MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representative Currie

To: Judiciary B

HOUSE BILL NO. 149

AN ACT TO CREATE THE CRIME OF FEMALE GENITAL MUTILATION; TO DEFINE CERTAIN TERMS RELATING TO THE CRIME; TO REQUIRE A REPORT OF UNPROFESSIONAL CONDUCT TO BE MADE TO THE APPROPRIATE STATE LICENSING BOARD FOR A PROFESSIONAL WHO VIOLATES THIS ACT; TO PROVIDE THAT A VIOLATION OF THIS ACT CONSTITUTES AGGRAVATED ASSAULT; TO AMEND SECTION 97-3-7, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) As used in this section, the following words and phrases have the meanings ascribed in this subsection unless the context clearly indicates otherwise:

(a) "Female genital mutilation," "mutilate" or "mutilation" means:

(i) The excision, infibulation or circumcision, in whole or in part, of the labia majora, labia minora or clitoris of another;

(ii) The narrowing of the vaginal opening through the creation of a covering seal formed by cutting and repositioning the inner or outer labia, with or without the removal of the clitoris; or

(iii) Any harmful procedure to the genitalia, including pricking, piercing, incising, scraping or cauterizing.

(b) "Facilitate" means knowingly raising, soliciting, collecting or providing material support or resources with intent that such will be used, in whole or in part, to: plan, prepare, carry out or aid in any act of female genital mutilation; hinder the prosecution of an act of female genital mutilation; or conceal an act of female genital mutilation.

(c) "Material support or resources" means currency or other financial securities, financial services, instruments of value, lodging, training, false documentation or identification, medical equipment, computer equipment, software, facilities, personnel, transportation or other physical assets.

(d) "Hinder the prosecution of an act of female genital mutilation" means, but is not limited to, the following:

(i) Harboring or concealing a person who is known or believed by the facilitator to be planning to commit an act of female genital mutilation;

(ii) Warning a person who is known or believed by the facilitator to be planning to commit an act of female genital mutilation of impending discovery or apprehension; or

(iii) Suppressing any physical evidence that might aid in the discovery or apprehension of a person who is known or believed by the facilitator to be planning to commit an act of female genital mutilation.

(2) It is unlawful for a person to:

(a) Knowingly mutilate or attempt to mutilate a female who is under eighteen (18) years of age;

(b) Knowingly facilitate the mutilation of a female who is under eighteen (18) years of age; or

(c) Knowingly transport or facilitate the transportation of a female who is under eighteen (18) years of age from this state for the purpose of mutilation.

(3) It is not a defense to prosecution for a violation of this section that a female genital mutilation procedure is:

(a) Required as a matter of belief, custom or ritual;

(b) Consented to by the minor on whom the procedure is performed; or

(c) Consented to by the parent or legal guardian of the minor on whom the procedure is performed.

(4) A procedure that otherwise is within the definition of "female genital mutilation," as defined under subsection (1) of this section, is not a violation of this section if the procedure is:

(a) Necessary to the physical health of the minor on whom it is performed; or

(b) Performed on a minor who is in labor or who has just given birth for medical purposes connected with that labor or birth.

(5) A person holding a professional license in Mississippi who violates this section must be deemed to have committed unprofessional conduct and must be reported to the appropriate licensing board for appropriate action.

(6) A person convicted of a violation of this section is guilty of the crime of aggravated assault and is subject to the same penalties prescribed under Section 97-3-7(2) for aggravated assault.

(7) This section does not prohibit a person from being charged with, convicted of or punished for any other violation of law arising out of the same transaction or occurrence as a violation of this section.

(8) If a criminal prosecution under this section proceeds against any person who committed the act of female genital mutilation, or against any person or entity that facilitated the actions of the person who committed the act of female genital mutilation, or against any person or entity who coerced, induced or solicited the person who committed the act of female genital mutilation, the running of the period must be suspended during the pendency of the prosecution.

SECTION 2. Section 97-3-7, Mississippi Code of 1972, is amended as follows:

97-3-7. (1) (a) A person is guilty of simple assault if he or she: (i) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; (ii) negligently

causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; or (iii) attempts by physical menace to put another in fear of imminent serious bodily harm; and, upon conviction, he or she shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not more than six (6) months, or both.

(b) However, a person convicted of simple assault upon any of the persons listed in subsection (14) of this section under the circumstances enumerated in subsection (14) shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment for not more than five (5) years, or both.

(2) (a) A person is guilty of aggravated assault if he or she: (i) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; (ii) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; *** * *** (iii) causes any injury to a child who is in the process of boarding or exiting a school bus in the course of a violation of Section 63-3-615; or (iv) commits any act related to female genital mutilation prohibited by Section 1 of House Bill , 2021 Regular Session; and, upon conviction, he or she shall be punished by imprisonment in the county jail for not more than one (1) year or

sentenced to the custody of the Department of Corrections for not more than twenty (20) years.

(b) However, a person convicted of aggravated assault upon any of the persons listed in subsection (14) of this section under the circumstances enumerated in subsection (14) shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by imprisonment for not more than thirty (30) years, or both.

(3) (a) When the offense is committed against a current or former spouse of the defendant or a child of that person, a person living as a spouse or who formerly lived as a spouse with the defendant or a child of that person, a parent, grandparent, child, grandchild or someone similarly situated to the defendant, a person who has a current or former dating relationship with the defendant, or a person with whom the defendant has had a biological or legally adopted child, a person is guilty of simple domestic violence who:

(i) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another;

(ii) Negligently causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; or

(iii) Attempts by physical menace to put another in fear of imminent serious bodily harm.

Upon conviction, the defendant shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not more than six (6) months, or both.

(b) **Simple domestic violence: third.** A person is guilty of the felony of simple domestic violence third who commits simple domestic violence as defined in this subsection (3) and who, at the time of the commission of the offense in question, has two (2) prior convictions, whether against the same or another victim, within seven (7) years, for any combination of simple domestic violence under this subsection (3) or aggravated domestic violence as defined in subsection (4) of this section or substantially similar offenses under the law of another state, of the United States, or of a federally recognized Native American tribe. Upon conviction, the defendant shall be sentenced to a term of imprisonment not less than five (5) nor more than ten (10) years.

(4) (a) When the offense is committed against a current or former spouse of the defendant or a child of that person, a person living as a spouse or who formerly lived as a spouse with the defendant or a child of that person, a parent, grandparent, child, grandchild or someone similarly situated to the defendant, a person who has a current or former dating relationship with the defendant, or a person with whom the defendant has had a biological or legally adopted child, a person is guilty of aggravated domestic violence who:

(i) Attempts to cause serious bodily injury to another, or causes such an injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life;

(ii) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; or

(iii) Strangles, or attempts to strangle another.

Upon conviction, the defendant shall be punished by imprisonment in the custody of the Department of Corrections for not less than two (2) nor more than twenty (20) years.

(b) **Aggravated domestic violence; third.** A person is guilty of aggravated domestic violence third who, at the time of the commission of that offense, commits aggravated domestic violence as defined in this subsection (4) and who has two (2) prior convictions within the past seven (7) years, whether against the same or another victim, for any combination of aggravated domestic violence under this subsection (4) or simple domestic violence third as defined in subsection (3) of this section, or substantially similar offenses under the laws of another state, of the United States, or of a federally recognized Native American tribe. Upon conviction for aggravated domestic violence third, the defendant shall be sentenced to a term of imprisonment of not less than ten (10) nor more than twenty (20) years.

(5) **Sentencing for fourth or subsequent domestic violence offense.** Any person who commits an offense defined in subsection (3) or (4) of this section, and who, at the time of the commission of that offense, has at least three (3) previous convictions, whether against the same or different victims, for any combination of offenses defined in subsections (3) and (4) of this section or substantially similar offenses under the law of another state, of the United States, or of a federally recognized Native American tribe, shall, upon conviction, be sentenced to imprisonment for not less than fifteen (15) years nor more than twenty (20) years.

(6) In sentencing under subsections (3), (4) and (5) of this section, the court shall consider as an aggravating factor whether the crime was committed in the physical presence or hearing of a child under sixteen (16) years of age who was, at the time of the offense, living within either the residence of the victim, the residence of the perpetrator, or the residence where the offense occurred.

(7) Reasonable discipline of a child, such as spanking, is not an offense under subsections (3) and (4) of this section.

(8) A person convicted under subsection (4) or (5) of this section shall not be eligible for parole under the provisions of Section 47-7-3(1)(c) until he or she shall have served one (1) year of his or her sentence.

(9) For the purposes of this section:

(a) "Strangle" means to restrict the flow of oxygen or blood by intentionally applying pressure on the neck, throat or chest of another person by any means or to intentionally block the nose or mouth of another person by any means.

(b) "Dating relationship" means a social relationship as defined in Section 93-21-3.

(10) Every conviction under subsection (3), (4) or (5) of this section may require as a condition of any suspended sentence that the defendant participate in counseling or treatment to bring about the cessation of domestic abuse. The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the court.

(11) (a) Upon conviction under subsection (3), (4) or (5) of this section, the court shall be empowered to issue a criminal protection order prohibiting the defendant from any contact with the victim. The court may include in a criminal protection order any other condition available under Section 93-21-15. The duration of a criminal protection order shall be based upon the seriousness of the facts before the court, the probability of future violations, and the continued safety of the victim or another person. However, municipal and justice courts may issue criminal protection orders for a maximum period of time not to exceed one (1) year. Circuit and county courts may issue a criminal protection order for any period of time deemed necessary. Upon issuance of a criminal protection order, the clerk of the

issuing court shall enter the order in the Mississippi Protection Order Registry within twenty-four (24) hours of issuance with no exceptions for weekends or holidays, pursuant to Section 93-21-25.

(b) A criminal protection order shall not be issued against the defendant if the victim of the offense, or the victim's lawful representative where the victim is a minor or incompetent person, objects to its issuance, except in circumstances where the court, in its discretion, finds that a criminal protection order is necessary for the safety and well-being of a victim who is a minor child or incompetent adult.

(c) Criminal protection orders shall be issued on the standardized form developed by the Office of the Attorney General and a copy provided to both the victim and the defendant.

(d) It shall be a misdemeanor to knowingly violate any condition of a criminal protection order. Upon conviction for a violation, the defendant shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not more than six (6) months, or both.

(12) When investigating allegations of a violation of subsection (3), (4), (5) or (11) of this section, whether or not an arrest results, law enforcement officers shall utilize the form prescribed for such purposes by the Office of the Attorney General in consultation with the sheriff's and police chief's associations. However, failure of law enforcement to utilize the uniform offense report shall not be a defense to a crime charged

under this section. The uniform offense report shall not be required if, upon investigation, the offense does not involve persons in the relationships specified in subsections (3) and (4) of this section.

(13) In any conviction under subsection (3), (4), (5) or (11) of this section, the sentencing order shall include the designation "domestic violence." The court clerk shall enter the disposition of the matter into the corresponding uniform offense report.

(14) Assault upon any of the following listed persons is an aggravating circumstance for charging under subsections (1)(b) and (2)(b) of this section:

(a) When acting within the scope of his or her duty, office or employment at the time of the assault: a statewide elected official; law enforcement officer; fireman; emergency medical personnel; health care provider; employees of a health care provider or health care facility; social worker, family protection specialist or family protection worker employed by the Department of Human Services or another agency; Division of Youth Services personnel; any county or municipal jail officer; superintendent, principal, teacher or other instructional personnel, school attendance officer or school bus driver; any member of the Mississippi National Guard or United States Armed Forces; a judge of a circuit, chancery, county, justice, municipal or youth court or a judge of the Court of Appeals or a justice of

the Supreme Court; district attorney or legal assistant to a district attorney; county prosecutor or municipal prosecutor; court reporter employed by a court, court administrator, clerk or deputy clerk of the court; public defender; or utility worker;

(b) A legislator while the Legislature is in regular or extraordinary session or while otherwise acting within the scope of his or her duty, office or employment; or

(c) A person who is sixty-five (65) years of age or older or a person who is a vulnerable person, as defined in Section 43-47-5.

SECTION 3. Section 1 of this act shall be codified as a new section in Chapter 5, Title 97, Mississippi Code of 1972.

SECTION 4. This act shall take effect and be in force from and after July 1, 2021.