

<p>California Department of Justice DIVISION OF LAW ENFORCEMENT John D. Marsh, Chief</p> 	<h1>INFORMATION BULLETIN</h1>	
<p><i>Subject:</i></p> <p>California Freedom of Access to Clinic and Church Entrances Act and the Reproductive Rights Law Enforcement Act</p>	<p><i>No.</i></p> <p>2022-DLE-06</p>	<p><i>Contact for information:</i></p> <p>John D. Marsh, Chief Division of Law Enforcement (916) 210-6300</p>
	<p><i>Date:</i></p> <p>June 13, 2022</p>	

TO: ALL DISTRICT ATTORNEYS, CHIEFS OF POLICE, SHERIFFS, AND STATE LAW ENFORCEMENT AGENCIES

The Department of Justice has received reports that crimes and incidents that interfere with the exercise of reproductive rights have escalated. California law requires that people have access to abortion care, family planning and other sexual and reproductive health care services safely, confidentially, and in a timely manner, without harassment, threats, or fear of bodily harm.

This bulletin provides information to assist law enforcement agencies to enforce the California Freedom of Access to Clinic and Church Entrances Act (FACE Act) and additional laws relating to reproductive health care clinic security. It also outlines law enforcement reporting requirements concerning anti-reproductive rights crimes as defined by the Reproductive Rights Law Enforcement Act (RRLE Act). Lastly, it recommends best practices for the prevention and investigation of such crimes.

Violations of the FACE Act

The FACE Act penalizes any person who physically obstructs, uses force or threat of force, or intentionally records without consent, any person, with the specific intent to intimidate that person from becoming or remaining a reproductive health services patient, provider, or assistant.ⁱ (Pen. Code, § 423.2.)

With regard to the security of reproductive health care clinics, the FACE Act can be violated in at least four ways.ⁱⁱ Here are the elements that a prosecutor must establish to prove a violation of the Act under each of those four theories:

A. The defendant, by force, threat of force, or physical obstruction that is a crime of violence:

1. intentionally injured, intimidated, or interfered with clinic patients, providers, or assistants or attempted to do so; AND
2. committed this act either:
 - a. because that person or entity is a reproductive health services patient, provider, or

assistant; OR

- b. to intimidate a person or entity, or a class of persons or entities, from becoming or remaining a reproductive health services patient, provider or assistant.

B. The defendant, by *nonviolent physical obstruction*:

1. intentionally injured, intimidated, or interfered with, clinic patients, providers, or assistants, or attempted to do so; AND
2. committed this act either:
 - a. because that person or entity is a reproductive health services patient, provider, or assistant; OR
 - b. to intimidate a person or entity, or a class of persons or entities from becoming or remaining a reproductive health services patient, provider or assistant.

C. The defendant *intentionally destroyed property*:

1. of a person, entity, or facility, or attempted to do so; AND
2. committed this act because the person, entity, or facility is a reproductive, health services patient, provider, assistant, or facility.

D. The defendant *intentionally videotaped, filmed, photographed, or recorded by electronic means*:

1. within 100 feet of the entrance to, or within a reproductive health services facility;
2. a reproductive health services patient, provider, or assistant without that person's consent;
3. with the specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant; AND
4. thereby caused the person to be intimidated.

Violation of Section 423.2 is a misdemeanor and may be punishable by imprisonment in a county jail for a period of not more than one year, or a fine of up to fifty thousand dollars (\$50,000), or both a fine and imprisonment. (Pen. Code, § 423.2, subds. (a)-(e).)

A district attorney or a city attorney may also bring a civil action to enjoin a violation of Section 423.2 for compensatory damages to health services clients, providers, or assistants who are victims of violations of subdivision (a), (c), or (e) of Section 423.2 and for the assessment of a civil penalty, not to exceed \$25,000 against each respondent. (Pen. Code, § 423.4.)

Additional Crimes Relating to Reproductive Health Care Clinic Security

Prohibition on Posting Personal Information with the Intent to Incite Others to Commit a Crime of Violence or a Threat of Violence (Govt. Code, § 6218.01.)

To prove a violation of Government Code section 6218.01, a prosecutor must establish that the defendant:

1. posted on the internet or social media the personal information or image of a reproductive health care services patient, provider, or assistant, or other individuals residing at the same home address; AND
2. committed this act with the intent that another person imminently use that information to commit a crime involving violence or a threat of violence against such person.

Violation of Government Code section 6218.01 is a misdemeanor punishable by a fine of up to \$10,000, imprisonment up to one year in a county jail, or both. A conviction under this section that leads to bodily injury is a misdemeanor punishable by a fine of up to \$50,000, imprisonment in a county jail not exceeding one year, or both.

Clinic obstruction – Penal Code Section 602.11 prohibits any person from intentionally preventing an individual from entering or exiting a health care facility by physically detaining the individual or physically obstructing the individual's passage. Violation of this section is a misdemeanor punishable by imprisonment in the county jail, or a fine of up to \$2,000. (Pen. Code, § 602.11.)

Explosive Devices at a Health Care Facility or Educational Event – Penal Code Section 11413 prohibits any person from exploding, igniting, or attempting to explode or ignite any destructive device or any explosive, or committing arson, in or about a licensed health care facility or place at which a lecture, film, or private meeting that educates about abortion practices is being held. Violation of this section is a felony and subject to imprisonment of up to seven years and a fine of not more than \$10,000. (Pen. Code, § 11413.)

A prosecutor must establish that the defendant:

1. exploded or ignited, or attempted to explode or ignite, a destructive device or explosive; OR committed arson;
2. used, or attempted to use, the device or explosive, or committed the arson in or around a licensed health care facility or place at which a lecture, film, or private meeting that educates about abortion practices was being held; AND
3. committed these acts with the intent to terrorize someone else or with reckless disregard of terrorizing someone else.

Criminal Threats – Penal Code Section 422 prohibits any person from willfully threatening to commit a crime that will result in death or great bodily injury to another person. This crime can be charged

as a misdemeanor or a felony. Misdemeanor violations are punishable by imprisonment in the county jail not to exceed one year. Felony violations are “strikes” and carry a maximum of three years in state prison unless coupled with other charges or enhancements. (Pen. Code, § 422.)

A prosecutor must establish the following elements:

1. defendant made a statement, verbally, in writing, or by means of electronic communication with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out;
2. the statement is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat; AND
3. the threatened person is reasonably in sustained fear for his or her own safety or for his or her immediate family’s safety.

Law Enforcement Reporting Requirements (RRLE Act)

The RRLE Act requires law enforcement agencies to provide to the Department of Justice the total number of:

1. anti-reproductive-rights crime-related calls for assistance made to the department;
2. arrests for anti-reproductive rights crimes, reported according to which subdivision of Section 423.2 is the basis for the arrest.
3. cases in which the district attorney charged an individual with a crime that violates Section 423.2, including the subdivision that prohibits the crime.

(Pen. Code, § 13777, subd. (a)(2)(A)-(C).)

The RRLE defines an “anti-reproductive-rights crime” as “a crime committed partly or wholly because the victim is a reproductive health services patient, provider, or assistant, or a crime that is partly or wholly intended to intimidate the victim, any other person or entity, or a class of persons or entities from becoming or remaining a reproductive health services patient, provider, or assistant,” which includes relevant violations of the FACE Act. (Pen. Code, § 13776, subd. (a).)

Anti-Reproductive Rights Crimes incident reporting is required on a monthly basis through the California Incident Based Reporting System (CIBRS). (Pen. Code, § 13777, subd (a).) If your agency has not yet transitioned to CIBRS, then you can continue to submit your monthly reporting on the BCIA 8370 and 8371 forms. (See Appendix A.)

Every law enforcement agency must develop, adopt, and implement written policies and standards for officers’ responses to anti-reproductive-rights calls by January 1, 2023. (Pen. Code, § 13778.1.)

Please note that further reporting instructions will follow in August 2022.

Best Practices

The below is a summary of the best practices for successful law enforcement agency prevention and investigation of suspected anti-reproductive rights crimes as defined by the RRLE.

Law Enforcement Training

Officers should be trained on:

- Local, state, and federal laws (i.e., Freedom of Access to Clinics Act) regarding anti-reproductive rights crimes, First Amendment rights, and reproductive rights of patients. (See Appendix B [list of local ordinances].)
- Mandatory compliance with the reporting of anti-reproductive rights crimes to the Department of Justice. (See Appendix A.)
- Department policy, including policies and procedures regarding trespass.

Dispatchers should be trained on:

- Local, state, and federal laws (i.e., Freedom of Access to Clinics Act) regarding anti-reproductive rights crimes.
- Specific response protocols.

Collaboration and Communication

The following practices are recommended to prevent and respond to incidents and crimes that impair the exercise of reproductive rights:

- Communicate regularly with reproductive health care service facilities.
- Designate a liaison at the supervisor level to lead all communications with the reproductive health care service facilities.
- Exchange information among law enforcement agencies concerning anti-reproductive rights trends occurring at events in nearby jurisdictions or on social media.
- Establish collaborative arrangements among law enforcement agencies, legal liaisons, judges, local prosecutors, U.S. Attorneys, jails, and other agencies tasked with criminal justice system responsibilities.
- Post departmental policy and any required forms, including any forms related to trespass, on the Department's website. If possible, there should be a way for individuals to submit required forms online, and forms should be given a reference number that can be cited to responding officers.
- Communicate with business owners and residents in areas affected by anti-reproductive rights-related conflicts, including discussions regarding community perspectives, concerns, and suspicious persons or activities.

Event and/or Protest Planning and Guidelines

Law enforcement agencies should review their existing policy regarding civil disturbances and/or demonstrations when preparing for a scheduled or unscheduled event or protest at a reproductive health care service facility.

Following a situational assessment, agencies should assign officers as primary contacts to both the event organizers and the reproductive health care service facility to ensure their issues and needs are addressed. Separate officers should be assigned to the facility, pro-reproductive rights demonstrators, anti-reproductive rights demonstrators, and any interested parties (e.g., media, business owners, or residents) in order to:

- Outline lawful behavior.
- Discuss and distribute relevant laws with consultation from agency legal advisors.
- Establish whether any court orders or injunctions are in effect.

Officers responding to an event or protest should confirm that an event response kit has been prepared. A kit may include relevant items such as court injunctions and contact information for the service provider manager or owner.

Legal Boundaries

When handling events or protests, officers should clearly mark injunction or law enforcement zones according to any relevant court order, local ordinance, statute, or permit. Law enforcement should be familiar with any ordinances, court orders, or injunctions prohibiting willfully and knowingly approaching any person seeking to enter such a facility within a specified distance of the entrance of a reproductive health care facility. Law enforcement should also mark a 100-foot boundary line from the clinic, consistent with Penal Code section 423.2, subdivision (g) concerning videotaping, filming, photographing, or recording with the specific intent to intimidate.

First Amendment

Any questions about the potential First Amendment impact of department policy or local ordinance should be directed to your jurisdiction's county counsel or city attorney.

Contact Information

The California Department of Justice is available to assist local law enforcement agencies in enforcing criminal and civil rights laws and protections. Should your agency or individual officers require technical assistance, please contact Division of Law Enforcement Acting Chief John Marsh at (916) 210-6300 or Supervising Deputy Attorney General Karli Eisenberg in the Department's Healthcare Rights and Access Section at Karli.Eisenberg@doj.ca.gov or (916) 210-7913.

ⁱ The FACE Act contains a very limited exception for a "parent or guardian acting toward their minor child or ward." (Pen. Code, § 423.2.)

ⁱⁱ The FACE Act also penalizes the intentional disclosure or distribution of film, videotapes, photographs, or recordings in any manner or forum—including internet or social media—obtained in violation of subdivision (g), with the specific intent to intimidate a person from becoming a reproductive health services patient, provider, or assistant, and causing the person to be intimidated. (Pen. Code, § 423.2 subd. (h).) Members of the press are exempted from this subdivision. (Pen. Code, § 423.2, subd. (i).)