

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Children, Families, and Elder Affairs Committee

BILL: SB 894

INTRODUCER: Senator Joyner

SUBJECT: Female Genital Mutilation

DATE: March 12, 2007

REVISED: 3/21/07

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ray</u>	<u>Jameson</u>	<u>CF</u>	<u>Fav/1 amendment</u>
2.	<u> </u>	<u> </u>	<u>CJ</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>JA</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

Please see last section for Summary of Amendments

- 1 Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

This bill creates s. 794.08, F.S. which defines “female genital mutilation,” eliminates consent as a defense to the offense of female genital mutilation, and specifies the following felonies:

- **First Degree Felony:** A person who commits female genital mutilation on a female younger than 18 years of age commits a first degree felony.
- **Second Degree Felony:** A person who removes, causes, or permits the removal of a female younger than 18 years of age from the state for the purpose of female genital mutilation commits a second degree felony.
- **Third Degree Felony:** A parent or guardian who consents to the female genital mutilation of a female younger than 18 years of age commits a third degree felony.

This bill amends s. 921.0022, F.S., creating felony classifications in the offense severity ranking chart of the Criminal Punishment Code.

This bill creates s. 794.08, F.S., and substantially amends s. 921.0022, F.S.

II. Present Situation:

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.

There are different types of FGM known to be practiced today.¹ The most common type of FGM is excision of the clitoris and the labia minora, accounting for up to 80 percent of all cases; the most extreme form is infibulation (excision of part or all of the external genitalia and stitching/narrowing of the vaginal opening), which constitutes about 15 percent of all procedures.²

“Female Genital Mutilation is practiced in 28 African countries as well as in Asia (Indonesia) and the Middle-East (Yemen). It is increasingly found in Europe, Australia, Canada and the USA, primarily among immigrants from these countries.”³

The number of girls and women worldwide who have undergone female genital mutilation is estimated at between 100 and 140 million. Amnesty International estimates that each year, an additional 2 million girls are at risk of undergoing FGM.⁴ Some families have their daughters undergo FGM while on vacation in their home countries. As Western governments become more aware of FGM, legislation has come into effect in many countries to make the practice of FGM a criminal offense.

The Centers for Disease Control and Prevention (CDC) undertook a study to determine the prevalence of FGM in the United States. Using data from the 1990 U.S. Census, along with country-specific prevalence data on FGM, the CDC estimated that in 1990, there were approximately 168,000 girls and women living in the United States with or at risk for FGM.⁵

The issue of FGM is most often addressed in the courts in cases involving a requested review of an order of the Board of Immigration Appeals in which the petitioner is seeking asylum based upon a fear of being subjected to FGM if they, and often times their minor daughters, are returned to their country of birth.⁶

In 2006, Khalid Adem became the first man in the United States to be prosecuted for circumcising his two-year-old daughter with a pair of scissors in the kitchen of his apartment.⁷ This occurred in Georgia where, at the time, there was no law specifically addressing female genital cutting. Adem was convicted of aggravated battery and cruelty to children. He was

¹ <http://www.who.int/mediacentre/factsheets/fs241/en/> (2007).

² Id.

³ Amnesty International: <http://news.amnesty.org/index/ENGACT770182004> (last visited March 16, 2007).

⁴ Id.

⁵ Center for Reproductive Rights, Legislation on Female Genital Mutilation in the United States, pg. 4, (November 2004).

⁶ See e.g. *Haqua v. Gonzales*, 472 F.3d 227 (4th Cir. 2007); *Abay v. Ashcroft*, 368 F.3d 634 (6th Cir. 2004); *Seifu v. Ashcroft*, 80 Fed. Appx. 323 (5th Cir. 2003).

⁷ The Associated Press. (2006). “Female circumcision trial may be first in U.S.”

(<http://www.cnn.com/2006/LAW/10/27/female.circumcision.ap/index.html>) (last visited March 16, 2007).

sentenced to two concurrent, fifteen-year terms with the first ten years being served in prison and the remaining five years on probation.⁸

Health and Safety Issues

The immediate and long-term health consequences of FGM vary according to the type and severity of the procedure performed. Recently, concern has arisen about possible transmission of the human immunodeficiency virus (HIV) due to the use of one instrument in multiple operations.⁹

Immediate complications include the following:¹⁰

- Severe pain.
- Shock.
- Hemorrhage.
- Urine retention.
- Ulceration of the genital region.
- Injury to adjacent tissue.

Long-Term consequences include the following:¹¹

- Cysts and abscesses.
- Keloid scar formation (an abnormal scar that grows beyond the boundary of the original site of a skin injury).
- Damage to the urethra resulting in urinary incontinence.
- Dyspareunia (painful sexual intercourse).
- Sexual dysfunction and difficulties with childbirth. Genital mutilation leaves a lasting mark on the life and mind of the woman who has undergone it. Women may suffer long term feelings of incompleteness, anxiety, and depression.¹²

Federal Legislation

Congress enacted a provision criminalizing the practice of FGM as a part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.¹³ The Act provides 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 5 years, or both.” The statute exempts a surgical operation if such operation is “necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner.” The statute provides that “no account shall be taken of the effect on the person on

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ 22 U.S.C. § 262k-2 (1996).

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.” The statute also exempts an operation if it is “performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed . . . as a medical practitioner, midwife, or person in training to become such a practitioner or midwife.”¹⁴

State Legislation

Currently, 17 states have enacted state laws relating to FGM including:

- **Nevada** - On June 26, 1997, Nevada adopted a law making “mutilation of genitalia of a female child” a criminal offense. The prohibited procedure is defined as “the removal or infibulation in whole or in part of the clitoris, vulva, labia major, or labia minor for nonmedical purposes.” Under this Act, a person who willfully “mutilates, or aids, abets, encourages or participates in the mutilation of the genitalia of a female child” is guilty of a Category B felony and shall be punished by imprisonment for two to ten years and may also be subject to a fine of up to ten thousand dollars. In addition, a person who willfully “removes a female child from [the] state for the purpose of mutilating the genitalia of the child” is subject to the same penalties. The law expressly disallows a defense citing custom, ritual, or standard practice, or the consent of the child, parent, or legal guardian of the child.¹⁵
- **New York** - In 1997, the New York State Prohibition of Female Genital Mutilation Act was adopted, adding s. 130.85 to New York’s Penal Code. The Act states that a person is guilty of FGM when he or she “knowingly circumcises, excises, or infibulates, the whole or any part of the labia majora, labia minora, or clitoris of another person who has not reached eighteen years of age.” In addition, “a parent, guardian, or other person legally responsible and charged with the care and custody of a child less than eighteen years old, [who] knowingly consents to the circumcision, excision or infibulation of whole or part of such child’s labia minora or labia majora or clitoris” is also guilty of FGM. FGM is classified as a class E felony, which is punishable by up to four years imprisonment. The law exempts from this prohibition circumcision, excision, or infibulation that is “necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner.” FGM is also permissible when it is “performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife.” However, the law does not permit any account to be taken of “the effect on the person on whom such a procedure is to be performed of any belief on the part of that or any other person that such procedure is required as a matter of custom or ritual.”¹⁶
- **Georgia** – In 2005, Georgia adopted a law making FGM a criminal offense. This legislation provides for the conviction of a person who performs, is a parent, guardian or has immediate custody or control and gives consent, or knowingly causes the removal of a female under 18

¹⁴ 18 U.S.C. § 116 (1996).

¹⁵ s. 200.5083, Nevada Revised Statutes.

¹⁶ s. 130.85, New York Penal Law.

for the purpose of FGM. A person convicted of FGM in Georgia may receive imprisonment for not less than five and no more than 20 years.¹⁷

These laws are similar to the proposed bill.

III. Effect of Proposed Changes:

This bill creates s. 794.08, F.S., which places felony classifications on those performing or contributing to the performance of FGM. The following felonies are specified:

- **First Degree Felony:** A person who commits female genital mutilation on a female younger than 18 years of age commits a felony of the first degree. A felony of the first degree is punishable by a term of imprisonment not exceeding 30 years, a term of imprisonment not exceeding life when specifically provided by statute,¹⁸ and/or a fine not to exceed ten thousand dollars.¹⁹
- **Second Degree Felony:** A person who removes, or causes or permits the removal of a female younger than 18 years of age from the state for the purpose of female genital mutilation commits a felony of the second degree. A felony of the second degree is punishable by a term of imprisonment not exceeding 15 years²⁰ and/or a fine not to exceed ten thousand dollars.²¹
- **Third Degree Felony:** A parent or guardian who consents to the female genital mutilation of a female younger than 18 years of age commits a felony of the third degree. A felony of the third degree is punishable by a term of imprisonment not exceeding 5 years²² and/or a fine not to exceed five thousand dollars.²³

The punishment of a habitual felony offender or a habitual violent felony offender is comprised of enhanced penalties or mandatory minimum prison terms.²⁴

This bill does not apply to a procedure performed by or under the direction of a licensed physician,²⁵ a licensed osteopathic physician,²⁶ a licensed registered nurse,²⁷ a licensed practical nurse,²⁸ a licensed advanced registered nurse practitioner,²⁹ a licensed midwife,³⁰ or a licensed physician assistant.³¹ The bill also takes exception for times when it is necessary to preserve the health of a female younger than 18 years of age. This bill does not apply to any autopsy or limited dissection conducted pursuant to ch. 406.

¹⁷ O.C.G.A., § 16-5-27.

¹⁸ s. 775.082, F.S.

¹⁹ s. 775.083, F.S.

²⁰ s. 775.082, F.S.

²¹ s. 775.083, F.S.

²² s. 775.082, F.S.

²³ s. 775.083, F.S.

²⁴ s. 775.084, F.S.

²⁵ s. 458, F.S.

²⁶ s. 459, F.S.

²⁷ s. 464, F.S.

²⁸ Id.

²⁹ Id.

³⁰ s. 467, F.S.

³¹ ss. 458 or 459, F.S.

This bill eliminates the consent of a female younger than 18 years of age or the consent of a parent, a guardian, or a person in a position of familial or custodial authority over that person as a defense to the offense of FGM. It differs from legislation enacted in Nevada by not disallowing a defense citing custom, ritual, or standard practice.

This bill also amends s. 921.0022, F.S., to create felony classifications in the offense severity ranking chart of the Criminal Punishment Code for the specified violations.

This bill will take effect October 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill potentially will have a positive fiscal impact on the private sector by reducing the number of FGM cases and the health and safety issues resulting there from.

C. Government Sector Impact:

This bill is expected to have an insignificant fiscal impact to the criminal justice system.

VI. Technical Deficiencies:

Page 1, lines 12-16 state that “a parent or guardian who consents to the female genital mutilation of his or her female child who is younger than 18 years of age commits a felony of the first degree.” However, page 2, line 21 states that a person committing the same act commits a felony of the third degree.

VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

Barcode 341990 by Children, Families, and Elder Affairs Committee:

The bill's title was amended to correct the third degree felony classification.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
