

# FGM SURVIVOR'S GUIDE

— TO —

# LEGAL REMEDIES

IN THE STATE OF  
KANSAS

DEVELOPED FOR [AHA](#) FOUNDATION

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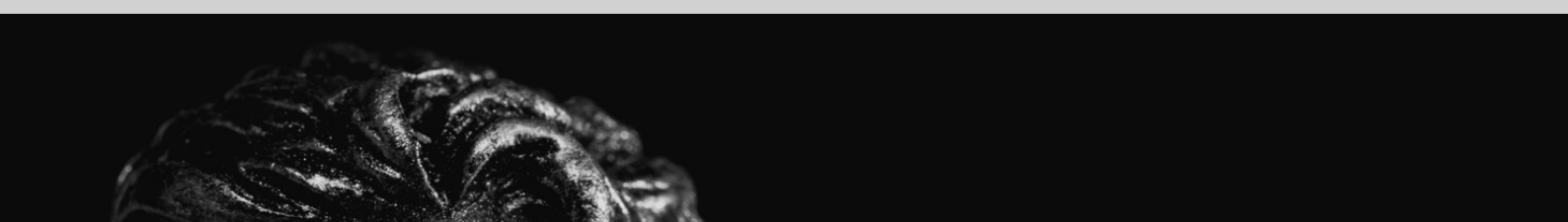
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# DISCLAIMER

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The contents of this Guide 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 Guide should not be construed as, nor relied upon for, legal advice in any circumstance or situation. An attorney licensed to practice law in Kansas should be contacted for advice on specific legal issues. This Guide is not a substitute for an in-person or telephone consultation with an attorney licensed to practice law in Kansas concerning any specific legal issue. This Guide is up to date as of February 6, 2023.



# 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 Kansas, 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 federal 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 criminal laws are equally important to provide FGM survivors with legal recourse.

Kansas offers a range of legal remedies through its state court system in relation to FGM. Under a 2021 Act, Kansas now recognizes FGM as a specific criminal offence. Depending on the facts and circumstances of a particular case, perpetrators of FGM can also be prosecuted under general criminal laws including assault, battery, kidnapping and criminal restraint. Although survivors of FGM cannot themselves bring the relevant criminal action, they can still provide valuable assistance to the state’s prosecuting attorneys bringing those actions. The criminal offenses mentioned in this Guide must be prosecuted within five years of being committed, except in the case of a sexually violent crime. Notwithstanding the ongoing debate over whether FGM qualifies as a sexually violent crime, prosecution for a sexually violent crime must be commenced within 10 years (or 10 years after the victim turns 18) or one year from the date that the identity of the suspected perpetrator is conclusively established by DNA testing, whichever is later.

A survivor of an 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 (such rights are not to interfere with the constitutional or statutory rights of the accused). Furthermore, Kansas’ Bill of Rights for Victims of Crime codifies constitutional protection of crime victims and a series of rights for crime victims.



A FGM survivor may also be eligible for compensation from a victims compensation program – please see below for further information.

In addition to the criminal remedies, Kansas also offers FGM survivors legal remedies through its state civil court system. Although there is no FGM-specific civil cause of action, survivors of FGM can bring a number of civil claims, 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 and may retain a legal representative to initiate such action. Generally, an aggrieved private citizen (“plaintiff”) must bring civil claims for assault, battery and false imprisonment within one year of the offense being committed or two years for civil claims of intentional or negligent infliction of emotional distress. However, as described further below, these statutory periods may be extended, depending on the individual situation and status of the law at the time of action, if the relevant civil offense is committed against minors under the age of 18 or persons with certain disabilities. The doctrine of parental immunity is not recognized in Kansas and state courts have held that parents may be liable to their children for injuries caused by parental negligence (although other than for cases of abuse, the court is unlikely to interfere with parental discretion).

## 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>1</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 MAINE ANTI-FGM LAWS

Kansas' criminal and civil laws offer survivors of FGM a number of different legal pathways to pursue justice. Importantly, Kansas is one of 41 states in the United States that have specifically criminalized the practice of FGM, typically upon minors. Further, as explained in the sections below, perpetrators of FGM can be prosecuted under Kansas' other criminal laws as well. Survivors of FGM may also seek redress against their perpetrators and receive forms of compensation through civil causes of action.

A criminal action is a lawsuit brought by a public prosecutor, who is an employee of either the federal, state, or local government. Accordingly, criminal prosecutions against perpetrators of FGM under Kansas-specific law can be brought only by state prosecutors. And while survivors of FGM cannot themselves bring criminal actions, they can provide valuable assistance to the prosecuting attorneys bringing those actions. For example, 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. In addition, if the defendant is found guilty in a criminal case, they may be punished with fines, time in prison, or both.

A civil lawsuit is brought by a plaintiff. In FGM cases, 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.

Because the same wrongful conduct may give rise to other criminal charges and civil claims, survivors should always consider pursuing both criminal and civil forms of relief. This Guide discusses the criminal and civil options in turn.





# CRIMINAL AND CIVIL CAUSES OF ACTION AVAILABLE TO SURVIVORS OF FGM IN KANSAS

## TABLE OF OFFENSES

A person involved in carrying out an act of FGM on another person might be charged with the offenses set out below, which are punishable based on the category in which they fall and as follows:

**OFFENSE TABLE**

TYPE OF OFFENSE	PENALTY
Level 1	147 to 653 months imprisonment (approx. 12 to 54 years)
Level 2	109 to 493 months imprisonment (approx. 9 to 41 years)
Level 3	55 to 247 months imprisonment (approx. 4.5 to 20.5 years)
Level 4	38 to 172 months imprisonment (approx. 3 to 14 years)
Level 5	31 to 136 months imprisonment (approx. 2.5 to 10.5 years)
Level 6	17 to 46 months imprisonment (approx. 1.5 to 4 years)
Level 7	11 to 34 months imprisonment (approx. 1 to 3 years)
Level 8	7 to 23 months imprisonment (approx. 7 months to 2 years)
Level 9	5 to 17 months imprisonment (approx. 5 months to 1.5 years)
Level 10	5 to 13 months imprisonment (approx. 5 months to 1 year)





## CRIME SPECIFIC TO FGM IN KANSAS<sup>2</sup>

As noted above, Kansas has enacted a law that specifically makes FGM a crime. A person commits the offense of FGM if the person: (1) knowingly circumcises, excises, or infibulates the whole or any part of the labia majora, labia minora or clitoris of a female under 18 years of age; (2) removes a female under 18 years of age from Kansas for the purpose of circumcising, excising, or infibulating the whole or any part of the labia majora, labia minora or clitoris of such female; or (3) is a parent, legal guardian, or caretaker of the victim and causes or permits another to perform the conduct described in subsection (1) or (2).<sup>3</sup> A "caretaker" means any person that willfully assumes responsibility for the care of a female under the age of 18.<sup>4</sup>

The offense of FGM is a level three felony. If convicted, the offender may be sentenced to a term of 55 to 247 months imprisonment (approximately 4.5 to 20.5 years).<sup>5</sup>

It is not a defense to prosecution if: (1) the person who undertook the act believed that the procedure was required as a matter of custom, ritual or religious practice; or (2) the victim, or the victim's parent, legal guardian or caretaker consented to the procedure.<sup>6</sup>

It is not considered female genital mutilation if a physician orders and performs the procedure and either: (1) the physical health of the female under 18 years of age makes it medically necessary to circumcise, excise, or infibulate the whole or any part of the labia majora, labia minora or clitoris; or (2) the female under 18 years of age is in labor or has just given birth, and such labor or birth makes it medically necessary to circumcise, excise, or infibulate the whole or any part of the labia majora, labia minora or clitoris.<sup>7</sup> A "physician" means any person licensed by the Kansas State Board of Healing Arts to practice medicine and surgery.<sup>8</sup>



# OTHER CRIMINAL CAUSES OF ACTION AVAILABLE TO SURVIVORS OF FGM IN KANSAS

In addition to the FGM-specific crime identified above, perpetrators of FGM in Kansas can also be charged with other crimes, depending on the facts and circumstances in an individual case.

## CRIMES AGAINST THE PERSON

### ***Assault***

A person commits criminal assault if they knowingly place another person in reasonable apprehension of immediate bodily harm.<sup>9</sup> This is a class C misdemeanor.<sup>10</sup>

### ***Aggravated Assault***

A person commits aggravated criminal assault if they knowingly place another person in reasonable apprehension of immediate bodily harm, either (1) with a deadly weapon; (2) while disguised in any manner designed to conceal identity; or (3) with intent to commit any felony.<sup>11</sup> This is a level seven felony.<sup>12</sup>

### ***Kidnapping***

A person commits kidnapping if they take or confine any person, accomplished by force, threat or deception, with the intent to hold such person, either (1) for ransom, or as a shield or hostage; (2) to facilitate flight or the commission of any crime; (3) to inflict bodily injury or to terrorize the victim or another; or (4) to interfere with the performance of any governmental or political function.<sup>13</sup> This is a level three felony.<sup>14</sup>

### ***Aggravated Kidnapping***

A person commits aggravated kidnapping if they commit kidnapping, as defined above, and bodily harm is inflicted upon the person kidnapped.<sup>15</sup> This is a level one felony.<sup>16</sup>

### ***Criminal Restraint***

A person commits criminal restraint if they knowingly and without legal authority restrain another person so as to interfere substantially with such person's liberty.<sup>17</sup> This act does not apply to acts done in the performance of duty by any Kansas law enforcement officer or any political subdivision thereof.<sup>18</sup> This is a class A misdemeanor.<sup>19</sup>

### ***Battery***

A person commits criminal battery if they (1) knowingly or recklessly cause bodily harm to another person; or (2) knowingly cause physical contact with another person when done in a rude, insulting or angry manner.<sup>20</sup> This is a class B misdemeanor.<sup>21</sup>



***Aggravated Battery***

A person commits aggravated criminal battery if they do any of the following:

- (a) Knowingly cause great bodily harm to another person or disfigurement of another person.<sup>22</sup> This is a level four felony.<sup>23</sup>
- (b) Knowingly cause bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted.<sup>24</sup> This is a level seven felony.<sup>25</sup>
- (c) Knowingly cause physical contact with another person when done in a rude, insulting or angry manner with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted.<sup>26</sup> This is a level seven felony.<sup>27</sup>
- (d) Recklessly cause great bodily harm to another person or disfigurement of another person.<sup>28</sup> This is a level five felony.<sup>29</sup>
- (e) Recklessly cause bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted.<sup>30</sup> This is a level eight felony.<sup>31</sup>

## CRIMES AFFECTING FAMILY RELATIONSHIPS AND CHILDREN

***Endangering a child***

A person commits criminal endangerment of a child if they knowingly and unreasonably cause or permit a child under the age of 18 years to be placed in a situation in which the child's life, body or health may be endangered.<sup>32</sup> This is a class A misdemeanor.<sup>33</sup>

***Aggravated endangering a child***

A person commits aggravated criminal endangerment of a child if they recklessly cause or permit a child under the age of 18 years to be placed in a situation in which the child's life, body or health is endangered.<sup>34</sup> This is a level nine felony. The sentence will be served consecutively to any other term or terms of imprisonment imposed and the term for any such sentence shall not be varied or appealed.<sup>35</sup>

***Abuse of a child***

Abuse of a child is committing any of the following acts against a child under 18 years of age:

- (a) Knowingly torturing, cruelly beating, cruelly striking or cruelly kicking.<sup>36</sup> This is a level five felony for victims aged 6-17, and a level three felony for victims aged under 6.<sup>37</sup>
- (b) Knowingly inflicting cruel and inhuman corporal punishment.<sup>38</sup> This is a level five felony for victims aged 6-17 and a level three felony for victims aged under 6.<sup>39</sup>



(c) Knowingly using cruel and inhuman physical restraint, including caging or confining the child in a space not designated for human habitation or binding the child in a way that is not medically necessary.<sup>40</sup> This is a level five felony for victims aged 6-17 and a level three felony for victims aged under 6.<sup>41</sup>

(d) Recklessly causing great bodily harm, abusive head trauma, permanent disability or disfigurement.<sup>42</sup> This is a level four felony.<sup>43</sup>

(e) Knowingly causing great bodily harm, abusive head trauma, permanent disability or disfigurement.<sup>44</sup> This is a level three felony.<sup>45</sup>

(f) Knowingly inflicting cruel and inhuman corporal punishment with a deadly weapon.<sup>46</sup> This is a level three felony.<sup>47</sup>

(g) Knowingly impeding the normal breathing or circulation of the blood by applying pressure on the throat, neck or chest of a child or blocking the nose or mouth of the child in a manner whereby death or great bodily harm could be inflicted.<sup>48</sup> This is a level three felony.<sup>49</sup>

## ANTICIPATORY CRIMES

### ***Criminal Attempt***

A person commits criminal attempt if they take an overt act toward the perpetration of a crime and intend to commit such crime but fails in the perpetration thereof or is prevented or intercepted in executing such crime.<sup>50</sup> It is not a defense that it was impossible to commit the attempted crime.<sup>51</sup>

### ***Criminal conspiracy***

A person commits criminal conspiracy if they make an agreement with another person to commit a crime or to assist in committing a crime. In order to be convicted of conspiracy, an overt act in furtherance of such conspiracy must be alleged and proved to have been committed by such person or a co-conspirator.<sup>52</sup>

It is immaterial to the liability of the person charged with conspiracy that any other person with whom they conspired lacked the actual intent to commit the underlying crime, provided they believed the other person had the actual intent to commit the underlying crime.<sup>53</sup> It is a defense to a charge of conspiracy if the accused voluntarily and in good faith withdrew from the conspiracy, and communicated the fact of such withdrawal to one or more of the accused person's co-conspirators, before any overt act in furtherance of the conspiracy was committed by the accused or by a co-conspirator.<sup>54</sup>

### ***Criminal solicitation***

A person commits criminal solicitation if they command, encourage or request another person to commit a felony, attempt to commit a felony or aid and abet in the commission or attempted commission of a felony for the purpose of promoting or facilitating the felony.<sup>55</sup> It does not require communication with the person solicited to commit the felony if the person's conduct was designed to effect a communication.<sup>56</sup> It is an affirmative defense that the actor, after



soliciting another person to commit a felony, persuaded that person not to do so or otherwise prevented the commission of the felony, under circumstances manifesting a complete and voluntary renunciation of the actor's criminal purposes.<sup>57</sup>

### ***Sentencing***

According to Kansas sentencing guidelines, criminal attempt, conspiracy and solicitation to commit the crime of FGM, which is a nondrug person felony (a felony against the person that does not involve a drug offense), are, reduced by six months (criminal attempt), or ranked on the nondrug scale at two (conspiracy) or three (solicitation) severity levels below the appropriate level for the underlying or completed crime of FGM, with the lowest severity level being severity level 10.<sup>58</sup>

## TIME LIMITATIONS FOR COMMENCEMENT OF PROSECUTION

Where a victim is under 18 years of age, prosecution for a sexually violent crime,<sup>59</sup> must be commenced within 10 years of the date the victim turns 18 years of age or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later.<sup>60</sup> Where a victim is under 18 years of age, prosecution for a sexually violent crime, must be commenced within 10 years of the date the victim turns 18 years of age or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later.<sup>61</sup> Prosecution for other crimes<sup>62</sup> mentioned in this Guide must be commenced within five years after the crime is committed.<sup>63</sup>

An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing offense plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.<sup>64</sup> A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution.<sup>65</sup>

The period within which a prosecution will be commenced will not include periods when:

- (a) The accused is absent from the state;<sup>66</sup>
- (b) The accused is concealed within the state so that process cannot be served upon the accused;<sup>67</sup>
- (c) The fact of the crime is concealed;<sup>68</sup>



(d) A prosecution is pending against the defendant for the same conduct, even if the indictment or information which commences the prosecution is quashed or the proceedings thereon are set aside, or are reversed on appeal;<sup>69</sup>

(e) An administrative agency is restrained by court order from investigating or otherwise proceeding on a matter before it as to any criminal conduct defined as a violation of any provision of article 41 of chapter 25 and article 2 of chapter 46 of the Kansas Statutes Annotated (as amended), which may be discovered as a result thereof regardless of who obtains the order of restraint;<sup>70</sup> or

(f) whether the fact of the crime is concealed by the active act or conduct of the accused. This is the case where there is substantially competent evidence to believe two or more of the following factors are present:<sup>71</sup>

(i) The victim was a child under 15 years of age at the time of the crime;<sup>72</sup>

(ii) The victim was of such age or intelligence that the victim was unable to determine that the acts constituted a crime;

(iii) The victim was prevented by a parent or other legal authority (including, but not limited to natural and stepparents, grandparents, aunts, uncles, siblings)<sup>73</sup> from making known to law enforcement authorities the fact of the crime. It does not matter if the parent or other legal authority is not the accused;<sup>74</sup> and

(iv) There is substantially competent expert testimony indicating the victim psychologically repressed such witness' memory of the fact of the crime, and in the expert's professional opinion the recall of such memory is accurate and free of undue manipulation, and substantial corroborating evidence can be produced in support of the allegation. Corroborating evidence may include, but is not limited to, evidence the defendant committed similar acts against other persons or evidence of contemporaneous physical manifestations of the crime.<sup>75</sup>

Under no circumstances can prosecution relying on the factors in section (f) above be later than the date the victim turns 28 years of age.<sup>76</sup>



# CIVIL CAUSES OF ACTION

Kansas does not have specific civil causes of action related to FGM. However, FGM survivors can pursue various causes of action through the state civil court system.

## ***Assault***

Assault is defined as “an intentional threat or attempt, coupled with apparent ability, to do bodily harm to another, resulting in immediate apprehension of bodily harm. No bodily contact is necessary.”<sup>77</sup> Civil assault is grounded upon the actor’s intention to inflict injury and such intent “can be actual or it can be inferred from the nature of the act when the consequences are substantially certain to result from the act.”<sup>78</sup> In other words, the actor does not need to make physical contact with the victim in order to be liable for assault.

## ***Battery***

Battery is the “unprivileged touching or striking of one person by another, done with the intent of bringing about either a contact or an apprehension of contact, that is harmful or offensive.”<sup>79</sup> Similar to assault, civil battery requires intent.<sup>80</sup> The court has held that such intent “can be satisfied either by (1) an intent to cause a physical injury on another; or by (2) an intent to cause an offensive bodily contact, that is, to invade the other’s reasonable sense of personal dignity. Both states of mind are sufficiently culpable to justify imposing civil battery liability for damages, including any physical injury that is legally caused by the resulting bodily contact.”<sup>81</sup>

## ***Sexual Battery***

Sexual battery is a statutory crime that involves the touching of a victim who is not the spouse of the offender and 16 or more years of age and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another.<sup>82</sup> Although sexual battery in Kansas is defined in the criminal code, it is also an intentional tort, enabling injured parties to bring both criminal proceedings and civil lawsuits against perpetrators of sexual battery.<sup>83</sup>

## ***False Imprisonment***

False imprisonment is the restraint of another’s personal freedom without legal excuse through any words, acts, threats, or personal violence that, under the circumstances, the one being restrained fears to disregard.<sup>84</sup> It is, therefore, not necessary for there to be actual confinement or any injury to the individual.<sup>85</sup>

## ***Intentional Infliction of Emotional Distress (The Tort of Outrage)***

In Kansas, the statute refers to a cause of action typically referred to as “intentional infliction of emotional distress” as “the tort of outrage.”<sup>86</sup> In order to prevail in a claim of intentionally causing emotional distress, a plaintiff must prove four elements: (1) The conduct of the defendant was intentional or in reckless disregard of the plaintiff; (2) the conduct was extreme and outrageous; (3) there was a causal connection between the defendant’s conduct and the plaintiff’s mental distress; and (4) the plaintiff’s mental distress was extreme and severe.<sup>87</sup>



***Negligent Infliction of Emotional Distress***

Negligent (rather than intentional) infliction of emotional distress is only actionable if it results in physical injury to the plaintiff.<sup>88</sup> In order to sustain such a claim, the plaintiff must establish that the conduct complained of was accompanied by, or resulted in, immediate physical injury, and that the physical injuries complained of were a direct and proximate result of emotional distress caused by the defendant's alleged negligent conduct. Furthermore, the victim must show that they suffered damage resulting from the act or omission.<sup>89</sup>

Kansas has adopted the Restatement (Second) of Torts, § 46(2)(b) which permits recovery for outrageous conduct directed at a third person who is not a family member of the plaintiff.<sup>90</sup> Plaintiffs must commence an action for either intentional or negligent infliction of emotional distress within two years, however, the same exceptions above apply as for false imprisonment (see above).<sup>91</sup>

***Causes of Action Related to Parent-Child Relationships*****1) Un-emancipated Minor v. Parent**

The Courts recognize that there is a “special relationship” which may exist between parent and child.<sup>92</sup> This special relationship creates a duty for the parent to protect the child from harm from third persons.<sup>93</sup> As a general rule, a parent may be liable to their child for injuries caused by the parent's negligence, provided that there are no special circumstances that would exclude or limit the offending parent from such liability.<sup>94</sup>

FGM survivors may benefit from the fact that Kansas has not explicitly adopted or codified a parental immunity doctrine. In a number of different cases, Kansas courts have held that parents may be liable to their children for injuries caused by parental negligence. However, except for cases of abuse, Kansas courts will generally not interfere with the ordinary exercise of parental discretion and, in such cases, causes of action for “negligent parenting” have been uniformly denied.<sup>95</sup> Kansas courts often justify their reluctance based on the view that parents have broad discretion in the education and discipline of their children and are presumed to act in the child's best interests.<sup>96</sup>

**2) Emancipated Minor v. Parent**

An emancipated child takes on more of the characteristics of a third person. The “child” has become an adult and is no longer subject to the authority of the parents. As such, the maintenance of family authority and harmony are no longer considerations. Therefore, long before the courts allowed unemancipated minors to sue, an emancipated minor could bring an action against a parent.<sup>97</sup>

**3) Child Sexual Abuse**

Kansas recognizes a cause of action for childhood sexual abuse. An action for childhood sexual abuse must be commenced within three years after the date the person attains 18 years of age or within three years after the plaintiff discovers or reasonably should have discovered that the injury or illness was caused by childhood sexual abuse, whichever occurs later.<sup>98</sup> Kansas courts have neither accepted nor rejected the possibility that FGM is a form of actionable child sexual abuse.



# RIGHTS OF CRIME VICTIMS IN KANSAS

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

Victims of crime, including FGM victims, are afforded “basic rights” under Article XV, § 15 of the Kansas State Constitution, which include being informed of and being present at public hearings of the criminal justice process. They also have the right to be heard at sentencing or at any other time deemed appropriate by the court. These rights are available to the extent that they do not interfere with the constitutional or statutory rights of the accused.<sup>99</sup>

### ***Bill of Rights for Victims of Crime – K.S.A. § 74-7333***

Kansas’ Bill of Rights for Victims of Crime creates protections for victims of crimes. In order to ensure the fair and compassionate treatment of victims of crime and increase the effectiveness of the criminal justice system, victims are afforded the following victims’ rights<sup>100</sup>:

- (a) Victims should be treated with courtesy, compassion and with respect for their dignity and privacy and should suffer the minimum of necessary inconvenience from their involvement with the criminal justice system.
- (b) Victims should receive, through formal and informal procedures, prompt and fair redress for the harm which they have suffered.
- (c) Information should be made available to victims regarding (i) the availability of criminal restitution; (ii) recovery of damages in a civil cause of action; (iii) the crime victims compensation fund; and (iv) other remedies and the mechanisms to obtain such remedies.
- (d) Information should be made available to victims about their participation in criminal proceedings and the scheduling, progress and ultimate disposition of the proceedings.
- (e) The views and concerns of victims should be ascertained and the appropriate assistance provided throughout the criminal process.
- (f) When the personal interests of victims are affected, the views or concerns of the victim should, when appropriate and consistent with criminal law and procedure, be brought to the attention of the court.
- (g) Measures may be taken when necessary to provide for the safety of victims and their families and to protect them from intimidation and retaliation.



(h) Enhanced training should be made available to sensitize criminal justice personnel to the needs and concerns of victims and guidelines should be developed for this purpose.

(i) Victims should be informed of the availability of health and social services and other relevant assistance that they might continue to receive the necessary medical, psychological and social assistance through existing programs and services.

(j) Victims should report the crime and cooperate with law enforcement authorities.

## **OTHER RIGHTS**

### ***Victim Impact Statements and the Right to be Heard — K.S.A. § 22-3424(e)(3)***

In addition, victim impact statements and the victims' right to be heard pursuant to the Kansas's Bill of Rights for Victims of Crime<sup>101</sup> are reinforced by further provisions of the Kansas Statutes.<sup>102</sup> Prior to sentencing, the court shall, if it deems it appropriate, "allow the victim or such members of the victim's family to address the court, if the victim or the victim's family so requests".<sup>103</sup>

### ***Victims' Right to Information and Notice — K.S.A. § 19-4808***

Crime victims may be entitled to receive compensation pursuant to the Crime Victims Compensation Act.<sup>104</sup> The Kansas Statutes reinforces the crime victims' rights to receive timely information and notice under the Kansas's Bill of Rights for Victims of Crime which provides that victims should be afforded the following rights<sup>105</sup>:

(a) the availability of phone numbers for emergency and medical services (if needed);

(b) the police report number, in writing;

(c) the address and telephone number of the prosecutor's office that the victim should contact to obtain information about victims' rights pursuant to K.S.A. 74-7333 and 74-7335, and amendments thereto;

(d) the name, address and telephone number of the local board and information about victim compensation benefits (if any local board has been appointed in the county);

(e) advise the victim that the details of the crime may be made public; and

(f) advise the victim of such victim's rights under K.S.A. 74-7333 and 74-7335 (as amended).



## 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>106</sup> In addition, FGM is often followed by early marriage at the detriment of the survivor's education and career.<sup>107</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

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- [77] *Baska v. Scherzer*, 283 Kan. 750, 756, 156 P.3d 617, 622 (2007) (quoting *State v. Hazen*, 160 Kan. 733, 740–41, 165 P.2d 234 (1946)); see also *Pattern Inst. Kan. Civil 127.01* (defining “assault”).
- [78] *McElhaney v. Thomas*, 307 Kan. 45, 53, 405 P.3d 1214, 1219 (2017) (quoting *Thomas v. Benchmark Ins. Co.*, 285 Kan. 918, 933, 179 P.3d 421 (2008) (relying on and adopting the black letter law of civil battery as set forth in the Restatement [Second] of Torts [1965] ).
- [79] *Baska v. Scherzer*, 156 P.3d at 756; see also *Pattern Inst. Kan. Civil 127.02* (defining “battery”).
- [80] *Ibid.*
- [81] *McElhaney v. Thomas*, 307 Kan. 45, 405 P.3d 1214 (2017).
- [82] See K.S.A. § 21-5505 (providing the statutory definition of the crime of sexual battery).
- [83] See *Smith v. Welch*, 967 P.2d. at 732–33 (noting that while sexual battery is a statutory crime, the civil injury caused by sexual battery does not merge with the crime in that the injured party has a civil right or remedy against the perpetrator of the sexual battery); see also K.S.A. § 21-5505 (providing that the [Criminal] code does not bar, suspend or otherwise affect any civil right or remedy, authorized by law to be enforced in a civil action, based on conduct which this code makes punishable. The civil injury caused by criminal conduct is not merged into the crime).
- [84] *Mendoza v. Reno County*, 235 Kan. 692, 681 P.2d 676, 678 (1984).



[85] *Comer v. Knowles*, 17 Kan. 436, 439 (1877); see also discussion of *Comer v. Knowles* and the nature and character of the action of false imprisonment in *Perry v. Kress & Co.*, 187 Kan. 537, 358 P.2d 665 (1961); *Cordell v. Standard Oil Co.*, 131 Kan. 221, 289 P. 472 (1930); *Gariety v. Fleming*, 121 Kan. 42, 45, 245 P. 1054 (1926); *Thompson v. General Finance Co., Inc.*, 205 Kan. 76, 468 P.2d 269 (1970); and *Munsell v. Ideal Food Stores*, 208 Kan. 909, 494 P.2d 1063 (1972).

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[91] K.S.A. § 60-513(a)(4). See also *Hallam v. Mercy Health Ctr. of Manhattan, Inc.*, 278 Kan. 339, 342, 97 P.3d 492, 495 (2004).

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P.2d 184, reversed 260 Kan. 769, 925 P.2d 422 (1996).

[94] Romualdo P. Eclavea, Annotation, Liability of Parent for Injury to Unemancipated Child Caused by Parent's Negligence—Modern Cases, 6 A.L.R.4th 1066 (1981).

[95] *Holden v. Holden*, 957 F. Supp. 1204 (D. Kan. 1997).

[96] In one instructive case discussing how parental immunity may need to remain for parental discretion in rearing children, the Court found parents immune from actions by a child for failure to investigate or immediately file a medical malpractice action for not diagnosing a child's scoliosis. The Court was persuaded that when parental discretion is exercised in situations such as the child's medical condition, the parent should be afforded immunity. See *Bonin v. Vannaman*, 261 Kan. 199, 208, 929 P.2d 754, 763 (1996).

[97] § 8:21. Parent-child immunity, 1 Kan. Law & Prac., Family Law § 8:21.

[98] K.S.A. § 60-523; *Shirley v. Reif*, 260 Kan. 514, 920 P.2d 405 (1996).

[99] Kan. Const. art. XV, § 15(a).

[100] K.S.A. § 74-7333(a).

[101] K.S.A. § 74-7333.

[102] K.S.A. § 22-3424(e)(3).

[103] K.S.A. § 22-3424(e)(3). In *State v. Gideon*, the major case addressing the purview of K.S.A. § 22-3424(e)(3), the Kansas Supreme Court did not distinguish between written and oral impact statements. 257 Kan. 591, 605; 894 P.2d 850, 863 (1995). However, courts and commentators alike have interpreted *Gideon* as implying that even if an oral impact statement is made to a court, the court must exercise discretion and disallow any statements that may be so inflammatory and prejudicial that there may be a risk of violating the defendant's 14th Amendment due process rights. See *State v. Scales*, 261 Kan. 734, 933 P.2d 737 (1997) (a case in which the Kansas Supreme Court addressed whether the defendant was denied a fair sentencing hearing because of the sentencing court's ex parte meeting with the deceased victim's family and because of the court's ex parte review and consideration of a petition signed by nearly 2000 people seeking the imposition of a harsh sentence for the defendant. The Supreme Court determined that because the sentencing court violated the Code of Judicial Conduct by having such ex parte communications, the defendant was denied a fair sentencing hearing. The court remanded the case for resentencing of the defendant with a different district judge); see generally Suzanne Valdez, What Every Lawyer Should Know About Crime Victims' Rights in Kansas, J. Kan. B. Ass'n November/December 2011, at 22, 25–26; Douglas E. Beloof, Constitutional Implications of Crime Victims as Participants, 88 Cornell L. Rev. 282 (Jan. 2003).

[104] K.S.A. § 74-7301.

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