

HOUSE BILL NO. 214

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE EASTMAN

Introduced: 1/16/24

Referred: Health and Social Services, Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to female genital mutilation; relating to the practice of medicine;**
2 **relating to direct-entry midwives; relating to the practice of nursing; relating to criminal**
3 **law and procedure; relating to sentencing; relating to the duties of the Department of**
4 **Health; and amending Rule 505(a), Alaska Rules of Evidence."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 08.64.331 is amended by adding a new subsection to read:

7 (g) The board shall permanently revoke a license under (a)(1) of this section if
8 the board finds that a licensee has been convicted of a violation of AS 11.41.275. The
9 board may not permanently revoke a license under this subsection if the conviction has
10 been reversed on appeal, the conviction is under appeal, or the right to appeal has not
11 been exhausted.

12 * **Sec. 2.** AS 08.65.120 is amended by adding a new subsection to read:

13 (f) The board shall permanently revoke a certificate or permit under (a)(1) of
14 this section if the board finds that the person holding the certificate or permit has been

1 convicted of a violation of AS 11.41.275. The board may not permanently revoke a
 2 certificate or permit under this subsection if the conviction has been reversed on
 3 appeal, the conviction is under appeal, or the right to appeal has not been exhausted.

4 * **Sec. 3.** AS 08.68.275 is amended by adding a new subsection to read:

5 (g) The board shall permanently revoke a license or permit to practice under
 6 (a)(1) of this section if the board finds that the licensee or permit holder has been
 7 convicted of a violation of AS 11.41.275. The board may not permanently revoke a
 8 license or permit under this subsection if the conviction has been reversed on appeal,
 9 the conviction is under appeal, or the right to appeal has not been exhausted.

10 * **Sec. 4.** AS 11.41 is amended by adding a new section to read:

11 **Sec. 11.41.275. Female genital mutilation.** (a) A person commits the crime of
 12 female genital mutilation if the person

13 (1) knowingly commits female genital mutilation on a female under 18
 14 years of age;

15 (2) knowingly removes, or causes or permits the removal of, a female
 16 under 18 years of age from the state in order to commit female genital mutilation on
 17 the female under 18 years of age;

18 (3) knowingly transports, or causes or permits the transport of, a
 19 female under 18 years of age within the state in order to commit female genital
 20 mutilation on the female under 18 years of age; or

21 (4) is the parent or guardian, or is in a position of familial or custodial
 22 authority, of a female under 18 years of age and knowingly consents to or permits the
 23 female genital mutilation of the female under 18 years of age.

24 (b) It is an affirmative defense to a prosecution under (a) of this section that
 25 the female genital mutilation was performed

26 (1) by a licensed health care provider who was acting within the scope
 27 of the provider's practice; and

28 (2) on a female under 18 years of age

29 (A) who was in labor or who had just given birth and was
 30 performed for medical purposes connected with that labor or birth; or

31 (B) to correct an anatomical abnormality or to remove diseased

1 tissue that was an immediate threat to the health of the female under 18 years
2 of age.

3 (c) In a prosecution under (a) of this section,

4 (1) it is not a defense that the female genital mutilation was carried out

5 (A) in accordance with the person's religious beliefs, ritual,
6 custom, or standard practice; or

7 (B) with the consent of the female under 18 years of age on
8 whom the female genital mutilation is performed; and

9 (2) existing provisions of law prohibiting the disclosure of confidential
10 marital communications do not apply, and both spouses are competent to testify for or
11 against each other as to all relevant matters.

12 (d) In this section,

13 (1) "female genital mutilation" means

14 (A) circumcising, excising, or infibulating, in whole or in part,
15 the labia majora, labia minora, clitoris, or clitoral prepuce of a female;

16 (B) surgically altering, pricking, scraping, or cauterizing
17 normal, healthy, and functioning genital tissue of a female; or

18 (C) other procedures that are harmful to the external genital
19 tissue of a female;

20 (2) "licensed health care provider" means a licensed physician,
21 osteopath, direct-entry midwife, advanced nurse practitioner, physician assistant, or
22 nurse.

23 (e) Female genital mutilation is an unclassified felony.

24 * **Sec. 5.** AS 11.81.250(a) is amended to read:

25 (a) For purposes of sentencing under AS 12.55, all offenses defined in this
26 title, except murder in the first and second degree, attempted murder in the first
27 degree, solicitation to commit murder in the first degree, conspiracy to commit murder
28 in the first degree, murder of an unborn child, **female genital mutilation**, sexual
29 assault in the first degree, sexual abuse of a minor in the first degree, misconduct
30 involving a controlled substance in the first degree, sex trafficking in the first degree
31 under AS 11.66.110(a)(2), and kidnapping, are classified on the basis of their

1 seriousness, according to the type of injury characteristically caused or risked by
 2 commission of the offense and the culpability of the offender. Except for murder in the
 3 first and second degree, attempted murder in the first degree, solicitation to commit
 4 murder in the first degree, conspiracy to commit murder in the first degree, murder of
 5 an unborn child, **female genital mutilation**, sexual assault in the first degree, sexual
 6 abuse of a minor in the first degree, misconduct involving a controlled substance in the
 7 first degree, sex trafficking in the first degree under AS 11.66.110(a)(2), and
 8 kidnapping, the offenses in this title are classified into the following categories:

9 (1) class A felonies, which characteristically involve conduct resulting
 10 in serious physical injury or a substantial risk of serious physical injury to a person;

11 (2) class B felonies, which characteristically involve conduct resulting
 12 in less severe violence against a person than class A felonies, aggravated offenses
 13 against property interests, or aggravated offenses against public administration or
 14 order;

15 (3) class C felonies, which characteristically involve conduct serious
 16 enough to deserve felony classification but not serious enough to be classified as A or
 17 B felonies;

18 (4) class A misdemeanors, which characteristically involve less severe
 19 violence against a person, less serious offenses against property interests, less serious
 20 offenses against public administration or order, or less serious offenses against public
 21 health and decency than felonies;

22 (5) class B misdemeanors, which characteristically involve a minor
 23 risk of physical injury to a person, minor offenses against property interests, minor
 24 offenses against public administration or order, or minor offenses against public health
 25 and decency;

26 (6) violations, which characteristically involve conduct inappropriate
 27 to an orderly society but which do not denote criminality in their commission.

28 * **Sec. 6.** AS 11.81.250(b) is amended to read:

29 (b) The classification of each felony defined in this title, except murder in the
 30 first and second degree, attempted murder in the first degree, solicitation to commit
 31 murder in the first degree, conspiracy to commit murder in the first degree, murder of

1 an unborn child, **female genital mutilation**, sexual assault in the first degree, sexual
 2 abuse of a minor in the first degree, misconduct involving a controlled substance in the
 3 first degree, sex trafficking in the first degree under AS 11.66.110(a)(2), and
 4 kidnapping, is designated in the section defining it. A felony under the law of this state
 5 defined outside this title for which no penalty is specifically provided is a class C
 6 felony.

7 * **Sec. 7.** AS 12.10.010(b) is amended to read:

8 (b) Except as otherwise provided by law or in (a) of this section, a person may
 9 not be prosecuted, tried, or punished for an offense unless the indictment is found or
 10 the information or complaint is instituted not later than

11 (1) 10 years after the commission of a felony offense in violation of
 12 AS 11.41.120 - 11.41.330, 11.41.425(a)(1), 11.41.425(a)(5), 11.41.425(a)(6), or
 13 11.41.450 - 11.41.458; [OR]

14 (2) **10 years after the commission of an offense in violation of**
 15 **AS 11.41.275 or the alleged victim's 28th birthday, whichever is later; or**

16 (3) five years after the commission of any other offense.

17 * **Sec. 8.** AS 12.55.035(b) is amended to read:

18 (b) Upon conviction of an offense, a defendant who is not an organization may
 19 be sentenced to pay, unless otherwise specified in the provision of law defining the
 20 offense, a fine of not more than

21 (1) \$500,000 for murder in the first or second degree, attempted
 22 murder in the first degree, murder of an unborn child, **female genital mutilation**,
 23 sexual assault in the first degree under AS 11.41.410(a)(1)(A), (2), (3), or (4), sexual
 24 abuse of a minor in the first degree, kidnapping, sex trafficking in the first degree
 25 under AS 11.66.110(a)(2), or misconduct involving a controlled substance in the first
 26 degree;

27 (2) \$250,000 for a class A felony;

28 (3) \$100,000 for a class B felony;

29 (4) \$50,000 for a class C felony;

30 (5) \$25,000 for a class A misdemeanor;

31 (6) \$2,000 for a class B misdemeanor;

1 (7) \$500 for a violation.

2 * **Sec. 9.** AS 12.55.125(b) is amended to read:

3 (b) A defendant convicted of attempted murder in the first degree, solicitation
4 to commit murder in the first degree, conspiracy to commit murder in the first degree,
5 **female genital mutilation**, kidnapping, or misconduct involving a controlled
6 substance in the first degree shall be sentenced to a definite term of imprisonment of at
7 least five years but not more than 99 years. A defendant convicted of murder in the
8 second degree or murder of an unborn child under AS 11.41.150(a)(2) - (4) shall be
9 sentenced to a definite term of imprisonment of at least 15 years but not more than 99
10 years. A defendant convicted of murder in the second degree shall be sentenced to a
11 definite term of imprisonment of at least 20 years but not more than 99 years when the
12 defendant is convicted of the murder of a child under 16 years of age and the court
13 finds by clear and convincing evidence that the defendant (1) was a natural parent, a
14 stepparent, an adoptive parent, a legal guardian, or a person occupying a position of
15 authority in relation to the child; or (2) caused the death of the child by committing a
16 crime against a person under AS 11.41.200 - 11.41.530. In this subsection, "legal
17 guardian" and "position of authority" have the meanings given in AS 11.41.470.

18 * **Sec. 10.** AS 44.29.020 is amended by adding a new subsection to read:

19 (e) The Department of Health shall establish and implement appropriate
20 educational, preventive, and outreach activities related to female genital mutilation as
21 defined in AS 11.41.275(d), focusing on immigrant populations that traditionally
22 practice female genital mutilation. The purposes of those activities are to inform

23 (1) members of those populations of the health risks and emotional
24 trauma inflicted by female genital mutilation; and

25 (2) members of those populations and health care providers of the
26 prohibition against and ramifications of committing female genital mutilation under
27 AS 11.41.275.

28 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 DIRECT COURT RULE AMENDMENT. Rule 505(a), Alaska Rules of
31 Evidence, is amended to read:

1 **(a) Spousal Immunity.**

2 (1) **General Rule.** A husband shall not be examined for or against his wife,
3 without his consent, nor a wife for or against her husband, without her consent.

4 (2) **Exceptions.** There is no privilege under this subdivision:

5 (A) In a civil proceeding brought by or on behalf of one spouse against
6 the other spouse; or

7 (B) In a proceeding to commit or otherwise place a spouse, the
8 property of a spouse or both the spouse and the property of the spouse under the
9 control of another because of the alleged mental or physical condition of the spouse;
10 or

11 (C) In a proceeding brought by or on behalf of a spouse to establish the
12 spouse's competence; or

13 (D) In a proceeding in which one spouse is charged with:

14 (i) A crime against the person or the property of the other
15 spouse or of a child of either, whether such crime was committed before or
16 during marriage.

17 (ii) Bigamy, incest, adultery, pimping, or prostitution.

18 (iii) A crime related to abandonment of a child or nonsupport
19 of a spouse or child.

20 (iv) A crime prior to the marriage.

21 (v) A crime involving domestic violence as defined in
22 AS 18.66.990.

23 **(vi) A crime involving female genital mutilation under**
24 **AS 11.41.275.**

25 (E) In a proceeding involving custody of a child.

26 (F) Evidence derived from or related to a business relationship
27 involving the spouses.

28 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 APPLICABILITY. AS 11.41.275, enacted by sec. 4 of this Act, and AS 12.10.010(b),
31 as amended by sec. 7 of this Act, apply to offenses committed on or after the effective date of

1 secs. 4 and 7 of this Act.

2 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 CONDITIONAL EFFECT. AS 11.41.275(c)(2), enacted by sec. 4 of this Act, and
5 Rule 505(a), Alaska Rules of Evidence, as amended by sec. 11 of this Act, take effect only if
6 sec. 11 of this Act receives the two-thirds majority vote of each house required by art. IV, sec.
7 15, Constitution of the State of Alaska.