



*Arkansas
Sentencing
Commission*

**Impact Assessment for HB1762
Sponsored by Representative B. Smith
and Senator Cooper**

Subtitle TO CREATE THE OFFENSE OF FEMALE GENITAL MUTILATION.

Impact Summary¹ Minimal, affecting fewer than ten offenders per year.

Change from current law² Amends Arkansas Code Title 5, Chapter 60, Subchapter 1 to add an additional section, § 5-27-211, Female Genital mutilation. A person commits the offense of female genital mutilation if he or she knowingly (1) circumcises, excises, or infibulates, in whole or in part, the genitalia of a minor female; (2) as the parent or guardian of a minor female, consents to or permits the circumcision, excision, or infibulation or the minor female’s genitalia; or (3) removes, causes, or permits removal of a minor female from the state for the purpose or circumcising, excising or infibulating the minor female’s genitalia. This proposed bill also creates a defense to prosecution if the circumcision, excision, or infibulation is performed by a licensed doctor and either necessary to the health of the person receiving the procedure or performed on a person in labor or who has just given birth for medical purposes associated with labor or birth. Under the proposed bill, a violation of § 5-27-211 is a Class C felony.

Impact Information

Federal law punishes female genital mutilation under 18 U.S.C. § 116. The United States Sentencing Commission (USSC) reports no federal convictions from 2010-2014 for female genital mutilation. USSC reports two convictions for female genital mutilation from 2005-2009. The average sentence for both these convictions was two (2) years or less.

¹ This impact assessment was prepared (03/23/2015 3:35 p.m.) by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Arkansas Department of Correction and the Administrative Office of the Courts. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources. The following designations will be used: “minimal” = less than 10 offenders per year will be affected; “medium” = would require budgetary increases for ADC inmate costs; and “major” = would require budgetary increases for ADC inmate costs and construction costs for additional beds.

² Standard punishment ranges:

Class Y	10-40 years or life	Class C	3-10 years; up to \$10,000	Class A	Up to 1 year; up to \$2,500
Class A	6-30 years; up to \$15,000	Class D	0-6 years; up to \$10,000	Class B	Up to 90 days; up to \$1,000
Class B	5-20 years; up to \$15,000	Unclassified	As specified in statute	Class C	Up to 30 days; up to \$500

The following states have criminal penalties for female genital mutilation:

- Arizona
- California
- Colorado
- Delaware
- Florida
- Georgia
- Illinois
- Kansas
- Louisiana
- Maryland
- Minnesota
- Missouri
- Nevada
- New Jersey
- New York
- North Dakota
- Oklahoma
- Oregon
- Rhode Island
- Tennessee
- Texas
- West Virginia
- Wisconsin

The Florida Department of Corrections (FDOC) reports no convictions in the past three (3) years for Female Genital Mutilation, F.S. § 794.08, a statute similar to this proposed bill.

18 U.S.C. § 116. Female Genital Mutilation

(a) Except as provided in subsection (b), whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than 5 years, or both.

(b) A surgical operation is not a violation of this section if the operation is –

- (1) necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner; or
- (2) 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 in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife.

(c) In applying subsection (b)(1), no account shall be taken of the effect on the person on whom the operation is to be performed of any belief on the part of that person, or any other person, that the operation is required as a matter of custom or ritual

F.S. § 794.08. Female genital mutilation.

(1) As used in this section, the term “female genital mutilation” means the circumcising, excising, or infibulating, in whole or in part, the labia majora, labia minora, or clitoris of a female person.

(2) A person who knowingly commits, or attempts to commit, female genital mutilation upon a female person younger than 18 years of age commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who knowingly removes, or causes or permits the removal of, a female person younger than 18 years of age from this state for purposes of committing female genital mutilation commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who is a parent, a guardian, or in a position of familial or custodial authority to a female person younger than 18 years of age and who knowingly consents to or permits the female genital mutilation of that female person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s.775.084.

(5) This section does not apply to procedures performed by or under the direction of a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a registered nurse licensed under part I of chapter 464, a practical nurse licensed under part I of chapter 464, an advanced registered nurse practitioner licensed under part I of chapter 464, a midwife licensed under chapter 467, or a physician assistant licensed under chapter 458 or chapter 459 when necessary to preserve the physical health of a female person. This section also does not apply to any autopsy or limited dissection conducted pursuant to chapter 406.

(6) Consent of a female person younger than 18 years of age or the consent of a parent, guardian, or person who is in a position of familial or custodial authority to the female person younger than 18 years of age is not a defense to the offense of female genital mutilation.