



FGM SURVIVOR'S GUIDE

— TO —

LEGAL REMEDIES

IN THE COMMONWEALTH OF
PENNSYLVANIA

DEVELOPED FOR [AHA](#) FOUNDATION

THROUGH THE PRO BONO ASSISTANCE OF

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LAST UPDATED: JANUARY 5, 2022





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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 CIRCUMSTANCE.

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

AN ATTORNEY LICENSED TO PRACTICE LAW IN THE COMMONWEALTH OF PENNSYLVANIA (PENNSYLVANIA OR THE COMMONWEALTH) 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 PENNSYLVANIA CONCERNING ANY SPECIFIC LEGAL ISSUE.

INTRODUCTION

THIS GUIDE AIMS AT PROVIDING SURVIVORS OF FEMALE GENITAL MUTILATION (“FGM”) WITH A COMPREHENSIVE FRAMEWORK EXPLAINING BOTH CIVIL AND CRIMINAL REMEDIES AVAILABLE TO THEM IN THE COURTS OF PENNSYLVANIA, 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 as necessary in providing legal recourse to FGM survivors.

INTRODUCTION

Criminal proceedings in Pennsylvania may only be brought by prosecutors, which are most commonly resulting from complaints filed by police officers. In Pennsylvania, FGM criminal complaints can also be filed by a private citizen, without involvement of a police officer, but a prosecutor will ultimately determine whether the private citizen's complaint will result in criminal charges being filed. Prosecutors can bring criminal charges against a person who commits FGM under Pennsylvania's FGM-specific laws. In addition, prosecutors can bring criminal charges for crimes that are not specific to FGM, including assault, conspiracy, endangering the life or health of a child, neglecting or abusing a minor, unlawful restraint, or kidnapping. Criminal proceedings may be commenced by a prosecutor at any time if the FGM survivor is under the age of 18. As soon as the FGM survivor reaches the age of 18, the action must be brought by the prosecutor within two years. If, however, the accused is continuously absent from the Commonwealth or has no reasonably discoverable home address or place of work within the Commonwealth, or their prosecution for the same offense is pending in the Commonwealth, the statute of limitation is suspended.⁵

In addition to criminal charges, the Commonwealth of Pennsylvania offers FGM survivors additional legal remedies through its civil state court system. While criminal proceedings against perpetrators of FGM can be brought only by Commonwealth prosecutors at the expense of the Commonwealth, an FGM plaintiff who is under the age of 18 can commence a civil cause of action on their own accord by instructing a legal representative for a variety of civil causes of action, including assault, battery, intentional infliction of emotional distress, negligent infliction of emotion distress, and negligent supervision. 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.

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



The Pittsburgh region ranks among one of the top metropolitan areas in the US for FGM risk according to the U.S. Centers for Disease Control and Prevention.⁶ 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 practiced 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 PENNSYLVANIA ANTI-FGM LAW

PENNSYLVANIA 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, 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 COMMONWEALTH OF PENNSYLVANIA'S **CIVIL** LAW AND **CRIMINAL** LAW OFFER DIFFERENT FORMS OF JUSTICE TO SURVIVORS OF FGM.

PENNSYLVANIA'S **CRIMINAL** LAW REGIME AFFORDS FGM SURVIVORS A THREE-PRONGED REDRESS BY WAY OF SPECIFIC FGM LEGISLATION, FGM CRIME RELATED LEGISLATION, AND GENERAL **CRIMINAL** LAW PRINCIPLES. A **CRIMINAL** ACTION IS A LAWSUIT BROUGHT ONLY BY A PUBLIC PROSECUTOR, WHO IS AN EMPLOYEE OF EITHER THE FEDERAL, STATE, OR LOCAL GOVERNMENT. WHILE SURVIVORS OF FGM CANNOT THEMSELVES BRING **CRIMINAL** ACTIONS, THEY CAN PROVIDE VALUABLE ASSISTANCE TO THE PROSECUTING ATTORNEYS BRINGING THOSE ACTIONS. AN FGM SURVIVOR MAY FILE A COMPLAINT FOR REVIEW BY THE PROSECUTOR WHICH CAN SERVE AS THE BASIS OF A PROSECUTOR FILING CHARGES. ONCE CHARGES ARE FILED AGAINST THE PERPETRATOR, AN FGM SURVIVOR MAY ALSO TESTIFY PRIOR TO CONVICTION OR OFFER A VICTIM-IMPACT STATEMENT AFTER A CONVICTION FOR THE COURT TO CONSIDER WHEN DETERMINING THE SENTENCING. IF THE PERPETRATOR IS FOUND GUILTY IN A **CRIMINAL** CASE, THEY MAY BE PUNISHED WITH FINES, TIME IN JAIL, OR BOTH. 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.

CRIME SPECIFIC TO FGM

18 PA. CONS. STAT. § 3132

A person commits the offense of female mutilation if the person: (1) knowingly circumcises, excises or infibulates the whole or any part of the genitalia of a minor; (2) is a parent of a minor and the parent knowingly consents or permits the circumcision, excision or infibulation of the whole or any part of the minor's genitalia; or (3) knowingly removes or permits the removal of a minor from this Commonwealth for the purpose of circumcising, excising or infibulating, in whole or in part, the genitalia of the minor.

Female mutilation is a felony of the first degree and if convicted, the offender may be sentenced to a term of up to 20 years imprisonment and/or pay a fine not exceeding \$25,000. It shall not be a defense to a prosecution under 18 PA. CONS. STAT. § 3132 (2019) if: (1) the person who undertook the act believed that the procedure was necessary or appropriate as a matter of custom, ritual or standard practice; or (2) the minor upon whom the circumcision, excision or infibulation was performed consented to the procedure or that the minor's parent consented to the procedure. As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

1. "Minor." A natural person who is a female and who is under 18 years of age.
2. "Parent." The term includes a natural parent, stepparent, adoptive parent, guardian or custodian of the Minor.

Criminal action may be commenced by a prosecutor at any time if the victim is under 18 years of age. Once the victim reaches 18 years of age, legal action must be commenced within two years. If the victim was at least 18 years of age when the offense was committed, prosecution must be commenced within two years after it was committed.⁸

If the accused is continuously absent from the Commonwealth, has no reasonably ascertainable place of abode or work within the Commonwealth, or if a prosecution against the accused for the same conduct against a different victim is already pending in the Commonwealth, the statute of limitation is tolled.⁹

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

ADDITIONAL CRIMINAL LAWS

1. ASSAULT AND BATTERY CRIMES

A person is guilty of assault if they attempt to cause or intentionally, knowingly or recklessly cause bodily injury to another person; negligently cause bodily injury to another person with a deadly weapon; or attempt by physical menace to put another person in fear of imminent serious bodily injury. Simple assault is a misdemeanor of the second degree unless committed against a child under 12 years of age by a person 18 years of age or older, in which case it is a misdemeanor of the first degree. If convicted, the offender may be sentenced to a prison term of up to five years and a fine of up to \$10,000 if the offense is a misdemeanor of the first degree, or a term of two years and a fine of up to \$5,000 if the offense is a misdemeanor of the second degree.¹⁰ If the offender is convicted of aggravated assault against a family or household member and the offender knew the crime was witnessed, either through sight or sound, by a minor who is also a family or household member of the offender or victim, a judge may, in accordance with certain guidelines, enhance the offender's prison sentence.¹¹

Criminal legal action may be commenced by a prosecutor at any time if the victim is under 18 years of age. Once the victim reaches 18 years of age, legal action must be commenced within two years. If the victim was at least 18 years of age when the offense was committed, prosecution, must be commenced within two years after it was committed.¹²

If the accused is continuously absent from the Commonwealth or has no reasonably ascertainable place of abode or work within the Commonwealth, or if a prosecution against the accused for the same conduct is pending in the Commonwealth, the statute of limitation is tolled.¹³

Aggravated assault is defined as when a person attempts to cause or intentionally or knowingly cause bodily injury to another with a deadly weapon; attempts to cause or intentionally, knowingly or recklessly cause bodily injury to a child less than six years of age, by a person 18 years of age or older; or attempts to cause or intentionally, knowingly or recklessly cause serious bodily injury to a child less than 13 years of age, by a person 18 years of age or older. Aggravated assault committed by a person 18 years of age or older against a child less than 13 years of age is a felony of the first degree. If convicted, the offender may be sentenced to a prison term of up to 20 years and a fine of up to \$25,000.¹⁴ If the offender is convicted of aggravated assault against a family or household member and the offender knew the crime was witnessed, either through sight or sound, by a minor who is also a family or household member of the offender or victim, a judge may, in accordance with certain guidelines, enhance the offender's prison sentence.¹⁵

Aggravated assault committed either (1) with a deadly weapon, or (2) by a person 18 years of age or older against a child less than six years of age is a felony of the second degree. If convicted, the offender may be sentenced to a prison term of up to 10 years and a fine of up to \$25,000. If the offender is convicted of aggravated assault against a family or household member and the offender knew the crime was witnessed, either through sight or sound, by a minor who is also a family or household member of the offender or victim, a judge may, in accordance with certain guidelines, enhance the offender's prison sentence.¹⁶

Mandatory Minimums: If the offender is convicted of attempting to cause or intentionally causing bodily injury to the victim with a deadly weapon, and the victim is less than 16 years of age at the time of the offense, the offender must be sentenced to a mandatory prison term of at least two years.¹⁷

Legal action may be commenced by a prosecutor at any time if the victim is under 18 years of age. Once the victim reaches 18 years of age, legal action must be commenced within five years. If the victim was at least 18 years of age when the offense was committed, prosecution must be commenced within five years after it was committed.¹⁸

If the accused is continuously absent from the Commonwealth or has no reasonably ascertainable place of abode or work within the Commonwealth, or if a prosecution against the accused for the same conduct is pending in the Commonwealth, the statute of limitation is tolled.¹⁹

2. RECKLESSLY ENDANGERING ANOTHER PERSON

The offense of recklessly endangering another person refers to when a perpetrator recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury. A person commits a misdemeanor of the second degree if they engage in such conduct and if convicted they may be sentenced to a term of 2 years.

3. KIDNAPPING AND RELATED CRIMES

A person is guilty of kidnapping if they unlawfully remove another person a substantial distance under the circumstances from the place where he is found, or if he unlawfully confines another for a substantial period in a place of isolation, with any of the following intentions:

1. To hold for ransom or reward, or as a shield or hostage.
2. To facilitate commission of any felony or flight thereafter.
3. To inflict bodily injury on or to terrorize the victim or another.

The removal or confinement is unlawful if it is accomplished by force, threat or deception, or, in the case of an incapacitated person, if it is accomplished without the consent of a parent, guardian or other person responsible for general supervision of the person's welfare.

Kidnapping is a first degree felony. If convicted, the offender may be sentenced to a prison term of up to 20 years and a fine of up to \$25,000.²⁰ If the convicted offender had previously been convicted of a "crime of violence," including kidnapping, he or she is subject to a mandatory minimum sentence of at least ten years imprisonment. If the convicted offender had previously been convicted of at least two other crimes of violence arising from separate criminal transactions, he or she is subject to a mandatory minimum sentence of at least 25 years imprisonment. Upon conviction for a third or subsequent crime of violence, a judge may sentence the offender to life in prison without the possibility of parole.²¹

A "crime of violence" includes, but is not limited to: involuntary deviate sexual intercourse; aggravated indecent assault; sexual assault; kidnapping; or criminal

attempt, criminal conspiracy, or criminal solicitation to commit murder, or any of the offenses listed above, or an equivalent crime under the laws of Pennsylvania in effect at the time of the commission of the offense or an equivalent crime in another jurisdiction.

Legal action may be commenced by a prosecutor at any time if the victim is under 18 years of age. Once the victim reaches 18 years of age, legal action must be commenced within five years. If the victim was at least 18 years of age when the offense was committed, prosecution must be commenced within five years after it was committed.²²

If the accused is continuously absent from the Commonwealth or has no reasonably ascertainable place of abode or work within the Commonwealth, or if a prosecution against the accused for the same conduct is pending in the Commonwealth, the statute of limitation is tolled.²³

4. KIDNAPPING A MINOR

A person is guilty of kidnapping of a minor if he unlawfully removes a person under 18 years of age a substantial distance under the circumstances from the place where he is found, or if he unlawfully confines a person under 18 years of age for a substantial period in a place of isolation, with any of the following intentions:

1. To hold for ransom or reward, or as a shield or hostage.
2. To facilitate commission of any felony or flight thereafter.
3. To inflict bodily injury on or to terrorize the victim or another.

The removal or confinement is unlawful if it is accomplished by force, threat or deception, or, in the case of a person under 14 years of age, if it is accomplished without consent of a parent, guardian or other person responsible for general supervision of his welfare.

Kidnapping a minor is a felony of the first degree. If convicted, the offender maybe sentenced to a prison term of up to 20 years and a fine of up to \$25,000. If the convicted offender had previously been convicted of a “crime of violence,” including kidnapping, he or she is subject to a mandatory minimum sentence of at least ten years imprisonment. If the convicted offender had previously been convicted of at least two other crimes of violence arising from

separate criminal transactions, he or she is subject to a mandatory minimum sentence of at least 25 years imprisonment. Upon conviction for a third or subsequent crime of violence, a judge may sentence the offender to life in prison without the possibility of parole.²⁴ A “crime of violence” includes, but is not limited to: involuntary deviate sexual intercourse; aggravated indecent assault; sexual assault; kidnapping; or criminal attempt, criminal conspiracy, or criminal solicitation to commit murder, or any of the offenses listed above, or an equivalent crime under the laws of Pennsylvania in effect at the time of the commission of the offense or an equivalent crime in another jurisdiction.

Legal action may be commenced by a prosecutor at any time if the victim is under 18 years of age. Once the victim reaches 18 years of age, legal action must be commenced within five years.²⁵

If the accused is continuously absent from the Commonwealth or has no reasonably ascertainable place of abode or work within the Commonwealth, or if a prosecution against the accused for the same conduct is pending in the Commonwealth, the statute of limitation is tolled.²⁶

5. UNLAWFUL RESTRAINT

A person commits the offense of unlawful restraint if he or she knowingly: (1) restrains another unlawfully in circumstances exposing the victim to risk of serious bodily injury; or (2) holds the victim in a condition of involuntary servitude.

Unlawful restraint of a person 18 years of age or older is a misdemeanor of the first degree. If convicted, the offender may be sentenced to a prison term of up to five years and a fine of up to \$10,000.²⁷

Unlawful restraint of a person under 18 years of age is a felony of the second degree. If convicted, the offender may be sentenced to a prison term of up to ten years and a fine of up to \$25,000.²⁸

Legal action may be commenced by a prosecutor at any time if the victim is under 18 years of age. Once the victim reaches 18 years of age, legal action must be commenced within two years. If the victim was at least 18 years of age when the offense was committed, prosecution must be commenced within two years after it was committed.²⁹

If the accused is continuously absent from the Commonwealth or has no reasonably ascertainable place of abode or work within the Commonwealth, or if a prosecution against the accused for the same conduct is pending in the Commonwealth, the statute of limitation is tolled.³⁰

If the victim is a person under 18 years of age, a parent of the victim commits a felony of the second degree if they knowingly restrains another unlawfully so as to interfere substantially with their liberty.

6. CHILD ENDANGERMENT CRIMES

A person commits the offense of child endangerment if they knowingly or recklessly take or entice any child under the age of 18 years from the custody of their parent, guardian or other lawful custodian, when the perpetrator has no privilege to do so. The offense is a felony of the third degree and if convicted, the offender may be sentenced to a term of 1 year unless: (1) the offender, not being a parent or person in equivalent relation to the child, acted with knowledge that their conduct would cause serious alarm for the safety of the child, or (2) in reckless disregard of a likelihood of causing such alarm. In such cases, the offense shall be a felony of the second degree and if convicted, the offender may be sentenced to a term of two years.

7. CONSPIRACY

A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission the person: (1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or (2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime. If a person guilty of conspiracy, knows that a person with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring with such other person or persons, to commit such crime whether or not he knows their identity. If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship. Except as otherwise provided in this title, attempt, solicitation and conspiracy are crimes of the same grade and degree as the most serious offense which is attempted or solicited or is an object of the conspiracy.



CIVIL CAUSES OF ACTION

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. PENNSYLVANIA 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

An assault may be described as an act intended to put another person in a situation where they reasonably perceives that they would be harmed through some sort of harmful or offensive bodily contact, and which succeeds in causing fear or anxiety of such action being committed on their person. The perpetrator must be in a position to carry out the threat immediately, and they must take some affirmative action to do so.³¹

The FGM survivor must commence legal action within 2 years of the assault.³² If the FGM survivor is a minor, they may bring the claim within 2 years of turning age 18.

2. BATTERY

Battery is the unconsented touching of another person that is either harmful or offensive.³³ Case law supports that a surgical procedure performed on a patient without consent is battery.³⁴ Hence, performing FGM on another person without their consent is a battery.

Civil action must be commenced within 2 years of the battery.³⁵ If the plaintiff is a minor, they may bring the claim within two years of turning age 18.³⁶ In the case of sexual abuse claims,³⁷ an individual has 37 years to commence legal action³⁸ for damages if the abuse occurred when they were a minor, and 30 years if it occurred when they were under 24 years of age.³⁹

3. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

An FGM survivor will have a claim for intentional infliction of emotional

distress against a defendant if it can be established that the defendant's conduct was extreme and outrageous and intentionally or recklessly caused severe emotional distress⁴⁰ and if bodily harm to the other person results from it. Liability has been found only when the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.⁴¹

Legal action must be commenced within 2 years of the infliction of emotional distress.⁴² If the plaintiff is a minor, they may bring the claim within 2 years of turning age 18.⁴³ In the case of sexual abuse claims, an individual has 37 years to commence legal action if the abuse occurred when they were a minor, and 30 years if it occurred when they were under 24 years of age.

4. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

An FGM plaintiff will have a claim for negligent infliction of emotional distress if it can be established that the defendant's breach of duty proximately caused the plaintiff's injury or distress.⁴⁴ In the context of a claim for emotional distress, the action may be sustained under the three rules:

1. The impact rule where the distress was accompanied by physical injury.
2. The zone of danger rule where the victim was in the zone of danger of injury or impact.
3. The bystander rule where the victim was outside the zone of danger, but witnessed injury or death of a close family member.⁴⁵

Legal action must be commenced within 2 years of the infliction of the emotional distress.⁴⁶ If the plaintiff is a minor, they may bring the claim within 2 years of turning age 18.⁴⁷ In the case of sexual abuse claims, an individual has 37 years to commence legal action if the abuse occurred when they were a minor, and 30 years if it occurred when they were under 24 years of age.

5. NEGLIGENT SUPERVISION

Pennsylvania allows a child to maintain a cause of action for negligent supervision.⁴⁸ Courts use a reasonable parent standard to gauge a parent's

supervision of their child.⁴⁹ Where a parent's negligence results in a minor being subjected to FGM, legal action may be commenced by the minor against their parent within 2 years of turning age 18.⁵⁰

6. PARENTAL IMMUNITY DOCTRINE

In Pennsylvania, a child can file a lawsuit against their parent for intentional tort, as the parental immunity doctrine is no longer recognized in Pennsylvania.⁵¹



RIGHTS OF ALL SURVIVORS UNDER THE PENNSYLVANIA CRIMINAL JUSTICE SYSTEM

NO JUDGMENT OR ORDER OF RESTITUTION SHALL DEBAR THE VICTIM, BY APPROPRIATE ACTION, TO RECOVER FROM THE OFFENDER AS OTHERWISE PROVIDED BY LAW, PROVIDED THAT ANY CIVIL AWARD SHALL BE REDUCED BY THE AMOUNT PAID UNDER THE CRIMINAL JUDGMENT.

CRIME VICTIMS ACT, 18 PA. STAT. ANN. §§ 11.101 - 11.5102

§ 11.201 (VICTIMS' RIGHTS)

Victims of crime can provide comment or a victim-impact statement for the court to consider when the court is determining the sentencing or disposition in the case of a juvenile offender. In accordance with the Crime Victims Act, the victims have the right to receive basic information regarding the services available to them and to be notified of certain significant actions and proceedings within the criminal and juvenile justice systems pertaining to their case. Among other rights, the victim has the right not to be excluded from any criminal proceeding and to be accompanied at all criminal and all juvenile proceedings in accordance with 42 PA. CONS. STAT. § 6336 (relating to conduct of hearings) by a family member, a victim advocate or other person providing assistance or support.

Additionally, the victim has the right to have notice and to provide prior comment on a judicial recommendation that the defendant participate in a motivational boot camp pursuant to the act of December 19, 1990 (P.L. 1391, No. 215), known as the Motivational Boot Camp Act.

In personal injury crimes where the adult is sentenced to a local correctional facility, the victim has the right, among others, to receive immediate notice of an escape of the adult and of subsequent apprehension and given the opportunity to receive notice of and to provide prior comment on a recommendation sought by the Department of Corrections that the offender participate in a motivational boot camp pursuant to the Motivational Boot Camp Act.

If, upon the request of the victim of a personal injury crime committed by a juvenile, the juvenile is ordered to residential placement, a shelter facility or a detention center, the victim has the right to receive prior notice of the date of the release of the juvenile, transfer between placement facilities, escape and reapprehension of the juvenile. The victim also has the right to receive immediate notice of the release of the adult on bail under 23 PA. CONS. STAT. Ch. 61 (relating to protection from abuse).

Moreover, the victim has the right to be notified of the details of the final disposition of the case of a juvenile.⁵² Upon the request of the victim of a personal injury crime, the victim has the right to be notified of the termination of the courts' jurisdiction.

§ 11.701 (PERSONS ELIGIBLE FOR COMPENSATION)

Except as otherwise provided in the Crime Victims Act, the following persons shall be eligible for compensation: (1) a direct victim, (2) an intervenor, (3) a surviving spouse, parent or child of a deceased direct victim or intervenor and (4) any other individual dependent for principal support upon a deceased direct victim or intervenor. The Attorney General may at any time sue the offender or the direct victim, or both, to recover the award if the offender benefits from the award.

§ 11.702 (FILING CLAIMS FOR COMPENSATION)

Except as otherwise provided in the Crime Victims Act, a claim for compensation may be filed by an individual eligible for compensation.³³ If the individual is a minor or mentally incompetent, the claim may be filed by a parent or guardian or a person who assumes financial responsibility for services eligible for compensation to receive compensation for eligible services provided to the minor.³⁴ This claim must be filed not later than 2 years after the discovery of the occurrence of the crime upon which the claim is based or not later than 2 years after the death of the direct victim or intervenor as a result of the crime or the discovery and identification of the body of a murder victim.³⁵

However, if a direct victim is under 18 years of age at the time of the occurrence of the crime and the alleged offender is the direct victim's parent or a person responsible for the direct victim's welfare, an individual residing in the same home as the direct

victim or a paramour of the direct victim's parent, the limitation period under this subsection is temporarily suspended until the direct victim reaches 21 years of age.⁵⁶ It shall run until the later of the end of the limitation period for the offense, which could be 2 years for most offenses and 5 years for major offenses such as kidnapping, aggravated assault,⁵⁷ or not later than two years after the discovery of the occurrence of the crime upon which the claim is based or not later than two years after the death of the direct victim or intervenor as a result of the crime.⁵⁸

If a direct victim is under 18 years of age at the time of the occurrence of the crime and the direct victim is seeking reimbursement for counseling services only, the limitation period under this subsection is temporarily suspended until the direct victim reaches 21 years of age, limitation period shall run until the later of the end of the limitation period for the offense, which could be 2 years for most offenses and 5 years for major offenses such as kidnapping, aggravated assault,⁵⁹ or not later than two years after the discovery of the occurrence of the crime upon which the claim is based or not later than two years after the death of the direct victim or intervenor as a result of the crime.⁶⁰ Claims must be filed with the bureau in person, by mail or by any electronic means authorized by the Office of Victims' Services.

§ 11.703 (MINIMUM ALLOWABLE CLAIM)

Except as set forth in subsection (b), no award shall be made on a claim unless the claimant has incurred an aggregate minimum out-of-pocket loss, loss of earnings or loss of support of \$100. Subsection (a)

shall not apply if the direct victim was 60 years of age or older at the time the crime occurred.

§ 11.706 (EMERGENCY AWARDS)

If undue hardship will result to the claimant if immediate payment is not made, the Office of Victims' Services may make an emergency award to the claimant pending a final decision in the case. The total amount of the emergency award shall not exceed \$1,500 per claim or at a rate set by the Office of Victims' Services. The amount of the emergency award shall be deducted from any final award made to the claimant. The excess of the amount of the emergency award over the amount of the final award or the full amount of the emergency award if no final award is made shall be repaid by the claimant to the Office of Victims' Services.

§ 11.901 (ELIGIBILITY OF VICTIMS)

A victim has the rights and is eligible for the services under sections 201 and 902 the Crime Victims Act only if the victim reported the crime to law enforcement authorities without unreasonable delay after its occurrence or discovery, unless the victim had a reasonable excuse not to do so.

§ 11.902 (ESTABLISHMENT OF BASIC SERVICES FOR VICTIMS OF CRIME)

The commission shall provide technical assistance to and make grants to district attorneys, other criminal

justice agencies or victim service agencies which provide crime victims with the (1) notification services, (2) the protection services, (3) the procedures for the expedited return by law enforcement officials of personal property of victims which is held for prosecutorial purposes, (4) the services related to the rights of victims under Chapter 2 and, (5) other services as defined by the commission.

RESTITUTION FOR INJURIES TO PERSON OR PROPERTY, 18 PA. CONS. STAT. § 1106 (1976)

A person convicted of any personal injury crime, including FGM, shall make restitution in addition to any criminal punishment imposed if the victim suffered personal injury directly resulting from the crime. This restitution shall consider the extent of injury suffered by the victim. However, the court shall not order incarceration of a defendant for failure to pay restitution if the failure results from the offender's inability to pay.

The court shall order full restitution regardless of the current financial resources of the defendant, to provide the victim with the fullest compensation for the loss. The court shall not reduce a restitution award by any amount that the victim has received from the Crime Victim's Compensation Board or other government agency but shall order the defendant to pay any restitution ordered for loss previously compensated by the board to the Crime Victim's Compensation Fund or other designated account when the claim involves a government

agency in addition to or in place of the board. The court shall not reduce a restitution award by any amount that the victim has received from an insurance company but shall order the defendant to pay any restitution ordered for loss previously compensated by an insurance company to the insurance company.

Moreover, it is the responsibility of the district attorneys of the respective counties to make a recommendation to the court at or prior to the time of sentencing as to the amount of restitution to be ordered. This recommendation shall be based upon information solicited by the district attorney and received from the victim.





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.⁶¹ IN ADDITION, FGM IS OFTEN FOLLOWED BY EARLY MARRIAGE TO THE DETRIMENT OF THE SURVIVOR'S EDUCATION AND CAREER.⁶²

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. 42 PA. CONS. STAT. § 5554
6. <https://www.pghcitypaper.com/pittsburgh/new-bill-makes-female-genital-mutilation-a-felony-in-pennsylvania/Content?oid=15385818> – retrieved on 14 January 2022
7. <https://www.un.org/en/observances/female-genital-mutilation-day>.
8. 42 PA. CONS. STAT. § 5554 (tolling of statute); 42 PA. CONS. STAT. § 5552 (statute of limitations).
9. 42 PA. CONS. STAT. § 5554
10. 18 PA. CONS. STAT. § 1104 (sentencing for misdemeanors); 18 PA. CONS. STAT. § 1101 (fines).
11. 42 PA. CONS. STAT. § 9720.8
12. 42 PA. CONS. STAT. § 5554 (tolling of statute); 42 PA. CONS. STAT. § 5552 (statute of limitations).
13. 42 PA. CONS. STAT. § 5554
14. 18 PA. CONS. STAT. § 1103 (sentencing for felonies); 18 PA. CONS. STAT. § 1101 (fines).
15. 42 PA. CONS. STAT. § 9720.8.
16. 42 PA. CONS. STAT. § 9720.8.
17. 42 PA. CONS. STAT. § 9718.
18. 42 PA. CONS. STAT. § 5554 (tolling of statute); 42 PA. CONS. STAT. § 5552(b)(1) (statute of limitations).
19. 42 PA. CONS. STAT. § 5554
20. 18 PA. CONS. STAT. § 1103 (sentencing for felonies); 18 PA. CONS. STAT. § 1101 (fines).
21. 42 PA. CONS. STAT. § 9714
22. 42 PA. CONS. STAT. § 5554 (tolling of statute); 42 PA. CONS. STAT. § 5552(b)(1) (statute of limitations).
23. 42 PA. CONS. STAT. § 5554
24. 42 PA. CONS. STAT. § 9714
25. 42 PA. CONS. STAT. § 5554 (tolling of statute); 42 PA. CONS. STAT. § 5552(b)(1) (statute of limitations).
26. 42 PA. CONS. STAT. § 5554
27. 18 PA. CONS. STAT. § 1104 (misdemeanor sentencing); 18 PA. CONS. STAT. § 1101 (fines).
28. 18 PA. CONS. STAT. § 1103 (felony sentencing); 18 PA. CONS. STAT. § 1101 (fines).
29. 42 PA. CONS. STAT. § 5554 (tolling of statute); 42 PA. CONS. STAT. § 5552 (statute of limitations).
30. 42 PA. CONS. STAT. § 5554
31. Cucinotti v. Ortman, 159 A.2d 216, 217 (Pa. 1960) (internal citations omitted).
32. 42 PA. CONS. STAT. § 5524
33. Cooper v. Lankenau Hosp., 51 A.3d 183, 191 (Pa. 2012).



ENDNOTES

34. Id.
35. 42 PA. CONS. STAT. § 5524.
36. 42 PA. CONS. STAT. § 5533(b)(1).
37. The statute's definition of the term "sexual abuse" does not specifically include FGM, but broadly includes "indecent contact" as an enumerated example. In order to bring a sexual abuse claim an act must have taken place between an individual 23 years of age or younger and an adult under forcible compulsion or the threat of forcible compulsion. 42 PA. CONS. STAT. § 5533(b)(2)(ii). 42 Pa. Cons. Stat. Ann. § 5533.
38. 42 PA. CONS. STAT. § 5533(b)(2)(i).
39. 42 PA. CONS. STAT. § 5533(b)(2)(i.1).
40. Jones v. Nissenbaum, Rudolph & Seidner, 368 A.2d 770, 772-73 (Pa. Super. Ct. 1976) (citing Restatement (Second) of Torts § 46).
41. Id. (citing Restatement (Second) of Torts § 46 cmt. d).
42. 42 PA. CONS. STAT. § 5524.
43. 42 PA. CONS. STAT. § 5533(b)(1).
44. Shumosky v. Lutheran Welfare Servs. of Ne. Pa., 784 A.2d 196, 199 (Pa. Super. Ct. 2001).
45. See, Sinn v. Burd, 404 A.2d 672 (Pa. 1979).
46. 42 PA. CONS. STAT. § 5524.
47. 42 PA. CONS. STAT. § 5533(b)(1).
48. See, Miller v. Leljedal, 455 A.2d 256, 256-260 (Pa. Commw. Ct. 1983).
49. "[T]he appropriate standard by which to gauge a parent's supervision of his or her child is that of the reasonable parent... Such a standard leaves ample room for parental discretion with respect to the supervision and raising of children and at the same time establishes parameters beyond which a parent may not act negligently towards his or her child with impunity." Id. at 260.
50. 42 PA. CONS. STAT. § 5524.
51. See, Falco v. Pados, 282 A.2d 351 (Pa. 1971) (holding that an unemancipated minor may recover in tort for injuries suffered as a result of their parent's negligence).
52. Notification must be consistent with 42 PA. CONS. STAT. § 6336(f) (2019).
53. Section 701, Crime Victims Act (1998).
54. 18 Pa. Stat. Ann. § 11.702(a)(1)-(2) (1998).
55. 18 Pa. Stat. Ann. § 11.702(b)(1) (1998).
56. 18 Pa. Stat. Ann. § 11.702(b)(ii.1) (1998).
57. 42 PA. CONS. STAT. §§ 5551-52 (2019) (relating to criminal proceedings).
58. 18 Pa. Stat. Ann. §§ 11.702(b)(1), (b)(2)(B) (1998).
59. 42 PA. CONS. STAT. §§ 5551-52 (2019) (relating to criminal proceedings).
60. 18 Pa. Stat. Ann. §§ 11.702(b)(1), (b)(ii.1)(B) (1998).
61. <https://www.bbc.co.uk/news/world-47131052>.
62. <https://www.un.org/en/observances/female-genital-mutilation-day>.