

Statement on House Bill No. 2217
by Professor Michelle Ward Ghatti

Thank you for allowing me to provide information to the Kansas Legislature on female genital mutilation. I am sorry I cannot be there in person but please feel free to contact me at the below email and/or phone number. I am a professor of law currently serving as a Fellow with the United States Supreme Court. I am also currently teaching at American University Washington College of Law and will be teaching at Georgetown Law School this summer. I have taught for over 21 years at Southern University Law Center in Louisiana. Nothing I am saying herein is authorized by those institutions nor do I speak for them in any way. My areas of expertise include criminal law and constitutional law (particularly the religion clauses), among others. I researched, helped draft, and testified on behalf of HB 759, the Female Genital Mutilation bill, adopted in Louisiana in 2012. I have attached my resume hereto for your information.

Female Genital Mutilation (FGM) (sometimes also referred to as female circumcision) is a cultural procedure through which the outward female genital structures (clitoris, labia majora, labia minora) are cut (from being pricked to being circumscribed) and/or removed (excised) and/or stitched shut (infibulations, leaving only a small opening for urine and menses to pass; this sometimes leads to a ceremonial ripping open on the wedding night). Although this can be performed on women of all ages, it typically is performed between the ages of 2 weeks and 14 (before puberty). It is allegedly performed for a number of reasons but, generally, it is done to protect a girl's and family's "good name." It is believed to ensure virginity and to stop sexual desire and/or it is to insure femininity by removal of body parts considered "male."

Although often claimed to be a religiously required ritual, the position of the United States and all international human rights organizations is that it is not. The procedure is not found in any religious text.¹ Even if it were, however, in the United States the physical harming of an individual, particularly a child, has *never* been upheld under the First Amendment's Free Exercise Clause.²

Furthermore, FGM has no health benefits and is usually performed for cultural reasons by a lay person, often a family member, with no medical training, in a home or other non-

¹ "Female Genital Cutting: Frequently Asked Questions" (US Dept. of Health and Human Services, Office on Women's Health 2010); "Female Genital Mutilation" (World Health Organization, Fact Sheet No. 241 (2012))

² See, e.g. *Prince v. Massachusetts*, 321 U.S. 158 (1944) ("Parents may be free to become martyrs themselves. But it does not follow they are free...to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.") See also, e.g. *State v. Miskimens*, 490 N.E.2d 931 (Ohio 1984) ("The right to hold one's own religious beliefs, and to act in conformity with those beliefs, does not and cannot include the right to endanger the life or health of others, including his or her children."); *People v. Pierson*, 176 NY 201 (NY 1903)(vaccinations); *Jehovah's Witnesses v. King County Hospital*, 278 F. Supp. 488 (USDC W.D. Washington 1967) (blood transfusions); *In the Interest of Karwath*, 199 NW 2d 147 (Iowa 1972)(removal of tonsils and adenoids); *In the Matter of McCauley*, 409 Mass. 134 (Mass. 1991)(blood transfusion for Leukemia).

hospital setting. Immediate complications of FGM include severe pain, cellulitis, sepsis, urinary retention, hemorrhage, shock, and even death. Long-term complications, seen predominantly in women who have undergone type III procedures, include cysts, abscesses, keloids, recurrent infections, dyspareunia, and dysmenorrhea due to the infibulated scar overlying the vaginal introitus.³ It is humiliating and is done without the consent of the female child in violation of her civil rights. It is condemned by the American Academy of Pediatrics, the International Federation of Gynecology and Obstetrics,⁴ the American Medical Association,⁵ the World Health Organization, the World Medical Association, and numerous organizations of the United Nations (OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM).⁶

The procedure has become prevalent enough in the United States that a new subcategory code for female genital mutilation status (629.2) was created by the American Congress of Obstetricians and Gynecologists in 2004 to allow coding for Unspecified female genital mutilation status (629.20), Female genital mutilation type I status (clitorectomy) (629.21), Female genital mutilation type II status (clitorectomy with excision of labia minora) (629.22), and Female genital mutilation type III status (infibulation) (629.23).⁷

Nineteen states have enacted laws criminalizing FGM.⁸ The US Government has had a law criminalizing FGM⁹ since 1996 and the first charges under the federal law were made in late 2003.¹⁰ Furthermore, the US Government considers the possibility of FGM as a cause for asylum from another country. Recently, the "Transport for Female Genital Mutilation Act" was passed as an amendment to the National Defense Authorization Act. The Act strengthens the existing federal FGM ban by adding an "extraterritoriality" component, making it illegal to knowingly transport a girl out of the country for the purpose of undergoing the procedure.

³ Council of Scientific Affairs: *Female genital mutilation*. JAMA. 1995;274:1714-1716. Abstract; Nour NM. *Female genital cutting: a need for reform*. Obstet Gynecol. 2003;101:1051-1052. Abstract

⁴ Barstow DG. *Female genital mutilation: the penultimate gender abuse*. Child Abuse Neglect. 1999;23:501-510. Abstract

⁵ Toubia N. *Female circumcision as a public health issue*. N Engl J Med. 1995;331:712-716.

⁶ *Eliminating Female Genital Mutilation, An Interagency Statement* (World Health Organization 2008) available at http://whqlibdoc.who.int/publications/2008/9789241596442_eng.pdf.

⁷ As an example, at least 4 FGM cases are seen each year at a clinic in Denver, Colorado. Associated Press article, 1998-FEB-16, quoted in the *Feminist Majority Foundation's* web site at: <http://feminist.org/>.

⁸ Arkansas (2008), California (2006/2008), Colorado (2009), Delaware (2001), Georgia (2007), Illinois (2002), Louisiana (2012), Maryland (2005), Minnesota (2003), Missouri (2008), Nevada (2006), New York (2009), North Dakota (1997), Oregon (2007), Rhode Island (2006), Tennessee (2006), Texas (2009), West Virginia (2006), Wisconsin (2006)

⁹ 18 USC Sec. 116; 8 USC Sec. 1374

¹⁰ Megan Costello, "Two in U.S. Accused of Genital Mutilation," Womensenews, 2004-FEB-19, at: <http://www.womensenews.org/> (California couples was arrested in a FBI sting operation allegedly after having agreed to perform a FGM procedure on two fictitious girls.) There have been numerous other cases concerning FGM litigated around the United States. See cases in Louisiana (*Turner v. Ostrowe*, 828 So.2d 1212 (La. App. 1st Cir. 2002)); Georgia (*Adem v. State*, 686 S.E.2d 339 (Ga. App. 2009)(criminal case); Massachusetts (*Adoption of Peggy*, 767 N.E.2d 29 (Mass. 2002)(removal of parental rights); Illinois (*People v. Sanchez*; *People v. Santiago* (2002); *People v. Huddleston* (all criminal)); and Washington (*State v. Baxter*(criminal)).

FGM is also outlawed in numerous other countries: Australia (six states), Burkina Faso, Canada, Central African Republic, Côte d'Ivoire, Djibouti, Ghana, Guinea, New Zealand, Nigeria (3 states), Norway, Senegal, Sweden, Tanzania, Togo, and the United Kingdom.

Generally, this is a procedure used by our immigrant and refugee communities. More than 228,000 women in the United States have either undergone or are at risk for undergoing this procedure.¹¹ An estimated 20,000 African refugees enter the United States each year, 80% from countries where FGM is a common practice.¹² In 2011, Kansas received 327 refugees.¹³ Some of the largest receiving areas for refugees are Des Moines, Iowa, St. Louis, Missouri, Chicago, Illinois, and Dallas¹⁴ and Ft. Worth, Texas. Texas, Illinois and Missouri have passed a law outlawing FGM so it can be expected that some refugees may travel into Kansas to perform this procedure.

As you can see, this is a terrible procedure that violates the civil rights of women and girls. Although difficult to talk about, every state in the United States should take a stand against this procedure by criminalizing the performance of this procedure and the transportation of a person for the purpose of performing this procedure. I fully support the passage of this piece of legislation.

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¹¹ Research conducted by the African Women's Health Center of the Brigham and Women's Hospital. See The AHA Foundation, accessible at www.theAHAfoundation.org.

¹² Nour NM. *Female genital cutting: clinical and cultural guidelines*. *Obstet Gynecol Sur*. 2004;59:272-279. For 2011, President Obama authorized entry for 80,000 international refugees. *Refugee Fact Sheet* (Immigration Policy Center 2010) http://www.immigrationpolicy.org/sites/default/files/docs/Refugees_Fact_Sheet_102110.pdf

¹³ "Proposed Refugee Admission for FY 2013" submitted to the Senate Committee on the Judiciary by the U.S. Department of State. See <http://www.wrapsnet.org/Portals/1/Reports/Reports%20to%20Congress/Final%20Report%20to%20Congress.pdf>.

¹⁴ One of 22 International Rescue Committees in the United States is in Dallas. See http://www.rescue.org/where/united_states