HOUSE DOCKET, NO. 2335 FILED ON: 1/17/2019

HOUSE . . . . . No. 1466

The Commonwealth of Massachusetts

PRESENTED BY:

Bradley H. Jones, Jr.

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 to prohibit female genital mutilation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Bradley H. Jones, Jr.	*20th Middlesex*	*1/17/2019*
Bradford Hill	*4th Essex*	*1/24/2019*
Elizabeth A. Poirier	*14th Bristol*	*1/17/2019*
Susan Williams Gifford	*2nd Plymouth*	*1/17/2019*
Paul K. Frost	*7th Worcester*	*1/30/2019*
Todd M. Smola	*1st Hampden*	*1/31/2019*
Donald H. Wong	*9th Essex*	*1/31/2019*
Timothy R. Whelan	*1st Barnstable*	*1/28/2019*
Randy Hunt	*5th Barnstable*	*1/28/2019*
William L. Crocker, Jr.	*2nd Barnstable*	*1/28/2019*
David F. DeCoste	*5th Plymouth*	*1/29/2019*
Steven S. Howitt	*4th Bristol*	*1/30/2019*
Thomas A. Golden, Jr.	*16th Middlesex*	*1/31/2019*
Kimberly N. Ferguson	*1st Worcester*	*1/31/2019*
Hannah Kane	*11th Worcester*	*2/1/2019*
Shaunna L. O'Connell	*3rd Bristol*	*2/1/2019*
David T. Vieira	*3rd Barnstable*	*2/1/2019*

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HOUSE . . . . . No. 1466

By Mr. Jones of North Reading, a petition (accompanied by bill, House, No. 1466) of Bradley H. Jones, Jr., and others relative to the penalties for the crime of female genital mutilation. The Judiciary.

The Commonwealth of Massachusetts

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

An Act to prohibit 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:

SECTION 1. Chapter 111 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after section 220, the following new section:—

(a) The commissioner shall develop and administer a program of community education, prevention and outreach activities regarding the health risks and emotional trauma inflicted by the practice of female genital mutilation, as defined in section 59 of chapter 265, and informing the community of the criminal penalties for committing female genital mutilation.

(b) The commissioner shall develop policies and procedures to promote partnerships between the department, agencies and political subdivisions of the commonwealth such as the department of elementary and secondary education, the department of children and families, the executive office of public safety and security, the attorney general's office, and 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 develop policies and procedures for the training of health care professionals regarding the risk factors associated with female genital mutilation and recognizing the signs that an individual may be a victim of female genital mutilation.

SECTION 2. Section 21 of chapter 119 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the word "faculty", in line 81, the following words:- , including female genital mutilation, as defined in section 59 of chapter 265.

SECTION 3. Chapter 119 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after section 39L the following section:-

Section 39M. (a) Notwithstanding any general or special law to the contrary, the department of children and families, in collaboration with the department of mental health and other appropriate state agencies, shall: (i) provide for the child welfare services needs of children who have undergone or are at risk of female genital mutilation including, but not limited to, services for victims of female genital mutilation residing in the commonwealth at the time they are identified by the department as victims or at risk of female genital mutilation, for the duration of any legal or administrative proceeding in which they are either the complaining witness, defendant or the subject child; and (ii) provide appropriate services to a child reasonably believed to be a victim of or at risk of female genital mutilation in order to safeguard the child's welfare. If a child reasonably believed to be a victim of or at risk of female genital mutilation declines services or is unable or unwilling to participate in the services offered, the department or any person may file a care and protection petition under section 24 of this chapter. Child victims of female genital mutilation or those at risk of female genital mutilation shall have access to an advocate. The advocate or a member of the multidisciplinary service team established under

section 51D of this chapter shall accompany the child to all court appearances and may serve as a liaison between the service providers and the court.

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

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

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

SECTION 4. Section 51A of chapter 119 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out the first full paragraph of subsection (a), and inserting in place thereof the following subsection:-

(a) A mandated reporter who, in his professional capacity, has reasonable cause to believe that a child is suffering physical or emotional injury resulting from: (i) abuse inflicted upon him which causes harm or substantial risk of harm to the child's health or welfare, including sexual abuse or female genital mutilation, or the substantial risk of female genital

mutilation, as defined in section 59 of chapter 265; (ii) neglect, including malnutrition; (iii) physical dependence upon an addictive drug at birth; (iv) being a sexually exploited child; or (v) being a human trafficking victim, as defined in section 20M of chapter 233, shall immediately communicate with the department orally and, within 48 hours, shall file a written report with the department detailing the suspected abuse or neglect.

SECTION 5. Section 51B of chapter 119 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the word "authorities", in line 7, the following words:- , a child who is a victim of female genital mutilation, or is at substantial risk of female genital mutilation, as defined in section 59 of chapter 265.

SECTION 6. Section 51D of said chapter 119 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the seventh paragraph the following paragraph:-

For 51A reports specifically involving a child who is a victim of female genital mutilation, or is at substantial risk of female genital mutilation, as defined in section 59 of chapter 265, the multi-disciplinary service team may consist of a team of professionals trained or otherwise experienced and qualified to assess the needs of children who have undergone or are at risk of female genital mutilation, including, but not limited to, a police officer, as defined by section 1 of chapter 90C, or other person designated by a police chief, as defined in said section 1 of said chapter 90C, an employee of the department of children and families, a representative of the appropriate district attorney, a social service provider, a medical professional or a mental health professional. The purpose of said team shall be to determine whether the child is a victim of, or is at substantial risk of, female genital mutilation and to recommend a plan for services to

the department that may include, but shall not be limited to, shelter or placement, mental health and medical care needs and other social services.

SECTION 7. 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 59 of chapter 265 may bring a civil action in any court of competent jurisdiction for female genital mutilation. The victim may bring an 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.

(b) A civil action for female genital mutilation shall be commenced within 10 years after the date the plaintiff turns 18.

SECTION 8. Chapter 265 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by adding the following section:—

Section 59. (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 that involve partial or total removal of the external female genitalia, 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, pricking, piercing, incising, scraping, and cauterizing the genital area and all other actions intended to alter the structure or function of the female genitalia for non-medical reasons.

(b) Any person:

1. who commits female genital mutilation on a child; or

2. who is a parent, guardian, or has immediate custody or control of a child and consents to, permits, or facilitates female genital mutilation of such child; or

3. who removes or causes or permits or facilitates the removal of a child from the commonwealth for the purpose of female genital mutilation of such child shall be guilty of female genital mutilation and shall be punished by imprisonment for a term of not more than 15 years in state prison or not more than 2.5 years in a house of correction.

(c) It shall not be a defense to a prosecution under this section that the female genital mutilation is required as a matter of religion, custom, ritual or standard practice, or that the child on whom it is performed or the child's parent or guardian consented to the procedure.

(d) A surgical procedure is not a violation of this section if the procedure is performed by a person licensed in the place it is performed as a medical professional and is:

1. necessary to preserve or protect the physical health of the person on whom it is performed;

2. for sex reassignment as requested by the patient; or

3. performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth.

(e) A violation of this section by a health care professional licensed to practice in the commonwealth shall result in the permanent revocation of such license.