Kids Online Safety Act
Responses to Concerns, Myth v. Fact, and Proposed Changes
The Heritage Foundation Policy Analysis

On July 30, 2024, the Senate passed the Kids Online Safety and Privacy Act, S. 2073, which includes the Kids Online Safety Act and the Children's Online Privacy Protection Act 2.0, by a vote of 91-3. This factsheet aims to resolve stated concerns over the legislation—both legitimate and unfounded—ahead of any movement in the House. We also offer potential changes to the text meant to address any outstanding issues among the Republican Conference.

Legitimate Concerns

1. *Concern: The definition of "mental health disorder" is the meaning given in the Diagnostic and Statistical Manual of Mental Health Disorders, 5th Edition (or the most current successor edition). This cedes legislative authority to the DSM, which is beholden to unelected progressive mental health professional associations.*
   Response: The duty of care in Section 102 limits the bill's scope to the following mental health disorders: anxiety, depression, eating disorders, substance use disorders, and suicidal behaviors. In order to ensure consistency in how those mental health disorders are interpreted by platforms, enforcement and guidance-issuing agencies, and state attorneys general, the Senate bill links the definition of mental health disorder to the DSM 5th Edition. The DSM is used by health care professionals across the nation to help diagnose mental disorders and was chosen to avoid a variety of subjective interpretations. It is standard practice for legislators and federal agencies to use the DSM for these purposes. For example, the Department of Veterans Affairs uses the DSM fifth edition for its definition of mental health disorder. The Department of Health and Human Services defines drug abuse and drug addiction in certain medical examinations using the DSM. And so on and so forth. However, in order to inhibit deference to future editions absent congressional scrutiny, we propose striking "(or the most current successor edition)." See addendum for proposed amendment.

2. *Concern: Then duty of care includes "online bullying, and harassment of a minor," but these terms are not defined and could lead to subjective interpretation and dubious claims.*
   Response: The inclusion of "online bullying and harassment of a minor" is deliberate phrasing due to the indisputable impact of these behaviors on children and teens. According to a 2022 Pew survey, nearly half of American teens (46%) experienced bullying online. Multiple academic studies cited by the Cyberbullying Research Center and other research aggregators indicate that online bullying and harassment is related to a

number of adverse psychological and physiological outcomes in young people, such as poor self-esteem, suicidal ideation, anger, substance use, and delinquency.[1] Seventy-four percent of teens said in the same 2022 Pew survey that social media platforms aren't doing enough to prevent digital bullying on their services.

The claim that the inclusion of "online bullying" and "harassment" could be weaponized by the FTC or attorneys general elides the legitimate, deleterious impact of online bullying and harassment on young people. These are genuine problems that impact millions of American minors. Overly broad interpretations of digital "bullying" and "harassment" can be prevented by clearly defining both terms. These definitions, plainly articulated and scoped, could limit the legislation's reach to actions that legitimately threaten the physical safety and mental health of American youth.[2]

3. *Concern: The requirement for independent research on social media harms will enable the FTC – through authorities provided in section 6(b) of the Federal Trade Commission Act – to request all user data, messages, etc. There is no opt-in requirement for parents, no anonymization requirements, and no limitations on data retention.*
Response: Platforms like Facebook and Instagram already study the effects of their design features on users. 2021 revelations about Instagram's harmful impacts on American teens are partially sourced from leaked internal studies the platform conducted in previous years. Under the status quo, Big Tech is the sole beneficiary of such studies while lawmakers and the public are left in the dark. This provision would help level the playing field by giving outside organizations like the National Academy of Sciences access to the necessary data to evaluate the social effects of these platforms. However, adding "de-identified" before "data" in Sec. 106(h) would help ensure the platforms anonymize the data.

Less Legitimate Concerns

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[1] Empirical studies indicate a link between teen cyberbullying and self-harm. A 2021 peer reviewed study published in *Archives of Suicide Research*, found that "endorsement of any form of cyberbullying was significantly associated with [non-suicidal self-injury] (NSSI)" among adolescents. The same study also found that minors who participated in illicit photographs—such as those of an obscene or pornographic nature—universally endorsed self-harm. Cyberbullying has similar effects on teen mental health. A 2010 study published in *Child and Adolescent Psychiatry and Mental Health* found that Swiss and Australian children victimized by cyberbullying exhibited "higher levels of depressive symptoms" than "non-involved children." Another 2007 study in *Child Maltreatment*, found evidence that all types of in-person and digital "victimization," including sexual solicitation and harassment, were independently associated with "depressive symptomatology, delinquent behavior, and substance use." Notably, children who experienced "online sexual solicitation" were two times more likely to exhibit symptoms of depression and substance abuse than victims of other types of bullying.

[2] See the addendum for proposed definitions.

1. *Concern: Parents are the most appropriate to decide what kind of content is inappropriate for their children, not the government.*
   Response: KOSA would not replace the role of parents but instead empower them. Under Sec. 103, KOSA requires platforms to provide parental tools including viewing and changing their child's privacy and account settings, limiting in-app purchases, limiting the amount of time their child can use the app, opting out of personalized-recommendation systems or limiting categories of recommendations, disabling notifications, restricting sharing of their geolocation, and limiting who can contact their child through the app. It requires platforms to enable the most stringent privacy settings by default, which simply provides a technical shortcut for parents. It also requires notification for breaches of parental controls, so parents are better equipped when one of their fail-safes has been compromised. KOSA thus gives parents *more* autonomy over their sons' and daughters' social media use.

   Sec. 103 also requires platforms to provide an accessible reporting process for claims of abuse and to respond to claims within a certain time frame (varied depending on the number of active users on the platform). Many users say current reporting processes are difficult to navigate, and the platforms often do not respond or resolve the issues reported. KOSA serves parents by aiming to fix this.

   If the Kids Online Safety Act passes the House, its enforcement mechanisms won't be acting *in loco parentis*, but instead serving as parents' force multipliers against Big Tech's predations on our children. They will be the deterrence and the teeth backing parents up against trillions of dollars in market cap. That, along with expanded technical controls and mandated transparency, *is* empowering parents.

2. *Concern: This bill would have a chilling effect on free speech and allow online platforms to censor political content under the guise of protecting children.*
   Response: KOSA places certain reasonable restrictions on harmful design features, not user content. First, the bill restricts "design features," narrowly defined as "any feature or component…that will encourage or increase the frequency, time spent, or activity of minors on the covered platform." The "components" and "features" covered by the bill are defined entirely based on the harmful conduct they encourage—not the content they facilitate.

   Second, to ensure the duty of care provision isn't misconstrued to limit access to protected speech, the bill text states that nothing in the duty-of-care section "shall be construed to require a covered platform to prevent or preclude any minor from deliberately and independently searching for, or specifically requesting, content" or prohibit the platform from providing resources for the prevention or mitigation of the

harms described. In other words, while the bill would prevent social media platforms from using design features to promote harmful behavior, it would not prevent kids from freely searching for content on the platform.

Third, Big Tech platforms already censor and suppress conservative views on a massive scale. KOSA wouldn't cause that—but it would oblige platforms to take kids' safety into account. As previously stated, KOSA would provide parents and kids more autonomy over their social-media experience and allow users to opt out of design features such as a personalized-recommendation system and certain categories of recommendations. It would also require platforms to provide easy-to-use tools to allow kids to limit notifications, use of their location information, who can contact them, and the amount of time they spend on covered apps.

3. *Concern: Social media age requirements conflict with the First Amendment.*
Response: KOSA does not require social media platforms to verify users' age. The bill is explicit in that it does not include any age verification or age gating requirements.

But even if it did, social media age verification does meet First Amendment muster. The U.S. Supreme Court has repeatedly held that the government may protect minors from obscene and indecent expression. In *Ginsberg v. New York*, the Court upheld a state law which banned the sale of obscene material to minors. It did so partially on the grounds that "[t]he wellbeing of... children is...a subject within the State's constitutional power to regulate."[3] Again, in *FCC v. Pacifica*, the Court affirmed the FCC's decision to sanction a radio station for swear words broadcast over the airwaves because content transmitted through that medium had a "uniquely pervasive presence in the lives of all Americans" and was "uniquely accessible to children." The same is true of today's social media platforms. According to Gallup, over half of U.S. teens spend an average of 4.8 hours per day on social media. These platforms are gateways to noxious content and harmful behavior.[4] Commonsense Media found that of teens who intentionally search for sexually explicit content online, 38% do so on social media platforms like TikTok and Instagram, and 34% do so on video-sharing platforms like YouTube. At the same time, platforms are facilitating the sexual exploitation of children. Instagram whistleblower Arturo Bejar, testified before the Senate Judiciary Committee in 2023 that 13% of teens between the ages of 13-15, including Bejar's own daughter, received unwanted sexual advances within the previous seven days on Instagram. The platform's recommender algorithms

[3] "The State has an interest 'to protect the welfare of children' and to see that they are 'safeguarded from abuses' which might prevent their 'growth into free and independent well developed men and citizens.'" See *Prince v. Massachusetts* as cited in *Ginsberg v. New Yo*

[4] The business in *Ginsberg* was a lunch counter which sold non-pornographic items—presumably including other magazines ("speech"). The fact that "girlie magazines" were only a portion of the store's speech/services, did not excuse it from New York's prohibition on knowingly distributing pornographic content to minors. In the same way, even though most radio broadcasts likely did not include obscene or indecent content, the FCC still retains authority to sanction broadcasters who transmit such terms over the airwaves under *Pacifica*.

were even pairing children with sex predators, according to *The Wall Street Journal* reporting.

Age verification reliably mitigates such harms in analog contexts like bars, adult venues, R-rated films, and online gambling. A form of "free expression" certainly occurs in those places. But that doesn't exempt them from laws requiring that they verify the age of their customers before granting entry. Our laws and social norms treat children differently because of their innocence, vulnerability, and underdeveloped reasoning faculties. Denying equal protection for kids "online" isn't just bad logic—it puts our children at grave risk.

4. *Concern: Compelling companies to restrict protected speech violates the First Amendment.*
   Response: The text of the legislation itself offers the strongest rebuttal to this claim. KOSA holds social media companies accountable for their addictive and harmful design features. It does not require companies to restrict appropriate content on the platform itself. Sec. 112 of the bill includes a rule of construction that says: "Nothing in this section shall be construed to limit or prohibit an online platform's ability to, at the direction of an individual user or group of users, restrict another user from searching for, finding, accessing, or interacting with such user's or group's account, content, data, or online community."

5. *Concern: Exclusions from "duty of care" allow platforms to provide transgender content to minors.*
   Response: This is no different than the status quo. Transgender content is currently available—and often promoted—on every major Big Tech platform. Some apps also allow content that disavows transgender ideology and promotes traditional gender values. The bill does not change this. The duty of care in section 102 limits the bill's scope to the following mental health disorders: anxiety, depression, eating disorders, substance use disorders, and suicidal behaviors. The bill does not limit users from searching for content, whether in favor of or opposed to transgender ideology.

6. *Concern: The bill does not include an opt-in from parents for the market research requirement to ensure informed consent.*
   Response: There is a misconception that KOSA somehow provides new authority or requirements for social media platforms to conduct market research. The bill does not do this. Platforms have had little restrictions on their collection of user data to provide their own analytics and market research. How did Facebook know that Instagram was toxic for teen girls, as revealed in September 2021? Market research. The bill actually aims to place guardrails on how platforms conduct market research. Specifically, Sec. 107 requires the FTC and Department of Commerce to issue guidance for covered platforms seeking to conduct market research on minors. The guidance must include "a standard

consent form that provides minors and their parents a clear, conspicuous, and easy-to-understand explanation of the scope and purpose of the research to be conducted…" and "information on how to obtain informed consent from the parent of a minor prior to conducting such market research."

7. *Concern: The bill provides too much authority to the FTC for enforcement. Given the Biden administration's collusion with Big Tech to suppress conservative viewpoints online, there is a concerning lack of safeguards in place to ensure government agencies cannot abuse their enforcement authority.*
   Response: KOSA does not grant the FTC broad new powers. If anything, this bill limits the general authority of the FTC. First, both KOSA and COPPA 2.0 provide that the FTC would rely on its existing authority under the Federal Trade Commission Act to enforce the bill's provisions. Second, where the bill grants the FTC authority to issue guidance, it limits the guidance to technical specifications for complying with requirements like KOSA's disclosure and transparency provisions and COPPA 2.0's knowledge standard. Third, Sec. 109 states that the FTC cannot initiate an enforcement action against a platform simply for not abiding by certain guidance, unless the practice directly violates a provision of the bill. Fourth, as researchers have argued, KOSA would actually narrow the FTC's general authority under Section 5 of the FTC Act with respect to kids' safety. Under the status quo, multiple U.S. appellate courts—including the Supreme Court—have held that the FTC possesses broad power to define "unfair" trade practices and to promulgate regulations to restrain such practices. Since courts generally defer to specific grants of authority to interpret broader statutes, Congress could rein in the FTC by passing laws that provide the commission with specific guidance on how to use its powers to protect kids online. KOSA would achieve this by limiting the FTC's purview to investigate specific harms caused by design features defined in the bill—rather than leaving action on kids' safety to the FTC's discretion, as is currently the case. [5]

8. *Concern: The bill undermines kids' privacy by placing their online activity under heightened surveillance by government bureaucrats and requiring companies to collect more data on kids.*
   Response: KOSA explicitly provides that platforms are not obligated to increase the amount of data they collect on users. First, Sec. 103 clarifies that safeguards for minors do not require retention or "disclosure of a minor's messages, search history, contact lists, browsing history, and other private communications." Second, Sec. 113 specifies that the bill does not require platforms to age gate or collect additional data on users.

[5] According to researcher Joel Thayer in a July 2024 essay in the *Harvard Journal of Law & Public Policy*: "…KOSA would narrow the FTC's Section 5 remit with respect to protecting kids from social media platforms and define what harms the FTC could investigate via KOSA's "duty of care" section that focused only on specific addictive functions. Without KOSA's duty of care, the FTC has free rein to decide what harms to minors look like in the broadest sense…"

9. *Concern: KOSA will effectively require age verification, which poses significant risks to children's data privacy.*
   Response: KOSA does not require social media platforms to verify users' age. The bill is explicit in that it does not include any age verification or age gating requirements/functionality. KOSA does not require age verification but requires the Department of Commerce to coordinate with the FCC and FTC to study the most technologically feasible methods and options for developing systems to verify age at the device or operating system level. After a year, the agencies must submit a report on their findings to the House Energy and Commerce Committee and Senate Commerce, Science, and Transportation Committee. However, Sec. 113 explicitly says that "nothing in this subtitle…shall be construed to require…a covered platform to implement an age gating or age verification functionality."

10. *Concern: Democratic administration will fill the Kids Online Safety Council with pro-abortion "civil society" and bureaucratic activists to decide what content is and is not dangerous to individuals (Section 111).*
    Response: A Republican administration could fill the council with representatives who share pro-life values. For the record, a Democratic administration's likelihood to promote pro-abortion policies is not affected by KOSA. That is the status quo.

Illegitimate Concerns

1. *Myth: "The FTC, under a Democratic administration, could prioritize enforcement actions against pro-life groups, alleging violations of KOSA's requirements related to data minimization, transparency, or individual control over personal data. This selective enforcement could place a significant burden on these organizations, even if they are acting in good faith (Section 110)."*
   Fact: Any enforcement actions could only be taken against social media companies, not pro-life nonprofits. The bill defines covered platform as "an online platform, online video game, messaging application, or video streaming service that connects to the internet and that is used, or is reasonably likely to be used, by a minor." Additionally, the bill states that the definition of covered platform does not include "an organization not organized to carry on business for its own profit or that of its members." In other words, nonprofits are explicitly excluded from the definition of covered platform. The FTC cannot take enforcement actions against pro-life groups under this bill.

2. *Myth: "The creation of a Kids Online Safety Council and rulemaking powers for the Federal Trade Commission allows Democrats to control what speech is and is not allowed – silencing pro-life speech."*

Fact: The council, convened under the Department of Commerce, requires representatives with expertise in privacy, free expression, access to information, and civil liberties. This is antithetical to silencing speech. The council is not a rulemaking body but an advisory board that makes recommendations related to the duty of care of the bill. The duty of care is limited to, in its entirety: anxiety, depression, eating disorders, substance use disorders, suicidal behaviors, physical violence, online bullying, sexual exploitation and abuse, narcotic drugs, tobacco products, gambling, alcohol, and predatory, unfair, or deceptive marketing, or other financial harms. Further, the bill explicitly states that platforms are not prohibited from preventing any minor from deliberately and independently searching for content and from providing resources to prevent the previously mentioned harms. This includes pro-life content. In effect, specific statutes like KOSA would narrow the FTC's existing broad authority under Section 5 of the FTC Act. Sec. 109 of the bill directs the FTC to issue guidance to assist covered platforms with compliance. Sec. 110 authorizes the FTC to enforce violations of the bill. The bill does not authorize rulemaking powers.

3. *Myth: "Preventing Pro-Life Groups from Maintaining Records Necessary to Provide Ongoing Support: KOSA's data minimization requirements could be used to argue that pro-life groups are collecting or retaining more personal information than necessary, making them vulnerable to lawsuits (Section 104)." and "Denying Ability to Use Data to Help Women Seeking Crisis Center Help: The individual control provisions could be used to demand that pro-life groups delete or refrain from using personal information of women who have sought their assistance, even if that information is crucial for providing ongoing support and resources (Section 104)."*
   Fact: KOSA applies to social media platforms, not pro-life organizations or crisis pregnancy centers. The definition of covered platform explicitly excludes nonprofits. The bill does not touch or restrict pro-life groups from using personal information of women who sought their assistance. This is completely unrelated to KOSA. The bill allows kids and their parents to restrict sharing their geolocation on social media platforms that advertisers could use (whether that would be for an abortion clinic or a crisis pregnancy center). Under the status quo, Big Tech partners with groups like Planned Parenthood to identify, target, and "persuade" vulnerable women to seek out abortions. They do this by surveilling women's every click, scroll, and search—and building the equivalent of a digital dossier to shift behavior. By reining in social media's free flow of data, we're disabling one of the abortion industry's biggest weapons and saving the lives of women and their babies.

4. *Myth: "Preventing Religious teachings about the sin of abortion: A Democrat controlled Kids Online Safety Council gets to decide if opposing abortion is "dangerous" or "age-*

inappropriate" and denies religious liberties of pro-life advocates and all of the faithful who support their message (Section 111)."
Fact: The council has no authority to change or restrict religious teachings. Sec. 111 does not include the terms "dangerous" or "age-inappropriate." The council is tasked with "identifying emerging or current risks of harms to minors associated with online platforms," "recommending measures…for assessing and mitigating harms," "recommending methods for conducting research regarding online harms," and "recommending best practices."

5. *Myth: "A Democratic administration could argue that these protections have a disparate impact on protected characteristics, such as sex or disability, and require pro-life groups to modify or discontinue their use (Section 113)."A Democratic administration could use the covered algorithm assessment and evaluation provisions to scrutinize any algorithms or computational processes used by pro-life groups for targeted outreach or resource allocation (Section 113). The civil rights protections could be interpreted by a Democratic administration to prohibit pro-life groups from engaging in targeted outreach based on an individual's reproductive health decisions, arguing that such actions constitute discrimination based on sex or disability (Section 113).*
Fact: The bill does not add any new civil rights or disparate impact protections or provisions. It also does not touch algorithms or computational processes used by pro-life groups. It places parameters on social media platforms' use of algorithms, such as requiring them to notify users that they use opaque algorithms and how the algorithms use user-specific data. The bill restricts data platforms can collect and share from its underage users, and it allows children and their parents to place limits on features. This could prevent targeted outreach to kids on social media platforms from ANY entity, not uniquely pro-life outreach.

6. *Myth: Democratic administrations can leverage KOSA's "data broker registration requirements" to collect information about pro-life groups that engage in data-related activities, using this information to target these organizations for additional scrutiny or enforcement actions (Section 106)*
Fact: There are no data broker registration requirements in KOSA.

Addendum: Proposed Changes to Address Legitimate Concerns

1. To avoid constitutional concerns regarding new or revised DSM definitions being smuggled into the law," strike the following in Sec. 101 Definitions:
   7) MENTAL HEALTH DISORDER.—*The term "mental health disorder" has the meaning given the term "mental disorder" in the Diagnostic and Statistical Manual of Mental Health Disorders, 5th Edition ~~(or the most current successor edition)~~.*

2. To prevent over broad interpretations of "bullying" and "harassment," add definitions of those terms in Sec. 101.
   Proposed Language:

   The term **"online bullying"** means the exploitation or use of any design feature, by individuals or groups, to

   (1) severely, consistently, and pervasively; i) create reasonable fear of harm to a specific minor's person or property; or ii) create a detrimental effect on a specific minor's physical health in the form of a medically diagnosable condition; or iii). create a detrimental effect on a specific minor's mental health in the form of a mental health disorder.

   The term **"harassment"** means the exploitation or use of any design feature, by individuals or groups, to

   (1) make or perpetuate a criminal threat against a specific minor that involves or alludes to the use of physical violence or unlawful conduct such that it constitutes a misdemeanor or felony violation of criminal law.

3. To order to ensure anonymity, add the following:
   (h) *ACCESS TO DATA.—*
   (1) FACT-FINDING AUTHORITY.—*The Commission may issue orders under section 6(b) of the Federal Trade Commission Act (15 U.S.C. 46(b)) to require covered platforms to provide reports, ~~de-identified~~ data, or answers in writing as necessary to conduct the studies required under this section.*