
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 798 **Hearing Date:** June 20, 2023
Author: Weber
Version: May 18, 2023
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Female genital mutilation*

HISTORY

Source: Stop the Cut Now!

Prior Legislation: AB 2125 (Cuneen), Ch. 790, Stats. 1996

Support: AHA Foundation; American College of Obstetricians and Gynecologists; California Catholic Conference; California District Attorneys Association; Equality Now; Nile Sisters Development Initiative; Racial and Ethnic Mental Health Disparities Coalition; Servicing Wild Flower International

Opposition: None known

Assembly Floor Vote: 80 - 0

PURPOSE

The purpose of this bill is to redefine female genital mutilation (FGM) and prohibit an individual from using religion, custom, or consent as a defense for crimes arising from the practice of FGM.

Existing law defines “female genital mutilation” as “the excision or infibulation of the labia majora, labia minora, clitoris, or vulva, performed for nonmedical purposes.” (Pen. Code, § 273.4, subd. (b).)

This bill instead defines “female genital mutilation” as “any procedure that involves partial or total removal of the external female genitalia, or other injury to the female genital organs for nonmedical reasons.”

Existing law provides that any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts unjustifiable physical pain or mental suffering, or having the care or custody of a child, willfully causes or permits that child to be injured, or willfully causes or permits that child to be placed in a situation where their person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years. (Pen. Code, § 273a.)

Existing law states that if a conviction for felony child abuse was based on the commission of FGM the defendant shall be punished by an additional consecutive term of imprisonment in the state prison for one year. (Pen. Code, § 273.4, subd. (a).)

This bill states that evidence that a person removes or causes, permits, or facilitates the removal of a minor from this state may be used as circumstantial evidence to establish a violation, or an attempt, under this section that provides for the enhancement, or any other crime arising from the commission of FGM.

This bill specifies that it is not a defense to this section that provides for the enhancement, or any other crime arising from the commission of female genital mutilation that the conduct is required as a matter of religion, custom, ritual, or standard practice, or that the minor on whom it is performed, or the minor's parent or guardian, consented to the procedure.

Existing law establishes the Child Abuse and Neglect Reporting Act. (Pen. Code, § 11164.)

Existing law lists the categories of individuals who are mandated reporters. (Pen. Code, § 11165.7.)

Existing law requires a mandated reporter to make a report whenever, in their professional capacity or within the scope of their employment, they have knowledge of or observe a child whom they know or reasonably suspect has been the victim of child abuse or neglect. (Pen. Code, § 11166.)

This bill specifies that FGM is child abuse for purposes of the Child Abuse and Neglect Reporting Act and states that it is not a defense to FGM that the conduct is required as a matter of religion, custom, ritual, or standard practice, or that the minor on whom it is performed, or the minor's parent or guardian, consented to the procedure.

COMMENTS

1. Need for This Bill

According to the author of this bill:

FGM is a practice that can cause serious lifelong health problems. It is a practice that has no medical benefits. While it is a challenge to know the exact number of women and girls who are at risk of FGM in the United States (U.S.), the Centers for Disease Control and Prevention estimates more than 500,000 are at risk or have already undergone FGM in the U.S. AB 798 will hold anyone who takes a minor to another country to undergo FGM accountable for that action. It also will prevent religion or culture to be a criminal defense for FGM under state law. This bill sends a strong message that FGM is not tolerated in California.

2. Female Genital Mutilation and Existing Laws

The World Health Organization (WHO) defines FGM as “all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons.” (See WHO FGM Fact Sheet, January 31, 2023, <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation> [as of June 12,

2023].) “FGM has no health benefits, and it harms girls and women in many ways. It involves removing and damaging healthy and normal female genital tissue, and it interferes with the natural functions of girls' and women's bodies.” (*Ibid.*) It is associated with long-term health complications ranging from urinary problems, menstrual problems, pain during intercourse, complications in childbirth and increased risk of newborn deaths. (*Ibid.*)

“FGM is recognized internationally as a violation of the human rights of girls and women. It reflects deep-rooted inequality between the sexes and constitutes an extreme form of discrimination against girls and women.” (WHO Fact Sheet, supra.) More than 200 million girls and women alive today have been subjected to FGM in 30 countries in Africa, the Middle East and Asia where FGM is practiced. (*Ibid.*)

The World Health Organization classifies FGM into four types:

Type 1: The partial or total removal of the clitoral glans, and/or the prepuce/clitoral hood.

Type 2: The partial or total removal of the clitoral glans and the labia minora, with or without removal of the labia majora.

Type 3: Infibulation, which is the narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the labia minora, or labia majora, sometimes through stitching, with or without removal of the clitoral prepuce/clitoral hood and glans.

Type 4: This includes all other harmful procedures to the female genitalia for non-medical purposes, such as pricking, piercing, incising, scraping and cauterizing the genital area. (WHO Fact Sheet, supra.)

FGM is prohibited both federally and under state law. Federal law makes it a crime punishable by up to 10 years in prison to knowingly: 1) perform, attempt to perform, or conspire to perform female genital mutilation on another person who has not attained the age of 18 years; 2) give consent or facilitate FGM as the parent, guardian, or caretaker of a person who has not attained the age of 18 years; or 3) transport a person who has not attained the age of 18 years for the purpose of the performance of female genital mutilation on such person. (18 U.S.C.S §116, subd. (a).) Federal law states that it is not a defense to prosecution that female genital mutilation is required as a matter of religion, custom, tradition, ritual, or standard practice. (18 U.S.C.S §116, subd. (c).)

California law criminalizes FGM as a form of child abuse and requires a sentencing enhancement of one year in state prison if the child abuse conviction was based on FGM. (Pen. Code, § 273.4.) Additionally, FGM could be prosecuted under other statutes such as mayhem or aggravated mayhem. (Pen. Code, §§ 203 and 205.) California law defines FGM as “the excision or infibulation of the labia majora, labia minora, clitoris, or vulva, performed for nonmedical purposes.” (Pen. Code, § 273.4, subd. (b).) This definition excludes certain forms of Type 1 FGM (such as cutting of the clitoral hood) or Type 4 FGM which includes all other harmful procedures to the female genitalia for non-medical purposes.

This bill would redefine California’s definition of “FGM” to conform with that of WHO. This bill would also state that it is not a defense to the above crimes, or to any crime arising out of the commission of a FGM, that the procedure was done for religious, ritual, or customary reasons

and/or that the minor or the minor's parents consented, which is similar to federal law.

In addition, this bill would specify that evidence that a person removes, causes, permits, or facilitates the removal of a minor from this state can be used as circumstantial evidence to establish the commission, or attempted commission, of any crime arising from a FGM.

3. Child Abuse and Neglect Reporting Act

The Child Abuse Neglect Reporting Act (Pen. Code, §§ 11164 et seq.) provides “a comprehensive reporting scheme aimed toward increasing the likelihood that child abuse victims [will] be identified.” (*Ferraro v. Chadwick* (1990) 221 Cal.App.3d 86, 90.) “The Act requires persons in positions where abuse is likely to be detected to report promptly all suspected and known instances of child abuse to authorities for follow-up investigation.” (*Ibid.*; accord, *James W. v. Superior Court* (1993) 17 Cal.App.4th 246, 253-254.)

The Act identifies over 40 separate categories of mandated reporters. (Pen. Code, § 11165.7, subd. (a)(1)-(49).) A mandated reporter must report known or reasonably suspected child abuse or neglect to a designated agency, specifically “any police or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to receive such reports, or county welfare department.” (Pen. Code, § 11166, subd. (a).) Failure to make the required report is a misdemeanor. (Pen. Code, § 11166, subd. (c).)

This bill would specify for purposes of the Child Abuse and Neglect Reporting Act that FGM is a crime and that it is not a defense to any crime arising out of the commission of a FGM that the procedure was done because of a religious, cultural, or customary ritual, and that it is also not a defense that the parent minor, or the minor consented.

4. Argument in Support

According to Stop the Cut Now!, the sponsor of this bill:

While California has anti-FGM legislation, it needs to be improved so as to be more effective in eradicating this procedure. Of the 41 states in the U.S. which have laws against FGM, California is one of only four states which do not have a provision in the law stating that religion or culture cannot be used as a defense. Similarly, 25 of the 41 states also have vacation cutting provisions, which show that they view this as a serious issue which needs to be addressed.

State laws have a more direct impact on the day-to-day lives of those living within its borders. At the state level, FGM is a child protection issue that should be linked to child protection laws. Federal laws against FGM are implemented by federal agencies, whereas state laws govern activities of state-run institutions including law enforcement and courts, healthcare, social services, and other programs to address FGM. States have significantly greater capacity to reach young girls at risk of FGM and the front-line professionals that can intervene to protect them within existing child protection frameworks. Girls must be protected from child abuse and violence, including FGM, in every state and front-line professionals responsible for protecting girls must be empowered to protect girls.