

HOUSE BILL NO. 245

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE EASTMAN

Introduced: 5/5/17

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the practice of medicine; relating to direct-entry midwives; relating
2 to the practice of nursing; relating to female genital mutilation; relating to criminal law
3 and procedure; relating to sentencing; and relating to the duties of the Department of
4 Health and Social Services."

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; or

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

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

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

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

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

28 (B) to correct an anatomical abnormality or to remove diseased
 29 tissue that was an immediate threat to the health of the female under 18 years
 30 of age.

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

1 (1) it is not a defense that the female genital mutilation was carried out
 2 in accordance with the person's religious beliefs, ritual, custom, or standard practice;
 3 and

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

7 (d) In this section,

8 (1) "female genital mutilation" means

9 (A) circumcising, excising, or infibulating, in whole or in part,
 10 the labia majora, labia minora, or clitoris of a female; or

11 (B) surgically altering normal, healthy, and functioning genital
 12 tissue of a female;

13 (2) "licensed health care provider" means a licensed physician,
 14 osteopath, direct-entry midwife, advanced nurse practitioner, physician assistant, or
 15 nurse.

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

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

18 (a) For purposes of sentencing under AS 12.55, all offenses defined in this
 19 title, except murder in the first and second degree, attempted murder in the first
 20 degree, solicitation to commit murder in the first degree, conspiracy to commit murder
 21 in the first degree, murder of an unborn child, **female genital mutilation**, sexual
 22 assault in the first degree, sexual abuse of a minor in the first degree, misconduct
 23 involving a controlled substance in the first degree, sex trafficking in the first degree
 24 under AS 11.66.110(a)(2), and kidnapping, are classified on the basis of their
 25 seriousness, according to the type of injury characteristically caused or risked by
 26 commission of the offense and the culpability of the offender. Except for murder in the
 27 first and second degree, attempted murder in the first degree, solicitation to commit
 28 murder in the first degree, conspiracy to commit murder in the first degree, murder of
 29 an unborn child, **female genital mutilation**, sexual assault in the first degree, sexual
 30 abuse of a minor in the first degree, misconduct involving a controlled substance in the
 31 first degree, sex trafficking in the first degree under AS 11.66.110(a)(2), and

1 kidnapping, the offenses in this title are classified into the following categories:

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

4 (2) class B felonies, which characteristically involve conduct resulting
5 in less severe violence against a person than class A felonies, aggravated offenses
6 against property interests, or aggravated offenses against public administration or
7 order;

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

11 (4) class A misdemeanors, which characteristically involve less severe
12 violence against a person, less serious offenses against property interests, less serious
13 offenses against public administration or order, or less serious offenses against public
14 health and decency than felonies;

15 (5) class B misdemeanors, which characteristically involve a minor
16 risk of physical injury to a person, minor offenses against property interests, minor
17 offenses against public administration or order, or minor offenses against public health
18 and decency;

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

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

22 (b) The classification of each felony defined in this title, except murder in the
23 first and second degree, attempted murder in the first degree, solicitation to commit
24 murder in the first degree, conspiracy to commit murder in the first degree, murder of
25 an unborn child, **female genital mutilation**, sexual assault in the first degree, sexual
26 abuse of a minor in the first degree, misconduct involving a controlled substance in the
27 first degree, sex trafficking in the first degree under AS 11.66.110(a)(2), and
28 kidnapping, is designated in the section defining it. A felony under the law of this state
29 defined outside this title for which no penalty is specifically provided is a class C
30 felony.

31 * **Sec. 7.** AS 12.55.035(b) is amended to read:

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

4 (1) \$500,000 for murder in the first or second degree, attempted
 5 murder in the first degree, murder of an unborn child, **female genital mutilation**,
 6 sexual assault in the first degree, sexual abuse of a minor in the first degree,
 7 kidnapping, sex trafficking in the first degree under AS 11.66.110(a)(2), or
 8 misconduct involving a controlled substance in the first degree;

9 (2) \$250,000 for a class A felony;

10 (3) \$100,000 for a class B felony;

11 (4) \$50,000 for a class C felony;

12 (5) \$25,000 for a class A misdemeanor;

13 (6) \$2,000 for a class B misdemeanor;

14 (7) \$500 for a violation.

15 * **Sec. 8.** AS 12.55.125(b) is amended to read:

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

31 * **Sec. 9.** AS 44.29.020 is amended by adding a new subsection to read:

1 (d) The Department of Health and Social Services shall establish and
2 implement appropriate educational, preventive, and outreach activities related to
3 female genital mutilation as defined in AS 11.41.275(d), focusing on immigrant
4 populations that traditionally practice female genital mutilation. The purposes of those
5 activities are to inform

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

8 (2) members of those populations and health care providers of the
9 prohibition and ramifications of AS 11.41.275.

10 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 APPLICABILITY. (a) AS 11.41.275, enacted by sec. 4 of this Act, applies to offenses
13 committed on or after the effective date of sec. 4 of this Act.

14 (b) AS 12.55.125(b), as amended by sec. 8 of this Act, applies to sentences imposed
15 on or after the effective date of sec. 8 of this Act for conduct occurring on or after the
16 effective date of sec. 8 of this Act.