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SENATE BILL NO. 1060

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 16, 2017)

(Patrons Prior to Substitute—Senators Black and Dunnavant [SB 1241])

A BILL to amend the Code of Virginia by adding sections numbered 8.01-42.5 and 18.2-51.7, relating to female genital mutilation; criminal penalty and civil action.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 8.01-42.5 and 18.2-51.7 as follows:

§ 8.01-42.5. Civil action for female genital mutilation.

A. Any person injured by an individual who engaged in conduct that is prohibited under § 18.2-51.7, whether or not the individual has been charged or convicted for the alleged violation, shall have a civil cause of action against the individual for the compensatory damages incurred by the person as a result of that conduct, in addition to reasonable attorney fees and costs for bringing the action. If compensatory damages are awarded, a person may also be awarded punitive damages.

B. No action shall be commenced under this section more than 10 years after the later of (i) the date on which such person was no longer the subject of the most recent conduct prohibited under § 18.2-51.7 or (ii) the date on which such person attained 18 years of age.

§ 18.2-51.7. Female genital mutilation.

A. Any person who knowingly circumcises, excises, or infibulates, in whole or in any part, the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years is guilty of a felony punishable by a fine of not more than \$1 million and imprisonment for 20 years to life, five years of which shall be a mandatory minimum sentence.

B. Any parent, guardian, or other person who is legally responsible for or charged with the care or custody of a minor and who consents to the circumcision, excision, or infibulation, in whole or in any part, of the labia majora or labia minora or clitoris of such minor is guilty of a Class 4 felony.

C. Any parent, guardian, or other person who is legally responsible for or charged with the care or custody of a minor and who knowingly removes or causes or permits the removal of such minor from the Commonwealth for the purposes of committing an offense under subsection A is guilty of a Class 4 felony.

D. A surgical operation is not a violation of this section if the operation is (i) necessary to the health of the person on whom it is performed and is performed by a person licensed in the place of its performance as a medical practitioner or (ii) performed on a person in labor who has just given birth and is performed for medical purposes connected with that labor or birth 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.

E. In any prosecution brought under this section, it is not a defense to a violation of this section that the procedure described in subsection A was required as a matter of custom, ritual, or religious practice or that the minor on whom it was performed, or the minor's parent or legal guardian, consented to the procedure.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 780 of the Acts of Assembly of 2016 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.