

FGM SURVIVOR'S GUIDE

— TO —

LEGAL REMEDIES

IN THE STATE OF
MINNESOTA

DEVELOPED FOR [AHA](#) FOUNDATION

THROUGH THE PRO BONO ASSISTANCE OF

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CONTENTS

DISCLAIMER	03
INTRODUCTION	04
HOW TO KNOW IF I'M AN FGM SURVIVOR	04
REMEDIES UNDER MN ANTI-FGM LAW.....	05
CRIMINAL PROSECUTION	06
OTHER CRIMINAL & CIVIL ACTIONS	07
ADDITIONAL CRIMINAL LAWS	07
ADDITIONAL CIVIL CAUSES OF ACTION	09
RIGHTS OF ALL MN SURVIVORS.....	11
CONCLUSION	12
ENDNOTES	13



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 MINNESOTA SHOULD BE CONTACTED FOR ADVICE ON SPECIFIC LEGAL ISSUES.

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INTRODUCTION

THIS GUIDE AIMS TO PROVIDE SURVIVORS OF FEMALE GENITAL MUTILATION (“FGM”) WITH AN UNDERSTANDING OF THE MAIN REMEDIES AVAILABLE TO THEM IN THE COURTS OF MINNESOTA.

FIRST, Minnesota has enacted anti-FGM laws creating a criminal cause of action against FGM’s perpetrators.

SECOND, survivors can potentially pursue recourse under several Minnesota state laws not directly related to FGM.

THIRD, Minnesota law provides survivors with various rights and protections in Minnesota’s criminal justice system.

PLEASE NOTE THAT MINNESOTA LAW PROVIDES THAT MINORS CANNOT SUE ON THEIR OWN AND MUST BE REPRESENTED BY AN ADULT.¹

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

FGM is a practice that spans many different countries and communities, each with their own customs that occur at different ages. For example, in the Somali community, most girls are cut between the ages of 5 and 10 years old, while in some Nigerian communities, girls are often cut when they are christened at 8 days old. A description of the different types of FGM can be found at www.who.int, and the different practices in various communities and countries of origin can be found at www.28toomany.org. If you are unsure whether you have been the victim of FGM, you should consult your OB/GYN or contact help@theahafoundation.org.



REMEDIES AVAILABLE TO SURVIVORS UNDER MINNESOTA ANTI-FGM LAW

MINNESOTA IS ONE OF 40 STATES THAT HAS CRIMINALIZED THE PRACTICE OF FGM. THIS MEANS THAT PERPETRATORS OF FGM CAN BE PROSECUTED UNDER **CRIMINAL** LAW. VICTIMS OF THE CRIME ALSO HAVE MANY LEGAL REMEDIES AT THEIR DISPOSAL TO PUNISH THEIR PERPETRATORS AND RECEIVE FORMS OF COMPENSATION. WHILE THERE IS CURRENTLY NO **CIVIL** ACTION SPECIFIC TO FGM, SURVIVORS MAY BE ELIGIBLE TO SEEK REMEDIES UNDER SEVERAL RELATED **CIVIL** CAUSES OF ACTION.

CIVIL LAW AND **CRIMINAL LAW** OFFER DIFFERENT FORMS OF JUSTICE TO SURVIVORS OF FGM. A **CIVIL** LAWSUIT IS BROUGHT BY A PRIVATE CITIZEN (THE “PLAINTIFF”). IN THE CASE OF FGM, THE PLAINTIFF IS USUALLY THE VICTIM, 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. A

CRIMINAL CASE IS A LAWSUIT BROUGHT BY A PUBLIC PROSECUTOR, WHO IS AN EMPLOYEE OF EITHER THE FEDERAL, STATE OR LOCAL GOVERNMENT. VICTIMS MAY PARTICIPATE IN THE TRIAL, BUT ONLY AS WITNESSES AND ONLY IF THE PROSECUTOR ALLOWS THEM TO. IF THE DEFENDANT IS FOUND GUILTY IN A **CRIMINAL** CASE, HE OR SHE MAY BE PUNISHED WITH FINES OR TIME IN PRISON. THE SAME WRONGFUL CONDUCT MAY GIVE RISE TO BOTH **CRIMINAL** AND **CIVIL** CHARGES, AND SO SURVIVORS SHOULD ALWAYS CONSIDER PURSUING BOTH FORMS OF RELIEF.

WE WILL DISCUSS THE **CRIMINAL** AND **CIVIL** OPTIONS IN TURN.

CRIMINAL PROSECUTION OF FGM PERPETRATORS

MINN. STAT. § 609.2245

Criminal prosecutions against perpetrators of FGM under Minnesota law can be brought only by state prosecutors. While victims of FGM cannot themselves bring criminal actions, they can provide valuable assistance to the prosecuting attorneys bringing those actions.

Minnesota law defines FGM as the circumcising, excising or infibulating of the whole or part of any labia majora or labia minora or clitoris of another person.² Anyone who knowingly performs FGM is guilty of a felony. Consent by a minor or by a minor's parents is not a defense.³ Additionally, it should be noted that Minnesota prohibits the practice of FGM on adult women, as well as on minors.⁴

While there is an exception for surgical procedures performed by a licensed physician which are deemed necessary for the health of a person, performing FGM as a matter of custom or ritual is not included among the defenses listed in the statute.⁵

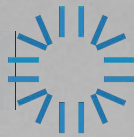
The most important way a survivor can assist a prosecuting attorney is by providing evidence, especially in the form of live testimony at trial. However, there are other forms of evidence that prosecuting attorneys may request from the survivor, including medical records, documented correspondence with the defendant, the names of other witnesses, the identities of other victims, and information about the defendant.

RESOURCES FOR VICTIMS OF FGM

MINN. STAT. § 144.3872

Minnesota law requires the commissioner of health to carry out educational, prevention and outreach activities to inform communities that typically perform FGM of the health risks and criminal penalties associated with FGM.⁶

Pursuant to this law, the Minnesota Department of Health has assembled a working group whose mission is to “recommend, inform and coordinate FGM prevention and community engagement efforts in Minnesota.”⁷ This group is actively working with community organizations to develop effective FGM prevention and community engagement strategies, develop recommendations to prevent FGM in Minnesota and identify and develop effective messaging for FGM prevention.⁸



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

ADDITIONAL CRIMINAL LAWS

IN ADDITION TO THE FGM STATUTE, THERE ARE SEVERAL OTHER CRIMINAL LAWS FOR WHICH A PERPETRATOR OF FGM MAY BE CONVICTED:⁹

1. AIDING AN OFFENDER (MINN. STAT. § 609.495)

While parents or other adults who did not actively participate in FGM are not liable under Minnesota's anti-FGM statute, they may still be liable under other laws to the extent they aided the offender in performing FGM. In Minnesota, an individual is guilty of aiding an offender if they conceal, aid or assist (by words or acts) another person who they know or have reason to know committed a crime. For example, a defendant could be liable for aiding an offender if they helped the person who committed FGM to (i) conceal the crime or (ii) avoid criminal liability after the fact. Aiding an offender is a felony in Minnesota and is punishable by up to three years in jail. The statute of limitations is three years from the occurrence.

2. AIDING AN OFFENDER (MINN. STAT. § 609.495)

Assault in the first degree occurs when the defendant assaults another and inflicts great bodily harm. Victims of FGM would in many cases be able to show great bodily harm, as that term is defined as permanent disfigurement or harm that causes a permanent loss or impairment of the function of any bodily member or organ.

3. DOMESTIC ASSAULT (MINN. STAT. § 609.2242)

Domestic assault occurs when a family or household member (i) commits an act with intent to cause fear of immediate bodily harm or death or (ii) intentionally inflicts or attempts to inflict bodily harm upon another. Domestic assault is a misdemeanor in Minnesota. However, more than one conviction for this offense within a ten year period could constitute a felony.

4. NEGLECT OR ENDANGERMENT OF A CHILD (MINN. STAT. § 609.378)

Neglect or endangerment of a child occurs when a parent, legal guardian or caretaker (i) willfully deprives a child of necessary supervision appropriate for the child's age or (ii) is reasonably able to make the necessary provisions but fails to do so, and the deprivation harms the child's physical, mental or emotional health. Neglect or endangerment of a child is punishable by up to five years in prison

5. FALSE IMPRISONMENT (MINN. STAT. § 609.255)

False imprisonment is the knowing confinement of (i) a minor without consent from their parent or legal custodian or (ii) any person without their consent. A parent, legal guardian or caretaker can be guilty of false imprisonment if they unreasonably confine or restrain a minor for a prolonged period of time and in a cruel manner that is excessive under the circumstances.

False imprisonment is a felony punishable by up to three years imprisonment.



ADDITIONAL CIVIL CAUSES OF ACTION

IN ADDITION TO THE CRIMES SUMMARIZED ABOVE, VICTIMS MAY COMMENCE A CAUSE OF ACTION IN CIVIL COURT. CIVIL COURT MAY BE MORE CONVENIENT, AS VICTIMS NEED TO SHOW ONLY THAT IT IS MORE LIKELY THAN NOT THAT THE DEFENDANT IS RESPONSIBLE FOR THE ALLEGED FGM. ADDITIONALLY, CIVIL COURTS MAY BE MORE WILLING TO ALLOW CERTAIN TYPES OF EVIDENCE THAT WOULD NOT BE PERMITTED IN A CRIMINAL TRIAL.

WHILE VICTIMS CAN RECEIVE COMPENSATION IN CIVIL COURT FOR THE HARMS THEY HAVE SUFFERED, SUCH COMPENSATION IS GENERALLY LIMITED TO THE DEFENDANT'S ACTUAL RESOURCES. NOTE THAT VICTIMS OF FGM MAY CHOOSE TO PURSUE BOTH CRIMINAL AND CIVIL CAUSES OF ACTION. THE STATUTE OF LIMITATIONS FOR EACH OF THESE CAUSES OF ACTIONS IS TWO YEARS FROM THE OCCURRENCE.¹⁰

1. ASSAULT

Assault happens when the defendant unlawfully attempts to apply actual force to the person of another, whether directly or indirectly.¹¹ It is worth noting that physical contact is not a necessary element of assault; however, the threat of violence is.¹² This means that an assault could occur even if the FGM procedure was never performed, so long as the defendant made an intentional and unlawful threat to cause bodily injury to the plaintiff, the plaintiff had a well-founded fear of immediate danger, and the defendant appeared readily able to carry out the act if not prevented.¹³

2. BATTERY

Battery includes the elements of assault and additionally requires the victim to have suffered an injury.¹⁴ In other words, the defendant must have intentionally attempted to unlawfully apply actual force to the victim and succeeded in doing so, so that it caused a physical injury to the victim.¹⁵ Intent refers to the defendant's intent for there to be contact, so that it does not matter if the defendant did not intend to cause the injury.¹⁶

3. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Intentional infliction of emotional distress happens when the defendant intentionally or recklessly engages in extreme and outrageous conduct which causes severe emotional distress to the plaintiff.¹⁷ The distress caused by the

defendant must be so extreme that it passes all boundaries of decency and no reasonable person could be expected to tolerate it.¹⁸ Since Minnesota courts tend to view claims of mental anguish and suffering as overly speculative, plaintiffs will likely need also to show evidence of a physical injury.¹⁹

4. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

To establish a claim for negligent infliction of emotional distress, it must be shown that (i) the plaintiff was in the zone of danger of physical impact, (ii) the plaintiff reasonably feared for her own safety and (iii) the plaintiff has severe emotional distress with physical manifestations²⁰ (i.e., some form of visible symptoms caused by the conduct in question, such as uncontrollable crying, trouble breathing, a high fever or headaches).²¹ The plaintiff must also have a close relationship to the third-party victim.²² Plaintiffs do not need to show they were within the “zone of danger” (i.e., in the immediate proximity of the danger) if the victim was their child.²³

Any claim for negligent infliction of emotional distress must be brought by a close relative of the survivor, not the survivor herself. Parents, children and spouses are all examples of individuals who could potentially bring such a cause of action.²⁴ Also, the plaintiff must show causation between the defendant’s actions and the plaintiff’s emotional distress.²⁵ It should be noted that this is a separate and independent cause of action, which may be maintained regardless of whether the victim has recovered money from the defendant.²⁶

5. NEGLIGENT SUPERVISION

If the victim is a minor, and the negligence of their parent or legal guardian allowed the FGM to occur, the victim may have a cause of action against that parent for negligent supervision of a child. The victim must show (i) that a duty was owed to plaintiff by the defendant, (ii) defendant breached this duty, (iii) injury and (iv) that the breach was a proximate cause of the injury.²⁷

Since parents are generally immune from liability for harm suffered by their children as a result of negligence, the victim must show that the negligent act involved an exercise of ordinary parental discretion with respect to care for the child.²⁸ In order to fit within this exception, the victim must show that the failure to prevent FGM occurred as a result of their parents’ negligence in providing care to them.



RIGHTS OF ALL SURVIVORS UNDER THE MINNESOTA CRIMINAL JUSTICE SYSTEM

Minnesota law provides numerous protections to crime victims, including survivors of FGM.

Under Minnesota state law, law enforcement officers are required to provide victims with information with respect to their rights to (i) be informed and participate in the prosecution process (if their attacker is criminally charged), (ii) be informed of their right to apply for financial restitution and (iii) request that their identity be withheld from public records, among other things.²⁹

If FGM was performed by a family member, the victim may qualify for certain protections provided under Minnesota state law to victims of domestic abuse. Victims of domestic abuse are allowed to ask the court to file an order for protection from domestic abuse, which orders the abuser to (i) refrain from committing further acts of abuse, (ii) leave the victim's household and (iii) refrain from entering the victim's residence, school or place of employment, among others.³⁰ Domestic abuse includes "the infliction of fear of imminent physical harm, bodily injury or assault,"³¹ so that an individual can seek a protection from domestic abuse even if she hasn't yet suffered physical harm or been cut.

The victim has the right, but is in no way obligated, to participate in the criminal trial. If convicted, the victim has the option to submit an oral or written victim impact statement summarizing the harm or trauma suffered as a result of the crime and reacting to the proposed sentence.³²

CONCLUSION

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



ENDNOTES



1. Minors can institute and prosecute a legal action through the representation of a “guardian ad litem”. A guardian ad litem is a court-appointed neutral party who is responsible for representing the best interests of the child in a court matter. See RCP § 17.02.
2. MINN. STAT. § 609.2245(1).
3. Id.
4. Id.
5. MINN. STAT. § 609.2245(2).
6. MINN. STAT. § 144.3872.
7. <https://www.health.state.mn.us/communities/rih/about/fgc.html>
8. <https://www.health.state.mn.us/communities/rih/about/fgc.html>
9. The statute of limitations for each of these criminal laws is three years. MINN. STAT. § 628.26(k).
10. MINN. STAT. § 541.07
11. Dahlin v. Fraser, 206 Minn. 476, 288 N.W. 851 (1939).
12. Thiede v. Town of Scandia Valley, 217 Minn. 218, 14 N.W.2d 400 (1944).
13. Cressy v. Republic Creosoting Co, 108 Minn. 349, 122 N.W. 484 (1909).
14. Ott v. Great N Ry, 70 Minn. 50, 72 N.W. 833 (1897).
15. Id.
16. Mohr v. Williams, 95 Minn. 261, 104 N.W. 12 (1905).
17. Hubbard v. United Press Int’l, Inc., 330 N.W.2d 428 (1983).
18. State by Woyke v. Tonka Corp., 420 N.W. 2d 624 (1988).
19. Hubbard v. United Press Int’l, Inc., 330 N.W.2d 438 (1983).
20. Engler v. Wehmas, 633 N.W. 2d 868 (Minn. Ct. App. 2001).
21. Jensen v. Arndt, 2018 Minn. App. Unpub. LEXIS 269 (2018).
22. Engler v. Ill. Farmers Ins. Co, 706 N.W.2d 764 (Minn. 2005).
23. MH v. Caritas Family Servs, 488 N.W. 2d 282 (Minn. 1992).
24. Id.
25. Id.
26. Id.
27. Lubbers v. Anderson, 539 N.W. 2d 398, 401-02 (Minn. 1995).
28. Willis v. K-Mart Corp., 345 N.W. 2d 442 (Minn. 1984).
29. MINN. STAT. § 611A.02.
30. MINN. STAT. § 629.341.
31. MINN. STAT. § 518B.01.
32. MINN. STAT. § 611A.037.