



FGM SURVIVOR'S GUIDE

— TO —

LEGAL REMEDIES

IN THE STATE OF
ILLINOIS

DEVELOPED FOR [AHA](#) FOUNDATION

THROUGH THE PRO BONO ASSISTANCE OF

REED SMITH LLP

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DISCLAIMER

THE CONTENTS OF THIS MEMORANDUM ARE INTENDED TO CONVEY GENERAL INFORMATION ONLY AND ARE NOT INTENDED TO PROVIDE LEGAL ADVICE OR OPINIONS FOR ANY PURPOSE OR PARTICULAR CIRCUMSTANCE.

THE CONTENTS OF THIS MEMORANDUM SHOULD NOT BE CONSTRUED AS NOR RELIED UPON FOR LEGAL ADVICE IN ANY PARTICULAR CIRCUMSTANCE OR SITUATION.

AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF ILLINOIS SHOULD BE CONTACTED FOR ADVICE ON SPECIFIC LEGAL ISSUES.

THIS MEMORANDUM IS NOT A SUBSTITUTE FOR AN IN-PERSON OR TELEPHONE CONSULTATION WITH AN ATTORNEY LICENSED TO PRACTICE LAW IN ILLINOIS CONCERNING ANY SPECIFIC LEGAL ISSUE.

INTRODUCTION

THIS GUIDE AIMS TO PROVIDE SURVIVORS OF FEMALE GENITAL MUTILATION (“FGM”) WITH A COMPREHENSIVE FRAMEWORK EXPLAINING BOTH CIVIL AND CRIMINAL REMEDIES AVAILABLE TO THEM IN THE COURTS OF ILLINOIS, USA.

In 1996, Congress passed the [FEDERAL GENITAL MUTILATION ACT](#), which made performing FGM on anyone under the age of 18 a felony in the United States.¹ However, in 2018, the District Court of the Eastern District of Michigan held that the 1996 federal criminal statute prohibiting and criminally punishing FGM, codified as 18 U.S.C § 116, was unconstitutional.² While the Department of Justice did not appeal the court’s decision, President Trump signed the [STOP FGM ACT OF 2020](#) in 2021 to reaffirm the 1996 law and ensure the prohibition of FGM on minors under federal law.³

Current federal law provides federal authorities the power to prosecute any person who performs, attempts to perform, facilitates in, consents to, or transports a person for the purpose of FGM. Violation of the law results in a fine, imprisonment of up to 10 years, or both.⁴ The law also requires government agencies to report to Congress about the estimated number of females who are at risk of or have undergone FGM, and on efforts to prevent FGM. While federal laws are important to protect survivors from this painful practice, state criminalization laws are equally necessary in providing legal recourse to FGM survivors.

THE STATE OF ILLINOIS OFFERS FGM SURVIVORS ADDITIONAL LEGAL REMEDIES THROUGH ITS STATE COURT SYSTEM.

FIRST, FGM offenders can be prosecuted under the general crime of ritual mutilation and ritualized abuse of a child.

SECOND, Illinois has enacted specific anti-FGM laws creating a criminal civil cause of action against a person guilty of such a Class X felony.

THIRD, Illinois provides for FGM victims to bring both domestic and non-domestic battery claims. Courts can classify this as 'aggravated' for particularly severe forms of battery.

FINALLY, the State can prosecute FGM perpetrators via other legal remedies (as applicable), including conspiracy, endangering the life or health of a child, neglecting or abusing a minor, aggravated unlawful restraint, or (aggravated) kidnapping.

In Illinois, while criminal proceedings against perpetrators of FGM can be brought only by state prosecutors at the expense of the State, an FGM plaintiff who is under the age of 18 can commence a civil cause of action of their own accord by instructing a legal representative. An FGM survivor must commence legal redress within two years of the committed offense if pursuing a civil cause of action, or within 2 years of the FGM survivor having attained the age of 18.

Criminal proceedings must be commenced by a prosecutor within 3 years of the committed offense in relation to both general crimes related to cutting and crimes specific to FGM, unless if the FGM survivor is under the age of 18 – where in most cases the action may be brought by the prosecutor at any time.⁵ It is worth noting that, for example, an award for restitution will not preclude an FGM survivor from also bringing a civil action against the perpetrator for damages.⁶

HOW DO I KNOW IF I AM A SURVIVOR OF FGM?

The United Nations (UN) has estimated that 200 million girls and women alive today have undergone some form of FGM.

Although primarily concentrated in 30 countries across Africa and the Middle East, FGM is also practised in some countries in Asia and Latin America and amongst immigrant populations living in Western Europe, North America, Australia and New Zealand.⁷

A description of the different types of FGM can be found at

https://www.who.int/health-topics/female-genital-mutilation#tab=tab_1

and the different practices in various communities and countries of origin can be found at

<http://www.28toomany.org/>.

If you are unsure whether you are a survivor of FGM, you should consult your OB/GYN or contact

help@theahafoundation.com.



REMEDIES AVAILABLE TO SURVIVORS UNDER ILLINOIS ANTI-FGM LAW

Illinois is one of 40 states in the United States of America (US) that have declared the practice of FGM a criminal act. This means that perpetrators of FGM, those who transport for the purpose of FGM, or legal guardians who consent to the procedure can be prosecuted under criminal law. Survivors of the crime also have many other legal remedies available to them to punish their perpetrators and receive forms of compensation through civil causes of action. Therefore, the State of Illinois' [civil law](#) and criminal law offer different forms of justice to survivors of FGM.

The State of Illinois' criminal law regime affords FGM victims a three-pronged redress by way of specific FGM legislation, FGM crime related legislation, and general criminal law principles. Criminal prosecutions against perpetrators of FGM under Illinois law can be brought only by state prosecutors. While survivors of FGM cannot themselves bring criminal actions, they can provide valuable assistance to the prosecuting attorneys bringing those actions. A criminal action is a lawsuit brought by a public prosecutor, who is an employee of either the federal, state, or local government. FGM survivors may participate in the court proceedings as the court will permit the FGM victim or their legal representative to make an oral statement during the court session. If the defendant is found guilty in a criminal case, they may be punished with fines or time in jail. The same wrongful conduct may give rise to both criminal and civil charges, and so survivors should always consider pursuing both forms of relief.

A civil lawsuit is brought by a private citizen (the "plaintiff"). In the case of FGM, the plaintiff is usually the survivor, and the person being sued (the "defendant") is usually the cutter or someone who assisted the cutter. If the defendant is found liable in a civil case, he or she may be ordered to pay money to the plaintiff.

We will discuss the criminal and [civil](#) options in turn.

GENERAL CRIMES RELATED TO CUTTING

1. RITUAL MUTILATION, 720 ILL. COMP. STAT. 5/12-32

Ritual mutilation is committed when a person, as part of a ritual, mutilates, dismembers or tortures another person who did not give consent (or lacks the capacity to consent) to such acts being done to them (except in the case of male circumcision). Ritual mutilation is a Class 2 felony, and an offender may be sentenced to a term of 3 to 7 years and where the sentence of imprisonment is for an extended term, such term shall be for a period of 7 to 14 years.

A prosecutor must commence legal action within 3 years of the ritual mutilation. Where the victim is under the age of 18, the action may be brought at any time.

2. RITUALIZED ABUSE OF A CHILD, 720 ILL. COMP. STAT. 5/12-33

Ritualized abuse of a child (defined as a person under the age of 18) is committed where, as part of a ceremony or rite etc., a person knowingly tortures, mutilates or sacrifices any warm-blooded animal or human being, or if they force ingestion, injection or other application of any drug in order to dull the victim's sensitivity, cognition or resistance. Ritualized abuse of a child is a Class 1 felony. If convicted, the offender may be sentenced to a term of 4 to 15 years, or 15 to 30 years for an extended term. In addition, the offender will also be sentenced to pay a fine of at least \$75 but no more than \$25,000, and could also be ordered to pay criminal restitution to the victim for out-of-pocket expenses incurred by the victim as a result of the crime, such as medical bills and lost wages.

Where the offense is a second or subsequent offense it will be a Class X felony and if convicted, the offender may be sentenced to a term of 6 to 30 years, or 30 to 60 years for an extended term. They will also be sentenced to pay a fine of at least \$75 but no more than \$25,000, and could also be ordered to pay criminal restitution to the victim for out-of-pocket expenses incurred by the victim as a result of the crime. If the offender is at least 18 years old at the time they committed this offense, they may be sentenced to a term of natural life imprisonment; if the offender is under 18 at the time, they will be sentenced according to the Unified Code of Corrections.

A prosecutor must commence legal action which may be brought at any time.

CRIME SPECIFIC TO FGM, 720 ILL. COMP. STAT. 5/12-34

Under Illinois law, FGM is defined as the circumcision, excision or infibulation of the labia majora, labia minora or clitoris of another person (whether in whole or in part). It is an offense to perform FGM on anyone, or for a parent, guardian or someone having physical custody and control of a child to permit the above to be done to a child. Consent from the minor or the minor's parent/guardian is not a defense. However, in some circumstances a surgical procedure to remove the labia majora, labia minora or clitoris may not constitute a violation of the law (i.e. a medical exception).

The performance of FGM is a Class X felony, whereas permitting the act to be done to a child by a parent, guardian or someone having physical custody and control of a child is a Class 1 felony. If convicted for it as a Class 1 felony, the offender may be sentenced to a prison term of 4 to 15 years, or 15 to 30 years for an extended term. In addition, the offender will also be sentenced to pay a fine of at least \$75 but no more than \$25,000, and could also be ordered to pay criminal restitution to the victim for out-of-pocket expenses incurred by the victim as a result of the crime. A person guilty of a Class X felony may be subject to imprisonment for 6 to 30 years, or 30 to 60 years for an extended term, will be sentenced to pay a fine of at least \$75 but no more than \$25,000, and could also be ordered to pay criminal restitution to the victim for out-of-pocket expenses incurred by the victim as a result of the crime.

A prosecutor must commence legal action within 3 years of the offense. Where the victim is under the age of 18, the action may be brought at any time.





OTHER CRIMINAL AND CIVIL CAUSES OF ACTION AVAILABLE TO SURVIVORS OF FGM IN ILLINOIS

ADDITIONAL CRIMINAL LAWS

DOMESTIC VIOLENCE CRIMES

1. DOMESTIC BATTERY, 720 ILL. COMP. STAT. 5/12-3.2

A person commits domestic battery under Illinois law if they knowingly cause bodily harm to any family member or member of their household, or make physical contact with any such person that is of an insulting or provoking nature. Domestic battery is a Class A misdemeanor,⁸ but could be either a Class 2,⁹ Class 3¹⁰ or Class 4 felony¹¹ if the offender has any prior conviction for other offenses. This includes, but is not limited to, (attempted) first-degree murder, aggravated battery with a firearm, aggravated stalking, criminal sexual assault, kidnapping, unlawful restraint etc. in any jurisdiction and any such other offense having been committed against a family or household member.¹² If it was the offender's second or subsequent conviction of domestic battery, they will be mandatorily sentenced to at least 72 consecutive hours of imprisonment, which is not subject to suspension nor would they be eligible for probation.¹³

A prosecutor must commence legal action within 1 year and 6 months of the domestic battery for a Class A misdemeanor, and within 3 years for a Class 2, Class 3 or Class 4 felony. Where the victim is under the age of 18, no time limitations apply.

2. AGGRAVATED DOMESTIC BATTERY, 720 ILL. COMP. STAT. 5/12-3.3

Aggravated domestic battery is committed when the perpetrator of domestic battery causes the victim to suffer from great bodily harm, or permanent disability or disfigurement. It is a Class 2 felony, meaning that if a person is convicted for this offense, the probation order or conditional discharge following their conviction would have to include a mandatory imprisonment term of at least 60 consecutive days. If it is the offender's second or subsequent conviction, they must be sentenced to a mandatory term of 3 to 7 years, or an extended term of 7 to 14 years imprisonment.¹⁴ Under any conviction for aggravated domestic battery, the defendant could be ordered to pay criminal restitution to the victim for out-of-pocket expenses incurred by the victim as a result of the crime.¹⁵

A prosecutor must commence legal action within 3 years of the aggravated domestic battery.

3. DOMESTIC VIOLENCE IN THE PRESENCE OF A CHILD, 720 ILL. COMP. STAT. 5/12-3.2(C)

Where domestic battery, aggravated domestic battery, aggravated battery (see below), unlawful restraint or aggravated unlawful restraint (see below) is committed against a family or household member in the presence of a child (i.e. the defendant or victim's child or step-child who is under 18 years old, or a minor child present at the defendant or victim's household), the offender will be sentenced to at least an additional 10 days' imprisonment and/or 300 hours of community service, and may be liable for the cost of any counselling required for the child.¹⁶

Legal action must be commenced by a prosecutor within the same time limitation as the main offense.

4. INTERFERING WITH THE REPORTING OF DOMESTIC VIOLENCE, 720 ILL. COMP. STAT. 5/12-3.5

Further, interfering with the reporting of domestic violence is also a violation of the law and constitutes a Class A misdemeanor. It refers to when a person prevents or tries to prevent the victim or a witness of the acts of domestic violence from calling 911, obtaining medical assistance, or reporting it to any law enforcement official.¹⁷ A Class A misdemeanor carries a sentence of imprisonment of less than 1 year, and a fine of at least \$75 but no more than \$2,500.¹⁸

A prosecutor must commence legal action within 1 year and 6 months of the interference with the reporting of domestic violence.

ASSAULT AND BATTERY CRIMES

PERFORMING AN ACT OF FGM CAN BE BOTH AN ASSAULT AND A BATTERY. A PERPETRATOR WILL BE CULPABLE AS EXPLAINED BELOW.

1. ASSAULT, 720 ILL. COMP. STAT. 5/12-1

Assault refers to when a person knowingly (without lawful authority) puts another person in a situation where that other person reasonably perceives they would be harmed through some sort of unlawful bodily contact. It constitutes a Class C misdemeanor under Illinois law for which a convicted offender may be sentenced to up to 30 days imprisonment, fined at least \$75 but no more than \$1,500,¹⁹ and could also be ordered to pay criminal restitution to the victim for out-of-pocket expenses incurred by the victim as a result of the crime.²⁰

2. BATTERY, 720 ILL. COMP. STAT. 5/12-3

Battery is defined as when a person knowingly causes bodily harm to another person, or makes physical contact of an insulting or provoking nature with them. It is a Class A misdemeanor for which a convicted offender may be sentenced to less than 1 year imprisonment, fined at least \$75 but not more than \$2,500,²¹ and could also be ordered to pay criminal restitution to the victim for out-of-pocket expenses incurred by the victim as a result of the crime.²²

3. AGGRAVATED BATTERY, 720 ILL. COMP. STAT. 5/12-3.05

Aggravated battery is a more severe form of battery (not involving the discharge of a firearm). It is committed when a person knowingly and without legal justification commits battery in the following four instances:

1. the perpetrator causes great bodily harm or permanent disability or disfigurement to the victim;
2. the perpetrator is at least 18 years old and causes great bodily harm or disability or disfigurement (whether permanent or not) to any child under the age of 13, or to any person with a severe or profound intellectual disability;
3. the perpetrator of battery commits the offense on a public way, public property, a public place of accommodation or amusement, a domestic violence center, or a place used for religious worship etc.; or

4. the perpetrator uses a deadly weapon (other than by discharge of a firearm) or an air rifle²³ in committing the battery.

Aggravated battery constitutes a Class 3 felony for which a convicted offender may be sentenced to imprisonment between 2 to 5 years, or between 5 to 10 years under an extended term, fined at least \$75 but no more than \$25,000,²⁴ and could also be ordered to pay criminal restitution to the victim for out-of-pocket expenses incurred by the victim as a result of the crime.²⁵ However, if the offense is committed under circumstances described in (1) above, it is a Class X felony for which a convicted offender may be sentenced to 6 to 30 years, or 30 to 60 years for an extended term,²⁶ fined at least \$75 but no more than \$25,000,²⁷ and could also be ordered to pay criminal restitution to the victim for out-of-pocket expenses incurred by the victim as a result of the crime.²⁸ In addition, 15 years shall be added to the imprisonment term imposed if it was committed whilst armed with a firearm.²⁹

A prosecutor must commence legal action within 1 year and 6 months of the assault and/or battery, and within 3 years of the aggravated battery.

OTHER CRIMES

IN ADDITION TO THE FGM STATUTE, THERE ARE SEVERAL OTHER CRIMINAL LAWS UNDER WHICH A PERPETRATOR OF FGM MAY BE CONVICTED.

1. CONSPIRACY, 720 ILL. COMP. STAT. 5/8-2

Conspiracy is committed when a person agrees with someone else to commit an offense with the intention of committing that offense. However, such a person can only be convicted if there was indeed an act done by them or a co-conspirator to put into action the agreement to commit the crime. The sentencing for such a violation of the law varies depending on and is proportional to the seriousness of the offense which the offender conspired to commit. An offender could be convicted of a Class 1, Class 2 or Class 3 felony for the offense of conspiracy, and could be sentenced to between 4 to 15 years (or 15 to 30 years for an extended term); 3 to 7 years (or 7 to 14 years under an extended term), and 2 to 5 years (or 5 to 10 years under an extended term), respectively.³⁰ Where the offense falls under a Class 4 felony, the sentence is 1 to 3 years, or 3 to 6 years under an extended term.³¹

Where the offense is a misdemeanor, the imprisonment term imposed cannot exceed the maximum provided for the offense that the conspirators have agreed to commit.³²

A prosecutor must commence legal action within 3 years if the underlying crime is a felony, and 18 months if the underlying crime is a misdemeanor.

2. ENDANGERING THE LIFE OR HEALTH OF A CHILD, 720 ILL. COMP. STAT. 5/12C-5

Endangering the life or health of a child refers to when a person knowingly causes or permits the life or health of a child (i.e. a person under the age of 18) to be endangered, or if they cause or permit the child to be placed under circumstances where the child's life or health may be endangered. A parent in violation of this law could be convicted of child abandonment or endangerment.³³ A first offense would constitute a Class A misdemeanor for which a convicted offender may be sentenced to less than one year imprisonment, and a fine of at least \$75 but no more than \$2,500.³⁴ If it is a second or subsequent offense, it would constitute a Class 3 felony for which they could be sentenced to a term of 2 to 5 years, or 5 to 10 years under an extended term.³⁵ If the offender committed an act or negligence constituting the proximate cause of the child's death, it would be a Class 3 felony. In such a case, the sentence of imprisonment upon conviction could range from 2 to 10 years.³⁶

A prosecutor must commence legal action within 1 year and 6 months of endangering the life or health of a child for a Class A misdemeanor, and within 3 years for a Class 3 felony offense.

3. NEGLECTING OR ABUSING A MINOR, 720 ILL. COMP. STAT. 405/2-3

Neglecting or abusing a minor occurs when a person inflicts upon a minor (or subjects them to a substantial risk of) physical injury, which led to their death, disfigurement, impairment of physical or emotional health, or loss of any bodily functions. Committing or allowing the commission of any sex offense or acts of torture against a minor would also be a form of abuse or neglect.³⁷ If the court determines that a minor has been abused or neglected, the court will order the parents to cooperate with the Department of Children and Family Services, comply with the terms of the service plan, and correct the conditions that require the child to be in care, or risk termination of parental rights.³⁸

4. UNLAWFUL RESTRAINT, 720 ILL. COMP. STAT. 5/10-3

Unlawful restraint is committed when a person knowingly and without legal authority detains another. It is a Class 4 felony for which a convicted offender may be sentenced to a term of imprisonment for 1 to 3 years, or 3 to 6 years under an extended term, and a fine of at least \$75 but no more than \$25,000.³⁹

5. AGGRAVATED UNLAWFUL RESTRAINT, 720 ILL. COMP. STAT. 5/10-3.1

Aggravated unlawful restraint is committed when a person commits unlawful restraint while using a deadly weapon. It is a Class 3 felony for which a convicted offender may be sentenced to a term of imprisonment for 2 to 5 years, or 5 to 10 years under an extended term, and a fine of at least \$75 but no more than \$25,000.⁴⁰

A prosecutor must commence legal action within 3 years of the offense.

6. KIDNAPPING, 720 ILL. COMP. STAT. 5/10-1

Kidnapping is a Class 2 felony which occurs when a person knowingly and secretly confines another against their will, or does so either by using force or threat of imminent force, or by deceit or enticement in order to carry another person from one place to another. Where a child under age 13 or a person with a severe or profound disability is confined, the court will regard the confinement as being against their will, unless the child or their parent/legal guardian has given consent.⁴¹ If an offender is convicted for kidnapping, they may be sentenced to a term of imprisonment for 3 to 7 years, or 7 to 14 years under an extended term, and fined at least \$75 but no more than \$25,000.⁴²

If the defendant kidnaps a victim who is under 18 years of age and then performs FGM on her, a prosecutor may commence legal action at any time.⁴³ In other circumstances, a prosecutor may commence legal action within 3 years of the offense.

7. AGGRAVATED KIDNAPPING, 720 ILL. COMP. STAT. 5/10-2

Aggravated kidnapping refers to when kidnapping is committed:

1. with the intent to obtain ransom;
2. where the victim is a child under 13 or a person with severe or profound intellectual disability;
3. where great bodily harm is inflicted or another felony is committed upon the victim (other than by discharge of a firearm);
4. where the perpetrator tries to conceal their identity; or

5. while armed with a dangerous weapon other than a firearm.

Aggravated kidnapping under these 5 situations constitute a Class X felony for which a convicted offender may be sentenced to a term of imprisonment for 6 to 30 years, or 30 to 60 years for an extended term,⁴⁴ and will be sentenced to pay a fine of at least \$75 but no more than \$25,000.⁴⁵ If the offender is at least 18 years old at the time of the offense and has been previously convicted for aggravated kidnapping, they will be sentenced to a term of natural life imprisonment. If the offender is under the age of 18 at the time of committing such offense, they will be sentenced according to the Unified Code of Corrections, under which a judge has discretion to consider mitigating factors before determining an appropriate sentence.⁴⁶

If the defendant commits an aggravated kidnapping upon a victim who is under 18 years of age and then performs FGM on her, a prosecutor may commence legal action at any time.⁴⁷ In other circumstances, a prosecutor may commence legal action within 3 years of the offense.

ADDITIONAL CIVIL CAUSES OF ACTION

ILLINOIS DOES NOT HAVE A SPECIFIC CIVIL CAUSE OF ACTION RELATED TO FGM. HOWEVER, THE FOLLOWING CIVIL CAUSES OF ACTION ARE AVAILABLE TO FGM SURVIVORS:

1. ASSAULT

Assault is any corporal injury inflicted by force. The action occurs when a person intentionally and unlawfully injures another person or causes that other person to believe that the offense will be carried out.⁴⁸ The FGM plaintiff must commence legal action within a period of 2 years after the assault unless the victim is a minor, in which case the claim may be made within 2 years of them turning 18.⁴⁹ If liable, the defendant may be required to pay compensatory⁵⁰ or punitive⁵¹ damages.

2. BATTERY

Battery is the intentional unauthorized touching of another person or willful touching/successful attempt to commit an act of violence on another person.⁵² The FGM plaintiff must commence legal action within 2 years of the battery assault unless the victim is a minor, in which case the claim may be made within 2 years of turning 18.⁵³ If liable, the defendant may be required to pay compensatory or punitive damages. Additionally, the victim may be eligible to receive up to \$27,000 from the Illinois Attorney General's office as part of the Crime Victim Compensation Act.⁵⁴

3. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

An FGM plaintiff will have a claim for intentional infliction of emotional distress (“IIED”) against a defendant if it can be established that the defendant’s conduct was not only extreme and outrageous, but that the defendant knew that there was a high probability their conduct would cause severe emotional distress and that the conduct in fact resulted in severe emotional distress.⁵⁷ Although fright, horror, grief, shame, humiliation, worry, etc. may fall within the ambit of the term “emotional distress”, these mental conditions alone are not actionable. To prevail on an IIED claim, the plaintiff must prove that the defendant’s conduct was “so outrageous in character, and so extreme in degree, that it went beyond all possible bounds of decency.” The FGM plaintiff must commence legal action within 2 years of the infliction of emotional distress unless the victim is a minor, in which case the claim may be made within 2 years of turning 18 years old. If liable, the defendant may be required to pay to the victim compensatory damages.⁵⁷

4. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

An FGM plaintiff can bring a direct claim of negligent infliction of emotional distress if it can be alleged that that defendant owed the FGM plaintiff a moral or legal obligation to ensure their safety or wellbeing, which the defendant has subsequently breached and that the FGM plaintiff’s injury was proximately caused by that breach.⁵⁸ Illinois law distinguishes between direct victims and bystanders. A direct victim needs only establish the elements of negligence⁵⁹ to prove a prima facie case for negligent infliction of emotional distress.⁶⁰ The FGM plaintiff must commence legal action within 2 years of the infliction of emotional distress unless the victim is a minor, in which case the claim may be made within 2 years of turning 18. If liable, the defendant may be required to pay compensatory damages to the victim.⁶¹

5. FALSE IMPRISONMENT

False imprisonment is the unlawful restraint, against a person’s will, of that individual’s personal liberty or freedom of movement.⁶² The act of false imprisonment occurs where a person confines another person against their will. Hence, performing an act of FGM, transporting another for the purposes of carrying out an act of FGM, and parental consent to an act of FGM would in

many cases all likely constitute false imprisonment, as it is unlikely the victim consented to the act and the perpetrator's intention to carry out an act of FGM interferes substantially with the victim's liberty.

The FGM plaintiff must commence legal action within 2 years of the false imprisonment unless the victim is a minor, in which case the claim can be made within 2 years of them turning 18. If liable, the defendant may be required to pay to the victim compensatory and punitive damages.

5. NEGLIGENT SUPERVISION

This cause of action is generally used to hold a parent liable for the torts of their children, but it is unclear whether this tort exists in Illinois in the same form it exists in other states (e.g. in Virginia).

6. PARENTAL IMMUNITY DOCTRINE

In Illinois, a child can file a lawsuit against their parent for intentional torts and willful or wanton misconduct. Such actions are instituted regardless of the fact that parental authority is thereby circumscribed. Thus, parents in Illinois must conform their treatment of their children within certain socially acceptable limits, or else face criminal and/or civil action by the State. However, while the doctrine of parent-child immunity does bar negligence actions generally, there is no parent-child immunity as applied to the area of intentional torts or in relation to actions such as willful or wanton misconduct as stated above.⁶³





RIGHTS OF ALL SURVIVORS UNDER THE ILLINOIS CRIMINAL JUSTICE SYSTEM

RIGHTS OF CRIME VICTIMS AND WITNESSES ACT, 725 ILL. COMP. STAT. ANN. 120, ET. SEQ.

The Act was created to implement, preserve, protect, and enforce the rights guaranteed to crime victims, including survivors of FGM. A victim's rights include being treated fairly and, with respect for their dignity and privacy, to be notified of court proceedings and to be given notice prior to a court accessing their records or information. Furthermore, victims are entitled to communicate with the prosecution, be present at trial and be heard at post-arraignment court proceedings.

The Act also requires that a victim's case is processed in a timely manner and that the victim be protected from the accused throughout the process. The victim has the right to restitution (see below) and to be notified of any conviction, sentence, imprisonment or release of the accused.

Any law enforcement agency that investigates an offense must provide the victim with a written statement (within 48 hours of contact), containing information about victim compensation, including how to contact the Office of the Illinois Attorney General to file a claim, and appropriate referrals to local and State programs that provide victim services. The victim can request a copy of the police report (to be provided within 5 business days).

The victim has the right to retain a victim's attorney who may be present during all stages of any interview, investigation, or other interaction with the criminal justice system. They also have a right for an advocate to be present during any medical examination.

The court shall allow a victim, or their representative, to make an oral statement in the courtroom which will not be made under oath and is not subject to cross-examination. The court shall then consider such statement when determining the sentence of the defendant or their mental health status. Importantly, the Act does not require victims, including FGM survivors, to make an oral statement.

Victims, however, also have certain responsibilities. They include reporting any crime in a timely manner, cooperating with law enforcement, testifying at trial (a written statement will suffice in the case of an FGM survivor), providing information and documentation to the prosecution and notifying the authorities of any change in contact information.

RESTITUTION, 730 ILL. COMP. STAT. ANN. 5/5-5-6

Restitution may be granted where a person (including an FGM survivor) has suffered injury or damage to themselves or their property. This can include long-term physical health care costs but will not include any compensation for pain or suffering.

The defendant will be required to restore damaged property, make a cash payment or fulfill a combination of both. This can include expenses and losses proximately caused by the criminal conduct of the defendant (e.g. the victim's costs from staying at a shelter).

Should the defendant fail to pay restitution within the time specified by the court then their property may be seized and sold to make such payment. The court will consider the defendant's assets and ability to make payment when determining the timing and number of payments to be made. Full payment is usually ordered to be made within no later than 5 years.

Where a crime has been committed by more than one defendant, the cost of restitution may be divided between them but the victim will never be able to recover more than their actual loss. An award of restitution does not stop a party from also bringing a civil action for damages. Therefore, an FGM survivor can bring a civil claim for damages against the defendant in addition to receiving restitution.

CRIME VICTIMS COMPENSATION ACT, 740 ILL. COMP. STAT. ANN. 45/1

Victims of crimes are entitled to compensation under this Act in an amount determined in consideration of any loss of money or support payments. A person who incurs expenses due to a crime perpetrated on another person may also be entitled to compensation.

The sum that can be awarded is limited depending on when the crime occurred, with the cap for the period between 1998 - 2022 being \$27,000, rising to \$45,000 from 7 August 2022. Where the maximum award does not cover all losses suffered, it will be divided proportionately between those persons entitled to the compensation. An applicant for an award under this Act must show that they are not entitled to benefits under the Criminal Victims' Escrow Account Act or government or medical insurance policies.





PRACTICAL PROTECTIVE STEPS

FGM CAN CAUSE PHYSICAL AND MENTAL HEALTH PROBLEMS THAT GO ON TO AFFECT WOMEN LATER IN LIFE, INCLUDING, BUT NOT LIMITED TO, IRREGULAR PERIODS, BLADDER PROBLEMS, RECURRENT INFECTIONS AND NATURAL CHILD-BIRTH CHALLENGES.⁶⁴ IN ADDITION, FGM IS OFTEN FOLLOWED BY EARLY MARRIAGE TO THE DETRIMENT OF THE SURVIVOR'S EDUCATION AND CAREER.⁶⁵

IF YOU ARE A VICTIM OF FGM, OR SUSPECT THAT YOU MIGHT KNOW SOMEONE WHO MAY BE A VICTIM, SPEAK TO A MEDICAL PRACTITIONER OR AGENCIES AND CHARITIES CAMPAIGNING AGAINST THE PRACTICE IN RELATION TO ANY PHYSICAL OR MENTAL CHALLENGES FACED. THERE ARE ALSO COMMUNITY EDUCATION PROGRAMS AND FGM SURVIVOR SUPPORT GROUPS WHICH CAN PROVIDE ADDITIONAL CARE AND ENCOURAGE GREATER AWARENESS.

CONCLUSION

FOR MORE INFORMATION, PLEASE CONTACT AHA FOUNDATION AT **INFO@THEAHAFOUNDATION.ORG.**



ENDNOTES

1. 18 U.S.C.S. §116.
2. *United States v. Jumana Nagarwala, et al.*, No. 17-cr-20274 (E.D. Mich. Nov. 20, 2018).
3. H.R.6100 - 116th Congress (2019-2020): STOP FGM Act of 2020, H.R.6100, 116th Cong. (2021).
4. 18 U.S.C.S. §116.
5. Note that if in a prior criminal proceeding, the defendant was charged with a Class 1 or Class X felony, the victim is not subject to a statute of limitations in their civil action for damages. 735 ILL. COMP. STAT. 5/13-202. If the victim is pursuing damages for a claim that is based on false imprisonment or personal injury (e.g. assault, battery) and the defendant has not been convicted of a Class 1 or Class X felony for the underlying harm, the statute of limitations is 2 years (or 2 years after the victim has reached 18). 735 ILL. COMP. STAT. 5/13-202.
6. 730 ILL. COMP. STAT. 5/5-5-6.
7. <https://www.un.org/en/observances/female-genital-mutilation-day>.
8. A Class A misdemeanor carries a sentence of imprisonment of less than one year, and a fine of at least \$75 but no more than \$2,500. 730 ILL. COMP. STAT. 5/5-4-5-55.
9. A Class 2 felony carries a sentence of imprisonment of 3 to 7 years, or 7 to fourteen years under an extended term, and a fine of at least \$75 but no more than \$25,000. 730 ILL. COMP. STAT. 5/5-4-5-35; see also 730 ILL. COMP. STAT. 5/5-8-2 (extended term sentencing guidelines); 730 ILL. COMP. STAT. 5/5-5-3.2 (enumerating the aggravating factors pursuant to which an extended sentence may be imposed); 730 ILL. COMP. STAT. 5/5-4-5-50(b) (felony fines).
10. A Class 3 felony carries a sentence of imprisonment of 2 to 5 years, or 5 to ten years under an extended term, and a fine of at least \$75 but no more than \$25,000. 730 ILL. COMP. STAT. 5/5-4-5-40; 730 ILL. COMP. STAT. 5/5-8-2 (extended term sentencing guidelines); 730 ILL. COMP. STAT. 5/5-5-3.2 (enumerating the aggravating factors pursuant to which an extended sentence may be imposed); 730 ILL. COMP. STAT. 5/5-4-5-50(b) (felony fines).
11. A Class 4 felony carries a sentence of imprisonment of 1 to 3 years, or 3 to 6 years under an extended term, and a fine of at least \$75 but no more than \$25,000. 730 ILL. COMP. STAT. 5/5-4-5-45; see also 730 ILL. COMP. STAT. 5/5-8-2 (extended term sentencing guidelines); 730 ILL. COMP. STAT. 5/5-5-3.2 (enumerating the aggravating factors pursuant to which an extended sentence may be imposed); 730 ILL. COMP. STAT. 5/5-4-5-50(b) (felony fines).
12. Under any conviction for domestic battery, the defendant could be ordered to pay criminal restitution to the victim for out-of-pocket expenses incurred by the victim as a result of the crime, such as medical bills and lost wages. 730 ILL. COMP. STAT. 5/5-5-6.
13. 720 ILL. COMP. STAT. 5/12-3.2.
14. 720 ILL. COMP. STAT. 5/12-3.3.
15. 730 ILL. COMP. STAT. 5/5-5-6.
16. 720 ILL. COMP. STAT. 5/12-3.3.
17. 720 ILL. COMP. STAT. 5/12-3.5.
18. 730 ILL. COMP. STAT. 5/5-4-5-55.
19. 720 ILL. COMP. STAT. 5/12-1; 730 ILL. COMP. STAT. 5/5-4-5-65.
20. 730 ILL. COMP. STAT. 5/5-5-6.

ENDNOTES

21. 720 ILL. COMP. STAT. 5/12-3; 730 ILL. COMP. STAT. 5/5-4.5-55.
22. 730 ILL. COMP. STAT. 5/5-5-6.
23. As defined in 720 ILL. COMP. STAT. 5/24-08-0.1: "Air rifle" means and includes any air gun, air pistol, spring gun, spring pistol, B-B gun, paint ball gun, pellet gun or any implement that is not a firearm which impels a breakable paint ball containing washable marking colors or, a pellet constructed of hard plastic, steel, lead or other hard materials with a force that reasonably is expected to cause bodily harm."
24. 730 ILL. COMP. STAT. 5/5-4.5-40; 730 ILL. COMP. STAT. 5/5-4.5-50(b).
25. 730 ILL. COMP. STAT. 5/5-5-6.
26. 730 ILL. COMP. STAT. 5/5-4.5-25; See also 730 ILL. COMP. STAT. 5/5-8-2 (extended term sentencing guidelines); 730 ILL. COMP. STAT. 5/5-5-3.2 (enumerating the aggravating factors pursuant to which an extended sentence may be imposed).
27. 730 ILL. COMP. STAT. 5/5-4.5-50(b).
28. 730 ILL. COMP. STAT. 5/5-5-6.
29. 720 ILL. COMP. STAT. 5/12-3.05.
30. 720 ILL. COMP. STAT. 5/8-2; 730 ILL. COMP. STAT. 5/5-4.5-30; 730 ILL. COMP. STAT. 5/5-4.5-35; 730 ILL. COMP. STAT. 5/5-4.5-40.
31. 730 ILL. COMP. STAT. 5/5-4.5-45.
32. 720 ILL. COMP. STAT. 5/8-2.
33. 720 ILL. COMP. STAT. 5/12C-5.
34. 730 ILL. COMP. STAT. 5/5-4.5-55.
35. 730 ILL. COMP. STAT. 5/5-4.5-40.
36. 720 ILL. COMP. STAT. 5/12C-5.
37. 705 ILL. COMP. STAT. 405/2-3.
38. 705 ILL. COMP. STAT. 405/2-1.
39. 730 ILL. COMP. STAT. 5/5-4.5-45; 730 ILL. COMP. STAT. 5/5-4.5-50(b).
40. 720 ILL. COMP. STAT. 5/10-3.1; 730 ILL. COMP. STAT. 5/5-4.5-40; 730 ILL. COMP. STAT. 5/5-4.5-50(b).
41. 720 ILL. COMP. STAT. 5/10-1.
42. 730 ILL. COMP. STAT. 5/5-4.5-35; 730 ILL. COMP. STAT. 5/5-4.5-50(b).
43. 720 ILL. COMP. STAT. 5/3-6(j-5).
44. 730 ILL. COMP. STAT. 5/5-4.5-25; See also 730 ILL. COMP. STAT. 5/5-8-2 (extended term sentencing guidelines); 730 ILL. COMP. STAT. 5/5-5-3.2 (enumerating the aggravating factors pursuant to which an extended sentence may be imposed).
45. 730 ILL. COMP. STAT. 5/5-4.5-50(b).
46. 720 ILL. COMP. STAT. 5/10-2; see also 730 ILL. COMP. STAT. 5/5-4.5-105 (enumerating the applicable mitigating factors that a judge may consider before sentencing a defendant-minor).
47. 720 ILL. COMP. STAT. 5/3-6(j-5).
48. Parrish v. Donahue, 443 N.E.2d 786 at 788 (Ill. App. Ct. 1982).
49. 735 Ill. Comp. Stat. Ann. 5/13-202, and 735 Ill. Comp. Stat. Ann. 5/13-211.

ENDNOTES



50. Compensatory damages focus on the harm the victim suffered; the greater the harm, the greater the compensatory damages. Compensatory damages can include economic damages (medical bills, funeral expenses, lost wages, etc.), which can be objectively determined; or non-economic damages (pain and suffering, emotional distress, grief and sorrow, disfigurement, etc.), which are more subjective and depend on the nature and extent of trauma to the victim.
51. Punitive damages focus on punishing the defendant and deterring similar conduct. Punitive damages may be awarded only when actual damages are awarded. 735 ILL. COMP. STAT. 5/2-1115.05(a). Punitive damages awards are rare in Illinois because the defendant's conduct must be fraudulent, intentional, or "willful and wonton," which is defined as showing an utter indifference to or conscious disregard for the safety of others. *Id.* at (b). There are no caps on the amount of punitive damages that can be awarded to a plaintiff, however, punitive damage awards exceeding 10 times the award of compensatory damages will be heavily scrutinized. See *id.* at (d); *State Farm Mut. Auto. Ins. Co., v. Campbell*, 538 U.S. 408 (2003) (striking down a punitive damages award with a punitive-to-compensatory ratio greater than single digits).
52. *Curtis v. Jaskey*, 759 N.E.2d 962 at 964 (Ill. App. Ct. 2001); *Parrish v. Donahue*, 443 N.E.2d 786 at 788 (Ill. App. Ct. 1982); and *McNeil v. Carter*, 742 N.E.2d 1277 at 1281 (Ill. App. Ct. 2001).
53. 735 Ill. Comp. Stat. Ann. 5/13-202 ; and 735 Ill. Comp. Stat. Ann. 5/13-211.
54. The Illinois Crime Victim Compensation Act compensates victims for expenses incurred due to a "crime of violence," as defined in 740 ILL. COMP. STAT. 45/2(c). Recovery is limited to expenses incurred due to medical needs, counseling, funeral and burial, crime scene cleanup, relocation, lost tuition, etc. 730 ILL. COMP. STAT. 45/2(h).
55. *Kolegas v. Heftel Broad. Corp.*, 607 N.E.2d 201 at 211 (Ill. 1992); *McGrath v. Fahey*, 533 N.E.2d 806 at 809-10 (Ill. 1988); *Honaker v. Smith*, 256 F.3d 477 (7th Cir. 2001); and *Pub. Fin. Corp. v. Davis*, 360 N.E.2d 765 at 767 (Ill. 1976).
56. *Pub. Fin. Corp.*, 360 N.E. 2d at 767 (quoting Restatement (Second) of Torts § 46 comment d, at 73 (1965)).
57. Punitive damages and attorney fees are not recoverable for intentional infliction of emotional distress claims.
58. *Parks v. Kownacki*, 737 N.E.2d 287 at 296--297 (Ill. 2000).
59. There are five elements of negligence that a plaintiff must prove: 1) Duty: the defendant owed the plaintiff a duty of care not to cause her or others harm. 2) Breach: the defendant's violation of his or her duty not to cause harm resulted in an injury to the plaintiff. 3) Causation (cause in fact): the defendant's breach of duty was the actual cause of the plaintiff's injury. 4) Proximate Cause: the plaintiff's injury must have been a reasonably foreseeable outcome of the defendant's breach of duty. 5) Damages: the plaintiff must have suffered injuries, loss, or other expenses as a result of the defendant's negligence.
60. See, *Corgan v. Muehling*, 574 N.E.2d 602 (Ill. 1991).
61. Punitive damages are not recoverable for negligent infliction of emotional distress claims.
62. *Adams v. Zayre Corp.*, 499 N.E.2d 678 at 684 (Ill. App. Ct. 1986).
63. *Nudd v. Matsoukas*, 131 N.E.2d 525 at (Ill. 1956); and *Cates v. Cates*, 619 N.E.2d 715.
64. <https://www.bbc.co.uk/news/world-47131052>.
65. <https://www.un.org/en/observances/female-genital-mutilation-day>.