SENATE DOCKET, NO. 307 FILED ON: 1/14/2015

SENATE . . . . . No. 1116

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger

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 establishing civil and criminal penalties for the female genital mutilation of minors.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
William N. Brownsberger	*Second Suffolk and Middlesex*
Sarah K. Peake	*4th Barnstable*
Chris Walsh	*6th Middlesex*
Harriette L. Chandler	*First Worcester*
Cynthia S. Creem	*First Middlesex and Norfolk*
Daniel A. Wolf	*Cape and Islands*
John F. Keenan	*Norfolk and Plymouth*
Karen E. Spilka	*Second Middlesex and Norfolk*
Kenneth J. Donnelly	*Fourth Middlesex*
Patricia D. Jehlen	*Second Middlesex*
Thomas M. McGee	*Third Essex*
Ann-Margaret Ferrante	*5th Essex*
Byron Rushing	*9th Suffolk*
Gloria L. Fox	*7th Suffolk*
James M. Cantwell	*4th Plymouth*
Kay Khan	*11th Middlesex*
Marjorie C. Decker	*25th Middlesex*
Mary S. Keefe	*15th Worcester*

Patricia A. Haddad	*5th Bristol*
Tackey Chan	*2nd Norfolk*
Jay D. Livingstone	*8th Suffolk*
David T. Vieira	*3rd Barnstable*
Denise Provost	*27th Middlesex*
Denise C. Garlick	*13th Norfolk*
Jennifer E. Benson	*37th Middlesex*
Lori A. Ehrlich	*8th Essex*
Nick Collins	*4th Suffolk*
Ruth B. Balser	*12th Middlesex*
Tricia Farley-Bouvier	*3rd Berkshire*
Eileen M. Donoghue	*First Middlesex*
Jonathan Hecht	*29th Middlesex*
Cory Atkins	*14th Middlesex*
Sean Garballey	*23rd Middlesex*
Linda Dorcena Forry	*First Suffolk*
Timothy R. Madden	*Barnstable, Dukes and Nantucket*
James J. O'Day	*14th Worcester*
Anne M. Gobi	*Worcester, Hampden, Hampshire and Middlesex*
Kenneth I. Gordon	*21st Middlesex*
Richard J. Ross	*Norfolk, Bristol and Middlesex*
Sal N. DiDomenico	*Middlesex and Suffolk*
Anthony W. Petruccelli	*First Suffolk and Middlesex*
Benjamin Swan	*11th Hampden*
Joan B. Lovely	*Second Essex*

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By Mr. Brownsberger, a petition (accompanied by bill, Senate, No. 1116) of William N. Brownsberger, Sarah K. Peake, Chris Walsh, Harriette L. Chandler and other members of the General Court for legislation to establish civil and criminal penalties for the female genital mutilation of minors. Public Health.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act establishing civil and criminal penalties for the female genital mutilation of minors.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 111 of the General Laws is hereby amended by inserting after section 220 the following new section:-

Section 220A. The commissioner shall develop and administer a program of education, prevention and outreach for communities that commonly practice female genital mutilation as defined in section 58 of chapter 265. The program shall be designed to inform those communities about the health risks and emotional trauma inflicted by the practice of female genital mutilation, as well as the criminal penalties for committing female genital mutilation. The commissioner shall work with culturally appropriate groups to obtain private funds to help finance these prevention and outreach activities.

10 The commissioner shall develop and disseminate information regarding female genital
11 mutilation and the criminal penalties for committing female genital mutilation to health care
12 providers and law enforcement personnel.

13 SECTION 2. Section 21 of chapter 119 of the General Laws, as appearing in the 2012
14 Official Edition, is hereby amended by inserting after the word “faculty”, in line 81, the
15 following words:-, including female genital mutilation, as defined in section 58 of chapter 265.

16 SECTION 3. Chapter 119 of the General Laws is hereby amended by inserting after
17 section 39L the following section:

18 Section 39M. (a) Notwithstanding any general or special law to the contrary, the
19 department of children and families, in collaboration with the department of mental health and
20 other appropriate state agencies, shall: (i) provide for the child welfare services needs of children
21 who have undergone or are at risk of FGM including, but not limited to, services for victims of
22 FGM residing in the commonwealth at the time they are identified by the department as victims
23 or at risk of FGM, for the duration of any legal or administrative proceeding in which they are
24 either the complaining witness, defendant or the subject child; and (ii) provide appropriate
25 services to a child reasonably believed to be a victim of or at risk of FGM in order to safeguard
26 the child's welfare. If a child reasonably believed to be a victim of or at risk of FGM declines
27 services or is unable or unwilling to participate in the services offered, the department or any
28 person may file a care and protection petition under section 24. Child victims of FGM or at risk
29 of FGM shall have access to an advocate. The advocate or a member of the multidisciplinary
30 service team established under section 51D shall accompany the child to all court appearances
31 and may serve as a liaison between the service providers and the court.

32 (b) The services that shall be provided under this section shall be available to all child
33 victims of FGM or at risk of FGM, whether they are accessed voluntarily, through a court
34 proceeding under this section or through a referral, which may be made by any person.

35 (c) The commissioner of the department may, subject to appropriation, contract with non-
36 governmental organizations or entities with experience working with victims of female genital
37 mutilation or at risk of female genital mutilation to train law enforcement officials likely to
38 encounter victims of female genital mutilation in the course of their law enforcement duties. The
39 training shall include, but not be limited to, awareness and compliance with the provisions of this
40 section, identification of, access to, and the provision of services for victims of female genital
41 mutilation or those at risk of female genital mutilation and any other services the department
42 deems necessary.

43 (d) The department shall adopt regulations to carry out this section.

44 SECTION 4. Section 51A of said chapter 119, as so appearing, is hereby amended by
45 striking out the first full paragraph of subsection (a), and inserting in place thereof the following
46 subsection:-

47 (a) A mandated reporter who, in his professional capacity, has reasonable cause to
48 believe that a child is suffering physical or emotional injury resulting from: (i) abuse inflicted
49 upon him which causes harm or substantial risk of harm to the child's health or welfare,
50 including sexual abuse and/or female genital mutilation, or the substantial risk of female genital
51 mutilation, as defined in section 58 of chapter 265; (ii) neglect, including malnutrition; (iii)
52 physical dependence upon an addictive drug at birth; (iv) being a sexually exploited child; or (v)
53 being a human trafficking victim, as defined in section 20M of chapter 233, shall immediately

54 communicate with the department orally and, within 48 hours, shall file a written report with the
55 department detailing the suspected abuse or neglect.

56 SECTION 5. Section 51B of chapter 119 of the General Laws, as appearing in the 2012
57 Official Edition, is hereby amended by inserting after the word "authorities", in line 7, the
58 following words:- , a child who is a victim of female genital mutilation, or is at substantial risk of
59 female genital mutilation, as defined in section 58 of chapter 265.

60 SECTION 6. Section 51D of said chapter 119, as so appearing, is hereby amended by
61 inserting after the seventh paragraph the following paragraph:-

62 For 51A reports specifically involving a child who is a victim of female genital
63 mutilation, or is at substantial risk of female genital mutilation, as defined in section 58 of
64 chapter 265, the multi-disciplinary service team may consist of a team of professionals trained or
65 otherwise experienced and qualified to assess the needs of children who have undergone or are at
66 risk of female genital mutilation, including, but not limited to, a police officer, as defined by
67 section 1 of chapter 90C, or other person designated by a police chief, as defined in said section
68 1 of said chapter 90C, an employee of the department of children and families, a representative
69 of the appropriate district attorney, a social service provider, a medical professional or a mental
70 health professional. The purpose of said team shall be to determine whether the child is a victim
71 of, or is at substantial risk of, female genital mutilation and to recommend a plan for services to
72 the department that may include, but shall not be limited to, shelter or placement, mental health
73 and medical care needs and other social services.

74 SECTION 7. Chapter 260 of the General Laws is hereby amended by inserting after
75 section 4D the following new section:-

76 Section 4E. (a) A victim of female genital mutilation pursuant to section 58 of chapter
77 265 may bring a civil action for female genital mutilation. The court may award actual damages,
78 compensatory damages, punitive damages, injunctive relief or any other appropriate relief. A
79 prevailing plaintiff shall be awarded attorney's fees and costs. Treble damages may be awarded
80 on proof of actual damages if the defendant's acts were willful and malicious.

81 (b) A civil action for female genital mutilation shall be commenced within 3 years after
82 the date the plaintiff turns 18.

83 (c) If a person entitled to sue is under a disability at the time the cause of action accrues,
84 such that it is impossible or impracticable for such person to bring an action, the time during
85 which the plaintiff is under a disability shall toll the statute until the disability ceases.

86 (d) In the event that the plaintiff is still a child and under a disability, the failure of the
87 child's guardian ad litem to bring a plaintiff's action within the applicable limitation period shall
88 not prejudice the plaintiff's right to do so after his disability ceases.

89 (e) A defendant shall be estopped from asserting a defense of the statute of limitations if
90 the expiration of the statute is due to the defendant inducing the plaintiff to delay the filing of the
91 action, preventing the plaintiff from filing the action or threats made by the defendant that caused
92 duress upon the plaintiff.

93 (f) Any legal guardian, family member, representative of the victim of female genital
94 mutilation or court appointee may represent the rights of the victim of female genital mutilation,
95 in the event the victim of female genital mutilation is deceased or otherwise unable to represent
96 his own interests in court.

97 SECTION 8. Chapter 265 of the General Laws is hereby amended by adding the
98 following section:-

99 Section 58. (a) As used in this section, the following words shall have the following
100 meanings:-

101 "Child", shall mean a person under the age of 18.

102 "Female genital mutilation" shall mean all procedures involving partial or total removal
103 of the female genitalia or other injury to the female genital organs, or any harmful procedure to
104 the female genitalia and includes –

105 1. clitoridectomy, which is the partial or total removal of the clitoris or the prepuce;

106 2. excision, which is the partial or total removal of the clitoris and the labia minora,
107 with or without excision of the labia majora;

108 3. infibulation, which is the narrowing of the vaginal orifice with the creation of a
109 covering seal by cutting and appositioning the labia minora or the labia majora, with or without
110 excision of the clitoris;

111 4. all other harmful procedures to the female genitalia for non-medical reasons, e.g.,
112 pricking, nicking, piercing, incising, scraping and cauterizing.

113 ; provided, however, "Female Genital Mutilation" shall not include surgery performed by
114 a health care professional (i) when necessary to preserve or protect the physical health of the
115 patient or (ii) for sex reassignment as requested by the patient.

116 “Health care professional”, shall mean a physician or other health care practitioner
117 licensed, accredited or certified to perform specified health services consistent with law.

118 (b) Whoever knowingly: (1) commits female genital mutilation on a child; (2) removes a
119 child from the commonwealth for the purposes of committing female genital mutilation; (3)
120 assists a child in committing female genital mutilation on herself; (4) consents to (i) the
121 commission of female genital mutilation on a child, or (ii) the removal of a child from the
122 commonwealth for purposes of committing female genital mutilation; or (5) aids or abets another
123 in (i) the commission of female genital mutilation on a child, or (ii) the removal of a child from
124 the commonwealth for the purposes of committing female genital mutilation shall be guilty of
125 the crime of female genital mutilation and shall be punished by imprisonment in the state prison
126 for life or for any term of years.

127 (c) A business entity that aids or abets a person in committing the crime of female genital
128 mutilation shall be punished by a fine of $1,000,000.

129 (d) It shall not be a defense to a prosecution pursuant to this section that (i) the child or
130 the child’s guardian consented to the commission of female genital mutilation, or (ii) that female
131 genital mutilation is matter of custom, ritual or standard practice.

132 (e) A victim of female genital mutilation may bring an action in tort in the superior court
133 in any county where a violation of this section occurred, where the victim resides, or where the
134 defendant resides or has a place of business. Any person, including a business entity that
135 knowingly violates this section shall be civilly liable for such an offense.

136 SECTION 9. Section 63 of chapter 277 of the General Laws, as so appearing, is hereby
137 amended by striking out, in lines 4 and 5, the words “or subsection (b) of section 50 of chapter

138 265” and inserting in place thereof the following words:- , subsection (b) of section 50, or section
139 58 of chapter 265.

140 SECTION 10. Said section 63 of said chapter 277, as so appearing, is hereby further
141 amended by striking out, in line 26, the words “or 50”, and inserting in place thereof the
142 following words:- , 50 or 58.

143 SECTION 11. Section 16D of chapter 278 of the General Laws, as so appearing, is
144 hereby amended by striking out, in lines 6 and 7, the words “or 50 of chapter two hundred and
145 sixty-five”, and inserting in place thereof the following words:- , 50 or 58 of chapter 265.