

117TH CONGRESS
2D SESSION

S. 4840

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 13, 2022

Mr. GRAHAM (for himself, Mr. DAINES, and Mr. RUBIO) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A 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 “Protecting Pain-Capa-
5 ble Unborn Children from Late-Term Abortions Act”.

6 **SEC. 2. LEGISLATIVE FINDINGS AND DECLARATION OF**
7 **CONSTITUTIONAL AUTHORITY FOR ENACT-**
8 **MENT.**

9 Congress finds and declares the following:

1 (1) Medical and other authorities now know
2 more about human prenatal development than ever
3 before, including that—

4 (A) an unborn child first moves about in
5 the womb and first reacts to touch at approxi-
6 mately 8 weeks gestation;

7 (B) the eyes begin to form at 5 weeks ges-
8 tation and finish forming by 10 weeks gesta-
9 tion;

10 (C) eye movements can be detected by
11 ultrasound at 12 weeks gestation;

12 (D) by 8 to 9 weeks gestation, an unborn
13 child has detectable brain waves;

14 (E) at 9 weeks gestation—

15 (i) an unborn child's diaphragm is de-
16 veloping, and he or she may even hiccup;
17 and

18 (ii) an unborn child is beginning to
19 move about freely in the womb;

20 (F) by 9 to 11 weeks gestation, teeth as
21 well as external genitalia begin to form;

22 (G) by 10 weeks gestation—

23 (i) all of an unborn child's organ rudi-
24 ments are formed and in place;

1 (ii) the digestive system and kidneys
2 start to function; and

3 (iii) an unborn child will show a pref-
4 erence for either right-handedness or left-
5 handedness; and

6 (H) at 12 weeks gestation—

7 (i) an unborn child can open and close
8 his or her fingers, starts to make sucking
9 motions, and senses stimulation from the
10 world outside the womb; and

11 (ii) fingernails and fingerprints begin
12 to form.

13 (2) The Supreme Court of the United States
14 has acknowledged that, by at least 12 weeks gesta-
15 tion, an unborn child has taken on “the human
16 form” in all relevant aspects. *Gonzales v. Carhart*,
17 550 U.S. 124, 160 (2007).

18 (3) Pain receptors (also known as
19 “nociceptors”) begin forming at 7 weeks gestational
20 age. Nerves linking these pain receptors to the
21 brain’s thalamus and subcortical plate form between
22 12 and 20 weeks gestational age. At no later than
23 16 weeks gestational age, the first contact occurs be-
24 tween the subcortical plate and these forming fibers.

1 (4) In considering the use of anesthesia for
2 invasive medical procedures performed on the fetus,
3 doctors have concluded, based on the evidence, that
4 from as early as 12 weeks gestational age, and cer-
5 tainly by 15 weeks gestational age, the fetus is ex-
6 tremely sensitive to painful stimuli, making it nec-
7 essary to apply adequate analgesia and anesthesia to
8 prevent fetal suffering.

9 (5) Substantial evidence indicates that neural
10 elements, such as the thalamus and subcortical
11 plate, which develop at specific times during the
12 early development of an unborn child, serve as pain-
13 processing structures, and are different from the
14 neural elements used for pain processing by adults.
15 Recent evidence, particularly since 2016, dem-
16 onstrates that structures responsible for pain show
17 signs of sufficient maturation beginning at 15 weeks
18 of gestation.

19 (6) In an unborn child, application of painful
20 stimuli is associated with significant increases in
21 stress hormones known as the stress response.

22 (7) Subjection to painful stimuli is associated
23 with long-term harmful neurodevelopmental effects,
24 such as altered pain sensitivity and, possibly, emo-

1 tional, behavioral, and learning disabilities later in
2 life.

3 (8) For the purposes of surgery on unborn chil-
4 dren, fetal anesthesia is routinely administered and
5 is associated with a decrease in stress hormones
6 compared to their level when painful stimuli are ap-
7 plied without such anesthesia.

8 (9) The assertion by some medical experts that
9 an unborn child is incapable of experiencing pain
10 until a point in pregnancy later than 24 weeks ges-
11 tational age predominately rests on the assumption
12 that the ability to experience pain depends on the
13 cerebral cortex and requires nerve connections be-
14 tween the thalamus and the cortex. However, recent
15 medical research and analysis, especially since 2007,
16 provide strong evidence for the conclusion that a
17 functioning cortex is not necessary to experience
18 pain.

19 (10) Substantial evidence indicates that chil-
20 dren born missing the bulk of the cerebral cortex,
21 such as those with hydranencephaly, nevertheless ex-
22 perience pain.

23 (11) In adult humans and in animals, stimula-
24 tion or ablation of the cerebral cortex does not alter

1 pain perception, while stimulation or ablation of the
2 thalamus does.

3 (12) The assertion of some medical experts that
4 an unborn child remains in a coma-like sleep state
5 that precludes an unborn child from experiencing
6 pain is inconsistent with the documented reaction of
7 unborn children to painful stimuli and with the expe-
8 rience of fetal surgeons who have found it necessary
9 to sedate an unborn child with anesthesia and pro-
10 vide analgesia to prevent an unborn child from en-
11 gaging in vigorous movement in reaction to invasive
12 surgery.

13 (13) Consequently, there is substantial medical
14 evidence that an unborn child is capable of experi-
15 encing pain at least by 15 weeks gestational age, if
16 not earlier.

17 (14) Abortion carries significant physical and
18 psychological risks to the pregnant woman, and
19 these physical and psychological risks increase with
20 gestational age.

21 (15) The majority of abortion procedures per-
22 formed after 15 weeks gestation are dismemberment
23 abortion procedures which involve the use of surgical
24 instruments to crush and tear an unborn child apart

1 before removing the pieces of the dead child from
2 the womb.

3 (16) Medical complications from dismember-
4 ment abortions include pelvic infection, incomplete
5 abortions (retained tissue), blood clots, heavy bleed-
6 ing or hemorrhage, laceration, tear, or other injury
7 to the cervix, puncture, laceration, tear, or other in-
8 jury to the uterus, injury to the bowel or bladder,
9 depression, anxiety, substance abuse, and other emo-
10 tional or psychological problems. Further, in abor-
11 tions performed after 15 weeks gestation, there is a
12 higher risk of requiring a hysterectomy, other repar-
13 ative surgery, or a blood transfusion.

14 (17) In subparagraphs (J) and (K) of section
15 2(14) of the Partial-Birth Abortion Ban Act of 2003
16 (Public Law 108–105; 117 Stat. 1201), Congress
17 found and declared that late-term abortion, such as
18 a dismemberment abortion, “confuses the medical,
19 legal, and ethical duties of physicians to preserve
20 and promote life, as the physician acts directly
21 against the physical life of a child” and “undermines
22 the public’s perception of the appropriate role of a
23 physician”.

24 (18) “The [Supreme] Court has given state and
25 federal legislatures wide discretion to pass legislation

1 in areas where there is medical and scientific uncer-
2 tainty.” *Gonzales v. Carhart*, 550 U.S. at 163. “The
3 law need not give abortion doctors unfettered choice
4 in the course of their medical practice, nor should it
5 elevate their status above other physicians in the
6 medical community.” *Gonzales v. Carhart*, 550 U.S.
7 at 163. “Medical uncertainty does not foreclose the
8 exercise of legislative power in the abortion context
9 any more than it does in other contexts.” *Gonzales*
10 *v. Carhart*, 550 U.S. at 164.

11 (19) The Supreme Court has held that “[i]t is
12 time to heed the Constitution and return the issue
13 of abortion to the people’s elected representatives.”
14 *Dobbs v. Jackson Women’s Health Organization*,
15 142 S. Ct. 2228, 2243 (2022).

16 (20) The Supreme Court has also held that
17 “[a] law regulating abortion, like other health and
18 welfare laws, is entitled to a ‘strong presumption of
19 validity.’ . . . It must be sustained if there is a ra-
20 tional basis on which the legislature could have
21 thought that it would serve legitimate state inter-
22 ests. . . . These legitimate interests include respect
23 for and preservation of prenatal life at all stages of
24 development . . . ; the protection of maternal health
25 and safety; the elimination of particularly gruesome

1 or barbaric medical procedures; the preservation of
2 the integrity of the medical profession; the mitiga-
3 tion of fetal pain; and the prevention of discrimina-
4 tion on the basis of race, sex, or disability.” *Dobbs*
5 *v. Jackson Women’s Health Organization*, 142 S.
6 Ct. at 2239.

7 (21) It is the purpose of Congress to assert a
8 legitimate governmental interest in protecting the
9 lives of unborn children from the stage at which sub-
10 stantial medical evidence indicates that they are ca-
11 pable of feeling pain.

12 (22) Congress has authority to extend protec-
13 tion to pain-capable unborn children under—

14 (A) the Commerce Clause of section 8 of
15 article I of the Constitution of the United
16 States, as interpreted by the Supreme Court;
17 and

18 (B) the Equal Protection and Due Process
19 Clauses of section 1, and the Enforcement
20 Clause of section 5, of the 14th Amendment to
21 the Constitution.

1 **SEC. 3. FEDERAL MINIMUM PROTECTIONS FOR PAIN-CAPA-**
 2 **BLE UNBORN CHILDREN.**

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

6 **“§ 1532. Federal minimum protections for pain-cap-**
 7 **able unborn children**

8 “(a) UNLAWFUL CONDUCT.—Subject to subsection
 9 (g) and notwithstanding any other provision of law, it shall
 10 be unlawful for any person to perform an abortion or at-
 11 tempt to do so, unless in conformity with the requirements
 12 set forth in subsection (b).

13 “(b) MINIMUM REQUIREMENTS FOR ABORTIONS.—

14 “(1) ASSESSMENT OF THE AGE OF THE UN-
 15 BORN CHILD.—The physician performing or at-
 16 tempting the abortion shall first make a determina-
 17 tion of the probable gestational age of the unborn
 18 child or reasonably rely upon such a determination
 19 made by another physician. In making such a deter-
 20 mination, the physician shall make such inquiries of
 21 the pregnant woman and perform or cause to be per-
 22 formed such medical examinations and tests as a
 23 reasonably prudent physician, knowledgeable about
 24 the case and the medical conditions involved, would
 25 consider necessary to make an accurate determina-
 26 tion of gestational age.

1 “(2) PROHIBITION ON PERFORMANCE OF CER-
2 TAIN ABORTIONS.—

3 “(A) GENERALLY FOR UNBORN CHILDREN
4 15 WEEKS OR OLDER.—Except as provided in
5 subparagraph (B), the abortion shall not be
6 performed or attempted, if the probable gesta-
7 tional age, as determined under paragraph (1),
8 of the unborn child is 15 weeks or greater.

9 “(B) EXCEPTIONS.—Subparagraph (A)
10 does not apply if—

11 “(i) in reasonable medical judgment,
12 the abortion is necessary to save the life of
13 a pregnant woman whose life is endan-
14 gered by a physical disorder, physical ill-
15 ness, or physical injury, including a life-en-
16 dangering physical condition caused by or
17 arising from the pregnancy itself, but not
18 including psychological or emotional condi-
19 tions;

20 “(ii) the pregnancy is the result of
21 rape against an adult woman, and at least
22 48 hours prior to the abortion—

23 “(I) she has obtained counseling
24 for the rape; or

1 “(II) she has obtained medical
2 treatment for the rape or an injury
3 related to the rape; or

4 “(iii) the pregnancy is a result of rape
5 against a minor or incest against a minor,
6 and the rape or incest has been reported at
7 any time prior to the abortion to either—

8 “(I) a government agency legally
9 authorized to act on reports of child
10 abuse; or

11 “(II) a law enforcement agency.

12 “(C) REQUIREMENT AS TO MANNER OF
13 PROCEDURE PERFORMED.—Notwithstanding
14 the definitions of ‘abortion’ and ‘attempt’ in
15 this section, a physician terminating or at-
16 tempting to terminate a pregnancy under an ex-
17 ception provided by subparagraph (B) may do
18 so only in the manner which, in reasonable
19 medical judgment, provides the best opportunity
20 for the unborn child to survive.

21 “(D) REQUIREMENT THAT A PHYSICIAN
22 TRAINED IN NEONATAL RESUSCITATION BE
23 PRESENT.—If, in reasonable medical judgment,
24 the pain-capable unborn child has the potential
25 to survive outside the womb, the physician who

1 performs or attempts an abortion under an ex-
2 ception provided by subparagraph (B) shall en-
3 sure a second physician trained in neonatal re-
4 suscitation is present and prepared to provide
5 care to the child consistent with the require-
6 ments of subparagraph (E).

7 “(E) CHILDREN BORN ALIVE AFTER AT-
8 TEMPTED ABORTIONS.—When a physician per-
9 forms or attempts an abortion in accordance
10 with this section, and the child is born alive, as
11 defined in section 8 of title 1 (commonly known
12 as the ‘Born-Alive Infants Protection Act of
13 2002’), the following shall apply:

14 “(i) DEGREE OF CARE REQUIRED.—
15 Any health care practitioner present at the
16 time shall humanely exercise the same de-
17 gree of professional skill, care, and dili-
18 gence to preserve the life and health of the
19 child as a reasonably diligent and conscien-
20 tious health care practitioner would render
21 to a child born alive at the same gesta-
22 tional age in the course of a natural birth.

23 “(ii) IMMEDIATE ADMISSION TO A
24 HOSPITAL.—Following the care required to
25 be rendered under clause (i), the child born

1 alive shall be immediately transported and
2 admitted to a hospital.

3 “(iii) MANDATORY REPORTING OF
4 VIOLATIONS.—A health care practitioner or
5 any employee of a hospital, a physician’s
6 office, or an abortion clinic who has knowl-
7 edge of a failure to comply with the re-
8 quirements of this subparagraph must im-
9 mediately report the failure to an appro-
10 priate State or Federal law enforcement
11 agency or both.

12 “(F) DOCUMENTATION REQUIREMENTS.—

13 “(i) DOCUMENTATION PERTAINING TO
14 ADULTS.—A physician who performs or at-
15 tempts to perform an abortion under an
16 exception provided by subparagraph (B)(ii)
17 shall, prior to the abortion, place in the pa-
18 tient medical file documentation from a
19 hospital licensed by the State or operated
20 under authority of a Federal agency, a
21 medical clinic licensed by the State or op-
22 erated under authority of a Federal agen-
23 cy, from a personal physician licensed by
24 the State, a counselor licensed by the
25 State, or a victim’s rights advocate pro-

1 vided by a law enforcement agency that the
2 adult woman seeking the abortion obtained
3 medical treatment or counseling for the
4 rape or an injury related to the rape.

5 “(ii) DOCUMENTATION PERTAINING
6 TO MINORS.—A physician who performs or
7 attempts to perform an abortion under an
8 exception provided by subparagraph
9 (B)(iii) shall, prior to the abortion, place in
10 the patient medical file—

11 “(I) documentation from a gov-
12 ernment agency legally authorized to
13 act on reports of child abuse that the
14 rape or incest was reported prior to
15 the abortion; or

16 “(II) as an alternative, docu-
17 mentation from a law enforcement
18 agency that the rape or incest was re-
19 ported prior to the abortion.

20 “(G) INFORMED CONSENT.—

21 “(i) CONSENT FORM REQUIRED.—The
22 physician who intends to perform or at-
23 tempt to perform an abortion under the
24 provisions of subparagraph (B) may not
25 perform any part of the abortion procedure

1 without first obtaining a signed Informed
2 Consent Authorization form in accordance
3 with this subparagraph.

4 “(ii) CONTENT OF CONSENT FORM.—

5 The Informed Consent Authorization form
6 shall be presented in person by the physi-
7 cian and shall consist of—

8 “(I) a statement by the physician
9 indicating the probable gestational age
10 of the pain-capable unborn child;

11 “(II) a statement that Federal
12 law allows abortion after 15 weeks
13 probable gestational age only if—

14 “(aa) the mother’s life is en-
15 dangered by a physical disorder,
16 physical illness, or physical in-
17 jury; or

18 “(bb) the pregnancy was the
19 result of—

20 “(AA) rape; or

21 “(BB) an act of incest
22 against a minor;

23 “(III) a statement that the preg-
24 nancy must be terminated by the
25 method most likely to allow the child

1 to be born alive unless this would
2 cause significant risk to the mother;

3 “(IV) a statement that in any
4 case in which an abortion procedure
5 results in a child born alive, Federal
6 law requires that child to be given
7 every form of medical assistance that
8 is provided to children spontaneously
9 born prematurely, including transpor-
10 tation and admittance to a hospital;

11 “(V) a statement that these re-
12 quirements are binding upon the phy-
13 sician and all other medical personnel
14 who are subject to criminal and civil
15 penalties and that a woman on whom
16 an abortion has been performed may
17 take civil action if these requirements
18 are not followed; and

19 “(VI) affirmation that each sign-
20 er has filled out the informed consent
21 form to the best of their knowledge
22 and understands the information con-
23 tained in the form.

24 “(iii) SIGNATORIES REQUIRED.—The
25 Informed Consent Authorization form shall

1 be signed in person by the woman seeking
2 the abortion, the physician performing or
3 attempting to perform the abortion, and a
4 witness.

5 “(iv) RETENTION OF CONSENT
6 FORM.—The physician performing or at-
7 tempting to perform an abortion must re-
8 tain the signed informed consent form in
9 the patient’s medical file.

10 “(H) REQUIREMENT FOR DATA RETEN-
11 TION.—Paragraph (j)(2) of section 164.530 of
12 title 45, Code of Federal Regulations, shall
13 apply to documentation required to be placed in
14 a patient’s medical file pursuant to subpara-
15 graph (F) of subsection (b)(2) and a consent
16 form required to be retained in a patient’s med-
17 ical file pursuant to subparagraph (G) of such
18 subsection in the same manner and to the same
19 extent as such paragraph applies to documenta-
20 tion required by paragraph (j)(1) of such sec-
21 tion.

22 “(I) ADDITIONAL EXCEPTIONS AND RE-
23 QUIREMENTS.—

24 “(i) IN CASES OF RISK OF DEATH OR
25 MAJOR INJURY TO THE MOTHER.—Sub-

1 paragraphs (C), (D), and (G) shall not
2 apply if, in reasonable medical judgment,
3 compliance with such paragraphs would
4 pose a greater risk of—

5 “(I) the death of the pregnant
6 woman; or

7 “(II) the substantial and irre-
8 versible physical impairment of a
9 major bodily function, not including
10 psychological or emotional conditions,
11 of the pregnant woman.

12 “(ii) EXCLUSION OF CERTAIN FACILI-
13 TIES.—Notwithstanding the definitions of
14 the terms ‘medical treatment’ and ‘coun-
15 seling’ in subsection (g), the counseling or
16 medical treatment described in subpara-
17 graph (B)(ii) may not be provided by a fa-
18 cility that performs abortions (unless that
19 facility is a hospital).

20 “(iii) RULE OF CONSTRUCTION IN
21 CASES OF REPORTS TO LAW ENFORCE-
22 MENT.—The requirements of subparagraph
23 (B)(ii) do not apply if the rape has been
24 reported at any time prior to the abortion
25 to a law enforcement agency or Depart-

1 ment of Defense victim assistance per-
2 sonnel.

3 “(c) CRIMINAL PENALTY.—Whoever violates sub-
4 section (a) shall be fined under this title or imprisoned
5 for not more than 5 years, or both.

6 “(d) BAR TO PROSECUTION.—A woman upon whom
7 an abortion in violation of subsection (a) is performed or
8 attempted may not be prosecuted under, or for a con-
9 spiracy to violate, subsection (a), or for an offense under
10 section 2, 3, or 4 of this title based on such a violation.

11 “(e) CIVIL REMEDIES.—

12 “(1) CIVIL ACTION BY A WOMAN ON WHOM AN
13 ABORTION IS PERFORMED.—A woman upon whom
14 an abortion has been performed or attempted in vio-
15 lation of any provision of this section may, in a civil
16 action against any person who committed the viola-
17 tion, obtain appropriate relief.

18 “(2) CIVIL ACTION BY A PARENT OF A MINOR
19 ON WHOM AN ABORTION IS PERFORMED.—A parent
20 of a minor upon whom an abortion has been per-
21 formed or attempted under an exception provided for
22 in subsection (b)(2)(B), and that was performed in
23 violation of any provision of this section may, in a
24 civil action against any person who committed the

1 violation obtain appropriate relief, unless the preg-
2 nancy resulted from the plaintiff's criminal conduct.

3 “(3) APPROPRIATE RELIEF.—Appropriate relief
4 in a civil action under this subsection includes—

5 “(A) objectively verifiable money damages
6 for all injuries, psychological and physical, occa-
7 sioned by the violation;

8 “(B) statutory damages equal to 3 times
9 the cost of the abortion; and

10 “(C) punitive damages.

11 “(4) ATTORNEYS FEES FOR PLAINTIFF.—The
12 court shall award a reasonable attorney's fee as part
13 of the costs to a prevailing plaintiff in a civil action
14 under this subsection.

15 “(5) ATTORNEYS FEES FOR DEFENDANT.—If a
16 defendant in a civil action under this subsection pre-
17 vails and the court finds that the plaintiff's suit was
18 frivolous, the court shall award a reasonable attor-
19 ney's fee in favor of the defendant against the plain-
20 tiff.

21 “(6) AWARDS AGAINST WOMAN.—Except as
22 provided in paragraph (5), in a civil action under
23 this subsection, no damages, attorney's fee or other
24 monetary relief may be assessed against the woman

1 upon whom the abortion was performed or at-
2 tempted.

3 “(f) DATA COLLECTION.—

4 “(1) DATA SUBMISSIONS.—Any physician who
5 performs or attempts an abortion described in sub-
6 section (b)(2)(B) shall annually submit a summary
7 of all such abortions to the National Center for
8 Health Statistics (in this subsection referred to as
9 the ‘Center’) not later than 60 days after the end of
10 the calendar year in which the abortion was per-
11 formed or attempted.

12 “(2) CONTENTS OF SUMMARY.—The summary
13 shall include the number of abortions performed or
14 attempted on an unborn child who had a gestational
15 age of 15 weeks or more and specify the following
16 for each abortion under subsection (b)(2)(B):

17 “(A) The probable gestational age of the
18 unborn child.

19 “(B) The method used to carry out the
20 abortion.

21 “(C) The location where the abortion was
22 conducted.

23 “(D) The exception under subsection
24 (b)(2)(B) under which the abortion was con-
25 ducted.

1 “(E) Any incident of live birth resulting
2 from the abortion.

3 “(3) EXCLUSIONS FROM DATA SUBMISSIONS.—
4 A summary required under this subsection shall not
5 contain any information identifying the woman
6 whose pregnancy was terminated and shall be sub-
7 mitted consistent with the Health Insurance Port-
8 ability and Accountability Act of 1996 (42 U.S.C.
9 1320d–2 note).

10 “(4) PUBLIC REPORT.—The Center shall annu-
11 ally issue a public report providing statistics by
12 State for the previous year compiled from all of the
13 summaries made to the Center under this sub-
14 section. The Center shall take care to ensure that
15 none of the information included in the public re-
16 ports could reasonably lead to the identification of
17 any pregnant woman upon whom an abortion was
18 performed or attempted. The annual report shall be
19 issued by July 1 of the calendar year following the
20 year in which the abortions were performed or at-
21 tempted.

22 “(g) RULES OF CONSTRUCTION.—

23 “(1) GREATER PROTECTION.—Nothing in this
24 section may be construed to preempt or limit any
25 Federal, State, or local law that provides greater

1 protections for an unborn child than those provided
2 in this section.

3 “(2) CREATING OR RECOGNIZING RIGHT.—

4 Nothing in this section shall be construed to—

5 “(A) create or recognize a right to abor-
6 tion; or

7 “(B) make lawful an abortion that is un-
8 lawful on the date of enactment of this section.

9 “(h) DEFINITIONS.—In this section the following
10 definitions apply:

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

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

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

19 “(i) after viability, to produce a live
20 birth and preserve the life and health of
21 the child born alive; or

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

23 “(2) ATTEMPT.—The term ‘attempt’, with re-
24 spect to an abortion, means conduct that, under the
25 circumstances as the actor believes them to be, con-

1 stitutes a substantial step in a course of conduct
2 planned to culminate in performing an abortion.

3 “(3) COUNSELING.—The term ‘counseling’
4 means counseling provided by a counselor licensed
5 by the State, or a victims rights advocate provided
6 by a law enforcement agency.

7 “(4) FACILITY.—The term ‘facility’ means any
8 medical or counseling group, center or clinic and in-
9 cludes the entire legal entity, including any entity
10 that controls, is controlled by, or is under common
11 control with such facility.

12 “(5) FERTILIZATION.—The term ‘fertilization’
13 means the fusion of a human spermatozoon with a
14 human ovum.

15 “(6) GESTATIONAL AGE.—The term ‘gesta-
16 tional age’, with respect to an unborn child, means
17 the age of the unborn child calculated from the first
18 day of the pregnant woman’s last menstrual period.

19 “(7) MEDICAL TREATMENT.—The term ‘med-
20 ical treatment’ means treatment provided at a hos-
21 pital licensed by the State or operated under author-
22 ity of a Federal agency, at a medical clinic licensed
23 by the State or operated under authority of a Fed-
24 eral agency, or from a personal physician licensed by
25 the State.

1 “(8) MINOR.—The term ‘minor’ means an indi-
2 vidual who has not attained the age of 18 years.

3 “(9) PERFORM.—The term ‘perform’, with re-
4 spect to an abortion, includes inducing an abortion
5 through a medical or chemical intervention, includ-
6 ing writing a prescription for a drug or device in-
7 tended to result in an abortion.

8 “(10) PHYSICIAN.—The term ‘physician’ means
9 a person licensed to practice medicine and surgery
10 or osteopathic medicine and surgery, or otherwise le-
11 gally authorized to perform an abortion.

12 “(11) PROBABLE GESTATIONAL AGE OF THE
13 UNBORN CHILD.—The term ‘probable gestational
14 age of the unborn child’ means what, in reasonable
15 medical judgment, will with reasonable probability be
16 the gestational age at the time the abortion is per-
17 formed or induced.

18 “(12) REASONABLE MEDICAL JUDGMENT.—The
19 term ‘reasonable medical judgment’ means a medical
20 judgment that would be made by a reasonably pru-
21 dent physician in the field of obstetrics, maternal
22 fetal medicine, or neonatology who is knowledgeable
23 about the case and the treatment possibilities with
24 respect to the medical conditions involved.

1 “(13) STATE.—The term ‘State’ means any of
2 the several States, the District of Columbia, or any
3 territory or possession of the United States.

4 “(14) UNBORN CHILD.—The term ‘unborn
5 child’ means an individual organism of the species
6 homo sapiens, beginning at fertilization, until the
7 point of being born alive as defined in section 8(b)
8 of title 1.

9 “(15) WOMAN.—The term ‘woman’ means a fe-
10 male human being whether or not she has reached
11 the age of majority.”.

12 (b) CLERICAL AMENDMENT.—The table of sections
13 at the beginning of chapter 74 of title 18, United States
14 Code, is amended by adding at the end the following new
15 item:

“1532. Federal minimum protections for pain-capable unborn child protection.”.

16 (c) CHAPTER HEADING AMENDMENTS.—

17 (1) CHAPTER HEADING IN CHAPTER.—The
18 chapter heading for chapter 74 of title 18, United
19 States Code, is amended by striking “**PARTIAL-**
20 **BIRTH ABORTIONS**” and inserting “**ABOR-**
21 **TIONS**”.

22 (2) TABLE OF CHAPTERS FOR PART I.—The
23 item relating to chapter 74 in the table of chapters

1 at the beginning of part I of title 18, United States
2 Code, is amended to read as follows:

“74. Abortions 1531”.

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