

March 1, 2024

The Honorable Tom Umberg
Chair, Senate Committee on Judiciary
Hon. Members of the Committee
1021 O Street, Room 3240
Sacramento, CA 95814

RE: SUPPORT FOR SB 1504

Dear Chair Umberg and Honorable Committee Members:

The Children's Advocacy Institute at the University of San Diego School of Law, which for 30 years has worked to improve the well-being of children in California in the courts, before regulators, and through legislative advocacy, is pleased to support SB 1504 (Stern). The bill will, in light of recent revelations about social media platforms failing to protect children from harms *they admit* they cause or permit, update California's current law regarding platform responsibilities to respond to children being cyberbullied who are desperately pleading for help.

THE CYBERBULLYING SOCIAL MEDIA EPIDEMIC

As Attorney General Rob Bonta has correctly observed, unlawful "cyberbullying can destroy a young life. It takes the worst of youthful cruelty and puts it on that most public of forums – the Internet. Too many American young people keep quiet about online abuse. And too many kill themselves over it."¹

"As many as 56 percent of teens report being cyberbullied, and certain groups, such as lesbian, gay, bisexual and transgender teens, are targeted more than others. Teenagers who are cyberbullied are more likely to struggle with depression and substance abuse. They are at a higher risk offline to be victims of sexual harassment and physical assault."² "Black or Hispanic teens are more likely than White teens to say cyberbullying is a major problem for people their age."³

Cyberbullying statistics show that Instagram is the most common platform for cyberbullying, closely followed by Facebook and Snapchat. Researchers found that "42 percent of Instagram users had been bullied on the platform compared to 37 percent for Facebook, 31 percent for Snapchat, 10 percent for YouTube and 9 percent for Twitter."⁴

¹ <https://oag.ca.gov/cybersafety/children/cyberbullying>

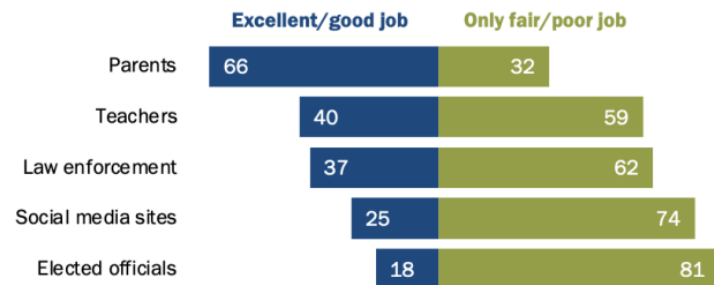
² <https://oag.ca.gov/cybersafety/online/opinion>

³ <https://www.pewresearch.org/internet/2022/12/15/teens-and-cyberbullying-2022/>

⁴ <https://www.ajc.com/news/world/this-social-media-platform-the-worst-for-cyberbullying/nsTKWz7nRG4gmDUE07BE0K/> See also <https://www.stopbullying.gov/cyberbullying/what-is-it>

Large majorities of teens think social media sites and elected officials are doing an only fair to poor job addressing online harassment

% of U.S. teens who say each of the following are doing a(n) ___ when it comes to addressing online harassment and online bullying



Note: Teens are those ages 13 to 17. Excellent/good job or only fair/poor job responses are combined. Those who did not give an answer are not shown.

Source: Survey conducted April 14-May 4, 2022.

"Teens and Cyberbullying 2022"

PEW RESEARCH CENTER

Recent disclosures and whistleblowing documenting social media platforms refusing to take modest steps to protect children from harms, including cyberbullying, reveal the pressing need to offer bullied children more protections. Current law (22589 of the Business and Professions Code) addressing platforms and cyberbullying offers no specific ability for a child to hold a platform directly accountable for failing to respond to requests to block cyberbullying and has no specific requirements ensuring that platforms heed and respond to the urgent pleas of each child being bullied.

More broadly, at least when it comes to Facebook (now called Meta), we are talking about one of the most stubbornly persistent bad actors in corporate history; something explicable when one considers that its founder was able to earn \$29 billion in a single day.⁵ Only the most robust laws can have a hope of altering this company's behavior. As the Federal Trade Commission explained when it issued an unprecedented order forbidding Facebook from using child data:

FTC Proposes Blanket Prohibition Preventing Facebook from Monetizing Youth Data

The Federal Trade Commission proposed changes to the agency's 2020 privacy order with Facebook after alleging that the company has failed to fully comply with the order, misled parents about their ability to control with whom their children communicated through its Messenger Kids app, and misrepresented the access it provided some app developers to private user data.

⁵ <https://www.mercurynews.com/2024/02/02/mark-zuckerberg-made-29-billion-this-morning-after-meta-stock-makes-record-surge/>

“Facebook has repeatedly violated its privacy promises,” said Samuel Levine, Director of the FTC’s Bureau of Consumer Protection. “The company’s recklessness has put young users at risk, and Facebook needs to answer for its failures.”

As part of the proposed changes, Meta, which changed its name from Facebook in October 2021, would be prohibited from profiting from data it collects, including through its virtual reality products, from users under the age of 18. It would also be subject to other expanded limitations, including in its use of facial recognition technology, and required to provide additional protections for users.

This is the third time the FTC has taken action against Facebook for allegedly failing to protect users’ privacy. The Commission first filed a complaint against Facebook in 2011, and [secured an order](#) in 2012 barring the company from misrepresenting its privacy practices. But according to a subsequent complaint filed by the Commission, Facebook violated the first FTC order within months of it being finalized – engaging in misrepresentations that helped fuel the Cambridge Analytica scandal. In [2019, Facebook agreed to a second order](#)—which took effect in 2020—resolving claims that it violated the FTC’s first order. Today’s action alleges that Facebook has violated the 2020 order, as well as the Children’s Online Privacy Protection Act Rule (COPPA Rule).

The [2020 privacy order](#) required Facebook to pay a \$5 billion civil penalty.⁶

Said another way, even an enforcement penalty of \$5 billion dollars was insufficient to prompt Facebook to simply do what it promised a state enforcement agency it would do to protect children.

Sadly, this is not the end of the company’s record of over and over again paying fines as just a cost of doing business. Consider this list of Facebook fines and payments from Statista from just one year, 2019⁷:

January - donation to a scam ad prevention charity in order to have a lawsuit dropped	3,900,000
March - settlement paid after multiple lawsuits alleged discrimination in advertising	5,000,000
April - fine issued by a court in Russia for storing Russian user data on servers outside the country	47
May - fine issued by Turkey's data protection authority	270,000
June - fine imposed by Italy's data protection watchdog	1,100,000

⁶ <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-proposes-blanket-prohibition-preventing-facebook-monetizing-youth-data>

⁷ <https://www.statista.com/statistics/1192850/fines-and-penalties-imposed-on-facebook/>

July - fine for allegedly underreporting the number of illegal hate speech complaints on Facebook, issued by German regulators	2,300,000
July - settlement paid after an FTC investigation following the Cambridge Analytica scandal	5,000,000,000
July - fine imposed by the Securities and Exchange Commission in connection to the Cambridge Analytica scandal	100,000,000
July - fine issued by a superior court judge in San Francisco for refusing to provide posts that could have helped in a criminal trial	1,000
October - fine issued for a data breach, imposed by authorities in Turkey	282,000
October - settlement as part of a lawsuit alleging that Facebook inflated viewership metrics	

But wait, there's more.

- In 2023 Meta was fined a record 1.2 billion euros (\$1.3 billion) and ordered to stop transferring data collected from Facebook users in Europe to the United States, in a major ruling against the social media company for violating European Union data protection rules.⁸
- In 2022 Meta agreed to pay \$90 million in settlement over a decade-old user data tracking case. By paying the settlement amount, the company avoided the risks of the case going to a trial. It looks like Mark Zuckerberg didn't want a repeat of the 2019 fine.
- The social media giant had paid a settlement amount of \$650 million to settle a lawsuit in Illinois for stealing photo face-tagging and other biometric data in 2021.
- Meta Inc-owned instant messaging platform – WhatsApp – was fined \$267 million in the EU for breaching its privacy laws.
- On February 29, 2024 European consumer rights groups have accused Meta, the owner of Facebook and Instagram, of carrying out a “massive” and “illegal” operation of collecting data from hundreds of millions of users in the region.
- Meta is being sued by nearly every state attorney general for harms it is causing to children and over one thousand private lawsuits have been filed, alleging the same.

⁸ <https://www.nytimes.com/2023/05/22/business/meta-facebook-eu-privacy-fine.html>

CURRENT LAW

Business & Professions Code section 22589, enacted by a well-intentioned AB 2879 in 2022, is simply not up to the task of prompting a company with this record meaningfully to address cyberbullying. The bill was not broadly supported by child advocacy groups⁹ Among the bill's gaps:

- It confusingly addresses only “pupils” (not defined) and not children.
- Its definition of cyberbullying is not as robust as the definitions used by social media platforms themselves.
- The “mechanism” required to report cyberbullying can be buried in the platform’s boilerplate, never-read terms of service.
- A platform is not required to respond to an entreating child in any way.
- Only the Attorney General – the agency tasked with protecting 39 million Californians with criminal, environmental, consumer rights, and a long list of urgent priorities and limited capacity – is permitted to enforce the law. Converting the Attorney General who, when they speak to a court, speaks for “The People” into some sort of private lawyer for individuals with individual case is simply inappropriate; at best a recipe for no enforcement of the laws enacted by the Legislature at all.
- The most that the Attorney General can recover is \$7,500 per day against the platform. The current jurisdictional limit for small claims court is \$10,000.¹⁰

Otherwise, cyberbullying is criminally addressed. Any individual who is found guilty of using an electronic communication device to harass, intimidate, annoy, or stalk another can face the criminal charges of up to one year in county jail, a fine of up to \$1,000, or both. “Electronic communication devices” include telephones, cellphones, computers, and Internet web pages or sites, among others. (California Penal Code 653.2)

California Education Code sections 32261, 32265, 32270, and 48900 addresses bullying in educational settings and defines bullying of pupils to include bullying committed by means of an electronic act, and authorizes school officials to suspend or recommend for expulsion pupils who engage in bullying.

⁹ An organization called Outschool and the Santa Clara County Office of Education were the supporters listed on the Senate Judiciary analysis. No support was listed in the Assembly Judiciary Committee.

¹⁰

<https://www.courts.ca.gov/9617.htm?rdeLocaleAttr=en#:~:text=Small%20claims%20court%20is%20a,jurisdictional%20limits%20in%20these%20cases.>

SB 1504'S APPROACH

Patterned after one part of 2023's AB 1394 (Wicks and Flora), SB 1504 seeks to motivate social media giants to do more to address cyberbullying simply by requiring them to communicate the "why" of their own decision-making to children who complain they are being cyberbullied on their products. SB 1504 does this:

- By requiring platforms to adopt a mechanism by which they are required to respond to entreaties of children who are being cyberbullied.
- By clarifying it applies to all children who can be bullied, not just "pupils".
- Notably, the bill does not require the platforms actually to remove any content. But it does require that the platform honor the child by actually responding, including an explanation of why the alleged bullying is permitted under the platform's own terms of service.
- By increasing the civil penalties to up to \$75,000 for violating these laws.
- By adopting definitions of "severe and pervasive" harm used by Meta itself to define cyberbullying.¹¹
- And by permitting an individual cyberbullied child to enforce the law when they claim it was violated as applied to them. (As proposed to be amended.)

For all these reasons, the Children's Advocacy Institute at the University of San Diego School of Law respectfully requests you vote aye on SB 1504 (Stern).

Sincerely,



Ed Howard
Senior Counsel, Children's Advocacy Institute

¹¹ <https://transparency.fb.com/policies/community-standards/bullying-harassment/?source=https%3A%2F%2Fwww.facebook.com%2Fcommunitystandards%2Fbullying>