

# Union Calendar No. 77

113TH CONGRESS  
1ST SESSION

# H. R. 1797

**[Report No. 113–109, Part I]**

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

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2013

Mr. FRANKS of Arizona (for himself, Mr. SMITH of New Jersey, Mr. SCALISE, Mr. GOSAR, Mr. SCHWEIKERT, Mr. SALMON, Mr. JONES, Mr. CONAWAY, Mr. CRAWFORD, Mr. NUNNELEE, Mr. CRAMER, Mr. KING of Iowa, Mr. FLEMING, Mr. GARRETT, Mr. ROE of Tennessee, Mr. CARTER, Mr. NEUGEBAUER, Mrs. ROBY, Mr. COLE, Mr. HUIZENGA of Michigan, Mr. HARPER, Mr. MASSIE, Mr. PEARCE, Mrs. BLACKBURN, Mr. BOUSTANY, Mrs. HARTZLER, Mr. BRIDENSTINE, Mr. KINGSTON, Mr. GUTHRIE, Mr. HOLDING, Mr. GRIFFIN of Arkansas, Mr. ROGERS of Alabama, Mr. ADERHOLT, Mr. AMASH, Mr. BUCHANAN, Mr. DUNCAN of South Carolina, Mr. SIMPSON, Mr. MARINO, Mr. CASSIDY, Mr. BRADY of Texas, Mr. DUNCAN of Tennessee, Mr. GOWDY, Mr. BACHUS, Mr. LATTA, Mrs. BLACK, Mrs. NOEM, Ms. ROS-LEHTINEN, Mr. YOUNG of Indiana, Mr. POMPEO, Mr. STOCKMAN, Mr. WILSON of South Carolina, Mr. ALEXANDER, Mr. HUELSKAMP, Mr. SHUSTER, Mr. STIVERS, Mr. BARR, Mr. GOHMERT, Mr. FINCHER, Mr. MULLIN, Mr. BROUN of Georgia, Mr. LIPINSKI, Mr. BENISHEK, Mr. ROSS, Mr. TIBERI, Mr. WESTMORELAND, Mr. ROTHFUS, Mr. PALAZZO, Mr. LONG, Mr. BONNER, Mr. PITTS, Mr. PRICE of Georgia, Mr. MCKINLEY, Mr. CALVERT, Mr. JORDAN, Mr. WALBERG, Mr. STEWART, Mr. YODER, Mr. HULTGREN, Mr. LANKFORD, Mr. OLSON, Mr. SMITH of Nebraska, Mr. DESANTIS, Mr. MEADOWS, Mr. ROKITA, Mr. HALL, Mr. NUGENT, Mr. MULVANEY, Mr. MILLER of Florida, Mrs. WAGNER, Mr. RODNEY DAVIS of Illinois, Mr. JOHNSON of Ohio, Mr. FORTENBERRY, Mr. SCHOCK, and Mr. POSEY) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JUNE 14, 2013

Additional sponsors: Mr. KELLY of Pennsylvania, Mr. FLORES, Ms. JENKINS, Mr. HARRIS, Mr. WEBER of Texas, Mr. FORBES, Mr. TERRY, Mr. BISHOP of Utah, Mr. KLINE, Mr. CAMP, Mr. FLEISCHMANN, Mr. LABRADOR, Mr. BARLETTA, Mr. LUCAS, Mr. MARCHANT, Mr. RAHALL, Mr. LUETKEMEYER, Mr. SENSENBRENNER, Mr. PITTENGER, Mr. DAINES, Mr. WOMACK, Mr. MCINTYRE, Mrs. ELLMERS, Mr. SAM JOHNSON of Texas, Mrs. BACHMANN, Mr. LATHAM, Mr. THOMPSON of Pennsylvania, Mr. LAMBORN, Mr. SOUTHERLAND, Mr. RIBBLE, Mr. BARTON, Mr. CHABOT, Mr. SMITH of Texas, Mr. WENSTRUP, Mr. COTTON, Mr. ROGERS of Kentucky, Mr. COLLINS of Georgia, Mr. STUTZMAN, Mr. COBLE, Mr. MURPHY of Pennsylvania, Mr. FARENTHOLD, Mr. MCHENRY, Mr. DUFFY, Mr. PETERSON, Mr. HENSARLING, Mr. TURNER, Mr. POE of Texas, Mr. DENHAM, Ms. FOXX, Mr. HUDSON, Mrs. BROOKS of Indiana, Mr. KING of New York, Mr. BENTIVOLIO, Mr. BROOKS of Alabama, Mr. RENACCI, Mr. MESSER, Mr. BILIRAKIS, Mr. MCCLINTOCK, Mrs. WALORSKI, Mr. MICA, Mrs. MILLER of Michigan, Mr. GIBBS, Mr. LAMALFA, Mr. YOHO, Mr. PERRY, Mr. AUSTIN SCOTT of Georgia, Mr. NUNES, Mr. MCCAUL, Mr. RADEL, Mr. ROSKAM, Mr. REED, Mr. GINGREY of Georgia, Mr. CRENSHAW, Mr. COLLINS of New York, Mr. BUCSHON, Mr. GRIFFITH of Virginia, Mr. JOYCE, Mr. DIAZ-BALART, Mr. GOODLATTE, Mr. SANFORD, Mr. CULBERSON, Mr. RICE of South Carolina, Mr. WOLF, Mr. GRAVES of Missouri, Mr. WITTMAN, Mr. SMITH of Missouri, Mr. PETRI, Mr. GRAVES of Georgia, Mr. WEBSTER of Florida, Mr. RIGELL, and Mr. HURT

JUNE 14, 2013

Reported from the Committee on the Judiciary with amendments

[Strike out all after the enacting clause and insert the part printed in *italic*]

JUNE 14, 2013

The Committee on Oversight and Government Reform discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on April 26, 2013]

# **A BILL**

To amend title 18, United States Code, to protect pain-capable unborn children in the District of Columbia, 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”.*

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

9        *Congress finds and declares the following:*

10            (1) *Pain receptors (nociceptors) are present*  
11 *throughout the unborn child’s entire body and nerves*  
12 *link these receptors to the brain’s thalamus and sub-*  
13 *cortical plate by no later than 20 weeks after fertiliza-*  
14 *tion.*

15            (2) *By 8 weeks after fertilization, the unborn*  
16 *child reacts to touch. After 20 weeks, the unborn child*  
17 *reacts to stimuli that would be recognized as painful*  
18 *if applied to an adult human, for example, by recoil-*  
19 *ing.*

20            (3) *In the unborn child, application of such*  
21 *painful stimuli is associated with significant in-*  
22 *creases in stress hormones known as the stress re-*  
23 *sponse.*

24            (4) *Subjection to such painful stimuli is associ-*  
25 *ated with long-term harmful neurodevelopmental ef-*

1        *fects, such as altered pain sensitivity and, possibly,*  
2        *emotional, behavioral, and learning disabilities later*  
3        *in life.*

4            (5) *For the purposes of surgery on unborn chil-*  
5        *dren, fetal anesthesia is routinely administered and is*  
6        *associated with a decrease in stress hormones com-*  
7        *pared to their level when painful stimuli are applied*  
8        *without such anesthesia. In the United States, surgery*  
9        *of this type is being performed by 20 weeks after fer-*  
10       *tilization and earlier in specialized units affiliated*  
11       *with children's hospitals.*

12           (6) *The position, asserted by some physicians,*  
13       *that the unborn child is incapable of experiencing*  
14       *pain until a point later in pregnancy than 20 weeks*  
15       *after fertilization predominately rests on the assump-*  
16       *tion that the ability to experience pain depends on*  
17       *the cerebral cortex and requires nerve connections be-*  
18       *tween the thalamus and the cortex. However, recent*  
19       *medical research and analysis, especially since 2007,*  
20       *provides strong evidence for the conclusion that a*  
21       *functioning cortex is not necessary to experience pain.*

22           (7) *Substantial evidence indicates that children*  
23       *born missing the bulk of the cerebral cortex, those*  
24       *with hydranencephaly, nevertheless experience pain.*

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

5           (9) *Substantial evidence indicates that structures*  
6           *used for pain processing in early development differ*  
7           *from those of adults, using different neural elements*  
8           *available at specific times during development, such*  
9           *as the subcortical plate, to fulfill the role of pain*  
10          *processing.*

11          (10) *The position, asserted by some commenta-*  
12          *tors, that the unborn child remains in a coma-like*  
13          *sleep state that precludes the unborn child experi-*  
14          *encing pain is inconsistent with the documented reac-*  
15          *tion of unborn children to painful stimuli and with*  
16          *the experience of fetal surgeons who have found it nec-*  
17          *essary to sedate the unborn child with anesthesia to*  
18          *prevent the unborn child from engaging in vigorous*  
19          *movement in reaction to invasive surgery.*

20          (11) *Consequently, there is substantial medical*  
21          *evidence that an unborn child is capable of experi-*  
22          *encing pain at least by 20 weeks after fertilization, if*  
23          *not earlier.*

24          (12) *It is the purpose of the Congress to assert*  
25          *a compelling governmental interest in protecting the*

1 *lives of unborn children from the stage at which sub-*  
2 *stantial medical evidence indicates that they are ca-*  
3 *pable of feeling pain.*

4 (13) *The compelling governmental interest in*  
5 *protecting the lives of unborn children from the stage*  
6 *at which substantial medical evidence indicates that*  
7 *they are capable of feeling pain is intended to be sep-*  
8 *arate from and independent of the compelling govern-*  
9 *mental interest in protecting the lives of unborn chil-*  
10 *dren from the stage of viability, and neither govern-*  
11 *mental interest is intended to replace the other.*

12 (14) *Congress has authority to extend protection*  
13 *to pain-capable unborn children under the Supreme*  
14 *Court’s Commerce Clause precedents and under the*  
15 *Constitution’s grants of powers to Congress under the*  
16 *Equal Protection, Due Process, and Enforcement*  
17 *Clauses of the Fourteenth Amendment.*

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

19 (a) *IN GENERAL.*—Chapter 74 of title 18, United  
20 States Code, is amended by inserting after section 1531 the  
21 following:

22 **“§ 1532. Pain-capable unborn child protection**

23 “(a) *UNLAWFUL CONDUCT.*—Notwithstanding any  
24 other provision of law, it shall be unlawful for any person

1 *to perform an abortion or attempt to do so, unless in con-*  
2 *formity with the requirements set forth in subsection (b).*

3 “(b) *REQUIREMENTS FOR ABORTIONS.*—

4 “(1) *The physician performing or attempting the*  
5 *abortion shall first make a determination of the prob-*  
6 *able post-fertilization age of the unborn child or rea-*  
7 *sonably rely upon such a determination made by an-*  
8 *other physician. In making such a determination, the*  
9 *physician shall make such inquiries of the pregnant*  
10 *woman and perform or cause to be performed such*  
11 *medical examinations and tests as a reasonably pru-*  
12 *dent physician, knowledgeable about the case and the*  
13 *medical conditions involved, would consider necessary*  
14 *to make an accurate determination of post-fertiliza-*  
15 *tion age.*

16 “(2)(A) *Except as provided in subparagraph*  
17 *(B), the abortion shall not be performed or attempted,*  
18 *if the probable post-fertilization age, as determined*  
19 *under paragraph (1), of the unborn child is 20 weeks*  
20 *or greater.*

21 “(B) *Subject to subparagraph (C), subparagraph*  
22 *(A) does not apply if, in reasonable medical judg-*  
23 *ment, the abortion is necessary to save the life of a*  
24 *pregnant woman whose life is endangered by a phys-*  
25 *ical disorder, physical illness, or physical injury, in-*

1 *cluding a life-endangering physical condition caused*  
2 *by or arising from the pregnancy itself, but not in-*  
3 *cluding psychological or emotional conditions.*

4 *“(C) Notwithstanding the definitions of ‘abor-*  
5 *tion’ and ‘attempt an abortion’ in this section, a phy-*  
6 *sician terminating or attempting to terminate a preg-*  
7 *nancy under the exception provided by subparagraph*  
8 *(B) may do so only in the manner which, in reason-*  
9 *able medical judgment, provides the best opportunity*  
10 *for the unborn child to survive, unless, in reasonable*  
11 *medical judgment, termination of the pregnancy in*  
12 *that manner would pose a greater risk of—*

13 *“(i) the death of the pregnant woman; or*

14 *“(ii) the substantial and irreversible phys-*  
15 *ical impairment of a major bodily function, not*  
16 *including psychological or emotional conditions,*  
17 *of the pregnant woman;*

18 *than would other available methods.*

19 *“(c) CRIMINAL PENALTY.—Whoever violates subsection*  
20 *(a) shall be fined under this title or imprisoned for not more*  
21 *than 5 years, or both.*

22 *“(d) BAR TO PROSECUTION.—A woman upon whom*  
23 *an abortion in violation of subsection (a) is performed or*  
24 *attempted may not be prosecuted under, or for a conspiracy*

1 *to violate, subsection (a), or for an offense under section*  
2 *2, 3, or 4 of this title based on such a violation.*

3 “(e) *DEFINITIONS.—In this section the following defi-*  
4 *initions apply:*

5 “(1) *ABORTION.—The term ‘abortion’ means the*  
6 *use or prescription of any instrument, medicine,*  
7 *drug, or any other substance or device—*

8 “(A) *to intentionally kill the unborn child*  
9 *of a woman known to be pregnant; or*

10 “(B) *to intentionally terminate the preg-*  
11 *nancy of a woman known to be pregnant, with*  
12 *an intention other than—*

13 “(i) *after viability to produce a live*  
14 *birth and preserve the life and health of the*  
15 *child born alive; or*

16 “(ii) *to remove a dead unborn child.*

17 “(2) *ATTEMPT AN ABORTION.—The term ‘at-*  
18 *tempt’, with respect to an abortion, means conduct*  
19 *that, under the circumstances as the actor believes*  
20 *them to be, constitutes a substantial step in a course*  
21 *of conduct planned to culminate in performing an*  
22 *abortion.*

23 “(3) *FERTILIZATION.—The term ‘fertilization’*  
24 *means the fusion of human spermatozoon with a*  
25 *human ovum.*

1           “(4) *PERFORM*.—The term ‘perform’, with re-  
2           spect to an abortion, includes induce an abortion  
3           through a medical or chemical intervention including  
4           writing a prescription for a drug or device intended  
5           to result in an abortion.

6           “(5) *PHYSICIAN*.—The term ‘physician’ means a  
7           person licensed to practice medicine and surgery or  
8           osteopathic medicine and surgery, or otherwise legally  
9           authorized to perform an abortion.

10           “(6) *POST-FERTILIZATION AGE*.—The term ‘post-  
11           fertilization age’ means the age of the unborn child as  
12           calculated from the fusion of a human spermatozoon  
13           with a human ovum.

14           “(7) *PROBABLE POST-FERTILIZATION AGE OF*  
15           *THE UNBORN CHILD*.—The term ‘probable post-fer-  
16           tilization age of the unborn child’ means what, in  
17           reasonable medical judgment, will with reasonable  
18           probability be the postfertilization age of the unborn  
19           child at the time the abortion is planned to be per-  
20           formed or induced.

21           “(8) *REASONABLE MEDICAL JUDGMENT*.—The  
22           term ‘reasonable medical judgment’ means a medical  
23           judgment that would be made by a reasonably pru-  
24           dent physician, knowledgeable about the case and the

1 *treatment possibilities with respect to the medical*  
 2 *conditions involved.*

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

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

10 (b) *CLERICAL AMENDMENT.*—*The table of sections at*  
 11 *the beginning of chapter 74 of title 18, United States Code,*  
 12 *is amended by adding at the end the following new item:*  
 “1532. *Pain-capable unborn child protection.*”

13 (c) *CHAPTER HEADING AMENDMENTS.*—

14 (1) *CHAPTER HEADING IN CHAPTER.*—*The chap-*  
 15 *ter heading for chapter 74 of title 18, United States*  
 16 *Code, is amended by striking “**PARTIAL-BIRTH***  
 17 ***ABORTIONS**” and inserting “**ABORTIONS**”.*

18 (2) *TABLE OF CHAPTERS FOR PART I.*—*The item*  
 19 *relating to chapter 74 in the table of chapters at the*  
 20 *beginning of part I of title 18, United States Code,*  
 21 *is amended by striking “*Partial-Birth Abortions*”*  
 22 *and inserting “*Abortions*”.*

Amend the title so as to read: “A bill to amend title 18, United States Code, to protect pain-capable unborn children, and for other purposes.”

Union Calendar No. 77

113<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**H. R. 1797**

[Report No. 113-109, Part I]

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**A BILL**

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

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JUNE 14, 2013

Reported from the Committee on the Judiciary with amendments

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The Committee on Oversight and Government Reform discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed