

Why we hesitate to protect girls from FGM in the United States



aha**foundation**

Executive summary by Amanda Parker and George Zarubin

Updated: August 2019

AHA Foundation has proudly served at the front lines in the battle against female genital mutilation (FGM) for over a decade. Our long journey leading into 2020 has been both edifying and energizing. With every legislative victory, however, we recognize the somber reality that tens of thousands of women and girls in the U.S. still need protection from this awful abuse.

To date, 35 states have outlawed FGM. The other 15 states that have failed to pass FGM bills are not only leaving girls within their borders, but girls across the country, at risk. For every state that successfully passes an FGM ban, the ones that remain are more susceptible to becoming hotspots for perpetrators—individuals who wish to cut their girls may seek out places that lack adequate protections against the practice. The fate of the federal FGM ban, which would have served as a protective barrier against this “shop around” tactic, was recently ruled unconstitutional in an unprecedented federal prosecution of an alleged FGM practitioner.

The Centers for Disease Control and Prevention (CDC) estimates that there are 513,000 women and girls in the U.S. who have been or are at risk of being cut. The practice itself is a deeply underground form of child abuse that is carried out with the aim of controlling female sexuality. FGM, in all its forms, is a manifestation of outdated, patriarchal norms. It is an extreme illustration of gender discrimination that constitutes a gross violation of the rights of women and girls. It should not be tolerated, and it must be stopped.

At AHA Foundation, we recognize the inherent complexities in addressing this issue and have formulated our responses accordingly. FGM must be banned across the U.S. at both the state and federal level, but criminalizing the practice is not enough; anti-FGM bills should be sufficiently comprehensive to get to the root of this problem and offer protection to girls that is both enduring and meaningful. While many states have passed laws prohibiting FGM, they are woefully inadequate to affect change because they do



not empower important stakeholders. This Report grades each state's FGM laws.

We hope that you will join our efforts by promoting both criminal and civil liability for the perpetrators of this insidious form of child abuse. We also need institutional stakeholders, from medical professionals to law enforcement, to be trained to identify and respond to FGM, and for communities to be empowered to combat the mores that reinforce and prolong the practice in the U.S. Strong legislation contributes to eradicating FGM. Thus, we recommend that every U.S. state and territory adopt laws in accordance with our Model Code, which includes the following provisions:

- Fund education and outreach for at-risk communities
- Train frontline services to identify FGM cases, and provide resources to those at risk or affected by FGM
- Require and enforce mandatory reporting of FGM among designees in health care, education, law enforcement, and social services, as with other types of child abuse
- Prohibit the transport of a girl for purposes of FGM
- Enable a civil cause of action with an extended statute of limitations for survivors
- Prohibit the use of cultural and religious belief as a defense to prosecution

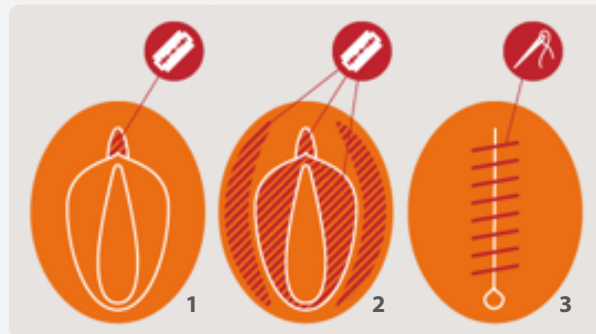
Amanda Parker *George Zarubin*

Amanda Parker, Senior Director & Chief Financial Officer
George Zarubin, Executive Director

Female genital mutilation (FGM) is a form of gender-based violence recognized as a violation of women's and girls' fundamental human rights.

There are four major types of FGM:

- 1 **Clitoridectomy:** Involves the removal of the clitoris and or clitoral hood, an otherwise normally functioning body part that is sliced off and thrown away.
- 2 **Intermediate infibulation:** As much of the clitoris as possible is removed and the labia minora cut, often times the labia majora as well to narrow the vaginal opening.
- 3 **Vaginal fusing or total infibulation:** Total infibulation includes the clitoris and the inner labia being removed and the outer labia cut or scraped, then sewn together. Vaginal fusing is the most severe form of FGM which includes all aspects of total infibulation, as well as the inner walls of the vagina scratched to cause bleeding and sewing again. The girl's feet are then tied together in an effort to fuse the two sides of the vagina with scar tissue to close it up.
- 4 **The 'nick':** Involves pushing a girl's legs apart and using a needle to prick her clitoris, typically to draw blood. This can sometimes include cutting, scraping or cauterizing the girls genitals.



FGM can only harm girls, there is no health benefit

The World Health Organization states that FGM has no health benefits and can cause a number of health problems. Immediately following the procedure, girls are at risk of severe pain, shock, bleeding, infection and injury to nearby tissue. In the long term, girls and women who have suffered this procedure can suffer recurrent bladder and urinary tract infections, cysts, infertility, and complications during childbirth. In some cases it can even be lethal.

All forms of FGM, including the less invasive forms, such as nicking or pricking, can still result in intense, lifelong psychological trauma, as well as physical consequences like infection and damaged nerve endings.

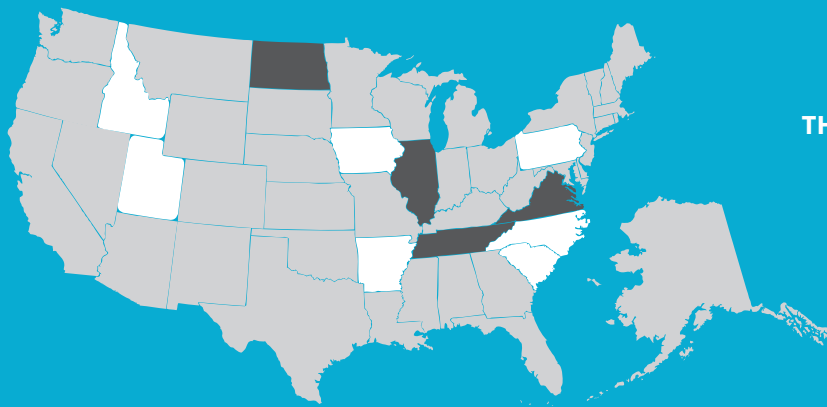
There is global agreement that the only way to end FGM is to have zero tolerance of the practice, meaning that any and every type of FGM is a violation of girls' human rights.

FGM is illegal in the United States but it still takes place

FGM was made a federal crime in 1996, punishable by up to five years in prison, and was later expanded to address the issue of "vacation cutting" — taking American girls abroad to undergo FGM became a felony in the U.S. The district court judge presiding over the *Nagarwala* case ruled in 2018 that the federal law is unconstitutional. The judge's ruling that criminalizing FGM should be done at the state level highlights the need for individual states to take corrective measures by passing their own anti-FGM laws.

 **513,000** 

The approximate **NUMBER OF WOMEN AND GIRLS IN THE U.S. THAT HAVE EITHER SUFFERED THE PROCEDURE OR ARE AT RISK OF FGM**, according to the Centers for Disease Control, a number that approximately **DOUBLED BETWEEN 2000 AND 2014.**



[11]
THE NUMBER OF STATES
THAT HAVE
PASSED
ANTI-FGM BILLS IN
2019

FGM CRIMINALIZATION BILLS passed in the following states

Arkansas
Idaho
Iowa
North Carolina
Pennsylvania
South Carolina
Utah

FGM STRENGTHENING BILLS passed in the following states

Illinois
North Dakota
Tennessee
Virginia

Ritual Nicks vs. Zero Tolerance

Some misguided commentators suggest that a ‘ritual nick’ in a girl’s clitoris would allow the customary nature of FGM to take place while reducing the harms associated with the practice. However, it is impossible to guarantee no physical harm will take place when doing a procedure on the tiny organ of a young girl.

Even in its most mild form, the ‘nick’ procedure involves a young girl being held down, often by her loved ones, her legs pulled apart and a needle poked into one of her most sensitive body parts.

In addition, the psychological consequences are unavoidable. The ‘nick’ symbolizes and communicates to little girls that their natural state is unclean and that pain must be inflicted on their genitals to make them acceptable to their communities.

FGM is the symptom of harmful cultural beliefs that girls and women must be sexually pure, modest and that their bodies exist to breed. Whether it’s justified on grounds of religion, culture or family tradition, these beliefs are not compatible with liberal societies that profess to ensure the human rights of their citizens.

“At age 11, I forcefully underwent female genital mutilation and 33 years later, I still suffer from PTSD.”

— F.A. Cole,
FGM Survivor and Activist



The psychological consequences of a ‘ritual nick’ are not acceptable

Even minimally-invasive forms of FGM cause trauma and other damaging psychological impacts. Psychotherapist Joanna Vergoth specializes in working with FGM survivors. She says that “many women who have experienced FGM may suffer, not only from complicated medical consequences, but also from serious psychological distress and psycho-sexual difficulties.”

Without drawing an absolute line to protect girls from all forms of female genital mutilation, it will be impossible to eliminate the practice.

The only justifiable approach to FGM is one of zero tolerance

Tolerating medically unnecessary procedures on girls' genitalia creates an ethical slippery slope. It begs the question — how much pain, blood and cut clitoris is enough? And who decides?

Bartering with human rights will result in human rights violations. Permitting girls to be subjected to a mild form of FGM, or 'ritual nick', will make it easier for communities to continue the practice in all its forms.

It is important to respect different cultural backgrounds and religious beliefs. However, this tolerance must not continue at the point where violence, abuse, or oppression takes place.

Criminalizing FGM is crucial to ending this human rights abuse

It may seem harsh to consider practitioners and parents who inflict FGM criminals. But, like other forms of child abuse, FGM should be prevented and prosecuted in the United States.

Even the threat of being prosecuted for inflicting FGM serves as a strong deterrent to practitioners and parents. The AHA Foundation has heard from families considering whether or not to cut their daughters, that the existence of state legislation is a useful excuse they can use to argue against family and community pressure to have their daughters cut.

Hand in hand with laws to criminalize the practice, education and advocacy are required to end FGM. Civil society organizations and frontline services such as police, teachers, social services and health care providers must work with at-risk communities to deter the practice. This requires explaining the harms associated with FGM as well as the fact that FGM is a cultural rather than religious practice.

ZERO TOLERANCE OF FGM is the only way to ensure the safety of girls,
any other option opens the door for child abuse.

// I was exposed to a horrible female genital mutilation experience, imposed by an unfair culture, and performed by an unskilled woman through inhumane and injurious practice. //

— FGM Survivor, California

Misguided backlash against FGM prevention and prosecution

Despite the unarguably harmful nature of FGM, some commentators and communities continue to push against criminalizing the practice. This backlash can be explained by the misconception that FGM is a religious practice.

In fact, FGM is not particular to any religious group, nor prescribed by any faith. It is actually a culturally-based practice, a harmful tradition passed on through families and communities that pre-dates all major religions. FGM has been co-opted by some religious sects, but there is no major religion that requires FGM.

The First Ever Federal Prosecution of FGM in Michigan

IN APRIL OF 2017, federal prosecutors brought charges against American-trained physician Dr. Jumana Nagarwala for performing female genital mutilation on girls at a medical clinic in Livonia, Michigan, between 2005 and 2017. Further investigation yielded shocking revelations into the extent of the allegations, including an updated indictment that named a total of seven defendants and alleged nine minor victims from multiple states in the region. Federal prosecutors indicated that as many as 100 young girls may have been cut.

These charges are unprecedented in the U.S.—this trial was the first prosecution for performing FGM under the federal statute since its 1996 institution. Michigan passed one of the strongest anti-FGM laws in the country, only after the high-profile case brought this issue to public knowledge. The inability to retroactively prosecute Nagarwala for her alleged crimes demonstrates the need for states to criminalize this horrific abuse now.

In late 2018, Nagarwala's defense team challenged the federal law on constitutional grounds and, unfortunately, the presiding judge ultimately ruled in their favor. He asserted that Congress lacked the power to pass the federal anti-FGM law, claiming that the ability to criminalize FGM rested solely with the individual states, not with the federal government. Primary charges against the defendants were subsequently dismissed.

The Department of Justice (DOJ) declined the opportunity to defend the federal FGM ban in April

2019, citing federalism concerns. Instead, they urged Congress to address the constitutional issues stated in the district court ruling.

AHA Foundation maintains that the federal FGM law is constitutional and that Congress has authority to enact an FGM ban under the Commerce Clause and the Necessary and Proper Clause of the U.S. Constitution. Several organizations, ours included, submitted amicus curiae (friend of the court) briefs to the district court. We, along with legal experts and fellow advocates, were bewildered by the DOJ's position in this case.

Congress is currently working to legitimize the federal law. The House of Representatives is attempting to defend its constitutionality, and the U.S. Court of Appeals is expected to determine whether it has standing in the coming months. In an alternative course of action, Senator Marsha Blackburn introduced a bill that would amend the existing law, in an effort to remedy its purported constitutional issues.

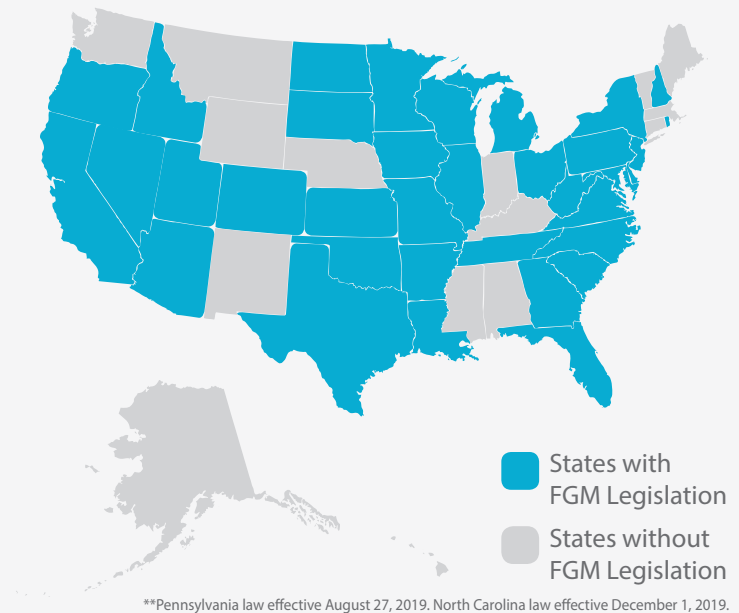
The outcome of this case, and the fate of the federal FGM ban is yet unknown. The unpredictable sequence of events shows the importance of state-level legislation to create criminal and civil liability. Lawmakers must not let the voices of survivors and at-risk girls be drowned out amid the complexities of legal proceedings and discourse. The survivors in this case deserve justice, and lawmakers owe girls protection from this horrendous abuse.

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Human rights abuses slipping through legislative cracks in the U.S.

Since FGM was outlawed nationally over 20 years ago, it was only in 2017 that federal authorities finally brought charges against a practitioner for allegedly performing FGM. It is clear that the need for meaningful state action is more vital than ever.

Currently, **only 35 states** in the U.S. specifically ban FGM. The remaining 15 do not have measures in place to prosecute, and prevent, FGM from taking place within their borders.



Specific state legislation combating FGM is required so states can do more to protect their girls. State legislation will:

-  Send a **STRONG MESSAGE THAT FGM WILL NOT BE TOLERATED** in the state.
-  **GIVE PROSECUTORS THE TOOLS** and access to resources to bring perpetrators to justice.
-  Signal to state prosecutors that **FGM IS A CRIME** that must be prosecuted.
-  Fill gaps in federal legislation such as **EDUCATION AND OUTREACH TARGETED TO AT RISK COMMUNITIES** and the professionals likely to encounter girls at risk of FGM.
-  **PREVENT GIRLS BEING TRAFFICKED ACROSS STATE BORDERS** to perform FGM.

// An ongoing challenge to prosecuting FGM is the lack of state legislation criminalizing the practice. //

— Ayaan Hirsi Ali



Which states are doing enough to end FGM?

The AHA Foundation has developed a 'State Grading Scale' as a resource for U.S. state legislators and constituents to understand the strength of their state's protections against FGM. Each state's code was analyzed for its strengths and weakness and a grading scale was given, as well as recommendations as to how each state can improve their grade.

Following the FGM charges in 2017, Michigan now has one of the country's best laws

Immediately following Dr. Nagarwala being charged for FGM in Michigan, the state legislature passed the strongest and most comprehensive anti-FGM legislation in the country. Sadly, the Michigan case demonstrates the need for states to act to outlaw this practice **before** girls are mutilated in their jurisdiction.

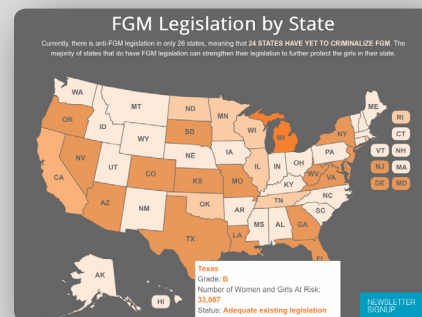
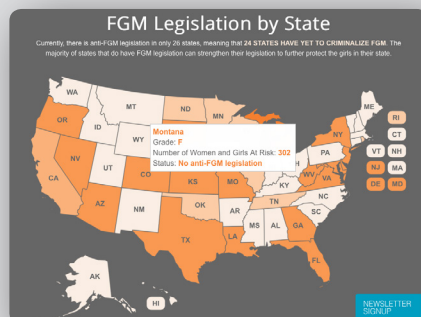
MICHIGAN is one of the only states with an A grade. The strength of Michigan's legislation is its holistic approach to ending FGM in the state. The law works to both stop practitioners and families from having girls undergo FGM, as well as educating communities, teachers, and law enforcement professionals of the risks and criminal penalties of FGM.

10 U.S. States Require Mandatory Reporting of FGM



Only a handful of states mandate reporting of FGM: **ARIZONA, ARKANSAS, DELAWARE, FLORIDA, ILLINOIS, LOUISIANA, NEVADA, SOUTH CAROLINA, TENNESSEE AND UTAH.** Though their grades vary, and each state's protections against FGM need strengthening, these states do mandate reporting of FGM by professional service providers. State anti-FGM legislation, along with child and criminal codes, instruct professionals to report cases of suspected FGM immediately to the appropriate department. This can prevent children from being subjected to the procedure or provide access to services for girls who have already undergone FGM.

SEE HOW EACH STATE SCORES USING OUR INTERACTIVE FGM PROTECTIONS TOOL
<https://www.theahafoundation.org/female-genital-mutilation/fgm-legislation-by-state/>



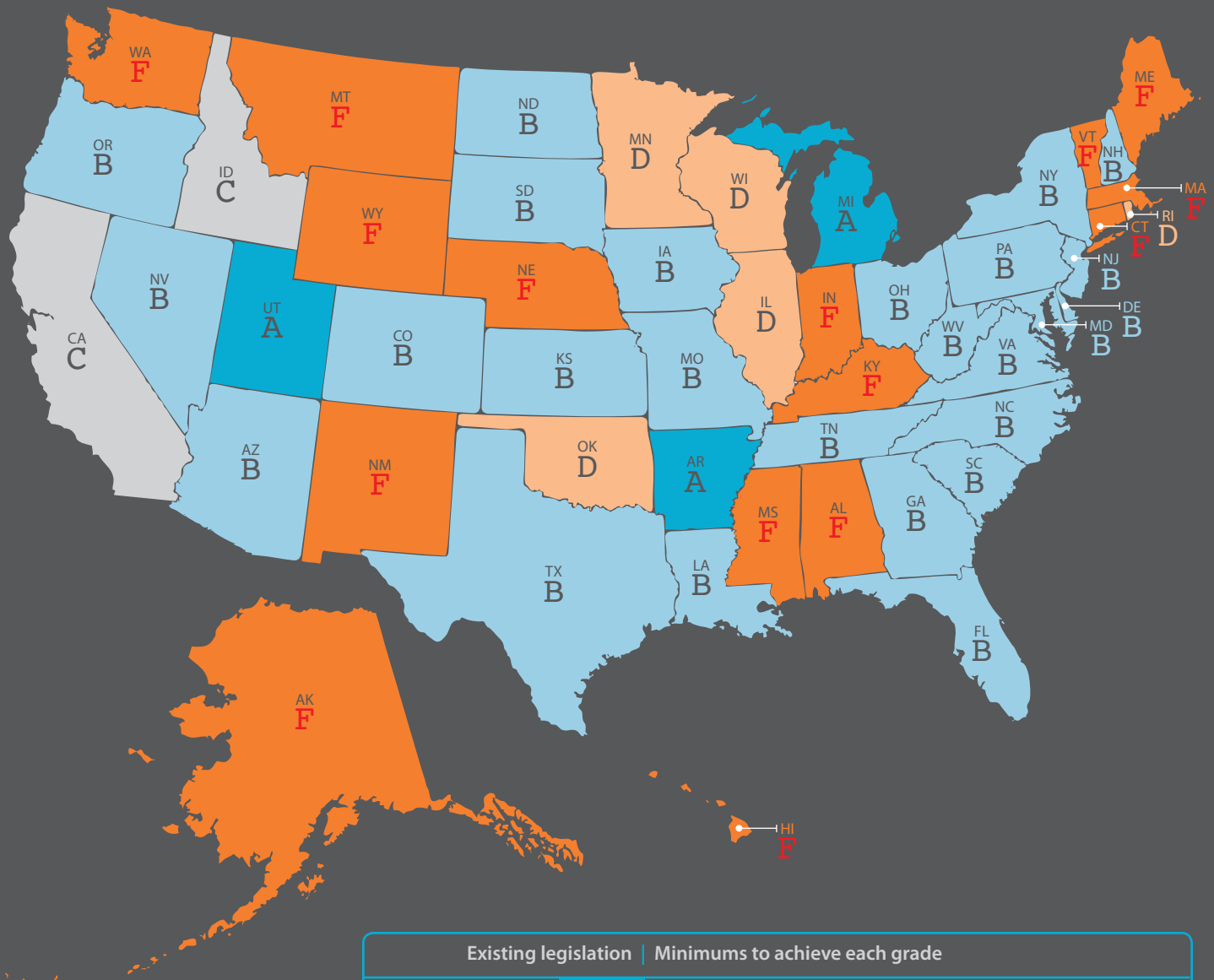
15 states are failing girls on FGM

The 15 states that received a failing mark provide no explicit protection for girls at risk of FGM. While some are considering legislation, progress is slow.

FGM Legislation by State

SCORECARD

Currently, there is anti-FGM legislation in only 35 states, meaning that **15 STATES HAVE YET TO CRIMINALIZE FGM**. The majority of states that do have FGM legislation can strengthen their legislation to further protect the girls in their state.



**Pennsylvania law effective August 27, 2019.
North Carolina law effective December 1, 2019.

THE AHA FOUNDATION STATE FGM LEGISLATION GRADES

US STATE	IMPROVE BY ADDING:
A	
Arkansas*	Continue strengthening legislation to go even more above and beyond. Ex. mandated medical license revocation
Michigan	Continue strengthening legislation to go even more above and beyond. Ex. mandatory reporting, mandatory law enforcement training, etc.
Utah*	Continue strengthening legislation to go even more above and beyond. Ex. annual statistical reporting
B	
Arizona*	Culture is not a defense provision, education and outreach provision
Colorado*	No vacation cutting, education and outreach provision, prosecute facilitating FGM
Delaware	No vacation cutting, education and outreach provision, prosecute facilitating FGM
Florida*	Culture is not a defense provision, education and outreach provision
Georgia*	Prosecute facilitating FGM, education and outreach provision
Iowa	Prosecute parents/guardian, prosecute facilitating FGM
Kansas	Prosecute facilitating FGM, education and outreach provision
Louisiana*	Prosecute facilitating FGM, education and outreach provision
Maryland	No vacation cutting, prosecute facilitating FGM, education and outreach provision
Missouri*	No vacation cutting, education and outreach, increase age to 18 (currently at 17)
Nevada*	Education and outreach provision
New Hampshire*	Prosecute facilitating FGM, education and outreach provision
New Jersey	Prosecute facilitating FGM, education and outreach provision
New York	No vacation cutting
North Carolina*	Prosecute facilitating FGM, education and outreach provision
North Dakota	Prosecute facilitating FGM, no vacation cutting, education and outreach provision
Ohio*	Prosecute parents/guardian, prosecute facilitating FGM, education and outreach provision
Oregon*	No vacation cutting, prosecute facilitating FGM
Pennsylvania*	Prosecute facilitating FGM, education and outreach provision
South Carolina*	Prosecute parents/guardian, education and outreach provision
South Dakota*	Education and outreach provision
Tennessee*	Education and outreach provision
Texas	Prosecute facilitating FGM, education and outreach provision
Virginia	Prosecute facilitating FGM, culture is not a defense provision, expanded education and outreach provision
West Virginia	Prosecute facilitating FGM, no vacation cutting, education and outreach provision
C	
California*	Culture is not a defense provision, no vacation cutting
Idaho*	Prosecute parents/guardian, prosecute facilitating FGM, no vacation cutting, education and outreach provision
D	
Illinois*	Prosecute parents/guardian, prosecute facilitating FGM, no vacation cutting, culture is not a defense provision, education and outreach provision
Minnesota*	Prosecute parents/guardian, prosecute facilitating FGM, no vacation cutting, culture is not a defense provision
Oklahoma*	Prosecute parents/guardian, prosecute facilitating FGM, no vacation cutting, culture is not a defense provision, education and outreach provision
Rhode Island*	Prosecute parent/guardians, prosecute facilitating FGM, no vacation cutting, culture is not a defense provision, education and outreach provision
Wisconsin	Prosecute parents/guardian, prosecute facilitating FGM, no vacation cutting, education and outreach provision
F	
Alabama	Prosecute practitioner, prosecute parents/guardian, prosecute facilitating FGM, culture is not a defense provision, no vacation cutting, education and outreach provision
Alaska	Prosecute practitioner, prosecute parents/guardian, prosecute facilitating FGM, culture is not a defense provision, no vacation cutting, education and outreach provision
Connecticut	Prosecute practitioner, prosecute parents/guardian, prosecute facilitating FGM, culture is not a defense provision, no vacation cutting, education and outreach provision
Hawaii	Prosecute practitioner, prosecute parents/guardian, prosecute facilitating FGM, culture is not a defense provision, no vacation cutting, education and outreach provision
Indiana	Prosecute practitioner, prosecute parents/guardian, prosecute facilitating FGM, culture is not a defense provision, no vacation cutting, education and outreach provision
Kentucky	Prosecute practitioner, prosecute parents/guardian, prosecute facilitating FGM, culture is not a defense provision, no vacation cutting, education and outreach provision
Maine	Prosecute practitioner, prosecute parents/guardian, prosecute facilitating FGM, culture is not a defense provision, no vacation cutting, education and outreach provision
Massachusetts	Prosecute practitioner, prosecute parents/guardian, prosecute facilitating FGM, culture is not a defense provision, no vacation cutting, education and outreach provision
Mississippi	Prosecute practitioner, prosecute parents/guardian, prosecute facilitating FGM, culture is not a defense provision, no vacation cutting, education and outreach provision
Montana	Prosecute practitioner, prosecute parents/guardian, prosecute facilitating FGM, culture is not a defense provision, no vacation cutting, education and outreach provision
Nebraska	Prosecute practitioner, prosecute parents/guardian, prosecute facilitating FGM, culture is not a defense provision, no vacation cutting, education and outreach provision
New Mexico	Prosecute practitioner, prosecute parents/guardian, prosecute facilitating FGM, culture is not a defense provision, no vacation cutting, education and outreach provision
Vermont	Prosecute practitioner, prosecute parents/guardian, prosecute facilitating FGM, culture is not a defense provision, no vacation cutting, education and outreach provision
Washington	Prosecute practitioner, prosecute parents/guardian, prosecute facilitating FGM, culture is not a defense provision, no vacation cutting, education and outreach provision
Wyoming	Prosecute practitioner, prosecute parents/guardian, prosecute facilitating FGM, culture is not a defense provision, no vacation cutting, education and outreach provision

*Asterisks used to show that the penalties are higher than federal law

Recommendations to end FGM in the United States

The scale and severity of FGM in the United States requires concerted and immediate action by politicians, policy makers, and civil society alike. The AHA Foundation recommends the following actions to protect the human rights of women and girls by putting an end to FGM.

1

MOVE BURDEN OF PROVING FGM FROM VICTIMS TO INVESTIGATORS

Survivors of FGM may be left demoralized, ashamed, and depressed. To further burden them with the task of declaring the crime, proving FGM, and pursuing a conviction is unjust. U.S. states should implement legislation and training that makes reporting known or suspected cases of FGM mandatory for service providers, in addition to providing resources for victims to quickly and secretly report to authorities.

2

TRAIN FRONTLINE SERVICE PROVIDERS

Professionals such as teachers, doctors, midwives, and community leaders should be given training in identifying FGM survivors, as well as potential victims. These individuals yield great influence within communities and can serve as help points. As potential mandatory reporters of crime these individuals are crucial in preventing FGM among victims who may not be empowered to openly acknowledge what has occurred. Education and training should also be incorporated into a formal continuing development program for medical professionals and law enforcement.

3

ADOPT AN FGM TRACKING SYSTEM SIMILAR TO THE UNITED KINGDOM

The UK's National Health Service collects data from midwives, ob-gyns, and other medical professionals on the number of cases of FGM they encounter. This tracking system is vital to begin to understand the extent of the problem in the United States.

4

INCORPORATE FGM INFORMATION INTO MANDATORY SEX EDUCATION IN SCHOOLS

It is important to educate minors on what FGM entails and the risks associated with it so they are aware of their rights and whom they can contact for help. It will also raise new generations of females and males who understand the harms caused by the practice and the need to end it.

5

ADDRESS THE ROOT OF THE PROBLEM

We must educate women on their right to be free of gender-based violence and in doing so empower them to be their own saviors and that of girls in their community. Open and honest debate is necessary to disassociate notions of 'honor' and 'marriage-ability' from female sexual pleasure, and to tear down myths pertaining to religious sanctioning of FGM. Open dialogue will help remove the stigma surrounding FGM and empower communities to speak up and enact real change. Furthermore, politicians, policy makers, and agencies must move away from political correctness in the name of assumed cultural authenticity.

The AHA Foundation believes in liberty for all people.

The AHA Foundation was established by Ayaan Hirsi Ali in 2007 to put the ideas she writes about into practice.

The organization advocates liberty for all by championing human rights and individual liberties above cultural, social or religious imperatives.

As a 501(c)3 non-profit, the AHA Foundation, raises funds and leads programs to protect women from honor violence, to advance freedom of speech on campuses and in public debate, as well as supporting the work of ex-Muslims and Muslim reformers.



Contact us

info@theahafoundation.org

www.theahafoundation.org