

Subsec. (b)(2). Pub. L. 99-646, §37(a), inserted “for the kidnapping or attempted kidnapping of a person described in section 1201(a)(5) of this title”.

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 3001 of Title 50, War and National Defense.

“United States magistrate judge” substituted for “United States magistrate” in subsec. (c)(3) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

##### TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### § 116. Female genital mutilation

(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.

(b) A surgical operation is not a violation of this section if the operation is—

(1) necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner; or

(2) performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife.

(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.

(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 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.

(Added Pub. L. 104-208, div. C, title VI, §645(b)(1), Sept. 30, 1996, 110 Stat. 3009-709; amended Pub. L. 112-239, div. A, title X, §1088, Jan. 2, 2013, 126 Stat. 1970; Pub. L. 116-309, §3, Jan. 5, 2021, 134 Stat. 4923.)

#### Editorial Notes

##### AMENDMENTS

2021—Subsec. (a). Pub. L. 116-309, §3(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Except as provided in subsection (b), 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 this title or imprisoned not more than 5 years, or both.”

Subsec. (c). Pub. L. 116-309, §3(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “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.”

Subsec. (d). Pub. L. 116-309, §3(3), (4), added subsec. (d) and struck out former subsec. (d), which read as follows: “Whoever knowingly transports from the United States and its territories a person in foreign commerce for the purpose of conduct with regard to that person that would be a violation of subsection (a) if the conduct occurred within the United States, or attempts to do so, shall be fined under this title or imprisoned not more than 5 years, or both.”

Subsec. (e). Pub. L. 116-309, §3(4), added subsec. (e).  
2013—Subsec. (d). Pub. L. 112-239 added subsec. (d).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Pub. L. 104-208, div. C, title VI, §645(c), Sept. 30, 1996, 110 Stat. 3009-709, provided that: “The amendments made by subsection (b) [enacting this section] shall take effect on the date that is 180 days after the date of the enactment of this Act [Sept. 30, 1996].”

##### CONGRESSIONAL FINDINGS AND PURPOSE

Pub. L. 116-309, §2, Jan. 5, 2021, 134 Stat. 4922, provided that:

“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.”

##### SENSE OF THE CONGRESS

Pub. L. 116-309, §5, Jan. 5, 2021, 134 Stat. 4924, provided that: “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 [this section] (See *United States v. Nagarwala*, 350 F. Supp. 3d 613, 631 (E.D. Mich. 2018)). The commer-

cial 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*.”

##### CONGRESSIONAL FINDINGS

Pub. L. 104-208, div. C, title VI, §645(a), Sept. 30, 1996, 110 Stat. 3009-708, provided that: “The Congress finds that—

“(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;

“(4) the unique circumstances surrounding the practice of female genital mutilation place it beyond the ability of any single State or local jurisdiction to control;

“(5) 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; and

“(6) Congress has the affirmative power under section 8 of article I, the necessary and proper clause, section 5 of the fourteenth Amendment, as well as under the treaty clause, to the Constitution to enact such legislation.”

#### § 117. Domestic assault by an habitual offender

(a) IN GENERAL.—Any person who commits a domestic assault within the special maritime and territorial jurisdiction of the United States or Indian country and who has a final conviction on at least 2 separate prior occasions in Federal, State, or Indian tribal court proceedings for offenses that would be, if subject to Federal jurisdiction—

(1) any assault, sexual abuse, or serious violent felony against a spouse or intimate partner, or against a child of or in the care of the person committing the domestic assault; or

(2) an offense under chapter 110A,

shall be fined under this title, imprisoned for a term of not more than 5 years, or both, except that if substantial bodily injury results from violation under this section, the offender shall be imprisoned for a term of not more than 10 years.

(b) DOMESTIC ASSAULT DEFINED.—In this section, the term “domestic assault” means an assault committed by a current or former spouse, parent, child, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, child, or guardian, or by a person similarly situated to a spouse, parent, child, or guardian of the victim.

(Added Pub. L. 109-162, title IX, §909, Jan. 5, 2006, 119 Stat. 3084; amended Pub. L. 113-104, §3, May 20, 2014, 128 Stat. 1156.)