

Date of Hearing: April 21, 2026

ASSEMBLY COMMITTEE ON JUDICIARY  
Ash Kalra, Chair  
AB 1946 (Wicks and Krell) – As Amended April 6, 2026

As Proposed to be Amended

**SUBJECT:** REPORTING MECHANISM: CHILD SEXUAL ABUSE MATERIAL

**KEY ISSUES:**

- 1) SHOULD PUBLIC PROSECUTORS BE AUTHORIZED TO BRING CIVIL CLAIMS AGAINST SOCIAL MEDIA PLATFORMS WHO FAIL TO MAINTAIN THE STATUTORILY REQUIRED CHILD SEXUAL ABUSE MATERIAL REPORTING MECHANISM?
- 2) SHOULD INDIVIDUALS DEPICTED IN CHILD SEXUAL ABUSE MATERIAL BE AUTHORIZED TO RECOVER ACTUAL DAMAGES AND STATUTORY DAMAGES IN A CLAIM BROUGHT AGAINST A SOCIAL MEDIA PLATFORM THAT FAILS TO BLOCK MATERIAL IN WHICH THE INDIVIDUAL IS DEPICTED?

**SYNOPSIS**

*Child sexual abuse material (CSAM) is deplorable and yet tragically prevalent throughout social media. In 2023 in an effort to stamp out the scourge of CSAM online, the Legislature enacted AB 1394 (Wicks) Chap. 579, Stats 2023. Pursuant to AB 1394, social media platforms are now required to maintain a platform available to California users to submit reports of child sexual abuse material. The statute also imposes timelines and response requirements on social media platforms, and authorizes a reporting user to bring a claim against a social media platform that fails to comply with any of the requirements under the law. This bill aims to clean up some of the provisions of AB 1394, including by clarifying the recovery authorization for a depicted user to collect actual damages and to bring a claim against a social media platform for their failure to take down reported CSAM. The author is proposing a number of largely clarifying amendments to the enforcement mechanisms proposed by this bill. Those amendments are incorporated into the SUMMARY and discussed in further detail in the body of this analysis.*

*This bill enjoys support from 3strands Global Foundation, the California Initiative for Technology and Democracy (CITED), the Children’s Advocacy Institute, Fairplay, the Jewish Family and Children’s Services of San Francisco, the Peninsula, Marin and Sonoma Counties, and Organization for Social Media Safety. While they have not submitted formal opposition, the Chamber of Commerce, TechNet, and the Computer and Communications Industry Association (CCIA) have raised concerns about the bill’s proposed expansions of existing law.*

*This bill was previously heard by the Assembly Committee on Privacy and Consumer Protection where it was approved on a vote of 14-1.*

**SUMMARY:** Modifies the enforcement mechanisms available to bring against a social media platform that fails to comply with requirements related to their maintenance of a reporting mechanism for users to report child sexual abuse material. Specifically, **this bill:**

- 1) Requires CSAM reporting mechanisms on social media platforms to be clear and conspicuous, refrain from dark patterns, and apply to material sent or received through direct messaging systems.
- 2) Expands the scope of users who may report CSAM to a social media platform by no longer limiting such users to identifiable minors, thereby enabling any user to submit such reports.
- 3) Requires platforms to ensure CSAM reports are reviewed by a natural person if the material does not match a hash value for known CSAM and will not otherwise be blocked.
- 4) Removes the requirement that the method by which a social media platform must contact a reporting user not be within the platform's control.
- 5) Shortens the timelines for blocking CSAM and providing written communications to the reporting user to 48 hours, unless extenuating circumstances apply, in which case the timeframe is extended to five days.
- 6) Subjects a social media company to a civil action brought by a public prosecutor for a civil penalty not to exceed \$250,000 for each day that the reporting mechanism is unavailable or nonfunctional. Prevailing public prosecutors may also receive reasonable attorney's fees and costs.
- 7) Provides an exemption from liability for an unavailable or nonfunctional reporting mechanism, as specified, if the social media company demonstrates, by clear and convincing evidence, that the unavailability or non-functionality was caused by circumstances beyond the social media company's reasonable control, as specified. Specifies that penalties accrue daily and enables public prosecutors to seek injunctive relief as necessary to prevent ongoing violations.
- 8) Requires that any penalty collected by the Attorney General, less reasonable attorney's fees and costs, be deposited into the Survivor Support Fund established pursuant to Section 647.5 of the Penal Code.
- 9) Limits private standing to sue social media companies for failure to properly implement the CSAM reporting mechanism to depicted individuals who are reporting users, rather than reporting users generally. Enables depicted individuals who are not reporting users to obtain relief for a platform's failure to block the material depicting the individual.
- 10) Provides that biannual audits under that provision must be submitted to the AG, and if requested, to a local public prosecutor.
- 11) Changes and adds definitions to existing law, including:
  - a) Replacing "obscene matter" in the definition of CSAM with "an intimate visual depiction involving an identifiable individual who is, or reasonably appears to be, a minor." Defines "intimate visual depiction" as one that depicts specified uncovered body parts of identifiable individuals, transfer of bodily fluids on to the body of identifiable individuals, or identifiable individuals engaging in sexually explicit conduct, as defined in existing Section 2256 of Title 18 of the United States Code.

- b) “Dark pattern” means a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decisionmaking, or choice, as further defined by regulation.
- c) “Depicted individual” means a person who is depicted, including through the use of digitization or artificial intelligence, as a minor in child sexual abuse material on a social media platform.
- d) “Digital forgery” means an intimate visual depiction of an identifiable individual created through the use of software, machine learning, artificial intelligence, or any other computer-generated or technological means, including by adapting, modifying, manipulating, or altering an authentic visual depiction, that, when viewed as a whole by a reasonable person, is indistinguishable from an authentic visual depiction of the individual.
- e) “Hash” means a unique, fixed-length alphanumeric value generated from the contents of an image.
- f) “Hash-matching process” means a process by which images and videos of child sexual abuse material can be converted into hashes and used to identify known child sexual abuse material.
- g) “Identifiable individual” means an individual that meets both of the following criteria:
  - i) The individual appears in whole or in part in an intimate visual depiction.
  - ii) The individual’s face, likeness, or other distinguishing characteristic, including a unique birthmark or other recognizable feature, is displayed in connection with that intimate visual depiction.

**EXISTING LAW:**

- 1) Requires online electronic service providers in the United States to report to the CyberTipline operated by the National Center for Missing & Exploited Children if they become aware of apparent CSAM on their platform. (18 U.S.C. Section 2258A.)
- 2) Establishes criminal and civil penalties against perpetrators of sex trafficking and those who knowingly benefit from trafficking. (18 U.S.C. Section 1591, 1595.)
- 3) Makes it a federal crime to knowingly share or threaten to share such images and requires websites and online platforms to remove the images within 48 hours of receiving a survivor’s verified request. (Pub. L. 119-12.)
- 4) Requires a social media platform provide an accessible mechanism for California users to report material to the platform the user reasonably believes is CSAM that is displayed, stored, or hosted on the platform. Sets standards and timelines for platforms to respond to reports of CSAM submitted through the accessible mechanism. (Civil Code Section 3273.66.)

- 5) Makes a social media platform that fails to comply with the requirements described above liable to a reporting user for actual damages sustained by the reporting user because of the violation, statutory damages of no more than \$250,000, as specified, costs of the action, and any other relief the court deems proper. (Civil Code Section 3273.67 (a).)
- 6) Prohibits a social media platform from knowingly facilitating, aiding, or abetting commercial sexual exploitation of a minor or nonminor dependent. Deems a platform to have knowledge if CSAM is reported on its platform for four consecutive months, and provides the platform is facilitating, aiding, or abetting if its features are a substantial factor in causing minor users to be victims of commercial sexual exploitation. Imposes statutory damages of between \$1,000,000 and \$4,000,000 for violations. Provides that a platform is not subject to this liability if it institutes a program of at least biannual audits of its designs, algorithms, practices, affordances, or features that have the potential to result in violations; takes action within 30 days of completion of an audit designed to mitigate or eliminate foreseeable risk of violations; and provides the platform's board of directors with the audits within 90 days of completion of the mitigations. (Civil Code Section 3345.1 (g).)

**FISCAL EFFECT:** As currently in print this bill is keyed fiscal.

**COMMENTS:** Child sexual abuse material (CSAM) refers to content, including pictures and videos, which capture the sexual abuse of children. CSAM is deplorable and yet tragically prevalent throughout social media. In 2021, the National Center for Missing and Exploited Children (NCMEC) estimated that over 29 million reports of suspected child sexual exploitation were reported by online platforms. Those 29 million reports included nearly 85 million individual images and videos of CSAM. (*What is Child Sexual Abuse Material (CSAM)*, (Rape, Abuse & Incest National Network (RAINN)) (August 25, 2022) available at: <https://www.rainn.org/news/what-child-sexual-abuse-material-csam>.)

A spring 2022 report by Forbes detailed how the exploitation manifests on the platform TikTok in particular. The review explored “how viewers regularly use the comments to urge young girls to perform acts that appear to toe the line of child pornography – rewarding those who oblige with TikTok gifts, which can be redeemed for money, or off-platform payments to Venmo, PayPal or CashApp accounts that users list in their TikTok profiles.” (*How TikTok Live Became ‘A Strip Club Filled With 15-Year-Olds’*, Alexandra S. Levine (Forbes) April 27, 2022 available at: <https://www.forbes.com/sites/alexandr Levine/2022/04/27/how-tiktok-live-became-a-strip-club-filled-with-15-year-olds/?sh=734b448162d7>.) Further, the article describes:

The transactions are happening in a public online forum open to viewers almost anywhere on the planet. Some of the demands are explicit – like asking girls to kiss each other, spread their legs or flash the camera – and some harder to detect, masked with euphemisms. Commenters say ‘outfit check’ to get a complete look at a girl’s body; ‘pedicure check’ to see their feet; ‘there’s a spider on your wall’ to get girls to turn around and show their rears; and ‘play rock-paper-scissors to encourage girls to flirt-fight or wrestle with each other. Phrases like ‘put your arms up’ or ‘touch the ceiling’ are often directed at girls in crop tops so viewers can see their breasts and stomachs. And many simply coax girls to show their tongues and belly buttons or do handstands and splits. In return, the girls are showered with virtual gifts, like flowers, hearts, ice cream cones and lollipops, that can be converted to cash. (*Ibid.*)

In 2023 in an effort to stamp out the scourge of CSAM online, the Legislature enacted AB 1394 (Wicks) Chap. 579, Stats 2023. Pursuant to AB 1394, social media platforms are now required to maintain a platform available to California users depicted in the reported content to submit reports of child sexual abuse material. In addition to maintaining a platform to receive reports, current law also requires almost all social media platforms to permanently block the content from being viewable on the platform if it meets specified criteria, provide confirmation of receipt to the reporting user within 36 hours of the user flagging the material, provide an update within seven days of confirming receipt to update the user about the platform's handling of the material, and issue a final determination to the user about the content final disposition. All of these steps are required to occur within 30 days of the initial report, unless circumstances beyond the platform's control make that impossible, in which case the platform has 60 days to comply. (Civil Code Section 3273.66.)

In April 2025, Congress passed the TAKE IT DOWN Act, which makes it a federal crime to knowingly share or threaten to share nonconsensual intimate images of real people, and requires websites and platforms to remove flagged images within 48 hours of receiving the depicted person's verified request.

***This bill*** makes changes to the law as enacted by AB 1394 in part to align with the TAKE IT DOWN Act, and to clarify the state law's enforcement provisions. According to the author:

Although AB 1394 created a framework and mechanism to combat the proliferation of CSAM, there are gaps within the existing law that still allow CSAM to spread on social media platforms. AB 1946 would fill in some of these gaps and expand the mechanism so that the process to report CSAM and the law is clear and functional.

To address the gaps in the current law, AB 1946 will expand the ability for all users—even users who are not depicted in the CSAM content—to report the content. In addition, this bill would require a platform to make the mechanism more accessible by specifying that it is clear and conspicuous and ensured that dark patterns are not used. This bill also allows for public enforcement. For additional accountability, this bill strengthens the safe harbor by requiring biannual audits be submitted to the Attorney General if requested.

First, the bill expands who may submit reports to the platform to include any user. Additionally, the bill modifies and expands a number of definitions relating to the type of content, digital tracking elements related to the content, and other details surrounding the online proliferation of CSAM. The bill also modifies the requirements related to the social media platform's reporting mechanism, including imposing a standard that the mechanism be "clear and conspicuous," prohibit the use of "dark patterns," and specify that a user can report "material sent or received through direct messaging systems." AB 1946 establishes a new review process for platforms processing reports of CSAM. The bill significantly shortens the response timelines in existing law to require a platform to issue a final determination within 48 hours after the content is first reported. These new definitions, requirements, and timelines are discussed at length in the analysis by the Assembly Committee on Privacy and Consumer Protection, which previously heard and approved this measure.

AB 1394 also authorized a private right of action for a reporting user against a social media platform who failed to comply with any of the statute's requirements. Under current law, a reporting user is entitled to recover statutory damages of up to \$250,000 per violation, which are further limited depending on the platform's response to the report, as well as any actual damages

sustained as a result of the platform's failure to comply with the requirements in Section 3273.66. AB 1946 also modifies these provisions, which are of particular relevance to this Committee.

The changes proposed by AB 1946 can be divided into two principal categories: incorporation of enforcement authority for public prosecutors, and clarification of enforcement by private individuals.

The bill explicitly authorizes public prosecutors, including the Attorney General (AG), a district attorney, a city attorney, or county counsel, to bring a civil claim against a social media platform that fails to maintain a reporting mechanism available or functional. A prosecutor is entitled to injunctive relief and to recover a civil penalty of up to \$250,000 for each day the reporting mechanism is out of compliance, but shields the platform from liability if it can show by clear and convincing evidence that the mechanism was made unavailable or nonfunctional "solely" due to circumstances out of their reasonable control "and not due to any act or omission by the company, including a failure to implement or maintain adequate systems, processes, or safeguards." A prevailing prosecutor is also entitled to recover reasonable attorney's fees and costs, and requires any penalties recovered to be deposited into the Survivor Support Fund. Authorizing a broad swath of public prosecutors to bring an enforcement action against a company or entity that is actively violating a state law is almost always a helpful tool to ensure the state achieves the law's underlying policy goal. In the case of wealthy social media companies, public prosecutors are arguably the most appropriately situated with access to significant resources to take on such Goliaths. Considering most district attorneys' offices do not have a civil enforcement unit, *the author may wish to exempt district attorneys from the bill.*

Additionally, the safe harbor provision seems crafted to allow platforms to avoid liability if their reporting mechanism is offline for some reason beyond their immediate control. However, as currently in print, the proposed statute would only allow platforms to benefit from the safe harbor if the cause of the mechanisms malfunction was a result of causes *solely* out of the platform's control. This one word potentially creates unnecessary confusion – if the social media platform's main servers are destroyed as a result of a natural disaster, and minutes after the flooding an engineer tasked with maintaining the mechanism decides to turn it off remotely – is that mechanism offline due to circumstances *solely* outside of the control of the platform? In any case, a platform would have to demonstrate by clear and convincing evidence that the mechanism was unavailable because of circumstances out of their reasonable control and not due to any act or omission by the company themselves. The inclusion of the word "solely" therefore arguably heightens the standard without providing any meaningful benefit.

In order to address this concern, the author proposes amendments to remove the word "solely" from the safe harbor provision.

AB 1946 also amends the private right of action. Existing law authorizes a reporting user, which is currently limited to identifiable minors, to bring a civil claim against a platform for failing to adhere to any the standards and timelines for the reporting mechanism imposed by AB 1394. Amendments proposed by this bill would expand the category of individuals who can submit a report to include any user. In order to align the private right of action with this change and ensure that only a person who is depicted in the CSAM is entitled to recover the authorized damages, the bill modifies existing law to make a social media company liable *to a depicted individual* who is the reporting user and authorizes recovery of actual damages sustained by that depicted

individual. Currently, the bill strikes reference to the “reporting user” when authorizing recovery of actual damages and replaces that reference with “depicted individual.” However, the subdivision guiding that language change explicitly requires the claimant to be *both* a reporting user and depicted individual. In conjunction, these two provisions seem to require a claimant to be both, but authorizes recovery of actual damages by a depicted individual who is *not* a reporting user in the same claim. In order to avoid unnecessary confusion, the author proposes the following amendment to Section 3 of the bill:

**3273.67.**

(b) Subject to subdivision (c), a social media company that fails to comply with this title other than subdivision (a) of Section 3273.66 shall be liable to *a reporting user who is the depicted individual* for all of the following:

(1) Any actual damages sustained by the *reporting user who is the depicted individual* as a result of the violation.

This amendment is further supported by the fact that the bill establishes a separate private right of action for a depicted individual who is *not* a reporting user against a social media platform for their failure to permanently block CSAM, and authorizes the same recovery as a reporting user who is a depicted individual. Additionally, the bill exempts a platform’s failure to provide the reporting mechanism pursuant to Section 3273.66 (a) as a basis for a user’s claim against the platform.

In sum, the bill would modify existing law to establish three distinct civil enforcement mechanisms: a claim by a public prosecutor for recovery of civil penalties up to \$250,000 unless a platform can demonstrate the reporting mechanism was out of compliance due to circumstances beyond their control; a private right of action brought by a reporting user who is a depicted individual to recover actual damages and statutory damages against a platform that fails to comply with any of the modified provisions of Civil Code Section 3273.66 except subdivision (a); and a private right of action by a depicted individual who is not a reporting user against a platform that fails to permanently block CSAM as required by Section 3273.66 for the same recovery as a reporting user who is a depicted individual.

AB 1394 also made platforms liable for facilitating, aiding, or abetting commercial sexual exploitation committed by an adult user on the platform and authorized steep civil penalties of up to \$4,000,000. (Civil Code Section 3345.1.) In an effort to incentivize platforms to actively engage in practices to prevent the spread of CSAM online, platforms are shielded from liability if they maintain a program of biannual audits of the platform’s designs, algorithms, and practices in order to detect features that may cause such violations, and takes corrective action within 30 days of the completed audit. Platforms must also make the audit report available to their board of directors within 90 days of completion. This bill adds another requirement to this safe harbor provision and requires platforms to also make the audit reports available to the Attorney General and to other public prosecutors if requested.

***ARGUMENTS IN SUPPORT:*** This bill enjoys support from 3strands Global Foundation, the California Initiative for Technology and Democracy (CITED), the Children’s Advocacy Institute, Fairplay, the Jewish Family and Children’s Services of San Francisco, the Peninsula, Marin and Sonoma Counties, Organization for Social Media Safety, and two individuals. In support of the measure, CITED submits:

CSAM is all too pervasive on the internet, spreading with ruthless efficiency through popular social media sites such as TikTok, Instagram, X, and others. Children who have been victims of sexual abuse continue to be abused when these horrific images are circulated online. In 2023, California created a mechanism to report online CSAM and have it removed permanently. (AB 1394 (Wicks), Chap. 579, Stats. 2023.) This bill builds upon AB 1394 by making it easier to report CSAM to social media platforms, requiring better auditing standards by those companies, and increasing opportunities for recourse if social media platforms do not comply with the reporting and removal requirements. We believe that these improvements will help speed the removal of child sexual abuse images from the internet and better protect our children.

**CONCERNS:** Although they have not submitted formal opposition, a coalition of tech industry advocates raise concerns about the measure. They highlight the following issues:

- Expansion of access to the reporting mechanism in 3273.66 to all users. While many platforms already allow all users to report CSAM, we want to consider how this expansion interacts with other provisions in the bill and current law to minimize unintended consequences.
- First and Fourth Amendment considerations. AB 1394 struck a careful, but tenuous balance regarding constitutional issues related to the free speech protections of the First Amendment and the protections against warrantless searches in the Fourth Amendment. We want to carefully consider how changes requiring hash-matching, human-review, and changes to the enforcement in this bill affect that balance as it relates to private-actor searches and state actor analyses under the Fourth Amendment. The last thing TechNet, our coalition, or our members want is for a criminal defendant to be able to overturn their conviction based on evidence collected as a result of this bill.
- Expansion of the definition of “child sexual abuse material” to include an individual who “reasonably appears to be a minor” and digital forgeries.
- Changes to the compliance timeline from 30 days to 48 hours will likely have significant unintended consequences and also confusion as to which timeframe is controlling.
- Regulatory authority for the Attorney General to define “clear and conspicuous”, which is well-defined in BPC 17601.
- Providing audits directly to the Attorney General and by request to public prosecutors.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

3strands Global Foundation

California Initiative for Technology & Democracy, a Project of California Common CAUSE

Childrens Advocacy Institute

Fairplay

Jewish Family and Children's Services of San Francisco, the Peninsula, Marin and Sonoma Counties

Organization for Social Media Safety

2 individuals

**Opposition**

None on file

**Analysis Prepared by:** Griff Ryan-Roberts and Manuela Boucher-de la Cadena / JUD. / (916)  
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