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HOUSE BILL 1423

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State of Washington

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

Read first time 01/20/15. Referred to Committee on Public Safety.

1 AN ACT Relating to female genital mutilation; amending RCW  
2 26.44.020; adding a new section to chapter 9A.36 RCW; creating a new  
3 section; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** A new section is added to  
6 chapter 9A.36 RCW to read as follows:

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

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

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

15 (c) The person knowingly removes or causes or permits the removal  
16 of a female minor from this state for the purpose of circumcising,  
17 excising, or infibulating, in whole or in part, the labia majora,  
18 labia minora, or clitoris of such female.

19 (2) It shall not be a defense to prosecution for a violation of  
20 this section that the conduct described in subsection (1) of this  
21 section is required as a matter of custom, ritual, or religious

1 practice, or that the minor on whom it is performed consented to the  
2 procedure, or the minor's parent or legal guardian consented to the  
3 procedure.

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

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

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

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

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

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

22 **Sec. 2.** RCW 26.44.020 and 2012 c 259 s 1 are each amended to  
23 read as follows:

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

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

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

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

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

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

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

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

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

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

1 for services to address the safety of the child and the risk of  
2 subsequent maltreatment.

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

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

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

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

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

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

33 (16) "Negligent treatment or maltreatment" means an act or a  
34 failure to act, or the cumulative effects of a pattern of conduct,  
35 behavior, or inaction, that evidences a serious disregard of  
36 consequences of such magnitude as to constitute a clear and present  
37 danger to a child's health, welfare, or safety, including but not  
38 limited to conduct prohibited under RCW 9A.42.100. When considering  
39 whether a clear and present danger exists, evidence of a parent's  
40 substance abuse as a contributing factor to negligent treatment or

1 maltreatment shall be given great weight. The fact that siblings  
2 share a bedroom is not, in and of itself, negligent treatment or  
3 maltreatment. Poverty, homelessness, or exposure to domestic violence  
4 as defined in RCW 26.50.010 that is perpetrated against someone other  
5 than the child does not constitute negligent treatment or  
6 maltreatment in and of itself.

7 (17) "Pharmacist" means any registered pharmacist under chapter  
8 18.64 RCW, whether acting in an individual capacity or as an employee  
9 or agent of any public or private organization or institution.

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

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

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

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

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

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

37 (24) "Social service counselor" means anyone engaged in a  
38 professional capacity during the regular course of employment in  
39 encouraging or promoting the health, welfare, support, or education  
40 of children, or providing social services to adults or families,

1 including mental health, drug and alcohol treatment, and domestic  
2 violence programs, whether in an individual capacity, or as an  
3 employee or agent of any public or private organization or  
4 institution.

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

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

14 NEW SECTION. **Sec. 3.** Each county prosecuting attorney shall:

15 (1) Keep annual statistics of the following information:

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

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

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

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