



FGM SURVIVOR'S GUIDE

TO

LEGAL REMEDIES

IN THE STATE OF
MARYLAND

DEVELOPED FOR [AHA](#) FOUNDATION

THROUGH THE PRO BONO ASSISTANCE OF

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DISCLAIMER

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

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

AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF MARYLAND 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 MARYLAND CONCERNING ANY SPECIFIC LEGAL ISSUE.

INTRODUCTION

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

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

SECOND, survivors can potentially recover under several Maryland state laws not directly related to FGM.

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

PLEASE NOTE THAT MARYLAND LAW PROVIDES THAT MINORS CANNOT SUE ON THEIR OWN AND MUST BE REPRESENTED BY AN ADULT THAT IS EITHER THEIR PARENT, GUARDIAN OR A NEXT FRIEND APPROVED BY THE COURT.¹

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

FGM is a practice that spans many different countries and communities, each with their own customs that occur at different ages. For example, in the Somali community, most girls are cut between the ages of 10 and 14 years old, while in some Nigerian communities, girls are often cut when they are christened at 8 days old. A description of the different types of FGM can be found at www.who.int, and the different practices in various communities and countries of origin can be found at www.28toomany.org. If you are unsure whether you have been the victim of FGM, you should consult your OB/GYN or contact help@theahafoundation.com.



REMEDIES AVAILABLE TO SURVIVORS UNDER MARYLAND ANTI-FGM LAW

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

CIVIL LAW AND **CRIMINAL LAW** OFFER DIFFERENT FORMS OF JUSTICE TO SURVIVORS OF FGM. A **CIVIL** LAWSUIT IS BROUGHT BY A PRIVATE CITIZEN (THE “PLAINTIFF”). IN THE CASE OF FGM, THE PLAINTIFF IS USUALLY THE VICTIM, AND THE PERSON BEING SUED (THE “DEFENDANT”) IS USUALLY THE CUTTER OR SOMEONE WHO ASSISTED THE CUTTER. IF THE DEFENDANT IS FOUND LIABLE IN A **CIVIL** CASE, HE OR SHE MAY BE ORDERED TO PAY MONEY TO THE PLAINTIFF.

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

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

CRIMINAL PROSECUTION OF FGM PERPETRATORS

MD. CODE ANN., HEALTH GENERAL CODE § 20-601

Criminal prosecutions against perpetrators of FGM under Maryland law can be brought only by state prosecutors. While victims of FGM cannot themselves bring criminal actions, they can provide valuable assistance to the prosecuting attorneys bringing those actions. Maryland law defines FGM as the circumcision, excision or infibulation of the whole or any part of the labia majora, labia minora or clitoris.² While the statute only punishes FGM performed on minors, it provides broad protections to such minor victims.

Additionally, a parent or guardian can be found guilty under the FGM statute if they knowingly consent to such circumcision, excision or infibulation to the minor for whom they are legally responsible or have custody.³ This means a minor's parent or guardian can be guilty of FGM even if they did not actively participate in the cutting. The FGM statute includes an exception for state-licensed medical practitioners performing a surgical operation that is necessary to the health of the individual, however FGM as a matter of custom or ritual is explicitly excluded from this exception.⁴

FGM is a felony punishable by a fine of up to \$5,000, imprisonment for not more than five years or both.⁵ The relevant statute does not specify a statute of limitations for FGM.⁶

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.





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

ADDITIONAL CRIMINAL LAWS

IN ADDITION TO THE ANTI-FGM LAW, THERE ARE SEVERAL OTHER CRIMINAL LAWS FOR WHICH A PERPETRATOR OF FGM MAY BE CONVICTED. THE STATUTE OF LIMITATIONS FOR EACH OF THE BELOW CRIMES IDENTIFIED AS A MISDEMEANOR IS ONE YEAR.⁷ THERE IS NO STATUTE OF LIMITATIONS IN MARYLAND FOR FELONIES.⁸

1. ASSAULT IN THE SECOND DEGREE (MD. CRIMINAL LAW CODE § 3-203)

Assault in the second degree occurs when a person makes an offensive physical contact with another. A perpetrator of FGM would likely be found guilty of this crime, since it involves a non-consensual and offensive touching of the victim. Assault in the second degree is a misdemeanor punishable by up to ten years imprisonment, a fine not exceeding \$5,000 or both.

2. RECKLESS ENDANGERMENT (MD. CRIMINAL LAW CODE § 3-204)

A person is guilty of reckless endangerment when they engage in conduct that creates a substantial risk of death or serious physical injury to another. This crime is a misdemeanor, punishable by imprisonment of not more than 5 years, a fine of up to \$5,000, or both. Maryland courts have stated this crime is meant to discourage reckless conduct that is not necessarily criminal.⁹

A parent or guardian could potentially be found liable for this crime, if they knew or should have known FGM would be performed on their child because of their (in)action. Such act or omission would likely constitute reckless behavior since it would be, “a gross departure from the type of conduct that a law-abiding” parent would observe under similar circumstances.¹⁰

3. KIDNAPPING (MD. CRIMINAL LAW CODE § 3-502)

Kidnapping occurs when the defendant intentionally causes the victim to be carried in or outside the State, by means of force or fraud. Kidnapping is a felony punishable by imprisonment of up to thirty years. Since there is a parental exception, any adult that is not the victim's guardian, could be found guilty of kidnapping if they forcefully moved the victim to another location in order to perform FGM.

4. CHILD ABUSE (MD. CRIMINAL LAW CODE § 3-601)

Child abuse occurs when a parent or guardian with custody of a minor, causes abuse to such minor that (among other things) results in severe physical injury. If a parent or guardian performed FGM on their child, this would likely constitute child abuse since "severe physical injury" is defined as physical injury that causes permanent or protracted serious (i) disfigurement or (ii) impairment or loss of the function of any bodily member or organ. Child abuse is a felony that is punishable with up to 25 years imprisonment.

5. NEGLECT OF A MINOR (MD. CRIMINAL LAW CODE § 3-601)

Maryland law prohibits a parent or guardian from neglecting a minor for whom they have custody. Neglect is defined as the intentional failure to provide necessary assistance for the minor's physical needs, resulting in a substantial risk of harm to their physical health. A parent or guardian whose minor was the victim of FGM could be found guilty of this crime if they deliberately failed to intervene or prevent FGM from occurring. Child neglect is a misdemeanor punishable by imprisonment of up to five years, a fine of not more than \$5,000 or both.



ADDITIONAL CIVIL CAUSES OF ACTION

IN ADDITION TO THE CRIMES SUMMARIZED ABOVE, VICTIMS MAY COMMENCE A CAUSE OF ACTION IN CIVIL COURT. CIVIL COURT MAY BE MORE CONVENIENT, AS THERE IS A LOWER BURDEN OF PROOF THAN IN CRIMINAL COURT, AND 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 COURT FOR THE HARMS THEY HAVE SUFFERED, SUCH COMPENSATION IS GENERALLY LIMITED TO THE DEFENDANT'S ACTUAL RESOURCES. NOTE THAT VICTIMS OF FGM MAY CHOOSE TO PURSUE BOTH CRIMINAL AND CIVIL CAUSES OF ACTION. THE STATUTE OF LIMITATIONS FOR EACH OF THE BELOW LISTED CAUSES OF ACTIONS IS THREE YEARS FROM THE OCCURRENCE.¹¹

1. ASSAULT & BATTERY

Civil assault and battery occurs when there is an intentional, nonconsensual contact of another person that is harmful or offensive.¹² In other words, (i) the defendant must have intended to perform the act resulting in the harmful or offensive contact¹³ (in the case of FGM, cutting), (ii) the contact must have been harmful or offensive to a reasonable person,¹⁴ (iii) the victim did not consent to the contact and (iv) the contact caused injury, damage, loss or harm.¹⁵

2. FALSE IMPRISONMENT

A survivor of FGM may be able to bring a claim for false imprisonment if she was confined by the defendant, against her consent.¹⁶ In order to establish liability for false imprisonment, the plaintiff must show that they were (i) willfully detained, (ii) without consent and legal justification.¹⁷ The survivor can demonstrate she was detained by showing evidence of violence, threats, or any other exercise of force.¹⁸

In proving her detainment, the victim does not need to show she attempted to escape. Maryland courts have held that even an implicit threat of force is sufficient for this element. For example, in one case the court determined the plaintiff was detained because the defendant shut the door, denied access to the only other point of egress and stated that the plaintiff would not get away.¹⁹

3. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Intentional infliction of emotional distress happens when the defendant intentionally or recklessly engages in extreme and outrageous conduct which causes severe emotional distress to the plaintiff.²⁰ The distress must actually be caused by the defendant's outrageous conduct and must be serious or severe.²¹

In determining whether the defendant's conduct is sufficiently outrageous, Maryland courts have held that such behavior must exceed all bounds tolerated by a decent society and, "be of a nature which is especially calculated to cause, and does cause, mental distress of a very serious kind."²²

While evidence of a physical injury is helpful to show the victim has suffered severe emotional distress, it is not necessary.²³





RIGHTS OF ALL SURVIVORS UNDER MARYLAND LAW

Survivors of FGM are provided numerous protections under both the Maryland Constitution and state law. The Maryland Constitution requires that the crime victim be treated by agents of the State with dignity and respect during all phases of the criminal justice process.²⁴ It also provides that victims have the right to be notified of, attend and to be heard regarding victim issues at public criminal justice proceedings.²⁵

Additionally, Maryland law provides several protections to crime victims, including the right (i) to be informed within 10 days of the filing of an indictment or charging information against the perpetrator,²⁶ (ii) to request notifications of court proceedings,²⁷ (iii) to know the terms of any plea agreement,²⁸ and (iv) to be present and make a statement (if they so choose) at pretrial release, bail or sentence review hearings.²⁹

Maryland crime victims are also eligible for compensation in the form of (i) restitution or (ii) a payment from the victim emergency funds. Restitution means the offender pays the victim for expenses suffered as a result of the crime, which may be required if requested by the victim or the state's attorney.³⁰ The State of Maryland may also compensate crime victims for medical expenses and losses incurred from physical injuries suffered as a result of the crime, in an amount up to \$45,000 through the Criminal Injuries Compensation Board.³¹

CONCLUSION

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



ENDNOTES



- 1 See MD Rules, Rule 3-302(c) (Capacity).
- 2 Md. Code Ann., Health § 20-601(a).
- 3 Md. Code Ann., Health § 20-601(b).
- 4 Md. Code Ann., Health § 20-602(a)-(b).
- 5 Md. Code Ann., Health § 20-602(3).
- 6 Code Ann., Courts and Judicial Proceedings §§5-106(a).
- 7 Smallwood v. State, 51 Md. App. 463, 467 (1982).
- 8 Smallwood v. State, 51 Md. App. 463, 467 (1982).
- 9 Jones v. State, 357 Md. 408, 426 (2000).
- 10 Jones v. State, 357 Md. 408, 430 (2000).
- 11 Md. Code Ann., Courts and Judicial Proceedings §5-101.
- 12 White Pine Ins. Co. v. Taylor, 233 Md. App. 479, 504 (2017).
- 13 Id. at 505.
- 14 Id. See Restatement (Second) of Torts §13.
- 15 See White Pine Ins. Co. v. Taylor, 233 Md. App. 479, 504 (2017).
- 16 See Montgomery Ward v. Wilson, 339 Md. 701, 721 (1995).
- 17 Fine v. Kolodny, 263 Md. 647, 651 (1971).
- 18 Carter v. Aramark Sports & Entm't Servs., 153 Md. App. 210, 250 (2003).
- 19 Maniki v. Mass Transit Admin., 360 Md. 333, 360 (2000).
- 20 Harris v. Jones, 281 Md. 560, 565 (1977).
- 21 Id. at 565.
- 22 Id. at 564.
- 23 Id. at 565.
- 24 See Md. Constitution, Declaration of Rights, article 47.
- 25 Md. Const., Declaration of Rights, art. 47, Md. Code Ann., Criminal Procedure §11-102.
- 26 Md. Code Ann., Criminal Procedure §11-104(c)(1)(i).
- 27 Md. Code Ann., Criminal Procedure §11-104.
- 28 Md. Code Ann., Criminal Procedure §11-104(f).
- 29 Md. Code Ann., Criminal Procedure §11-104(f).
- 30 See Md. Code Ann., Criminal Procedure §§11-603; 11-606(a); 11-617; and 11-103(e)(4).
- 31 See Md. Code Ann., Criminal Procedure §11-819.