A BILL FOR AN ACT

RELATING TO FEMALE GENITAL MUTILATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that female genital mutilation is a dangerous practice that cannot be justified by claims of tradition or culture and must be heavily penalized in this State. Female genital mutilation involves the cutting away and removal of healthy and normal female genital tissue. It interferes with the natural function of girls' and women's bodies, and can cause severe bleeding and urinary problems, cysts, infections, and complications during childbirth and increased risk of newborn deaths. Moreover, once the physical procedure itself is over, girls and women subjected to it are further harmed in many ways: they typically experience pain during sexual intercourse, decreased sexual satisfaction, the need for later surgeries to allow for childbirth, and psychological problems such as low self-esteem, depression, anxiety, and post-traumatic stress disorder.

The legislature also finds that more than five hundred thousand girls and women in the United States are at risk of, or
have undergone, female genital mutilation. The practice of female genital mutilation is carried out by members of certain cultural and religious groups within the United States, and is associated with cultural ideals of femininity and modesty, which include the notion that girls are clean and beautiful after removal of body parts that are considered unclean, unfeminine, or male. Though no religious scripts prescribe the practice, practitioners often believe the practice has religious support. The legislature nonetheless finds that female genital mutilation is recognized internationally as a violation of the human rights of girls and women, reflects a deep-rooted inequality between the sexes, and constitutes an extreme form of discrimination against women.

The legislature is cognizant that federal law already prohibits the practice of female genital mutilation in the United States. However, in November 2018, a federal judge in Michigan dismissed key charges against doctors accused of participating in or enabling the ritual genital cutting of girls. Further, the judge ruled that Congress lacked the authority to pass the law against female genital mutilation. While the United States Attorney's office is considering an
appeal to this ruling, it is clear that in order ensure the
prevention of female genital mutilation, states must adopt their
own laws to prohibit such acts.

The legislature further recognizes that with recent
increases in immigration from certain countries where female
genital mutilation is widespread, there are more arrivals to
this country who have already been victimized by this cruel and
inhumane practice. Moreover, the spread of this practice into
the United States has resulted in some families taking their
daughters out of the country to subject them to the procedure
during what would otherwise appear to be a family vacation.
Therefore, the State must prohibit the practice and associated
acts locally in order to prevent the victimization of more girls
and women.

The purpose of this Act is to:

(1) Establish the class B felony offense of prohibited
acts related to female genital mutilation;

(2) Amend the statutory definition of "child abuse or
neglect" to include prohibited acts related to female
    genital mutilation; and
(3) Include prohibited acts related to female genital mutilation as acts prohibited under Hawaii's Child Protective Act.

SECTION 2. Chapter 707, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

"§707- Prohibited acts related to female genital mutilation. (1) A person commits the offense of prohibited acts related to female genital mutilation if the person intentionally or knowingly:

(a) Circumcises, excises, or infibulates the whole or any part of the labia majora, labia minora, or clitoris of a minor;

(b) As a parent, guardian, or other person legally responsible or charged with the care or custody of a minor, allows the circumcision, excision, or infibulation, in whole or in part, of the labia majora, labia minora, or clitoris of the minor; or

(c) Removes, or causes or permits to be removed, a minor from this State for the purpose of circumcising,
excising, or infibulating, in whole or in part, the
labia majora, labia minora, or clitoris of the minor.

(2) It shall not be a defense to prosecution for a
violation of this section that the procedure or conduct
described in subsection (1):

(a) Is required as a matter of custom, ritual, or
religious practice;

(b) Was consented to by the minor who was subjected to it;

or

(c) Was consented to by the parent, guardian, or other
person legally responsible or charged with the care or
custody of the minor who was subjected to it.

(3) A health care provider licensed pursuant to chapter
453 who performs the procedure described in subsection (1)(a)
shall not be subject to criminal liability under this section if
the procedure is performed within the scope of the person's
license and qualifications and is:

(a) Medically necessary for the health of the minor on
whom it is performed;
(b) Performed on a person who is in labor or who has just
given birth and is performed for medical purposes
connected with that labor or birth; or

(c) Performed on a person as part of gender or sex
reassignment surgery; provided that a minor whom
undergoes gender or sex reassignment surgery and the
parent, guardian, or other person legally responsible
for care or custody of the minor consent to the
procedure.

(4) A parent, guardian, or other person legally
responsible or charged with the care or custody of a minor who
allows a procedure consistent with subsection (3) of this
section to take place shall not be subject to criminal liability
under this section.

(5) A person who removes, or causes or permits to be
removed, a minor from this State for the purpose of a procedure
consistent with subsection (3) of this section shall not be
subject to criminal liability under this section.

(6) As used in this section, "infibulate" means the
narrowing of the vaginal opening through the creation of a
covering seal which is formed by cutting and repositioning the
labia minora, or labia majora, sometimes through stitching, with
or without removal of the clitoris.

(7) Prohibited acts related to female genital mutilation
is a mandatory reportable offense for any person required to
report child abuse under section 350-1.1.

(8) Prohibited acts related to female genital mutilation
is a class B felony."

SECTION 3. Section 350-1, Hawaii Revised Statutes, is
amended by amending the definition of "child abuse or neglect"
to read as follows:

"Child abuse or neglect" means:

(1) The acts or omissions of any person who, or legal
entity which, is in any manner or degree related to
the child, is residing with the child, or is otherwise
responsible for the child's care, that have resulted
in the physical or psychological health or welfare of
the child, who is under the age of eighteen, to be
harmed, or to be subject to any reasonably
foreseeable, substantial risk of being harmed. The
acts or omissions are indicated for the purposes of
reports by circumstances that include but are not limited to:

(A) When the child exhibits evidence of:

   (i) Substantial or multiple skin bruising or any other internal bleeding;

   (ii) Any injury to skin causing substantial bleeding;

   (iii) Malnutrition;

   (iv) Failure to thrive;

   (v) Burn or burns;

   (vi) Poisoning;

   (vii) Fracture of any bone;

   (viii) Subdural hematoma;

   (ix) Soft tissue swelling;

   (x) Extreme pain;

   (xi) Extreme mental distress;

   (xii) Gross degradation; or

   (xiii) Death; and

   [such] the injury is not justifiably explained,

   or [when] the history given concerning [such] the condition or death is at variance with the degree
or type of [such] the condition or death, or circumstances indicate that [such] the condition or death may not be the product of an accidental occurrence;

(B) When the child has been the victim of sexual contact or conduct, including but not limited to sexual assault as defined in the Penal Code, molestation, sexual fondling, incest, or prostitution; obscene or pornographic photographing, filming, or depiction; or other similar forms of sexual exploitation, including but not limited to acts that constitute an offense pursuant to section 712-1202(1)(b);

(C) When there exists injury to the psychological capacity of a child as is evidenced by an observable and substantial impairment in the child's ability to function;

(D) When the child is not provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision;
(E) When the child is provided with dangerous, harmful, or detrimental drugs as defined by section 712-1240; provided that this subparagraph shall not apply when the drugs are provided to the child pursuant to the direction or prescription of a practitioner, as defined in section 712-1240;

(F) When the child has been the victim of labor trafficking under chapter 707; or

(G) When the child has been subjected to a procedure or conduct that constitutes an offense under section 707-; or

(2) The acts or omissions of any person that have resulted in sex trafficking or severe forms of trafficking in persons; provided that no finding by the department pursuant to this chapter shall be used as conclusive evidence that a person has committed an offense under part VIII of chapter 707 or section 712-1202."

SECTION 4. Section 587A-4, Hawaii Revised Statutes, is amended by amending the definition of "harm" to read as follows:
"Harm" means damage or injury to a child's physical or psychological health or welfare, where:

1. The child exhibits evidence of injury, including, but not limited to:
   - (A) Substantial or multiple skin bruising;
   - (B) Substantial external or internal bleeding;
   - (C) Burn or burns;
   - (D) Malnutrition;
   - (E) Failure to thrive;
   - (F) Soft tissue swelling;
   - (G) Extreme pain;
   - (H) Extreme mental distress;
   - (I) Gross degradation;
   - (J) Poisoning;
   - (K) Fracture of any bone;
   - (L) Subdural hematoma; or
   - (M) Death;

and the injury is not justifiably explained, or the history given concerning the condition or death is not consistent with the degree or type of the condition or
death, or there is evidence that the condition or
deadth may not be the result of an accident;

(2) The child has been the victim of sexual contact or
conduct, including sexual assault; sodomy;
molestation; sexual fondling; incest; prostitution;
obscene or pornographic photographing, filming, or
depiction; or other similar forms of sexual
exploitation, including but not limited to acts that
constitute an offense pursuant to section
712-1202(1)(b);

(3) The child's psychological well-being has been injured
as evidenced by a substantial impairment in the
child's ability to function;

(4) The child is not provided in a timely manner with
adequate food; clothing; shelter; supervision; or
psychological, physical, or medical care;

(5) The child is provided with dangerous, harmful, or
detrimental drugs as defined in section 712-1240,
except when a child's family administers drugs to the
child as directed or prescribed by a practitioner as
defined in section 712-1240; [\not]
(6) The child has been the victim of labor trafficking under chapter 707[—]; or
(7) The child has been subjected to a procedure or conduct that constitutes an offense under section 707-__.

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2050.
Report Title:
Female Genital Mutilation; Penal Code

Description:
Establishes the class B felony offense of prohibited acts related to female genital mutilation. Includes commission of prohibited acts related to female genital mutilation in the statutory definition of child abuse or neglect and as a prohibited act under the State's Child Protective Act. (HB132 HD2)

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