

FGM SURVIVOR'S GUIDE

TO

LEGAL REMEDIES

IN THE STATE OF
NEW JERSEY

DEVELOPED FOR [AHA](#) FOUNDATION

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CONTENTS

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



DISCLAIMER

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

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INTRODUCTION

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

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

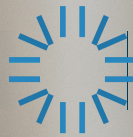
SECOND, survivors can potentially pursue recourse under several New Jersey state laws not directly related to FGM.

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

PLEASE NOTE THAT PURSUANT TO NEW JERSEY LAW MINORS CANNOT SUE ON THEIR OWN AND MUST BE REPRESENTED BY AN ADULT.¹

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

FGM is a practice that spans many different countries and communities, each with their own customs that occur at different ages. For example, in the Somali community, most girls are cut between the ages of 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 NEW JERSEY ANTI-FGM LAW

NEW JERSEY 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

CRIMINAL PROSECUTION OF FGM PERPETRATORS (N.J.S. § 2C:24-10)

Criminal prosecutions against perpetrators of FGM under New Jersey 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.

New Jersey law defines FGM as the circumcising, excising or infibulating of the whole or part of any labia majora or labia minora or clitoris of a female under the age of 18.² Anyone who (i) knowingly performs FGM or (ii) removes or permits the removal of a minor from New Jersey to perform FGM is guilty of a third degree felony. Additionally, any parent or guardian with immediate custody over a female minor who knowingly consents to FGM being performed on such minor is guilty of FGM.³ Consent by a minor or by a minor's parents is not a defense,⁴ and performing FGM as a matter of custom or ritual is expressly precluded as a defense.⁵ Defendants found guilty of FGM can be punished with up to five years imprisonment.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 a 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 NEW JERSEY

ADDITIONAL CRIMINAL LAWS

IN ADDITION TO THE FGM STATUTE, THERE ARE SEVERAL OTHER CRIMINAL LAWS FOR WHICH A PERPETRATOR OF FGM MAY BE CONVICTED.⁷

1. ENDANGERING WELFARE OF CHILDREN (N.J.S. § 2C:24-4(2))

This crime occurs when a person with a legal responsibility to care for a child causes harm to them, so they are “abused” or “neglected”. Any parent that directly participated in or performed FGM on their child could be found guilty of this offense, since (i) child abuse is defined as (among other things) excessive physical restraint under circumstances where the child’s behavior is not harmful to herself⁸ and (ii) neglect includes (among other things) the failure to do any act necessary for the child’s physical well-being.⁹ This offense is a second degree felony and is punishable by up to ten years in jail.¹⁰

2. ABUSE, ABANDONMENT, CRUELTY AND NEGLECT OF CHILD (N.J.S. § 9:6-1)

Of the four criminal offenses that are punishable by this statute, a parent or guardian whose child is the victim of FGM could potentially be found guilty of (i) abuse, (ii) abandonment or (iii) cruelty.

Abuse of a child occurs when (among other things) a parent or guardian uses excessive physical restraint on the child under circumstances which do not indicate that the child’s behavior is harmful to herself. A parent or guardian could be found guilty of this offense if they restrained their child to perform FGM, since the force required to restrain the victim is by definition excessive, as FGM is by no means meant to protect the victim from self-harm.

Abandonment of a child occurs when anyone having custody or control of the child fails to care and keep such child in their custody, so they are exposed to

physical or moral risk without proper and sufficient protection. A parent or guardian whose child is the victim of FGM could be found guilty of abandonment if it can be shown that FGM was performed on the victim as a result of their failure to provide adequate care.

Cruelty to a child occurs when (i) unnecessarily severe corporal punishment is inflicted on a child, (ii) unnecessary suffering or pain (mental or physical) is inflicted on a child, or (iii) unnecessary harm or suffering is inflicted on a child due to any willful act or omissions or commission. A parent or guardian could be found guilty of this crime if their acts or omissions resulted in FGM being performed on the victim that is their child, since FGM would likely be considered “unnecessary harm or suffering”.

Each of these offenses is a crime in the fourth degree,¹¹ which is punishable by up to 18 months in jail.¹²

3. ASSAULT (N.J.S. § 2C:12-1)

Assault occurs when the defendant (i) attempts to or (ii) purposely, knowingly or recklessly causes bodily injury to another. Since many victims of FGM suffer physical harm, they would likely be successful in prosecution for assault, so long as they can establish the defendant caused such harm on purpose, knowingly or out of extreme indifference.

4. KIDNAPPING (N.J.S. § 2C:13-1)

Kidnapping occurs when a person is (i) unlawfully removed from his or her place of residence, or (ii) confined for a substantial period of time to (a) facilitate a crime or (b) inflict bodily injury or terrorize the victim, among others. If the defendant (i) removed the victim and brought them to another location or (ii) restrained the victim in order to perform FGM, they could be found guilty of this crime. Kidnapping is a first degree felony, punishable with imprisonment of between fifteen to thirty years.

5. FALSE IMPRISONMENT (N.J.S. § 2C:13-3)

False imprisonment is the knowing restraint of another, which substantially interferes with such person's liberty. Notably it's not a requirement that the defendant and victim be related. Accordingly, the defendant can be guilty of false imprisonment if they unreasonably confine the victim for a time period that is excessive under the circumstances.

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.¹³

1. ASSAULT

Assault happens when the defendant attempts by physical menace to put another person in fear of imminent, serious bodily injury.¹⁴ This means an assault could occur even if FGM was never actually performed, so long as the defendant made an intentional threat to cause bodily injury to the plaintiff, the plaintiff had a well-founded fear of immediate danger, and the defendant was readily able to carry out the act.¹⁵

2. BATTERY

Battery includes the elements of assault and additionally requires the victim to have suffered actual, nonconsensual contact.¹⁶ In other words, the defendant must have attempted by physical menace to put the victim in fear of imminent serious bodily injury and made physical contact with the victim in doing so.¹⁷ Intent refers to the defendant's intent for there to be contact.¹⁸

3. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Intentional infliction of emotional distress happens when the defendant (i) intends to inflict emotional distress or acted in reckless disregard with high probability that severe emotional distress would follow, (ii) the defendant's conduct was extreme and outrageous, (iii) the defendant's actions caused the

plaintiff's emotional distress and (iv) the plaintiff's emotional distress was severe.¹⁹ The distress caused by the defendant must be so extreme that it passes all possible bounds of decency, and is regarded as atrocious and utterly intolerable in a civilized community.²⁰ While evidence of physical injury is helpful, it is not necessary, as plaintiffs can successfully establish a cause of action for intentional infliction of emotional distress if each of the four previously described elements is established.²¹ However, due to the nature of FGM, most victims should be able to show physical harm, thus further bolstering their case.

4. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

To establish a claim for negligent infliction of emotional distress, the plaintiff must show (i) the death or serious physical injury of another caused by defendant's negligence, (ii) an intimate familial relationship between plaintiff and the injured person, (iii) the plaintiff observed the victim's death or injury and (iv) having witnessed such death or injury caused the plaintiff severe emotional distress.²²

Any claim for negligent infliction of emotional distress must be brought by a close relative of the survivor, not the survivor herself. Parents, children and spouses are all examples of individuals who could potentially bring such a cause of action.²³

New Jersey courts have held that only plaintiffs present at the scene of the accident will suffer a traumatic loss causing emotional distress severe enough to establish a case for negligent infliction of emotional distress.²⁴ Accordingly, a victim of FGM could not bring a case for negligent infliction of emotional distress, but a parent or close family member that witnessed the act and satisfies the other elements could.

5. NEGLIGENT SUPERVISION

If the victim is a minor, and the negligence of their parent or legal guardian allowed FGM to occur, the victim may have a cause of action against that parent for negligent supervision of a child. The victim must show (i) that a duty was owed to them by the defendant, (ii) the defendant breached this duty, (iii) injury and (iv) the breach was a proximate cause of the injury, and there were actual damages.²⁵

Since under New Jersey law parents are generally immune from liability for harm suffered by their children as a result of negligence, the victim must show that the negligent act was willful or wanton.²⁶ In order to fit within this exception, the victim must show that the failure to prevent FGM occurred as a result of more their parents' negligence in providing care to them.



RIGHTS OF ALL SURVIVORS UNDER NEW JERSEY LAW

New Jersey law provides numerous protections to crime victims, including survivors of FGM. Under New Jersey state law, law enforcement officers are required to provide victims with information with respect to their rights to be (i) informed about the prosecution (if their attacker is criminally charged), (ii) informed about available remedies, financial assistance and social services and (iii) free from intimidation, harassment or abuse by any person (including the defendant) or any other person acting on the defendant's behalf, among others.²⁷ Additionally, the New Jersey State Constitution states that the criminal justice system shall treat victims of crimes with fairness, compassion and respect. Additionally, victims shall not be denied the right to attend public judicial proceedings, except if they need to be sequestered before providing testimony at such trial.²⁸

Under New Jersey law, victims of FGM may be entitled to compensation provided they satisfy certain conditions, including (i) being a resident of New Jersey, (ii) the criminal act occurred in New Jersey, (iii) they suffered personal injury or mental trauma and (iv) they cooperate with law enforcement, among others.²⁹ If the victim meets all relevant criteria, they can be compensated for expenses for medical treatment, lost earning, relocation expenses, emergency financial assistance up to \$1,500 and supplemental income for rehabilitative services (i.e. counseling, etc.).³⁰

CONCLUSION

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



ENDNOTES



- 1 Minors can institute and prosecute a legal action through the representation of their guardian, or if a conflict of interest exists, a “guardian ad litem”. A guardian ad litem is a court-appointed neutral party who is responsible for representing the best interests of the child in a court matter. See N.J. R. Civ. P. § 4:26-2.
- 2 N.J.S. § 2C:24-10(a).
- 3 N.J.S. § 2C:24-10(a)(2).
- 4 N.J.S. § 2C:24-10(c).
- 5 N.J.S. § 2C:24-10(b)-(c). Note that there are exceptions in the law for surgical procedures performed by a licensed physician when necessary to the health of the female or when the female is in labor or has just given birth and performed for medical purposes connected with that labor or birth.
- 6 N.J.S. § 2C:43-6.
- 7 The statute of limitations for each of these criminal laws is five years. N.J.S. § 2C:1-6.
- 8 N.J.S. § 9:6-1.
- 9 N.J.S. § 9:6-3.
- 10 N.J.S. § 2C:43-6.
- 11 N.J.S. § 9:6-3.
- 12 N.J.S. § 2C:43-6.
- 13 N.J.S. § 2(A):14-2.
- 14 State v. Berka, 211 N.J. Super. 717, 720 (1986).
- 15 Id.
- 16 Leang v. Jersey City Bd. Of Educ., 198 N.J. 557, 592 (2009).
- 17 Id.
- 18 Leang v. Jersey City Bd. Of Educ., 198 N.J. 557, 591 (2009).
- 19 49 Prospect St. Tenants Asso v. Sheva Gardens, 227 N.J. Super. 449, 474 (1988).
- 20 Id.
- 21 Id.
- 22 Portee v. Jaffee, 84 N.J. 88, 101 (1980).
- 23 Id.
- 24 Id.
- 25 Smith v. Harrah’s Casino Resort of Atl. City, 2013 NJ. Super. Unpub. LEXIS 2928, 6 (2013).
- 26 Buono v. Scalia, 179 N.J. 131, 133 (2004).
- 27 N.J.S. § 52:4B-36.
- 28 N.J. Const., art. I, para. 22.
- 29 <https://www.nj.gov/oag/njvictims/pdfs/VCCO-Application-Instructions.pdf>.
- 30 www.njoag.gov/vcco/vcco-victims/.