

Legislative Analysis



FEMALE GENITAL MUTILATION

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<http://www.house.mi.gov/hfa>

House Bill 4636 reported from committee w/o amendment
Sponsor: Rep. Michele Hoytenga

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

House Bill 4637 reported w/o amendment
Sponsor: Rep. Diana Farrington

House Bill 4638 reported w/o amendment
Sponsor: Rep. Daire Rendon

House Bill 4690 reported w/o amendment
Sponsor: Rep. Bronna Kahle

House Bill 4639 reported w/o amendment
Sponsor: Rep. Clint Kesto

Senate Bill 337 reported w/o amendment
Sponsor: Sen. Margaret E. O'Brien

House Bill 4641 reported as H-1
Sponsor: Rep. Stephanie Chang

Senate Bill 338 reported w/o amendment
Sponsor: Sen. Rick Jones

House Bill 4642 reported w/o amendment
Sponsor: Rep. Pam Faris

Senate Bill 368 reported w/o amendment
Sponsor: Sen. Tonya Schuitmaker

House Bill 4661 reported as H-1
Sponsor: Rep. Beth Griffin

Senate Bill 369 reported w/o amendment
Sponsor: Sen. Judy Emmons

Committee: Law and Justice
Complete to 6-7-17

BRIEF SUMMARY: The bills amend various acts to:

- Prohibit performing female genital mutilation (FGM).
- Create criminal penalties and civil actions.
- Provide sanctions against health care licensees.
- Require public education about FGM.
- Extend criminal and civil statutes of limitations.

The bills will each take effect 90 days after enactment.

FISCAL IMPACT: Some of the bills will have a fiscal impact on state and/or local governments. See *Fiscal Information* below for more information.

THE APPARENT PROBLEM:

According to the Centers for Disease Control and Prevention, an estimated 513,000 women and girls in the United States have experienced, or are at risk of experiencing, Female Genital Mutilation (FGM). A representative from the AHA Foundation estimates that of those 513,000 women and girls, 10,493 are living in Michigan. Two Detroit-area doctors,

and a third person, have recently been charged under the federal FGM statute, related to the performing of FGM on two girls from Minnesota at a medical clinic in Livonia.

Even though a federal framework already exists, sponsors of the bills believe that the federal laws are not severe enough to account for the lifetime of suffering victims of FGM experience. Additionally, the sparse federal laws addressing FGM do not hold everyone involved in the procedure accountable for their actions. For instance, according to The Washington Post, the parents of the girls in the above-mentioned case lost custody of their children for only 72 hours, prompting Minnesota to draft their own state legislation to make up for the inadequacy of the federal laws.¹ Michigan legislators have crafted a comprehensive package of bills to address various aspects of FGM in the hopes of eradicating it from the state; the proposals range from creating a stiffer criminal penalty, to education about FGM, to extending certain statutes of limitation so that girls forced to undergo FGM may file criminal charges and civil actions when they reach adulthood.

THE CONTENT OF THE BILLS:

Criminal Penalties and Statute of Limitations

House Bill 4636 would add a new section to the Michigan Penal Code (MCL 750.136). The bill prohibits a person from knowingly circumcising, excising, or infibulating the whole or any part of the labia majora or labia minora or clitoris of a person less than 18 years of age. (Infibulating refers to the practice of stitching up most or all of the vulva).

Exceptions: A surgical operation would not be a violation of the above prohibition if the operation were either of the following:

- Necessary to the health of the person on whom it is performed, and is performed by a person licensed to perform that operation under the Public Health Code.
- 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 to perform that operation under the Public Health Code.

House Bill 4637 also adds a new section to the Michigan Penal Code (750.136a). The bill prohibits a person from knowingly transporting a person from this state for the purpose of conduct with regard to that person that would be a violation of Section 136 (added by House Bill 4636) if the conduct had occurred in this state. The bill also prohibits knowingly facilitating a violation of the bill.

The following provisions apply to both House Bill 4636 and House Bill 4637:

¹ Abigail Hauslohner, *The Washington Post*, *First federal case under female genital mutilation ban spurs efforts for harsher penalties*, May 29, 2017, https://www.washingtonpost.com/national/first-federal-case-under-female-genital-mutilation-ban-spurs-efforts-to-stiffen-penalties/2017/05/25/5b29d0de-39a9-11e7-a058-dbb23c75d82_story.html?utm_term=.33f4e3af7903.

- A person who violates the prohibitions of either bill, or knowingly facilitates a violation, would be guilty of a felony punishable by imprisonment for not more than 15 years and/or a fine of not more than \$25,000.
- Believing that the operation is required as a matter of custom or ritual by the person upon whom it is performed or by any other person would not be a defense to prosecution. Parental consent to the operation would also not be a defense to prosecution.
- A violation of either bill by a health care provider licensed under the Public Health Code would be grounds for permanent revocation of that license. In addition, Sections 136 and 136a 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 either of these provisions.

Both bills are tie-barred to House Bill 4639, meaning that neither could take effect unless House Bill 4639 were also enacted. House Bill 4639 would require the health care license of a person convicted of violating the prohibitions under House Bills 4636 or 4637 to be permanently revoked.

Senate Bills 367 and 368 are similar to House Bills 4636 and 4637, but do not contain a criminal fine for a violation involving FGM.

Senate Bill 367 would also 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.

"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 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.

House Bill 4638 and Senate Bills 338 and 369 amend the Code of Criminal Procedure (MCL 777.16g) to place the penalties for a violation of House Bill 4636 or 4637 within the sentencing guidelines. Specifically, the bill states that a female genital mutilation violation or transporting a person for purpose of female genital mutilation each would be a Class B felony against a person with a maximum term of imprisonment of 15 years.

The bills also make a technical correction to a sentencing guideline pertaining to a second or subsequent offense involving abuse against a vulnerable adult by a caregiver or licensee.

House Bill 4638 is tie-barred to House Bills 4636 and 4637. Senate Bill 338 is tie-barred to Senate Bill 337, and Senate Bill 369 is tie-barred to Senate Bill 368.

House Bill 4690 would amend the Code of Criminal Procedure to prescribe a statute of limitations for the crime of female genital mutilation.² An indictment could be found and filed within 10 years after the offense was committed, or by the alleged victim's 21st birthday, whichever is later. The bill is tie-barred to House Bills 4636 and 4637.

Healthcare License Revocation

House Bill 4639 would amend the disciplinary section of the Public Health Code to require that the health care license or registration of a person convicted of violating the prohibitions under House Bills 4636 or 4637 be permanently revoked.³ A certified copy of the court

² See the summaries of House Bills 4636 & 4637 at:

<http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-4636-DBD83D8F.pdf>

³ Currently, the following healthcare professions are licensed or registered under Article 15 of the Public Health Code: acupuncturists, chiropractors, dentists, dental assistants, dental hygienists, audiologists, marriage and family therapists, physicians (M.D.s and D.O.s), nurses, nursing home administrators, optometrists, speech-language pathologists, pharmacists, physical therapists and physical therapy assistants, physician's assistants, athletic trainers, massage therapists, podiatrists, counselors, psychologists, occupational therapists and occupational therapy assistants, dietitians and nutritionists, sanitarians, social workers and social service technicians, respiratory therapists, and veterinarians and veterinarian technicians.

record would be conclusive evidence of the conviction. The bill is tie-barred to House Bills 4636 and 4637.

[Under provisions of the Public Health Code, a licensed or registered healthcare professional (or applicant) can be subject to administrative sanctions for engaging in certain conduct or prohibited acts, as specified in the Code. For example, negligence or failure to exercise due care, incompetence, practice outside the scope of a license, or conviction of certain criminal offenses can result in sanctions levied against the person's license or registration. These sanctions, which apply to specific violations, may include denial, suspension, or revocation of the license or registration; reprimand; fines; restitution; and community service.]

Civil Actions for FGM Victims

Both bills would amend the Revised Judicature Act related to civil actions for damages brought by victims of female genital mutilation.

House Bill 4641 would add a new Section 5851a so that an individual who, while a minor, was a victim of female genital mutilation could commence an action under Section 2978 or as otherwise allowed by law to recover damages sustained at any time before the individual reaches 28 years of age. (This would provide an extended statute of limitations.)

House Bill 4661 would create a new Section 2978 to allow a victim of female genital mutilation to bring a civil action for damages sustained because of the female genital mutilation, and to specify the damages allowed to be awarded.

Under both bills, "female genital mutilation" would refer to the conduct listed in the provisions added to the Michigan Penal Code by House Bills 4636 (which would criminalize the practice of female genital mutilation).

House Bill 4661

The bill would create a new section so a victim of female genital mutilation could bring an action, in a court of competent jurisdiction, for damages sustained because of the female genital mutilation. A court would also be able to award all of the following:

- Three times the amount of actual damages sustained (also called "treble damages").
- Damages for noneconomic loss.
- Costs and reasonable attorney fees.

The remedy provided by this new section is in addition to any other right or remedy the individual may have at law or otherwise.

The term "noneconomic loss" would mean damages or loss due to pain, suffering, inconvenience, physical impairment, physical disfigurement, loss of society and companionship, loss of consortium, or other noneconomic loss.

House Bill 4661 and House Bill 4641 are both tie-barred to House Bill 4636 and to each other.

FGM Educational and Outreach Program

House Bill 4642 adds a new section to the Public Health Code to require the development and administration of an educational and outreach program by the Department of Health and Human Services to—at a minimum—inform the public of the health risks and emotional trauma inflicted by the practice of female genital mutilation (FGM) and criminal penalties for FGM.

The program must include informing members of new immigrant populations and health care providers. Further, the DHHS must develop and disseminate information on FGM and the criminal penalties to teachers and law enforcement personnel.

The bill defines "female genital mutilation" to mean the circumcision, excision, or infibulation, in whole or part, of the labia majora, labia minora, or clitoris of a female who is under 18 years of age. In developing the program described in the bill, the DHHS must seek input from all of the following:

- The general public, including individuals from communities that, as a matter of custom or ritual, traditionally practice FGM.
- Women's health organizations.
- Teachers. (The bill does not indicate whether this would be K-12 teachers or include teaching staff at institutions of higher education or other educational institutions such as trade schools.)
- Local health departments.
- Health care providers, defined to mean: a person licensed, registered, or otherwise authorized to engage in a health profession under Article 15 of the Code or a health facility or agency as defined in Section 20106.
- State agencies that the DHHS considers relevant.

BACKGROUND INFORMATION:

According to the World Health Organization (WHO), female genital mutilation (FGM, also called cutting) is any procedure involving the partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons. WHO classifies FGM into four categories, as follows:

- Type 1– clitoridectomy: partial or total removal of the clitoris, and in very rare cases, only the prepuce.
- Type 2– excision: partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora.

- Type 3– infibulation: narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the inner or outer labia, with or without removal of the clitoris.
- Type 4– other: all other harmful procedures to the female genitalia for non-medical purposes; for example, pricking, piercing, incising, scraping, and cauterizing the genital area.

The AHA Foundation has found that the procedure is often performed on girls between the ages of 4–14 and for a variety of cultural, social, and religious reasons. As reported by WHO, some factors may include strong cultural traditions or social conventions that pertain to ideals of femininity through removal of body parts considered "unclean" or "male," and to prove virginity at the time of marriage. In such social circles, it is considered a necessary procedure in order for a woman to be "desirable" by a potential spouse. The Center for Disease Control and Prevention reported that the three countries with the highest prevalence of FGM are Somalia, Ethiopia, and Sudan.

WHO has found no health benefits for girls and women, as the procedure involves the removal and/or damage of normal and healthy female genital tissue. In effect, FGM negatively interferes with the natural functions of girls' and women's bodies. Immediate consequences include severe pain, shock hemorrhage (bleeding), tetanus or sepsis (bacterial infection), urine retention, open sores in the genital region, and injury to nearby genital tissue. Long-term consequences often consist of recurrent bladder and urinary tract infections, cysts, infertility, complications during sexual intercourse and childbirth, and an increase in newborn deaths and stillbirths. Other psychological consequences occur as well, such as loss of trust, betrayal, post-traumatic shock, depression, anxiety, guilt, and suicidal ideation. For women who have resisted the procedure, they often become outcasts of their society and are shamed for their "uncleanliness." These women are also at a higher risk for "honor" violence or abuse because the family's honor can lie with girls undergoing FGM.

Current federal regulations criminalize FGM under Chapter 18, Section 116, of the United States Code, which prohibits a person from knowingly performing FGM on girls less than 18 years of age, or from taking a girl abroad for FGM (also known as "vacation cutting"). A person found guilty under this law would receive a maximum of five year's imprisonment and/or an unspecified fine amount. Chapter 8, Section 1374, of the United States Code also requires United States immigration officials to provide all immigrants with information about the severe physical and mental harm FGM causes and the legal consequences of performing FGM.

FISCAL INFORMATION:

House Bills 4636, 4637, 4690 and Senate Bills 337 and 368:

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. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bill 4638 and Senate Bills 338 and 369:

The bills amend sentencing guidelines and do not have a direct fiscal impact on the state or on local units of government.

House Bill 4639:

House Bill 4639 would not have a significant fiscal impact on the Department of Licensing and Regulatory Affairs.

House Bills 4641 and 4661

The bills would have an indeterminate fiscal impact on the state and on local court systems and would depend on the number of victims who commenced actions to recover damages. Local court systems would incur costs depending on how court caseloads and related administrative costs were affected.

House Bill 4642

The bill will have fiscal implications for the Department of Health and Human Services. A more detailed fiscal analysis is in process.

ARGUMENTS:

For:

Many in Michigan had never heard of FGM before a Michigan doctor was accused of performing it on two young girls from Minnesota. The clinic owner and his wife where the procedures were performed are now also facing charges for their role in the incident. As discussed in the ***Background*** section, FGM has no medical basis and can lead to serious and even life-threatening complications over a woman's lifespan. Often touted as having roots in religious doctrine, none of the major religions require FGM, though some sects or offshoots may have leaders who promote the practice. For example, observers say, FGM is practiced around the world by Muslims and Christians, and by adherents of pagan religions. Supporters of this legislation say that it is time, however, for this ancient practice to end.

The bill package embodies a comprehensive plan to address various issues surrounding FGM. The main thrust lies in creating a 15-year felony for anyone who would perform FGM on a child or who transports a child in the state for that purpose. House Bill 4637 would apply the penalty also to knowingly facilitating a FGM procedure. Exceptions are provided in the bills to exclude procedures done for a medical reason, and the provisions

do not apply once a woman reaches the age of majority at 18. Parents who subjected a child to FGM could not use as a defense that they were exercising their religious or cultural beliefs.

Supporters of this legislation say that though federal law already prohibits the practice, the penalty is so minor (a maximum of five years in prison, with no convictions on the books as of yet) as to be an ineffective deterrent. It is hoped that the threat of spending up to 15 years in prison, and/or paying up to \$25,000 in criminal fines as House Bills 4636 and 4637 would provide, will get the attention of parents and motivate them to resist the pressure of friends, family, and community elders still wrongfully pushing this abusive practice.

Against:

Federal law already makes FGM a crime. Numerous Michigan statutes, including child abuse and maiming, provide prosecutors with remedies. Further, depending on the immigration status of the parents, even a misdemeanor charge can result in a parent being deported. That fact, coupled with a focus on education and outreach efforts (as proposed in House Bill 4642) may alone be effective in reducing, if not eliminating, the practice of FGM among the state's immigrant population.

In addition, the harsh imprisonment and loss of a medical license—equating FGM with crimes involving criminal sexual conduct—could inadvertently drive the practice more underground and encourage more parents to seek the services of untrained people in unsanitary settings rather than a medical practitioner performing a less radical procedure under sterile conditions. It should be remembered that this procedure, though heinous and medically unnecessary, is being done out of concern by parents who, because of their personal religious or cultural beliefs, believe their child will be more harmed if FGM is not performed.

For:

Proponents of House Bills 4641 and 4661 argue that in order to allow for equitable relief, a victim of FGM should be able to sue under a civil statute for the act of FGM. Currently, a victim may sue under mayhem or battery, but a proper civil framework does not exist. In addition, the current statute of limitations for bringing a civil suit for a personal injury is two years from the time of actual discovery of harm, or when a plaintiff should have discovered the harm. Many girls do not realize or understand exactly what has happened to them until they reach adulthood. Because of this, and because women and girls who have suffered FGM experience long-term health problems, the statute of limitations should be extended to allow girls and women to come forward and gain proper relief.

For:

Supporters of House Bill 4690 argue that the statute of limitations to bring a criminal charge for the act of FGM should be extended. Currently, a similar crime must be prosecuted within six years, which can be well before a victim of FGM becomes an adult. The extension proposed under the bill would be the same as that for criminal sexual conduct in the second, third, and fourth degrees and assault with the intent to commit criminal sexual conduct.

Concerns were raised regarding negative effects that could result from a longer statute of limitations. Evidence disappears and memories fade over time, making cases harder to prosecute the longer a victim waits to come forward. However, proponents of the bill argue that victims need to be given time so they are ready to come forward. Additionally, the physical evidence of FGM is permanent on a victim.

For:

House Bill 4639 would result in a health care professional who engages in or facilitates the practice of FGM to permanently lose his or her professional license or registration. Advocates say to knowingly subject vulnerable, trusting children to the immediate and also long-lasting pain and suffering associated with FGM for no medical or health benefit is unconscionable. The Hippocratic Oath, which many adhere to, says not to do harm. Any trained medical professional who engages in FGM, which is a clear violation of that oath, should therefore not be allowed to practice medicine again.

For:

House Bill 4642 will require the Department of Health and Human Services to develop an educational and outreach program targeting populations in which children may be at higher risk of being forced to undergo FGM and those professionals who interact with them, such as teachers and law enforcement, and even DHHS case workers. Even physicians would receive information. Though often FGM is only discovered after the damage has been done, as more general practitioners and pediatricians become aware of the practice, they can educate their patient's parents of the truth about FGM and the potential criminal penalties it could trigger.

As many victims of FGM are now speaking out against the practice, and as laws begin to change, there is hope that FGM will finally be eradicated. If not in the world, at least in this part of it.

Against:

There is some concern that the wording of the bills prohibiting FGM could inadvertently prevent persons undergoing surgery for gender dysphoria from completing their transition in their own time. Perhaps the terminology in the bills could be fine-tuned to better ensure that surgeries, whether cosmetic in nature or to relieve discomfort could still be performed without fear of criminal penalties.

Response:

The bills only pertain to FGM procedures performed on children, and then only if the procedure was not medically necessary. Once a person turns 18, she would be free to exercise her preferences.

POSITIONS:

A representative from the AHA Foundation testified in support of House Bills 4636-4642 and 4661. (5-30-17)

A representative from the American Association of University Women indicated support for House Bills 4636-4639. (5-30-17)

A representative from the Michigan Domestic and Sexual Violence Prevention and Treatment Board indicated support for House Bills 4636-4640 and 4642. (5-30-17)

A representative from the Michigan State Police indicated support for House Bills 4636-4642. (5-30-17)

A representative from the Michigan Catholic Conference indicated support for House Bills 4636-4640 and 4642 (5-30-17), as well as Senate Bills 337, 338, 368, and 369 (6-6-17).

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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.