

Legal Brief

Female Genital Mutilation

This Legal Brief was drafted for general informational purposes only. It is not meant to be a comprehensive guide, nor should it be construed as legal advice. The information in this brief is current as of July 1, 2015; readers should consult the most recent versions of referenced statutes, regulations, and cases to ensure there have been no material changes.

Summary

Per South Dakota Codified Law (SDCL), it is a Class 4 felony for any person to knowingly circumcise, excise, mutilate, or infibulate, in whole or in part, the labia majora, labia minora, or clitoris of a female under the age of eighteen years.

Discussion

Per South Dakota Codified Law (SDCL), it is a Class 4 felony under State Law for any person:

1. To knowingly circumcise, excise, mutilate, or infibulate, in whole or in part, the labia majora, labia minora, or clitoris of a female under the age of eighteen years;
2. Who is a parent, guardian, or has immediate custody or control of a female under the age of eighteen years to knowingly consent to or permit the circumcision, excision, mutilation, or infibulation in whole or in part, of the labia majora, labia minora, or clitoris of such female; or
3. To knowingly remove, cause, or permit the removal of a female under the age of eighteen years from the State of South Dakota, for the purpose of circumcising, excising, mutilating, or infibulating, in whole or in part, the labia majora, labia minora, or clitoris of such female.

Of note, it is not defense to claim the conduct described above is required as a matter of religion, custom, ritual, or standard practice, or that the individual on whom the conduct is performed, or the parent or guardian of the individual consented to the procedure. However, a surgical procedure is not in violation if the procedure is:

1. Necessary to the health of the individual to whom it is performed and the procedure is performed by a licensed medical practitioner in a licensed medical facility; or
2. Performed on an individual in labor or who has just given birth and the procedure is performed for medical purposes connected with that labor or birth, and the procedure is performed by a licensed medical practitioners.

Further, U.S. Congressional findings dated September 30, 1996 state:

1. The practice of female genital mutilation is carried out by members of certain cultural and religious groups within the United States;
2. The practice of female genital mutilation often results in the occurrence of physical and psychological health effects that harm the women involved;
3. Such mutilation infringes upon the guarantees of rights secured by Federal and State law – both statutory and constitutional; and
4. The practice of female genital mutilation can be prohibited without abridging the exercise of any rights guaranteed under the first amendment to the Constitution or under any other law.

In accordance with these Congressional findings, under federal law, such procedures are similarly illegal under 18 USC § 116, which states:

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- a) Except as provided in subsection (b) immediately below, whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years shall be fined under 18 USC 116 or imprisoned not more than five years, or both.
- b) A surgical procedure is not in violation of 18 USC 116 if the procedure is:
 - 1) Necessary to the health of the individual on whom it is performed and the procedure is performed by a licensed medical practitioner in a licensed medical facility; or
 - 2) Performed on an individual in labor or who has just given birth and the procedure is performed for medical purposes connected with that labor or birth, and the procedure is performed by a licensed medical practitioner.
- c) In applying subsection (b)(1), no account shall be taken of the effect on the person on whom the operation is to be performed of any belief on the part of that person, or any other person, that the operation is required as a matter of custom or ritual.

Conclusion

Unless necessary to the health of the individual, and conducted by a licensed medical practitioner in a licensed medical facility, it is illegal for any person to knowingly circumcise, excise, mutilate, or infibulate, in whole or in part, the labia majora, labia minora, or clitoris of a female under the age of eighteen years. Any person who knowingly does so may be charged with a Class 4 felony under SDCL and/or federally under U.S Code Title 18, Section 116.



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