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THE STATE OF DELAWARE BILL TEXT

Submitted to the Delaware General Assembly on January 13, 2014



AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO GENITAL MUTILATION.

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

SECTION 1. This act shall be known and may be cited as the "Delaware State Prohibition of Genital Mutilation Act."

SECTION 2. The General Assembly hereby finds and declares all of the following:

(a) Genital mutilation is an extreme form of child abuse and a violation of people's basic human rights. Genital mutilation is a medically unnecessary modification of the genitalia which for girls typically occurs at about seven years of age, but is known to be practiced any time between infancy and puberty. For boys, genital mutilation typically occurs within eight days of birth, but is known to be practiced any time between infancy and twenty years of age. Genital mutilation for girls involves the excision of a young girl's clitoris and other parts of the external genitalia. The most extreme form of this mutilation, known as infibulation, also involves the sewing together of the two sides of the vulva, leaving only a small opening for the passage of menstrual blood and urine. Genital mutilation for boys involves the excision of a young boy's foreskin, which includes the ridged band of nerves and usually the frenulum. Boys whose foreskins are left intact are often subjected to premature forcible foreskin retraction, which can cause bleeding, scarring of the glans, and other problems. For intersex individuals (those born with ambiguous or hermaphroditic genitalia), genital mutilation typically occurs in hospitals shortly after birth, when the attending physician performs "sex assignment" surgery to make the child fit into the category of boy or girl, rather than intersex.

(b) Female genital mutilation is known to be practiced in 28 nations in the African continent, in a few countries in the Arab Peninsula, among some minority communities in Asia, and among migrants from these areas who have settled in Europe, Australia, and North America. This practice has come to the United States with the influx of recent immigrant groups from countries that practice female genital mutilation. In addition to the countries where female genital mutilation is practiced, male genital mutilation is widely practiced in the United States, Australia, South Korea, the Philippines, and the Middle East, and is more widespread than female genital mutilation. Statistics on intersex genital mutilation are not as well documented, but in the United States it is not uncommon for an attending medical practitioner to perform genital mutilation on intersex infants. The Intersex Society of North America estimates that the number of "normalizing" genital mutilations is roughly 1 or 2 per 1,000 births, with approximately 1 in 1,666 births being classified as intersexed.

(c) Genital mutilation constitutes a major health risk to all people, with lifelong physical, psychological, and human rights consequences. Complications due to female genital mutilation include shock, hemorrhage, infection, tetanus and septicemia from unsterilized instruments, bladder infection, and even death. Long-term



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complications include sexual dysfunction, chronic vaginal and uterine infections, severe pain during urination, menstruation, and sexual intercourse, obstetric complications due to obstruction of the birth canal by scar tissue, and lifelong psychological trauma. For the obstructed infant, labor can lead to brain damage or death. Complications due to male genital mutilation include hemorrhage, infection, excessive skin loss, skin bridges, glans deformation, bowing, meatal stenosis, loss of penis, and death. Long term complications include sexual dysfunction, loss of sexual sensitivity, increased friction and pain during sexual intercourse, and lifelong psychological trauma. The complications of intersex genital mutilation are similar to, and may be even more traumatic than, the complications of female and male genital mutilation.

(d) This 4,000-year-old cultural practice is not a requirement of any major religion. According to the World Health Organization, most families allow their daughters to undergo female genital mutilation out of fear that no man will want to marry an "uncircumcised" woman and that she will be ostracized from the community. Further, some women believe that clitoridectomy or infibulation are not only more hygienic, but will also increase a woman's fertility. In some tribes, infibulation is performed to protect family lineage through ensuring that wives are virgins at marriage and that the children are verifiably the men's descendants. For boys, circumcision is encouraged so that boys will look like others in their community, so they will look the same as their father, and so they will have a penis that is perceived to be more hygienic. In religious circumcisions, male genital mutilation is typically encouraged as a "covenant of blood", and as a way to predetermine the religion of the child. To the extent that intersex children are circumcised for religious reasons, quite often it is based on whether the child is perceived to be "more male" or "more female".

(e) The World Health Organization, which urges the elimination of female genital mutilation, estimates that 2,000,000 girls undergo female genital mutilation each year. Worldwide, approximately 128,000,000 girls and women, now living, have been subject to the procedure. The National Organization to Halt the Abuse and Routine Mutilation of Males estimates that 13,000,000 boys undergo male genital mutilation each year. Worldwide, approximately 650,000,000 boys and men, now living, have been subject to the procedure. As stated in section (b), The Intersex Society of North America estimates the number of genital mutilations at roughly 1 or 2 per 1,000 births.

(f) It is time for this state to join with genital integrity and human rights organizations to condemn this harmful and outdated procedure. The state must take a proactive role to prevent these mutilations through education and outreach activities to make all state citizens aware of Delaware laws, standards, and expectations for child protection. Heightened awareness among child protective services workers, health care providers, educators, and law enforcement personnel will also aid in achieving this end. Finally, criminal investigations and prosecutions should be carried out, when necessary, to send a strong message that Delaware abhors this practice and views its abolition as paramount to the health and welfare of these young children.

SECTION 3. Subsection 10 (relative to ritual circumcision) of §1703 (Nonapplicability of certain provisions) of Subchapter I (General Provisions) of Chapter 17 (Medical Practice Act) of Title 24 (Professions and Occupations) of the Delaware Code is hereby repealed.

SECTION 4. Amend §780 (Female genital mutilation) of Subpart A (Assaults and Related Offenses) of Subchapter II (Offenses Against the Person) of Chapter 5 (Specific Offenses) of Title 11 (Crimes and Criminal Procedure) of the Delaware Criminal Code to read as follows:

§ 780. Genital mutilation.

(a) Except as provided in subsection (b), whoever knowingly circumcises, excises, cuts, or mutilates the whole or any part of the labia majora, labia minora, clitoris, vulva, breasts, nipples, foreskin, glans, testicles, penis, ambiguous genitalia, hermaphroditic genitalia, or genital organs of another person who has not attained the age of 18 years or on any nonconsenting adult; whoever prematurely and forcibly retracts the penile or clitoral prepuce of another person who has not attained the age of 18 years or on any nonconsenting adult, except to



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the extent that the prepuce has already separated from the glans; whoever knowingly assists with or facilitates any of these acts; or whoever arranges, plans, aids, abets, counsels, facilitates, or procures a genital mutilation operation on another person outside the State of Delaware who has not attained the age of 18 years or on any nonconsenting adult outside the State of Delaware shall be fined under this title or imprisoned not more than 14 years, or both.

(b) A surgical operation is not a violation of this section if the operation is (1) performed on a person who has not attained the age of 18 years and is necessary to the physical health of the person on whom it is performed because of a clear, compelling, and immediate medical need with no less-destructive alternative treatment available, and is performed by a person licensed in the place of its performance as a medical practitioner; (2) performed on an adult who is physically unable to give consent and there is a clear, compelling, and immediate medical need with no less-destructive alternative treatment available, and is performed by a person licensed in the place of its performance as a medical practitioner; or (3) performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth because of a clear, compelling, and immediate medical need with no less-destructive alternative treatment available, and is performed 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), 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 or any other person that the operation is required as a matter of custom or ritual.

(d) DEFINITIONS. -- For purpose of this Act, the term "genital mutilation" means the removal or cutting (or both) of the whole or part of the clitoris, labia minora, labia majora, vulva, breasts, nipples, foreskin, glans, testicles, penis, ambiguous genitalia, hermaphroditic genitalia, or genital organs. The term "premature forcible retraction of the penile or clitoral prepuce" means forced retraction of the prepuce from the glans, except to the extent that the prepuce has already separated from the glans. The term "prepuce" means foreskin. The term "adult" means a person who has attained the age of 18 years. The term "nonconsenting" means not wishing to undergo genital mutilation.

SECTION 5. The State Department of Health and Social Services, in consultation with the appropriate state and federal agencies or departments, shall establish and implement appropriate education, preventative, and outreach activities, focusing on the new immigrant populations that traditionally practice female genital mutilation, on hospitals that traditionally practice male and intersex genital mutilation, and on religious groups that traditionally practice male genital mutilation, for the purpose of informing members of those communities of the health risks and emotional trauma inflicted by this practice and informing those communities and the medical community of the prohibition and ramifications of this Act.

SYNOPSIS

This Act expands the scope of §780, Title 11, of the Delaware Code to make genital mutilation of all children and non-consenting adults a specific offense (under the current statute, only genital mutilation of girls is a specific offense). This Act would increase the maximum penalty for a person who commits genital mutilation to 14 years imprisonment. This Act would repeal the nonapplicability of ritual circumcision under the Medical Practice Act. This Act would also provide for appropriate education, preventative, and outreach activities.