

# FGM SURVIVOR'S GUIDE

---

TO

# LEGAL REMEDIES

## IN THE STATE OF FLORIDA

DEVELOPED FOR [AHA](#) FOUNDATION

THROUGH THE PRO BONO ASSISTANCE OF

REED SMITH, LLP

---

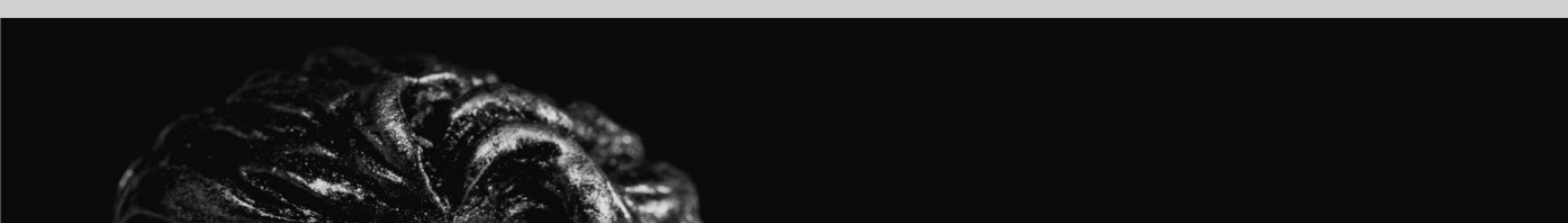
LAST UPDATED: MAY 12, 2023





# CONTENTS

INTRODUCTION.....	4
HOW DO I KNOW WHETHER I'M A SURVIVOR OF FEMALE GENITAL MUTILATION?.....	5
REMEDIES AVAILABLE TO SURVIVORS UNDER FLORIDA ANTI-FGM LAWS .....	6
OTHER CRIMINAL AND CIVIL CAUSES OF ACTION AVAILABLE TO SURVIVORS OF FGM IN FLORIDA .....	7
CRIMES SPECIFIC TO FGM IN FLORIDA.....	7
OTHER CRIMINAL CAUSES OF ACTION AVAILABLE TO SURVIVORS OF FGM IN FLORIDA.....	8
CIVIL CAUSES OF ACTION .....	12
RIGHTS OF CRIME VICTIMS IN FLORIDA .....	14
CONCLUSION .....	17
PRACTICAL PROTECTIVE STEPS .....	17
FURTHER INFORMATION .....	17
ANNEX: REFERENCES .....	18







# DISCLAIMER

---

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 Florida 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 Florida concerning any specific legal issue. This Guide is up to date as of May 12, 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 Florida, United States of America.

In 2018, Florida criminalized perpetrating FGM on minors. Notable features of Florida’s anti-FGM legislation include felony charges, prosecution of the FGM practitioner and prosecution of the minor’s parents or guardians.

Current federal law provides federal authorities the power to prosecute any person who knowingly 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. Federal 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.

Florida offers a range of legal remedies through its state criminal court system in relation to FGM. In 2018, Florida recognized FGM of minors as a specific criminal offense, categorized as sexual battery. Other offenses also include removing (or causing or permitting the removal of) a minor from Florida for the purpose of committing FGM, and a person who is a parent, a guardian, or in a position of familial or custodial authority to a minor knowingly consenting to or permitting FGM. Depending on the facts and circumstances of a particular case, perpetrators of FGM can also be prosecuted under general criminal laws, including assault and child abuse, as well as anticipatory crimes such as criminal attempt, criminal conspiracy and criminal solicitation. Although survivors of FGM in Florida cannot themselves bring the relevant criminal action, they can still provide valuable assistance to the state’s prosecuting attorneys bringing those actions.

Criminal prosecution in Florida is generally time-barred unless commenced within a specific period after an offense is committed depending on the type of offense. Certain factors may extend such statutory periods. However, because FGM is categorized as a sexual battery offense under Florida law, many FGM prosecutions are not time-barred and prosecution can commence at any time, particularly where the victim was under the age of 16 at the time of the offense, or in the case of a first or second degree felony sexual battery offense, under the age of 18 at the time of the offense.

In addition to the criminal remedies, Florida 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, sexual battery, false imprisonment, intentional or negligent infliction of emotional distress and various intentional torts based on abuse. In Florida, the parental immunity doctrine, which would otherwise

generally prevent children from suing their parents in tort, does not apply to civil claims involving intentional sexual torts.

Civil actions are generally time-barred and most actions must be commenced within four years of the occurrence of the last element of the relevant criminal offense. However, there is no statute of limitations for sexual battery if the victim of the sexual battery was under the age of 16 at the time of the offense. In some circumstances the four year limit which would otherwise apply is extended if the action is based on childhood sexual abuse and the victim has suffered traumatic amnesia. The Florida Supreme Court (the “**Court**”) has also held that the award of civil damages in a civil action founded on a crime does not bar the prosecution of the same act through criminal proceedings, and vice versa.

Finally, under Florida state law, victims of crimes including FGM are entitled to certain rights and protections. These include (1) the right to be treated with fairness and respect; (2) the right to notice of all public proceedings involving the criminal offense (and to be present at such proceedings); (3) the right to be heard in public proceedings involving pre-trial or release; (4) the right to protection and return of property from the defendant; (5) the right to prompt conclusion of the case without unreasonable delay; and (6) the right to prevent disclosure of information that could be used to locate or harass the victim. Victims of a crime may be eligible for awards or compensation - see below for further details.

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

The United Nations 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 FLORIDA ANTI-FGM LAWS

Florida's criminal and civil laws offer survivors of FGM a number of different legal pathways to pursue justice. Importantly, Florida is one of 41 states in the United States that has specifically criminalized the practice of FGM upon minors. Further, as explained in the sections below, perpetrators of FGM can be prosecuted under Florida's 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 the federal, state, or local government. Accordingly, criminal prosecutions against perpetrators of FGM under Florida-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 prosecutors bringing those actions. For example, FGM survivors may participate in court proceedings, as most courts will permit FGM victims or their legal representatives to make oral statements during court proceedings. 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 FLORIDA

## SUMMARY

In 2018, Florida specifically criminalized perpetrating FGM on minors. Notable features of Florida's anti-FGM legislation include: felony charges, prosecution of the FGM perpetrator, prosecution of the minor's parents or guardians, and specifying that the consent of the minor or consent of the minor's parent or guardian are not valid defenses.<sup>2</sup> A person who commits or attempts to commit FGM on a minor (namely, a female younger than the age of 18) commits a first-degree felony.<sup>3</sup> Knowingly removing or permitting the removal of a minor from Florida for the purposes of committing FGM is a second-degree felony.<sup>4</sup> A person in authority of a minor commits a third-degree felony if they knowingly consent to or give permission for such minor to be subjected to FGM.<sup>5</sup>

There are also other criminal offenses which can apply to FGM. Accordingly, perpetrators of FGM can be prosecuted for the following crimes under Florida law:

- (a) FGM;
- (b) Attempting to commit FGM;
- (c) Assault; and
- (d) Child abuse.

Generally, criminal prosecution in Florida is time-barred unless commenced within a specific period (as provided below) after an offense is committed.

### Offense Table

TYPE OF OFFENSE	STATUTE OF LIMITATIONS
<b>Felony of the First Degree</b> FLA. STAT. § 775.15(2)(a)	Four years
<b>Other Felonies</b> FLA. STAT. § 775.15(2)(b)	Three years
<b>Misdemeanor of the First Degree</b> FLA. STAT. § 775.15(2)(c)	Two years
<b>Misdemeanor of the Second Degree</b> FLA. STAT. § 775.15(2)(d)	One year

As noted above, depending on the facts of a particular offense, perpetrators of FGM can be prosecuted for first, second or third degree felonies, as well as for misdemeanors under Florida law. Notwithstanding the general statutory limitations in the table above, because FGM is categorized as a sexual battery offense under Florida's criminal code, prosecutors are not time-barred from prosecuting perpetrators of FGM and, therefore, prosecution can be commenced at any time.<sup>6</sup>



There are additional statute of limitation exceptions depending on how old the victim was at the time FGM was perpetrated and when the crime was first reported after its commission.<sup>7</sup>

Furthermore, prosecution for certain offenses (including FGM and other forms of sexual battery and aggravated child abuse) may be commenced within one year after the date on which the identity of the defendant is established, or should have been established by the exercise of due diligence, through the analysis of DNA evidence, if a sufficient portion of the evidence collected at the time of the original investigation is preserved and available for testing by the defendant.<sup>8</sup>

## CRIME SPECIFIC TO FGM IN FLORIDA

Florida's FGM criminal statute prohibits a person from knowingly circumcising, excising, or infibulating any part of the labia majora or labia minora, where the victim is under the age of 18.<sup>9</sup>

In addition, a person commits the offense of FGM under Florida's FGM criminal statute if they are:

- (a) a person who knowingly removes, or causes or permits the removal of, a female person younger than 18 years of age from Florida for the purpose of committing FGM;<sup>10</sup>
- (b) a person who is a parent, a guardian, or in a position of familial or custodial authority to a female person younger than 18 years of age and who knowingly consents to or permits FGM of that minor.<sup>11</sup>

Florida's FGM criminal statute does not apply to certain procedures performed by or under the direction of a licensed medical professional, such as when necessary to preserve the physical health of a female person.<sup>12</sup> It is not a defense to a prosecution that the minor, or their parent or guardian, consented to FGM.<sup>13</sup>

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

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

### A) § 784.011 Assault

A person commits the offense of assault if they make an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and then do some act which creates a well-founded fear in such other person that such violence is imminent. As such they will be punishable under the law.<sup>14</sup>

### B) § 827.01 - 03 Abuse of Children

A person commits the offense of "child abuse" under Florida law if they:

- (a) intentionally inflict physical or mental injury upon a child;<sup>15</sup>
- (b) commit an intentional act that could reasonably be expected to result in physical or mental injury to a child;<sup>16</sup> or



- (c) actively encourage any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.<sup>17</sup>

A person commits the offense of “aggravated child abuse” under Florida law if they:

- (a) commit aggravated battery on a child;<sup>18</sup>
- (b) willfully torture, maliciously punish, or willfully and unlawfully cage a child;<sup>19</sup> or
- (c) knowingly or willfully abuse a child and in so doing cause great bodily harm, permanent disability, or permanent disfigurement to the child.<sup>20</sup>

A parent, adult household member, or other person responsible for a child’s welfare commits the offense of “neglect of a child” under Florida law if they fail or omit to provide a child with the care, supervision, and services necessary to maintain the child’s physical and mental health, or fail to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.<sup>21</sup>

### C) §777.04 Anticipatory Crimes

#### (i) *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 to commit the offense or is prevented or intercepted in executing such crime.<sup>22</sup>

#### (ii) *Criminal Conspiracy*

A person commits the offense of criminal conspiracy if they agree, conspire, combine, or confederate with another person or persons to commit any offense.<sup>23</sup>

#### (iii) *Criminal Solicitation*

A person commits criminal solicitation if they command, encourage, hire, or request another person to engage in specific conduct which would constitute a criminal offense or an attempt to commit such offense.<sup>24</sup>

It is a defense to a charge of the above crimes that, under circumstances demonstrating a complete and voluntary renunciation of the person’s criminal purpose, the person:

- (a) abandoned his or her attempt to commit the offense or otherwise prevented its commission;<sup>25</sup>
- (b) after soliciting another person to commit an offense, persuaded such other person not to do so or otherwise prevented commission of the offense;<sup>26</sup> or
- (c) after conspiring with one or more persons to commit an offense, persuaded such persons not to do so or otherwise prevented commission of the offense.<sup>27</sup>

### D) § 775.15 Time limitations for Commencement of Prosecution

#### (i) *Time limits on prosecution*

- (a) Prosecution for a capital felony, a life felony, or a felony that resulted in a death following FGM may be commenced at any time. For the purposes of this Guide, a person who commits sexual battery, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age, commits either a capital felony or a life felony, depending on the age of the offender.<sup>28</sup> If the offender of the sexual battery or the attempted sexual battery is eighteen years of age or older, the offense is categorized as a capital felony, and if the offender is younger than eighteen years of age, the offense is



categorized as a life felony.<sup>29</sup> Capital felonies in Florida are punishable by a sentence of death or life imprisonment.<sup>30</sup> However, if the death penalty is held to be unconstitutional by the Court or the United States Supreme Court, all crimes designated as capital felonies shall be considered life felonies for the purposes of this section, and prosecution for such crimes may be commenced at any time.<sup>31</sup>

- (b) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following limitations:
- (1) a prosecution for a felony of the first degree must be commenced within four years after it is committed;<sup>32</sup>
  - (2) a prosecution for any other felony must be commenced within three years after it is committed;<sup>33</sup>
  - (3) a prosecution for a misdemeanor of the first degree must be commenced within two years after it is committed;<sup>34</sup> and
  - (4) a prosecution for a misdemeanor of the second degree or a non-criminal violation must be commenced within one year after it is committed.<sup>35</sup>

Note that an offense is committed either (1) when every element of the offense has occurred; or (2) 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>36</sup>

(ii) *Prosecution*

- (a) When the charge is one that the defendant has previously been arrested for or served with a summons for, then prosecution is commenced by the filing of an indictment, information, or other charging document.<sup>37</sup>
- (b) When the charge is one that the defendant has not previously been arrested for or served with a summons for, then prosecution is commenced when either:
- (1) an indictment or information is filed, provided the capias, summons, or other process issued on such indictment; or
  - (2) information is executed without unreasonable delay. In determining what is reasonable, inability to locate the defendant after diligent search or the defendant's absence from the state shall be considered. The failure to execute process on or extradite a defendant in another state who has been charged by information or indictment with a crime in this state shall not constitute an unreasonable delay.<sup>38</sup>

(iii) *Exceptions*

- (a) The period of limitation does not run during any time when the defendant is continuously absent from the state or has no reasonably ascertainable place of abode or work within the state. Such extension can be for a maximum of three years unless the defendant has been charged in a timely manner but has not been arrested due to their absence from the state.<sup>39</sup>
- (b) If the periods prescribed in Section 4.1 above have expired, a prosecution may nevertheless be commenced for any offense featuring fraud or a breach of fiduciary obligation within one year after its discovery by an aggrieved party or by a person who has a legal duty to represent an aggrieved party. However, this may not extend the limitation period by more than three years.



(iv) *Sexual Battery exceptions*

- (a) If the victim of sexual battery is under the age of 18, the applicable period of limitation does not begin to run until the victim has reached the age of 18 or the violation is reported to a law enforcement agency or governmental agency (whichever occurs earlier). Such law enforcement agencies or other governmental agencies shall promptly report such allegations to the state attorney for the judicial circuit in which the alleged violation occurred.
- (b) If the offense is a first or second degree felony for sexual battery and the offense is reported within 72 hours after its commission, the prosecution for such offense may be commenced at any time. A person who commits sexual battery upon a person 18 years of age or older without that person's consent commits a felony of the first degree; whereas, a person who commits sexual battery upon a person 12 years of age or younger without that person's consent, commits a felony of the first degree.<sup>40</sup>
- (c) If the offense is a first degree felony for sexual battery and the victim was under 18 years of age at the time the offense was committed, a prosecution of the offense may be commenced at any time.
- (d) If the offense is sexual battery and the victim was under 16 years of age at the time the offense was committed, a prosecution of the offense may be commenced at any time.
- (e) A prosecution for a first or second degree felony sexual battery where the victim is 16 years of age or older at the time of the offense and the offense is reported to a law enforcement agency within 72 hours after commission of the offense, may be commenced at any time.
- (f) Except as provided for in (c) or (e) above, a prosecution for first or second degree felony sexual battery where the victim is 16 years of age or older at the time of the offense, must be commenced within eight years after the violation is committed.

The above is in relation to sexual battery as set out in Section 794.011 of Chapter 794 of Florida's criminal code.

As defined under such criminal code, "sexual battery" means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.<sup>41</sup>

(v) *Other offenses*

In addition to the time periods prescribed in this section, a prosecution for any of the following offenses may be commenced at any time after the date on which the identity of the defendant is established, or should have been established by DNA evidence:

- (a) aggravated battery or any felony battery offense;
- (b) kidnapping or false imprisonment;
- (c) sexual battery; and
- (d) aggravated child abuse.



## CIVIL CAUSES OF ACTION

Florida does not have a specific civil cause of action related to FGM. However, FGM survivors have access to the following legal remedies through the state civil court system. The Court has also held that the award of civil damages in a civil action founded on a crime does not bar the prosecution of the same act through criminal proceedings – similarly, conviction of a crime does not bar liability in the corresponding civil action.<sup>42</sup> In other words, perpetrators of FGM can be held liable to the survivor through civil remedies and guilty for the same acts in the criminal justice system.

### A) Assault

Assault is defined as “an intentional, unlawful offer of corporal injury to another by force, or force unlawfully directed toward another under such circumstances as to create a fear of imminent peril, coupled with the apparent present ability to effectuate the attempt.”<sup>43</sup> To commit an assault, a defendant must intend either to physically injure the plaintiff or to cause the plaintiff to fear bodily injury.<sup>44</sup> While mere words do not constitute an assault, the words coupled with an appearance of rage and a simple shove could constitute an assault.<sup>45</sup>

The civil action must be commenced within four years of the occurrence of the last element of the assault unless the action is based on childhood sexual abuse and the victim has suffered traumatic amnesia.<sup>46</sup>

### B) Battery

Battery is defined as “the infliction of a harmful or offensive contact upon another with the intent to cause such contact or the apprehension that such contact is imminent.”<sup>47</sup> This contact can be entirely harmless, but still offensive, and a plaintiff can be awarded damages for a resulting mental disturbance such as fright, revulsion, or humiliation.<sup>48</sup> The defendant is liable not only for contacts which do actual harm, but also for those that are offensive and insulting.<sup>49</sup>

The civil action must be commenced within four years of the occurrence of the last element of the battery unless the action is based on childhood sexual abuse and the victim has suffered traumatic amnesia.

### C) Sexual Battery Offenses on Victims Under Age 16

Sexual battery occurs when there is “oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object.”<sup>50</sup> It does not include an act done for bona fide medical purposes.

There is no statute of limitations for sexual battery if the victim of the sexual battery was under the age of 16 at the time of the offense.

### D) False Imprisonment

False imprisonment occurs when (1) a victim has been unlawfully detained, against their will and without legal authority and (2) the detention is unreasonable and unwarranted.<sup>51</sup>

The civil action must be commenced within four years of the occurrence of the last element of the false imprisonment unless the action is based on childhood sexual abuse and the victim has suffered traumatic amnesia.



## E) Intentional Infliction of Emotional Distress

In order to prove a claim of intentional infliction of emotional distress, the plaintiff must demonstrate that (1) the defendant's conduct was intentional or reckless; (2) the defendant's conduct was outrageous; (3) the defendant's conduct caused emotional distress; and (4) the plaintiff's emotional distress was severe.<sup>52</sup>

In Florida, to be found liable, the conduct typically has to 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>53</sup>

The statute of limitations for a claim of intentional infliction of emotional distress is four years.<sup>54</sup>

## F) Negligent Infliction of Emotional Distress

In order to prove a claim of negligent infliction of emotional distress, the plaintiff must demonstrate that (1) the plaintiff suffered a discernable physical injury; (2) the physical injury was caused by the psychological trauma; (3) the plaintiff was involved in the event that caused the negligent injury to another; and (4) the plaintiff must have a close personal relationship to the directly injured person.<sup>55</sup> The negligent infliction of emotional distress must result in physical injury to the plaintiff, as opposed to psychological harm alone.<sup>56</sup>

The statute of limitations for a claim of intentional infliction of emotional distress is four years.

## G) Parent-Child Relationships

There are two key concepts to consider in respect of parent-child relationships, as below:

### (i) *Unemancipated Minor v. Parent*

Generally, the parental immunity doctrine prohibits suits brought by unemancipated minors against their parents,<sup>57</sup> but the Court has held that "the parental immunity doctrine does not bar [an] action by [a] minor child against his parent for damages arising from sexual abuse."<sup>58</sup>

### (ii) *Child Sexual Abuse*

Aside from Fla. Stat. § 95.031 and 95.11, there is no statutory basis for application of the delayed discovery doctrine for the delayed accrual of a cause of action in cases of intentional torts based on abuse.<sup>59</sup> In Florida, the Court has held that when a plaintiff in a tort action based on childhood sexual abuse alleges that they suffered from traumatic amnesia caused by the abuse, the delayed discovery doctrine postpones accrual of the cause of action.<sup>60</sup> The delayed discovery doctrine generally provides that a cause of action does not accrue until the plaintiff either knows or reasonably should know of the tortious act giving rise to the cause of action.<sup>61</sup>



# RIGHTS OF CRIME VICTIMS IN FLORIDA

## Crime Victims are Entitled to Special Protection Under the Florida Constitution

Victims of crime, including victims of FGM, are guaranteed enforceable rights under Article I, Section 16 of the Florida Constitution. A “victim” for these purposes includes any person who suffers direct or threatened physical, psychological or financial harm as a consequence of the commission or attempted commission of a crime or against whom a crime is committed.<sup>62</sup>

These constitutional rights, many of which are also codified under separate Florida criminal statutes and evidence rules, include:

- (i) the right to due process and to be treated with fairness and respect;
- (ii) the right to be free from intimidation, harassment and abuse;
- (iii) the right to proceedings free from unreasonable delay;
- (iv) the right (upon request) to (1) reasonable notice of, and to be present at, all public proceedings involving the crime in question and (2) reasonable notice of release or escape of the defendant;
- (v) the right to be heard in any public proceeding involving pre-trial or other release;
- (vi) the right, within the judicial process, to be protected from the defendant and the right to have the safety and welfare of the victim considered when setting bail;
- (vii) the right to prevent disclosure of information that could be used to locate or harass the victim;
- (viii) the right to the prompt return of the victim’s property when no longer needed as evidence; and
- (ix) the right to be informed of these rights and to the right to seek the advice of an attorney with respect to these rights.<sup>63</sup>

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

### A) § 960.001 Fair treatment of victims

Florida law enforcement agencies have several obligations to ensure the fair treatment of victims in the criminal justice system. These obligations include but are not limited to the following:

- (i) the provision of information regarding services and protections available to victims, such as compensation, restitution, transportation, translation, counseling and the right to protection from intimidation;
- (ii) collecting notification cards from victims and keeping victims informed of (1) the status of judicial proceedings concerning their case; (2) the victim’s right to be present at any hearing or trial and (3) of the release or escape of the defendant from incarceration;
- (iii) informing a victim’s employer that the need for the victim’s cooperation in judicial proceedings may require the absence of the victim from work;



- (iv) consulting with the victim or family of the victim in relation to the sentencing of the defendant;<sup>64</sup> and
- (v) promptly returning a victim's property unless there is a good reason for retaining it as evidence.<sup>65</sup>

### **B) § 960.0015. Right to a speedy trial**

Florida state attorneys may file a demand for a speedy trial in certain circumstances, including:

- (i) in a case involving a felony that has not been resolved within 125 days of the date that formal charges were filed and the defendant was arrested; and
- (ii) in a case involving a misdemeanor that has not been resolved within 45 days of the date that formal charges were filed and the defendant was arrested.<sup>66</sup>

Once a demand for a speedy trial has been filed, the court shall organize a call within five days on which the court shall schedule the trial for no sooner than five days and no later than 45 days after the call.<sup>67</sup> The court may temporarily postpone the speedy trial date in certain circumstances.

### **C) § 960.0021. Advisement to victims**

To help victims understand their rights under the Florida Constitution, the court shall either (i) make an announcement at any arraignment, sentencing or case-management hearing or (ii) display a poster on the door to the courtroom describing the rights given to victims by the Florida Constitution.<sup>68</sup>

### **D) § 960.05. Crime Victims' Services Office**

The Crime Victims' Services Office shall, amongst other things:

- (i) ensure that the rights of victims are publicized and encouraged;
- (ii) develop and administer victim assistance services programs;
- (iii) enlist the assistance of health, education, welfare and rehabilitation agencies/groups for victims;
- (iv) assist public agencies and local governments to provide assistance for victims; and
- (v) investigate all claims for awards made by victims.<sup>69</sup>

### **E) § 960.065. Eligibility for awards**

A victim, a surviving spouse, parent, guardian, sibling or child of a deceased victim, and any person who is dependent upon a deceased victim are eligible for awards under Florida Statute § 960.<sup>70</sup> Notwithstanding the foregoing, anyone who aided in the commission of the crime upon which a claim for compensation is based or was engaged in an unlawful activity at the time of the crime upon which a claim for compensation is based is not eligible for an award.<sup>71</sup>

### **F) § 960.13. Awards**

Awards shall only be made where:

- (i) a crime is committed;
- (ii) the crime resulted in personal, psychiatric or psychological injury to, or death of, the victim;
- (iii) the crime was reported to the proper authorities no later than five days after it happened.<sup>72</sup>



Any award made pursuant to Florida Statute § 960 shall be made in accordance with the schedule of benefits, degrees of disability and wage-loss formula specified in Florida Statutes § 440.12 and 440.15 excluding subsection (5) of that section.<sup>73</sup>

In most circumstances, awards made pursuant to Florida Statute § 960 shall be reduced by the amount of any payments or services received by the victim as a result of the injury including, amongst other things, any payments made by or on behalf of the defendant.<sup>74</sup>

In determining the amount of an award, the Department of Legal Affairs (the “**department**”) shall determine whether, because of his or her conduct, the victim contributed to the infliction of his or her physical, psychiatric or psychological injury and shall reduce the amount of the award (or reject the claim altogether) accordingly.<sup>75</sup>

The amount of any award may not exceed:

- (i) \$10,000 for treatment;
- (ii) \$10,000 for the mental health care of a victim who is a minor;
- (iii) A total of \$25,000 for all costs; and
- (iv) \$50,000 when the department makes a written finding that the victim has suffered a catastrophic injury as a result of the crime.<sup>76</sup>

### **G) § 960.199. Relocation assistance for victims of sexual battery**

“Sexual battery” means oral, anal or female genital penetration by the sexual organ of another or the anal or female genital penetration of another by any other object.<sup>77</sup>

Subject to the satisfaction of certain conditions, the department may award a payment of up to \$1,500 on any one claim and a lifetime maximum of \$3,000 to victims of sexual battery who need assistance with relocation.<sup>78</sup>

### **H) § 960.21. Crimes Compensation Trust Fund**

Moneys held in the Crimes Compensation Trust Fund are available for the purpose of compensating victims under Florida Statute § 960.<sup>79</sup>

### **I) § 960.28. Payment for victims’ physical examinations**

The Crime Victims’ Services Office of the department shall pay for medical expenses (up to a maximum of \$1,000) connected with the initial physical examination of a victim of sexual battery regardless of whether or not the victim is insured.<sup>80</sup>



## CONCLUSION

### 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>81</sup> In addition, FGM is often followed by early marriage at the detriment of the survivor's education and career.<sup>82</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.

### FURTHER INFORMATION

For more information,  
please contact the  
AHA Foundation at  
[info@theahafoundation.org](mailto:info@theahafoundation.org)





## ANNEX

## REFERENCES

- 1 <https://www.un.org/en/observances/female-genital-mutilation-day>.
- 2 FLA. STAT. § 794.08.
- 3 FLA. STAT. § 794.08(2).
- 4 FLA. STAT. § 794.08(3).
- 5 FLA. STAT. § 794.08(4).
- 6 FLA. STAT. § 775.15(13)(b).
- 7 FLA. STAT. § 775.15(13)(c), (13)(a), (13)(c), (14).
- 8 FLA. STAT. § 775.15(a).
- 9 FLA. STAT. §§ 794.08(2).
- 10 FLA. STAT. §§ 794.08(3).
- 11 FLA. STAT. §§ 794.08(4).
- 12 FLA. STAT. § 794.08.
- 13 FLA. STAT. § 794.08(6).
- 14 FLA. STAT. § 84.011.
- 15 FLA. STAT. § 827.03(1)(b)(1).
- 16 FLA. STAT. § 827.03(1)(b)(2).
- 17 FLA. STAT. § 827.03(1)(b)(3).
- 18 FLA. STAT. § 827.03(1)(a)(1).
- 19 FLA. STAT. § 827.03(1)(a)(2).
- 20 FLA. STAT. § 827.03(1)(a)(3).
- 21 FLA. STAT. § 827.03(1)(e).
- 22 FLA. STAT. § 777.04(1).
- 23 FLA. STAT. § 777.04(3).
- 24 FLA. STAT. § 777.04(2).
- 25 FLA. STAT. § 777.04(5)(a).
- 26 FLA. STAT. § 777.04(5)(b).
- 27 FLA. STAT. § 777.04(5)(c).
- 28 FLA. STAT. § 794.011(2)(a) and (b).
- 29 FLA. STAT. § 794.011(2)(a) and (b).
- 30 FLA. STAT. § 794.011(2)(a).
- 31 FLA. STAT. § 777.15(1).
- 32 FLA. STAT. § 777.15(2)(a).
- 33 FLA. STAT. § 777.15(2)(b).
- 34 FLA. STAT. § 777.15(2)(c).
- 35 FLA. STAT. § 777.15(2)(d).
- 36 FLA. STAT. § 777.15(3).
- 37 FLA. STAT. § 777.15(4)(a).
- 38 FLA. STAT. § 777.15(3)(b).
- 39 FLA. STAT. § 777.15(5).
- 40 FLA. STAT. § 794.011(4)(a) – (b).
- 41 FLA. STAT. § 794.011(1)(j).
- 42 *Smith vs. Bagwell*, 19 Fla. 117, 126, (1882).
- 43 *Lay v. Kremer*, 411 So. 2d 1347, 1349 (Fla. Dist. Ct. App. 1982).
- 44 *Id*
- 45 *Id*
- 46 Where the plaintiff has suffered from traumatic amnesia caused by the abuse, Florida applies the principle of “delayed discovery” – this means the cause of action does not accrue until the plaintiff either knows or reasonably should have known of the tortious act giving rise to the cause of action.
- 47 *Paul v. Holbrook*, 696 So. 2d 1311, 1312 (Fla. Dist. Ct. App. 1997) (citing *Sullivan v. Atlantic Fed. Sav. & Loan Ass’n*, 454 So. 2d 52, 54 (Fla. Dist. Ct. App. 1984), *review denied*, 461 So. 2d 116 (Fla. 1985); *Chorak v. Naughton*, 409 So. 2d 35, 39 (Fla. Dist. Ct. App. 1981); Restatement (Second) of Torts § 18 (1965); W. Page Keeton, et al., Prosser and Keeton on Torts § 9 (5th ed. 1984)).
- 48 *Id*
- 49 *Id*
- 50 FLA. STAT. § 794.011(1)(j).
- 51 *Montejo v. Martin Mem’l Med. Ctr., Inc.*, 935 So. 2d 1266, 1268 (Fla. Dist. Ct. App. 2006).
- 52 *Kendron v. SCI Funeral Servs. of Fla., LLC*, 230 So. 3d 636, 637 (Fla. Dist. Ct. App. 2017) (citing *Food Lion, Inc. v. Clifford*, 629 So. 2d 201, 202 (Fla. Dist. Ct. App. 1993)).
- 53 *Food Lion, Inc. v. Clifford*, 629 So. 2d 201, 203 (Fla. Dist. Ct. App. 1993), *review dismissed*, 632 So. 2d 1025 (Fla. 1994); *see also* Comment (d) to Section 46, Restatement (Second) of Torts (1965).
- 54 FLA. STAT. § 95.11(3)(n).
- 55 *Kendron v. SCI Funeral Servs. of Fla., LLC*, 230 So. 3d at 637 (*LeGrande v. Emmanuel*, 889 So. 2d 991, 995 (Fla. Dist. Ct. App. 2004)).
- 56 *Zell v. Meek*, 665 So. 2d 1048, 1052 (Fla. 1995) (concluding that plaintiffs who claim emotional injury must suffer a physical injury.).
- 57 *Herzfeld v. Herzfeld*, 732 So. 2d 1102, 1103 (Fla. Dist. Ct. App. 1999).
- 58 *Id*
- 59 *Davis v. Monahan*, 832 So. 2d 708, 710 (Fla. 2002); *see also Hearndon v. Graham*, 767 So. 2d at 1179; *see also R.R. v. New Life Cmty. Church of CMA*, 303 So. 3d 916, (Fla. 2020) (where plaintiff was the victim of childhood sexual abuse by her stepfather and suffered from traumatic amnesia caused by the abuse, the doctrine of delayed discovery applied to the accrual of plaintiff’s cause of action, and the claim did not accrue until plaintiff remembered the abuse).
- 60 *Hearndon v. Graham*, 767 So. 2d at 1186.
- 61 *Id.* at 1184.
- 62 FLA. CONST. Art. 1 § 16(e).
- 63 FLA. CONST. Art. 1 § 16(b)(11).
- 64 FLA. STAT. § 960.001(1)(a)–(u).
- 65 FLA. STAT. § 960.001(1)(h).
- 66 FLA. STAT. § 960.0015(1).
- 67 FLA. STAT. § 960.0015(2).
- 68 FLA. STAT. § 960.0021(2).
- 69 FLA. STAT. § 960.05(2).
- 70 FLA. STAT. § 960.065(1).
- 71 FLA. STAT. § 960.065(1),(2).
- 72 FLA. STAT. § 960.13(1).
- 73 FLA. STAT. § 960.13(4).
- 74 FLA. STAT. § 960.13(6).
- 75 FLA. STAT. § 960.13(7).
- 76 FLA. STAT. § 960.13(9).
- 77 FLA. STAT. § 794.011.
- 78 FLA. STAT. § 960.199(1).
- 79 FLA. STAT. § 960.21(1).
- 80 FLA. STAT. § 960.28(2).
- 81 Eva Ontiveros, *What is FGM, where does it happen and why?*, BBC NEWS, <https://www.bbc.co.uk/news/world-47131052>.
- 82 U.N. International Day of Zero Tolerance for Female Genital Mutilation, 6 February: Ending Female Genital Mutilation by 2030, <https://www.un.org/en/observances/female-genital-mutilation-day>.