

117TH CONGRESS
1ST SESSION

S.

To amend title 18, United States Code, to protect pain-capable unborn children, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. GRHAM (for himself, Mr. BARRASSO, Mrs. BLICKBURN, Mr. BLUNT, Mr. BOOZMANN, Mr. BRUN, Mr. CORNYN, Mr. COTTON, Mr. CROMER, Mr. CROPO, Mr. CRUZ, Mr. DINES, Ms. ERNST, Mrs. FISCHER, Mr. GRASSLEY, Mr. HERTY, Mr. HUBLEY, Mr. HOEVEN, Mrs. HYDE-SMITH, Mr. INHOFE, Mr. JOHNSON, Mr. KENNEDY, Mr. LANKFORD, Ms. LUMMIS, Mr. MURSHALL, Mr. McCONNELL, Mr. MORAN, Mr. PUL, Mr. PORTMAN, Mr. RISCH, Mr. ROMNEY, Mr. ROUNDS, Mr. RUBIO, Mr. SASSIE, Mr. SCOTT of Florida, Mr. SCOTT of South Carolina, Mr. SHELBY, Mr. SULLIVAN, Mr. THUNE, Mr. TILLIS, Mr. TOOMEY, Mr. TUBERVILLE, Mr. WICKER, and Mr. YOUNG) introduced the following bill; which was read twice and referred to the Committee on

BILL

To amend title 18, United States Code, to protect pain-capable unborn children, and for other purposes.

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 “Pain-Capable Unborn
5 Child Protection Act”.

1 **SEC. 2. LEGISLATIVE FINDINGS.**

2 Congress finds and declares the following:

3 (1) Pain receptors (nociceptors) are present
4 throughout the unborn child's entire body and
5 nerves link these receptors to the brain's thalamus
6 and subcortical plate by no later than 20 weeks after
7 fertilization.

8 (2) By 8 weeks after fertilization, the unborn
child reacts to touch. After 20 weeks, the unborn
10 child reacts to stimuli that would be recognized as
11 painful if applied to an adult human, for example,
12 by recoiling.

13 (3) In the unborn child, application of such
14 painful stimuli is associated with significant in-
15 creases in stress hormones known as the stress re-
16 sponse.

17 (4) Subjection to such painful stimuli is associ-
18 ated with long-term harmful neurodevelopmental ef-
fects, such as altered pain sensitivity and, possibly,
20 emotional, behavioral, and learning disabilities later
21 in life.

22 (5) For the purposes of surgery on unborn chil-
23 dren, fetal anesthesia is routinely administered and
24 is associated with a decrease in stress hormones
25 compared to their level when painful stimuli are ap-
26 plied without such anesthesia. In the United States,

1 surgery of this type is being performed by 20 weeks
2 after fertilization and earlier in specialized units af-
3 filiated with children's hospitals.

4 (6) The position, asserted by some physicians,
5 that the unborn child is incapable of experiencing
6 pain until a point later in pregnancy than 20 weeks
7 after fertilization predominately rests on the as-
8 sumption that the ability to experience pain depends
on the cerebral cortex and requires nerve connec-
10 tions between the thalamus and the cortex. However,
11 recent medical research and analysis, especially since
12 2007, provides strong evidence for the conclusion
13 that a functioning cortex is not necessary to experi-
14 ence pain.

15 (7) Substantial evidence indicates that children
16 born missing the bulk of the cerebral cortex, those
17 with hydranencephaly, nevertheless experience pain.

18 (8) In adult humans and in animals, stimula-
1 tion or ablation of the cerebral cortex does not alter
20 pain perception, while stimulation or ablation of the
21 thalamus does.

22 (9) Substantial evidence indicates that struc-
23 tures used for pain processing in early development
24 differ from those of adults, using different neural
25 elements available at specific times during develop-

1 ment, such as the subcortical plate, to fulfill the role
2 of pain processing.

3 (10) The position, asserted by some commenta-
4 tors, that the unborn child remains in a coma-like
5 sleep state that precludes the unborn child experi-
6 encing pain is inconsistent with the documented re-
7 action of unborn children to painful stimuli and with
8 the experience of fetal surgeons who have found it
9 necessary to sedate the unborn child with anesthesia
10 to prevent the unborn child from engaging in vig-
11 orous movement in reaction to invasive surgery.

12 (11) Consequently, there is substantial medical
13 evidence that an unborn child is capable of experi-
14 encing pain at least by 20 weeks after fertilization,
15 if not earlier.

16 (12) It is the purpose of the Congress to assert
17 a compelling governmental interest in protecting the
18 lives of unborn children from the stage at which sub-
19 stantial medical evidence indicates that they are ca-
20 pable of feeling pain.

21 (13) The compelling governmental interest in
22 protecting the lives of unborn children from the
23 stage at which substantial medical evidence indicates
24 that they are capable of feeling pain is intended to
25 be separate from and independent of the compelling

1 governmental interest in protecting the lives of un-
2 born children from the stage of viability, and neither
3 governmental interest is intended to replace the
4 other.

5 **SEC. 3. PAIN-CAPABLE UNBORN CHILD PROTECTION.**

6 (a) IN GENERAL.—Chapter 74 of title 18, United
7 States Code, is amended by inserting after section 1531
8 the following:

“§ 1532. Pain-capable unborn child protection

10 “(a) UNLAWFUL CONDUCT.—Notwithstanding any
11 other provision of law, it shall be unlawful for any person
12 to perform an abortion or attempt to do so, unless in con-
13 formity with the requirements set forth in subsection (b).

14 “(b) REQUIREMENTS FOR ABORTIONS.—

15 “(1) ASSESSMENT OF THE AGE OF THE UN-
16 BORN CHILD.—The physician performing or at-
17 tempting the abortion shall first make a determina-
18 tion of the probable post-fertilization age of the un-
19 born child or reasonably rely upon such a determina-
20 tion made by another physician. In making such a
21 determination, the physician shall make such inquir-
22 ies of the pregnant woman and perform or cause to
23 be performed such medical examinations and tests
24 as a reasonably prudent physician, knowledgeable
25 about the case and the medical conditions involved,