

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility – This bill criminalizes female genital mutilation and certain acts relating to female genital mutilation.

B. EFFECT OF PROPOSED CHANGES:

Background

Types of Female Genital Mutilation

Female genital mutilation (FGM), often referred to as “female circumcision,” comprises all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural, religious or other non-therapeutic reasons.¹ There are different types of female genital mutilation known to be practiced today. They include:

- Type I - excision of the prepuce, with or without excision of part or all of the clitoris;
- Type II - excision of the clitoris with partial or total excision of the labia minora;
- Type III - excision of part or all of the external genitalia and stitching/narrowing of the vaginal opening (infibulation);
- Type IV - pricking, piercing or incising of the clitoris and/or labia; stretching of the clitoris and/or labia; cauterization by burning of the clitoris and surrounding tissue;
- Scraping of tissue surrounding the vaginal orifice (angurya cuts) or cutting of the vagina (gishiri cuts);
- Introduction of corrosive substances or herbs into the vagina to cause bleeding or for the purpose of tightening or narrowing it; and any other procedure that falls under the definition given above.²

The most common type of female genital mutilation is excision of the clitoris and the labia minora, accounting for up to 80% of all cases; the most extreme form is infibulation, which constitutes about 15% of all procedures.³

How & Why FGM is Performed

FGM is usually performed by a traditional practitioner with crude instruments and without anesthetic. Among the more affluent in society it may be performed in a health care facility by qualified health personnel. The age at which female genital mutilation is performed varies from area to area. It is performed on infants a few days old, female children and adolescents and, occasionally, on mature women.⁴

The reasons given by families for having FGM performed include:

- Psychosexual reasons: reduction or elimination of the sensitive tissue of the outer genitalia, particularly the clitoris, in order to attenuate sexual desire in the female, maintain chastity and virginity before marriage and fidelity during marriage, and increase male sexual pleasure;
- Sociological reasons: identification with the cultural heritage, initiation of girls into womanhood, social integration and the maintenance of social cohesion;

¹ <http://www.who.int/mediacentre/factsheets/fs241/en/>

² *Id.*

³ *Id.*

⁴ *Id.*

- Hygiene and aesthetic reasons: the external female genitalia are considered dirty and unsightly and are to be removed to promote hygiene and provide aesthetic appeal;
- Myths: enhancement of fertility and promotion of child survival;
- Religious⁵ reasons.⁶

Who Performs FGM

In cultures where it is an accepted norm, female genital mutilation is practiced by followers of all religious beliefs as well as animists and non-believers. Most of the girls and women who have undergone genital mutilation live in 28 African countries, although some live in Asia and the Middle East. They are also increasingly found in Europe, Australia, Canada and the USA, primarily among immigrants from these countries. Today, the number of girls and women who have undergone female genital mutilation is estimated at between 100 and 140 million worldwide. It is estimated that each year, a further 2 million girls are at risk of undergoing FGM.⁷

Health Consequences of FGM

The immediate and long-term health consequences of female genital mutilation vary according to the type and severity of the procedure performed. Immediate complications include severe pain, shock, hemorrhage, urine retention, ulceration of the genital region, and injury to adjacent tissue. Hemorrhage and infection can cause death. More recently, concern has arisen about possible transmission of the human immunodeficiency virus (HIV) due to the use of one instrument in multiple operations, but this has not been the subject of detailed research. Long-term consequences include cysts and abscesses, keloid scar formation, damage to the urethra resulting in urinary incontinence, dyspareunia (painful sexual intercourse), sexual dysfunction, and difficulties with childbirth. Genital mutilation may leave a lasting mark on the life and mind of the woman who has undergone it. In the longer term, women may suffer feelings of incompleteness, anxiety and depression.⁸

Laws Regarding FGM

A number of countries to which persons from countries that practice FGM have immigrated have laws against FGM. For example, Sweden, United Kingdom, Norway, Australia and New Zealand have enacted legislation against the practice.

In the United States, the performance of FGM on a person under the age of 18 was made a crime under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.⁹ The law, which was enacted September 30, 1996, provides in part that “whoever knowingly circumcises, excises or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than five years, or both.” The law provides that no account shall be taken of the effect on the person on whom the operation is to be performed, of any belief on the part of that person, or any other person, that the operation is required as a matter of custom or ritual.¹⁰

⁵ FGM has been documented in individuals from many religions, including Christians, Muslims, and Jews. Some proponents of the practice claim that it is required by the Islamic faith. However, scholars and theologians of Islam state that female circumcision is not prescribed by their religious doctrine, emphasizing that the procedure is almost never performed in many major Muslim countries such as Saudi Arabia, Iran, and Pakistan. See <http://aappolicy.aappublications.org/cgi/content/full/pediatrics%3b102/1/153>.

⁶ <http://www.who.int/mediacentre/factsheets/fs241/en/>

⁷ *Id.*

⁸ *Id.*

⁹ Pub. L. 104–208, div. C, title VI, § 645(b)(1)

¹⁰ 18 U.S.C. s. 116; <http://www.state.gov/documents/organization/9424.pdf>

To date, at least seventeen states have passed legislation outlawing FGM. These include California, Colorado, Delaware, Georgia, Illinois, Maryland, Minnesota, Missouri, Nevada, New York, North Dakota, Oregon, Rhode Island, Tennessee, Texas, West Virginia and Wisconsin.¹¹

Effect of the Bill

HB 1441 creates s. 794.08, F.S., criminalizing FGM. The bill defines “female genital mutilation” as “the circumcising, excising, or infibulating, in whole or in part, the labia majora, labia minora, or clitoris of a female person,” and provides that:

- A person who knowingly commits, or attempts to commit, FGM upon a female person younger than 18 years of age commits a first degree felony.¹² The bill ranks this offense in level 9 of the Criminal Punishment Code, offense severity ranking chart.
- A person who knowingly removes, or causes or permits the removal of, a female person younger than 18 years of age from this state for purposes of committing FGM commits a second degree felony.¹³ The bill ranks this offense in level 8 of the Criminal Punishment Code, offense severity ranking chart.
- A person who is a parent, a guardian, or in a position of familial or custodial authority to a female person younger than 18 years of age and who knowingly consents to or permits the FGM of that female person commits a third degree felony.¹⁴ The bill ranks this offense in level 7 of the Criminal Punishment Code, offense severity ranking chart.

The bill specifies that consent of a female person younger than 18 or the consent of a parent, guardian, or person who is in a position of familial or custodial authority to a female person younger than 18 is not a defense to the offense of FGM.

Procedures performed by or under the direction of a physician,¹⁵ an osteopathic physician,¹⁶ a registered nurse,¹⁷ a practical nurse,¹⁸ an advanced registered nurse practitioner,¹⁹ a midwife,²⁰ or a physician assistant²¹ when necessary to preserve the physical health of a female person are exempted from criminal prosecution. Also exempted are autopsies and limited dissections conducted pursuant to chapter 406, F.S.

C. SECTION DIRECTORY:

Section 1. Creates s. 794.08, F.S., relating to female genital mutilation.

Section 2. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

Section 3. This bill takes effect October 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

¹¹ *Id.*
¹² A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.
¹³ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.
¹⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and s. 775.084, F.S.
¹⁵ ch. 458, F.S.
¹⁶ ch. 459, F.S.
¹⁷ Part I of ch. 464, F.S.
¹⁸ *Id.*
¹⁹ *Id.*
²⁰ ch. 467, F.S.
²¹ chapters 458 and 459, F.S.

1. Revenues:

None.

2. Expenditures:

On March 27, 2007, the Criminal Justice Impact Conferences determined that this bill would have an insignificant prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

The bill sponsor submitted the following statement:

The immediate and long-term health consequences of female genital mutilation vary according to the type and severity of the procedure performed. Immediate complications include females who are subjected to genital mutilation often experience severe pain, shock, hemorrhage, urine retention, ulceration of the genital region, and injury to adjacent tissue. Hemorrhage and infection can cause death. More recently, concern has arisen about possible transmission of the human immunodeficiency virus (HIV) due to the use of one instrument in multiple operations. Long-term consequences include cysts and abscesses, colloid scar formation, damage to the urethra resulting in urinary incontinence,

dyspareunia (painful sexual intercourse), sexual dysfunction, and difficulties with childbirth. Genital mutilation may leave a lasting mark on the life and mind of the women who has undergone it. In the longer term, women may suffer feelings of incompleteness, anxiety and depression. This bill proposes adding Florida to states including: California, Colorado, Delaware, Georgia, Illinois, Maryland, Minnesota, Missouri, Nevada, New York, North Dakota, Oregon, Rhode Island, Tennessee, Texas, West Virginia and Wisconsin, which have outlawed such procedures.

The chair of the Safety & Security Council chose not to submit any further comments regarding the council substitute.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 11, 2007, the Safety & Security Council adopted one amendment and reported the bill favorably as a council substitute. The amendment corrected a bill drafting error in the title.