

SENATE BILL REPORT

SB 5453

As of February 10, 2023

Title: An act relating to female genital mutilation.

Brief Description: Concerning female genital mutilation.

Sponsors: Senators Keiser, Dhingra, Cleveland, Nguyen, Saldaña and Valdez.

Brief History:

Committee Activity: Law & Justice: 1/30/23, 2/02/23 [DPS].

Ways & Means: 2/14/23.

Brief Summary of First Substitute Bill

- Establishes a civil cause of action for minor victims of female genital mutilation.
- Makes it unprofessional conduct for a health care professional to perform female genital mutilation on a minor and requires the Department of Health to establish an education program to prevent female genital mutilation.
- Includes female genital mutilation in the definition of "abuse or neglect" that must be reported by a mandatory reporter.
- Creates the crime of female genital mutilation.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5453 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Salomon, Torres, Valdez, Wagoner and Wilson, L..

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Ryan Giannini (786-7285)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Monica Fontaine (786-7341)

Background: Unprofessional Conduct of Health Care Providers. The Department of Health (DOH) certifies, licenses, and regulates dozens of health professions in Washington State. Most of these health professions are governed by a board, commission, or advisory committee which are supported by DOH. All health professions are subject to the Uniform Disciplinary Act (UDA). Under the UDA, DOH or a professional board or commission investigates unprofessional conduct claims and may take disciplinary action against a licensed health care provider. Disciplining actions include fines, license revocations, and restrictions on practice.

Mandatory Reporting of Child Abuse or Neglect. Mandatory reporting laws require certain people to report suspected child abuse or neglect to the Department of Children, Youth, and Families or to law enforcement when a reporter has reasonable cause to believe that a child has suffered abuse or neglect. Mandatory reporters include professional school personnel; registered or licensed nurses; social service counselors; psychologists; and licensed or certified child-care providers.

Damages. Economic damages are objectively verifiable monetary losses, including medical expenses, loss of earnings, burial costs, loss of use of property, cost of replacement or repair, cost of obtaining substitute domestic services, loss of employment, and loss of business or employment opportunities.

Noneconomic damages are subjective, nonmonetary losses, including, but not limited to pain, suffering, inconvenience, mental anguish, disability or disfigurement incurred by the injured party, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation, and destruction of the parent-child relationship.

State case law has held that exemplary damages—also known as punitive damages—are unavailable in the absence of express statutory authorization.

Sentencing for Criminal Convictions. Crimes are classified as misdemeanors, gross misdemeanors, or felonies (of which there are class A, B, and C felonies). The classification of a crime generally determines the maximum term of confinement, or fine for an offense, or both. For each classification, the maximum terms of confinement and maximum fines are as follows:

| <u>Classification</u> | <u>Maximum Confinement</u> | <u>Maximum Fine</u> |
|-----------------------|----------------------------|---------------------|
| Misdemeanor | 90 days | \$1,000 |
| Gross Misdemeanor | 364 days | \$5,000 |
| Class C Felony | 5 years | \$10,000 |
| Class B Felony | 10 years | \$20,000 |
| Class A Felony | Life | \$50,000 |

Summary of Bill (First Substitute): Definition of Female Genital Mutilation. Female genital mutilation is defined as any procedure performed for nonmedical reasons that involves partial or total removal of, or other injury to, the external female genitalia, including but not limited to a clitoridectomy or the partial or total removal of the clitoris or the prepuce or clitoral hood, excision or the partial or total removal—with or without excision of the clitoris—of the labia minora or the labia majora, or both, infibulation or the narrowing of the vaginal opening—with or without excision of the clitoris, or other procedures that are harmful to the external female genitalia, including pricking, incising, scraping, or cauterizing the genital area.

Civil Cause of Action. A minor victim of female genital mutilation may bring a civil action against the person who committed female genital mutilation on the minor for economic and noneconomic damages, punitive damages, reasonable attorneys' fees, and costs incurred in bringing the action. A civil action must be brought within ten years of the injury. This statute of limitations is tolled for a minor until the minor reaches the age of 18.

Unprofessional Conduct of Health Care Providers. It is unprofessional conduct under the Uniform Disciplinary Act for a licensed health care provider to perform female genital mutilation on a minor.

Mandatory Reporting of Child Abuse or Neglect. Abuse or neglect that must be reported by mandatory reporters is expanded to include female genital mutilation.

Education Program. DOH must establish an education program for the prevention of female genital mutilation. The program must provide information about the health risks and emotional trauma inflicted by the practice of female genital mutilation, as well as the civil and criminal penalties for committing female genital mutilation. DOH must develop policies and procedures to both partner with relevant stakeholders to prevent female genital mutilation, and to train health care providers on recognizing factors and victims of female genital mutilation.

Crime of Female Genital Mutilation. A person is guilty of the crime of female genital mutilation when the person knowingly:

- commits female genital mutilation on a minor; or
- transports a minor, or causes or permits the transport of a minor, for the purpose of the performance of female genital mutilation on the minor.

Female genital mutilation is a gross misdemeanor. It is not a defense to female genital mutilation that a person believes that their actions were conducted as a matter of culture, custom, religion, or ritual, that a minor consented to female genital mutilation, or that the minor's parents or guardians consented to female genital mutilation.

A medical procedure does not constitute female genital mutilation if it is performed by a licensed health care provider, and it is necessary for the health of the minor.

A criminal prosecution for female genital mutilation must be brought within ten years after the commission of the crime, or if the crime was committed against a victim under the age of 18, up to the victim's 28th birthday, whichever is later.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Includes female genital mutilation in the definition of "abuse or neglect" that must be reported by a mandatory reporter.
- Clarifies that a person is guilty of female genital mutilation if the person knowingly transports or causes or permits the transport of a minor for the purpose of the performance of female genital mutilation on the minor.
- Clarifies that culture and religion are not defenses to female genital mutilation.
- Changes the effective date of the bill by having it take effect immediately upon signature.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on Original Bill (Law & Justice): *The committee recommended a different version of the bill than what was heard.* PRO: In previous years, this bill only dealt with female genital mutilation in the context of unprofessional conduct, but licensed health professionals are not the only ones involved in this practice. Female genital mutilation often happens to very young girls. This bill has a civil as well as criminal component. Communities want this criminal prohibition because this practice must end in Washington in order for young girls to grow to their full potential without suffering trauma. Female genital mutilation is recognized in the United States and internationally as a human

rights violation. It is a form of gender-based violence and child sexual assault. Many people think of female genital mutilation as a foreign problem, but the focus needs to shift back to local communities, since there are communities in Washington that are practicing female genital mutilation. Washington is number eight in the United States for highest risk population for female genital mutilation. There are several long-term harmful effects of female genital mutilation to victims, including mental trauma, health implications, and physical and emotional scars. There are no benefits to this brutal practice. Everyone has a right to be protected from this kind of harm, especially children. When a law is in place, those who are in favor of stopping female genital mutilation, including parents who are under pressures from their communities, are empowered to reject this practice.

Persons Testifying (Law & Justice): PRO: Senator Karen Keiser, Prime Sponsor; Absa Samba; Muna Osman, Behalf off WA coalition and survivor; Dr. Maria Viola Sanchez, STOP THE CUT NOW! Eradicating Female Genital Mutilation; Fatoumata Jammeh; Eric Pratt, I, America; Zehra Patwa, WeSpeakOut.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.