

# Legislative Analysis

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## FEMALE GENITAL MUTILATION

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**Senate Bill 337 as passed by the Senate**  
**Sponsor: Sen. Margaret E. O'Brien**

Analysis available at  
<http://www.legislature.mi.gov>

**Senate Bill 338 as passed by the Senate**  
**Sponsor: Sen. Rick Jones**

**Senate Bill 368 as passed by the Senate**  
**Sponsor: Sen. Tonya Schuitmaker**

**Senate Bill 369 as passed by the Senate**  
**Sponsor: Sen. Judy Emmons**

**House Committee: Law and Justice**  
**Senate Committee: Judiciary**  
**Complete to 6-5-17**

## SUMMARY:

Taken together, the bills will prohibit knowingly performing female genital mutilation (FGM) or transporting another person for the purpose of undergoing FGM within the state, provide exceptions for medical reasons, make a violation a 15-year felony, and place the new penalties within the sentencing guidelines. The bills would take effect 90 days after enactment. The bill package is similar, but not identical, to House Bills 4636-4638.<sup>1</sup> Specifically, the bills would do the following:

### **Senate Bills 337 & 338**

Senate Bill 337 would add a new section to the Michigan Penal Code (MCL 750.136). With some exceptions, a person would be prohibited from knowingly performing a surgical operation to circumcise, incise, excise, or infibulate all or any part of the labia majora or labia minora, clitoris, or contiguously surrounding tissue on another person who is less than 18 years of age. The prohibition would apply regardless of whether the surgical operation caused physical deformity, residual pain, or loss or sensation. A violation would be a felony punishable by up to 15 years' imprisonment.

A surgical procedure would not be a violation if:

- It was necessary to the health of the person on whom it is performed and was performed by a licensed medical practitioner; or,
- It was performed on a person in labor or who had just given birth and had been performed for medical purposes connected with that labor or birth by a licensed medical practitioner, midwife, or person in training to become a licensed medical practitioner.

It would not be a defense in a prosecution that the defendant believed that the person on whom the surgical operation was performed was 18 years of age or older or that the operation is or was required as a matter of custom or ritual.

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<sup>1</sup> See: <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-4636-91C19FA5.pdf>

"Licensed medical practitioner" and "licensed midwife" means a medical or osteopathic physician, or a midwife, respectively, licensed under the Michigan Public Health Code. "Person in training" would mean an individual acting under the delegatory authority and supervision of a physician under Section 16215 (2) and includes an individual described in Section 16215(3) but not if the individual's license had been suspended. (Section 16215(2) and (3) pertain to the delegation of acts, tasks, or functions by a licensed health professional to a licensed or unlicensed person.)

Senate Bill 338 would amend the sentencing guidelines portion of the Code of Criminal Procedure (MCL 777.16g). The bill specifies that a female genital mutilation violation would be a Class B felony against a person with a maximum term of imprisonment of 15 years. The bill is tie-barred to Senate Bill 337, meaning that it could not become law unless Senate Bill 337 was also enacted.

### **Senate Bill 368 & 369**

Senate Bill 368 adds a new section to the Michigan Penal Code (MCL 750.136a). The bill would prohibit a person from knowingly transporting another person for the purpose of conduct with regard to that other person that would be a violation of Senate Bill 337. A violation would be a felony punishable by up to 15 years imprisonment. Further, the bill would not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same transaction as the violation of the bill. The bill is tie-barred to Senate Bill 337.

Senate Bill 369 places the felony penalty of Senate Bill 368 within the sentencing guidelines (MCL 777.16g). The bill specifies that transporting for the purpose of female genital mutilation would be a Class B felony against a person with a maximum term of imprisonment of 15 years. The bill is tie-barred to Senate Bill 368.

## **FISCAL IMPACT:**

The following is the fiscal impact statement provide for very similar House Bills:

The bills would have an indeterminate fiscal impact on the state's correctional system and on local court systems and would depend on the number of persons convicted under the provisions of the bills. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2016, the average cost of prison incarceration in a state facility was roughly \$36,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,500 per supervised offender in the same year. The fiscal impact on local court systems would depend on how the provisions of the bills affected caseloads and related administrative costs.

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Robin Risko

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.