

Public Law 116–309
116th Congress

An Act

Jan. 5, 2021
[H.R. 6100]

To amend title 18, United States Code, to clarify the criminalization of female genital mutilation, and for other purposes.

Strengthening
the Opposition to
Female Genital
Mutilation Act
of 2020.
18 USC 1 note.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Strengthening the Opposition to Female Genital Mutilation Act of 2020” or the “STOP FGM Act of 2020”.

18 USC 116 note.

SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSE.

The Congress finds the following:

(1) Female genital mutilation is recognized internationally as a human rights violation and a form of child abuse, gender discrimination, and violence against women and girls. Female genital mutilation is a global problem whose eradication requires international cooperation and enforcement at the national level. The United States should demonstrate its commitment to the rights of women and girls by leading the way in the international community in banning this abhorrent practice.

(2) Congress has previously prohibited the commission of female genital mutilation on minors. Female genital mutilation is a heinous practice that often inflicts excruciating pain on its victims and causes them to suffer grave physical and psychological harm.

(3) Congress has the power under article I, section 8 of the Constitution to make all laws which shall be necessary and proper for carrying into execution treaties entered into by the United States.

(4) Congress also has the power under the Commerce Clause to prohibit female genital mutilation. An international market for the practice exists, and persons who perform female genital mutilation in other countries typically earn a living from doing so.

(5) Those who perform this conduct often rely on a connection to interstate or foreign commerce, such as interstate or foreign travel, the transmission or receipt of communications in interstate or foreign commerce, the use of instruments traded in interstate or foreign commerce, or payments of any kind in furtherance of this conduct.

(6) Amending the statute to specify a link to interstate or foreign commerce would confirm that Congress has the affirmative power to prohibit this conduct.

SEC. 3. AMENDMENTS TO CURRENT LAW ON FEMALE GENITAL MUTILATION.

Section 116 of title 18, United States Code, is amended—

(1) by amending subsection (a) to read as follows:

“(a) Except as provided in subsection (b), whoever, in any circumstance described in subsection (d), knowingly—

“(1) performs, attempts to perform, or conspires to perform female genital mutilation on another person who has not attained the age of 18 years;

“(2) being the parent, guardian, or caretaker of a person who has not attained the age of 18 years facilitates or consents to the female genital mutilation of such person; or

“(3) transports a person who has not attained the age of 18 years for the purpose of the performance of female genital mutilation on such person,

shall be fined under this title, imprisoned not more than 10 years, or both.”;

(2) by amending subsection (c) to read as follows:

“(c) It shall not be a defense to a prosecution under this section that female genital mutilation is required as a matter of religion, custom, tradition, ritual, or standard practice.”;

(3) by striking subsection (d); and

(4) by adding at the end the following:

“(d) For the purposes of subsection (a), the circumstances described in this subsection are that—

“(1) the defendant or victim traveled in interstate or foreign commerce, or traveled using a means, channel, facility, or instrumentality of interstate or foreign commerce, in furtherance of or in connection with the conduct described in subsection (a);

“(2) the defendant used a means, channel, facility, or instrumentality of interstate or foreign commerce in furtherance of or in connection with the conduct described in subsection (a);

“(3) any payment of any kind was made, directly or indirectly, in furtherance of or in connection with the conduct described in subsection (a) using any means, channel, facility, or instrumentality of interstate or foreign commerce or in or affecting interstate or foreign commerce;

“(4) the defendant transmitted in interstate or foreign commerce any communication relating to or in furtherance of the conduct described in subsection (a) using any means, channel, facility, or instrumentality of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means or in manner, including by computer, mail, wire, or electromagnetic transmission;

“(5) any instrument, item, substance, or other object that has traveled in interstate or foreign commerce was used to perform the conduct described in subsection (a);

“(6) the conduct described in subsection (a) occurred within the special maritime and territorial jurisdiction of the United States, or any territory or possession of the United States; or

“(7) the conduct described in subsection (a) otherwise occurred in or affected interstate or foreign commerce.

“(e) For purposes of this section, the term ‘female genital mutilation’ means any procedure performed for non-medical reasons

Penalty.

Definition.

that involves partial or total removal of, or other injury to, the external female genitalia, and includes—

“(1) a clitoridectomy or the partial or total removal of the clitoris or the prepuce or clitoral hood;

“(2) excision or the partial or total removal (with or without excision of the clitoris) of the labia minora or the labia majora, or both;

“(3) infibulation or the narrowing of the vaginal opening (with or without excision of the clitoris); or

“(4) other procedures that are harmful to the external female genitalia, including pricking, incising, scraping, or cauterizing the genital area.”.

Consultation.
34 USC 41312.

SEC. 4. REPORT.

Not later than one year after the date of the enactment of this Act, and annually thereafter, the Attorney General, in consultation with the Secretary of Homeland Security, the Secretary of State, the Secretary of Health and Human Services, and the Secretary of Education, shall submit to Congress a report that includes—

Estimate.

(1) an estimate of the number of women and girls in the United States at risk of or who have been subjected to female genital mutilation;

(2) the protections available and actions taken, if any, by Federal, State, and local agencies to protect such women and girls; and

(3) the actions taken by Federal agencies to educate and assist communities and key stakeholders about female genital mutilation.

18 USC 116 note.

SEC. 5. SENSE OF THE CONGRESS.

It is the sense of the Congress that the United States District Court for the Eastern District of Michigan erred in invalidating the prior version of such section 116 (See *United States v. Nagarwala*, 350 F. Supp. 3d 613, 631 (E.D. Mich. 2018)). The commercial nature of female genital mutilation (hereinafter in this section referred to as “FGM”) is “self-evident,” meaning that the “absence of particularized findings” about the commercial nature of FGM in the predecessor statute did not “call into question Congress’s authority to legislate” (*Gonzales v. Raich*, 545 U.S. 1, 21 (2005)). Nevertheless, the Congress has elected to amend the FGM statute to clarify the commercial nature of the conduct that this statute regulates. But, by doing so, Congress does not hereby ratify the district court’s erroneous interpretation in *Nagarwala*.

SEC. 6. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the

Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved January 5, 2021.

LEGISLATIVE HISTORY—H.R. 6100:

HOUSE REPORTS: No. 116–506 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 166 (2020):

Sept. 21, considered and passed House.

Dec. 15, considered and passed Senate.