

Freedom of Access to Clinic Entrances (FACE) Act FACT SHEET

What does FACE prohibit?

FACE prohibits:

A)

1. Force, threat of force, or physical obstruction;
2. Done with the intent to;
3. Injure, intimidate, or interfere with a person, or attempt to do so;
4. Because that person has sought or provided, or is seeking or providing, or will seek or provide, reproductive health services.

B) intentional damage or attempted intentional damage to facilities because the facility provides reproductive health care services.

What are the penalties for violating FACE?

There are criminal penalties (jail time and fines) and civil penalties (damages).

How can FACE create a buffer zone around the clinic?

A FACE violation or threat of a FACE violation can be the reason that a court grants an injunction creating a buffer zone around a clinic. For more on injunctions and buffer zones see *Drawing the Line* at <http://www.feminist.org/rrights/DrawingtheLine.pdf>.

Who can bring a FACE case?

Criminal FACE cases can be brought by the federal government only. Local law enforcement MAY contact federal authorities to refer a criminal FACE case. Civil FACE cases may be brought by the federal government, the state attorney general, clinics, doctors, clinic workers, or patients.

How do I report a criminal FACE violation?

Contact your local law enforcement. If local law enforcement is unable or unwilling to help you, you may contact the Federal Bureau of Investigation (FBI). To find the FBI agent responsible for your area, call 202.324.5000 or visit the FBI website at <http://www.fbi.gov/contact/fo/fo.htm> and find the FBI office covering your location. If the decision is made not to press charges, you may still bring a civil FACE action.

How do I bring a civil FACE suit?

You should contact an attorney to see if the violations you have experienced qualify as FACE violations. If you or your attorney need more information about FACE, contact the Feminist Majority Foundation at 703.522.2214.

Examples of conduct that violates FACE

Blockades:

Blocking a clinic entrance with people locked together: *U.S. v. Gregg*, 32 F.Supp. 2d 151 (D.NJ 1998), *aff'd*, 226 F.2d 253 (3d Cir. 2000), *cert. denied*, 532 U.S. 971 (2001).

Blocking a clinic entrance with cars and people locked into cars: *U.S. v. Ketchum*, 201 F.3d 928 (7th Cir. 2000).

Blocking a doctor as he tried to drive to work, putting posters on his car as he stopped at stop sign, and pantomiming shooting the doctor: *U.S. v. White*, 893 F.Supp 1423 (C.D.CA 1995).

Threats

“Un-Wanted” posters and information posted on an anti-abortion website are true threats and FACE violations given the pattern of doctors being murdered after such posters were issued: *Planned Parenthood of the Columbia/Willemette v. American Coalition of Life Activists*, 290 F.3d 1058 (9th Cir. 2002), *cert. denied*, 123 S.Ct. 2637 (2003).

Parking a Ryder truck in front of a clinic was a true threat and a FACE violation given the use of a Ryder truck in the Oklahoma City bombing: *U.S. v. Hart*, 212 F.3d 1067 (8th Cir. 2000), *cert. denied*, 531 U.S. 1114 (2001).

Pantomiming a shooting of clinic staff and other comments considered threats especially given defendant’s history of advocating violence against abortion providers: *U.S. v. McMillian*, 946 F. Supp. 2d 1254 (S.D.MS 1995).

50 statements to doctor were FACE violation especially given defendant’s history of advocating violence against abortion providers: *U.S. v. Dinwiddie*, 76 F.3d 913 (8th Cir. 1996), *cert. denied*, 519 U.S. 1043 (1996).

This document explains legal issues but is not intended to replace consultation with and attorney and is not legal advice. If you decide to pursue a FACE claim, you should consult your own attorney first.

Text of the Statute

§ 248. Freedom of access to clinic entrances

(a) Prohibited activities.--Whoever--

(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;

(2) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship; or

(3) intentionally damages or destroys the property of a facility, or attempts to do so, because such facility provides reproductive health services, or

intentionally damages or destroys the property of a place of religious worship,

shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c), except that a parent or legal guardian of a minor shall not be subject to any penalties or civil remedies under this section for such activities insofar as they are directed exclusively at that minor.

(b) Penalties.--Whoever violates this section shall--

(1) in the case of a first offense, be fined in accordance with this title, or imprisoned not more than one year, or both; and

(2) in the case of a second or subsequent offense after a prior conviction under this section, be fined in accordance with this title, or imprisoned not more than 3 years, or both;

except that for an offense involving exclusively a nonviolent physical obstruction, the fine shall be not more than \$10,000 and the length of imprisonment shall be not more than six months, or both, for the first offense; and the fine shall, notwithstanding section 3571, be not more than \$25,000 and the length of imprisonment shall be not more than 18 months, or both, for a subsequent offense; and except that if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life.

(c) Civil remedies.--

(1) Right of action.--

(A) In general.--Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a facility that provides reproductive health services, and such an action may be brought under subsection (a)(2) only by a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship or by the entity that owns or operates such place of religious worship.

(B) Relief.--In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the

plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of \$5,000 per violation.

(2) Action by Attorney General of the United States.--

(A) In general.--If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, the Attorney General may commence a civil action in any appropriate United States District Court.

(B) Relief.--In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent--

(i) in an amount not exceeding \$10,000 for a nonviolent physical obstruction and \$15,000 for other first violations; and

(ii) in an amount not exceeding \$15,000 for a nonviolent physical obstruction and \$25,000 for any other subsequent violation.

(3) Actions by State Attorneys General.--

(A) In general.--If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, such Attorney General may commence a civil action in the name of such State, as *parens patriae* on behalf of natural persons residing in such State, in any appropriate United States District Court.

(B) Relief.--In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B).

(d) Rules of construction.--Nothing in this section shall be construed--

(1) to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution;

(2) to create new remedies for interference with activities protected by the free speech or free exercise clauses of the First Amendment to the Constitution, occurring outside a facility, regardless of the point of view expressed, or to limit any existing legal remedies for such interference;

(3) to provide exclusive criminal penalties or civil remedies with respect to the conduct prohibited by this section, or to preempt State or local laws that may provide such penalties or remedies; or

(4) to interfere with the enforcement of State or local laws regulating the performance of abortions or other reproductive health services.

(e) Definitions.--As used in this section:

(1) Facility.--The term "facility" includes a hospital, clinic, physician's office, or other facility that provides reproductive health services, and includes the building or structure in which the facility is located.

(2) Interfere with.--The term "interfere with" means to restrict a person's freedom of movement.

(3) Intimidate.--The term "intimidate" means to place a person in reasonable apprehension of bodily harm to him- or herself or to another.

(4) Physical obstruction.--The term "physical obstruction" means rendering impassable ingress to or egress from a facility that provides reproductive health services or to or from a place of religious worship, or rendering passage to or from such a facility or place of religious worship unreasonably difficult or hazardous.

(5) Reproductive health services.--The term "reproductive health services" means reproductive health services provided in a hospital, clinic, physician's office, or other facility, and includes medical, surgical, counselling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.

(6) State.--The term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.