

117TH CONGRESS  
1ST SESSION

# S. 446

To amend title 18, United States Code, to criminalize any abortion or sterilization procedure performed without the informed consent of the person on whom such procedure is performed, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 2021

Ms. ERNST (for herself, Mr. TILLIS, Mr. CRAMER, Mrs. HYDE-SMITH, and Mr. MARSHALL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to criminalize any abortion or sterilization procedure performed without the informed consent of the person on whom such procedure is performed, 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 “Informed Consent  
5 Act”.

1 **SEC. 2. ABORTION AND STERILIZATION.**

2 (a) IN GENERAL.—Chapter 7 of title 18, United  
3 States Code, is amended by adding at the end the fol-  
4 lowing:

5 **“§ 120. Abortion and sterilization without informed**  
6 **consent**

7 “(a) OFFENSE.—Whoever, under the circumstances  
8 described in subsection (b), knowingly performs an abor-  
9 tion or a sterilization procedure on a person without the  
10 informed consent of such person shall be fined under this  
11 title, imprisoned not more than 10 years, or both.

12 “(b) CIRCUMSTANCES DESCRIBED.—For purposes of  
13 subsection (a), the circumstances described in this sub-  
14 section are that—

15 “(1) the defendant is an officer, employee, or  
16 contractor of the Federal Government;

17 “(2) the defendant is a recipient of Federal  
18 funds from the Secretary of Health and Human  
19 Services or a program administered by the Secretary  
20 of Health and Human Services; or

21 “(3) the conduct described in subsection (a) oc-  
22 curred in or affected interstate commerce.

23 “(c) EXCEPTIONS.—

24 “(1) IN GENERAL.—Subsection (a) does not  
25 apply—

1           “(A) in the case that a woman suffers  
2           from a physical disorder, physical injury, or  
3           physical illness that would, as certified by a  
4           physician, place the woman in danger of death  
5           unless an abortion is performed, including a  
6           life-endangering physical condition caused by or  
7           arising from the pregnancy itself and not in-  
8           cluding psychological or emotional conditions;  
9           or

10           “(B) if, in reasonable medical judgement,  
11           a sterilization procedure is necessary to—

12                   “(i) save the life of an individual  
13                   whose life is endangered by a physical dis-  
14                   order, physical illness, or physical injury,  
15                   including a life-endangering physical condi-  
16                   tion caused by or arising from the repro-  
17                   ductive organs of the individual and not in-  
18                   cluding psychological or emotional condi-  
19                   tions; or

20                   “(ii) prevent serious risk of substan-  
21                   tial and irreversible impairment of a major  
22                   bodily function created by a delay.

23           “(2) WITHHOLDING OF CONSENT.—Paragraph  
24           (1) shall not apply if the individual on whom an  
25           abortion or sterilization procedure is performed has

1 explicitly refused to consent to the abortion or steri-  
2 lization procedure.

3 “(d) CONDUCT OF INDIVIDUALS WITH KNOWLEDGE  
4 OF VIOLATIONS.—Whoever, being an officer, employee, or  
5 contractor of the Federal Government or an employee or  
6 contractor of a recipient of Federal funds from the Sec-  
7 retary of Health and Human Services or a program ad-  
8 ministered by the Secretary of Health and Human Serv-  
9 ices, has knowledge of a failure to comply with subsection  
10 (a) and does not, as soon as possible, make known the  
11 same to a Federal or State law enforcement agency, shall  
12 be fined under this title or imprisoned not more than three  
13 years, or both.

14 “(e) DEFINITIONS.—

15 “(1) ABORTION.—The term ‘abortion’ means  
16 the use or prescription of any instrument, medicine,  
17 drug, or any other substance or device—

18 “(A) to intentionally kill the unborn child  
19 of a woman known to be pregnant; or

20 “(B) to intentionally terminate the preg-  
21 nancy of a woman known to be pregnant, with  
22 an intention other than—

23 “(i) after viability to produce a live  
24 birth and preserve the life and health of  
25 the child born alive; or

1 “(ii) to remove a dead unborn child.

2 “(2) REASONABLE MEDICAL JUDGMENT.—The  
3 term ‘reasonable medical judgment’ means a medical  
4 judgment that would be made by a reasonably pru-  
5 dent physician, knowledgeable about the case and  
6 the treatment possibilities with respect to the med-  
7 ical conditions involved.

8 “(3) STERILIZATION PROCEDURE.—The term  
9 ‘sterilization procedure’ means any medical proce-  
10 dure, treatment, or operation for the purpose of ren-  
11 dering an individual permanently incapable of repro-  
12 ducing.”.

13 (b) CLERICAL AMENDMENT.—The table of sections  
14 for chapter 7 of title 18, United States Code, is amended  
15 by adding at the end the following:

“120. Abortion and sterilization without informed consent.”.

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