

# SB 5453: Concerning female genital mutilation.

We support efforts to curtail violent and heinous crimes, and are supportive of the goals of this piece of legislation. While this bill is aimed at eliminating a harmful practice that is a form of gender-based violence, there are issues regarding failing to define important terms and misplaced reliance on law enforcement to address the issue.

The bill states that it is aimed at prohibiting certain procedures performed for “nonmedical reasons,” but this term is undefined. In order to prevent misinterpretation of this statute in the future, some definition must be included to differentiate what is a medical reason and what is not. Specific attention must be paid to explicitly stating that gender affirming care categorically is not female genital mutilation. The statement of legislature’s intent must also include explicitly that the statutes are not to be interpreted in any way to prevent people from accessing gender affirming care, nor is it to prevent providers from providing gender affirming care, and any such interpretation is contrary to the intent of the legislature. It is extremely important to spell this out explicitly because statutory interpretation litigation arguments will be made as long as a statute exists. Other states have used laws aimed at prohibiting female genital mutilation to instead target gender-affirming care. Washington legislature must make an absolutely clear statement that this will not occur in Washington state.

Likewise, the bill instructs DSHS to develop partnerships with state agencies that provide services to “persons at risk of genital mutilation.” Who exactly are those people? Some effort must be made to define this. Often discussions of female genital mutilation are referring to practices or traditions amongst communities of color. How does this bill address concerns that, in practice, families and communities of color will be disproportionately targeted by this bill, continuing the over-policing and disproportionate surveillance to which they are already subject?

This is particularly likely to occur given the crime this bill seeks to create for female genital mutilation that would criminalize not just the person performing the procedure, but anyone transporting someone for the purpose of obtaining female genital mutilation. Accomplice liability as it exists in Washington would further subject anyone that facilitates that transport in any way, including solicitation or encouragement, to potential criminal liability. RCW 9A.08.020.

This reliance on criminal prosecution will make it harder to curb the practice, not easier. As stated by Marieke Brock, researcher in the Federal Research Division of the Library of Congress in an article published in the *National Institute of Justice Journal*, “Who are these parents going to turn to for help?” asked Brock. “They feel like they can’t call law enforcement. FGM/C [female genital mutilation/ cutting] is illegal. They fear going to jail. They fear putting family members in jail. They fear endangering their immigration status. Are they going to turn in their aunts and uncles? Not likely. More likely is they will hide what happened.” Frederique and Pearsall, *Female Genital*

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*Mutilation and Cutting: An Incomplete Picture of a Pressing Global Problem*, NIJ Journal, Issue 283, p. 6 ; October 2021; <https://nij.ojp.gov/topics/articles/female-genital-mutilationcutting-incomplete-picture-pressing-global-problem>. There is evidence that using the criminal punishment system to address this problem will be harmful; there is no evidence to support speculation that it will actually reduce harm. The section of the bill which attempts to create a crime for female genital mutilation should be removed.<sup>1</sup>

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<sup>1</sup> It is also of note that statutes already exist criminalizing the assault of children and these can be used as bases for criminal prosecution. For example, *State v. Baxter* is a Division 2 case which held that criminal liability exists where a father performed a circumcision at home, despite his religious convictions on which the act was based and despite the child's alleged 'consent.' *State v. Baxter*, 134 Wn. App. 587, 141 P.3d 92 (2006).