

South Australia



**STATUTES AMENDMENT (FEMALE GENITAL MUTILATION AND
CHILD PROTECTION) ACT 1995**

No. 24 of 1995

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ELIZABETHAE II REGINAE

A.D. 1995

No. 24 of 1995

An Act to amend the Criminal Law Consolidation Act 1935 and the Children's Protection Act 1993.

[Assented to 27 April 1995]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment (Female Genital Mutilation and Child Protection) Act 1995*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

**PART 2
AMENDMENT OF CRIMINAL LAW CONSOLIDATION ACT 1935**

Insertion of ss. 33-33B

4. The following heading and sections are inserted after section 32 of the principal Act:

Female Genital Mutilation

Definitions

33. (1) In this Division (ss. 33-33B)—

"child" means a person under 18;

"female genital mutilation" means—

(a) clitoridectomy; or

- (b) excision of any other part of the female genital organs; or
- (c) a procedure to narrow or close the vaginal opening; or
- (d) any other mutilation of the female genital organs,

but does not include a sexual reassignment procedure or a medical procedure that has a genuine therapeutic purpose;

"sexual reassignment procedure" means a surgical procedure to give a female, or a person whose sex is ambivalent, genital characteristics, or ostensible genital characteristics, of a male.

(2) A medical procedure has a genuine therapeutic purpose only if directed at curing or alleviating a physiological disability or physical abnormality.

Prohibition of female genital mutilation

33A. (1) A person who performs female genital mutilation is guilty of an offence.

Penalty: Imprisonment for 7 years.

(2) This section applies irrespective of whether the victim, or a parent or guardian of the victim, consents to the mutilation.

Removal of child from State for genital mutilation

33B. (1) A person must not take a child from the State, or arrange for a child to be taken from the State, with the intention of having the child subjected to female genital mutilation.

Penalty: Imprisonment for 7 years.

(2) In proceedings for an offence against subsection (1), if it is proved that—

- (a) the defendant took a child, or arranged for a child to be taken from the State; and
- (b) the child was subjected, while outside the State, to female genital mutilation,

it will be presumed, in the absence of proof to the contrary, that the defendant took the child, or arranged for the child to be taken, from the State (as the case may be) with the intention of having the child subjected to female genital mutilation.

**PART 3
AMENDMENT OF CHILDREN'S PROTECTION ACT 1993**

Insertion of Division 6

5. The following Division is inserted in Part 4 of the principal Act after Division 5:

DIVISION 6—OTHER ORDERS

Definitions

26A. (1) In this section—

"female genital mutilation" means—

- (a) clitoridectomy; or
- (b) excision of any other part of the female genital organs; or
- (c) a procedure to narrow or close the vaginal opening; or
- (d) any other mutilation of the female genital organs,

but does not include a sexual reassignment procedure or a medical procedure that has a genuine therapeutic purpose;

"sexual reassignment procedure" means a surgical procedure to give a female, or a person whose sex is ambivalent, genital characteristics, or ostensible genital characteristics, of a male.

(2) A medical procedure has a genuine therapeutic purpose only if directed at curing or alleviating a physiological disability or physical abnormality.

Protection of children at risk of genital mutilation

26B. (1) If the Court is satisfied that there are reasonable grounds to suspect that a child may be at risk of female genital mutilation, the Court may make orders for the protection of the child.

Examples—

The Court might for example make an order—

- (a) preventing a person from taking the child from the State; or
- (b) requiring that the child's passport be held by the Court for a period specified in the order or until further order; or
- (c) providing for the periodic examination of the child to ensure that the child is not subjected to female genital mutilation.

(2) An application for an order under this section may be made by a member of the police force or by the Chief Executive Officer.

(3) The Court may make an order on an application under this section without giving a person who is to be bound by the Court's order notice of the proceedings or an opportunity to be heard in the proceedings.

(4) However, in that case the Court must allow the person against whom the order is made a reasonable opportunity to appear before the Court to show why the order should be varied or revoked.

(5) In proceedings under this section the Court must assume that it is in the child's best interests to resist pressure of racial, ethnic, religious, cultural or family origin that might lead to genital mutilation of the child.

Substitution of s. 27

6. Section 27 of the principal Act is repealed and the following section is substituted:

Family care meetings to be convened by Minister

27. (1) If the Minister is of the opinion that a child is at risk and that arrangements should be made to secure the child's care and protection, the Minister should cause a family care meeting to be convened in respect of the child.

(2) The Minister cannot make an application under Division 2 for an order granting custody of a child, or placing a child under guardianship, before a family care meeting had been held in respect of the child unless satisfied—

- (a) that it has not been possible to hold a meeting despite reasonable endeavours to do so; or
- (b) that an order should be made without delay; or
- (c) that the guardians of the child consent to the making of the application; or
- (d) that there is other good reason to do so.

(3) An application under Division 2 is not invalid by reason only of a failure to hold a family care meeting.

Amendment of s. 55—Children's Protection Advisory Panel

7. Section 55 of the principal Act is amended—

- (a) by striking out from subsection (2) "five" and substituting "eight";
- (b) by inserting in paragraph (c) of subsection (4) "or otherwise to further the objects of this Act" after "changes".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor