

Date of Hearing: August 16, 2023

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Chris Holden, Chair  
SB 646 (Cortese) – As Amended June 21, 2023

Policy Committee: Judiciary

Vote: 10 - 0

Urgency: No

State Mandated Local Program: No

Reimbursable: No

**SUMMARY:**

This bill creates a civil cause of action that allows any person, including the parent or guardian of an affected minor, to bring a civil action in court against a person or entity that distributes child sexual assault material (CSAM) depicting the person filing suit. If a distributing person or entity removes the actionable material within two days after being notified about it, the distributing person or entity is no longer subject to civil liability or damages.

**FISCAL EFFECT:**

Costs (Trial Court Trust Fund, General Fund) of an unknown but potentially significant amount to the courts to adjudicate the civil actions authorized by this bill. According to the bill's findings and declarations, tens of millions of potentially actionable illicit images have been identified on social media platforms in recent years. Although presumably petitions will not be filed in California about each of these images, this speaks to the potential magnitude of litigation that may result from this bill. Actual costs will depend on the number of petitions filed, and the amount of court time needed to adjudicate each case. Some actions may take minimal court time to resolve; others may involve complicated questions of fact that require more significant court involvement. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a need for increased funding for courts from the General Fund. The 2023-24 budget includes \$105 million from the General Fund to backfill declining revenue to the Trial Court Trust Fund.

**COMMENTS:**

1) **Purpose.** According to the author:

This bill seeks to provide victims the same standing in state court that Masha's law gives them in federal court. Any person or entity who transmits [child sexual assault material] is liable to be sued for damages under SB 646. SB 646 also requires that platforms list an agent who will be responsible for fielding requests to remove content. If the platform does not act within two business days, they will be liable to the civil remedies listed in Masha's law. The platform must also create a method for contacting that agent. Platforms already are using hash values to locate and remove such content.

- 2) **Background.** CSAM (also called child pornography) refers to content that captures the sexual abuse of children, including photographs and videos. CSAM has proliferated through the internet in recent years, including on social media platforms. In 2022, the National Center for Missing and Exploited Children received more than 32 million reports of online child sexual exploitation. More than 99.5% of those reports pertained to the possession, manufacture, or distribution of CSAM. As noted below, there are several bills this session that seek to curb the spread of CSAM on social media. In 2005, Congress created federal civil remedies for victims of CSAM and online exploitation, known as Masha's Law.

This bill allows a person depicted in CSAM, or their parent or guardian if the depicted person is still a minor, to file a civil lawsuit against any person or entity that distributes the CSAM. In addition to allowing for recovery of actual damages, compensatory damages, punitive damages, and attorney's fees and costs, the bill would require a court to grant a prevailing plaintiff \$200,000 in statutory damages if the person or entity who distributes the material fails to remove the content within two days of receiving notice.

As discussed in detail in the analysis of this bill by the Assembly Judiciary Committee, there are concerns that, if enacted, this bill would be preempted by federal law. Specifically, Section 230 of the federal Communications Decency Act prohibits a provider or user of an interactive computer service from being treated as the publisher of information posted on the service. This federal law may also preclude a state from imposing civil liability on social media companies for third-party content posted and distributed on their platforms, even CSAM. This is an area of the law that is uncertain, evolving, and very actively litigated. If chaptered, the cause of action created by this bill will almost certainly be challenged in court.

- 3) **Related Legislation.** AB 1394 (Wicks) requires social media platforms to provide a mechanism through which users can report CSAM and creates a civil cause of action for victims of commercial sexual exploitation to sue social media platforms for features that were a substantial factor in causing their exploitation. AB 1394 is pending in the Senate Appropriations Committee.

SB 558 (Rubio), among other provisions, expands the civil childhood sexual assault cause of action to include acts relating to the creation and distribution of CSAM. SB 558 is pending in this committee.

SB 680 (Skinner) creates a civil cause of action against a social media platform that uses a design, algorithm, practice, affordance, or feature that the platform knows or should have known causes child users to experience specified harms. SB 680 is pending in this committee.

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