

119TH CONGRESS
2D SESSION

S. _____

To amend the Epstein Files Transparency Act with respect to enforcement
by an attorney general of a State.

IN THE SENATE OF THE UNITED STATES

Mr. MERKLEY (for himself and Mr. LUJÁN) introduced the following bill;
which was read twice and referred to the Committee on

A BILL

To amend the Epstein Files Transparency Act with respect
to enforcement by an attorney general of a State.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Epstein Files Trans-
5 parency Act II”.

6 **SEC. 2. ENFORCEMENT BY ATTORNEY GENERAL OF A**
7 **STATE.**

8 (a) ENFORCEMENT TO THE EPSTEIN FILES TRANS-
9 PARENCY ACT.—The Epstein Files Transparency Act

1 (Public Law 119–38; 139 Stat. 656) is amended by add-
2 ing at the end the following:

3 **“SEC. 4. ENFORCEMENT BY ATTORNEY GENERAL OF A**
4 **STATE.**

5 “(a) ACTION AUTHORIZED.—

6 “(1) IN GENERAL.—The attorney general of a
7 State, a district attorney, or any other authorized
8 State officer may bring an action on behalf of such
9 State or the residents thereof, and a victim may
10 bring an action on behalf of such victim, against the
11 Attorney General of the United States alleging an
12 unlawful withholding, redaction, delay, removal, con-
13 cealment, failure to publish, failure to produce, or
14 failure to justify a withholding or redaction of a
15 record, document, communication, or investigative
16 material described in section 2(a) in the United
17 States District Court for the District of Columbia,
18 in any United States district court located in the
19 State on behalf of which the action is brought by an
20 attorney general of a State, a district attorney, or
21 any other authorized State officer, or, in the case of
22 an action brought by a victim, in any United States
23 district court located in the State in which the vic-
24 tim resides, to obtain declaratory relief, injunctive

1 relief, monetary relief, costs, reasonable attorney's
2 fees, and any other appropriate equitable relief.

3 “(2) CONSIDERATION.—The court shall advance
4 on the docket and expedite the disposition of a civil
5 action filed under this subsection to the greatest ex-
6 tent practicable.

7 “(3) HARM.—For purposes of this subsection, a
8 State, a resident of a State, or a State or local law
9 enforcement agency shall be considered to have been
10 harmed if the State, the residents of a State, or a
11 State or local law enforcement agency have experi-
12 enced harm, including investigative harm, harass-
13 ment, inability to corroborate reports to law enforce-
14 ment, inability to obtain a victim statement, infor-
15 mational injury, financial harm in excess of \$100, or
16 any other harm as a result of the noncompliance of
17 the Attorney General of the United States with this
18 Act.

19 “(4) EFFECT ON TOUHY REGULATIONS.—The
20 requirements under sections 16.21 through 16.29 of
21 title 28, Code of Federal Regulations, shall not
22 apply to any request for, or production of, records
23 pursuant to this Act. An attorney general of a State,
24 a district attorney, or any other authorized State of-
25 ficer shall not be required to comply with any provi-

1 sion of those regulations as a condition of obtaining,
2 retaining, using, or disclosing records produced
3 under this Act, and no Federal agency may invoke
4 those regulations as grounds to withhold, redact,
5 delay, or condition the production of any record re-
6 quired to be disclosed under this Act. The statutory
7 rights and enforcement mechanisms established by
8 this Act shall constitute the exclusive procedural
9 framework governing State law enforcement access
10 to records covered by this Act.

11 “(5) NO PRECLUSION OF ALTERNATIVE CAUSES
12 OF ACTION.—Nothing in this Act shall be construed
13 to limit, displace, or preclude any other cause of ac-
14 tion, claim, or remedy available to an attorney gen-
15 eral of a State, a district attorney, or any other au-
16 thorized State officer arising from the withholding,
17 redaction, delay, removal, concealment, failure to
18 publish, failure to produce, or failure to justify a
19 withholding or redaction of any record, document,
20 communication, or investigative material described
21 in section 2(a) by the Department of Justice, and
22 the enforcement avenues provided under this Act
23 shall be deemed cumulative of, and in addition to,
24 any such cause of action, claim, or remedy otherwise
25 available at law or in equity.

1 “(6) APPLICABILITY TO EXISTING INVESTIGA-
2 TIONS.—The provisions of this Act shall apply to
3 any investigation currently pending before an attor-
4 ney general of a State, a district attorney, or any
5 other authorized State officer on the date of enact-
6 ment of the Epstein Files Transparency Act II,
7 without regard to whether such investigation was
8 initiated prior to the date of enactment of that Act.
9 No provision of this Act shall be construed to limit
10 the application of this section solely to investigations
11 commenced after the date of enactment of the Ep-
12 stein Files Transparency Act II, and any attorney
13 general of a State, district attorney, or other author-
14 ized State officer with an active investigation into
15 matters described in section 2(a) shall be entitled to
16 the full benefit of the rights, procedures, and en-
17 forcement mechanisms established herein as of the
18 date of enactment of the Epstein Files Transparency
19 Act II.

20 “(b) VICTIM ACCESS TO UNREDACTED RECORDS.—

21 “(1) RIGHT OF ACCESS.—Upon request by a
22 victim, the Attorney General of the United States
23 shall provide the victim with the full, unredacted
24 records, documents, communications, or investigative
25 materials described in section 2(a), including FD—

1 302 files, that identify, describe, reference, quote,
2 summarize, document, or otherwise relate to such
3 victim, the parents, siblings, or legal guardians of
4 such victim, or the harm suffered by the victim.

5 “(2) PROTECTIONS OF OTHER VICTIMS.—

6 “(A) IN GENERAL.—In complying with a
7 request of a victim under paragraph (1), the
8 Attorney General of the United States may re-
9 daact segregable portions of the records de-
10 scribed in paragraph (1) that contain personally
11 identifiable information of any other victim or
12 the personal and medical files and similar files
13 of any other victim the disclosure of which
14 would constitute a clearly unwarranted invasion
15 of personal privacy.

16 “(B) CLARIFICATION.—Nothing in para-
17 graph (1) shall be construed to entitle a re-
18 questing victim to obtain any record, or seg-
19 regable portion of a record, that relates to an-
20 other victim. A requesting victim shall be enti-
21 tled only to records, or portions of records, that
22 identify, describe, reference, quote, summarize,
23 document, or otherwise relate to the requesting
24 victim.

25 “(3) ACTION AUTHORIZED.—

1 “(A) IN GENERAL.—A victim alleging an
2 unlawful withholding, redaction, delay, removal,
3 concealment, failure to produce, failure to re-
4 spond, or failure to justify a withholding or re-
5 daction of a record required to be provided
6 under this subsection shall have standing to
7 bring an action against the Attorney General of
8 the United States in the United States District
9 Court for the District of Columbia or in any
10 United States district court located in the State
11 in which the victim resides to obtain declaratory
12 relief, injunctive relief, monetary relief, costs,
13 reasonable attorney’s fees, and any other appro-
14 priate equitable relief.

15 “(B) CONSIDERATION.—The court shall
16 advance on the docket and expedite the disposi-
17 tion of a civil action filed under this paragraph
18 to the greatest extent practicable.

19 “(c) PRODUCTION OF RECORDS REDACTED FROM
20 PUBLIC VIEW.—

21 “(1) PRODUCTION REQUIRED.—For the pur-
22 poses of any investigation or judicial proceeding con-
23 ducted or brought by the attorney general of a
24 State, a district attorney, or other authorized State
25 officer that requests access to information permitted

1 to be withheld or redacted under section 2(c)(1), the
2 Attorney General of the United States shall make
3 available for full, unredacted access to, and copies
4 of, any such record, document, communication, or
5 investigative material described in section 2(a).

6 “(2) POSSESSION AND USE.—An attorney gen-
7 eral of a State, district attorney, or other authorized
8 State officer receiving records under paragraph (1)
9 may possess, review, copy, retain, use, and disclose
10 such records as necessary for any investigation, en-
11 forcement action, prosecution, civil action, or other
12 judicial proceeding, subject to any protective order
13 entered by a court to protect the personally identifi-
14 able information of victims.

15 “(3) COURT FILINGS.—Records produced under
16 this subsection may be filed, submitted, quoted, de-
17 scribed, or otherwise used in any Federal or State
18 court proceeding, except that any portion of the
19 record containing information protected from public
20 disclosure under section 2(c)(1) shall be filed under
21 seal or otherwise protected pursuant to an appro-
22 priate protective order unless the court determines
23 that public disclosure—

24 “(A) is authorized by law; and

1 “(B) does not reveal to the public person-
2 ally identifiable information of any victim or the
3 personal and medical files and similar files of
4 any victim the disclosure of which would con-
5 stitute a clearly unwarranted invasion of per-
6 sonal privacy.

7 “(4) NO LIMITATION TO IN CAMERA REVIEW.—
8 Production under this subsection shall not be limited
9 to in camera review, and no protective order may
10 prohibit the requesting attorney general of a State,
11 district attorney, or other authorized State officer
12 from possessing or using the records as necessary
13 for an investigation or judicial proceeding consistent
14 with this subsection.

15 “(d) REVIEW AND USE OF CLASSIFIED MATE-
16 RIALS.—

17 “(1) IN GENERAL.—For purposes of any inves-
18 tigation or judicial proceeding conducted or brought
19 by the attorney general of a State, district attorney,
20 or other authorized State officer requesting access to
21 classified records described in section 2(a), the At-
22 torney General of the United States shall make
23 available to such attorney general of a State, district
24 attorney, or other authorized State officer for full,
25 unredacted review any such classified record.

1 “(2) ACCESS.—Access under paragraph (1)
2 shall be provided in a secure facility and under pro-
3 cedures approved by the court to protect information
4 that is properly classified pursuant to criteria estab-
5 lished by executive order, including review by the
6 court, the requesting attorney general of a State,
7 district attorney, or other authorized State officer,
8 and such counsel, as the court determines are nec-
9 essary and appropriate.

10 “(3) PROTECTIVE PROCEDURES.—The Attorney
11 General of the United States may not refuse, delay,
12 or object to access under paragraph (1) on the
13 grounds that the material is classified, but may re-
14 quest protective procedures governing the storage,
15 handling, review, use, and filing of classified por-
16 tions of the material.

17 “(4) USE OF CLASSIFIED PORTIONS.—Classi-
18 fied portions of records described in section 2(a)
19 may be submitted, described, quoted, or otherwise
20 used in any Federal or State court proceeding under
21 seal, in camera, and ex parte if necessary.

22 “(5) RULE OF CONSTRUCTION.—Nothing in
23 this subsection shall be construed to authorize the
24 public release of classified information except in ac-
25 cordance with section 2(c)(3).

1 “(e) CONGRESSIONAL ACCESS.—

2 “(1) COMPLIANCE.—

3 “(A) ACCESS.—Notwithstanding section
4 2(c) or any other provision of law, upon the
5 written request of any Member of Congress, the
6 Attorney General of the United States shall,
7 not later than 7 calendar days after receiving
8 the request, provide the Member of Congress
9 with full, unredacted access to any record de-
10 scribed in section 2(a).

11 “(B) RELEASE.—Upon receipt of written
12 notice from any Member of Congress alleging
13 that the Attorney General of the United States
14 has unlawfully withheld or redacted material
15 under this Act or otherwise violated any re-
16 quirement of this Act, the Attorney General of
17 the United States shall, not later than 30 cal-
18 endar days after receiving such notice, remedy
19 the alleged violation or provide the Member of
20 Congress with a written justification dem-
21 onstrating that the actions identified in the no-
22 tice were in compliance with this Act.

23 “(2) ACTION AUTHORIZED.—A Member of Con-
24 gress who has submitted a request under paragraph
25 (1)(A) or written notice under paragraph (1)(B)

1 and, after expiration of the applicable period under
2 paragraph (1), alleges that the Attorney General of
3 the United States failed to comply with such request
4 or notice, or any other provision of this Act, includ-
5 ing through an unlawful withholding, redaction,
6 delay, removal, concealment, failure to produce, fail-
7 ure to respond, or failure to provide the written jus-
8 tification required under paragraph (1)(B) or if the
9 provision of a written justification is materially false,
10 misleading, or otherwise fails to demonstrate compli-
11 ance with this Act, shall have a cause of action
12 against the Attorney General of the United States in
13 the United States District Court for the District of
14 Columbia or in any United States district court for
15 a judicial district that includes any portion of the
16 State, congressional district, territory, or district
17 represented by the Member of Congress for any vio-
18 lation of any provision of this Act.

19 “(3) RELIEF.—In an action brought under
20 paragraph (2), the court may—

21 “(A) declare that the Attorney General of
22 the United States has failed to comply with this
23 Act;

1 “(B) enjoin any continued withholding, re-
2 daction, delay, removal, concealment, or other
3 noncompliance;

4 “(C) declare that a written justification
5 provided under paragraph (1)(B) is materially
6 false, misleading, or otherwise fails to dem-
7 onstrate compliance with this Act;

8 “(D) compel compliance with this Act
9 through a writ of mandamus or any other ap-
10 propriate equitable remedy; and

11 “(E) award costs and reasonable attorney’s
12 fees.

13 “(f) PENALTIES.—

14 “(1) IN GENERAL.—Any officer or employee of
15 the Department of Justice, the Federal Bureau of
16 Investigation, or United States Attorneys’ offices, in-
17 cluding the Attorney General of the United States
18 and the Director of the Federal Bureau of Investiga-
19 tion, who conceals, removes, destroys, mutilates, fal-
20 sifies, withholds, misrepresents, or makes a materi-
21 ally false statement or certification concerning any
22 record, document, communication, investigative ma-
23 terial justification, report, summary, or publication
24 required under this Act shall be fined or imprisoned
25 under sections 1001, 1505, 1519, and 2071 of title

1 18, United States Code, as applicable, provided that
2 the relevant mens rea requirements under those
3 statutes shall be required to be met.

4 “(2) OBSTRUCTION OF PROCEEDINGS BEFORE
5 DEPARTMENTS, AGENCIES, AND COMMITTEES.—For
6 purposes of section 1505 of title 18, United States
7 Code, any congressional review, hearing, inquiry, re-
8 port, certification, or enforcement proceeding relat-
9 ing to compliance with this Act shall be deemed a
10 proceeding before a department, agency, or com-
11 mittee of Congress.

12 “(3) DESTRUCTION, ALTERATION, OR FAL-
13 SIFICATION OF RECORDS IN FEDERAL INVESTIGA-
14 TIONS AND BANKRUPTCY.—For purposes of section
15 1519 of title 18, United States Code, compliance
16 with this Act shall be deemed a matter within the
17 jurisdiction of a department or agency of the United
18 States.

19 “(g) DEFINITIONS.—In this section:

20 “(1) VICTIM.—

21 “(A) IN GENERAL.—The term ‘victim’
22 means any individual who was directly harmed
23 by any sexual abuse, trafficking, forced labor,
24 commercial sex act, abuse or exploitation of a
25 minor, or related criminal conduct involving

1 Jeffrey Epstein, Ghislaine Maxwell, or the
2 criminal network led by Epstein and Maxwell,
3 and who—

4 “(i) has been identified, designated,
5 recognized, or otherwise treated, including
6 by redacting the name or personally identi-
7 fiable information of the individual in a
8 record described in section 2, as a victim
9 of Jeffrey Epstein, Ghislaine Maxwell, or
10 the criminal network led by Epstein and
11 Maxwell by the Department of Justice, the
12 Federal Bureau of Investigation, a United
13 States Attorney’s office, or a Federal
14 court;

15 “(ii) is associated with an FD–302
16 file or other investigative record in the pos-
17 session of the Federal Bureau of Investiga-
18 tion or the Department of Justice relating
19 to Jeffrey Epstein, Ghislaine Maxwell, or
20 the criminal network led by Epstein and
21 Maxwell; or

22 “(iii) submits a sworn declaration or
23 affidavit making an allegation of such
24 harm involving Jeffrey Epstein, Ghislaine

1 Maxwell, or the criminal network led by
2 Epstein and Maxwell.

3 “(B) EXCLUSION.—The term ‘*victim*’ shall
4 not include any individual whose claim of being
5 a victim arises from such individual’s own par-
6 ticipation in, solicitation of, facilitation of, con-
7 cealment of, or benefit from the criminal con-
8 duct involving Jeffrey Epstein, Ghislaine Max-
9 well, or the criminal network led by Epstein
10 and Maxwell, unless such individual’s involve-
11 ment in that conduct originated from being
12 trafficked, sexually abused, or otherwise directly
13 harmed by sexual abuse, sex trafficking, forced
14 labor, or abuse or exploitation of a minor in-
15 volving Jeffrey Epstein, Ghislaine Maxwell, or
16 the criminal network led by Epstein and Max-
17 well.

18 “(2) CRIMINAL NETWORK.—The term ‘criminal
19 network’ means any individual or entity that know-
20 ingly participated in, assisted, facilitated, funded,
21 concealed, profited from, obstructed investigation of,
22 or otherwise enabled any sexual abuse, sex traf-
23 ficking, forced labor, commercial sex act, abuse of a
24 minor, financial exploitation, money laundering,
25 bribery, extortion, racketeering activity, or other re-

1 lated criminal conduct involving Jeffrey Epstein or
2 Ghislaine Maxwell.”.

3 (b) PROHIBITED WITHHOLDINGS FURTHER CLARI-
4 FIED.—Section 2(b) of the Epstein Files Transparency
5 Act (Public Law 119–38; 139 Stat. 657) is amended by
6 adding after paragraph (1) the following new paragraph:

7 “(2) The Attorney General of the United States
8 may not invoke any common law privilege, including
9 the deliberative process privilege, attorney-client
10 privilege, attorney work-product privilege, or law en-
11 forcement privilege, to withhold, delay, or redact any
12 record, document, communication, or investigative
13 material described in subsection (a), except as ex-
14 pressly permitted under subsection (c).”.

15 (c) PERMITTED WITHHOLDINGS.—Section 2(c) of
16 the Epstein Files Transparency Act (Public Law 119–38;
17 139 Stat. 657) is amended—

18 (1) in paragraph (1)—

19 (A) in subparagraph (C), by striking the
20 semicolon at the end and inserting “; or”;

21 (B) in subparagraph (D), by striking “;
22 or” and inserting a period; and

23 (C) by striking subparagraph (E); and

24 (2) in paragraph (2), by striking “All
25 redactions” and inserting “Each redaction”.