

# FGM SURVIVOR'S GUIDE

TO

# LEGAL REMEDIES

IN THE STATE OF  
WASHINGTON

DEVELOPED FOR [AHA](#) FOUNDATION

THROUGH THE PRO BONO ASSISTANCE OF

Reed Smith, LLP

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# DISCLAIMER

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## 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 the State of Washington, United States of America.

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 of America. 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.

Washington offers a range of legal remedies through its state court system in relation to FGM. This includes a FGM specific criminal statute that prohibits any person from perpetrating FGM on minors, knowingly facilitating FGM or knowingly transporting for the purpose of FGM. Depending on the facts and circumstances of a particular case, perpetrators of FGM can also be prosecuted under general criminal law principles, including, depending on the facts, assault, reckless endangerment, kidnapping and unlawful imprisonment. Under the criminal laws, survivors of FGM cannot themselves bring the relevant criminal action (such actions are brought by the state through prosecuting attorneys), however survivors can provide valuable assistance to the prosecuting attorneys bringing those actions. With certain very limited exceptions, prosecution of these non-FGM specific crimes must start within 3 years of the crime being committed.<sup>1</sup>

In addition to the criminal charges, Washington offers FGM survivors additional legal remedies through its state civil court system. Although there is no specific civil cause of action addressing FGM, there are a number of civil



causes of action available to survivors of FGM, including assault, battery, false imprisonment and intentional infliction of emotional distress. An FGM survivor can commence a civil cause of action on their own accord by retaining a legal representative to initiate a variety of civil causes of action. Civil claims must be commenced within 2 years of the offense being committed, which period may be extended in the case of minors under the age of 18 or persons with certain disabilities. In addition, whilst in general a child under the age of 18 may not bring a claim of negligent supervision against a parent, the parental immunity doctrine has certain limited exceptions including "willful or wanton conduct" which may be applicable.

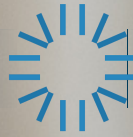
A survivor of a FGM crime is entitled to attend any trial or other court proceedings, and has the right to make a statement at the time of sentencing. A FGM survivor may also be eligible for compensation from a victims compensation program – please see below for further information. Note that to be eligible for compensation from the victims compensation program the crime must be reported to a law enforcement officer within 12 months of the occurrence or discovery of the crime, and the application for compensation submitted within 3 years of the date the crime was reported. These time periods may be extended for good cause at the discretion of the department which administers the victims compensation program.

## HOW DO I KNOW WHETHER I'M A SURVIVOR OF FEMALE GENITAL MUTILATION?

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.<sup>2</sup>

A description of the different types of FGM can be found at <https://www.who.int/health-topics/female-genital-mutilation#tab=tab>, 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 doctor or obstetrician-gynecologist (OB/GYN) or contact [help@theahafoundation.org](mailto:help@theahafoundation.org).





# REMEDIES AVAILABLE TO SURVIVORS UNDER WASHINGTON ANTI-FGM LAWS

WASHINGTON'S CRIMINAL AND CIVIL LAWS OFFER SURVIVORS OF FGM A NUMBER OF DIFFERENT LEGAL PATHWAYS TO PURSUE JUSTICE. IMPORTANTLY, WASHINGTON IS ONE OF THE 41 STATES IN THE UNITED STATES THAT HAS SPECIFICALLY CRIMINALIZED THE PRACTICE OF FGM UPON MINORS (UNDER THE AGE OF 18). FURTHER, AS EXPLAINED IN THE SECTIONS BELOW, PERPETRATORS OF FGM CAN ALSO BE PROSECUTED UNDER OTHER WASHINGTON CRIMINAL LAWS. SURVIVORS OF THE CRIME ALSO HAVE MANY OTHER LEGAL REMEDIES AVAILABLE TO SEEK REDRESS AGAINST THEIR PERPETRATORS AND COULD BE ENTITLED TO RECEIVE FORMS OF COMPENSATION THROUGH CIVIL CAUSES OF ACTION. THEREFORE, WASHINGTON'S CIVIL LAW AND CRIMINAL LAW OFFER A NUMBER OF DIFFERENT FORMS OF JUSTICE TO SURVIVORS OF FGM.

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 WASHINGTON SPECIFIC 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 BOTH. THE SAME WRONGFUL CONDUCT MAY GIVE RISE TO BOTH OTHER 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 WHILE 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, THEY MAY BE ORDERED TO PAY MONEY TO THE PLAINTIFF.

THIS GUIDE DISCUSSES THE CRIMINAL AND CIVIL OPTIONS IN TURN.



# OTHER CRIMINAL AND CIVIL CAUSES OF ACTION AVAILABLE TO SURVIVORS OF FGM IN WASHINGTON:

## CRIMINAL LAWS AND STATUTES

THE STATE OF WASHINGTON OFFERS A RANGE OF LEGAL REMEDIES TO FGM SURVIVORS THROUGH ITS COURT SYSTEM. WASHINGTON'S CRIMINAL LAWS ALLOW PERPETRATORS OF FGM TO BE PROSECUTED UNDER THE CRIME OF FGM AND OTHER GENERAL CRIMINAL LAW PRINCIPLES. SPECIFICALLY, A PERSON WHO CONDUCTS FGM MAY BE CHARGED WITH THE FOLLOWING CRIMES:

**FEMALE GENITAL MUTILATION** (WASH. REV. CODE ANN. §§ 9A.36. (ADDED BY 2023 C 122 § 7) AND 18.130. (ADDED BY 2023 C 122 § 7))

On April 20, 2023, Washington criminalized perpetrating FGM on minors. Under the new law, a person who knowingly (1) commits FGM on a minor; or (2) transports a minor, or causes or permits the transport of a minor, for the purpose of the performance of FGM on a minor<sup>3</sup> commits a gross misdemeanor,<sup>4</sup> which is punishable by imprisonment for a maximum term fixed by a court of up to 264 days, or by a fine fixed by the court of not more than \$5,000, or by both imprisonment and fine.<sup>5</sup> It is not a defense that a person believes the person's actions were conducted as a matter of culture, custom, religion, or ritual, or that the minor on whom female genital mutilation was performed consented to female genital mutilation, or that the minor's parent or guardian consented to female genital mutilation.<sup>6</sup>

Under Washington's FGM statute, a medical procedure does not constitute FGM if it is performed by a licensed healthcare provider, and it is necessary for the health of the minor.<sup>7</sup> Notwithstanding the foregoing, under a separate Washington statute, effective April, 2023, a licensed health care provider performing any procedure constituting FGM on a minor is subject to discipline.<sup>8</sup>

Prosecution of perpetrators of FGM must be commenced within ten years after the commission of the crime of FGM, or if the crime of FGM was committed against a victim under the age of 18, up to the victim's 28th birthday, whichever is later.<sup>9</sup>



**PHYSICAL HARM (WASH. REV. CODE ANN. §§ 9A.36)****ASSAULT ON A MINOR IN THE FIRST DEGREE (CLASS A FELONY) - § 9A.36.120**

A person eighteen years of age or older is guilty of the crime of assault of a child in the first degree if the child is under the age of thirteen and the person:

- (a) commits the crime of assault in the first degree, as defined in § 9A.36 011, against the child; or
- (b) intentionally assaults the child and either:
  - (i) recklessly inflicts great bodily harm; or
  - (ii) causes substantial bodily harm, and the person has previously engaged in a practice either of (A) assaulting the child which has resulted in bodily harm that is greater than transient physical pain or minor temporary marks, or (B) causing the child physical pain that is equivalent to that produced by torture.

“Assault” is defined under common law as (1) an attempt, with unlawful force, to inflict bodily injury upon another; (2) an unlawful touching with criminal intent, and (3) putting another in apprehension of harm whether or not the actor intends to inflict or is capable of inflicting that harm.<sup>10</sup>

“Great bodily harm” means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ.<sup>11</sup>

**ASSAULT ON A MINOR IN THE SECOND DEGREE (CLASS B FELONY) - § 9A.36.130**

A person eighteen years of age or older is guilty of the crime of assault of a child in the second degree if the child is under the age of thirteen and either of the following is true:

- (a) the defendant commits the crime of assault in the second degree against the child, or
- (b) the defendant intentionally assaults the child and causes bodily harm that is greater than transient physical pain or minor temporary marks, and the person has previously engaged in a practice either of (A) assaulting the child which has resulted in bodily harm that is greater than transient pain or minor temporary marks, or (B) causing the child physical pain that is equivalent to that produced by torture.



ASSAULT ON A MINOR IN THE THIRD DEGREE (CLASS C FELONY)  
- § 9A.36.140

A person eighteen years of age or older is guilty of the crime of assault of a child in the third degree if the child is under the age of thirteen and the person commits the crime of assault in the third degree as defined in § 9A.36.031(I) (d) or (f) against the child.

ASSAULT IN THE FIRST DEGREE (CLASS A FELONY) – § 9A.36.011

A person is guilty of assault in the first degree if they, with intent to inflict great bodily harm:

- (a) assault another with a firearm or deadly weapon, or by any other force or means likely to produce great bodily harm or death; or
- (b) assaults another and inflicts great bodily harm.

ASSAULT IN THE SECOND DEGREE (CLASS B FELONY) – § 9A.36.021

A person is guilty of assault in the second degree if they, under circumstances not amounting to assault in the first degree:

- (a) intentionally assault another and thereby recklessly inflict substantial bodily harm;<sup>12</sup> or
- (b) knowingly inflict bodily harm which by design causes such pain or agony the equivalent of that produced by torture.

RECKLESS ENDANGERMENT (GROSS MISDEMEANOR) – § 9A.36.050

A person is guilty of reckless endangerment when they recklessly engage in conduct that creates a substantial risk of death or serious physical injury to another person.<sup>13</sup>

Reckless endangerment is a gross misdemeanor.<sup>14</sup>

KIDNAPPING (CLASS A FELONY) – WASH. REV. CODE ANN. §§ 9A.40.020

KIDNAPPING IN THE FIRST DEGREE – § 9A.40.020

A person is guilty of kidnapping in the first degree if they intentionally abduct another person with the intent to:

- (a) inflict bodily injury on them; or
- (b) inflict extreme mental distress on them or a third person.<sup>15</sup>

Kidnapping in the first degree is a class A felony.<sup>16</sup>



**KIDNAPPING IN THE SECOND DEGREE (CLASS B FELONY) – § 9A.40.030**

A person is guilty of kidnapping in the second degree if they intentionally abduct another person under circumstances not amounting to kidnapping in the first degree.<sup>17</sup>

In any prosecution for this crime, it is a defense if established by the defendant through evidence that (a) the abduction does not include the use, intent or threat to use deadly force, AND (b) the actor is a relative of the person abducted, AND (c) the actor's sole intent is to assume custody of that person.<sup>18</sup>

Kidnapping in the second degree is a class B felony.<sup>19</sup>

**UNLAWFUL IMPRISONMENT (CLASS C FELONY) - WASH. REV. CODE ANN. § 9A.40.040**

A person is guilty of unlawful imprisonment if they knowingly restrain another person.<sup>20</sup> Unlawful imprisonment is a class C felony.<sup>21</sup>

**HARASSMENT - WASH. REV. CODE ANN. § 9A.46**

A person is guilty of harassment if:

without lawful authority, the person knowingly threatens:

(i) To cause bodily injury immediately or in the future to the person threatened or any other person; or

(ii) To subject them to physical confinement or restraint; or

(iii) to maliciously do any other act which is intended to substantially harm them with respect to their physical or mental health or safety; AND

the person by words or conduct<sup>22</sup> places the person threatened in reasonable fear that the threat will be carried out.

**CONSPIRACY AND RELATED CRIMES - WASH. REV. CODE ANN. § 9A.28**

The following offences apply when the actor conspires, attempts or solicits others to commit one of the offences above (A – D).

**CRIMINAL CONSPIRACY (CLASS C FELONY OR GROSS MISDEMEANOR<sup>23</sup>) – § 9A.28.040**

A person is guilty of criminal conspiracy when, with the intent that conduct constituting a crime be performed, they agree with one or more persons to engage in or cause the performance of such conduct and any one of them takes a substantial step in pursuance of such agreement.<sup>24</sup>



It is not a defense that the person(s) with whom the accused is alleged to have conspired (i) has not been prosecuted or convicted; or (ii) has been convicted of a different offence; or (iii) is not amenable to justice; or (iv) has been acquitted; or (v) lacked the capacity to commit an offence; or (vi) is a law enforcement officer or other government agent who did not intend that a crime be committed.<sup>25</sup>

CRIMINAL ATTEMPT (CLASS B FELONY, CLASS C FELONY OR GROSS MISDEMEANOR<sup>26</sup>) – § 9A.28.020

A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, they do any act which is a substantial step towards the commission of that crime. It is no defense to a prosecution that the crime attempted was factually or legally impossible to commission.<sup>27</sup>

An attempt to commit a crime is a:

- (a) Class B felony when the crime attempted is a class A felony;
- (b) Class C felony when the crime attempted is a class B felony;
- (c) Gross misdemeanor when the crime attempted is a class C felony.<sup>28</sup>

§ 9A.28.030—CRIMINAL SOLICITATION (PUNISHED IN THE SAME MANNER AS CRIMINAL ATTEMPT)

A person is guilty of criminal solicitation when, with intent to promote or facilitate the commission of a crime, they offer or give money or other things of value to another to engage in conduct which would constitute such crime or establish complicity of the other person in its commission or attempted commission had the crime been attempted or committed.<sup>29</sup>

Criminal solicitation shall be punished in the same manner as criminal attempt.<sup>30</sup>

ACCOMPLICE LIABILITY - WASH. REV. CODE ANN. § 9A.08.020

A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable.<sup>31</sup>

A person is legally accountable for the conduct of another person when (a) he or she acts with the same culpability that is sufficient for the commission of the crime and causes an innocent or irresponsible person to engage in the offense; (b) he or she is made accountable for the conduct of such other person



by § 9A.08.020 or by the specific law defining the crime; or (c) he or she is an accomplice of such other person in the commission of the crime.<sup>32</sup>

A person is an accomplice of another person in the commission of a crime if (a) with knowledge that it will promote or facilitate the commission of the crime (i) he or she solicits, commands, encourages, or requests such other person to commit it or (ii) his or her conduct is expressly declared by law to establish his or her complicity.<sup>33</sup>

A person is not an accomplice in a crime committed by another person if he or she is a victim of that crime.<sup>34</sup>

#### STATUTES OF LIMITATION - WASH. REV. CODE ANN. § 9A.04.080(I)

Except for prosecution of FGM, the relevant felonies must be prosecuted within THREE YEARS after commission including where the victim is a minor as the Statute of Limitation will not be suspended, as may be the case in others states.



## CIVIL CAUSES OF ACTION

WASHINGTON HAS A SPECIFIC CIVIL CAUSE OF ACTION RELATED TO FGM.<sup>35</sup> ADDITIONALLY, THE CIVIL CAUSES OF ACTION DISCUSSED IN THIS SECTION ARE AVAILABLE TO SURVIVORS OF FGM. A CIVIL CAUSE OF ACTION FOR FGM MUST BE COMMENCED WITHIN 10 YEARS OF THE ACTS ALLEGED TO HAVE CAUSED THE INJURY. HOWEVER, THE TIME LIMIT FOR COMMENCEMENT OF AN ACTION IS TOLLED FOR A MINOR UNTIL THE MINOR REACHES THE AGE OF 18 YEARS.<sup>36</sup> DIFFERENTLY, CIVIL CLAIMS GENERALLY MUST BE COMMENCED WITHIN A PERIOD OF 2 YEARS AFTER THE COMMISSION OF THE OFFENSES OUTLINED IN PARAGRAPHS B - E BELOW, PROVIDED THAT INDIVIDUALS WHO ARE LESS THAN 18 YEARS OLD OR SUFFER FROM AN INTELLECTUAL DISABILITY OR MENTAL ILLNESS AS A RESULT OF THE ACT, SHALL HAVE 2 YEARS TO DO SO FOLLOWING THAT INDIVIDUAL'S 18TH BIRTHDAY OR UPON THEM REGAINED THEIR PHYSICAL OR MENTAL CAPABILITY.<sup>37</sup> WHERE THE VICTIM IS SERVING A PRISON SENTENCE, THE "STATUTE OF LIMITATION" IS ALSO SUSPENDED UNTIL THEIR RELEASE ("STATUTE OF LIMITATION" IN THIS CONTEXT MEANS A LEGAL PROVISION THAT REQUIRES THAT A LEGAL CLAIM MUST BE BROUGHT WITHIN THE SPECIFIED TIMEFRAME).

### FEMALE GENITAL MUTILATION

Under Washington's anti-FGM legislation, a victim of FGM may also bring a civil cause of action against the person who committed FGM for economic and non-economic damages, punitive damages, and reasonable attorneys' fees and costs incurred in bringing the action.<sup>38</sup>

### ASSAULT

Assault is an attempt, with unlawful force, to inflict bodily injury upon another person, accompanied with the apparent present ability to give effect to the attempt if not prevented.<sup>39</sup> A claim for civil assault requires the victim's apprehension of imminent physical violence caused by the perpetrator's action or threat.<sup>40</sup> Thus, an FGM victim will have a claim for assault if the FGM victim can prove either that they were unlawfully injured by the defendant or they had cause to believe that the defendant will carry out the offense against the FGM victim.

Under the laws of Washington, a victim of assault has a claim for the offense from when the assault occurs up until the time the claim becomes time barred on the second anniversary pursuant to the statute of limitation. If the victim is younger than 18 years old, disabled, or imprisoned before sentencing, at the time the FGM occurs, the statute of limitations is suspended until the person becomes 18 years old, is no longer under disability, or is sentenced or released.<sup>41</sup>



## BATTERY

“A battery is an intentional and unpermitted contact with the plaintiff’s person”.<sup>42</sup> A defendant is liable for battery if they act in a manner with the intention to either cause harmful or offensive contact with the plaintiff or a third party, or an imminent apprehension of such contact and harmful or offensive contact with the plaintiff directly or indirectly results by reason of their conduct.<sup>43</sup> “A bodily contact is offensive if it offends a reasonable sense of personal dignity”<sup>44</sup> (i.e. the perpetrator knew that the contact would be highly offensive to any reasonable person). An FGM victim would have a claim for battery if it can be established that the defendant acted intending to either cause harmful or offensive contact with the FGM victim or a third party, or an imminent apprehension of such contact, and that harmful or offensive contact with the FGM victim directly or indirectly resulted from the defendant’s actions.<sup>45</sup>

## FALSE IMPRISONMENT

False imprisonment is defined as “the unlawful violation of a person’s right of personal liberty or the restraint of that person without legal authority”.<sup>46</sup> A person is restrained or imprisoned when they are deprived of either liberty of movement or freedom to remain in the place of their lawful choice and such restraint or imprisonment may be accomplished by physical force alone, or by threat of force, or by conduct reasonably implying that force will be used.<sup>47</sup>

A claim for false imprisonment can be brought by a victim of FGM if it can be established that the victim’s liberty was intentionally and unlawfully restrained either by deprivation of movement or deprivation of freedom to remain in a place of the victim’s choosing.<sup>48</sup>

## OUTRAGE (INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

“Outrage” or “intentional infliction of emotional distress” occurs where a perpetrator’s extreme and outrageous, intentional or reckless infliction of emotional distress causes another person actual severe emotional distress.<sup>49</sup> The perpetrator’s conduct must be “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.”<sup>50</sup>



A victim of FGM will have a claim for outrage/intentional infliction of emotional distress if it can be established that the defendant's extreme and outrageous conduct intentionally or recklessly inflicted emotional distress upon the victim, and resulted in the victim's severe emotional distress.

Where the outrageous conduct is directed at a third person, the defendant is subject to liability only if the defendant intentionally or recklessly caused severe emotional distress to a member of the plaintiff's immediate family who is present at the time.<sup>51</sup>

The Washington Supreme Court has noted that there is a disagreement among the state courts on whether there is a 2-year or 3-year statute of limitations on outrage claims. The conflict has not yet been resolved.<sup>52</sup>

## NEGLIGENT SUPERVISION

There is no cause of action for tort liability or tort duty against a parent for negligent supervision under the laws of Washington.<sup>53</sup> Consequently, a child of a parent, including an adult child, cannot sue their parent for negligent supervision where the child had undergone any form of FGM procedure because the parent failed to adequately supervise the child. However, although parents are immune from claims brought against them by their children for negligent supervision, they are not immune from "willful or wanton misconduct in supervising a child"<sup>54</sup> (see *Parental Immunity Doctrine below*).

## PARENTAL IMMUNITY DOCTRINE

As mentioned above, in Washington, a child may not bring a claim against their parent for personal injury they have suffered as a result of their parent's action or inaction as parents are afforded protection from such claims pursuant to the doctrine of parental immunity. Washington courts have, however, carved out three exceptions to the 'parental immunity doctrine' where a parent (1) negligently operates an automobile and the child suffers personal injury as a result, (2) injures their child while engaging in a business activity, and (3) engages in willful or wanton misconduct or intentionally wrongful conduct.<sup>55</sup> Gross negligence alone does not rise to the level of 'willful and wanton misconduct'.<sup>56</sup> "Willful misconduct" means the actor's misconduct is deliberate and intentional.<sup>57</sup> "Wanton misconduct" means the actor has knowledge or appreciation of the fact that danger was likely to result.<sup>58</sup>





## RIGHTS OF CRIME VICTIMS IN WASHINGTON

### CRIME VICTIMS ARE ENTITLED TO SPECIAL PROTECTION UNDER THE STATE CONSTITUTION

Victims and survivors of crime, including FGM victims and survivors, are afforded “basic and fundamental rights” under Article I, section 35 of the Washington State Constitution, which also “ensure[s] victims a meaningful role in the criminal justice system” by according them due dignity and respect.<sup>59</sup> These rights include being informed of, and attending, trial and all other court proceedings as well as the right to make a statement at sentencing and at any proceeding where the defendant’s release is considered. In the event the victim lacks mental or legal capacity including in the case of a person under 18 years of age (“**child**” or “**minor**”), or is otherwise unavailable, the prosecuting attorney may identify a representative to appear on behalf of the victim to exercise the victim’s rights.<sup>60</sup>

### RIGHTS OF CRIME VICTIMS– Wash. Rev. Code Ann. § 7.69

The “crime victim bill of rights” Wash Rev. Code Ann. requires law enforcement agencies, prosecutors, and judges must make “reasonable efforts” to ensure that victims, survivors of victims and witnesses to crime are afforded the following rights<sup>61</sup>:

- (a) access to immediate medical assistance,
- (b) to receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts, including access to a secure environment during court proceedings that does not require the victim to be in close proximity to the defendant,
- (c) to be notified of any change in court dates where the victim is under subpoena (i.e. summoned by the court),
- (d) to be provided with appropriate employer intercession services to minimize impacts resulting from court appearances,
- (e) to present a statement at any hearing conducted regarding an application for pardon or commutation of sentence, and to be informed of the final disposition of the case,



- (f) to be physically present for court proceedings and throughout the trial and to present a victim impact statement in person or by representation at sentencing hearings,
- (g) to be advised of procedures for securing witness fees,
- (h) to have any stolen or other personal property promptly returned when no longer held as evidence, and
- (i) to be notified by the prosecutor of the date, time and place of any sentencing hearing for felony convictions, and/or the issuance of an order of restitution in all felony cases even if the offender is incarcerated unless extraordinary circumstances exist.

#### § 7.69(A)—CHILD VICTIMS AND WITNESSES

Under Washington law, children are protected from any form of assault or abuse. Child abuse happens when any person under the age of 18 years suffers sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child.<sup>62</sup>

In cases involving violent crimes or child abuse, the child has the right to receive a written notice of their rights either directly or through a parent or guardian.<sup>63</sup> Furthermore, child victims have the right to be provided with appropriate referrals to social service agencies to assist the child and/or the child's family with the emotional impact of the crime.<sup>64</sup>

Where a child suffers bodily harm (or assault) as a result of being subjected to any form of FGM, that child may also be a victim of child abuse and the provisions in this section, which protect minors from child abuse, also apply to victims of FGM who are under the age of 18 years.

#### § 7.69(B)—ADDITIONAL RIGHTS WHERE THE VICTIM IS A DEPENDENT PERSON

In addition to the rights of victims and witnesses outlined above,<sup>65</sup> there shall be every reasonable effort made by law enforcement agencies, prosecutors, and judges to assure that dependent persons who are victims or witnesses are afforded the rights mentioned in this section.<sup>66</sup> "Dependent Persons" in this context means a person who, because of physical or mental disability, or because of extreme advanced age, is dependent upon another person to provide the basic necessities of life.<sup>67</sup>

The rights discussed in this section shall not be construed to create affirmative rights and duties, and the application of any such right in an individual case is subject to the discretion of the relevant law enforcement agency, prosecutor, or judge.<sup>68</sup>



Dependent persons who are victims or witnesses in the criminal justice system have the following rights, which apply in any criminal court or juvenile court proceeding:

- (a) to have explained in language easily understood by the dependent person, all legal proceedings and police investigations in which the dependent person may be involved,
- (b) where the dependent person is a victim of a violent crime, to be assigned a crime victim advocate or any other advocate of the victim's choosing to attend proceedings with the dependent person and provide emotional support to the dependent person and promote the dependent person's feelings of security and safety,
- (c) to be provided, whenever possible, a secure waiting area during court proceedings and to have an advocate or support person remain with the dependent person prior to and during any court proceedings,
- (d) to allow an advocate to make recommendations to the prosecuting attorney about the ability of the dependent person to cooperate with prosecution and the potential effect of the proceedings on the dependent person, and to provide information to the court concerning the dependent person's ability to understand the nature of the proceedings,
- (e) to be provided information or appropriate referrals to social service agencies to assist the dependent person with the emotional impact of the crime, the subsequent investigation, and judicial proceedings in which the dependent person is involved,
- (f) to provide information to the court on the necessity to have other supportive persons at the court proceedings while the dependent person testifies in order to promote the dependent person's feelings of security and safety,
- (g) for law enforcement agencies to enlist the assistance of other professional personnel such as victim advocates or prosecutorial staff trained in the interviewing of the dependent person,
- (h) to be provided a written statement of the rights of a dependent person to them or the dependent person's legal guardian (if applicable) at the time of reporting the crime to law enforcement officials where the dependent person is a victim of a violent crime. The statement may be paraphrased to make it more easily understood and shall include the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county, and
- (i) for any party to request a preliminary hearing for the purpose of establishing accommodations for the dependent person consistent with, but not limited to, the rights set out in this section.<sup>69</sup>



## Article 1.

## COMPENSATION FOR CRIME VICTIMS— Wash. Rev. Code Ann. § 7.68

Washington operates a state-funded crime victims' compensation program under which innocent victims of violent acts can apply for compensation for the harm they have suffered.<sup>70</sup>

“Victim” means a person who suffers bodily injury or death as a proximate result of a criminal act<sup>71</sup> of: (i) another person, (ii) the victim's own good faith and reasonable effort to prevent a criminal act, or (ii) his or her good faith effort to apprehend a person reasonably suspected of engaging in a criminal act.<sup>72</sup> “Injury” means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom.<sup>73</sup>

## § 7.68.045—CREATION OF VICTIMS' COMPENSATION ACCOUNT

The crime victims' compensation program has a designated crime victims' compensation account in place (the “**Account**”) from which compensation is paid out to victims of crime under this chapter. The Account is in the custody of the state treasurer and only the director of the department of labor (the “**Director**” and the “**Department**”) or a person designated by the Director may authorize expenditures from the Account.<sup>74</sup>

## § 7.68.060—REQUIREMENTS AND ELIGIBILITY

## Requirements:

- (a) An application for compensation must be received by the Department within 3 years after the date the criminal act was reported to a local police department or sheriff's office or the date the rights of any beneficiary is established, unless the Director has determined that “good cause” exists to extend the time permitted to receive the application.<sup>75</sup> “Good cause” shall be determined by the Department on a case-by-case basis and may extend the period of time in which an application can be received for up to 5 years after the date the criminal act was reported or the date the rights of beneficiaries accrued,<sup>76</sup> and
- (b) the criminal act must be reported by either the victim or another person on behalf of the victim to a local police department or sheriff's office within 12 months of its occurrence or, if it cannot be reasonably expected to have been reported within that period, within 12 months of the time when a report could reasonably have been made.<sup>77</sup> In making determinations as to reasonable time limits, the Department shall consider the needs of the victim.<sup>78</sup>



# Article 1.

## Eligibility:

- (a) A spouse, child, or dependent of a crime victim or any other person shall not be eligible for benefits under this chapter when the injury for which benefits are sought was:
  - (i) The result of consent, provocation, or incitement by the victim, unless an injury resulting from a criminal act caused the death of the victim;
  - (ii) sustained while the crime victim was engaged in the attempt to commit, or the commission of, a felony; or
  - (iii) sustained while the victim was confined in any county or city jail, federal jail or prison or in any other federal institution, or any state correctional institution maintained and operated by the department of social and health services or the department of corrections, prior to release from lawful custody; or confined or living in any other institution maintained and operated by the relevant state or local law enforcement agency.<sup>79</sup>
- (b) A spouse, child, or dependent of a crime victim or any other person shall not be eligible for benefits under this chapter where the person making a claim for such benefits has refused to give reasonable cooperation to the state or local law enforcement agencies in their efforts to apprehend and convict the perpetrator of the criminal act which gave rise to the claim.<sup>80</sup>
- (c) A victim is not eligible for benefits under this chapter if the victim:
  - (i) has been convicted of a felony offense within 5 years preceding the criminal act for which the victim is applying where the felony offense is a violent offense<sup>81</sup> or a crime against persons,<sup>82</sup> or is convicted of such a felony offense after the criminal act for which the victim is applying; and
  - (ii) has not completely satisfied all legal financial obligations owed (e.g. restitution payments).<sup>83</sup>
- (d) Where the victim is a victim of a childhood criminal act, there is a strong probability that the victim may repress conscious memory of such criminal act far beyond the victim attaining the age of 18. Consequently, the rights of adult victims of childhood criminal acts shall be deemed to have come into effect at the time the victim discovers or reasonably should have discovered the elements of the crime.<sup>84</sup> In making determinations on reasonable time limits, the Department shall give greatest weight to the needs of the victim.<sup>85</sup>



## PRACTICAL PROTECTIVE STEPS

FGM can cause physical and mental health problems that continue to affect survivors later in life, including, but not limited to, irregular periods, bladder problems, recurrent infections and natural child-birth challenges.<sup>86</sup> In addition, FGM is often followed by early marriage at the detriment of the survivor's education and career.<sup>87</sup>

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 non-profit organizations campaigning against the practice in relation to any physical or mental challenges faced. There are also community education programs and FGM survivor support groups that can provide additional care and encourage greater awareness.

## CONCLUSION

For more information,

please contact

AHA Foundation at

[info@theahafoundation.org](mailto:info@theahafoundation.org)



## REFERENCES

<sup>1</sup>Wash. Rev. Code Ann. § 9A.04.080. Certain other sexual abuses against minors have a longer statute of limitation. See § 9A.04.080.

<sup>2</sup><https://www.un.org/en/observances/female-genital-mutilation-day>.

<sup>3</sup>Wash. Rev. Code Ann. § 9A.36 (added by 2023 c 122 § 3) (1) (a), (b).

<sup>4</sup>Id.

<sup>5</sup>Wash. Rev. Code Ann. § 9A.92.020.

<sup>6</sup>Wash. Rev. Code Ann. § 9A.36 (added by 2023 c 122 § 3) (4).

<sup>7</sup>Wash. Rev. Code Ann. § 9A.36 (added by 2023 c 122 § 3) (3).

<sup>8</sup>Wash. Rev. Code Ann. § 18.130 (added by 2023 c 122 § 3).

<sup>9</sup>Wash. Rev. Code Ann. § 9A.04.080 (added by 2023 c 122 § 3)(e).

<sup>10</sup>*State v. Stevens*, 143 P.3d 817 (2006) and *State v. Jarvis*, 246 P.3d 1280, 1284 (Wash. Ct. App. 2011).

<sup>11</sup>Wash. Rev. Code Ann. § 9A.04.110(4)(c).

<sup>12</sup>Wash. Rev. Code Ann. § 9A.04.110(4)(b) – “Substantial bodily harm” means bodily injury which causes temporary but substantial disfigurement, or substantial loss or impairment of the function of any bodily part or organ or fracture to any bodily part.

<sup>13</sup>Wash. Rev. Code Ann. § 9A.36.050(1).

<sup>14</sup>Wash. Rev. Code Ann. § 9A.36.050(2).

<sup>15</sup>Wash. Rev. Code Ann. § 9A.40.020(1).

<sup>16</sup>Wash. Rev. Code Ann. § 9A.40.020(2).

<sup>17</sup>Wash. Rev. Code Ann. § 9A.40.030(1).

<sup>18</sup>Wash. Rev. Code Ann. § 9A.40.030(2).

<sup>19</sup>Wash. Rev. Code Ann. § 9A.40.030(3)(a).

<sup>20</sup>Wash. Rev. Code Ann. § 9A.40.040(1).

<sup>21</sup>Wash. Rev. Code Ann. § 9A.40.040(2).

<sup>22</sup>Wash. Rev. Code Ann. § 9A.46.020 – “Words or conduct” include, in addition to any other form of communication or conduct, the sending of electronic communication.

<sup>23</sup>Class C when an object of the conspiratorial agreement is a class B felony. Gross misdemeanor when the object is a class C felony.

<sup>24</sup>Wash. Rev. Code Ann. § 9A.28.040(1).

<sup>25</sup>Wash. Rev. Code Ann. § 9A.28.040(2).

<sup>26</sup>Wash. Rev. Code Ann. § 9A.28.020(3) – class B felony when the crime attempted is a class A felony. Class C when the crime attempted is a class B felony. Gross misdemeanor when the crime attempted is a class C felony.

<sup>27</sup>Wash. Rev. Code Ann. § 9A.28.020(1), (2).

<sup>28</sup>Wash. Rev. Code Ann. § 9A.28.020(3).

<sup>29</sup>Wash. Rev. Code Ann. § 9A.28.030(1).

<sup>30</sup>Wash. Rev. Code Ann. § 9A.28.030(3).

<sup>31</sup>Wash. Rev. Code Ann. § 9A.08.020(1).

<sup>32</sup>Wash. Rev. Code Ann. § 9A.08.020(2).

<sup>33</sup>Wash. Rev. Code Ann. § 9A.08.020(3).

<sup>34</sup>Wash. Rev. Code Ann. § 9A.08.020(5).

<sup>35</sup>Wash. Rev. Code Ann. § 9A.36. (added by 2023 c 122 § 3).

<sup>36</sup>Wash. Rev. Code Ann. § 9A.36. (added by 2023 c 122 § 3) (2).

<sup>37</sup>Wash. Rev. Code Ann. § 4.16.190.

<sup>38</sup>Wash. Rev. Code Ann. § 9A.36 (added by 2023 c 122 § 3)(1).

<sup>39</sup>*Howell v. Winters*, 108 P. 1077, 1078 (Wash. 1910).

<sup>40</sup>*Brower v. Ackerley*, 943 P.2d 1141, 1144 (Wash. Ct. App. 1997) (quoting *St. Michelle v. Robinson*, 759 P.2d 467, 469 (Wash. Ct. App. 1988)).

<sup>41</sup>Wash. Rev. Code Ann. § 4.16.190.

<sup>42</sup>*Kumar v. Gate Gourmet, Inc.*, 325 P.3d 193, 204 (Wash. 2014) (quoting Restatement (Second) of Torts § 13 (Am. L. Inst. 1965)).

<sup>43</sup>*Ibid.*

<sup>44</sup>*Kumar v. Gate Gourmet, Inc.*, 325 P.3d 193, 204 (Wash. 2014) (quoting Restatement (Second) of Torts § 19).

<sup>45</sup>*Ibid.* Also see Wash. Rev. Code Ann. § 4.16.100; Wash. Rev. Code Ann. § 4.16.190; and Wash. Rev. Code Ann. § 4.16.340.

<sup>46</sup>*Bender v. Seattle*, 664 P.2d 492, 499 (Wash. 1983).

<sup>47</sup>*Ibid.*

<sup>48</sup>*Bender v. Seattle*, 664 P.2d 492, 499 (Wash. 1983). See also Wash. Rev. Code Ann. § 4.16.100; *State Farm Fire & Cas. Co. v. Justus*, 398 P.3d 1258, 1268 (Wash. Ct. App. 2017).

<sup>49</sup>*Reyes v. Yakim Health Dist.*, 419 P.3d 819, 825 (Wash. 2018) (quoting *Kloepfel v. Bokor*, 66 P.3d 630, 632 (Wash. 2003)).

<sup>50</sup>*Reyes*, 419 P.3d at 825 (quoting *Grimsby v. Samson*, 530 P.2d 291, 295 (Wash. 1975)).

<sup>51</sup>*Grimsby*, 530 P.2d at 294.

<sup>52</sup>*Doe v. Finch*, 942 P.2d 359, 361 (Wash. 1997).

<sup>53</sup>*Smelser v. Paul*, 398 P.3d 1086, 1088 (Wash. 2017).

<sup>54</sup>*Zellmer v. Zellmer*, 188 P.3d 497, 503-04 (Wash. 2008).

<sup>55</sup>*Woods v. H.O. Sports Co., Inc.*, 333 P.3d 455, 457 (Wash. Ct. App. 2014).

<sup>56</sup>*Jenkins v. Snohomish Cty. Pub. Util. Dist. No. 1*, 713 P.2d 79, 83 (Wash. 1986) (citing *Stevens v. Murphy*, 421 P.2d 668, 673-74 (Wash. 1966)).

<sup>57</sup>*Ibid.*



<sup>58</sup> *Ibid.*

<sup>59</sup> *State v. Gentry*, 888 P.2d 1105, 1140 (Wash. 1995).

<sup>60</sup> Wash Const. art. I § 35.

<sup>61</sup> Wash Rev. Code Ann. § 7.69.030.

<sup>62</sup> Wash Rev. Code Ann. §§ 26.44.020(1), (2).

<sup>63</sup> Wash. Rev. Code Ann. § 7.69A; and § 7.69A.030(11).

<sup>64</sup> Wash. Rev. Code Ann. § 7.69A.030(9).

<sup>65</sup> Wash. Rev. Code Ann. § 7.69.030.

<sup>66</sup> Wash. Rev. Code Ann. § 7.69B.020.

<sup>67</sup> Wash. Rev. Code Ann. § 9A.42.010.

<sup>68</sup> Wash. Rev. Code Ann. § 7.69B.020.

<sup>69</sup> *Ibid.*

<sup>70</sup> Wash. Rev. Code Ann. § 7.7.68.

<sup>71</sup> “Criminal act” means an act committed or attempted in Washington which is: (a) punishable as a federal offense that is comparable to a felony or gross misdemeanor in Washington; (b) punishable as a felony or gross misdemeanor under the laws of Washington; (c) an act committed outside the state of Washington against a resident of the state of Washington which would be compensable had it occurred inside the state of Washington and the crime occurred in a state which does not have a crime victims’ compensation program, for which the victim is eligible as set forth in the Washington compensation law; or (d) trafficking as defined in Wash Rev. Code Ann. § 9A.40.100. § 7.68.020(6).

<sup>72</sup> Wash Rev. Code Ann. § 7.68.020(16).

<sup>73</sup> Wash. Rev. Code Ann. § 7.68.020(10).

<sup>74</sup> Wash. Rev. Code Ann. § 7.68.045.

<sup>75</sup> Wash. Rev. Code Ann. § 7.68.060(1)(a).

<sup>76</sup> *Ibid.*

<sup>77</sup> Wash. Rev. Code Ann. § 7.68.060(1)(a); and Wash. Rev. Code Ann. § 7.68.060(1)(b).

<sup>78</sup> Wash. Rev. Code Ann. § 7.68.060(1)(b).

<sup>79</sup> Wash. Rev. Code Ann. § 7.68.060(2).

<sup>80</sup> Wash. Rev. Code Ann. § 7.68.060(3).

<sup>81</sup> Wash. Rev. Code Ann. § 9.94A.030.

<sup>82</sup> Wash. Rev. Code Ann. § 9.94A.411.

<sup>83</sup> Wash. Rev. Code Ann. § 7.68.060(4).

<sup>84</sup> Wash. Rev. Code Ann. § 7.68.060(5).

<sup>85</sup> *Ibid.*

<sup>86</sup> <https://www.bbc.co.uk/news/world-47131052>.

<sup>87</sup> <https://www.un.org/en/observances/female-genital-mutilation-day>.