

FGM SURVIVOR'S GUIDE

TO

LEGAL REMEDIES

IN THE COMMONWEALTH OF
MASSACHUSETTS

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 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 MASSACHUSETTS (“MASSACHUSETTS” 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 MASSACHUSETTS 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 MASSACHUSETTS, 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. 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. 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.

Current federal law provides federal authorities the power to prosecute any person who performs, attempts to perform, facilitates, consents to, or transports a person for the purpose of FGM. Violation of the law can result in a fine, imprisonment of up to 10 years, or both. The law also requires government agencies to report to Congress: (1) the estimated number of females who are at risk of or have undergone FGM, and (2) the agencies’ efforts to prevent FGM. While federal laws are important to protect survivors from this painful practice, state criminalization laws are equally necessary to provide legal recourse to FGM survivors.

In 2020, Massachusetts passed into law “An Act Relative to the Penalties for the crime of Female Genital Mutilation”,¹ which officially criminalized the practice of FGM in Massachusetts. Under the law, any person who knowingly commits FGM on a minor — or transports a minor within or outside the Commonwealth for the purposes of FGM — will face up to 5 years in state prison or 2½ years’ imprisonment in a county house of correction, and a fine of up to \$10,000.² It is not a defense that the defendant believed that their actions were conducted as a matter of custom or ritual, nor that the minor on whom the act of FGM was performed — or that minor’s parent or guardian — consented to the procedure.

In Massachusetts, the most common way in which a criminal proceeding is initiated is when a police officer gathers evidence of a crime and files a criminal complaint. However, a private citizen may also request that the Commonwealth investigate and prosecute a crime by filling out and submitting a Police Incident Report to both the police and the criminal court. This request will initiate a police investigation to gather evidence of the alleged crime. Next, the District Attorney’s Office, which is responsible for all criminal prosecutions in Massachusetts, will determine if there is enough evidence to bring criminal charges against the alleged perpetrator. If the criminal proceeding goes to trial, the prosecutor must prove the defendant’s guilt beyond a reasonable doubt to secure a conviction.

Prosecutors can bring criminal charges against a person who commits FGM under Massachusetts’s FGM-specific laws, as well as crimes that are not specific to FGM, including assault,³ indecent assault and battery on a child under 14 years of age,⁴ conspiracy,⁵ and kidnapping.⁶ Criminal proceedings for: (1) indecent assault and battery on a child under fourteen years of age, and (2) wanton or reckless behavior creating a risk of serious bodily injury to a child⁷ may be commenced by a prosecutor at any time.⁸

However, if charges are brought more than 27 years after the date of the commission of either of these two offenses, the claim must be supported by independent evidence that corroborates the victim's allegations. If the victim of the crime was under the age of 16 when the crime was committed, the 27-year filing condition does not commence until the earlier of: (1) the victim reaching the age of 16, or (2) the offense being reported to a law enforcement agency. For all other criminal offenses enumerated in this guide, the prosecutor must commence criminal proceedings within 6 years of the occurrence of the offense. For all crimes, the statute of limitations for filing a criminal claim is paused if the alleged perpetrator is not usually and publicly a resident of the Commonwealth and does not resume until the alleged perpetrator returns to the Commonwealth.

Beyond criminal charges, Massachusetts offers FGM survivors additional legal remedies through its civil laws and regulations, either specifically related to FGM or to other civil causes of action, including assault, battery, intentional infliction of emotional distress, negligent infliction of emotion distress, and negligent supervision. Courts can award actual, compensatory, and/or punitive damages, as well as injunctive relief. Civil causes of action related to FGM must be commenced within 10 years of the acts alleged to have caused the injury; however, if the victim was under the age of 18 at the time the acts occurred, the statute of limitations is paused until the victim turns 18. Legal action for other civil causes must be commenced within 3 years of the injury.



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.⁹

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 MASSACHUSETTS ANTI-FGM LAW

Massachusetts 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, Massachusetts' [civil law](#) and [criminal law](#) offer different forms of justice to survivors of FGM.

The Commonwealth's criminal law regime affords FGM victims a three-pronged redress by way of: (1) specific FGM legislation, (2) FGM crime related legislation, and (3) general criminal law principles. 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. Criminal prosecutions against perpetrators of FGM under Massachusetts law can be brought only by state prosecutors. 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 hearing. If the defendant is found guilty in a criminal case, they may be punished with fines, time in prison or a county house of correction, 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.

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.

CRIME SPECIFIC TO FGM

1. (MASS. GEN. LAWS CH. 265, § 60)

FGM refers to the partial or total removal of the female genitalia, or the alteration of the structure or function of the female genitalia for non-medical purposes. A person who knowingly commits FGM on a person under the age of 18, or transports the person under 18 within or out of the Commonwealth to commit, or for another person to commit, FGM will face up to 5 years' imprisonment in a state prison,¹⁰ or 2½ years' imprisonment in a county house of correction and a maximum fine of \$10,000.

It is not a defense that a defendant believes that their actions were conducted as a matter of custom or ritual or that the person on whom the FGM was performed, or that person's parent or guardian in the case of a minor, consented to the procedure.

It is not a violation of law if the procedure was: (1) a necessary medical treatment to protect the health of the person on whom it was performed or a gender reassignment¹¹ requested by the person on whom it was performed; and (2) performed by a licensed medical provider.





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

ADDITIONAL CRIMINAL LAWS

ASSAULT AND RELATED CRIMES

In addition to being charged with the FGM-specific crime, a perpetrator can also be charged with various non-FGM specific crimes described below.

1. ASSAULT / ASSAULT AND BATTERY

“Assault” is an attempt or threat to inflict bodily injury on another person.¹²

“Assault and Battery” is any touching that likely results in bodily harm or an unjustified intentional touching of another person without their consent.

“Serious bodily injury” means bodily injury causing permanent disfigurement, loss, or impairment of a bodily function, limb, or organ, or a substantial risk of death.

The offenses of Assault or Assault and Battery carry a maximum sentence of 2½ years’ imprisonment in a county house of correction, or a maximum fine of \$1,000.¹⁴ The punishment is increased to a maximum sentence of 5 years’ imprisonment in a state prison, or 2½ years’ imprisonment in a county house of correction, a maximum fine of \$5,000, or both if: (1) the Assault or Assault and Battery caused serious bodily injury; (2) the victim is pregnant; or (3) there is an outstanding order to vacate, restraining or no contact order, or qualifying judgment¹⁵ in effect against the offender at the time of such Assault or Assault and Battery.

2. INDECENT ASSAULT AND BATTERY (MASS. GEN. LAWS CH. 265, § 13H)

The Massachusetts criminal statute does not specifically define “Indecent Assault and Battery”. However, conduct likely to fall within the bounds of the statute includes that which member of society would regard as immodest, immoral, and improper.¹⁶ One way the Commonwealth may establish Indecent Assault and Battery is by proving that the defendant committed an “intentional unprivileged and indecent touching of [a] victim”.¹⁷ Indecent Assault and Battery on a victim who is 14 years of age or older is punishable by a maximum 5 years’ imprisonment in a state prison, or 2½ years’ imprisonment in a county house of correction. If the victim has a disability or is over the age of 60, the maximum sentence is increased to 10 years’ imprisonment in a state prison or 2½ years’ imprisonment in a county house of correction. If the convicted defendant is a repeat offender, the maximum punishment increases to 20 years’ imprisonment in a state prison.

A. ASSAULT AND BATTERY ON A CHILD UNDER THE AGE OF 14

Assault and Battery upon a child under the age of 14 (“Child”) that results in bodily injury carries a maximum sentence of 5 years’ imprisonment in a state prison, or 2½ years’ imprisonment in a county house of correction. If the bodily injury is substantial, the maximum state prison sentence increases to 15 years.¹⁸

Indecent Assault and Battery upon a Child is punishable by a maximum 10 years’ imprisonment in a state prison, or 2½ years’ imprisonment in a county house of correction.¹⁹ The Child’s purported consent is not a defense.

i. Indecent Assault and Battery on a Child during the commission of other crimes (Mass. Gen. Laws ch. 265 § 13B1/2)

If an Indecent Assault and Battery is committed on a Child during the commission or attempted commission of the following offenses: kidnapping;²⁰ Assault and Battery with a dangerous weapon or Assault with a dangerous weapon;²¹ home invasion;²² or posing or exhibiting a Child in state of nudity or sexual conduct,²³ the perpetrator shall be punished by a minimum of 10 years’ imprisonment and a maximum of life imprisonment in a state prison. The perpetrator’s sentence cannot be reduced to less than 10 years or suspended, nor will the perpetrator be eligible for probation, parole, work release, furlough, or receive a sentence reduction for good conduct until the perpetrator has served at least 10 years of the sentence.

ii. Indecent Assault and Battery on a Child / Mandated Reporter (Mass. Gen. Laws ch. 265 § 13B1/2)

If an Indecent Assault and Battery is committed on a Child and, at the time of the commission, the perpetrator is classified as a “Mandated Reporter” (as defined below), the perpetrator shall be punished by a minimum of 10 years’ imprisonment and a maximum of life imprisonment in a state prison. The perpetrator’s sentence cannot be reduced to less than 10 years or suspended, nor will the perpetrator be eligible for probation, parole, work release, furlough, or receive a sentence reduction for good conduct until the perpetrator has served at least 10 years of the sentence.

A “Mandated Reporter” broadly refers to a person in a medical, school, childcare, social, governmental, or religious capacity and the increased penalties reflect the reality that these categories of people likely exert, whether perceived or actual, authority over the Child.²⁴ The Child’s purported consent is not a defense.

iii. Previously convicted offenders (Mass. Gen. Laws ch. 265, § 13B3/4)

An individual who: (1) commits an Indecent Assault and Battery on a Child; and (2) was previously convicted as a youthful offender for: Indecent Assault and Battery on a Child,²⁵ Aggravated Indecent Assault and Battery on a Child,²⁶ Indecent Assault and Battery on a person 14 years of age or older,²⁷ or a like violation of the laws of another state, the United States, or a military, territorial, or Indian tribal authority, shall be punished by a minimum of 15 years’ imprisonment and a maximum of life imprisonment in a state prison. The individual’s sentence cannot be reduced to less than 15 years or suspended, nor will the individual be eligible for probation, parole, work release, furlough, or receive a sentence reduction for good conduct until the individual has served at least 15 years of the sentence.

iv. Person having care and custody (Mass. Gen. Laws ch. 265, § 13J)

If a “person having care and custody” (i.e., a parent, guardian, employee of a home or institution, or any other person with equivalent supervision or care of a Child, whether the supervision is temporary or permanent)

wantonly or recklessly (as defined in the Wanton or Reckless Behavior section below) permits another to commit Assault and Battery on that Child, such person shall be punished by a maximum of 2 years' imprisonment in a state prison, or 1½ years' imprisonment in a county house of correction. If the Assault and Battery caused substantial bodily injury to the Child, the punishment increases to 5 years' imprisonment in a state prison, or 2½ years' imprisonment in a county house of correction.

v. Wanton or Reckless Behavior (Mass. Gen. Laws ch. 265, § 13L)

Whoever Wantonly or Recklessly: (1) creates a substantial risk of serious bodily injury or sexual abuse (including Indecent Assault and Battery and rape) to a child below the age of 18; or (2) fails to take reasonable steps to alleviate such risk where there is a duty to act, shall be punished by a maximum of 2 years' imprisonment in a county house of correction. "Wanton or Reckless Behavior" occurs when a person is aware of, and consciously disregards, a substantial, unjustifiable risk that their acts (or omissions where there is a duty to act) will result in serious bodily injury or sexual abuse to the child.

vi. Assault and Battery on family of household member (Mass. Gen. Laws ch. 265, § 13M)

Assault and Battery on a Family or Household Member (as defined below) has a maximum sentence of 2½ years' imprisonment in a county house of correction, a \$5,000 fine, or both. In the case of a subsequent offense, the punishment is 5 years' imprisonment in a state prison, or 2½ years' imprisonment in a county house of correction. A "Family or Household Member" includes a spouse, an ex-spouse, a co-parent, and a person who is in a substantive relationship²⁸ with the offender.

vii. Assault with Intent to Murder or Maim (Mass. Gen. Laws ch. 265, § 15)

Assaulting another person with the intent to murder, or to maim or disfigure (as defined in the Mayhem section below) that other person, carries a maximum sentence of 10 years' imprisonment in a state prison, or a \$1,000 fine and 2½ years' imprisonment in a county house of correction.

viii. Mayhem (Mass. Gen. Laws ch. 265, § 14)

A person who, with malicious intent to maim or disfigure: (1) cuts out or maims the tongue; puts out or destroys an eye; cuts or tears off an ear; cuts, slits, or mutilates the nose or lip; or cuts off or disables a limb or member of another person; or (2) assaults with a dangerous weapon, substance or chemical, another person, and the assault results in the crippling, disfigurement, or serious or permanent physical injury of the other person, will be subject to a maximum sentence of 20 years' imprisonment in a state prison, or a \$1,000 fine and 2½ years' imprisonment in a county house of correction. This punishment also applies to anyone who was present during and aided in the commission of the offense.

ix. Entering a Dwelling House and Home Invasion (Mass. Gen. Laws ch. 265, §§ 18A, 18C)

Entering a home with a dangerous weapon to commit a felony²⁹ carries a minimum sentence of 10 years' imprisonment in a state prison. Those who are convicted of this offense are not eligible for parole for the first 5 years if the dangerous weapon was not a firearm, and 10 years if the weapon was a firearm. If a person enters another's home while armed with a dangerous weapon, knows that there are people present in the home, and uses or threatens to use force against any of the people inside, that person will be sentenced to a minimum term of 20 years' imprisonment in a state prison.

x. Commission of a Felony for Hire (Mass. Gen. Laws ch. 265, § 13G)

A person who commits a felony for payment, or the promise of payment, shall be punished by a maximum term of 5 years' imprisonment in a state prison. This sentence will be imposed in addition to the sentence for the underlying felony the offender committed for payment.

xi. Assault with Intent to Commit a Felony (Mass. Gen. Laws ch. 265, § 29)

Assault on another person with the intent to commit a felony (if not covered in preceding sections above) carries a maximum sentence of 10 years' imprisonment in a state prison, or a \$1,000 fine and 2½ years' imprisonment in a county house of correction.

B. KIDNAPPING (MASS. GEN. LAWS CH. 265, §§ 26, 26A, 26B)

Kidnapping occurs when a person, without lawful authority: (1) forcibly or secretly imprisons another person; (2) forcibly sends another person out of the Commonwealth; or (3) forcibly seizes and confines another person with the intent to imprison, send out of the Commonwealth, or otherwise hold the person against his or her will (“Kidnapping”). The maximum sentence is 10 years’ imprisonment in a state prison, or a \$1,000 fine and 2 years’ imprisonment in a county house of correction.

However, if the Kidnapping is committed:

- with a firearm, the minimum sentence is 10 years’ imprisonment in a state prison, or 2½ years’ imprisonment in a county house of correction, unless serious bodily injury or sexual assault occurs as a result, in which case the minimum sentence is 25 years’ imprisonment in a state prison;
- to extort money or valuables, the sentence is any term of years up to life imprisonment in a state prison (but, if committed with a firearm, the minimum sentence is 20 years’ imprisonment in a state prison);
- via the application or administration of drugs, the sentence is a minimum of 10 years and a maximum of life imprisonment in a state prison; or
- against a child under the age of 16, the maximum sentence is 15 years’ imprisonment in a state prison.

A relative of a child under the age of 18 or of an incompetent person who: (1) holds or intends to hold the child or incompetent person permanently or for a protracted period; or (2) takes or entices the child or incompetent person from their lawful custodian, commits the crime of Kidnapping a Minor or Incompetent Person by a Relative. The maximum sentence is 5 years’ imprisonment in a state prison, a \$5,000 fine, or both.³⁰

C. SENTENCING

A person who assists another person in a felony, or counsels, hires, or procures such felony to be committed, is punished in the same way as the principal felon as a conspirator.³¹

“Conspiracy” is defined as “a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose”.³² Co-conspirators of crimes are subject to the penalties specified under the offense for conspiracy.³³ Whoever solicits, counsels, advises, or otherwise entices

another to commit a crime may also be punished. The applicable sentences depend in each case on the severity of the crime in question.

A person who unsuccessfully attempts to commit a crime is guilty of the offense of Attempt to Commit a Crime.³⁷ The applicable sentence depends on the severity of the crime attempted.

D. STATUTES OF LIMITATION FOR BRINGING A CASE

| Offense | Time Limit for Bringing the Case |
|---|--|
| Indecent Assault on a Child <i>or</i> Wanton or Reckless Behavior | The claim can be brought by the District Attorney's Office at any time after the offense. However, if brought after 27 years from the offense, the claim must be supported by independent evidence that corroborates the FGM victim's allegation. The time limit does not commence until the earlier of: (a) the FGM victim reaching the age of 16, or (b) the offense being reported to a law enforcement agency. |
| All other offenses (within this Guide) | A claim can be brought by the District Attorney's Office within 6 years of the offense, excluding any time where the alleged offender is not usually and publicly a resident within the Commonwealth. |

C. SENTENCING

The Massachusetts District Attorney's Office is responsible for criminal prosecutions. A criminal proceeding shall be commenced in the Federal District Court by a complaint or in the State Superior Court by an indictment.

A complaint can be filed by a person with knowledge of the facts constituting the offense, and the complainant's account will be recorded or reduced to writing and signed under oath. A civilian may apply to initiate a criminal complaint without police assistance.

The prosecutor will determine whether the evidence (not limited to direct evidence from the victim) gathered by the police is sufficient to bring an indictment. If the criminal case proceeds to trial, the prosecution has the burden to prove that the defendant is guilty beyond all reasonable doubt.

ADDITIONAL CIVIL CAUSES OF ACTION

1. SPECIFIC CIVIL CAUSES OF ACTION RELATED TO FGM

A civil lawsuit is brought by a private citizen (the “plaintiff”, as defined above). The plaintiff has the burden of proving their case by a preponderance of the evidence (i.e., more likely than not), which is a lower evidentiary burden than in criminal trials, where the prosecutor is required to establish a defendant’s guilt beyond all reasonable doubt. In the case of FGM, the plaintiff is usually the survivor, and the person being sued (the “defendant”, as defined above) is usually the perpetrator or someone who assisted the perpetrator. In other words, a victim of FGM may bring a civil action against the person who performed FGM on the victim and/or any persons who assisted in the commission of FGM on the victim. If the defendant is found liable in a civil case, the court can award actual, compensatory, or punitive damages to the FGM victim as redress for the offense committed against them.³⁷ Consequently, the defendant may have to pay money to the FGM plaintiff for the offense committed and pay for the FGM victim’s attorney’s fees and costs.³⁸

Furthermore, a person at risk of FGM or an FGM victim may also apply to the courts for injunctive relief against an offender. For example, a victim may seek a temporary restraining order to prohibit the offender from carrying out certain acts or contacting the potential or actual FGM victim, or to require the offender to stay a certain distance away from the potential or actual FGM victim.

Legal action must be commenced within 10 years of the acts alleged to have caused the injury. If the victim was under the age of 18 at the time the acts occurred, the statute of limitation is paused until the victim turns 18.³⁹

2. OTHER CIVIL CAUSES OF ACTION

As an initial matter, legal action for assault, battery, intentional infliction of emotional distress, and negligent infliction of emotional distress (each as described below) must be commenced within 3 years of the injury.⁴⁰ A minor may bring their own civil cause of action directly, or an adult may act on their behalf.⁴¹

A. ASSAULT

Under Massachusetts law, mere words do not constitute assault; there must be an attempt by the defendant to carry out the threat or act.⁴² An assault is therefore accomplished either by an attempted battery, or by putting another in fear of an immediately threatened battery.⁴³ The FGM plaintiff must show that the defendant's words, together with other acts or circumstances, resulted in the FGM victim being put in reasonable apprehension (i.e., in justifiable fear) of an imminent harmful or offensive contact.

B. BATTERY

A battery is a successful attempt to carry out an assault. A defendant is liable for battery if they act with the intention to harm or be in offensive contact with another person, or cause imminent apprehension of such contact, and harmful contact with that other person directly or indirectly occurs as a result.⁴⁴

C. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

A defendant commits the offense of intentional infliction of emotional distress if the FGM plaintiff can prove: (1) that the defendant intended to inflict emotional distress or that they knew or should have known that emotional distress was the likely result of their conduct; (2) the conduct was "extreme and outrageous",⁴⁵ i.e., beyond all possible bounds of decency, and was utterly intolerable in a civilized community; (3) the actions of the defendant were the cause of the FGM plaintiff's distress; and (4) the emotional distress sustained by the FGM plaintiff was severe and of a nature that no reasonable person could be expected to endure.⁴⁶

D. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

A defendant commits the offense of negligent infliction of emotional distress if the FGM plaintiff can prove that: (1) the defendant was negligent; (2) the FGM plaintiff suffered emotional distress; (3) the

FGM plaintiff's emotional distress was caused by the defendant's negligence; (4) the FGM plaintiff's emotional distress is evidenced by "physical harm manifested by objective symptomatology;" and (5) a reasonable person would have suffered emotional distress under the circumstances.⁴⁷ Proving physical harm is not a prerequisite, but courts require objective corroboration of the emotional distress alleged.⁴⁸

E. FALSE IMPRISONMENT

A defendant commits the offense of false imprisonment if the FGM plaintiff can prove that: (1) the defendant's actions directly or indirectly caused confinement;⁴⁹ (2) the defendant was aware of the confinement; and (3) the defendant had actual intent to imprison or restrain the FGM plaintiff.⁵⁰

Legal action must be commenced within 3 years of the assault. A minor may bring a civil cause of action directly, or an adult may act on their behalf.⁵¹

F. PARENTAL IMMUNITY DOCTRINE

The parental immunity doctrine previously in place has been abolished. Accordingly, children can maintain tort actions against their parents.⁵² If liable, a parent may be sentenced as specified above in relation to i. to v. above.





RIGHTS OF ALL SURVIVORS UNDER THE MASSACHUSETTS CRIMINAL JUSTICE SYSTEM

MASSACHUSETTS CRIME VICTIMS BILL OF RIGHTS (MASS. GEN. LAWS CH. 258B)

§ 3. RIGHT OF VICTIMS AND WITNESSES OF CRIME:

Victims and witnesses have the right to be informed by the prosecutor about their rights in the criminal process, including the right to request confidentiality, the right to request financial assistance and other social services, and the right to pursue civil action for damages related to the crime. Among other rights, the prosecutor must inform victims and witnesses of the available level of protection from harm and threats of harm and to receive such protection from local law enforcement agencies. Prosecutors also must inform victims and witnesses²⁷ of their right to submit to or decline an interview by defense counsel.

Additionally, victims have the right to be present at all court proceedings, subject to some exceptions (e.g., where the court finds that hearing other testimony may alter the victim's testimony) and to be heard through oral or written statement at the sentencing or disposition of the case. They also have the right to confer with the prosecutor before: (a) the commencement of trial; (b) the hearing of any motion

by the defense to obtain confidential records of the victim; (c) the prosecution files a notice to abandon proceedings (nolle prosequi); and (d) a proposed sentence recommendation.

During the proceedings, the victim is protected from discharge, or the threat of discharge or other penalty, by their employer because of their attendance at the criminal proceedings. Moreover, victims have a right to be provided with employer and creditor intercession services by the prosecutor to ensure employer cooperation, as well as consideration from creditors if the victim is unable to continue payments because of the proceedings.

The victim has the right to be informed of the details of the final disposition of the case and other information relating to the status of the defendant, including parole eligibility, status in the criminal justice system, and (prior to such) release, whether temporary, provisional, or final.

COMPENSATION FOR VICTIMS OF VIOLENT CRIMES (MASS. GEN. LAWS CH. 258C)

§ 2 ELIGIBILITY FOR COMPENSATION

Victims are entitled to compensation where the Division of Victim Compensation and Assistance within the Department of the Attorney General (the “Division”) finds that a crime was committed and where such crime resulted directly in personal physical or psychological injury to, or death of, the

victim. In addition, the crime must have been reported to a law enforcement agency and the victim must have cooperated with law enforcement investigation unless there is a reasonable excuse for not doing so.

Where the victim retains counsel pursuant to this law, attorney's fees may be deducted from the compensation.⁵³

§ 3 MAXIMUM COMPENSATION AWARD; COMPENSABLE EXPENSES

The maximum award of compensation is \$25,000, unless the victim suffered "catastrophic injury," in which case the maximum award is increased to \$50,000.

Under this law,⁵⁴ compensable expenses include, among others: (a) hospital or medical services; (b) loss of actual earnings due to disability from work because of injuries caused by the crime; (c) replacement of costs of clothing and bedding seized as evidence or rendered unusable as a result of the criminal investigation up to a maximum of \$250; and (d) costs associated with the implementation of security measures up to a maximum of \$500.

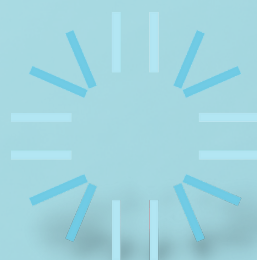
§ 5 FILING CLAIMS FOR COMPENSATION

A claim for compensation under this law⁵⁵ must be filed within 3 years of the date of the crime and on the claim form specified by the Division, including copies

of bills and other documentation supporting the claim. The responsibility is on the FGM plaintiff to prove by way of evidence that they have a greater chance at success of at least 51% in bringing their claim and that they are therefore eligible to receive the compensation claimed.

Upon receipt of the claim for compensation, the Division shall acknowledge receipt of the application and thereafter investigate the claim to verify the information provided. During the verification process, the Division may issue to the FGM survivor a written civil investigative demand, interrogatories under oath, and requests for production of documents, and may take oral testimony under oath.

The FGM survivor must return a civil investigative demand within 20 days from the date of service and failure to do so could result in dismissal of the claim for compensation, or the Attorney General may petition the court to require a response to the civil investigative demand.⁵⁶ Failure to comply with such court order shall be punished as a contempt of court.





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.⁵⁷ IN ADDITION, FGM IS OFTEN FOLLOWED BY EARLY MARRIAGE TO THE DETRIMENT OF THE SURVIVOR'S EDUCATION AND CAREER.⁵⁸

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. 2020 Mass. Acts 149.
2. Mass. Gen. Laws ch. 265, § 60.
3. Mass. Gen. Laws ch. 265, § 13A.
4. Mass. Gen. Laws ch. 265, § 13B.
5. Mass. Gen. Laws ch. 274, § 7.
6. Mass. Gen. Laws ch. 265, § 26.
7. Mass. Gen. Laws ch. 265, § 13L.
8. Mass. Gen. Laws ch. 277, § 63.
9. <https://www.un.org/en/observances/female-genital-mutilation-day>.
10. Massachusetts' criminal system consists of two trial courts: district and superior courts, and two types of correctional facilities: state prisons and county houses of correction. At the outset of criminal proceedings, the district courts can hear all criminal charges, but can only render house of correction sentences. House of correction sentences can never exceed 2.5 years. Almost all criminal cases start in the district courts. Then, the more serious criminal cases are transferred to the superior courts. Superior courts have the authority to impose sentences of any term of years, up to life imprisonment.
11. As a general matter, unlike other forms of gender-affirming health care, gender-affirming surgery that involves changing a person's reproductive anatomy typically is performed only if the person is at least 18 years of age, according to the current, accepted standard of care. This rule is subject to very few narrow exceptions that are outside of the scope of this guide.
12. *Commonwealth v. Shaffer*, 326 N.E.2d 880, 885 (Mass. 1975).
13. *Commonwealth v. Wentworth*, 128 N.E.3d 14 (Mass. 2019) (internal quotation marks and citation omitted).
14. Mass. Gen. Laws ch. 265, § 13A.
15. The qualifying judgments under this statute include, but are not limited to: (1) a domestic restraining order (Mass. Gen. Laws ch. 208, § 18); (2) an order to vacate the marital home (Mass. Gen. Laws ch. 208, § 34B); or (3) an anti-abuse or no-contact order (Mass. Gen. Laws ch. 209A, § 3).
16. *Commonwealth v. Perretti*, 477 N.E.2d 1061, 1066 (Mass. App. Ct. 1985), but note that no definition is given by the statute for what constitutes the crime of Indecent Assault and Battery.
17. *Id.*
18. Mass. Gen. Laws ch. 265, § 13J.
19. Mass. Gen. Laws ch. 265, § 13B.
20. As set forth in Mass. Gen. Laws ch. 265, § 26.
21. As set forth in Mass. Gen. Laws ch. 265, §§ 15A, 15B.
22. As set forth in Mass. Gen. Laws ch. 265, § 18C.
23. As set forth in Mass. Gen. Laws ch. 272, § 29A.
24. Mass. Gen. Laws ch. 119, § 21.
25. As set forth in Mass. Gen. Laws ch. 265, § 13B.

ENDNOTES



26. As set forth in Mass. Gen. Laws ch. 265, § 13B½.
27. As set forth in Mass. Gen. Laws ch. 265, § 13H.
28. The determination of a “substantive relationship” depends on the length of time and type of the relationship, the frequency of interaction between the parties, if the relationship was terminated by either person, and the length of time elapsed since the termination of the relationship (Mass. Gen. Laws ch. 265, § 13M).
29. A crime punishable by death or imprisonment in the state prison is a felony; all other crimes are misdemeanors; Mass. Gen. Laws ch. 274, § 1.
30. Mass. Gen. Laws ch. 265, §§ 26A, 26C.
31. Mass. Gen. Laws ch. 265, § 2.
32. *Commonwealth v. Nee*, 935 N.E.2d 1276, 1282 (Mass. 2010) (internal quotation marks and citation omitted).
33. Mass. Gen. LAWS ch. 274, § 7.
34. In accordance with Mass. Gen. Laws ch. 274, § 8.
35. Mass. Gen. Laws ch. 274, § 6.
36. As defined by the Massachusetts criminal code as: “partially or totally removing the female genitalia or altering the structure or function of the female genitalia for non-medical purposes, including, but not limited to, infibulation, the partial or total removal of the clitoris, prepuce, labia minora, or labia majora, the narrowing of the vaginal orifice, or any other procedure that causes injury to the female genitalia for non-medical purposes.” Mass. Gen. Laws ch. 265, § 60.
37. Treble damages may be awarded if the plaintiff proves actual damage and that the defendant’s acts were “willful and malicious.”
38. MASS. GEN. LAWS ch. 260, § 4E(a).
39. *Ibid*, § 4E(b).
40. MASS. GEN. LAWS ch. 260, § 2A.
41. Massachusetts Rules of Civil Procedure. Mass. R. Civ. P. Rule 17(b): “Whenever an infant...has a representative, such as a guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant.”
42. Courts have adopted the Restatement (Second) of Torts view on Assault. The case law for assault is very limited as a civil cause of action, see *Commonwealth v. Delgado*, 326 N.E.2d 716, 719 n. 3 (Mass. 1975).
43. See *Commonwealth v. Gorassi*, 733 N.E.2d 106, 109 (Mass. 2000).
44. *Waters v. Blackshear*, 591 N.E.2d 184, 185 (Mass. 1992) (quoting Restatement (Second) of Torts § 13 (1965)).
45. “Outrageous” means more than workaday insults, annoyances, or even threats and petty oppressions, e.g., a high order of reckless ruthlessness or deliberate malevolence that is simply intolerable (*Conway v. Smerling*, 635 N.E.2d 268, 273 (Mass. App. Ct. 1994)).
46. *Agis v. Howard Johnson Co.*, 355 N.E.2d 315, 318-19 (Mass. 1976) (citations omitted).
47. *Rodriguez v. Cambridge Hous. Auth.*, 823 N.E.2d 1249 (Mass. 2005).



ENDNOTES

- 48. *Migliori v. Airborne Freight Corp.*, 690 N.E.2d 413, 415 (Mass. 1998).
- 49. See *Coblyn v. Kennedy's, Inc.*, 268 N.E.2d 860, 861 (Mass. 1971), “[a]ny general restraint is sufficient to constitute an imprisonment” (citations omitted).
- 50. See *Beaumont v. Segal*, 283 N.E.2d 858, 860 (Mass. 1972) (citing Restatement (Second) of Torts, § 35).
- 51. Massachusetts Rules of Civil Procedure. Mass. R. Civ. P. Rule 17(b): “Whenever an infant . . . has a representative, such as a guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant”
- 52. See, *Stamboulis v. Stamboulis*, 519 N.E.2d 1299, 1301 (Mass. 1988), holding that “no absolute curtain of immunity protects a parent who negligently causes injury to his or her minor child.”
- 53. MASS. GEN. LAWS ch. 258C, § 2.
- 54. MASS. GEN. LAWS ch. 258C, § 3.
- 55. MASS. GEN. LAWS ch. 258C § 5(a)(1).
- 56. MASS. GEN. LAWS ch. 258C § 5(b).
- 57. <https://www.bbc.co.uk/news/world-47131052>.
- 58. <https://www.un.org/en/observances/female-genital-mutilation-day>.