



# FGM SURVIVOR'S GUIDE

TO

# LEGAL REMEDIES

IN THE STATE OF  
**NEW YORK**

DEVELOPED FOR [AHA](#) FOUNDATION

THROUGH THE PRO BONO ASSISTANCE OF

WHITE & CASE LLP

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# DISCLAIMER

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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 NEW YORK 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 THREE MAIN REMEDIES AVAILABLE TO THEM IN THE COURTS OF NEW YORK.

FIRST, New York has specific anti-FGM laws creating criminal offenses against FGM’s perpetrators.

SECOND, survivors can potentially pursue recourse under several criminal and civil New York state laws not directly related to FGM.

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

PLEASE NOTE THAT NEW YORK LAW PROVIDES THAT MINORS CANNOT SUE ON THEIR OWN AND MUST BE REPRESENTED BY AN ADULT.<sup>1</sup>

## 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](http://www.who.int), and the different practices in various communities and countries of origin can be found at [www.28toomany.org](http://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](mailto:help@theahafoundation.org).





## REMEDIES AVAILABLE TO SURVIVORS UNDER NEW YORK LAW

**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:

## 1. CRIMINAL PROSECUTION UNDER THE ANTI-FGM STATUTE

Since 1997, New York has enacted a comprehensive anti-FGM legislation criminalizing this act and providing survivors with the ability to assist in the prosecution of FGM perpetrators.

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

New York 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 who is less than 18 years of age.<sup>2</sup> The New York penal code punishes with up to 4 years of imprisonment anyone who knowingly performs FGM.<sup>3</sup> Parents or legal guardians who knowingly consent to the commission of FGM on their child may be punished to up to 4 years of imprisonment.<sup>4</sup> Additionally, anyone who intentionally aids the commission of FGM is guilty of facilitating FGM and can be sentenced to a term of imprisonment up to one year.<sup>5</sup>

Importantly, under New York law, it is not a defense to a prosecution for this crime that the defendant did not know the age of the child or believed such age to be 18 or greater. Further, the fact that the operation was performed as a matter of custom or ritual is not a defense to criminal prosecution.<sup>6</sup>

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.

Charges must be brought within five years after the commission of FGM.<sup>7</sup> If the crime was performed against a victim that was under 18 at the time of commission of the offense, the limitations period does not begin to run until the victim has reached the age of 23 or the offense is reported to a law enforcement agency or statewide central register of child abuse and maltreatment - whichever occurs earlier.



## 2. CRIMINAL PROSECUTION UNDER OTHER CRIMINAL LAWS

### A. ASSAULT IN THE FIRST DEGREE (N.Y. C.L.S. § 120.10)

Under New York law, a person is guilty of first degree assault when he or she purposely causes a serious physical injury to another person by means of a deadly weapon or a dangerous instrument. A serious physical injury can be a serious and protracted disfigurement, a protracted impairment of health, or a protracted loss or impairment of the function of any bodily organ. A dangerous instrument is any instrument which is readily capable of causing death or a serious physical injury. A person found guilty of assault in the first degree can be sentenced to a term of imprisonment up to 25 years.

The statute of limitations is five years.<sup>8</sup>

### B. UNLAWFUL IMPRISONMENT IN THE FIRST DEGREE (N.Y. C.L.S. § 135.10))

Unlawful imprisonment in the first degree occurs when an individual restrains another under circumstances which expose the latter to a risk of serious physical injury. A person guilty of unlawful imprisonment in the first degree may be sentenced to up to four years of imprisonment.

The statute of limitation is five years.<sup>9</sup>

### C. ENDANGERING THE WELFARE OF A CHILD (N.Y. C.L.S. § 260.10)

A person is guilty of endangering the welfare of a child when he or she knowingly acts in a manner to be injurious to the physical, mental or moral welfare of a child less than seventeen years old. Actual harm to the child need not result. The maximum term of imprisonment is one year.

The statute of limitations is two years.<sup>10</sup>

### D. FORCIBLE TOUCHING (N.Y. C.L.S. § 135.52)

An individual is guilty of forcible touching when he or she intentionally and for no legitimate purpose forcibly touches the sexual parts of another person in order to degrade or abuse such person. A person guilty of forcible touching can be sentenced to a maximum of one year of imprisonment.

The statute of limitations is two years.<sup>11</sup>



# CIVIL CAUSES OF ACTION:

IN ADDITION TO THE CRIMES SUMMARIZED ABOVE, VICTIMS MAY COMMENCE A CIVIL CAUSE OF ACTION. CIVIL COURTS MAY BE MORE CONVENIENT, AS VICTIMS ONLY NEED TO SHOW 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 COURTS 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.

## 1. ASSAULT

Assault is manifested by the imminent threat or fear that a battery will be effectuated. Plaintiff must prove that defendant engaged in physical conduct that placed her in imminent apprehension of harmful contact.<sup>12</sup> Assault does not require the FGM procedure to have been performed, provided that 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 to be able to carry out the act if not prevented.

The statute of limitations is one year.<sup>13</sup>

## 2. BATTERY

Battery is created by an unwanted, offensive contact with the body of one person by another. Plaintiff must prove that there was bodily contact; that such contact was offensive; and that the defendant intended to make the contact. Plaintiff does not have to prove that defendant intended to physically injure her.<sup>14</sup>

The statute of limitations is one year.<sup>15</sup>

## 3. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Intentional infliction of emotional distress occurs when an individual has engaged in extreme and outrageous conduct which causes severe emotional



distress to another. Plaintiff must prove the following four elements: (i) extreme and outrageous conduct; (ii) intent to cause severe emotional distress;<sup>16</sup> (iii) a causal connection between the conduct and the injury; and (iv) severe emotion distress. The threshold of outrageousness is high, as plaintiff must prove that the conduct goes beyond all possible bounds of decency such that it can be regarded as atrocious and utterly intolerable in a civilized community.<sup>17</sup> Emotional pain and suffering, as well as severe mental illness, shock, fright and humiliation, are evidence of severe emotional distress.<sup>18</sup> Admissible evidence may take the form of an affidavit or affirmation from a psychiatrist or psychologist who examined or treated the plaintiff.<sup>19</sup>

The statute of limitations is one year.<sup>20</sup>

#### 4. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

A cause of action to recover damages for negligent infliction of emotional distress generally requires a plaintiff to show a breach of a duty of care owed to her which unreasonably exposed her to an unreasonable risk of bodily injury or death.<sup>21</sup> In New York, it is not necessary that the perpetrator's negligent conduct caused a physical injury if the mental injury is a direct result of the breach of duty and the claim possesses some guarantee of genuineness (a likelihood that there exists a serious mental distress arising out of special circumstances.)<sup>22</sup> Unlike intentional infliction of emotional distress, the conduct of the perpetrator does not have to be outrageous and extreme.<sup>23</sup>

The statute of limitations is three years.





# RIGHTS OF ALL SURVIVORS UNDER THE NEW YORK CRIMINAL JUSTICE SYSTEM

SURVIVORS OF FGM RECEIVE NUMEROUS PROTECTIONS UNDER NEW YORK LAW. NEW YORK LAW REQUIRES LAW ENFORCEMENT TO PROVIDE VICTIMS WITH INFORMATION ABOUT EMERGENCY MEDICAL SERVICES, VICTIM'S COMPENSATION BENEFITS, THE ROLE OF THE VICTIMS IN A CRIMINAL JUSTICE PROCESS AND THE CONTACT INFORMATION FOR THE PROSECUTING ATTORNEY.<sup>24</sup>

Law enforcement officers and district attorneys ensure routine notification of victims of the phases of the criminal case and steps that can be undertaken to protect victims from threats or intimidation.<sup>25</sup> Victims will also be notified of the arrest of the accused, the initial appearance of the accused before a judicial officer, and the release of the accused pending judicial proceedings.<sup>26</sup> Victims are entitled to a police report of the crime.<sup>27</sup> In the case of a felony, victims must be consulted by the district attorney in order to obtain their views regarding disposition of the criminal case by dismissal, plea of guilty or trial.<sup>28</sup> Finally, information regarding the right to seek restitution and reparation must also be provided to victims prior to sentencing.<sup>29</sup>

THE NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL HAS ISSUED A "CRIME VICTIMS BILL OF RIGHTS" SUMMARIZING VICTIM'S RIGHTS IN THE CRIMINAL JUDICIAL PROCESS.<sup>30</sup>

## CONCLUSION

FOR MORE INFORMATION, PLEASE CONTACT AHA FOUNDATION AT [INFO@THEAHAFOUNDATION.ORG](mailto: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 person appointed by the court either upon its own initiative or upon the minor’s motion (if the minor is 14 years old or older) or upon the motion of any other relative, friend or guardian. N.Y. C.P.L.R. § R1202 (2012).
2. N.Y. C.L.S. § 130.85 (1) (a).
3. N.Y. C.L.S. § 130.85 (1) (a). Note that a surgical operation (i) necessary to the health of the person or (ii) performed for medical purposes on a person in labor or who has just given birth is not considered FGM. N.Y. C.L.S. § 130.85 (2).
4. N.Y. C.L.S. § 130.85 (1) (b).
5. N.Y. C.L.S. § 260.22.
6. N.Y. C.L.S. § 130.85 (3).
7. N.Y. Crim. Proc. Law § 30.10.
8. Id.
9. Id.
10. Id.
11. Id.
12. *Bastein v. Sotto*, 299 A.D.2d 432, 433, 749 N.Y.S.2d 538 (2002).
13. N.Y. C.P.L.R. § 215(3).
14. *Lamberston v. United States*, 528 F.2d 441 (2d Cir. 1976) (citing *Masters v. Becker*, 22 A.D. 2d 118, 120 254 N.Y.S.2d 633 (2d Dept. 1964).
15. N.Y. C.P.L.R. § 215(3).
16. *Howell v New York Post Co.*, 81 NY2d at 115, 121, 596 N.Y.S.2d 350 (2d Dept. 1993).
17. *Murphy v American Home Prods. Corp.*, 58 NY2d 293, 303, 461 N.Y.S. 2d 232 (2d Dept. 1983) (quoting Restatement [Second] of Torts § 46, Comment d.
18. *Waters v. Town Sports Intl, Holdings, Inc.*, 44 Misc. 3d 1217(a) \* 20, 997 N.Y.S.2d 102 (2014).
19. *Josephine v. Columbia Univ.*, 2004 NYLJ LEXIS 3258 \* 3 (2014).
20. N.Y. CPLR § 215(3).
21. *Bovsun v. Sanperi*, 61 NY2d 219, 461 N.E.2d 843, 473 N.Y.S.2d 357 (1984).
22. *Greene v. Esplanade Venture Partnership*, 172 AD3d 1013, 1025-26, 101 N.Y.S.3d 99 (2019); [sets/nypd/downloads/pdf/collaborative\\_policing/ovs-crime-victims-bill-of-rights.pdf](https://www1.nyc.gov/assets/nypd/downloads/pdf/collaborative_policing/ovs-crime-victims-bill-of-rights.pdf)
23. Id.
24. N.Y. Executive Law, Article 23, Section 64I.
25. Id.
26. Id.
27. Id., Section 646
28. Id. Section 642.
29. Id. Section 64I.
30. See New York State Attorney General, Crime Victim Bill of Rights, available at [https://www1.nyc.gov/assets/nypd/downloads/pdf/collaborative\\_policing/ovs-crime-victims-bill-of-rights.pdf](https://www1.nyc.gov/assets/nypd/downloads/pdf/collaborative_policing/ovs-crime-victims-bill-of-rights.pdf)