

JAN 24 2019

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
4 in this State. Female genital mutilation involves the cutting
5 away and removal of healthy and normal female genital tissue.
6 It 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 locally in order
13 to prevent the victimization of more girls and women.

14 The purpose of this Act is to:

- 15 (1) Establish the class B felony offense of prohibited
16 acts related to female genital mutilation;
- 17 (2) Amend the definition of "child abuse or neglect" in
18 chapter 350, Hawaii Revised Statutes, to include
19 prohibited acts related to female genital mutilation;



- 1 (3) Amend the definition of "harm" in chapter 587A, Hawaii
2 Revised Statutes, to include prohibited acts related
3 to female genital mutilation;
- 4 (4) Require the prosecuting attorneys of the respective
5 counties to keep annual statistics on cases involving
6 prohibited acts related to female genital mutilation
7 and the judiciary's administrative director of the
8 courts to annually compile these statistics and report
9 to the legislature; and
- 10 (5) Require the department of health to design and
11 implement a plan for raising awareness about,
12 preventing, and treating female genital mutilation and
13 to report regularly to the legislature on plan
14 implementation.

15 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended
16 by adding a new section to part V to be appropriately designated
17 and to read as follows:

18 "§46- Female genital mutilation; statistics; reports.

19 (a) The prosecuting attorney of each county shall keep annual
20 statistics on the following:

- 21 (1) The number of offenders:



1 (A) Charged with prohibited acts related to female
2 genital mutilation under section 707- ; and
3 (B) Charged and convicted under section 707- ; and
4 (2) The number of offenders recorded under this subsection
5 whose cases originated from mandatory reporting of
6 child abuse under section 350-1.1, and the number of
7 offenders recorded pursuant to paragraph (1).

8 (b) The prosecuting attorney of each county shall submit a
9 written report of the statistics to the administrative director
10 of the courts by September 1 of each year. The administrative
11 director of the courts shall compile the information received
12 from the respective county prosecutors and submit a consolidated
13 written report to the legislature no later than twenty days
14 prior to the convening of each regular session."

15 SECTION 3. Chapter 321, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:

18 "§321- Female genital mutilation; plan; reports. (a)
19 The department of health shall design a plan for raising
20 awareness about, preventing, and treating female genital



1 mutilation as described in section 707- . In developing the
2 plan, the department shall seek the input of:

3 (1) The public;

4 (2) Members of communities known to engage in female
5 genital mutilation as a traditional or cultural
6 practice; provided that the department shall develop
7 criteria to identify these communities;

8 (3) Women's health advocacy organizations;

9 (4) Educators in the public and private school systems;

10 (5) State and county agencies that provide services to
11 persons at risk of female genital mutilation or
12 persons who have been subjected to female genital
13 mutilation;

14 (6) Health care providers of services to persons at risk
15 of female genital mutilation or persons who have been
16 subjected to female genital mutilation; and

17 (7) Any other appropriate stakeholders.

18 (b) The plan shall include implementation recommendations
19 in the following areas:



- 1 (1) Female genital mutilation prevention and treatment
- 2 strategies for groups at risk for female genital
- 3 mutilation;
- 4 (2) Educational programs to promote public awareness about
- 5 female genital mutilation;
- 6 (3) Education curricula for appropriate health and health-
- 7 related providers;
- 8 (4) Training courses for persons providing counseling to
- 9 individuals subjected to female genital mutilation;
- 10 and
- 11 (5) Sources and availability of funding to implement the
- 12 plan.
- 13 (c) The department shall adopt rules pursuant to chapter
- 14 91 necessary to effectuate the purpose of this section.
- 15 (d) The department shall submit the completed plan in the
- 16 form of a written report, along with any proposed legislation,
- 17 to the legislature no later than twenty days prior to the
- 18 convening of the regular session of 2020.
- 19 (e) The department shall implement the plan no later than
- 20 July 1, 2020.



1 (f) The department shall provide written reports of its
2 progress in implementing the plan. The first progress report
3 shall be submitted to the legislature no later than twenty days
4 prior to the convening of the regular session of 2021 and every
5 odd-numbered year thereafter."

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

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

13 (a) Circumcises, excises, or infibulates the whole or any
14 part of the labia majora, labia minora, or clitoris of
15 another person;

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



1 (c) Removes, or causes or permits to be removed, a minor
2 from this State for the purpose of circumcising,
3 excising, or infibulating, in whole or in part, the
4 labia majora, labia minora, or clitoris of the minor.

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

8 (a) Is required as a matter of custom, ritual, or
9 religious practice;

10 (b) Was consented to by the person who was subjected to
11 it; or

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

15 (3) A health care provider licensed pursuant to chapter
16 453 who performs the procedure described in subsection (1)(a)
17 shall not be subject to criminal liability under this section if
18 the procedure is:

19 (a) Within the scope of the person's license and
20 qualifications;



1 (b) Medically necessary for the physical health of the
2 person on whom it is performed; or

3 (c) Performed on a person who is in labor or who has just
4 given birth and is performed for medical purposes
5 connected with that labor or birth.

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

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

14 (6) Female genital mutilation is a class B felony."

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

18 "Child abuse or neglect" means:

19 (1) The acts or omissions of any person who, or legal
20 entity which, is in any manner or degree related to
21 the child, is residing with the child, or is otherwise



1 responsible for the child's care, that have resulted
2 in the physical or psychological health or welfare of
3 the child, who is under the age of eighteen, to be
4 harmed, or to be subject to any reasonably
5 foreseeable, substantial risk of being harmed. The
6 acts or omissions are indicated for the purposes of
7 reports by circumstances that include but are not
8 limited to:

9 (A) When the child exhibits evidence of:

10 (i) Substantial or multiple skin bruising or any
11 other internal bleeding;

12 (ii) Any injury to skin causing substantial
13 bleeding;

14 (iii) Malnutrition;

15 (iv) Failure to thrive;

16 (v) Burn or burns;

17 (vi) Poisoning;

18 (vii) Fracture of any bone;

19 (viii) Subdural hematoma;

20 (ix) Soft tissue swelling;

21 (x) Extreme pain;



- 1 (xi) Extreme mental distress;
 - 2 (xii) Gross degradation; or
 - 3 (xiii) Death; and
- 4 [~~such~~] the injury is not justifiably explained,
- 5 or [~~when~~] the history given concerning [~~such~~] the
- 6 condition or death is at variance with the degree
- 7 or type of [~~such~~] the condition or death, or
- 8 circumstances indicate that [~~such~~] the condition
- 9 or death may not be the product of an accidental
- 10 occurrence;
- 11 (B) When the child has been the victim of sexual
- 12 contact or conduct, including but not limited to
- 13 sexual assault as defined in the Penal Code,
- 14 molestation, sexual fondling, incest, or
- 15 prostitution; obscene or pornographic
- 16 photographing, filming, or depiction; or other
- 17 similar forms of sexual exploitation, including
- 18 but not limited to acts that constitute an
- 19 offense pursuant to section 712-1202(1) (b);
- 20 (C) When there exists injury to the psychological
- 21 capacity of a child as is evidenced by an



- 1 observable and substantial impairment in the
2 child's ability to function;
- 3 (D) When the child is not provided in a timely manner
4 with adequate food, clothing, shelter,
5 psychological care, physical care, medical care,
6 or supervision;
- 7 (E) When the child is provided with dangerous,
8 harmful, or detrimental drugs as defined by
9 section 712-1240; provided that this subparagraph
10 shall not apply when [~~such~~] the drugs are
11 provided to the child pursuant to the direction
12 or prescription of a practitioner, as defined in
13 section 712-1240; [~~or~~]
- 14 (F) When the child has been the victim of labor
15 trafficking under chapter 707; or
- 16 (G) When the child has been subjected to a procedure
17 or conduct that constitutes an offense under
18 section 707- ; or
- 19 (2) The acts or omissions of any person that have resulted
20 in sex trafficking or severe forms of trafficking in
21 persons; provided that no finding by the department



1 pursuant to this chapter shall be used as conclusive
2 evidence that a person has committed an offense under
3 part VIII of chapter 707 or section 712-1202."

4 SECTION 6. Section 587A-4, Hawaii Revised Statutes, is
5 amended by amending the definition of "harm" to read as follows:

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

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

10 (A) Substantial or multiple skin bruising;

11 (B) Substantial external or internal bleeding;

12 (C) Burn or burns;

13 (D) Malnutrition;

14 (E) Failure to thrive;

15 (F) Soft tissue swelling;

16 (G) Extreme pain;

17 (H) Extreme mental distress;

18 (I) Gross degradation;

19 (J) Poisoning;

20 (K) Fracture of any bone;

21 (L) Subdural hematoma; or



- 1 (M) Death;
- 2 and the injury is not justifiably explained, or the
- 3 history given concerning the condition or death is not
- 4 consistent with the degree or type of the condition or
- 5 death, or there is evidence that the condition or
- 6 death may not be the result of an accident;
- 7 (2) The child has been the victim of sexual contact or
- 8 conduct, including sexual assault; sodomy;
- 9 molestation; sexual fondling; incest; prostitution;
- 10 obscene or pornographic photographing, filming, or
- 11 depiction; or other similar forms of sexual
- 12 exploitation, including but not limited to acts that
- 13 constitute an offense pursuant to section
- 14 712-1202(1)(b);
- 15 (3) The child's psychological well-being has been injured
- 16 as evidenced by a substantial impairment in the
- 17 child's ability to function;
- 18 (4) The child is not provided in a timely manner with
- 19 adequate food; clothing; shelter; supervision; or
- 20 psychological, physical, or medical care;



- 1 (5) The child is provided with dangerous, harmful, or
- 2 detrimental drugs as defined in section 712-1240,
- 3 except when a child's family administers drugs to the
- 4 child as directed or prescribed by a practitioner as
- 5 defined in section 712-1240; [~~or~~]
- 6 (6) The child has been the victim of labor trafficking
- 7 under chapter 707 [-]; or
- 8 (7) The child has been subjected to a procedure or conduct
- 9 that constitutes an offense under section 707- ."

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

13 SECTION 8. Statutory material to be repealed is bracketed
 14 and stricken. New statutory material is underscored.

15 SECTION 9. This Act shall take effect upon its approval.

16
 INTRODUCED BY: *Francis R. Sroufe*



S.B. NO. 1434

Report Title:

Female Genital Mutilation; DOH; Penal Code; County Prosecutors; Judiciary; Annual Report

Description:

Establishes the class B felony offense of prohibited acts related to female genital mutilation. Requires prosecuting attorneys of the respective counties to keep annual statistics on cases involving prohibited acts related to female genital mutilation. Requires the Judiciary's administrative director of the courts to annually compile and report these county statistics to the legislature. Requires the Department of Health to design and implement a plan for raising awareness about, preventing, and treating female genital mutilation and to report regularly to the Legislature on plan implementation.

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

