



*Arkansas  
Sentencing  
Commission*

**Impact Assessment for SB318  
Sponsored by Senator B. Davis**

**Subtitle** TO PROHIBIT UNLAWFUL FEMALE GENITAL MUTILATION OF A MINOR; TO PROVIDE FOR A CIVIL CAUSE OF ACTION; AND TO CREATE AWARENESS PROGRAMS CONCERNING AND STATISTICAL TRACKING OF UNLAWFUL FEMALE GENITAL MUTILATION.

**Impact Summary**<sup>1</sup> Minimal, affecting fewer than ten offenders per year.

**Change from current law**<sup>2</sup> Amends Arkansas Code Title 5, Chapter 14, Subchapter 1 to add an additional section, § 5-14-135, Unlawful female genital mutilation of a minor. A person commits the offense of female genital mutilation of a minor if he or she (1) knowingly performs female genital mutilation on a minor; (2) is a parent or guardian or has immediate custody or control of a minor and knowingly consents to, permits, or facilitates female genital mutilation of the minor; or (3) knowingly removes or causes, permits, or facilitates the removal of a minor from this state for the purposes of facilitating the female genital mutilation of the minor. Under the proposed bill, unlawful female genital mutilation of a minor is a Class C felony.

The proposed bill also defines “female genital mutilation”, provides exceptions for lawful medical procedures, provides for a tolling of the statute of limitations, requires reporting of female genital mutilation, and provides for civil and administrative actions for unlawful female genital mutilation.

**Impact Information**

The proposed bill creates a new offense for female genital mutilation of a minor for which data is unavailable as to the likely number of convictions per year. Some conduct covered under this proposed bill is potentially criminalized under existing law. [See attached A.C.A. § 5-13-201(a)(2), Battery in the first degree, Class B felony, and A.C.A. § 5-26-303(a)(2), Domestic battery in the first degree, Class B felony.] Because the proposed offense is potentially covered by felony provisions in existing law, the projected impact of the proposed bill is minimal.

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<sup>1</sup> This impact assessment was prepared (02/18/2019 2:09 p.m.) by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Arkansas Department of Correction and the Administrative Office of the Courts. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources. The following designations will be used: “minimal” = less than 10 offenders per year will be affected; “medium” = would require budgetary increases for ADC inmate costs; and “major” = would require budgetary increases for ADC inmate costs and construction costs for additional beds.

<sup>2</sup> Standard punishment ranges:

Class Y	10-40 years or life	Class C	3-10 years; up to \$10,000	Class A	Up to 1 year; up to \$2,500
Class A	6-30 years; up to \$15,000	Class D	0-6 years; up to \$10,000	Class B	Up to 90 days; up to \$1,000
Class B	5-20 years; up to \$15,000	Unclassified	As specified in statute	Class C	Up to 30 days; up to \$500

## Other States

In 2006, Khalid Adem, an Ethiopian immigrant in Georgia, was sentenced to ten (10) years in prison for the genital mutilation of his two (2) year old daughter. At the time, Georgia did not have laws specifically targeting female genital mutilation. As a result, Adem was convicted of aggravated battery and cruelty to children. [See attached for copies of relevant code provisions.] A search of the Georgia Department of Corrections inmates reports that there are no inmates serving a sentence in a Georgia state prison for which female genital mutilation is the primary offense.

The following states have criminal penalties for female genital mutilation:

- Arizona
- California
- Colorado
- Delaware
- Florida
- Georgia
- Illinois
- Kansas
- Louisiana
- Maryland
- Michigan
- Minnesota
- Missouri
- Nevada
- New Hampshire
- New Jersey
- New York
- North Dakota
- Ohio
- Oklahoma
- Oregon
- Rhode Island
- South Dakota
- Tennessee
- Texas
- Virginia
- West Virginia
- Wisconsin

**A.C.A. § 5-13-201. Battery in the first degree.**

- (a) A person commits battery in the first degree if:
- (1) With the purpose of causing serious physical injury to another person, the person causes serious physical injury to any person by means of a deadly weapon;
  - (2) With the purpose of seriously and permanently disfiguring another person or of destroying, amputating, or permanently disabling a member or organ of that other person's body, the person causes such an injury to any person;
  - (3) The person causes serious physical injury to another person under circumstances manifesting extreme indifference to the value of human life;
  - (4) Acting alone or with one (1) or more other persons:
    - (A) The person commits or attempts to commit a felony; and
    - (B) In the course of and in furtherance of the felony or in immediate flight from the felony:
      - (i) The person or an accomplice causes serious physical injury to any person under circumstances manifesting extreme indifference to the value of human life; or
      - (ii) Another person who is resisting the felony or flight causes serious physical injury to any person;
  - (5) With the purpose of causing serious physical injury to an unborn child or to a woman who is pregnant with an unborn child, the person causes serious physical injury to the unborn child;
  - (6) The person knowingly causes physical injury to a pregnant woman in the commission of a felony or a Class A misdemeanor, and in so doing, causes serious physical injury to the pregnant woman's unborn child, and the unborn child is subsequently born alive;
  - (7) The person knowingly, without legal justification, causes serious physical injury to a person he or she knows to be twelve (12) years of age or younger;
  - (8) With the purpose of causing physical injury to another person, the person causes physical injury to any person by means of a firearm; or
  - (9) The person knowingly causes serious physical injury to any person four (4) years of age or younger under circumstances manifesting extreme indifference to the value of human life.
- (b) It is an affirmative defense in any prosecution under subdivision (a)(4) of this section in which the defendant was not the only participant that the defendant:
- (1) Did not commit the battery or in any way solicit, command, induce, procure, counsel, or aid the battery's commission;
  - (2) Was not armed with a deadly weapon;
  - (3) Reasonably believed that no other participant was armed with a deadly weapon; and
  - (4) Reasonably believed that no other participant intended to engage in conduct that could result in serious physical injury.
- (c)
- (1) Except as provided in subdivisions (c)(2) and (3) of this section, battery in the first degree is a Class B felony.
  - (2) Battery in the first degree is a Class Y felony under the circumstances described in subdivision (a)(9) of this section.
  - (3) Battery in the first degree is a Class Y felony if the injured person is a law enforcement officer acting in the line of duty.

HISTORY: Acts 1975, No. 280, § 1601; A.S.A. 1947, § 41-1601; Acts 1987, No. 482, § 1; 1995, No. 360, § 1; 1995, No. 1305, § 1; 2005, No. 1994, § 474; 2007, No. 622, § 1; 2007, No. 709, § 2; 2007, No. 827, § 26.

**A.C.A. § 5-26-303. Domestic battering in the first degree.**

(a) A person commits domestic battering in the first degree if:

- (1) With the purpose of causing serious physical injury to a family or household member, the person causes serious physical injury to a family or household member by means of a deadly weapon;
- (2) With the purpose of seriously and permanently disfiguring a family or household member or of destroying, amputating, or permanently disabling a member or organ of a family or household member's body, the person causes such an injury to a family or household member;
- (3) The person causes serious physical injury to a family or household member under circumstances manifesting extreme indifference to the value of human life;
- (4) The person knowingly causes serious physical injury to a family or household member he or she knows to be sixty (60) years of age or older or twelve (12) years of age or younger;
- (5) The person:
  - (A) Commits any act of domestic battering as defined in § 5-26-304 or § 5-26-305; and
  - (B) For conduct that occurred within the ten (10) years preceding the commission of the current offense, the person has on two (2) previous occasions been convicted of any act of battery against a family or household member as defined by the laws of this state or by the equivalent laws of any other state or foreign jurisdiction;or
- (6) With the purpose of causing physical injury to a family or household member, the person causes physical injury to a family or household member by means of a firearm.

(b)

- (1) Domestic battering in the first degree is a Class B felony.
- (2) However, domestic battering in the first degree is a Class A felony upon a conviction under subsection (a) of this section if:
  - (A) Committed against a woman the person knew or should have known was pregnant; or
  - (B) The person committed one (1) or more of the following offenses within five (5) years of the offense of domestic battering in the first degree:
    - (i) Domestic battering in the first degree;
    - (ii) Domestic battering in the second degree, § 5-26-304;
    - (iii) Domestic battering in the third degree, § 5-26-305; or
    - (iv) A violation of an equivalent penal law of this state or of another state or foreign jurisdiction.

HISTORY: Acts 1979, No. 396, § 1; A.S.A. 1947, § 41-1653; Acts 1995, No. 1291, § 1; 1999, No. 1317, § 2; 1999, No. 1365, § 1; 2001, No. 1553, § 8; 2003, No. 944, § 1; 2003, No. 1079, § 1; 2005, No. 1994, § 481; 2007, No. 671, § 1; 2009, No. 194, § 1; 2009, No. 748, § 16; 2011, No. 1120, § 7; 2013, No. 417, § 1; 2017, No. 301, § 1.

**GA Code § 16-5-24 (2017). Aggravated battery.**

(a) A person commits the offense of aggravated battery when he or she maliciously causes bodily harm to another by depriving him or her of a member of his or her body, by rendering a member of his or her body useless, or by seriously disfiguring his or her body or a member thereof.

(b) Except as provided in subsections (c) through (g) of this Code section, a person convicted of the offense of aggravated battery shall be punished by imprisonment for not less than one nor more than 20 years.

(c)

(1) A person who knowingly commits the offense of aggravated battery upon a public safety officer while the public safety officer is engaged in, or on account of the performance of, his or her official duties shall, upon conviction thereof, be punished by imprisonment for not less than ten nor more than 20 years; provided, however, that for persons who are at least 17 years of age, a mandatory minimum term of imprisonment of three years shall be imposed and no portion of the mandatory minimum sentence shall be suspended, stayed, probated, deferred, or otherwise withheld by the sentencing court; provided, however, that in the court's discretion, the court may depart from such mandatory minimum sentence when the prosecuting attorney and defendant have agreed to a sentence that is below such mandatory minimum.

(2) A person convicted under this subsection shall be punished, in addition to any term of imprisonment imposed, by a fine as provided by law which shall be at least \$2,000.00. With respect to \$2,000.00 of the fine imposed, after distributing the surcharges and deductions required by Chapter 21 of Title 15, Code Sections 36-15-9 and 42-8-34, and Title 47, it shall be earmarked for the Georgia State Indemnification Fund for purposes of payment of indemnification for death or disability as provided for in Part 1 of Article 5 of Chapter 9 of Title 45.

(d) Any person who commits the offense of aggravated battery against a person who is 65 years of age or older shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years.

(e) Any person who commits the offense of aggravated battery in a public transit vehicle or station shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years.

(f) Any person who commits the offense of aggravated battery upon a student or teacher or other school personnel within a school safety zone as defined in Code Section 16-11-127.1 shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years.

(g) If the offense of aggravated battery is committed between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons excluding siblings living or formerly living in the same household, the defendant shall be punished by imprisonment for not less than three nor more than 20 years.

**GA Code § 16-5-70 (2017). Cruelty to children.**

(a) A parent, guardian, or other person supervising the welfare of or having immediate charge or custody of a child under the age of 18 commits the offense of cruelty to children in the first degree when such person willfully deprives the child of necessary sustenance to the extent that the child's health or well-being is jeopardized.

(b) Any person commits the offense of cruelty to children in the first degree when such person maliciously causes a child under the age of 18 cruel or excessive physical or mental pain.

(c) Any person commits the offense of cruelty to children in the second degree when such person with criminal negligence causes a child under the age of 18 cruel or excessive physical or mental pain.

(d) Any person commits the offense of cruelty to children in the third degree when:

(1) Such person, who is the primary aggressor, intentionally allows a child under the age of 18 to witness the commission of a forcible felony, battery, or family violence battery; or

(2) Such person, who is the primary aggressor, having knowledge that a child under the age of 18 is present and sees or hears the act, commits a forcible felony, battery, or family violence battery.

(e)

(1) A person convicted of the offense of cruelty to children in the first degree as provided in this Code section shall be punished by imprisonment for not less than five nor more than 20 years.

(2) A person convicted of the offense of cruelty to children in the second degree shall be punished by imprisonment for not less than one nor more than ten years.

(3) A person convicted of the offense of cruelty to children in the third degree shall be punished as for a misdemeanor upon the first or second conviction. Upon conviction of a third or subsequent offense of cruelty to children in the third degree, the defendant shall be guilty of a felony and shall be sentenced to a fine not less than \$1,000.00 nor more than \$5,000.00 or imprisonment for not less than one year nor more than three years or shall be sentenced to both fine and imprisonment.

**GA Code § 16-5-27 (2017). Female genital mutilation.**

(a) Any person:

(1) Who knowingly circumcises, excises, or infibulates, in whole or in part, the labia majora, labia minora, or clitoris of a female under 18 years of age;

(2) Who is a parent, guardian, or has immediate custody or control of a female under 18 years of age and knowingly consents to or permits the circumcision, excision, or infibulation, in whole or in part, of the labia majora, labia minora, or clitoris of such female; or

(3) Who knowingly removes or causes or permits the removal of a female under 18 years of age from this state for the purpose of circumcising, excising, or infibulating, in whole or in part, the labia majora, labia minora, or clitoris of such female

shall be guilty of female genital mutilation.

(b) A person convicted of female genital mutilation shall be punished by imprisonment for not less than five nor more than 20 years.

(c) This Code section shall not apply to procedures performed by or under the direction of a physician, a registered professional nurse, a certified nurse midwife, or a licensed practical nurse licensed pursuant to Chapter 34 or 26, respectively, of Title 43 when necessary to preserve the physical health of the female. This Code section shall also not apply to any autopsy or limited dissection as defined by Code Section 45-16-21 which is conducted in accordance with Article 2 of Chapter 16 of Title 45.

(d) Consent of the female under 18 years of age or the parent, guardian, or custodian of the female under 18 years of age shall not be a defense to the offense of female genital mutilation. Religion, ritual, custom, or standard practice shall not be a defense to the offense of female genital mutilation.

(e) The statutory privileges provided by Chapter 5 of Title 24 shall not apply to proceedings in which one of the parties to the privilege is charged with a crime against a female under 18 years of age, but such person shall be compellable to give evidence only on the specific act for which the accused is charged.