

HOUSE No. 1530

The Commonwealth of Massachusetts

PRESENTED BY:

Sarah K. Peake and William N. Brownsberger

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing civil and criminal penalties for female genital mutilation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>Daniel A. Wolf</i>	<i>Cape and Islands</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Karen E. Spilka</i>	<i>Second Middlesex and Norfolk</i>
<i>Thomas M. McGee</i>	<i>Third Essex</i>
<i>Ruth B. Balse</i>	<i>12th Middlesex</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>

<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>Nick Collins</i>	<i>4th Suffolk</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>
<i>David T. Vieira</i>	<i>3rd Barnstable</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>Brian R. Mannal</i>	<i>2nd Barnstable</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>Shaunna L. O'Connell</i>	<i>3rd Bristol</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Bradford R. Hill</i>	<i>4th Essex</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Brendan P. Crighton</i>	<i>11th Essex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>

Carlos Gonzalez

10th Hampden

HOUSE No. 1530

By Representative Peake of Provincetown and Senator Brownsberger, a joint petition (accompanied by bill, House, No. 1530) of Sarah K. Peake and others relative to penalties for the crime of female genital mutilation. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act establishing civil and criminal penalties for female genital mutilation.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 111 of the General Laws is hereby amended by inserting after
2 section 220 the following new section:-

3 Section 220A. The commissioner shall develop and administer a program of education,
4 prevention and outreach for communities that commonly practice female genital mutilation as
5 defined in section 58 of chapter 265. The program shall be designed to inform those communities
6 about the health risks and emotional trauma inflicted by the practice of female genital mutilation,
7 as well as the criminal penalties for committing female genital mutilation. The commissioner
8 shall work with culturally appropriate groups to obtain private funds to help finance these
9 prevention and outreach activities.

10 The commissioner shall develop and disseminate information regarding female genital
11 mutilation and the criminal penalties for committing female genital mutilation to health care
12 providers and law enforcement personnel.

13 SECTION 2. Section 21 of chapter 119 of the General Laws, as appearing in the 2012
14 Official Edition, is hereby amended by inserting after the word “faculty”, in line 81, the
15 following words:-, including female genital mutilation, as defined in section 58 of chapter 265.

16 SECTION 3. Chapter 119 of the General Laws is hereby amended by inserting after
17 section 39L the following section:

18 Section 39M. (a) Notwithstanding any general or special law to the contrary, the
19 department of children and families, in collaboration with the department of mental health and
20 other appropriate state agencies, shall: (i) provide for the child welfare services needs of children
21 who have undergone or are at risk of FGM including, but not limited to, services for victims of
22 FGM residing in the commonwealth at the time they are identified by the department as victims
23 or at risk of FGM, for the duration of any legal or administrative proceeding in which they are
24 either the complaining witness, defendant or the subject child; and (ii) provide appropriate
25 services to a child reasonably believed to be a victim of or at risk of FGM in order to safeguard
26 the child's welfare. If a child reasonably believed to be a victim of or at risk of FGM declines
27 services or is unable or unwilling to participate in the services offered, the department or any
28 person may file a care and protection petition under section 24. Child victims of FGM or at risk
29 of FGM shall have access to an advocate. The advocate or a member of the multidisciplinary
30 service team established under section 51D shall accompany the child to all court appearances
31 and may serve as a liaison between the service providers and the court.

32 (b) The services that shall be provided under this section shall be available to all child
33 victims of FGM or at risk of FGM, whether they are accessed voluntarily, through a court
34 proceeding under this section or through a referral, which may be made by any person.

35 (c) The commissioner of the department may, subject to appropriation, contract with
36 non-governmental organizations or entities with experience working with victims of female
37 genital mutilation or at risk of female genital mutilation to train law enforcement officials likely
38 to encounter victims of female genital mutilation in the course of their law enforcement duties.
39 The training shall include, but not be limited to, awareness and compliance with the provisions
40 of this section, identification of, access to, and the provision of services for victims of female
41 genital mutilation or those at risk of female genital mutilation and any other services the
42 department deems necessary.

43 (d) The department shall adopt regulations to carry out this section.

44 SECTION 4. Section 51A of said chapter 119, as so appearing, is hereby amended by
45 striking out the first full paragraph of subsection (a), and inserting in place thereof the following
46 subsection:-

47 (a) A mandated reporter who, in his professional capacity, has reasonable cause to
48 believe that a child is suffering physical or emotional injury resulting from: (i) abuse inflicted
49 upon him which causes harm or substantial risk of harm to the child's health or welfare,
50 including sexual abuse and/or female genital mutilation, or the substantial risk of female genital
51 mutilation, as defined in section 58 of chapter 265; (ii) neglect, including malnutrition; (iii)
52 physical dependence upon an addictive drug at birth; (iv) being a sexually exploited child; or (v)
53 being a human trafficking victim, as defined in section 20M of chapter 233, shall immediately
54 communicate with the department orally and, within 48 hours, shall file a written report with the
55 department detailing the suspected abuse or neglect.

56 SECTION 5. Section 51B of chapter 119 of the General Laws, as appearing in the 2012
57 Official Edition, is hereby amended by inserting after the word “authorities”, in line 7, the
58 following words:-

59 , a child who is a victim of female genital mutilation, or is at substantial risk of female
60 genital mutilation, as defined in section 58 of chapter 265.

61 SECTION 6. Section 51D of said chapter 119, as so appearing, is hereby amended by
62 inserting after the seventh paragraph the following paragraph:-

63 For 51A reports specifically involving a child who is a victim of female genital
64 mutilation, or is at substantial risk of female genital mutilation, as defined in section 58 of
65 chapter 265, the multi-disciplinary service team may consist of a team of professionals trained or
66 otherwise experienced and qualified to assess the needs of children who have undergone or are at
67 risk of female genital mutilation, including, but not limited to, a police officer, as defined by
68 section 1 of chapter 90C, or other person designated by a police chief, as defined in said section
69 1 of said chapter 90C, an employee of the department of children and families, a representative
70 of the appropriate district attorney, a social service provider, a medical professional or a mental
71 health professional. The purpose of said team shall be to determine whether the child is a victim
72 of, or is at substantial risk of, female genital mutilation and to recommend a plan for services to
73 the department that may include, but shall not be limited to, shelter or placement, mental health
74 and medical care needs and other social services.

75 SECTION 7. Chapter 260 of the General Laws is hereby amended by inserting after
76 section 4D the following new section:-

77 Section 4E. (a) A victim of female genital mutilation pursuant to section 58 of chapter
78 265 may bring a civil action for female genital mutilation. The court may award actual damages,
79 compensatory damages, punitive damages, injunctive relief or any other appropriate relief. A
80 prevailing plaintiff shall be awarded attorney's fees and costs. Treble damages may be awarded
81 on proof of actual damages if the defendant's acts were willful and malicious.

82 (b) A civil action for female genital mutilation shall be commenced within 3 years after
83 the date the plaintiff turns 18.

84 (c) If a person entitled to sue is under a disability at the time the cause of action accrues,
85 such that it is impossible or impracticable for such person to bring an action, the time during
86 which the plaintiff is under a disability shall toll the statute until the disability ceases.

87 (d) In the event that the plaintiff is still a child and under a disability, the failure of the
88 child's guardian ad litem to bring a plaintiff's action within the applicable limitation period shall
89 not prejudice the plaintiff's right to do so after his disability ceases.

90 (e) A defendant shall be estopped from asserting a defense of the statute of limitations if
91 the expiration of the statute is due to the defendant inducing the plaintiff to delay the filing of the
92 action, preventing the plaintiff from filing the action or threats made by the defendant that caused
93 duress upon the plaintiff.

94 (f) Any legal guardian, family member, representative of the victim of female genital
95 mutilation or court appointee may represent the rights of the victim of female genital mutilation,
96 in the event the victim of female genital mutilation is deceased or otherwise unable to represent
97 his own interests in court.

98 SECTION 8. Chapter 265 of the General Laws is hereby amended by adding the
99 following section:-

100 Section 58. (a) As used in this section, the following words shall have the following
101 meanings:-

102 “Child”, shall mean a person under the age of 18.

103 “Female genital mutilation” shall mean all procedures involving partial or total removal
104 of the female genitalia or other injury to the female genital organs, or any harmful procedure to
105 the female genitalia and includes –

106 1. clitoridectomy, which is the partial or total removal of the clitoris or the
107 prepuce;

108 2. excision, which is the partial or total removal of the clitoris and the labia
109 minora, with or without excision of the labia majora;

110 3. infibulation, which is the narrowing of the vaginal orifice with the creation of a
111 covering seal by cutting and appositioning the labia minora or the labia majora, with or without
112 excision of the clitoris;

113 4. all other harmful procedures to the female genitalia for non-medical reasons,
114 e.g., pricking, nicking, piercing, incising, scraping and cauterizing.

115 ; provided, however, “Female Genital Mutilation” shall not include surgery performed by
116 a health care professional (i) when necessary to preserve or protect the physical health of the
117 patient or (ii) for sex reassignment as requested by the patient.

118 “Health care professional”, shall mean a physician or other health care practitioner
119 licensed, accredited or certified to perform specified health services consistent with law.

120 (b) Whoever knowingly: (1) commits female genital mutilation on a child; (2) removes a
121 child from the commonwealth for the purposes of committing female genital mutilation; (3)
122 assists a child in committing female genital mutilation on herself; (4) consents to (i) the
123 commission of female genital mutilation on a child, or (ii) the removal of a child from the
124 commonwealth for purposes of committing female genital mutilation; or (5) aids or abets another
125 in (i) the commission of female genital mutilation on a child, or (ii) the removal of a child from
126 the commonwealth for the purposes of committing female genital mutilation shall be guilty of
127 the crime of female genital mutilation and shall be punished by imprisonment in the state prison
128 for life or for any term of years.

129 (c) A business entity that aids or abets a person in committing the crime of female genital
130 mutilation shall be punished by a fine of \$1,000,000.

131 (d) It shall not be a defense to a prosecution pursuant to this section that (i) the child or
132 the child’s guardian consented to the commission of female genital mutilation, or (ii) that female
133 genital mutilation is matter of custom, ritual or standard practice.

134 (e) A victim of female genital mutilation may bring an action in tort in the superior court
135 in any county where a violation of this section occurred, where the victim resides, or where the
136 defendant resides or has a place of business. Any person, including a business entity that
137 knowingly violates this section shall be civilly liable for such an offense.

138 SECTION 9. Section 63 of chapter 277 of the General Laws, as so appearing, is hereby
139 amended by striking out, in lines 4 and 5, the words “or subsection (b) of section 50 of chapter

140 265” and inserting in place thereof the following words:- , subsection (b) of section 50, or section
141 58 of chapter 265.

142 SECTION 10. Said section 63 of said chapter 277, as so appearing, is hereby further
143 amended by striking out, in line 26, the words “or 50”, and inserting in place thereof the
144 following words:-

145 , 50 or 58.

146 SECTION 11. Section 16D of chapter 278 of the General Laws, as so appearing, is
147 hereby amended by striking out, in lines 6 and 7, the words “or 50 of chapter two hundred and
148 sixty-five”, and inserting in place thereof the following words:- , 50 or 58 of chapter 265.