

Legislative Analysis



FEMALE GENITAL MUTILATION: PROHIBIT & ESTABLISH PENALTIES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4636 as introduced
Sponsor: Rep. Michele Hoytenga

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4637 as introduced
Sponsor: Rep. Diana Farrington

House Bill 4638 as introduced
Sponsor: Rep. Daire Rendon

House Bill 4639 as introduced
Sponsor: Rep. Klint Kesto

Committee: Law & Justice
Complete to 5-29-17

SUMMARY:

Taken together, the bills:

- Prohibit knowingly performing female genital mutilation (FGM) or transporting another person from Michigan for the purpose of undergoing FGM within the state and provide exceptions.
- ❖ Establish criminal penalties for a violation and include the maximum term of imprisonment for a violation within the sentencing guidelines. Violations would be a felony punishable by imprisonment for not more than 15 years and/or a fine of not more than \$25,000. [These offenses are currently federal crimes punishable by imprisonment for five years.]
- Specify that believing the operation is required as a matter of custom or ritual, or obtaining parental consent to the operation, would not be a defense to prosecution.
- Require the permanent revocation of the license of a health professional convicted of a female genital mutilation violation.

The bills would take effect 90 days after enactment.

House Bill 4636 would add a new section to the Michigan Penal Code (MCL 750.136). The bill prohibits a person from knowingly circumcising, excising, or infibulating the whole or any part of the labia majora or labia minora or clitoris of a person less than 18 years of age. (Infibulating refers to the practice of stitching up most or all of the vulva).

Exceptions: A surgical operation would not be a violation of the above prohibition if the operation were either of the following:

- ❖ Necessary to the health of the person on whom it is performed, and is performed by a person licensed to perform that operation under the Public Health Code.
- ❖ 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 to perform that operation under the Public Health Code.

House Bill 4637 also adds a new section to the Michigan Penal Code (750.136a). The bill prohibits a person from knowingly transporting a person from this state for the purpose of conduct with regard to that person that would be a violation of Section 136 (added by House Bill 4636) if the conduct had occurred in this state. The bill also prohibits knowingly facilitating a violation of the bill.

The following provisions apply to both House Bill 4636 and House Bill 4637:

- ❖ A person who violates the prohibitions of either bill, or knowingly facilitates a violation, would be guilty of a felony punishable by imprisonment for not more than 15 years and/or a fine of not more than \$25,000.
- ❖ Believing that the operation is required as a matter of custom or ritual by the person upon whom it is performed or by any other person would not be a defense to prosecution. Parental consent to the operation would also not be a defense to prosecution.
- ❖ A violation of either bill by a health care provider licensed under the Public Health Code would be grounds for permanent revocation of that license. In addition, Sections 136 and 136a would not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same transaction as the violation of either of these provisions.

Both bills are tie-barred to House Bill 4639, meaning that neither could take effect unless House Bill 4639 were also enacted. House Bill 4639 would require the health care license of a person convicted of violating the prohibitions under House Bills 4636 or 4637 to be permanently revoked.

House Bill 4638 amends the Code of Criminal Procedure (MCL 777.16g) to place the penalties for a violation of House Bill 4636 or 4637 within the sentencing guidelines. Specifically, the bill states that a female genital mutilation violation or transporting a person for purpose of female genital mutilation each would be a Class B felony against a person with a maximum term of imprisonment of 15 years. The bill is tie-barred to House Bills 4636 and 4637.

The bill also makes a technical correction to a sentencing guideline pertaining to a second or subsequent offense involving abuse against a vulnerable adult by a caregiver or licensee.

House Bill 4639 would amend the disciplinary section of the Public Health Code to require that the health care license or registration of a person convicted of violating the prohibitions

under House Bills 4636 or 4637 be permanently revoked.¹ A certified copy of the court record would be conclusive evidence of the conviction.

House Bills 4636 and 4637 are tie-barred to House Bill 4639 is tie-barred to those bills. House Bill 4638 is also tie-barred to House Bills 4636 and 4637. This means for any of the bills to take effect all would have to be enacted.

FISCAL IMPACT:

House Bills 4636 and 4637: The bills would have an indeterminate fiscal impact on the state's correctional system and on local court systems and would depend on the number of persons convicted under the provisions of the bills. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2016, the average cost of prison incarceration in a state facility was roughly \$36,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,500 per supervised offender in the same year. The fiscal impact on local court systems would depend on how the provisions of the bills affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bill 4638:

The bill amends sentencing guidelines and does not have a direct fiscal impact on the state or on local units of government.

House Bill 4639:

House Bill 4639 would not have a significant fiscal impact.

Legislative Analyst: Susan Stutzky
Emily S. Smith
Fiscal Analyst: Robin Risko
Marcus Coffin

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

¹ Currently, the following healthcare professions are licensed or registered under Article 15 of the Public Health Code: acupuncturists, chiropractors, dentists, dental assistants, dental hygienists, audiologists, marriage and family therapists, physicians (M.D.s and D.O.s), nurses, nursing home administrators, optometrists, speech-language pathologists, pharmacists, physical therapists and physical therapy assistants, physician's assistants, athletic trainers, massage therapists, podiatrists, counselors, psychologists, occupational therapists and occupational therapy assistants, dietitians and nutritionists, sanitarians, social workers and social service technicians, respiratory therapists, and veterinarians and veterinarian technicians.