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# A BILL FOR AN ACT

RELATING TO FEMALE GENITAL MUTILATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that female genital  
2 mutilation is a dangerous practice that cannot be justified by  
3 claims of tradition or culture and must be heavily penalized in  
4 this State. Female genital mutilation involves the cutting away  
5 and removal of healthy and normal female genital tissue. It  
6 interferes with the natural function of girls' and women's  
7 bodies, and can cause severe bleeding and urinary problems,  
8 cysts, infections, and complications during childbirth and  
9 increased risk of newborn deaths. Moreover, once the physical  
10 procedure itself is over, girls and women subjected to it are  
11 further harmed in many ways: they typically experience pain  
12 during sexual intercourse, decreased sexual satisfaction, the  
13 need for later surgeries to allow for childbirth, and  
14 psychological problems such as low self-esteem, depression,  
15 anxiety, and post-traumatic stress disorder.

16           The legislature also finds that more than five hundred  
17 thousand girls and women in the United States are at risk of, or



1 have undergone, female genital mutilation. The practice of  
2 female genital mutilation is carried out by members of certain  
3 cultural and religious groups within the United States, and is  
4 associated with cultural ideals of femininity and modesty, which  
5 include the notion that girls are clean and beautiful after  
6 removal of body parts that are considered unclean, unfeminine,  
7 or male. Though no religious scripts prescribe the practice,  
8 practitioners often believe the practice has religious support.  
9 The legislature nonetheless finds that female genital mutilation  
10 is recognized internationally as a violation of the human rights  
11 of girls and women, reflects a deep-rooted inequality between  
12 the sexes, and constitutes an extreme form of discrimination  
13 against women.

14 The legislature is cognizant that federal law already  
15 prohibits the practice of female genital mutilation in the  
16 United States. However, in November 2018, a federal judge in  
17 Michigan dismissed key charges against doctors accused of  
18 participating in or enabling the ritual genital cutting of  
19 girls. Further, the judge ruled that Congress lacked the  
20 authority to pass the law against female genital mutilation.  
21 While the United States Attorney's office is considering an



1 appeal to this ruling, it is clear that in order ensure the  
2 prevention of female genital mutilation, states must adopt their  
3 own laws to prohibit such acts.

4 The legislature further recognizes that with recent  
5 increases in immigration from certain countries where female  
6 genital mutilation is widespread, there are more arrivals to  
7 this country who have already been victimized by this cruel and  
8 inhumane practice. Moreover, the spread of this practice into  
9 the United States has resulted in some families taking their  
10 daughters out of the country to subject them to the procedure  
11 during what would otherwise appear to be a family vacation.  
12 Therefore, the State must prohibit the practice and associated  
13 acts locally in order to prevent the victimization of more girls  
14 and women.

15 The purpose of this Act is to:

- 16 (1) Establish the class B felony offense of prohibited  
17 acts related to female genital mutilation;  
18 (2) Amend the statutory definition of "child abuse or  
19 neglect" to include prohibited acts related to female  
20 genital mutilation; and



1 (3) Include prohibited acts related to female genital  
2 mutilation as acts prohibited under Hawaii's Child  
3 Protective Act.

4 SECTION 2. Chapter 707, Hawaii Revised Statutes, is  
5 amended by adding a new section to part III to be appropriately  
6 designated and to read as follows:

7 **"§707- Prohibited acts related to female genital**  
8 **mutilation.** (1) A person commits the offense of prohibited  
9 acts related to female genital mutilation if the person  
10 intentionally or knowingly:

11 (a) Circumcises, excises, or infibulates the whole or any  
12 part of the labia majora, labia minora, or clitoris of  
13 a minor;

14 (b) As a parent, guardian, or other person legally  
15 responsible or charged with the care or custody of a  
16 minor, allows the circumcision, excision, or  
17 infibulation, in whole or in part, of the labia  
18 majora, labia minora, or clitoris of the minor; or

19 (c) Removes, or causes or permits to be removed, a minor  
20 from this State for the purpose of circumcising,



1           excising, or infibulating, in whole or in part, the  
2           labia majora, labia minora, or clitoris of the minor.

3           (2) It shall not be a defense to prosecution for a  
4           violation of this section that the procedure or conduct  
5           described in subsection (1):

6           (a) Is required as a matter of custom, ritual, or  
7           religious practice;

8           (b) Was consented to by the minor who was subjected to it;  
9           or

10          (c) Was consented to by the parent, guardian, or other  
11          person legally responsible or charged with the care or  
12          custody of the minor who was subjected to it.

13          (3) A health care provider licensed pursuant to chapter  
14          453 who performs the procedure described in subsection (1)(a)  
15          shall not be subject to criminal liability under this section if  
16          the procedure is performed within the scope of the person's  
17          license and qualifications and is:

18          (a) Medically necessary for the health of the minor on  
19          whom it is performed;



1        (b) Performed on a person who is in labor or who has just  
2                    given birth and is performed for medical purposes  
3                    connected with that labor or birth; or

4        (c) Performed on a person as part of gender or sex  
5                    reassignment surgery; provided that a minor whom  
6                    undergoes gender or sex reassignment surgery and the  
7                    parent, guardian, or other person legally responsible  
8                    for care or custody of the minor consent to the  
9                    procedure.

10       (4) A parent, guardian, or other person legally  
11 responsible or charged with the care or custody of a minor who  
12 allows a procedure consistent with subsection (3) of this  
13 section to take place shall not be subject to criminal liability  
14 under this section.

15       (5) A person who removes, or causes or permits to be  
16 removed, a minor from this State for the purpose of a procedure  
17 consistent with subsection (3) of this section shall not be  
18 subject to criminal liability under this section.

19       (6) As used in this section, "infibulate" means the  
20 narrowing of the vaginal opening through the creation of a  
21 covering seal which is formed by cutting and repositioning the



1 labia minora, or labia majora, sometimes through stitching, with  
2 or without removal of the clitoris.

3 (7) Prohibited acts related to female genital mutilation  
4 is a mandatory reportable offense for any person required to  
5 report child abuse under section 350-1.1.

6 (8) Prohibited acts related to female genital mutilation  
7 is a class B felony."

8 SECTION 3. Section 350-1, Hawaii Revised Statutes, is  
9 amended by amending the definition of "child abuse or neglect"  
10 to read as follows:

11 "Child abuse or neglect" means:

12 (1) The acts or omissions of any person who, or legal  
13 entity which, is in any manner or degree related to  
14 the child, is residing with the child, or is otherwise  
15 responsible for the child's care, that have resulted  
16 in the physical or psychological health or welfare of  
17 the child, who is under the age of eighteen, to be  
18 harmed, or to be subject to any reasonably  
19 foreseeable, substantial risk of being harmed. The  
20 acts or omissions are indicated for the purposes of



1 reports by circumstances that include but are not  
2 limited to:

3 (A) When the child exhibits evidence of:

4 (i) Substantial or multiple skin bruising or any  
5 other internal bleeding;

6 (ii) Any injury to skin causing substantial  
7 bleeding;

8 (iii) Malnutrition;

9 (iv) Failure to thrive;

10 (v) Burn or burns;

11 (vi) Poisoning;

12 (vii) Fracture of any bone;

13 (viii) Subdural hematoma;

14 (ix) Soft tissue swelling;

15 (x) Extreme pain;

16 (xi) Extreme mental distress;

17 (xii) Gross degradation; or

18 (xiii) Death; and

19 [~~such~~] the injury is not justifiably explained,  
20 or [~~when~~] the history given concerning [~~such~~] the  
21 condition or death is at variance with the degree





1 or type of [~~such~~] the condition or death, or  
2 circumstances indicate that [~~such~~] the condition  
3 or death may not be the product of an accidental  
4 occurrence;

5 (B) When the child has been the victim of sexual  
6 contact or conduct, including but not limited to  
7 sexual assault as defined in the Penal Code,  
8 molestation, sexual fondling, incest, or  
9 prostitution; obscene or pornographic  
10 photographing, filming, or depiction; or other  
11 similar forms of sexual exploitation, including  
12 but not limited to acts that constitute an  
13 offense pursuant to section 712-1202(1)(b);

14 (C) When there exists injury to the psychological  
15 capacity of a child as is evidenced by an  
16 observable and substantial impairment in the  
17 child's ability to function;

18 (D) When the child is not provided in a timely manner  
19 with adequate food, clothing, shelter,  
20 psychological care, physical care, medical care,  
21 or supervision;



1 (E) When the child is provided with dangerous,  
 2 harmful, or detrimental drugs as defined by  
 3 section 712-1240; provided that this subparagraph  
 4 shall not apply when [~~such~~] the drugs are  
 5 provided to the child pursuant to the direction  
 6 or prescription of a practitioner, as defined in  
 7 section 712-1240; [~~or~~]

8 (F) When the child has been the victim of labor  
 9 trafficking under chapter 707; or

10 (G) When the child has been subjected to a procedure  
 11 or conduct that constitutes an offense under  
 12 section 707- ; or

13 (2) The acts or omissions of any person that have resulted  
 14 in sex trafficking or severe forms of trafficking in  
 15 persons; provided that no finding by the department  
 16 pursuant to this chapter shall be used as conclusive  
 17 evidence that a person has committed an offense under  
 18 part VIII of chapter 707 or section 712-1202."

19 SECTION 4. Section 587A-4, Hawaii Revised Statutes, is  
 20 amended by amending the definition of "harm" to read as follows:



1 "Harm" means damage or injury to a child's physical or  
2 psychological health or welfare, where:

3 (1) The child exhibits evidence of injury, including, but  
4 not limited to:

- 5 (A) Substantial or multiple skin bruising;
- 6 (B) Substantial external or internal bleeding;
- 7 (C) Burn or burns;
- 8 (D) Malnutrition;
- 9 (E) Failure to thrive;
- 10 (F) Soft tissue swelling;
- 11 (G) Extreme pain;
- 12 (H) Extreme mental distress;
- 13 (I) Gross degradation;
- 14 (J) Poisoning;
- 15 (K) Fracture of any bone;
- 16 (L) Subdural hematoma; or
- 17 (M) Death;

18 and the injury is not justifiably explained, or the  
19 history given concerning the condition or death is not  
20 consistent with the degree or type of the condition or



- 1 death, or there is evidence that the condition or  
2 death may not be the result of an accident;
- 3 (2) The child has been the victim of sexual contact or  
4 conduct, including sexual assault; sodomy;  
5 molestation; sexual fondling; incest; prostitution;  
6 obscene or pornographic photographing, filming, or  
7 depiction; or other similar forms of sexual  
8 exploitation, including but not limited to acts that  
9 constitute an offense pursuant to section  
10 712-1202(1)(b);
- 11 (3) The child's psychological well-being has been injured  
12 as evidenced by a substantial impairment in the  
13 child's ability to function;
- 14 (4) The child is not provided in a timely manner with  
15 adequate food; clothing; shelter; supervision; or  
16 psychological, physical, or medical care;
- 17 (5) The child is provided with dangerous, harmful, or  
18 detrimental drugs as defined in section 712-1240,  
19 except when a child's family administers drugs to the  
20 child as directed or prescribed by a practitioner as  
21 defined in section 712-1240; [~~or~~]



1 (6) The child has been the victim of labor trafficking  
2 under chapter 707[-]; or

3 (7) The child has been subjected to a procedure or conduct  
4 that constitutes an offense under section 707- ."

5 SECTION 5. This Act does not affect rights and duties that  
6 matured, penalties that were incurred, and proceedings that were  
7 begun before its effective date.

8 SECTION 6. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 7. This Act shall take effect on July 1, 2050.



**Report Title:**

Female Genital Mutilation; Penal Code

**Description:**

Establishes the class B felony offense of prohibited acts related to female genital mutilation. Includes commission of prohibited acts related to female genital mutilation in the statutory definition of child abuse or neglect and as a prohibited act under the State's Child Protective Act. (HB132 HD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

