
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; or

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.

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

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

13 (6) As used in this section, "infibulate" means the
14 narrowing of the vaginal opening through the creation of a
15 covering seal which is formed by cutting and repositioning the
16 labia minora, or labia majora, sometimes through stitching, with
17 or without removal of the clitoris.

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



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

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

6 "Child abuse or neglect" means:

7 (1) The acts or omissions of any person who, or legal
8 entity which, is in any manner or degree related to
9 the child, is residing with the child, or is otherwise
10 responsible for the child's care, that have resulted
11 in the physical or psychological health or welfare of
12 the child, who is under the age of eighteen, to be
13 harmed, or to be subject to any reasonably
14 foreseeable, substantial risk of being harmed. The
15 acts or omissions are indicated for the purposes of
16 reports by circumstances that include but are not
17 limited to:

18 (A) When the child exhibits evidence of:

19 (i) Substantial or multiple skin bruising or any
20 other internal bleeding;



- 1 (ii) Any injury to skin causing substantial
2 bleeding;
- 3 (iii) Malnutrition;
- 4 (iv) Failure to thrive;
- 5 (v) Burn or burns;
- 6 (vi) Poisoning;
- 7 (vii) Fracture of any bone;
- 8 (viii) Subdural hematoma;
- 9 (ix) Soft tissue swelling;
- 10 (x) Extreme pain;
- 11 (xi) Extreme mental distress;
- 12 (xii) Gross degradation; or
- 13 (xiii) Death; and
- 14 [~~such~~] the injury is not justifiably explained,
15 or [~~when~~] the history given concerning [~~such~~] the
16 condition or death is at variance with the degree
17 or type of [~~such~~] the condition or death, or
18 circumstances indicate that [~~such~~] the condition
19 or death may not be the product of an accidental
20 occurrence;



- 1 (B) When the child has been the victim of sexual
2 contact or conduct, including but not limited to
3 sexual assault as defined in the Penal Code,
4 molestation, sexual fondling, incest, or
5 prostitution; obscene or pornographic
6 photographing, filming, or depiction; or other
7 similar forms of sexual exploitation, including
8 but not limited to acts that constitute an
9 offense pursuant to section 712-1202(1)(b);
- 10 (C) When there exists injury to the psychological
11 capacity of a child as is evidenced by an
12 observable and substantial impairment in the
13 child's ability to function;
- 14 (D) When the child is not provided in a timely manner
15 with adequate food, clothing, shelter,
16 psychological care, physical care, medical care,
17 or supervision;
- 18 (E) When the child is provided with dangerous,
19 harmful, or detrimental drugs as defined by
20 section 712-1240; provided that this subparagraph
21 shall not apply when [~~sueh~~] the drugs are



1 provided to the child pursuant to the direction
2 or prescription of a practitioner, as defined in
3 section 712-1240; [~~or~~]

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

6 (G) When the child has been subjected to a procedure
7 or conduct that constitutes an offense under
8 section 707- ; or

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

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

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

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

21 (A) Substantial or multiple skin bruising;



- 1 (B) Substantial external or internal bleeding;
2 (C) Burn or burns;
3 (D) Malnutrition;
4 (E) Failure to thrive;
5 (F) Soft tissue swelling;
6 (G) Extreme pain;
7 (H) Extreme mental distress;
8 (I) Gross degradation;
9 (J) Poisoning;
10 (K) Fracture of any bone;
11 (L) Subdural hematoma; or
12 (M) Death;
13 and the injury is not justifiably explained, or the
14 history given concerning the condition or death is not
15 consistent with the degree or type of the condition or
16 death, or there is evidence that the condition or
17 death may not be the result of an accident;
- 18 (2) The child has been the victim of sexual contact or
19 conduct, including sexual assault; sodomy;
20 molestation; sexual fondling; incest; prostitution;
21 obscene or pornographic photographing, filming, or



- 1 depiction; or other similar forms of sexual
2 exploitation, including but not limited to acts that
3 constitute an offense pursuant to section
4 712-1202 (1) (b);
- 5 (3) The child's psychological well-being has been injured
6 as evidenced by a substantial impairment in the
7 child's ability to function;
- 8 (4) The child is not provided in a timely manner with
9 adequate food; clothing; shelter; supervision; or
10 psychological, physical, or medical care;
- 11 (5) The child is provided with dangerous, harmful, or
12 detrimental drugs as defined in section 712-1240,
13 except when a child's family administers drugs to the
14 child as directed or prescribed by a practitioner as
15 defined in section 712-1240; [~~or~~]
- 16 (6) The child has been the victim of labor trafficking
17 under chapter 707[-]; or
- 18 (7) The child has been subjected to a procedure or conduct
19 that constitutes an offense under section 707- ."



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

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 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 HD1)

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