
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2099 **Hearing Date:** July 2, 2024
Author: Bauer-Kahan
Version: February 5, 2024
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Crimes: reproductive health services*

HISTORY

Source: Planned Parenthood Affiliates of California

Prior Legislation: AB 1356 (Bauer-Kahan), Chapter 191, Stats. 2021
AB 3140 (Bauer-Kahan), 2020 not heard in ACoPS
SB 1770 (Padilla), Chapter 206, Statutes of 2008
AB 2251 (Evans), Chapter 486, Statutes of 2006
SB 603 (Ortiz), Chapter 481, Statutes of 2006

Support: American Association of University Women – California; American College of Obstetricians and Gynecologists District IX; California Academy of Family Physicians; California Chapter of The American College of Emergency Physicians; Office of Lieutenant Governor Eleni Kounalakis

Opposition: ACLU California Action

Assembly Floor Vote: 63 - 0

This analysis reflects amendments to be taken in Committee.

PURPOSE

The purpose of this bill to increase penalties for violations of the California Freedom of Access to Clinics and Church Entrances (“FACCE”) Act.

Existing law provides that any reproductive health service provider, employee, volunteer, or patient who is placed in reasonable fear by the posting of their home address and phone number on an Internet website may make a written demand that such information be removed from the website, so long as the demand includes a sworn statement describing the reasonable fear and attesting that the person is a member of the group protected by the statute. Provides injunctive relief. (Govt. Code § 6281 (b).)

Existing law makes it a misdemeanor, punishable by up to 6 months in a county jail, a fine of not more than \$2,500, or both that fine and imprisonment, to post the home address, telephone number, or personally identifying information about a provider, employee, volunteer, or patient of a reproductive health service facility or other individuals residing at the same home address with the intent that another person imminently use that information to commit a crime involving

violence or a threat of violence against that person or entity. If the violation leads to bodily injury of the person, it is a misdemeanor punishable by up to one year in a county jail, a fine of up to \$5,000, or both that fine and imprisonment. (Govt. Code § 6218.01.)

Existing law defines “reproductive health care services” to mean health care services relating to the termination of a pregnancy in a reproductive health care services facility. (Govt. Code § 6218.05. (a).)

Existing law defines “reproductive health care services provider, employee, volunteer, or patient” means a person who obtains, provides, or assists, at the request of another person, in obtaining or providing reproductive health care services, or a person who owns or operates a reproductive health care services facility. (Govt. Code § 6218.05 (b).)

Existing law defines “reproductive health care services facility” includes a hospital, an office operated by a licensed physician and surgeon, a licensed clinic or a clinic exempt from licensure, or other licensed health care facility that provides reproductive health care services and includes only the building or structure in which the reproductive health care services are actually provided. (Govt. Code § 6218.05 (c).)

Existing law defines “public post” or “publicly display” as meaning to intentionally communicate or otherwise make available to the general public. (Govt. Code § 6218.05 (d).)

Existing law defines “image” as including, but not limited to, any photograph, video footage, sketch, or computer-generated image that provides a means to visually identify the person depicted. (Govt. Code § 6218.05 (e).)

Existing law defines “crime of violence” as an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another. (Penal Code § 423.1 (a).)

Existing law defines “interfere with” as meaning to restrict a person’s freedom of movement. (Penal Code § 423.1 (b).)

Existing law defines “intimidate” as meaning to place a person in reasonable apprehension of bodily harm to herself or himself or to another. (Penal Code, § 423.1 (c).)

Existing law defines “nonviolent” as meaning to conduct that would not constitute a crime of violence. (Pen. Code § 423.1 (d).)

Existing law defines “physical obstruction” as rendering ingress to or egress from a reproductive health services facility or to or from a place of religious worship impassable to another person, or rendering passage to or from a reproductive health services facility or a place of religious worship unreasonably difficult or hazardous to another person. (Penal Code § 423.1 (e).)

Existing law defines “reproductive health services” as meaning reproductive health services provided in a hospital, clinic, physician’s office, or other facility and includes medical, surgical, counseling, or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy. (Penal Code § 423.1 (f).)

Existing law defines “reproductive health services client, provider, or assistant” as a person or entity that is or was involved in obtaining, seeking to obtain, providing, seeking to provide, or assisting or seeking to assist another person, at that other person’s request, to obtain or provide any services in a reproductive health services facility, or a person or entity that is or was involved in owning or operating or seeking to own or operate, a reproductive health services facility. (Penal Code § 423.1 (g).)

Existing law states “reproductive health services facility” includes a hospital, clinic, physician’s office, or other facility that provides or seeks to provide reproductive health services and includes the building or structure in which the facility is located. (Penal Code § 423.1 (h).)

Existing provides that every person who, except a parent or guardian acting towards his or her minor child or ward, commits any of the following acts shall be subject to the punishment, as specified (Penal Code § 423.2 (a)-(f)):

- a) By force, threat of force, or physical obstruction that is a crime of violence, intentionally injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider, or assistant; or
- b) By force, threat of force, or physical obstruction that is a crime of violence, intentionally injures, intimidates, 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
- c) By nonviolent physical obstruction, intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider, or assistant; or
- d) By nonviolent 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
- e) Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services client, provider, assistant, or facility; or
- f) Intentionally damages or destroys the property of a place of religious worship. (Penal Code § 423.2.)

Existing law makes a first violation involving nonviolent physical obstruction a misdemeanor, punishable by imprisonment in a county jail for a period of not more than six months and a fine not to exceed two thousand dollars (\$2,000). (Penal Code § 423.3 (a).)

Existing law makes a second or subsequent violation involving nonviolent physical obstruction a misdemeanor, punishable by imprisonment in a county jail for a period of not more than six months and a fine not to exceed five thousand dollars (\$5,000). (Penal Code § 423.3 (b).)

Existing law makes a first violation involving force, threat of force, or physical obstruction that is a crime of violence or intentional property damage a misdemeanor, punishable by imprisonment in a county jail for a period of not more than one year and a fine not to exceed twenty-five thousand dollars (\$25,000). (Penal Code § 423.3 (c).)

Existing law makes a second or subsequent violation involving force, threat of force, or physical obstruction that is a crime of violence or intentional property damage a misdemeanor, punishable by imprisonment in a county jail for a period of not more than one year and a fine not to exceed fifty thousand dollars (\$50,000). (Penal Code § 423.3 (d).)

Existing law states that this title establishes concurrent state jurisdiction over conduct that is also prohibited by the federal Freedom of Access to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248), which provides for more severe misdemeanor penalties for first violations and felony-misdemeanor penalties for second and subsequent violations. State law enforcement agencies and prosecutors shall cooperate with federal authorities in the prevention, apprehension, and prosecution of these crimes, and shall seek federal prosecutions when appropriate. (Penal Code, § 423.3 (f).)

Existing law makes it a misdemeanor to, by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten another person in the free exercise or enjoyment of a right or privilege secured by the Constitution or laws of this state or by the Constitution or laws of the United States, in whole or in part, because of one or more of specified actual or perceived characteristics of the victim, including disability, gender, religion, race, or sexual orientation. (Penal Code, §§ 422.6 (a) & 422.55 (a).)

Existing law makes it a misdemeanor to knowingly deface, damage, or destroy the real or personal property of another person for the purpose of intimidating or interfering with the free exercise or enjoyment of a right or privilege secured by the Constitution or laws of this state or by the Constitution or laws of the United States, in whole or in part, because of one or more of the same actual or perceived characteristics of the victim. (Penal Code §§ 422.6 (b) & 422.55 (a).)

This bill increases the penalty for a misdemeanor offense of posting on the internet or social media, threats of violence with the intent that another person imminently use that information to commit a violent crime against a reproductive health care worker to an alternate misdemeanor-felony punishable by up to one year in the county jail or sixteen months, 2 or three years in addition to the existing \$10,000 fine plus penalty assessments.

This bill increases the penalty for posting on the internet or social media threats of violence against a reproductive healthcare worker where it leads to bodily injury from a misdemeanor to a felony punishable by 16 months, 2 or 3 years in county jail in addition to the existing \$50,000 plus penalty assessments and existing community service.

This bill increases the penalty for willfully interfering with, injuring, intimidating, oppressing, or threatening, by use of force or threat of force, any person's ability in the free exercise of any right or privilege, ensured by the state and federal constitutional law or statutes because of one or

more actual or perceived characteristics. from a misdemeanor to an alternate misdemeanor-felony punishable by up to one year in county jail, or 16 months, 2 or 3 years in county jail, plus the existing \$5,000 fine plus penalty assessments and the existing mandatory community service,

This bill, as proposed to be amended in Committee, increases the penalties for the existing crimes under the FACCE Act, as follows:

- a) Punishes the second violation of the following offenses as an alternate-misdemeanor-felony subject to a penalty of one year in county jail or 16 months two or three years in county jail, in addition to the existing fine of up to \$10,000 plus penalty assessments, or by both imprisonment and fine:
 - i. nonviolent physical obstruction, or where a person intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services patient, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services patient, provider, or assistant.
 - ii. By nonviolent physical obstruction, or where a person intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.
 - iii. Within 100 feet of the entrance to, or within, a reproductive health services facility, intentionally videotape, film, photograph, or record by electronic means, a reproductive health services patient, provider, or assistant without that person's consent with specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causes the person to be intimidated.
 - iv. Intentionally disclose or distribute a videotape, film, photograph, or recording knowing it was obtained unlawfully with the specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causes the person to be intimidated.
- b) Increases the penalties for a first violation of the following offenses from a misdemeanor to a straight felony punishable by 16 months, two, or three years in county jail and the existing fine of not more than \$25,000 plus penalty assessments:
 - i. Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services patient, provider, assistant, or facility.
 - ii. Intentionally damages or destroys the property of a place of religious worship.
- c) As proposed to be amended, punishes a second or subsequent violation of the following offenses as an alternate-misdemeanor-felony subject to a penalty of one year in county jail or 16 months, two or three years in county jail, in addition to the existing fine of not

more than \$50,000, or by both imprisonment and fine:

- i. Using force, threat of force, or physical obstruction of violence, to intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services patient, provider, or assistant, or in order to intimidate a person or entity, or a class of persons or entities, or from becoming or remaining a reproductive health services patient, provider, or assistant.
- ii. Using force, threat of force, or physical obstruction of violence, to intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.
- iii. Intentionally damaging or destroying the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services patient, provider, assistant, or facility.
- iv. Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services patient, provider, assistant, or facility.
- v. Intentionally damages or destroys the property of a place of religious worship.

COMMENTS

1. Need for This Bill

According to the author:

Since the overturning of Roe vs. Wade, reproductive health clinics like Planned Parenthood have become the very last line for women seeking critical reproductive health care. These vulnerable patients and providers are facing an onslaught of organized harassment, being attacked online and in person. Current penalties are insufficient to deter extremist anti-abortion groups from attacking clinics and providers. AB 2099 updates our state penalties to protect the essential right to reproductive healthcare.

2. AB 1356 (Bauer-Kahan), Chapter 191, Statutes of 2021

AB 1356 was enacted in 2021 and provided more protections for those seeking reproductive healthcare assistance and people that provide those services. Specifically, as enacted, it created new crimes under FACCE Act directed at videotaping, photographing, or recording patients or providers within 100 feet of the facility (i.e., the "buffer" zone) or disclosing or distributing those images. It also increased misdemeanor penalties for violations of the FACCE Act and expanded online privacy laws and peace officer trainings relative to anti-reproduction-rights offenses. In this Committee the felony penalties were removed but the greatly increased fines remained – before the bill was signed into law. This bill creates several new wobblers or felonies. Has there been an increase in attacks on reproductive clinics or people seeking reproductive services since

AB 1356 was enacted? Given that we just increased penalties for these offenses, does it make sense to consider alternate solutions?

3. First Amendment

First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech.” (U.S. Const. Amend. I, Section 1.) The California Constitution also protects free speech. “Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.” (Cal. Const. Art. I, § 2.) “[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” (*Ashcroft v. American Civil Liberties Union* (2002) 535 U.S. 564, 573.)

“To achieve First Amendment protection, a plaintiff must show that [t]he[y] possessed: (1) a message to be communicated; and (2) an audience to receive that message, regardless of the medium in which the message is to be expressed.” (*Hurley v. Irish-American Gay, Lesbian & Bisexual Group* (1995) 515 U.S. 557.) With personal filming devices being commonplace, more and more “news” is being gathered and disseminated by members of the public. The courts have found that freedom of the press applies to citizen journalists and documentarians, not just formal members of the press. (See, e.g., *Glik v. Cunniffe*, (1st Cir. 2011) 655 F.3d 78 [“plaintiff was exercising clearly-established First Amendment rights in filming the officers in a public space”].)

Legislation that regulates the content of protected speech is subject to strict scrutiny, sometimes referred to by the courts as “exacting scrutiny” in this context. (*Reed v. Town of Gilbert, Ariz.* (2015) 135 S.Ct. 2218, 2226.) To survive strict scrutiny, state action must be narrowly tailored to address a compelling government interest. (*Ibid.*)

4. The California FACCE Act

In 2001, the Legislature enacted the California FACCE Act, mirroring the federal Freedom of Access to Clinic Entrances (FACE) Act. California’s FACCE Act provides state criminal and civil penalties for interference with rights to reproductive health services and religious worship. As stated above, AB 1356 added a 100 ft., buffer zone around reproductive healthcare facilities wherein it is unlawful to “intentionally videotape, film, photograph, or records by electronic means, any reproductive health services patient, provider, or assistant without that person’s consent, with specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causes the person to be intimidated.”

The enactment of “buffer zones” around reproductive health care facilities were designed to protect reproductive health care services patients and providers from being harassed, photographed, or threatened just for walking in and out of a reproductive health care facility. According to Guttmacher Institute, a leading research and policy organization working to advance sexual and reproductive health and rights worldwide, there are numerous protections around the U.S. for people working at, or seeking the services of, a reproductive healthcare facility.

States have taken two approaches designed to protect abortion providers. Some states have enacted laws similar to the federal FACE Act that prohibit specific activities such as vandalism or obstruction at clinics. Other states have limited protests aimed at clinic patients by either creating “buffer” zones around clinics that

bar protestors entirely or establishing floating “bubble zones” of several feet around a person who is within a specific distance of a clinic; protesters are prohibited from crossing into that “bubble zone” without the person’s consent.

In 2014, the U.S. Supreme Court struck down the Massachusetts law that placed a 35-foot buffer zone around clinic entrances. The impact of this ruling on the New Hampshire law is still to be determined, but the decision did not immediately affect the Court’s 2000 ruling that upheld Colorado’s floating ‘bubble [or buffer] zone’ law.

15 states and the District of Columbia prohibit certain specified actions aimed at abortion providers: 13 of the states and the District of Columbia prohibit blocking the entrance to and egress from clinic facilities; seven of the states and the District of Columbia prohibit threatening or intimidating staff who provide reproductive health services and/or patients entering the clinic; four of the states prohibit property damage to facilities providing reproductive health services; two of the states and the District of Columbia prohibit telephone harassment of staff who provide reproductive health services; six of the states and the District of Columbia prohibit other specified actions, such as creating excessive noise outside the clinic, possessing or having access to a weapon during a demonstration at a medical facility, trespassing, or releasing a substance that produces noxious odor on clinic premises; and four states have established a “bubble zone” around a person within a specific distance of a clinic’s entrance or driveway. (Guttmacher Institute (August 31, 2023) Public Policy Office, *Protecting Access to Clinics, Background.*)¹

The Massachusetts “buffer” zone made it a “crime to knowingly stand on a ‘public way or sidewalk’ within 35 feet of an entrance or driveway to any ‘reproductive health care facility,’ defined as ‘a place, other than within or upon the grounds of a hospital, where abortions are offered or performed.’” (*McCullen v. Cookley* (2014) 573 U.S. 474.) The U.S. Supreme Court held the law violated the First Amendment. (*Ibid.* [state law creating 35-foot buffer zones around all abortion clinics was not justified by congestion in front of one clinic on Saturday mornings].)

However, the Supreme Court declined to hear two challenges to two other buffer zones: in Harrisburg, Pennsylvania and Chicago, Illinois. In those cases, the buffer zone at issue was much lower than 100 feet, and were, at least, tacitly approved by the Court when it denied certiorari. According to one article in the national press coverage,

On Thursday, one of the two cases the court declined to take up involved an ordinance passed by the city council in Harrisburg, Pennsylvania’s capital, in 2012 that made it illegal to “congregate, patrol, picket or demonstrate” in a zone 20 feet from a health care facility. Anti-abortion activists sued, arguing that the ordinance violates their free speech rights. Lower courts have upheld the ordinance, however, ruling it doesn’t apply to “sidewalk counseling,” where individuals who oppose abortion offer assistance and information about alternatives to abortion to those entering a clinic.

¹ Located at <https://www.guttmacher.org/state-policy/explore/protecting-access-clinics> last visited March 26, 2024.

The second case the court turned away on Thursday involved a Chicago ordinance that regulates the space 50 feet from the entrance of any abortion clinic or other medical facility. In that space, a person cannot come within 8 feet of another person without their consent to hand them information or engage in “oral protest, education, or counseling.” The ordinance was modeled on a statute upheld by the Supreme Court in 2000. (Jessica Gresko (July 2, 2020) “*Higher Court won’t hear abortion clinic ‘buffer zone’ cases,*” Associated News Press.)²

5. Increased Penalties

As outlined in detail in the Purpose section, this bill increase penalties for a number of offenses. It increases from a misdemeanor with a \$10,000 fine (approximately \$41,000 with penalty assessments)³ to a wobbler with the same fine for a posting a home address of a clinic worker on the internet with the intent for another to imminently use the information to commit a crime. If that action results in great bodily injury to someone at that posted address then this bill also makes the existing misdemeanor with a \$50,000 fine (approximately \$205,000 with penalty assessments) a wobbler with the same fine.

This bill as proposed to be amended, makes a second violation of a number of non-violent violations of the FACE act that are currently a misdemeanor with a \$10,000 fine (approximately \$41,000 with penalty assessments) a wobbler with a \$25,000 fine (approximately \$102,500) a straight felony.

As proposed to be amended, existing offenses that involve some force or physical obstruction that are a misdemeanor with a \$25,000 fine for a first and a misdemeanor with a \$50,000 fine for second become a wobbler for a second offense.

Finally this bill makes the existing misdemeanor with a \$25,000 fine for intentionally destroying the property of a reproductive clinic or house of worship a straight felony.

The fines were increased in these sections in 2021, and as noted, with penalty assessments are quite high. Should these misdemeanors become wobblers? Or in the case of destroying property a straight felony.

6. Argument in Support

Planned Parenthood Affiliates of California:

In California, while we continue to work to expand and protect access to sexual and reproductive health care, we still witness the consequences of the national attack on abortion. Extremist lawmakers and their supporters have been transforming incredibly personal health care choices into political battlegrounds, creating dangerous consequences for people across the country. Attacks on reproductive health care, including abortion, contraception, gender-affirming care, and IVF have

² Located at <https://apnews.com/article/31d02c9336e9f3c2a5d9dea4a883e72c>

³ Until the budget year 2002-2003, there was 170% in penalty assessments applied to every fine, the current penalty assessments are approximately 310% plus a flat fee of \$79. (See Penal Code § 1464; Penal Code § 1465.7; Penal Code § 1465.8 Government Code § 70373; Government Code § 7600.5; Government Code § 76000 *et seq*; Government Code §76000.10 Government Code § 76104.6; Government Code §76104,7)

resulted in patients being denied care, forced to travel out-of-their home states in difficult circumstances, and endangering their health and well-being. These attacks have emboldened anti-abortion extremists.

Since the *Dobbs* decision, there has been an increase in violence in abortion protective states like California. According to the National Abortion Federation, there was a disproportionate increase of anti-reproductive health incidents in protective states – stalking increased by 913%, assault and battery increased by 29%, bomb threats increased by 133% and obstruction of clinics increased by 538%. While California has existing protections in place under the Freedom to Access Clinic Entrances (FACE) Act, offenses are not always taken seriously and health centers face challenges with enforcement. Acts of violence and harassment have persisted for decades as anti-abortion extremists have faced little retribution for their escalating tactics and cultural complacency has normalized their activity.

Violations of the FACE Act include intentionally injuring, intimidating, or obstructing access to a health center, vandalism, and modern forms of harassment such as posting personal information online with the intent to cause harm. According to a Feminist Majority Foundation survey of providers over half of providers face targeted threats and intimidation – often coming from highly organized and well-funded groups. Targeted threats and intimidation includes twelve variables: death threats, stalking, tracking of activities, vandalism of home or personal property, harassing phone calls, harassing emails/social media posts, pamphlets/leaflets targeting staff and physicians, personal information/pictures posted online, frivolous lawsuits, and threats to family members of staff or physicians.

Attacks at clinics do not just have a negative impact on the staff and patients, but also contribute to a culture of fear. As more states criminalize reproductive health care, increasing not just safety in accessing care but also stigma, it is more crucial than ever that patients feel safe when seeking care in California. AB 2099 will strengthen the enforcement mechanisms for violations of the FACE Act in California and ensure that patients and providers can access the care they need, provide essential health care, and do so without fearing their safety. For these reasons, PPAC is proud to sponsor AB 2099 and respectfully urge your “Aye” vote when it’s before you in Committee.

7. Argument in Opposition

ACLU California Action opposes this bill stating:

The code sections addressed by the bill already provide significant penalties for those who seek to impede access to reproductive health care. Government Code section 6218.01 and Penal Code sections 422.6 and 423.3 allow for up to a year in jail and fines ranging from \$5,000 to \$50,000. In addition to the code sections addressed by the bill, anyone who makes criminal threats against another person can be punished by up to three years in state prison. (Penal Code § 422.) Likewise, a person who aids and abets another in committing a crime involving violence against a reproductive healthcare patient, provider, employee, or volunteer – or any other person – can be convicted of the underlying crime as though they themselves

had directly committed it. (Penal Code § 31.) Assault by means of force likely to produce great bodily injury can be punished by up to four years in state prison (Penal Code § 245, subd. (a)(4)); and if the felony assault is committed because of a protected characteristic, the person can be punished by up to an additional three years in state prison (Penal Code § 422.75).

To the extent existing laws are not being enforced or prioritized to curb the harmful behavior contemplated by AB 2099, we encourage the Legislature to focus its attention on holding law enforcement agencies accountable. Simply increasing penalties will not result in greater accountability for those who seek to do harm.

-- END --

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2099 **Hearing Date:** July 2, 2024
Author: Bauer-Kahan
Version: February 5, 2024
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Crimes: reproductive health services*

HISTORY

Source: Planned Parenthood Affiliates of California

Prior Legislation: AB 1356 (Bauer-Kahan), Chapter 191, Stats. 2021
AB 3140 (Bauer-Kahan), 2020 not heard in ACoPS
SB 1770 (Padilla), Chapter 206, Statutes of 2008
AB 2251 (Evans), Chapter 486, Statutes of 2006
SB 603 (Ortiz), Chapter 481, Statutes of 2006

Support: American Association of University Women – California; American College of Obstetricians and Gynecologists District IX; California Academy of Family Physicians; California Chapter of The American College of Emergency Physicians; Office of Lieutenant Governor Eleni Kounalakis

Opposition: ACLU California Action

Assembly Floor Vote: 63 - 0

This analysis reflects amendments to be taken in Committee.

PURPOSE

The purpose of this bill to increase penalties for violations of the California Freedom of Access to Clinics and Church Entrances (“FACCE”) Act.

Existing law provides that any reproductive health service provider, employee, volunteer, or patient who is placed in reasonable fear by the posting of their home address and phone number on an Internet website may make a written demand that such information be removed from the website, so long as the demand includes a sworn statement describing the reasonable fear and attesting that the person is a member of the group protected by the statute. Provides injunctive relief. (Govt. Code § 6281 (b).)

Existing law makes it a misdemeanor, punishable by up to 6 months in a county jail, a fine of not more than \$2,500, or both that fine and imprisonment, to post the home address, telephone number, or personally identifying information about a provider, employee, volunteer, or patient of a reproductive health service facility or other individuals residing at the same home address with the intent that another person imminently use that information to commit a crime involving

violence or a threat of violence against that person or entity. If the violation leads to bodily injury of the person, it is a misdemeanor punishable by up to one year in a county jail, a fine of up to \$5,000, or both that fine and imprisonment. (Govt. Code § 6218.01.)

Existing law defines “reproductive health care services” to mean health care services relating to the termination of a pregnancy in a reproductive health care services facility. (Govt. Code § 6218.05. (a).)

Existing law defines “reproductive health care services provider, employee, volunteer, or patient” means a person who obtains, provides, or assists, at the request of another person, in obtaining or providing reproductive health care services, or a person who owns or operates a reproductive health care services facility. (Govt. Code § 6218.05 (b).)

Existing law defines “reproductive health care services facility” includes a hospital, an office operated by a licensed physician and surgeon, a licensed clinic or a clinic exempt from licensure, or other licensed health care facility that provides reproductive health care services and includes only the building or structure in which the reproductive health care services are actually provided. (Govt. Code § 6218.05 (c).)

Existing law defines “public post” or “publicly display” as meaning to intentionally communicate or otherwise make available to the general public. (Govt. Code § 6218.05 (d).)

Existing law defines “image” as including, but not limited to, any photograph, video footage, sketch, or computer-generated image that provides a means to visually identify the person depicted. (Govt. Code § 6218.05 (e).)

Existing law defines “crime of violence” as an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another. (Penal Code § 423.1 (a).)

Existing law defines “interfere with” as meaning to restrict a person’s freedom of movement. (Penal Code § 423.1 (b).)

Existing law defines “intimidate” as meaning to place a person in reasonable apprehension of bodily harm to herself or himself or to another. (Penal Code, § 423.1 (c).)

Existing law defines “nonviolent” as meaning to conduct that would not constitute a crime of violence. (Pen. Code § 423.1 (d).)

Existing law defines “physical obstruction” as rendering ingress to or egress from a reproductive health services facility or to or from a place of religious worship impassable to another person, or rendering passage to or from a reproductive health services facility or a place of religious worship unreasonably difficult or hazardous to another person. (Penal Code § 423.1 (e).)

Existing law defines “reproductive health services” as meaning reproductive health services provided in a hospital, clinic, physician’s office, or other facility and includes medical, surgical, counseling, or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy. (Penal Code § 423.1 (f).)

Existing law defines “reproductive health services client, provider, or assistant” as a person or entity that is or was involved in obtaining, seeking to obtain, providing, seeking to provide, or assisting or seeking to assist another person, at that other person’s request, to obtain or provide any services in a reproductive health services facility, or a person or entity that is or was involved in owning or operating or seeking to own or operate, a reproductive health services facility. (Penal Code § 423.1 (g).)

Existing law states “reproductive health services facility” includes a hospital, clinic, physician’s office, or other facility that provides or seeks to provide reproductive health services and includes the building or structure in which the facility is located. (Penal Code § 423.1 (h).)

Existing provides that every person who, except a parent or guardian acting towards his or her minor child or ward, commits any of the following acts shall be subject to the punishment, as specified (Penal Code § 423.2 (a)-(f)):

- a) By force, threat of force, or physical obstruction that is a crime of violence, intentionally injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider, or assistant; or
- b) By force, threat of force, or physical obstruction that is a crime of violence, intentionally injures, intimidates, 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
- c) By nonviolent physical obstruction, intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider, or assistant; or
- d) By nonviolent 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
- e) Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services client, provider, assistant, or facility; or
- f) Intentionally damages or destroys the property of a place of religious worship. (Penal Code § 423.2.)

Existing law makes a first violation involving nonviolent physical obstruction a misdemeanor, punishable by imprisonment in a county jail for a period of not more than six months and a fine not to exceed two thousand dollars (\$2,000). (Penal Code § 423.3 (a).)

Existing law makes a second or subsequent violation involving nonviolent physical obstruction a misdemeanor, punishable by imprisonment in a county jail for a period of not more than six months and a fine not to exceed five thousand dollars (\$5,000). (Penal Code § 423.3 (b).)

Existing law makes a first violation involving force, threat of force, or physical obstruction that is a crime of violence or intentional property damage a misdemeanor, punishable by imprisonment in a county jail for a period of not more than one year and a fine not to exceed twenty-five thousand dollars (\$25,000). (Penal Code § 423.3 (c).)

Existing law makes a second or subsequent violation involving force, threat of force, or physical obstruction that is a crime of violence or intentional property damage a misdemeanor, punishable by imprisonment in a county jail for a period of not more than one year and a fine not to exceed fifty thousand dollars (\$50,000). (Penal Code § 423.3 (d).)

Existing law states that this title establishes concurrent state jurisdiction over conduct that is also prohibited by the federal Freedom of Access to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248), which provides for more severe misdemeanor penalties for first violations and felony-misdemeanor penalties for second and subsequent violations. State law enforcement agencies and prosecutors shall cooperate with federal authorities in the prevention, apprehension, and prosecution of these crimes, and shall seek federal prosecutions when appropriate. (Penal Code, § 423.3 (f).)

Existing law makes it a misdemeanor to, by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten another person in the free exercise or enjoyment of a right or privilege secured by the Constitution or laws of this state or by the Constitution or laws of the United States, in whole or in part, because of one or more of specified actual or perceived characteristics of the victim, including disability, gender, religion, race, or sexual orientation. (Penal Code, §§ 422.6 (a) & 422.55 (a).)

Existing law makes it a misdemeanor to knowingly deface, damage, or destroy the real or personal property of another person for the purpose of intimidating or interfering with the free exercise or enjoyment of a right or privilege secured by the Constitution or laws of this state or by the Constitution or laws of the United States, in whole or in part, because of one or more of the same actual or perceived characteristics of the victim. (Penal Code §§ 422.6 (b) & 422.55 (a).)

This bill increases the penalty for a misdemeanor offense of posting on the internet or social media, threats of violence with the intent that another person imminently use that information to commit a violent crime against a reproductive health care worker to an alternate misdemeanor-felony punishable by up to one year in the county jail or sixteen months, 2 or three years in addition to the existing \$10,000 fine plus penalty assessments.

This bill increases the penalty for posting on the internet or social media threats of violence against a reproductive healthcare worker where it leads to bodily injury from a misdemeanor to a felony punishable by 16 months, 2 or 3 years in county jail in addition to the existing \$50,000 plus penalty assessments and existing community service.

This bill increases the penalty for willfully interfering with, injuring, intimidating, oppressing, or threatening, by use of force or threat of force, any person's ability in the free exercise of any right or privilege, ensured by the state and federal constitutional law or statutes because of one or

more actual or perceived characteristics. from a misdemeanor to an alternate misdemeanor-felony punishable by up to one year in county jail, or 16 months, 2 or 3 years in county jail, plus the existing \$5,000 fine plus penalty assessments and the existing mandatory community service,

This bill, as proposed to be amended in Committee, increases the penalties for the existing crimes under the FACCE Act, as follows:

- a) Punishes the second violation of the following offenses as an alternate-misdemeanor-felony subject to a penalty of one year in county jail or 16 months two or three years in county jail, in addition to the existing fine of up to \$10,000 plus penalty assessments, or by both imprisonment and fine:
 - i. nonviolent physical obstruction, or where a person intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services patient, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services patient, provider, or assistant.
 - ii. By nonviolent physical obstruction, or where a person intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.
 - iii. Within 100 feet of the entrance to, or within, a reproductive health services facility, intentionally videotape, film, photograph, or record by electronic means, a reproductive health services patient, provider, or assistant without that person's consent with specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causes the person to be intimidated.
 - iv. Intentionally disclose or distribute a videotape, film, photograph, or recording knowing it was obtained unlawfully with the specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causes the person to be intimidated.
- b) Increases the penalties for a first violation of the following offenses from a misdemeanor to a straight felony punishable by 16 months, two, or three years in county jail and the existing fine of not more than \$25,000 plus penalty assessments:
 - i. Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services patient, provider, assistant, or facility.
 - ii. Intentionally damages or destroys the property of a place of religious worship.
- c) As proposed to be amended, punishes a second or subsequent violation of the following offenses as an alternate-misdemeanor-felony subject to a penalty of one year in county jail or 16 months, two or three years in county jail, in addition to the existing fine of not

more than \$50,000, or by both imprisonment and fine:

- i. Using force, threat of force, or physical obstruction of violence, to intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services patient, provider, or assistant, or in order to intimidate a person or entity, or a class of persons or entities, or from becoming or remaining a reproductive health services patient, provider, or assistant.
- ii. Using force, threat of force, or physical obstruction of violence, to intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.
- iii. Intentionally damaging or destroying the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services patient, provider, assistant, or facility.
- iv. Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services patient, provider, assistant, or facility.
- v. Intentionally damages or destroys the property of a place of religious worship.

COMMENTS

1. Need for This Bill

According to the author:

Since the overturning of Roe vs. Wade, reproductive health clinics like Planned Parenthood have become the very last line for women seeking critical reproductive health care. These vulnerable patients and providers are facing an onslaught of organized harassment, being attacked online and in person. Current penalties are insufficient to deter extremist anti-abortion groups from attacking clinics and providers. AB 2099 updates our state penalties to protect the essential right to reproductive healthcare.

2. AB 1356 (Bauer-Kahan), Chapter 191, Statutes of 2021

AB 1356 was enacted in 2021 and provided more protections for those seeking reproductive healthcare assistance and people that provide those services. Specifically, as enacted, it created new crimes under FACCE Act directed at videotaping, photographing, or recording patients or providers within 100 feet of the facility (i.e., the "buffer" zone) or disclosing or distributing those images. It also increased misdemeanor penalties for violations of the FACCE Act and expanded online privacy laws and peace officer trainings relative to anti-reproduction-rights offenses. In this Committee the felony penalties were removed but the greatly increased fines remained – before the bill was signed into law. This bill creates several new wobblers or felonies. Has there been an increase in attacks on reproductive clinics or people seeking reproductive services since

AB 1356 was enacted? Given that we just increased penalties for these offenses, does it make sense to consider alternate solutions?

3. First Amendment

First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech.” (U.S. Const. Amend. I, Section 1.) The California Constitution also protects free speech. “Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.” (Cal. Const. Art. I, § 2.) “[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” (*Ashcroft v. American Civil Liberties Union* (2002) 535 U.S. 564, 573.)

“To achieve First Amendment protection, a plaintiff must show that [t]he[y] possessed: (1) a message to be communicated; and (2) an audience to receive that message, regardless of the medium in which the message is to be expressed.” (*Hurley v. Irish-American Gay, Lesbian & Bisexual Group* (1995) 515 U.S. 557.) With personal filming devices being commonplace, more and more “news” is being gathered and disseminated by members of the public. The courts have found that freedom of the press applies to citizen journalists and documentarians, not just formal members of the press. (See, e.g., *Glik v. Cunniffe*, (1st Cir. 2011) 655 F.3d 78 [“plaintiff was exercising clearly-established First Amendment rights in filming the officers in a public space”].)

Legislation that regulates the content of protected speech is subject to strict scrutiny, sometimes referred to by the courts as “exacting scrutiny” in this context. (*Reed v. Town of Gilbert, Ariz.* (2015) 135 S.Ct. 2218, 2226.) To survive strict scrutiny, state action must be narrowly tailored to address a compelling government interest. (*Ibid.*)

4. The California FACCE Act

In 2001, the Legislature enacted the California FACCE Act, mirroring the federal Freedom of Access to Clinic Entrances (FACE) Act. California’s FACCE Act provides state criminal and civil penalties for interference with rights to reproductive health services and religious worship. As stated above, AB 1356 added a 100 ft., buffer zone around reproductive healthcare facilities wherein it is unlawful to “intentionally videotape, film, photograph, or records by electronic means, any reproductive health services patient, provider, or assistant without that person’s consent, with specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causes the person to be intimidated.”

The enactment of “buffer zones” around reproductive health care facilities were designed to protect reproductive health care services patients and providers from being harassed, photographed, or threatened just for walking in and out of a reproductive health care facility. According to Guttmacher Institute, a leading research and policy organization working to advance sexual and reproductive health and rights worldwide, there are numerous protections around the U.S. for people working at, or seeking the services of, a reproductive healthcare facility.

States have taken two approaches designed to protect abortion providers. Some states have enacted laws similar to the federal FACE Act that prohibit specific activities such as vandalism or obstruction at clinics. Other states have limited protests aimed at clinic patients by either creating “buffer” zones around clinics that

bar protestors entirely or establishing floating “bubble zones” of several feet around a person who is within a specific distance of a clinic; protesters are prohibited from crossing into that “bubble zone” without the person’s consent.

In 2014, the U.S. Supreme Court struck down the Massachusetts law that placed a 35-foot buffer zone around clinic entrances. The impact of this ruling on the New Hampshire law is still to be determined, but the decision did not immediately affect the Court’s 2000 ruling that upheld Colorado’s floating ‘bubble [or buffer] zone’ law.

15 states and the District of Columbia prohibit certain specified actions aimed at abortion providers: 13 of the states and the District of Columbia prohibit blocking the entrance to and egress from clinic facilities; seven of the states and the District of Columbia prohibit threatening or intimidating staff who provide reproductive health services and/or patients entering the clinic; four of the states prohibit property damage to facilities providing reproductive health services; two of the states and the District of Columbia prohibit telephone harassment of staff who provide reproductive health services; six of the states and the District of Columbia prohibit other specified actions, such as creating excessive noise outside the clinic, possessing or having access to a weapon during a demonstration at a medical facility, trespassing, or releasing a substance that produces noxious odor on clinic premises; and four states have established a “bubble zone” around a person within a specific distance of a clinic’s entrance or driveway. (Guttmacher Institute (August 31, 2023) Public Policy Office, *Protecting Access to Clinics, Background.*)¹

The Massachusetts “buffer” zone made it a “crime to knowingly stand on a ‘public way or sidewalk’ within 35 feet of an entrance or driveway to any ‘reproductive health care facility,’ defined as ‘a place, other than within or upon the grounds of a hospital, where abortions are offered or performed.’” (*McCullen v. Cookley* (2014) 573 U.S. 474.) The U.S. Supreme Court held the law violated the First Amendment. (*Ibid.* [state law creating 35-foot buffer zones around all abortion clinics was not justified by congestion in front of one clinic on Saturday mornings].)

However, the Supreme Court declined to hear two challenges to two other buffer zones: in Harrisburg, Pennsylvania and Chicago, Illinois. In those cases, the buffer zone at issue was much lower than 100 feet, and were, at least, tacitly approved by the Court when it denied certiorari. According to one article in the national press coverage,

On Thursday, one of the two cases the court declined to take up involved an ordinance passed by the city council in Harrisburg, Pennsylvania’s capital, in 2012 that made it illegal to “congregate, patrol, picket or demonstrate” in a zone 20 feet from a health care facility. Anti-abortion activists sued, arguing that the ordinance violates their free speech rights. Lower courts have upheld the ordinance, however, ruling it doesn’t apply to “sidewalk counseling,” where individuals who oppose abortion offer assistance and information about alternatives to abortion to those entering a clinic.

¹ Located at <https://www.guttmacher.org/state-policy/explore/protecting-access-clinics> last visited March 26, 2024.

The second case the court turned away on Thursday involved a Chicago ordinance that regulates the space 50 feet from the entrance of any abortion clinic or other medical facility. In that space, a person cannot come within 8 feet of another person without their consent to hand them information or engage in “oral protest, education, or counseling.” The ordinance was modeled on a statute upheld by the Supreme Court in 2000. (Jessica Gresko (July 2, 2020) “*Higher Court won’t hear abortion clinic ‘buffer zone’ cases,*” Associated News Press.)²

5. Increased Penalties

As outlined in detail in the Purpose section, this bill increase penalties for a number of offenses. It increases from a misdemeanor with a \$10,000 fine (approximately \$41,000 with penalty assessments)³ to a wobbler with the same fine for a posting a home address of a clinic worker on the internet with the intent for another to imminently use the information to commit a crime. If that action results in great bodily injury to someone at that posted address then this bill also makes the existing misdemeanor with a \$50,000 fine (approximately \$205,000 with penalty assessments) a wobbler with the same fine.

This bill as proposed to be amended, makes a second violation of a number of non-violent violations of the FACE act that are currently a misdemeanor with a \$10,000 fine (approximately \$41,000 with penalty assessments) a wobbler with a \$25,000 fine (approximately \$102,500) a straight felony.

As proposed to be amended, existing offenses that involve some force or physical obstruction that are a misdemeanor with a \$25,000 fine for a first and a misdemeanor with a \$50,000 fine for second become a wobbler for a second offense.

Finally this bill makes the existing misdemeanor with a \$25,000 fine for intentionally destroying the property of a reproductive clinic or house of worship a straight felony.

The fines were increased in these sections in 2021, and as noted, with penalty assessments are quite high. Should these misdemeanors become wobblers? Or in the case of destroying property a straight felony.

6. Argument in Support

Planned Parenthood Affiliates of California:

In California, while we continue to work to expand and protect access to sexual and reproductive health care, we still witness the consequences of the national attack on abortion. Extremist lawmakers and their supporters have been transforming incredibly personal health care choices into political battlegrounds, creating dangerous consequences for people across the country. Attacks on reproductive health care, including abortion, contraception, gender-affirming care, and IVF have

² Located at <https://apnews.com/article/31d02c9336e9f3c2a5d9dea4a883e72c>

³ Until the budget year 2002-2003, there was 170% in penalty assessments applied to every fine, the current penalty assessments are approximately 310% plus a flat fee of \$79. (See Penal Code § 1464; Penal Code § 1465.7; Penal Code § 1465.8 Government Code § 70373; Government Code § 7600.5; Government Code § 76000 *et seq*; Government Code §76000.10 Government Code § 76104.6; Government Code §76104,7)

resulted in patients being denied care, forced to travel out-of-their home states in difficult circumstances, and endangering their health and well-being. These attacks have emboldened anti-abortion extremists.

Since the *Dobbs* decision, there has been an increase in violence in abortion protective states like California. According to the National Abortion Federation, there was a disproportionate increase of anti-reproductive health incidents in protective states – stalking increased by 913%, assault and battery increased by 29%, bomb threats increased by 133% and obstruction of clinics increased by 538%. While California has existing protections in place under the Freedom to Access Clinic Entrances (FACE) Act, offenses are not always taken seriously and health centers face challenges with enforcement. Acts of violence and harassment have persisted for decades as anti-abortion extremists have faced little retribution for their escalating tactics and cultural complacency has normalized their activity.

Violations of the FACE Act include intentionally injuring, intimidating, or obstructing access to a health center, vandalism, and modern forms of harassment such as posting personal information online with the intent to cause harm. According to a Feminist Majority Foundation survey of providers over half of providers face targeted threats and intimidation – often coming from highly organized and well-funded groups. Targeted threats and intimidation includes twelve variables: death threats, stalking, tracking of activities, vandalism of home or personal property, harassing phone calls, harassing emails/social media posts, pamphlets/leaflets targeting staff and physicians, personal information/pictures posted online, frivolous lawsuits, and threats to family members of staff or physicians.

Attacks at clinics do not just have a negative impact on the staff and patients, but also contribute to a culture of fear. As more states criminalize reproductive health care, increasing not just safety in accessing care but also stigma, it is more crucial than ever that patients feel safe when seeking care in California. AB 2099 will strengthen the enforcement mechanisms for violations of the FACE Act in California and ensure that patients and providers can access the care they need, provide essential health care, and do so without fearing their safety. For these reasons, PPAC is proud to sponsor AB 2099 and respectfully urge your “Aye” vote when it’s before you in Committee.

7. Argument in Opposition

ACLU California Action opposes this bill stating:

The code sections addressed by the bill already provide significant penalties for those who seek to impede access to reproductive health care. Government Code section 6218.01 and Penal Code sections 422.6 and 423.3 allow for up to a year in jail and fines ranging from \$5,000 to \$50,000. In addition to the code sections addressed by the bill, anyone who makes criminal threats against another person can be punished by up to three years in state prison. (Penal Code § 422.) Likewise, a person who aids and abets another in committing a crime involving violence against a reproductive healthcare patient, provider, employee, or volunteer – or any other person – can be convicted of the underlying crime as though they themselves

had directly committed it. (Penal Code § 31.) Assault by means of force likely to produce great bodily injury can be punished by up to four years in state prison (Penal Code § 245, subd. (a)(4)); and if the felony assault is committed because of a protected characteristic, the person can be punished by up to an additional three years in state prison (Penal Code § 422.75).

To the extent existing laws are not being enforced or prioritized to curb the harmful behavior contemplated by AB 2099, we encourage the Legislature to focus its attention on holding law enforcement agencies accountable. Simply increasing penalties will not result in greater accountability for those who seek to do harm.

-- END --

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2099 **Hearing Date:** July 2, 2024
Author: Bauer-Kahan
Version: February 5, 2024
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Crimes: reproductive health services*

HISTORY

Source: Planned Parenthood Affiliates of California

Prior Legislation: AB 1356 (Bauer-Kahan), Chapter 191, Stats. 2021
AB 3140 (Bauer-Kahan), 2020 not heard in ACoPS
SB 1770 (Padilla), Chapter 206, Statutes of 2008
AB 2251 (Evans), Chapter 486, Statutes of 2006
SB 603 (Ortiz), Chapter 481, Statutes of 2006

Support: American Association of University Women – California; American College of Obstetricians and Gynecologists District IX; California Academy of Family Physicians; California Chapter of The American College of Emergency Physicians; Office of Lieutenant Governor Eleni Kounalakis

Opposition: ACLU California Action

Assembly Floor Vote: 63 - 0

This analysis reflects amendments to be taken in Committee.

PURPOSE

The purpose of this bill to increase penalties for violations of the California Freedom of Access to Clinics and Church Entrances (“FACCE”) Act.

Existing law provides that any reproductive health service provider, employee, volunteer, or patient who is placed in reasonable fear by the posting of their home address and phone number on an Internet website may make a written demand that such information be removed from the website, so long as the demand includes a sworn statement describing the reasonable fear and attesting that the person is a member of the group protected by the statute. Provides injunctive relief. (Govt. Code § 6281 (b).)

Existing law makes it a misdemeanor, punishable by up to 6 months in a county jail, a fine of not more than \$2,500, or both that fine and imprisonment, to post the home address, telephone number, or personally identifying information about a provider, employee, volunteer, or patient of a reproductive health service facility or other individuals residing at the same home address with the intent that another person imminently use that information to commit a crime involving

violence or a threat of violence against that person or entity. If the violation leads to bodily injury of the person, it is a misdemeanor punishable by up to one year in a county jail, a fine of up to \$5,000, or both that fine and imprisonment. (Govt. Code § 6218.01.)

Existing law defines “reproductive health care services” to mean health care services relating to the termination of a pregnancy in a reproductive health care services facility. (Govt. Code § 6218.05. (a).)

Existing law defines “reproductive health care services provider, employee, volunteer, or patient” means a person who obtains, provides, or assists, at the request of another person, in obtaining or providing reproductive health care services, or a person who owns or operates a reproductive health care services facility. (Govt. Code § 6218.05 (b).)

Existing law defines “reproductive health care services facility” includes a hospital, an office operated by a licensed physician and surgeon, a licensed clinic or a clinic exempt from licensure, or other licensed health care facility that provides reproductive health care services and includes only the building or structure in which the reproductive health care services are actually provided. (Govt. Code § 6218.05 (c).)

Existing law defines “public post” or “publicly display” as meaning to intentionally communicate or otherwise make available to the general public. (Govt. Code § 6218.05 (d).)

Existing law defines “image” as including, but not limited to, any photograph, video footage, sketch, or computer-generated image that provides a means to visually identify the person depicted. (Govt. Code § 6218.05 (e).)

Existing law defines “crime of violence” as an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another. (Penal Code § 423.1 (a).)

Existing law defines “interfere with” as meaning to restrict a person’s freedom of movement. (Penal Code § 423.1 (b).)

Existing law defines “intimidate” as meaning to place a person in reasonable apprehension of bodily harm to herself or himself or to another. (Penal Code, § 423.1 (c).)

Existing law defines “nonviolent” as meaning to conduct that would not constitute a crime of violence. (Pen. Code § 423.1 (d).)

Existing law defines “physical obstruction” as rendering ingress to or egress from a reproductive health services facility or to or from a place of religious worship impassable to another person, or rendering passage to or from a reproductive health services facility or a place of religious worship unreasonably difficult or hazardous to another person. (Penal Code § 423.1 (e).)

Existing law defines “reproductive health services” as meaning reproductive health services provided in a hospital, clinic, physician’s office, or other facility and includes medical, surgical, counseling, or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy. (Penal Code § 423.1 (f).)

Existing law defines “reproductive health services client, provider, or assistant” as a person or entity that is or was involved in obtaining, seeking to obtain, providing, seeking to provide, or assisting or seeking to assist another person, at that other person’s request, to obtain or provide any services in a reproductive health services facility, or a person or entity that is or was involved in owning or operating or seeking to own or operate, a reproductive health services facility. (Penal Code § 423.1 (g).)

Existing law states “reproductive health services facility” includes a hospital, clinic, physician’s office, or other facility that provides or seeks to provide reproductive health services and includes the building or structure in which the facility is located. (Penal Code § 423.1 (h).)

Existing provides that every person who, except a parent or guardian acting towards his or her minor child or ward, commits any of the following acts shall be subject to the punishment, as specified (Penal Code § 423.2 (a)-(f)):

- a) By force, threat of force, or physical obstruction that is a crime of violence, intentionally injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider, or assistant; or
- b) By force, threat of force, or physical obstruction that is a crime of violence, intentionally injures, intimidates, 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
- c) By nonviolent physical obstruction, intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider, or assistant; or
- d) By nonviolent 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
- e) Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services client, provider, assistant, or facility; or
- f) Intentionally damages or destroys the property of a place of religious worship. (Penal Code § 423.2.)

Existing law makes a first violation involving nonviolent physical obstruction a misdemeanor, punishable by imprisonment in a county jail for a period of not more than six months and a fine not to exceed two thousand dollars (\$2,000). (Penal Code § 423.3 (a).)

Existing law makes a second or subsequent violation involving nonviolent physical obstruction a misdemeanor, punishable by imprisonment in a county jail for a period of not more than six months and a fine not to exceed five thousand dollars (\$5,000). (Penal Code § 423.3 (b).)

Existing law makes a first violation involving force, threat of force, or physical obstruction that is a crime of violence or intentional property damage a misdemeanor, punishable by imprisonment in a county jail for a period of not more than one year and a fine not to exceed twenty-five thousand dollars (\$25,000). (Penal Code § 423.3 (c).)

Existing law makes a second or subsequent violation involving force, threat of force, or physical obstruction that is a crime of violence or intentional property damage a misdemeanor, punishable by imprisonment in a county jail for a period of not more than one year and a fine not to exceed fifty thousand dollars (\$50,000). (Penal Code § 423.3 (d).)

Existing law states that this title establishes concurrent state jurisdiction over conduct that is also prohibited by the federal Freedom of Access to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248), which provides for more severe misdemeanor penalties for first violations and felony-misdemeanor penalties for second and subsequent violations. State law enforcement agencies and prosecutors shall cooperate with federal authorities in the prevention, apprehension, and prosecution of these crimes, and shall seek federal prosecutions when appropriate. (Penal Code, § 423.3 (f).)

Existing law makes it a misdemeanor to, by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten another person in the free exercise or enjoyment of a right or privilege secured by the Constitution or laws of this state or by the Constitution or laws of the United States, in whole or in part, because of one or more of specified actual or perceived characteristics of the victim, including disability, gender, religion, race, or sexual orientation. (Penal Code, §§ 422.6 (a) & 422.55 (a).)

Existing law makes it a misdemeanor to knowingly deface, damage, or destroy the real or personal property of another person for the purpose of intimidating or interfering with the free exercise or enjoyment of a right or privilege secured by the Constitution or laws of this state or by the Constitution or laws of the United States, in whole or in part, because of one or more of the same actual or perceived characteristics of the victim. (Penal Code §§ 422.6 (b) & 422.55 (a).)

This bill increases the penalty for a misdemeanor offense of posting on the internet or social media, threats of violence with the intent that another person imminently use that information to commit a violent crime against a reproductive health care worker to an alternate misdemeanor-felony punishable by up to one year in the county jail or sixteen months, 2 or three years in addition to the existing \$10,000 fine plus penalty assessments.

This bill increases the penalty for posting on the internet or social media threats of violence against a reproductive healthcare worker where it leads to bodily injury from a misdemeanor to a felony punishable by 16 months, 2 or 3 years in county jail in addition to the existing \$50,000 plus penalty assessments and existing community service.

This bill increases the penalty for willfully interfering with, injuring, intimidating, oppressing, or threatening, by use of force or threat of force, any person's ability in the free exercise of any right or privilege, ensured by the state and federal constitutional law or statutes because of one or

more actual or perceived characteristics. from a misdemeanor to an alternate misdemeanor-felony punishable by up to one year in county jail, or 16 months, 2 or 3 years in county jail, plus the existing \$5,000 fine plus penalty assessments and the existing mandatory community service,

This bill, as proposed to be amended in Committee, increases the penalties for the existing crimes under the FACCE Act, as follows:

- a) Punishes the second violation of the following offenses as an alternate-misdemeanor-felony subject to a penalty of one year in county jail or 16 months two or three years in county jail, in addition to the existing fine of up to \$10,000 plus penalty assessments, or by both imprisonment and fine:
 - i. nonviolent physical obstruction, or where a person intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services patient, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services patient, provider, or assistant.
 - ii. By nonviolent physical obstruction, or where a person intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.
 - iii. Within 100 feet of the entrance to, or within, a reproductive health services facility, intentionally videotape, film, photograph, or record by electronic means, a reproductive health services patient, provider, or assistant without that person's consent with specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causes the person to be intimidated.
 - iv. Intentionally disclose or distribute a videotape, film, photograph, or recording knowing it was obtained unlawfully with the specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causes the person to be intimidated.
- b) Increases the penalties for a first violation of the following offenses from a misdemeanor to a straight felony punishable by 16 months, two, or three years in county jail and the existing fine of not more than \$25,000 plus penalty assessments:
 - i. Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services patient, provider, assistant, or facility.
 - ii. Intentionally damages or destroys the property of a place of religious worship.
- c) As proposed to be amended, punishes a second or subsequent violation of the following offenses as an alternate-misdemeanor-felony subject to a penalty of one year in county jail or 16 months, two or three years in county jail, in addition to the existing fine of not

more than \$50,000, or by both imprisonment and fine:

- i. Using force, threat of force, or physical obstruction of violence, to intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services patient, provider, or assistant, or in order to intimidate a person or entity, or a class of persons or entities, or from becoming or remaining a reproductive health services patient, provider, or assistant.
- ii. Using force, threat of force, or physical obstruction of violence, to intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.
- iii. Intentionally damaging or destroying the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services patient, provider, assistant, or facility.
- iv. Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services patient, provider, assistant, or facility.
- v. Intentionally damages or destroys the property of a place of religious worship.

COMMENTS

1. Need for This Bill

According to the author:

Since the overturning of Roe vs. Wade, reproductive health clinics like Planned Parenthood have become the very last line for women seeking critical reproductive health care. These vulnerable patients and providers are facing an onslaught of organized harassment, being attacked online and in person. Current penalties are insufficient to deter extremist anti-abortion groups from attacking clinics and providers. AB 2099 updates our state penalties to protect the essential right to reproductive healthcare.

2. AB 1356 (Bauer-Kahan), Chapter 191, Statutes of 2021

AB 1356 was enacted in 2021 and provided more protections for those seeking reproductive healthcare assistance and people that provide those services. Specifically, as enacted, it created new crimes under FACCE Act directed at videotaping, photographing, or recording patients or providers within 100 feet of the facility (i.e., the "buffer" zone) or disclosing or distributing those images. It also increased misdemeanor penalties for violations of the FACCE Act and expanded online privacy laws and peace officer trainings relative to anti-reproduction-rights offenses. In this Committee the felony penalties were removed but the greatly increased fines remained – before the bill was signed into law. This bill creates several new wobblers or felonies. Has there been an increase in attacks on reproductive clinics or people seeking reproductive services since

AB 1356 was enacted? Given that we just increased penalties for these offenses, does it make sense to consider alternate solutions?

3. First Amendment

First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech.” (U.S. Const. Amend. I, Section 1.) The California Constitution also protects free speech. “Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.” (Cal. Const. Art. I, § 2.) “[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” (*Ashcroft v. American Civil Liberties Union* (2002) 535 U.S. 564, 573.)

“To achieve First Amendment protection, a plaintiff must show that [t]he[y] possessed: (1) a message to be communicated; and (2) an audience to receive that message, regardless of the medium in which the message is to be expressed.” (*Hurley v. Irish-American Gay, Lesbian & Bisexual Group* (1995) 515 U.S. 557.) With personal filming devices being commonplace, more and more “news” is being gathered and disseminated by members of the public. The courts have found that freedom of the press applies to citizen journalists and documentarians, not just formal members of the press. (See, e.g., *Glik v. Cunniffe*, (1st Cir. 2011) 655 F.3d 78 [“plaintiff was exercising clearly-established First Amendment rights in filming the officers in a public space”].)

Legislation that regulates the content of protected speech is subject to strict scrutiny, sometimes referred to by the courts as “exacting scrutiny” in this context. (*Reed v. Town of Gilbert, Ariz.* (2015) 135 S.Ct. 2218, 2226.) To survive strict scrutiny, state action must be narrowly tailored to address a compelling government interest. (*Ibid.*)

4. The California FACCE Act

In 2001, the Legislature enacted the California FACCE Act, mirroring the federal Freedom of Access to Clinic Entrances (FACE) Act. California’s FACCE Act provides state criminal and civil penalties for interference with rights to reproductive health services and religious worship. As stated above, AB 1356 added a 100 ft., buffer zone around reproductive healthcare facilities wherein it is unlawful to “intentionally videotape, film, photograph, or records by electronic means, any reproductive health services patient, provider, or assistant without that person’s consent, with specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causes the person to be intimidated.”

The enactment of “buffer zones” around reproductive health care facilities were designed to protect reproductive health care services patients and providers from being harassed, photographed, or threatened just for walking in and out of a reproductive health care facility. According to Guttmacher Institute, a leading research and policy organization working to advance sexual and reproductive health and rights worldwide, there are numerous protections around the U.S. for people working at, or seeking the services of, a reproductive healthcare facility.

States have taken two approaches designed to protect abortion providers. Some states have enacted laws similar to the federal FACE Act that prohibit specific activities such as vandalism or obstruction at clinics. Other states have limited protests aimed at clinic patients by either creating “buffer” zones around clinics that

bar protestors entirely or establishing floating “bubble zones” of several feet around a person who is within a specific distance of a clinic; protesters are prohibited from crossing into that “bubble zone” without the person’s consent.

In 2014, the U.S. Supreme Court struck down the Massachusetts law that placed a 35-foot buffer zone around clinic entrances. The impact of this ruling on the New Hampshire law is still to be determined, but the decision did not immediately affect the Court’s 2000 ruling that upheld Colorado’s floating ‘bubble [or buffer] zone’ law.

15 states and the District of Columbia prohibit certain specified actions aimed at abortion providers: 13 of the states and the District of Columbia prohibit blocking the entrance to and egress from clinic facilities; seven of the states and the District of Columbia prohibit threatening or intimidating staff who provide reproductive health services and/or patients entering the clinic; four of the states prohibit property damage to facilities providing reproductive health services; two of the states and the District of Columbia prohibit telephone harassment of staff who provide reproductive health services; six of the states and the District of Columbia prohibit other specified actions, such as creating excessive noise outside the clinic, possessing or having access to a weapon during a demonstration at a medical facility, trespassing, or releasing a substance that produces noxious odor on clinic premises; and four states have established a “bubble zone” around a person within a specific distance of a clinic’s entrance or driveway. (Guttmacher Institute (August 31, 2023) Public Policy Office, *Protecting Access to Clinics, Background.*)¹

The Massachusetts “buffer” zone made it a “crime to knowingly stand on a ‘public way or sidewalk’ within 35 feet of an entrance or driveway to any ‘reproductive health care facility,’ defined as ‘a place, other than within or upon the grounds of a hospital, where abortions are offered or performed.’” (*McCullen v. Cookley* (2014) 573 U.S. 474.) The U.S. Supreme Court held the law violated the First Amendment. (*Ibid.* [state law creating 35-foot buffer zones around all abortion clinics was not justified by congestion in front of one clinic on Saturday mornings].)

However, the Supreme Court declined to hear two challenges to two other buffer zones: in Harrisburg, Pennsylvania and Chicago, Illinois. In those cases, the buffer zone at issue was much lower than 100 feet, and were, at least, tacitly approved by the Court when it denied certiorari. According to one article in the national press coverage,

On Thursday, one of the two cases the court declined to take up involved an ordinance passed by the city council in Harrisburg, Pennsylvania’s capital, in 2012 that made it illegal to “congregate, patrol, picket or demonstrate” in a zone 20 feet from a health care facility. Anti-abortion activists sued, arguing that the ordinance violates their free speech rights. Lower courts have upheld the ordinance, however, ruling it doesn’t apply to “sidewalk counseling,” where individuals who oppose abortion offer assistance and information about alternatives to abortion to those entering a clinic.

¹ Located at <https://www.guttmacher.org/state-policy/explore/protecting-access-clinics> last visited March 26, 2024.

The second case the court turned away on Thursday involved a Chicago ordinance that regulates the space 50 feet from the entrance of any abortion clinic or other medical facility. In that space, a person cannot come within 8 feet of another person without their consent to hand them information or engage in “oral protest, education, or counseling.” The ordinance was modeled on a statute upheld by the Supreme Court in 2000. (Jessica Gresko (July 2, 2020) “*Higher Court won’t hear abortion clinic ‘buffer zone’ cases,*” Associated News Press.)²

5. Increased Penalties

As outlined in detail in the Purpose section, this bill increase penalties for a number of offenses. It increases from a misdemeanor with a \$10,000 fine (approximately \$41,000 with penalty assessments)³ to a wobbler with the same fine for a posting a home address of a clinic worker on the internet with the intent for another to imminently use the information to commit a crime. If that action results in great bodily injury to someone at that posted address then this bill also makes the existing misdemeanor with a \$50,000 fine (approximately \$205,000 with penalty assessments) a wobbler with the same fine.

This bill as proposed to be amended, makes a second violation of a number of non-violent violations of the FACE act that are currently a misdemeanor with a \$10,000 fine (approximately \$41,000 with penalty assessments) a wobbler with a \$25,000 fine (approximately \$102,500) a straight felony.

As proposed to be amended, existing offenses that involve some force or physical obstruction that are a misdemeanor with a \$25,000 fine for a first and a misdemeanor with a \$50,000 fine for second become a wobbler for a second offense.

Finally this bill makes the existing misdemeanor with a \$25,000 fine for intentionally destroying the property of a reproductive clinic or house of worship a straight felony.

The fines were increased in these sections in 2021, and as noted, with penalty assessments are quite high. Should these misdemeanors become wobblers? Or in the case of destroying property a straight felony.

6. Argument in Support

Planned Parenthood Affiliates of California:

In California, while we continue to work to expand and protect access to sexual and reproductive health care, we still witness the consequences of the national attack on abortion. Extremist lawmakers and their supporters have been transforming incredibly personal health care choices into political battlegrounds, creating dangerous consequences for people across the country. Attacks on reproductive health care, including abortion, contraception, gender-affirming care, and IVF have

² Located at <https://apnews.com/article/31d02c9336e9f3c2a5d9dea4a883e72c>

³ Until the budget year 2002-2003, there was 170% in penalty assessments applied to every fine, the current penalty assessments are approximately 310% plus a flat fee of \$79. (See Penal Code § 1464; Penal Code § 1465.7; Penal Code § 1465.8 Government Code § 70373; Government Code § 7600.5; Government Code § 76000 *et seq*; Government Code §76000.10 Government Code § 76104.6; Government Code §76104,7)

resulted in patients being denied care, forced to travel out-of-their home states in difficult circumstances, and endangering their health and well-being. These attacks have emboldened anti-abortion extremists.

Since the *Dobbs* decision, there has been an increase in violence in abortion protective states like California. According to the National Abortion Federation, there was a disproportionate increase of anti-reproductive health incidents in protective states – stalking increased by 913%, assault and battery increased by 29%, bomb threats increased by 133% and obstruction of clinics increased by 538%. While California has existing protections in place under the Freedom to Access Clinic Entrances (FACE) Act, offenses are not always taken seriously and health centers face challenges with enforcement. Acts of violence and harassment have persisted for decades as anti-abortion extremists have faced little retribution for their escalating tactics and cultural complacency has normalized their activity.

Violations of the FACE Act include intentionally injuring, intimidating, or obstructing access to a health center, vandalism, and modern forms of harassment such as posting personal information online with the intent to cause harm. According to a Feminist Majority Foundation survey of providers over half of providers face targeted threats and intimidation – often coming from highly organized and well-funded groups. Targeted threats and intimidation includes twelve variables: death threats, stalking, tracking of activities, vandalism of home or personal property, harassing phone calls, harassing emails/social media posts, pamphlets/leaflets targeting staff and physicians, personal information/pictures posted online, frivolous lawsuits, and threats to family members of staff or physicians.

Attacks at clinics do not just have a negative impact on the staff and patients, but also contribute to a culture of fear. As more states criminalize reproductive health care, increasing not just safety in accessing care but also stigma, it is more crucial than ever that patients feel safe when seeking care in California. AB 2099 will strengthen the enforcement mechanisms for violations of the FACE Act in California and ensure that patients and providers can access the care they need, provide essential health care, and do so without fearing their safety. For these reasons, PPAC is proud to sponsor AB 2099 and respectfully urge your “Aye” vote when it’s before you in Committee.

7. Argument in Opposition

ACLU California Action opposes this bill stating:

The code sections addressed by the bill already provide significant penalties for those who seek to impede access to reproductive health care. Government Code section 6218.01 and Penal Code sections 422.6 and 423.3 allow for up to a year in jail and fines ranging from \$5,000 to \$50,000. In addition to the code sections addressed by the bill, anyone who makes criminal threats against another person can be punished by up to three years in state prison. (Penal Code § 422.) Likewise, a person who aids and abets another in committing a crime involving violence against a reproductive healthcare patient, provider, employee, or volunteer – or any other person – can be convicted of the underlying crime as though they themselves

had directly committed it. (Penal Code § 31.) Assault by means of force likely to produce great bodily injury can be punished by up to four years in state prison (Penal Code § 245, subd. (a)(4)); and if the felony assault is committed because of a protected characteristic, the person can be punished by up to an additional three years in state prison (Penal Code § 422.75).

To the extent existing laws are not being enforced or prioritized to curb the harmful behavior contemplated by AB 2099, we encourage the Legislature to focus its attention on holding law enforcement agencies accountable. Simply increasing penalties will not result in greater accountability for those who seek to do harm.

-- END --

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2099 **Hearing Date:** July 2, 2024
Author: Bauer-Kahan
Version: February 5, 2024
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Crimes: reproductive health services*

HISTORY

Source: Planned Parenthood Affiliates of California

Prior Legislation: AB 1356 (Bauer-Kahan), Chapter 191, Stats. 2021
AB 3140 (Bauer-Kahan), 2020 not heard in ACoPS
SB 1770 (Padilla), Chapter 206, Statutes of 2008
AB 2251 (Evans), Chapter 486, Statutes of 2006
SB 603 (Ortiz), Chapter 481, Statutes of 2006

Support: American Association of University Women – California; American College of Obstetricians and Gynecologists District IX; California Academy of Family Physicians; California Chapter of The American College of Emergency Physicians; Office of Lieutenant Governor Eleni Kounalakis

Opposition: ACLU California Action

Assembly Floor Vote: 63 - 0

This analysis reflects amendments to be taken in Committee.

PURPOSE

The purpose of this bill to increase penalties for violations of the California Freedom of Access to Clinics and Church Entrances (“FACCE”) Act.

Existing law provides that any reproductive health service provider, employee, volunteer, or patient who is placed in reasonable fear by the posting of their home address and phone number on an Internet website may make a written demand that such information be removed from the website, so long as the demand includes a sworn statement describing the reasonable fear and attesting that the person is a member of the group protected by the statute. Provides injunctive relief. (Govt. Code § 6281 (b).)

Existing law makes it a misdemeanor, punishable by up to 6 months in a county jail, a fine of not more than \$2,500, or both that fine and imprisonment, to post the home address, telephone number, or personally identifying information about a provider, employee, volunteer, or patient of a reproductive health service facility or other individuals residing at the same home address with the intent that another person imminently use that information to commit a crime involving

violence or a threat of violence against that person or entity. If the violation leads to bodily injury of the person, it is a misdemeanor punishable by up to one year in a county jail, a fine of up to \$5,000, or both that fine and imprisonment. (Govt. Code § 6218.01.)

Existing law defines “reproductive health care services” to mean health care services relating to the termination of a pregnancy in a reproductive health care services facility. (Govt. Code § 6218.05. (a).)

Existing law defines “reproductive health care services provider, employee, volunteer, or patient” means a person who obtains, provides, or assists, at the request of another person, in obtaining or providing reproductive health care services, or a person who owns or operates a reproductive health care services facility. (Govt. Code § 6218.05 (b).)

Existing law defines “reproductive health care services facility” includes a hospital, an office operated by a licensed physician and surgeon, a licensed clinic or a clinic exempt from licensure, or other licensed health care facility that provides reproductive health care services and includes only the building or structure in which the reproductive health care services are actually provided. (Govt. Code § 6218.05 (c).)

Existing law defines “public post” or “publicly display” as meaning to intentionally communicate or otherwise make available to the general public. (Govt. Code § 6218.05 (d).)

Existing law defines “image” as including, but not limited to, any photograph, video footage, sketch, or computer-generated image that provides a means to visually identify the person depicted. (Govt. Code § 6218.05 (e).)

Existing law defines “crime of violence” as an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another. (Penal Code § 423.1 (a).)

Existing law defines “interfere with” as meaning to restrict a person’s freedom of movement. (Penal Code § 423.1 (b).)

Existing law defines “intimidate” as meaning to place a person in reasonable apprehension of bodily harm to herself or himself or to another. (Penal Code, § 423.1 (c).)

Existing law defines “nonviolent” as meaning to conduct that would not constitute a crime of violence. (Pen. Code § 423.1 (d).)

Existing law defines “physical obstruction” as rendering ingress to or egress from a reproductive health services facility or to or from a place of religious worship impassable to another person, or rendering passage to or from a reproductive health services facility or a place of religious worship unreasonably difficult or hazardous to another person. (Penal Code § 423.1 (e).)

Existing law defines “reproductive health services” as meaning reproductive health services provided in a hospital, clinic, physician’s office, or other facility and includes medical, surgical, counseling, or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy. (Penal Code § 423.1 (f).)

Existing law defines “reproductive health services client, provider, or assistant” as a person or entity that is or was involved in obtaining, seeking to obtain, providing, seeking to provide, or assisting or seeking to assist another person, at that other person’s request, to obtain or provide any services in a reproductive health services facility, or a person or entity that is or was involved in owning or operating or seeking to own or operate, a reproductive health services facility. (Penal Code § 423.1 (g).)

Existing law states “reproductive health services facility” includes a hospital, clinic, physician’s office, or other facility that provides or seeks to provide reproductive health services and includes the building or structure in which the facility is located. (Penal Code § 423.1 (h).)

Existing provides that every person who, except a parent or guardian acting towards his or her minor child or ward, commits any of the following acts shall be subject to the punishment, as specified (Penal Code § 423.2 (a)-(f)):

- a) By force, threat of force, or physical obstruction that is a crime of violence, intentionally injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider, or assistant; or
- b) By force, threat of force, or physical obstruction that is a crime of violence, intentionally injures, intimidates, 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
- c) By nonviolent physical obstruction, intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider, or assistant; or
- d) By nonviolent 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
- e) Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services client, provider, assistant, or facility; or
- f) Intentionally damages or destroys the property of a place of religious worship. (Penal Code § 423.2.)

Existing law makes a first violation involving nonviolent physical obstruction a misdemeanor, punishable by imprisonment in a county jail for a period of not more than six months and a fine not to exceed two thousand dollars (\$2,000). (Penal Code § 423.3 (a).)

Existing law makes a second or subsequent violation involving nonviolent physical obstruction a misdemeanor, punishable by imprisonment in a county jail for a period of not more than six months and a fine not to exceed five thousand dollars (\$5,000). (Penal Code § 423.3 (b).)

Existing law makes a first violation involving force, threat of force, or physical obstruction that is a crime of violence or intentional property damage a misdemeanor, punishable by imprisonment in a county jail for a period of not more than one year and a fine not to exceed twenty-five thousand dollars (\$25,000). (Penal Code § 423.3 (c).)

Existing law makes a second or subsequent violation involving force, threat of force, or physical obstruction that is a crime of violence or intentional property damage a misdemeanor, punishable by imprisonment in a county jail for a period of not more than one year and a fine not to exceed fifty thousand dollars (\$50,000). (Penal Code § 423.3 (d).)

Existing law states that this title establishes concurrent state jurisdiction over conduct that is also prohibited by the federal Freedom of Access to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248), which provides for more severe misdemeanor penalties for first violations and felony-misdemeanor penalties for second and subsequent violations. State law enforcement agencies and prosecutors shall cooperate with federal authorities in the prevention, apprehension, and prosecution of these crimes, and shall seek federal prosecutions when appropriate. (Penal Code, § 423.3 (f).)

Existing law makes it a misdemeanor to, by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten another person in the free exercise or enjoyment of a right or privilege secured by the Constitution or laws of this state or by the Constitution or laws of the United States, in whole or in part, because of one or more of specified actual or perceived characteristics of the victim, including disability, gender, religion, race, or sexual orientation. (Penal Code, §§ 422.6 (a) & 422.55 (a).)

Existing law makes it a misdemeanor to knowingly deface, damage, or destroy the real or personal property of another person for the purpose of intimidating or interfering with the free exercise or enjoyment of a right or privilege secured by the Constitution or laws of this state or by the Constitution or laws of the United States, in whole or in part, because of one or more of the same actual or perceived characteristics of the victim. (Penal Code §§ 422.6 (b) & 422.55 (a).)

This bill increases the penalty for a misdemeanor offense of posting on the internet or social media, threats of violence with the intent that another person imminently use that information to commit a violent crime against a reproductive health care worker to an alternate misdemeanor-felony punishable by up to one year in the county jail or sixteen months, 2 or three years in addition to the existing \$10,000 fine plus penalty assessments.

This bill increases the penalty for posting on the internet or social media threats of violence against a reproductive healthcare worker where it leads to bodily injury from a misdemeanor to a felony punishable by 16 months, 2 or 3 years in county jail in addition to the existing \$50,000 plus penalty assessments and existing community service.

This bill increases the penalty for willfully interfering with, injuring, intimidating, oppressing, or threatening, by use of force or threat of force, any person's ability in the free exercise of any right or privilege, ensured by the state and federal constitutional law or statutes because of one or

more actual or perceived characteristics. from a misdemeanor to an alternate misdemeanor-felony punishable by up to one year in county jail, or 16 months, 2 or 3 years in county jail, plus the existing \$5,000 fine plus penalty assessments and the existing mandatory community service,

This bill, as proposed to be amended in Committee, increases the penalties for the existing crimes under the FACCE Act, as follows:

- a) Punishes the second violation of the following offenses as an alternate-misdemeanor-felony subject to a penalty of one year in county jail or 16 months two or three years in county jail, in addition to the existing fine of up to \$10,000 plus penalty assessments, or by both imprisonment and fine:
 - i. nonviolent physical obstruction, or where a person intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services patient, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services patient, provider, or assistant.
 - ii. By nonviolent physical obstruction, or where a person intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.
 - iii. Within 100 feet of the entrance to, or within, a reproductive health services facility, intentionally videotape, film, photograph, or record by electronic means, a reproductive health services patient, provider, or assistant without that person's consent with specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causes the person to be intimidated.
 - iv. Intentionally disclose or distribute a videotape, film, photograph, or recording knowing it was obtained unlawfully with the specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causes the person to be intimidated.
- b) Increases the penalties for a first violation of the following offenses from a misdemeanor to a straight felony punishable by 16 months, two, or three years in county jail and the existing fine of not more than \$25,000 plus penalty assessments:
 - i. Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services patient, provider, assistant, or facility.
 - ii. Intentionally damages or destroys the property of a place of religious worship.
- c) As proposed to be amended, punishes a second or subsequent violation of the following offenses as an alternate-misdemeanor-felony subject to a penalty of one year in county jail or 16 months, two or three years in county jail, in addition to the existing fine of not

more than \$50,000, or by both imprisonment and fine:

- i. Using force, threat of force, or physical obstruction of violence, to intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services patient, provider, or assistant, or in order to intimidate a person or entity, or a class of persons or entities, or from becoming or remaining a reproductive health services patient, provider, or assistant.
- ii. Using force, threat of force, or physical obstruction of violence, to intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.
- iii. Intentionally damaging or destroying the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services patient, provider, assistant, or facility.
- iv. Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services patient, provider, assistant, or facility.
- v. Intentionally damages or destroys the property of a place of religious worship.

COMMENTS

1. Need for This Bill

According to the author:

Since the overturning of Roe vs. Wade, reproductive health clinics like Planned Parenthood have become the very last line for women seeking critical reproductive health care. These vulnerable patients and providers are facing an onslaught of organized harassment, being attacked online and in person. Current penalties are insufficient to deter extremist anti-abortion groups from attacking clinics and providers. AB 2099 updates our state penalties to protect the essential right to reproductive healthcare.

2. AB 1356 (Bauer-Kahan), Chapter 191, Statutes of 2021

AB 1356 was enacted in 2021 and provided more protections for those seeking reproductive healthcare assistance and people that provide those services. Specifically, as enacted, it created new crimes under FACCE Act directed at videotaping, photographing, or recording patients or providers within 100 feet of the facility (i.e., the "buffer" zone) or disclosing or distributing those images. It also increased misdemeanor penalties for violations of the FACCE Act and expanded online privacy laws and peace officer trainings relative to anti-reproduction-rights offenses. In this Committee the felony penalties were removed but the greatly increased fines remained – before the bill was signed into law. This bill creates several new wobblers or felonies. Has there been an increase in attacks on reproductive clinics or people seeking reproductive services since

AB 1356 was enacted? Given that we just increased penalties for these offenses, does it make sense to consider alternate solutions?

3. First Amendment

First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech.” (U.S. Const. Amend. I, Section 1.) The California Constitution also protects free speech. “Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.” (Cal. Const. Art. I, § 2.) “[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” (*Ashcroft v. American Civil Liberties Union* (2002) 535 U.S. 564, 573.)

“To achieve First Amendment protection, a plaintiff must show that [t]he[y] possessed: (1) a message to be communicated; and (2) an audience to receive that message, regardless of the medium in which the message is to be expressed.” (*Hurley v. Irish-American Gay, Lesbian & Bisexual Group* (1995) 515 U.S. 557.) With personal filming devices being commonplace, more and more “news” is being gathered and disseminated by members of the public. The courts have found that freedom of the press applies to citizen journalists and documentarians, not just formal members of the press. (See, e.g., *Glik v. Cunniffe*, (1st Cir. 2011) 655 F.3d 78 [“plaintiff was exercising clearly-established First Amendment rights in filming the officers in a public space”].)

Legislation that regulates the content of protected speech is subject to strict scrutiny, sometimes referred to by the courts as “exacting scrutiny” in this context. (*Reed v. Town of Gilbert, Ariz.* (2015) 135 S.Ct. 2218, 2226.) To survive strict scrutiny, state action must be narrowly tailored to address a compelling government interest. (*Ibid.*)

4. The California FACCE Act

In 2001, the Legislature enacted the California FACCE Act, mirroring the federal Freedom of Access to Clinic Entrances (FACE) Act. California’s FACCE Act provides state criminal and civil penalties for interference with rights to reproductive health services and religious worship. As stated above, AB 1356 added a 100 ft., buffer zone around reproductive healthcare facilities wherein it is unlawful to “intentionally videotape, film, photograph, or records by electronic means, any reproductive health services patient, provider, or assistant without that person’s consent, with specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causes the person to be intimidated.”

The enactment of “buffer zones” around reproductive health care facilities were designed to protect reproductive health care services patients and providers from being harassed, photographed, or threatened just for walking in and out of a reproductive health care facility. According to Guttmacher Institute, a leading research and policy organization working to advance sexual and reproductive health and rights worldwide, there are numerous protections around the U.S. for people working at, or seeking the services of, a reproductive healthcare facility.

States have taken two approaches designed to protect abortion providers. Some states have enacted laws similar to the federal FACE Act that prohibit specific activities such as vandalism or obstruction at clinics. Other states have limited protests aimed at clinic patients by either creating “buffer” zones around clinics that

bar protestors entirely or establishing floating “bubble zones” of several feet around a person who is within a specific distance of a clinic; protesters are prohibited from crossing into that “bubble zone” without the person’s consent.

In 2014, the U.S. Supreme Court struck down the Massachusetts law that placed a 35-foot buffer zone around clinic entrances. The impact of this ruling on the New Hampshire law is still to be determined, but the decision did not immediately affect the Court’s 2000 ruling that upheld Colorado’s floating ‘bubble [or buffer] zone’ law.

15 states and the District of Columbia prohibit certain specified actions aimed at abortion providers: 13 of the states and the District of Columbia prohibit blocking the entrance to and egress from clinic facilities; seven of the states and the District of Columbia prohibit threatening or intimidating staff who provide reproductive health services and/or patients entering the clinic; four of the states prohibit property damage to facilities providing reproductive health services; two of the states and the District of Columbia prohibit telephone harassment of staff who provide reproductive health services; six of the states and the District of Columbia prohibit other specified actions, such as creating excessive noise outside the clinic, possessing or having access to a weapon during a demonstration at a medical facility, trespassing, or releasing a substance that produces noxious odor on clinic premises; and four states have established a “bubble zone” around a person within a specific distance of a clinic’s entrance or driveway. (Guttmacher Institute (August 31, 2023) Public Policy Office, *Protecting Access to Clinics, Background.*)¹

The Massachusetts “buffer” zone made it a “crime to knowingly stand on a ‘public way or sidewalk’ within 35 feet of an entrance or driveway to any ‘reproductive health care facility,’ defined as ‘a place, other than within or upon the grounds of a hospital, where abortions are offered or performed.’” (*McCullen v. Cookley* (2014) 573 U.S. 474.) The U.S. Supreme Court held the law violated the First Amendment. (*Ibid.* [state law creating 35-foot buffer zones around all abortion clinics was not justified by congestion in front of one clinic on Saturday mornings].)

However, the Supreme Court declined to hear two challenges to two other buffer zones: in Harrisburg, Pennsylvania and Chicago, Illinois. In those cases, the buffer zone at issue was much lower than 100 feet, and were, at least, tacitly approved by the Court when it denied certiorari. According to one article in the national press coverage,

On Thursday, one of the two cases the court declined to take up involved an ordinance passed by the city council in Harrisburg, Pennsylvania’s capital, in 2012 that made it illegal to “congregate, patrol, picket or demonstrate” in a zone 20 feet from a health care facility. Anti-abortion activists sued, arguing that the ordinance violates their free speech rights. Lower courts have upheld the ordinance, however, ruling it doesn’t apply to “sidewalk counseling,” where individuals who oppose abortion offer assistance and information about alternatives to abortion to those entering a clinic.

¹ Located at <https://www.guttmacher.org/state-policy/explore/protecting-access-clinics> last visited March 26, 2024.

The second case the court turned away on Thursday involved a Chicago ordinance that regulates the space 50 feet from the entrance of any abortion clinic or other medical facility. In that space, a person cannot come within 8 feet of another person without their consent to hand them information or engage in “oral protest, education, or counseling.” The ordinance was modeled on a statute upheld by the Supreme Court in 2000. (Jessica Gresko (July 2, 2020) “*Higher Court won’t hear abortion clinic ‘buffer zone’ cases,*” Associated News Press.)²

5. Increased Penalties

As outlined in detail in the Purpose section, this bill increase penalties for a number of offenses. It increases from a misdemeanor with a \$10,000 fine (approximately \$41,000 with penalty assessments)³ to a wobbler with the same fine for a posting a home address of a clinic worker on the internet with the intent for another to imminently use the information to commit a crime. If that action results in great bodily injury to someone at that posted address then this bill also makes the existing misdemeanor with a \$50,000 fine (approximately \$205,000 with penalty assessments) a wobbler with the same fine.

This bill as proposed to be amended, makes a second violation of a number of non-violent violations of the FACE act that are currently a misdemeanor with a \$10,000 fine (approximately \$41,000 with penalty assessments) a wobbler with a \$25,000 fine (approximately \$102,500) a straight felony.

As proposed to be amended, existing offenses that involve some force or physical obstruction that are a misdemeanor with a \$25,000 fine for a first and a misdemeanor with a \$50,000 fine for second become a wobbler for a second offense.

Finally this bill makes the existing misdemeanor with a \$25,000 fine for intentionally destroying the property of a reproductive clinic or house of worship a straight felony.

The fines were increased in these sections in 2021, and as noted, with penalty assessments are quite high. Should these misdemeanors become wobblers? Or in the case of destroying property a straight felony.

6. Argument in Support

Planned Parenthood Affiliates of California:

In California, while we continue to work to expand and protect access to sexual and reproductive health care, we still witness the consequences of the national attack on abortion. Extremist lawmakers and their supporters have been transforming incredibly personal health care choices into political battlegrounds, creating dangerous consequences for people across the country. Attacks on reproductive health care, including abortion, contraception, gender-affirming care, and IVF have

² Located at <https://apnews.com/article/31d02c9336e9f3c2a5d9dea4a883e72c>

³ Until the budget year 2002-2003, there was 170% in penalty assessments applied to every fine, the current penalty assessments are approximately 310% plus a flat fee of \$79. (See Penal Code § 1464; Penal Code § 1465.7; Penal Code § 1465.8 Government Code § 70373; Government Code § 7600.5; Government Code § 76000 *et seq*; Government Code §76000.10 Government Code § 76104.6; Government Code §76104,7)

resulted in patients being denied care, forced to travel out-of-their home states in difficult circumstances, and endangering their health and well-being. These attacks have emboldened anti-abortion extremists.

Since the *Dobbs* decision, there has been an increase in violence in abortion protective states like California. According to the National Abortion Federation, there was a disproportionate increase of anti-reproductive health incidents in protective states – stalking increased by 913%, assault and battery increased by 29%, bomb threats increased by 133% and obstruction of clinics increased by 538%. While California has existing protections in place under the Freedom to Access Clinic Entrances (FACE) Act, offenses are not always taken seriously and health centers face challenges with enforcement. Acts of violence and harassment have persisted for decades as anti-abortion extremists have faced little retribution for their escalating tactics and cultural complacency has normalized their activity.

Violations of the FACE Act include intentionally injuring, intimidating, or obstructing access to a health center, vandalism, and modern forms of harassment such as posting personal information online with the intent to cause harm. According to a Feminist Majority Foundation survey of providers over half of providers face targeted threats and intimidation – often coming from highly organized and well-funded groups. Targeted threats and intimidation includes twelve variables: death threats, stalking, tracking of activities, vandalism of home or personal property, harassing phone calls, harassing emails/social media posts, pamphlets/leaflets targeting staff and physicians, personal information/pictures posted online, frivolous lawsuits, and threats to family members of staff or physicians.

Attacks at clinics do not just have a negative impact on the staff and patients, but also contribute to a culture of fear. As more states criminalize reproductive health care, increasing not just safety in accessing care but also stigma, it is more crucial than ever that patients feel safe when seeking care in California. AB 2099 will strengthen the enforcement mechanisms for violations of the FACE Act in California and ensure that patients and providers can access the care they need, provide essential health care, and do so without fearing their safety. For these reasons, PPAC is proud to sponsor AB 2099 and respectfully urge your “Aye” vote when it’s before you in Committee.

7. Argument in Opposition

ACLU California Action opposes this bill stating:

The code sections addressed by the bill already provide significant penalties for those who seek to impede access to reproductive health care. Government Code section 6218.01 and Penal Code sections 422.6 and 423.3 allow for up to a year in jail and fines ranging from \$5,000 to \$50,000. In addition to the code sections addressed by the bill, anyone who makes criminal threats against another person can be punished by up to three years in state prison. (Penal Code § 422.) Likewise, a person who aids and abets another in committing a crime involving violence against a reproductive healthcare patient, provider, employee, or volunteer – or any other person – can be convicted of the underlying crime as though they themselves

had directly committed it. (Penal Code § 31.) Assault by means of force likely to produce great bodily injury can be punished by up to four years in state prison (Penal Code § 245, subd. (a)(4)); and if the felony assault is committed because of a protected characteristic, the person can be punished by up to an additional three years in state prison (Penal Code § 422.75).

To the extent existing laws are not being enforced or prioritized to curb the harmful behavior contemplated by AB 2099, we encourage the Legislature to focus its attention on holding law enforcement agencies accountable. Simply increasing penalties will not result in greater accountability for those who seek to do harm.

-- END --

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2099 **Hearing Date:** July 2, 2024
Author: Bauer-Kahan
Version: February 5, 2024
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Crimes: reproductive health services*

HISTORY

Source: Planned Parenthood Affiliates of California

Prior Legislation: AB 1356 (Bauer-Kahan), Chapter 191, Stats. 2021
AB 3140 (Bauer-Kahan), 2020 not heard in ACoPS
SB 1770 (Padilla), Chapter 206, Statutes of 2008
AB 2251 (Evans), Chapter 486, Statutes of 2006
SB 603 (Ortiz), Chapter 481, Statutes of 2006

Support: American Association of University Women – California; American College of Obstetricians and Gynecologists District IX; California Academy of Family Physicians; California Chapter of The American College of Emergency Physicians; Office of Lieutenant Governor Eleni Kounalakis

Opposition: ACLU California Action

Assembly Floor Vote: 63 - 0

This analysis reflects amendments to be taken in Committee.

PURPOSE

The purpose of this bill to increase penalties for violations of the California Freedom of Access to Clinics and Church Entrances (“FACCE”) Act.

Existing law provides that any reproductive health service provider, employee, volunteer, or patient who is placed in reasonable fear by the posting of their home address and phone number on an Internet website may make a written demand that such information be removed from the website, so long as the demand includes a sworn statement describing the reasonable fear and attesting that the person is a member of the group protected by the statute. Provides injunctive relief. (Govt. Code § 6281 (b).)

Existing law makes it a misdemeanor, punishable by up to 6 months in a county jail, a fine of not more than \$2,500, or both that fine and imprisonment, to post the home address, telephone number, or personally identifying information about a provider, employee, volunteer, or patient of a reproductive health service facility or other individuals residing at the same home address with the intent that another person imminently use that information to commit a crime involving

violence or a threat of violence against that person or entity. If the violation leads to bodily injury of the person, it is a misdemeanor punishable by up to one year in a county jail, a fine of up to \$5,000, or both that fine and imprisonment. (Govt. Code § 6218.01.)

Existing law defines “reproductive health care services” to mean health care services relating to the termination of a pregnancy in a reproductive health care services facility. (Govt. Code § 6218.05. (a).)

Existing law defines “reproductive health care services provider, employee, volunteer, or patient” means a person who obtains, provides, or assists, at the request of another person, in obtaining or providing reproductive health care services, or a person who owns or operates a reproductive health care services facility. (Govt. Code § 6218.05 (b).)

Existing law defines “reproductive health care services facility” includes a hospital, an office operated by a licensed physician and surgeon, a licensed clinic or a clinic exempt from licensure, or other licensed health care facility that provides reproductive health care services and includes only the building or structure in which the reproductive health care services are actually provided. (Govt. Code § 6218.05 (c).)

Existing law defines “public post” or “publicly display” as meaning to intentionally communicate or otherwise make available to the general public. (Govt. Code § 6218.05 (d).)

Existing law defines “image” as including, but not limited to, any photograph, video footage, sketch, or computer-generated image that provides a means to visually identify the person depicted. (Govt. Code § 6218.05 (e).)

Existing law defines “crime of violence” as an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another. (Penal Code § 423.1 (a).)

Existing law defines “interfere with” as meaning to restrict a person’s freedom of movement. (Penal Code § 423.1 (b).)

Existing law defines “intimidate” as meaning to place a person in reasonable apprehension of bodily harm to herself or himself or to another. (Penal Code, § 423.1 (c).)

Existing law defines “nonviolent” as meaning to conduct that would not constitute a crime of violence. (Pen. Code § 423.1 (d).)

Existing law defines “physical obstruction” as rendering ingress to or egress from a reproductive health services facility or to or from a place of religious worship impassable to another person, or rendering passage to or from a reproductive health services facility or a place of religious worship unreasonably difficult or hazardous to another person. (Penal Code § 423.1 (e).)

Existing law defines “reproductive health services” as meaning reproductive health services provided in a hospital, clinic, physician’s office, or other facility and includes medical, surgical, counseling, or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy. (Penal Code § 423.1 (f).)

Existing law defines “reproductive health services client, provider, or assistant” as a person or entity that is or was involved in obtaining, seeking to obtain, providing, seeking to provide, or assisting or seeking to assist another person, at that other person’s request, to obtain or provide any services in a reproductive health services facility, or a person or entity that is or was involved in owning or operating or seeking to own or operate, a reproductive health services facility. (Penal Code § 423.1 (g).)

Existing law states “reproductive health services facility” includes a hospital, clinic, physician’s office, or other facility that provides or seeks to provide reproductive health services and includes the building or structure in which the facility is located. (Penal Code § 423.1 (h).)

Existing provides that every person who, except a parent or guardian acting towards his or her minor child or ward, commits any of the following acts shall be subject to the punishment, as specified (Penal Code § 423.2 (a)-(f)):

- a) By force, threat of force, or physical obstruction that is a crime of violence, intentionally injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider, or assistant; or
- b) By force, threat of force, or physical obstruction that is a crime of violence, intentionally injures, intimidates, 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
- c) By nonviolent physical obstruction, intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider, or assistant; or
- d) By nonviolent 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
- e) Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services client, provider, assistant, or facility; or
- f) Intentionally damages or destroys the property of a place of religious worship. (Penal Code § 423.2.)

Existing law makes a first violation involving nonviolent physical obstruction a misdemeanor, punishable by imprisonment in a county jail for a period of not more than six months and a fine not to exceed two thousand dollars (\$2,000). (Penal Code § 423.3 (a).)

Existing law makes a second or subsequent violation involving nonviolent physical obstruction a misdemeanor, punishable by imprisonment in a county jail for a period of not more than six months and a fine not to exceed five thousand dollars (\$5,000). (Penal Code § 423.3 (b).)

Existing law makes a first violation involving force, threat of force, or physical obstruction that is a crime of violence or intentional property damage a misdemeanor, punishable by imprisonment in a county jail for a period of not more than one year and a fine not to exceed twenty-five thousand dollars (\$25,000). (Penal Code § 423.3 (c).)

Existing law makes a second or subsequent violation involving force, threat of force, or physical obstruction that is a crime of violence or intentional property damage a misdemeanor, punishable by imprisonment in a county jail for a period of not more than one year and a fine not to exceed fifty thousand dollars (\$50,000). (Penal Code § 423.3 (d).)

Existing law states that this title establishes concurrent state jurisdiction over conduct that is also prohibited by the federal Freedom of Access to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248), which provides for more severe misdemeanor penalties for first violations and felony-misdemeanor penalties for second and subsequent violations. State law enforcement agencies and prosecutors shall cooperate with federal authorities in the prevention, apprehension, and prosecution of these crimes, and shall seek federal prosecutions when appropriate. (Penal Code, § 423.3 (f).)

Existing law makes it a misdemeanor to, by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten another person in the free exercise or enjoyment of a right or privilege secured by the Constitution or laws of this state or by the Constitution or laws of the United States, in whole or in part, because of one or more of specified actual or perceived characteristics of the victim, including disability, gender, religion, race, or sexual orientation. (Penal Code, §§ 422.6 (a) & 422.55 (a).)

Existing law makes it a misdemeanor to knowingly deface, damage, or destroy the real or personal property of another person for the purpose of intimidating or interfering with the free exercise or enjoyment of a right or privilege secured by the Constitution or laws of this state or by the Constitution or laws of the United States, in whole or in part, because of one or more of the same actual or perceived characteristics of the victim. (Penal Code §§ 422.6 (b) & 422.55 (a).)

This bill increases the penalty for a misdemeanor offense of posting on the internet or social media, threats of violence with the intent that another person imminently use that information to commit a violent crime against a reproductive health care worker to an alternate misdemeanor-felony punishable by up to one year in the county jail or sixteen months, 2 or three years in addition to the existing \$10,000 fine plus penalty assessments.

This bill increases the penalty for posting on the internet or social media threats of violence against a reproductive healthcare worker where it leads to bodily injury from a misdemeanor to a felony punishable by 16 months, 2 or 3 years in county jail in addition to the existing \$50,000 plus penalty assessments and existing community service.

This bill increases the penalty for willfully interfering with, injuring, intimidating, oppressing, or threatening, by use of force or threat of force, any person's ability in the free exercise of any right or privilege, ensured by the state and federal constitutional law or statutes because of one or

more actual or perceived characteristics. from a misdemeanor to an alternate misdemeanor-felony punishable by up to one year in county jail, or 16 months, 2 or 3 years in county jail, plus the existing \$5,000 fine plus penalty assessments and the existing mandatory community service,

This bill, as proposed to be amended in Committee, increases the penalties for the existing crimes under the FACCE Act, as follows:

- a) Punishes the second violation of the following offenses as an alternate-misdemeanor-felony subject to a penalty of one year in county jail or 16 months two or three years in county jail, in addition to the existing fine of up to \$10,000 plus penalty assessments, or by both imprisonment and fine:
 - i. nonviolent physical obstruction, or where a person intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services patient, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services patient, provider, or assistant.
 - ii. By nonviolent physical obstruction, or where a person intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.
 - iii. Within 100 feet of the entrance to, or within, a reproductive health services facility, intentionally videotape, film, photograph, or record by electronic means, a reproductive health services patient, provider, or assistant without that person's consent with specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causes the person to be intimidated.
 - iv. Intentionally disclose or distribute a videotape, film, photograph, or recording knowing it was obtained unlawfully with the specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causes the person to be intimidated.
- b) Increases the penalties for a first violation of the following offenses from a misdemeanor to a straight felony punishable by 16 months, two, or three years in county jail and the existing fine of not more than \$25,000 plus penalty assessments:
 - i. Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services patient, provider, assistant, or facility.
 - ii. Intentionally damages or destroys the property of a place of religious worship.
- c) As proposed to be amended, punishes a second or subsequent violation of the following offenses as an alternate-misdemeanor-felony subject to a penalty of one year in county jail or 16 months, two or three years in county jail, in addition to the existing fine of not

more than \$50,000, or by both imprisonment and fine:

- i. Using force, threat of force, or physical obstruction of violence, to intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services patient, provider, or assistant, or in order to intimidate a person or entity, or a class of persons or entities, or from becoming or remaining a reproductive health services patient, provider, or assistant.
- ii. Using force, threat of force, or physical obstruction of violence, to intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.
- iii. Intentionally damaging or destroying the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services patient, provider, assistant, or facility.
- iv. Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services patient, provider, assistant, or facility.
- v. Intentionally damages or destroys the property of a place of religious worship.

COMMENTS

1. Need for This Bill

According to the author:

Since the overturning of Roe vs. Wade, reproductive health clinics like Planned Parenthood have become the very last line for women seeking critical reproductive health care. These vulnerable patients and providers are facing an onslaught of organized harassment, being attacked online and in person. Current penalties are insufficient to deter extremist anti-abortion groups from attacking clinics and providers. AB 2099 updates our state penalties to protect the essential right to reproductive healthcare.

2. AB 1356 (Bauer-Kahan), Chapter 191, Statutes of 2021

AB 1356 was enacted in 2021 and provided more protections for those seeking reproductive healthcare assistance and people that provide those services. Specifically, as enacted, it created new crimes under FACCE Act directed at videotaping, photographing, or recording patients or providers within 100 feet of the facility (i.e., the "buffer" zone) or disclosing or distributing those images. It also increased misdemeanor penalties for violations of the FACCE Act and expanded online privacy laws and peace officer trainings relative to anti-reproduction-rights offenses. In this Committee the felony penalties were removed but the greatly increased fines remained – before the bill was signed into law. This bill creates several new wobblers or felonies. Has there been an increase in attacks on reproductive clinics or people seeking reproductive services since

AB 1356 was enacted? Given that we just increased penalties for these offenses, does it make sense to consider alternate solutions?

3. First Amendment

First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech.” (U.S. Const. Amend. I, Section 1.) The California Constitution also protects free speech. “Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.” (Cal. Const. Art. I, § 2.) “[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” (*Ashcroft v. American Civil Liberties Union* (2002) 535 U.S. 564, 573.)

“To achieve First Amendment protection, a plaintiff must show that [t]he[y] possessed: (1) a message to be communicated; and (2) an audience to receive that message, regardless of the medium in which the message is to be expressed.” (*Hurley v. Irish-American Gay, Lesbian & Bisexual Group* (1995) 515 U.S. 557.) With personal filming devices being commonplace, more and more “news” is being gathered and disseminated by members of the public. The courts have found that freedom of the press applies to citizen journalists and documentarians, not just formal members of the press. (See, e.g., *Glik v. Cunniffe*, (1st Cir. 2011) 655 F.3d 78 [“plaintiff was exercising clearly-established First Amendment rights in filming the officers in a public space”].)

Legislation that regulates the content of protected speech is subject to strict scrutiny, sometimes referred to by the courts as “exacting scrutiny” in this context. (*Reed v. Town of Gilbert, Ariz.* (2015) 135 S.Ct. 2218, 2226.) To survive strict scrutiny, state action must be narrowly tailored to address a compelling government interest. (*Ibid.*)

4. The California FACCE Act

In 2001, the Legislature enacted the California FACCE Act, mirroring the federal Freedom of Access to Clinic Entrances (FACE) Act. California’s FACCE Act provides state criminal and civil penalties for interference with rights to reproductive health services and religious worship. As stated above, AB 1356 added a 100 ft., buffer zone around reproductive healthcare facilities wherein it is unlawful to “intentionally videotape, film, photograph, or records by electronic means, any reproductive health services patient, provider, or assistant without that person’s consent, with specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causes the person to be intimidated.”

The enactment of “buffer zones” around reproductive health care facilities were designed to protect reproductive health care services patients and providers from being harassed, photographed, or threatened just for walking in and out of a reproductive health care facility. According to Guttmacher Institute, a leading research and policy organization working to advance sexual and reproductive health and rights worldwide, there are numerous protections around the U.S. for people working at, or seeking the services of, a reproductive healthcare facility.

States have taken two approaches designed to protect abortion providers. Some states have enacted laws similar to the federal FACE Act that prohibit specific activities such as vandalism or obstruction at clinics. Other states have limited protests aimed at clinic patients by either creating “buffer” zones around clinics that

bar protestors entirely or establishing floating “bubble zones” of several feet around a person who is within a specific distance of a clinic; protesters are prohibited from crossing into that “bubble zone” without the person’s consent.

In 2014, the U.S. Supreme Court struck down the Massachusetts law that placed a 35-foot buffer zone around clinic entrances. The impact of this ruling on the New Hampshire law is still to be determined, but the decision did not immediately affect the Court’s 2000 ruling that upheld Colorado’s floating ‘bubble [or buffer] zone’ law.

15 states and the District of Columbia prohibit certain specified actions aimed at abortion providers: 13 of the states and the District of Columbia prohibit blocking the entrance to and egress from clinic facilities; seven of the states and the District of Columbia prohibit threatening or intimidating staff who provide reproductive health services and/or patients entering the clinic; four of the states prohibit property damage to facilities providing reproductive health services; two of the states and the District of Columbia prohibit telephone harassment of staff who provide reproductive health services; six of the states and the District of Columbia prohibit other specified actions, such as creating excessive noise outside the clinic, possessing or having access to a weapon during a demonstration at a medical facility, trespassing, or releasing a substance that produces noxious odor on clinic premises; and four states have established a “bubble zone” around a person within a specific distance of a clinic’s entrance or driveway. (Guttmacher Institute (August 31, 2023) Public Policy Office, *Protecting Access to Clinics, Background.*)¹

The Massachusetts “buffer” zone made it a “crime to knowingly stand on a ‘public way or sidewalk’ within 35 feet of an entrance or driveway to any ‘reproductive health care facility,’ defined as ‘a place, other than within or upon the grounds of a hospital, where abortions are offered or performed.’” (*McCullen v. Cookley* (2014) 573 U.S. 474.) The U.S. Supreme Court held the law violated the First Amendment. (*Ibid.* [state law creating 35-foot buffer zones around all abortion clinics was not justified by congestion in front of one clinic on Saturday mornings].)

However, the Supreme Court declined to hear two challenges to two other buffer zones: in Harrisburg, Pennsylvania and Chicago, Illinois. In those cases, the buffer zone at issue was much lower than 100 feet, and were, at least, tacitly approved by the Court when it denied certiorari. According to one article in the national press coverage,

On Thursday, one of the two cases the court declined to take up involved an ordinance passed by the city council in Harrisburg, Pennsylvania’s capital, in 2012 that made it illegal to “congregate, patrol, picket or demonstrate” in a zone 20 feet from a health care facility. Anti-abortion activists sued, arguing that the ordinance violates their free speech rights. Lower courts have upheld the ordinance, however, ruling it doesn’t apply to “sidewalk counseling,” where individuals who oppose abortion offer assistance and information about alternatives to abortion to those entering a clinic.

¹ Located at <https://www.guttmacher.org/state-policy/explore/protecting-access-clinics> last visited March 26, 2024.

The second case the court turned away on Thursday involved a Chicago ordinance that regulates the space 50 feet from the entrance of any abortion clinic or other medical facility. In that space, a person cannot come within 8 feet of another person without their consent to hand them information or engage in “oral protest, education, or counseling.” The ordinance was modeled on a statute upheld by the Supreme Court in 2000. (Jessica Gresko (July 2, 2020) “*Higher Court won’t hear abortion clinic ‘buffer zone’ cases,*” Associated News Press.)²

5. Increased Penalties

As outlined in detail in the Purpose section, this bill increase penalties for a number of offenses. It increases from a misdemeanor with a \$10,000 fine (approximately \$41,000 with penalty assessments)³ to a wobbler with the same fine for a posting a home address of a clinic worker on the internet with the intent for another to imminently use the information to commit a crime. If that action results in great bodily injury to someone at that posted address then this bill also makes the existing misdemeanor with a \$50,000 fine (approximately \$205,000 with penalty assessments) a wobbler with the same fine.

This bill as proposed to be amended, makes a second violation of a number of non-violent violations of the FACE act that are currently a misdemeanor with a \$10,000 fine (approximately \$41,000 with penalty assessments) a wobbler with a \$25,000 fine (approximately \$102,500) a straight felony.

As proposed to be amended, existing offenses that involve some force or physical obstruction that are a misdemeanor with a \$25,000 fine for a first and a misdemeanor with a \$50,000 fine for second become a wobbler for a second offense.

Finally this bill makes the existing misdemeanor with a \$25,000 fine for intentionally destroying the property of a reproductive clinic or house of worship a straight felony.

The fines were increased in these sections in 2021, and as noted, with penalty assessments are quite high. Should these misdemeanors become wobblers? Or in the case of destroying property a straight felony.

6. Argument in Support

Planned Parenthood Affiliates of California:

In California, while we continue to work to expand and protect access to sexual and reproductive health care, we still witness the consequences of the national attack on abortion. Extremist lawmakers and their supporters have been transforming incredibly personal health care choices into political battlegrounds, creating dangerous consequences for people across the country. Attacks on reproductive health care, including abortion, contraception, gender-affirming care, and IVF have

² Located at <https://apnews.com/article/31d02c9336e9f3c2a5d9dea4a883e72c>

³ Until the budget year 2002-2003, there was 170% in penalty assessments applied to every fine, the current penalty assessments are approximately 310% plus a flat fee of \$79. (See Penal Code § 1464; Penal Code § 1465.7; Penal Code § 1465.8 Government Code § 70373; Government Code § 7600.5; Government Code § 76000 *et seq*; Government Code §76000.10 Government Code § 76104.6; Government Code §76104,7)

resulted in patients being denied care, forced to travel out-of-their home states in difficult circumstances, and endangering their health and well-being. These attacks have emboldened anti-abortion extremists.

Since the *Dobbs* decision, there has been an increase in violence in abortion protective states like California. According to the National Abortion Federation, there was a disproportionate increase of anti-reproductive health incidents in protective states – stalking increased by 913%, assault and battery increased by 29%, bomb threats increased by 133% and obstruction of clinics increased by 538%. While California has existing protections in place under the Freedom to Access Clinic Entrances (FACE) Act, offenses are not always taken seriously and health centers face challenges with enforcement. Acts of violence and harassment have persisted for decades as anti-abortion extremists have faced little retribution for their escalating tactics and cultural complacency has normalized their activity.

Violations of the FACE Act include intentionally injuring, intimidating, or obstructing access to a health center, vandalism, and modern forms of harassment such as posting personal information online with the intent to cause harm. According to a Feminist Majority Foundation survey of providers over half of providers face targeted threats and intimidation – often coming from highly organized and well-funded groups. Targeted threats and intimidation includes twelve variables: death threats, stalking, tracking of activities, vandalism of home or personal property, harassing phone calls, harassing emails/social media posts, pamphlets/leaflets targeting staff and physicians, personal information/pictures posted online, frivolous lawsuits, and threats to family members of staff or physicians.

Attacks at clinics do not just have a negative impact on the staff and patients, but also contribute to a culture of fear. As more states criminalize reproductive health care, increasing not just safety in accessing care but also stigma, it is more crucial than ever that patients feel safe when seeking care in California. AB 2099 will strengthen the enforcement mechanisms for violations of the FACE Act in California and ensure that patients and providers can access the care they need, provide essential health care, and do so without fearing their safety. For these reasons, PPAC is proud to sponsor AB 2099 and respectfully urge your “Aye” vote when it’s before you in Committee.

7. Argument in Opposition

ACLU California Action opposes this bill stating:

The code sections addressed by the bill already provide significant penalties for those who seek to impede access to reproductive health care. Government Code section 6218.01 and Penal Code sections 422.6 and 423.3 allow for up to a year in jail and fines ranging from \$5,000 to \$50,000. In addition to the code sections addressed by the bill, anyone who makes criminal threats against another person can be punished by up to three years in state prison. (Penal Code § 422.) Likewise, a person who aids and abets another in committing a crime involving violence against a reproductive healthcare patient, provider, employee, or volunteer – or any other person – can be convicted of the underlying crime as though they themselves

had directly committed it. (Penal Code § 31.) Assault by means of force likely to produce great bodily injury can be punished by up to four years in state prison (Penal Code § 245, subd. (a)(4)); and if the felony assault is committed because of a protected characteristic, the person can be punished by up to an additional three years in state prison (Penal Code § 422.75).

To the extent existing laws are not being enforced or prioritized to curb the harmful behavior contemplated by AB 2099, we encourage the Legislature to focus its attention on holding law enforcement agencies accountable. Simply increasing penalties will not result in greater accountability for those who seek to do harm.

-- END --