Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas *As Engrossed: H2/26/19*
92nd General Assembly A Bill
Regular Session, 2019 SENATE BILL 318

By: Senators B. Davis, T. Garner, B. Ballinger, A. Clark, J. English, Flippo, K. Hammer, Hester, Irvin, B. Johnson, Rice, G. Stubblefield, J. Sturch, D. Wallace
By: Representatives Lundstrum, C. Fite, B. Smith, G. Hodges, McCollum, Pilkington, C. Cooper, Cloud, Bentley, Speaks, Cavenaugh, Richmond, Jean, Barker, Petty, Eaves, Jett, Brown, McKenzie, Penzo, J. Mayberry, Dotson

For An Act To Be Entitled

AN ACT TO PROHIBIT UNLAWFUL FEMALE GENITAL MUTILATION OF A MINOR; TO PROVIDE FOR A CIVIL CAUSE OF ACTION; TO CREATE AWARENESS PROGRAMS CONCERNING AND STATISTICAL TRACKING OF UNLAWFUL FEMALE GENITAL *MUTILATION; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.*

Subtitle

TO PROHIBIT UNLAWFUL FEMALE GENITAL MUTILATION OF A MINOR; TO CREATE AWARENESS PROGRAMS CONCERNING AND STATISTICAL TRACKING OF UNLAWFUL FEMALE GENITAL MUTILATION; AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 5, Chapter 14, Subchapter 1, is amended to add an additional section to read as follows:

5-14-135. Unlawful female genital mutilation of a minor.

(a) As used in this section, "female genital mutilation" means a procedure that involves the partial or total removal of the external female genitalia or any procedure harmful to the female genitalia, including without

limitation:

(1) A clitoridectomy;

(2) The partial or total removal of the clitoris or the prepuce;

(3) The excision or the partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora;

(4) The infibulation or the narrowing of the vaginal orifice with the creation of a covering seal by cutting and appositioning the labia minora or the labia majora, with or without excision of the clitoris;

(5) Pricking, piercing, incising, scraping, or cauterizing the genital area; or

(6) Any other action to purposely alter the structure or function of the female genitalia for a nonmedical reason.

(b) A person commits the offense of unlawful female genital mutilation of a minor if he or she:

(1) Knowingly performs female genital mutilation on a minor;

(2) Is a parent or guardian or has immediate custody or control of a minor and knowingly consents to, permits, or facilitates female genital mutilation of the minor; or

(3) Knowingly removes or causes, permits, or facilitates the removal of a minor from this state for the purpose of facilitating the female genital mutilation of the minor.

(c) Unlawful female genital mutilation of a minor is a Class C felony.

(d) It is not a defense under this section that:

(1) The unlawful conduct is required as a matter of religion, custom, ritual, or standard practice; or

(2) The minor's parent or guardian consented to the female genital mutilation.

(e) It is not a violation of this section if the acts or conduct that otherwise would be considered female genital mutilation occurred in the furtherance of a surgical or other lawful medical procedure, performed by a licensed medical professional, and:

(1) Was necessary to preserve or protect the physical health of the minor upon whom the surgical or other lawful medical procedure was performed; or

(2) Was part of a sex reassignment procedure as requested by the minor who was the patient in the sex reassignment procedure.

(f) The statute of limitation for an offense under this section does not begin to run until the victim of the offense reaches eighteen (18) years of age or when the violation of this section is first reported to a law enforcement agency, whichever occurs first.

SECTION 2. Arkansas Code § 12-18-103(3)(A), concerning the definition of abuse under the Child Maltreatment Act, is amended to add an additional subdivision to read as follows:

(ix) Female genital mutilation.

SECTION 3. Arkansas Code § 12-18-103, concerning definitions related to child maltreatment, is amended to add an additional subdivision to read as follows:

(28)(A) "Female genital mutilation" means a procedure that involves the partial or total removal of the external female genitalia or any procedure harmful to the female genitalia, including without limitation:

(i) A clitoridectomy;

(ii) The partial or total removal of the clitoris or the prepuce;

(iii) The excision or the partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora;

(iv) The infibulation or the narrowing of the vaginal orifice with the creation of a covering seal by cutting and appositioning the labia minora or the labia majora, with or without excision of the clitoris;

(v) Pricking, piercing, incising, scraping, or cauterizing the genital area; or

(vi) Any other action to purposely alter the structure or function of the female genitalia for a nonmedical reason.

(B) "Female genital mutilation" does not include acts or conduct that otherwise would be considered female genital mutilation if the acts or conduct occur in the furtherance of a surgical or other lawful medical procedure, performed by a licensed medical professional, and:

(i) Is necessary to preserve or protect the physical health of the child upon whom the surgical or other lawful medical procedure

was performed; or

(ii) Is part of a sex reassignment procedure as requested by the child who was the patient in the sex reassignment procedure.

SECTION *4*. Arkansas Code Title 16, Chapter 118, is amended to add an additional section to read as follows:

16-118-116. Civil actions for unlawful female genital mutilation.

(a) A person who knowingly commits or attempts to commit unlawful female genital mutilation of a minor as described in § 5-14-135 is liable to the victim of the unlawful female genital mutilation.

(b) A person who knowingly directs or assists another person to violate or attempt to violate § 5-14-135 is jointly liable under this section.

(c) A court may award to a prevailing party in an action brought under this section one (1) or more of the following remedies:

(1) Compensatory damages, including treble damages if the defendant is shown to have acted willfully and maliciously;

(2) Punitive damages;

(3) Costs and fees, including reasonable attorney's fees; or

(4) Any other appropriate relief as provided by law.

(d) A cause of action under this section may be brought by a victim of an unlawful female genital mutilation, or her estate, at any point before the victim reaches or would have reached twenty-eight (28) years of age.

(e) The burden of proof under a cause of action under this section is preponderance of the evidence.

(f) The doctrine of forum non conveniens does not apply to a claim arising under this section.

SECTION *5*. Arkansas Code Title 17, Chapter 80, Subchapter 1, is amended to add an additional section to read as follows:

17-80-121. Unlawful female genital mutilation by a medical professional.

(a) A state agency, board, or commission authorized to issue a license to a medical professional under the laws of this state shall institute disciplinary action against a licensed medical professional over whom the state agency, board, or commission has jurisdiction and who is convicted of

unlawful female genital mutilation of a minor, § 5-14-135.

(b) The state agency, board, or commission instituting a disciplinary action as described in this section may take any measure authorized to discipline the licensed medical professional, including the revocation of any license.

SECTION *6*. Arkansas Code Title 20, Chapter 82, is amended to add an additional subchapter to read as follows:

Subchapter 3 — Unlawful Female Genital Mutilation of a Minor

20-82-101. Awareness program established.

The *Department of Health* shall:

(1) Develop and administer a program of community education, prevention, and outreach activities to address the health risks and emotional trauma inflicted by the practice of unlawful female genital mutilation and to inform communities of the criminal penalties for committing unlawful female genital mutilation;

(2) Develop and disseminate information regarding unlawful female genital mutilation, recognizing the risk factors associated with unlawful female genital mutilation, and the signs that a person may be a victim of unlawful female genital mutilation, and the criminal penalties for committing unlawful female genital mutilation to teachers, and law enforcement personnel, and ensuring their awareness and compliance with the provisions of this section;

(3) Develop policies and procedures to promote partnerships between departments, agencies, and political subdivisions, including without limitation the *Department of Human Services* and Department of Education, and other governmental entities and nongovernmental organizations to prevent unlawful female genital mutilation and to protect and provide assistance to victims of unlawful female genital mutilation;

(4) Outline best practices for responses to victims of unlawful female genital mutilation; and

(5) Develop policies and procedures for the training of providers of health services:

(A) Regarding best practices for responses to victims of

unlawful female genital mutilation; and

(B) To recognize:

(i) The risk factors associated with unlawful female genital mutilation;

(ii) The signs that an individual may be a victim of unlawful female genital mutilation; and

(iii) The criminal penalties for committing unlawful female genital mutilation.

20-82-102. Statistics required.

(a) Healthcare practitioners of each county shall keep annual statistics and report to the *Department of Health* cases of unlawful female genital mutilation.

(b) The department shall thereafter compile an annual report of the incidents reported, which will be published with no personal identifying information.

SECTION 7. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the Centers for Disease Control and Prevention currently estimates that five hundred fifty-one (551) girls or women in Arkansas are at the risk of, or have undergone, female genital mutilation; that female genital mutilation is recognized globally as a human rights violation; and that this legislation is immediately needed to help the women of Arkansas as soon as possible. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/B. Davis