~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 24, 2019

**H. 3973**

Introduced by Reps. Crawford, Mace, Erickson, Thayer, Davis, Magnuson, Bennett, Allison, Bernstein, Cobb‑Hunter, Henegan, McDaniel, Norrell, Funderburk, Brawley, Simmons, Henderson‑Myers, Robinson, Collins, Calhoon, Dillard, Kimmons, Trantham, Caskey, Weeks and Gilliard

S. Printed 4/24/19--S. [SEC 4/25/19 2:29 PM]

Read the first time March 6, 2019.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3973) to amend the Code of Laws of South Carolina, 1976, by adding Article 20 to Chapter 3, Title 16 so as to prohibit genital mutilation of a female under the, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, page 2, by striking lines 7 through 18, in Section 16‑3‑2210(4), as contained in SECTION 1 and inserting therein the following:

/ (4) ‘Hindering the prosecution of female genital mutilation’ means actions to include, but not be limited to:

(a) harboring or concealing a person who is known or believed to be planning to commit an act of female genital mutilation;

(b) warning a person who is known or believed to be planning to commit an act of female genital mutilation of impending discovery or apprehension; or

(c) suppressing any physical evidence that might aid in the discovery or apprehension of a person who is known or believed to be planning to commit an act of female genital mutilation. /

Amend the bill further, as and if amended, page 3, by striking lines 38 through 43, and page 4, by striking lines 1 through 2, as contained in Section 16-3-2240, in SECTION 1, and inserting therein the following:

/ Section 16‑3‑2240. The provisions of this article do not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same transaction or occurrence as the violation of this article.” /

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Amended by the House of Representatives on March 5, 2019**

**State Expenditure**

This bill prohibits genital mutilation of a female under the age of 18 years and adds female genital mutilation of a minor to the definition of child abuse or neglect. The bill also creates a new felony offense punishable by a fine of not more than $20,000 or imprisonment for not more than 20 years, or both.

**Judicial Branch.** This bill would create a new criminal offense and expand the acts which constitute child abuse and neglect. Since the criminal offense is new, there is no data upon which to determine the impact on the caseload of the General Sessions Court. Similarly, there is no data upon which to predict the increase in Family Court abuse and neglect proceedings should this bill be adopted. The Judicial Branch anticipates that any additional costs in General Sessions Court and Family Court resulting from this bill would be absorbed by the Judicial Branch’s existing appropriations.

**Commission on Prosecution Coordination.** The implementation of this bill will have no expenditure impact to the general fund, other funds, or federal funds, as the department expects to manage any increase in caseloads within current resources.

**Commission on Indigent Defense.** The implementation of this bill will have no expenditure impact to the general fund, other funds, or federal funds, as the department expects to manage any increase in caseloads within current resources.

**Department of Corrections.** The bill establishes a new offense which there is no historical data to estimate the number of offenders. However, in FY 2018-19, new admissions to the department for similar offenses included 4 inmates admitted for the offense of inflicting injury on a child, 1 inmate with the offense of allowing great injury to a child, and 2 inmates admitted for child abuse. Average sentences for these offenses ranged from 3.5 to 6 years and maximum sentences ranged from 5 to 10 years. The agency reports that any increase in caseloads can be managed within existing resources.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 20 TO CHAPTER 3, TITLE 16 SO AS TO PROHIBIT GENITAL MUTILATION OF A FEMALE UNDER THE AGE OF EIGHTEEN YEARS AND TO CREATE THE OFFENSE OF FEMALE GENITAL MUTILATION OF A MINOR; AND TO AMEND SECTION 63‑7‑20, AS AMENDED, RELATING TO TERMS DEFINED IN THE CHILDREN’S CODE, SO AS TO ADD FEMALE GENITAL MUTILATION OF A MINOR TO THE DEFINITION OF “CHILD ABUSE OR NEGLECT” OR “HARM”.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Article 20

Female Genital Mutilation

Section 16‑3‑2210. For purposes of this article:

(1) ‘Facilitate’ means to raise, solicit, collect, or provide material support or resources with intent that such will be used, in whole or in part, to plan, prepare, carry out, or aid in any act of female genital mutilation or hindering the prosecution of an act of female genital mutilation, or the concealment of an act of female genital mutilation.

(2) ‘Female genital mutilation’ or ‘mutilation’ means:

(a) the partial or total removal of the clitoris, prepuce, or labia minora, with or without excision of the labia majora; or

(b) the narrowing of the vaginal opening through the creation of a covering seal formed by cutting and repositioning the inner or outer labia, with or without the removal of the clitoris.

(3) ‘Health care professional’ means an individual who is licensed, certified, or otherwise authorized by the laws of this State to provide health care to members of the public.

(4) ‘Hindering the prosecution of female genital mutilation’ means actions to include, but not be limited to the:

(a) harboring or concealing a person who is known or believed by the facilitator to be planning to commit an act of female genital mutilation;

(b) warning a person who is known or believed by the facilitator to be planning to commit an act of female genital mutilation of impending discovery or apprehension; or

(c) suppressing any physical evidence that might aid in the discovery or apprehension of a person who is known or believed by the facilitator to be planning to commit an act of female genital mutilation.

(5) ‘Material support or resources’ means currency or other financial securities, financial services, instruments of value, lodging, training, false documentation or identification, medical equipment, computer equipment, software, facilities, personnel, transportation, or other physical assets.

(6) ‘Mutilate’ means to commit female genital mutilation or mutilation.

(7) ‘Unable to consent’ means unable to appreciate the nature and implications of the patient’s condition and proposed health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision in an unambiguous manner. A patient’s inability to consent must be certified by two licensed physicians, each of whom has examined the patient. However, in an emergency the patient’s inability to consent may be certified by a health care professional responsible for the care of the patient if the health care professional states in writing in the patient’s record that the delay occasioned by obtaining certification from two licensed physicians would be detrimental to the patient’s health. A certifying physician or other health care professional shall give an opinion regarding the cause and nature of the inability to consent, its extent, and its probable duration. If a patient unable to consent is being admitted to hospice care pursuant to a physician certification of a terminal illness required by Medicare, that certification meets the certification requirements of this item.

Section 16‑3‑2220. (A) It is unlawful for a person to:

(1) knowingly mutilate or attempt to mutilate a female who is under eighteen years of age or who is unable to consent;

(2) knowingly facilitate the mutilation of a female who is under eighteen years of age or who is unable to consent; or

(3) knowingly transport or facilitate the transportation of a female who is under eighteen years of age or who is unable to consent from this State for the purpose of mutilation.

(B) Any person who violates the provisions of this article is guilty of a felony and, upon conviction, must be fined not more than twenty thousand dollars or imprisoned not more than twenty years, or both.

(C) Section 63-5-330 does not apply to this chapter.

Section 16‑3‑2230. (A) It is not a defense to prosecution for a violation of this article that a female genital mutilation procedure is:

(1) required as a matter of belief, custom, or ritual;

(2) consented to by the minor or female who is unable to consent on whom the procedure is performed; or

(3) consented to by the parent or legal guardian of the minor or female who is unable to consent on whom the procedure is performed.

(B) A procedure involving female genital mutilation is not a violation of this article if it is:

(1) necessary to the physical health of the minor or female who is unable to consent on whom it is performed; or

(2) performed on a minor or female who is unable to consent who is in labor or who has just given birth for medical purposes connected with that labor or birth.

(C) A physician, physician‑in‑training, nurse, certified nurse‑midwife, or any other medical professional who performs, participates in, or facilitates a female genital mutilation procedure which does not fall under one of the exceptions listed in subsection (B), in addition to the criminal penalties provided in this article, shall have his professional license or certification permanently revoked.

Section 16‑3‑2240. (A) An indictment for a violation or an attempted violation of this article may be found and filed within ten years after the offense is committed or by the alleged victim’s twenty‑second birthday, whichever is later.

(B) The provisions of this article do not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same transaction or occurrence as the violation of this article.”

SECTION 2. Section 63‑7‑20(6)(a)(v) and (vi) of the 1976 Code, as last amended by Act 146 of 2018, is further amended to read:

“(v) encourages, condones, or approves the commission of delinquent acts by the child including, but not limited to, sexual trafficking or exploitation, and the commission of the acts are shown to be the result of the encouragement, condonation, or approval; ~~or~~

(vi) commits or allows to be committed against the child female genital mutilation as defined in Section 16‑3‑2210 or engages in acts or omissions that present a substantial risk that the crime of female genital mutilation would be committed against the child; or

(vii) has committed abuse or neglect as described in subitems (i) through ~~(v)~~(vi) such that a child who subsequently becomes part of the person’s household is at substantial risk of one of those forms of abuse or neglect; or”

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. This act takes effect upon approval by the Governor.

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