtained from a female arrestee’s cellphone as part of a “[game](#)” among officers;
- [Fraternity brothers](#) uploading photos of unconscious, naked women to a members-only Facebook page for entertainment purposes;
- [Male Marines](#) sharing nude photos of their female colleagues without consent in secret Facebook groups;
- Revenge-porn site owners like [Hunter Moore](#) and [Craig Brittain](#) publishing thousands of private, sexually explicit private images for profit and entertainment.

6. Don’t state criminal laws already adequately address NDII?

Following extensive calls for [reform](#) by victims and survivors and advocates, [48 states](#), as well as the District of Columbia, Guam, Puerto Rico, and the Uniform Code of Military Justice, have enacted criminal laws to address NDII. But there are extreme variations across jurisdictions in the definition, classification, and remedies for this crime, which leaves victims at the mercy of a confusing patchwork of laws.

In particular, many state laws wrongly treat NDII as a form of harassment rather than as a privacy violation, prohibiting the abuse only when the perpetrator has a personal desire to hurt the victim. That means that perpetrators who are motivated by profit, voyeurism, a desire for social status, or any other reason can commit this abuse with impunity.

What is more, because NDII often involves online distribution or other activity that crosses state lines, it can be difficult to prosecute as a state matter.

7. There is already a [federal civil remedy](#) for NDII – why is a criminal prohibition also necessary?

While civil and other after-the-fact remedies for nonconsensual pornography are extremely important, they are often costly, time-consuming, and draw further attention to the exposed material. Criminal prohibition is one of the most powerful and effective ways for society to condemn and deter serious wrongdoing. It is appropriate for conduct that causes severe and irreversible harm to both individuals and society. The harm caused by NDII can be far more severe and lasting than that caused by many kinds of conduct traditionally punished by criminal law, such as theft, destruction of property, and assault.

Most importantly, according to CCRI’s [research](#), perpetrators of NDII identify the fear of criminal penalties as the most powerful potential deterrent. The most important function a law can play is to keep this abuse from happening in the first place.

8. Does the SHIELD Act raise First Amendment concerns?

No. Courts have [overwhelmingly concluded](#) that NDII laws are constitutional. In every single case involving a First Amendment challenge to an NDII law, the law has been found constitutional. This includes the state law that most closely resembles the SHIELD Act, the Illinois “Non-consensual dissemination of private sexual images” statute ([720 ILCS 5/11-23.5](#)). In October 2020, the U.S. Supreme Court declined to review *Austin v. Illinois*, letting stand the Illinois Supreme Court’s 2019 [ruling](#) that the Illinois law is a constitutionally permissible protection of the right to intimate privacy and providing the strongest possible indication that NDII laws raise no significant constitutional issues.

In summary, the SHIELD Act is an urgently needed and constitutionally sound measure that provides a clear, consistent, and nationally applicable path to justice for victims and survivors of image-based sexual abuse.

If you or someone you know is a victim or survivor of NDII or other image-based sexual abuse, please visit the [CCRI Safety Center](#), which offers a step-by-step guide on next steps you might take.