SENATE No. 834

The Commonwealth of Massachusetts

PRESENTED BY:

Joseph A. Boncore

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 relative to female genital mutilation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Joseph A. Boncore	First Suffolk and Middlesex	
Harriette L. Chandler	First Worcester	1/17/2019
Paul R. Feeney	Bristol and Norfolk	1/17/2019
Patricia D. Jehlen	Second Middlesex	1/18/2019
Rebecca L. Rausch	Norfolk, Bristol and Middlesex	1/22/2019
Nick Collins	First Suffolk	1/23/2019
Michael D. Brady	Second Plymouth and Bristol	1/23/2019
Jason M. Lewis	Fifth Middlesex	1/24/2019
Tommy Vitolo	15th Norfolk	1/28/2019
Barry R. Finegold	Second Essex and Middlesex	1/29/2019
Patrick M. O'Connor	Plymouth and Norfolk	1/29/2019
Kay Khan	11th Middlesex	1/30/2019
Mark C. Montigny	Second Bristol and Plymouth	1/30/2019
Mike Connolly	26th Middlesex	1/30/2019
Cindy F. Friedman	Fourth Middlesex	1/31/2019
Sal N. DiDomenico	Middlesex and Suffolk	1/31/2019
Michael O. Moore	Second Worcester	1/31/2019
Diana DiZoglio	First Essex	1/31/2019

Sean Garballey	23rd Middlesex	2/1/2019
Julian Cyr	Cape and Islands	2/1/2019
Viriato M. deMacedo	Plymouth and Barnstable	2/1/2019
Tram T. Nguyen	18th Essex	3/5/2019
Walter F. Timilty	Norfolk, Bristol and Plymouth	3/15/2019
John H. Rogers	12th Norfolk	3/15/2019
Brendan P. Crighton	Third Essex	3/15/2019
James B. Eldridge	Middlesex and Worcester	4/9/2019
Timothy R. Whelan	1st Barnstable	4/9/2019
Cynthia Stone Creem	First Middlesex and Norfolk	4/9/2019
Marc R. Pacheco	First Plymouth and Bristol	4/12/2019
Joanne M. Comerford	Hampshire, Franklin and Worcester	4/12/2019
Anne M. Gobi	Worcester, Hampden, Hampshire and Middlesex	4/12/2019
Michael J. Barrett	Third Middlesex	4/12/2019
James Arciero	2nd Middlesex	4/22/2019
James T. Welch	Hampden	4/29/2019
Joan B. Lovely	Second Essex	4/29/2019
Lindsay N. Sabadosa	1st Hampshire	5/10/2019
Ryan C. Fattman	Worcester and Norfolk	6/12/2019
Dean A. Tran	Worcester and Middlesex	7/18/2019

SENATE No. 834

By Mr. Boncore, a petition (accompanied by bill, Senate, No. 834) of Joseph A. Boncore, Harriette L. Chandler, Paul R. Feeney, Patricia D. Jehlen and other members of the General Court for legislation relative to female genital mutilation. The Judiciary.

The Commonwealth of Alassachusetts

In the One Hundred and Ninety-First General Court (2019-2020)

An Act relative to 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, as appearing in the 2016 Official Edition,
- 2 is hereby amended by inserting after section 220 the following new section:-
- 3 Section 220A. (a) The commissioner shall develop and administer a program of
- 4 education, prevention and outreach for communities that commonly practice female genital
- 5 mutilation as defined in section 60 of chapter 265. The program shall be designed to inform
- 6 those communities about the health risks and emotional trauma inflicted by the practice of
- 7 female genital mutilation, as well as the criminal penalties for committing female genital
- 8 mutilation.
- 9 (b) The commissioner shall develop policies and procedures to promote partnerships
- between the department, agencies and political subdivisions of the commonwealth such as the
- 11 Department of Elementary and Secondary Education, the Department of Children and Families,
- 12 the Executive Office of Public Safety and Security, and the Attorney General's Office, other

government entities and non-governmental organizations to prevent female genital mutilation and to protect and provide assistance to victims of female genital mutilation.

- (c) The commissioner shall make recommendations and develop procedures regarding strategies and methodologies for training providers of health services on recognizing the risk factors associated with female genital mutilation and the signs that an individual may be a victim of female genital mutilation.
- (d) The commissioner shall develop regulations to carry out this section and may, subject to appropriation, contract with non-governmental organizations, entities or individuals with experience working with victims of female genital mutilation to provide training and materials and other services as the department deems necessary.
- SECTION 2. Chapter 260 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after section 4D the following new section:-
- Section 4E. (a) A victim of female genital mutilation as defined in section 60 of chapter 265 may bring a civil action in any court of competent jurisdiction for female genital mutilation. The victim may bring said action regardless of where the alleged female genital mutilation occurred. A court of the commonwealth may exercise jurisdiction over a defendant in such an action on any basis not inconsistent with the Constitution of the commonwealth or of the United States. The court may award actual damages, compensatory damages, punitive damages, injunctive relief or any other appropriate relief. A prevailing plaintiff shall be awarded attorney's fees and costs. Treble damages may be awarded on proof of actual damages if the defendant's acts were willful and malicious. The doctrines of forum non conveniens and exhaustion of local remedies shall not apply to claims arising under this section.

- 35 (b) A civil action for female genital mutilation shall be commenced within 10 years after 36 the date the plaintiff turns 18.
 - SECTION 3. Chapter 265 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by adding the following section:-
- Section 60. (a) As used in this section, the following words shall have the following meanings:-
 - "Child", shall mean a person under the age of 18.

- "Female genital mutilation" shall mean all procedures involving partial or total removal of the female genitalia or other injury to the female genital organs, or any harmful procedure to the female genitalia, including but not limited to clitoridectomy or the partial or total removal of the clitoris or the prepuce, excision or the partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora, infibulation or the narrowing of the vaginal orifice with the creation of a covering seal by cutting and appositioning the labia minora or the labia majora, with or without excision of the clitoris, and all other actions intended to alter the structure or function of the female genitalia for non-medical reasons, but excluding surgery performed by a health care professional when necessary to preserve or protect the physical health of the patient or for gender reassignment as requested by the patient.
- (b) Whoever commits female genital mutilation on a child shall be guilty of the crime of female genital mutilation and shall be punished by imprisonment for a term of not more than 10 years in state prison or not more than 2.5 years in a house of correction and by a fine of not more than \$10,000. The superior court and the district court shall have concurrent jurisdiction.

(c) Whoever holds or takes a child in the commonwealth or holds or takes a child outside the commonwealth to commit female genital mutilation or to permit another to commit female genital mutilation upon the child shall be punished by imprisonment for a term of not more than 10 years in state prison or not more than 2.5 years in a house of correction and by a fine of not more than \$10,000. The superior court and the district court shall have concurrent jurisdiction.

- (d) It shall not be a defense to a prosecution under this section that (i) the child or the child's guardian consented to the commission of female genital mutilation, or (ii) female genital mutilation is a matter of custom, ritual or standard practice.
- SECTION 4. Section 16D of chapter 278 of the General Laws, as so appearing, is hereby amended by striking out, in lines 6 and 7, the words "or 50 of chapter two hundred and sixty-five", and inserting in place thereof the following words:- ", 50 or 60 of chapter 265"
- SECTION 5. Chapter 231 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out section 85P and inserting in place thereof the following section:-
- Section 85P. (a) Except as otherwise specifically provided by law, any person domiciled in the commonwealth who has reached the age of 18 shall for all purposes, and any other person who has reached the age of 18 shall with respect to any transaction governed by the law of the commonwealth, be deemed of full legal capacity unless legally incapacitated for some reason other than insufficient age.
- (b) Notwithstanding subsection (a), a minor 13 years of age or older may appear in a court of competent jurisdiction without a parent, guardian, next friend, counsel, or guardian ad litem, for the purpose of requesting or opposing a request for any of the following:

- (i) an order pursuant to chapter 209A;
- 79 (ii) an order pursuant to chapter 258E.

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80 (c) If a minor at least 13 years of age seeks relief in a matter under subsection (b) and is 81 not represented by an attorney, the minor shall be informed that the minor has a right to 82 appointed counsel and the court shall appoint an attorney to represent the minor. 83 Notwithstanding, the court may proceed with an emergency ex parte hearing. Appointment of

counsel shall be made through the Committee for Public Counsel Services.

(d) Subsection (b) shall not prevent a parent, guardian, custodian, or other appropriate adult to file or oppose a request for relief in a matter under subsection (b) on behalf of a minor of any age. In matters falling under subsection (b) in which a parent, guardian, custodian or other appropriate adult has sought relief on behalf of a minor plaintiff 13 years of age or older, the court shall consider the expressed wishes of the minor plaintiff in deciding whether to grant relief pursuant to subsection (b) and in determining the contents of such an order.