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**HOUSE BILL 1423**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives Scott, Young, Caldier, Shea, Taylor, Short, Kochmar, G. Hunt, Condotta, Van Werven, Klippert, Pike, Wilson, Holy, Griffey, Buys, Muri, and Pollet

AN ACT Relating to female genital mutilation; amending RCW 26.44.020; adding a new section to chapter 9A.36 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. **Sec.**  A new section is added to chapter 9A.36 RCW to read as follows:

(1) A person is guilty of female genital mutilation when any of the following occur:

(a) The person knowingly circumcises, excises, or infibulates the whole or any part of the labia majora, labia minora, or clitoris;

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

(c) The person knowingly removes or causes or permits the removal of a female 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 such female.

(2) It shall not be a defense to prosecution for a violation of this section that the conduct described in subsection (1) of this section is required as a matter of custom, ritual, or religious practice, or that the minor on whom it is performed consented to the procedure, or the minor's parent or legal guardian consented to the procedure.

(3) If the action described in subsection (1) of this section is performed by a licensed physician during a surgical procedure, it shall not be a violation of this section if either of the following is true:

(a) The procedure is necessary to the physical health of the minor on whom it is performed; or

(b) The procedure is performed on a minor who is in labor or who has just given birth and is performed for medical purposes connected with that labor or birth.

(4) Female genital mutilation is a mandatory reportable offense for any personnel required to report child abuse under chapter 26.44 RCW.

(5) Female genital mutilation is a class B felony.

(6) If the prosecuting attorney has a reasonable belief that any person arrested or charged pursuant to this section is not a citizen or national of the United States, he or she shall report the information to the United States immigration and naturalization service in an expeditious manner.

**Sec.**  RCW 26.44.020 and 2012 c 259 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abuse or neglect" means sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section. Female genital mutilation under chapter 9A.36 RCW constitutes abuse. The belief that female genital mutilation is required as a matter of custom, ritual, or standard practice or consent to the conduct by the child on whom it is performed or by the child's parent or legal guardian is not an affirmative defense to a charge of child abuse under this subsection.

(2) "Child" or "children" means any person under the age of eighteen years of age.

(3) "Child protective services" means those services provided by the department designed to protect children from child abuse and neglect and safeguard such children from future abuse and neglect, and conduct investigations of child abuse and neglect reports. Investigations may be conducted regardless of the location of the alleged abuse or neglect. Child protective services includes referral to services to ameliorate conditions that endanger the welfare of children, the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect, and services to children to ensure that each child has a permanent home. In determining whether protective services should be provided, the department shall not decline to provide such services solely because of the child's unwillingness or developmental inability to describe the nature and severity of the abuse or neglect.

(4) "Child protective services section" means the child protective services section of the department.

(5) "Children's advocacy center" means a child-focused facility in good standing with the state chapter for children's advocacy centers and that coordinates a multidisciplinary process for the investigation, prosecution, and treatment of sexual and other types of child abuse. Children's advocacy centers provide a location for forensic interviews and coordinate access to services such as, but not limited to, medical evaluations, advocacy, therapy, and case review by multidisciplinary teams within the context of county protocols as defined in RCW 26.44.180 and 26.44.185.

(6) "Clergy" means any regularly licensed or ordained minister, priest, or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(7) "Court" means the superior court of the state of Washington, juvenile department.

(8) "Department" means the state department of social and health services.

(9) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child abuse or neglect, and family strengths and needs that is applied to a child abuse or neglect report. Family assessment does not include a determination as to whether child abuse or neglect occurred, but does determine the need for services to address the safety of the child and the risk of subsequent maltreatment.

(10) "Family assessment response" means a way of responding to certain reports of child abuse or neglect made under this chapter using a differential response approach to child protective services. The family assessment response shall focus on the safety of the child, the integrity and preservation of the family, and shall assess the status of the child and the family in terms of risk of abuse and neglect including the parent's or guardian's or other caretaker's capacity and willingness to protect the child and, if necessary, plan and arrange the provision of services to reduce the risk and otherwise support the family. No one is named as a perpetrator, and no investigative finding is entered in the record as a result of a family assessment.

(11) "Founded" means the determination following an investigation by the department that, based on available information, it is more likely than not that child abuse or neglect did occur.

(12) "Inconclusive" means the determination following an investigation by the department, prior to October 1, 2008, that based on available information a decision cannot be made that more likely than not, child abuse or neglect did or did not occur.

(13) "Institution" means a private or public hospital or any other facility providing medical diagnosis, treatment, or care.

(14) "Law enforcement agency" means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

(15) "Malice" or "maliciously" means an intent, wish, or design to intimidate, annoy, or injure another person. Such malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

(16) "Negligent treatment or maltreatment" means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100. When considering whether a clear and present danger exists, evidence of a parent's substance abuse as a contributing factor to negligent treatment or maltreatment shall be given great weight. The fact that siblings share a bedroom is not, in and of itself, negligent treatment or maltreatment. Poverty, homelessness, or exposure to domestic violence as defined in RCW 26.50.010 that is perpetrated against someone other than the child does not constitute negligent treatment or maltreatment in and of itself.

(17) "Pharmacist" means any registered pharmacist under chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(18) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatric medicine and surgery, optometry, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery or to provide other health services. The term "practitioner" includes a duly accredited Christian Science practitioner. A person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner will not be considered, for that reason alone, a neglected person for the purposes of this chapter.

(19) "Professional school personnel" include, but are not limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(20) "Psychologist" means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(21) "Screened-out report" means a report of alleged child abuse or neglect that the department has determined does not rise to the level of a credible report of abuse or neglect and is not referred for investigation.

(22) "Sexual exploitation" includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child by any person.

(23) "Sexually aggressive youth" means a child who is defined in RCW 74.13.075(1)(b) as being a sexually aggressive youth.

(24) "Social service counselor" means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(25) "Supervising agency" means an agency licensed by the state under RCW 74.15.090 or an Indian tribe under RCW 74.15.190 that has entered into a performance-based contract with the department to provide child welfare services.

(26) "Unfounded" means the determination following an investigation by the department that available information indicates that, more likely than not, child abuse or neglect did not occur, or that there is insufficient evidence for the department to determine whether the alleged child abuse did or did not occur.

NEW SECTION. **Sec.**  Each county prosecuting attorney shall:

(1) Keep annual statistics of the following information:

(a)(i) The number of offenders that are charged with female genital mutilation under section 1 of this act, and (ii) the number of offenders that are charged and convicted under section 1(1) of this act; and

(b) The number of reports that the prosecuting attorney's office receives that are required under section 1(4) of this act, the number of offenders that are charged pursuant to the report, and the number of offenders that are convicted pursuant to the report.

(2) Submit its annual report to the administrative office of the courts. The administrative office of the courts shall submit a consolidated report to the appropriate committees of the legislature by December 1st of each year.

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