
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 1356 **Hearing Date:** July 6, 2021
Author: Bauer-Kahan
Version: June 10, 2021
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Reproductive health care services*

HISTORY

Source: Planned Parenthood California

Prior Legislation: AB 3140 (Bauer-Kahan), of the 2019-2020 No
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 College of Obstetricians and Gynecologists District IX; California Commission on the Status of Women and Girls; California Latinas for Reproductive Justice; Naral Pro-choice California; Planned Parenthood Affiliates of California; Santa Barbara Women's Political Committee

Opposition: ACLU California Action (unless amended); California Public Defenders Association (CPDA); Fieldstead and Company, Inc.; Pacific Justice Institute; Right to Life League of Southern California

Assembly Floor Vote: 59 - 17

PURPOSE

The purpose of this bill is to increase penalties for current crimes under the California Freedom of Access to Clinic Act (Act), making them wobblers; creates new crimes under the Act directed at videotaping, photographing, or recording patients or providers within 100 feet of the facility ("buffer" zone) or disclosing or distributing those images and makes these new crimes wobblers; increases current misdemeanor hate crime penalties making them wobblers; updates and expands online privacy laws and peace officer trainings relative to anti-reproduction-rights offenses

Existing law prohibits a person, business, or association from knowingly publicly posting or displaying on the internet the home address or home telephone number of a provider, employee, volunteer, or patient of a reproductive health care services facility, or of persons residing at the same home address as a provider, employee, volunteer, or patient of a reproductive health care services facility, with the intent to do either of the following:

- a) Incite a third person to cause imminent great bodily harm to the person identified in the posting or display, or to a coresident of that person, if the third person is likely to commit this harm; or,

- b) Threaten the person identified in the posting or display, or a coresident of that person, in a manner that places the person identified or the coresident in objectively reasonable fear for the person's or coresident's personal safety. Establishes a cause of action for damages and declaratory relief for violations.

The penalty is injunctive relief or monetary damages in the amount of three times the actual damages but no less than \$5,000.(Government Code § 6218 (a).)

This bill instead extends the prohibition in the above to the knowing distribution of personal information about or the image of in any forum with the intent to incite a third person to cause great bodily harm to the reproductive health care services patient, provider, or assistant or to threaten the patient, provider or assistant in a manner that places that person or their co-resident in objectively reasonable fear for their personal safety.

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. (Government Code § 6281 (b).)

This bill expands this provision to the prohibition of the publication in any forum, of person information or image if the person has made a demand that the person, business or association not disclose the information or image.

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. (Government Code § 6218.01.)

This bill instead makes a violation of the above punishable as a one year misdemeanor and/or a fine of up to \$10,000 per violation and if bodily injury occurs a wobbler with up to one year in county jail or 16 months, 2, or 3 years in jail o and or a fine of up to \$50,000.

This bill also sunsets the new increased criminal penalties on January 1, 2025.

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. (Government 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. (Government Code, § 6218.05(b).)

This bill instead defines “reproductive health care services patient, provider or assistant” as a person or entity, including, but not limited to, employees, staff, volunteers, and third-party vendors, that is or was involved in obtaining, seeking to obtain, providing , seeking to provide, or assisting or seeking to assist another person, at that person’s request to obtain or provide any services in a reproductive health care 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 care services facility.

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. (Government Code § 6218.05(c).)

This bill instead provides that a “reproductive health care services facility” includes a hospital, clinic, physician’ office, or other facility that provides or seeks to provide reproductive health care services and includes the building or structure in which the facility is located.

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

This bill defines “personal information” as information that identifies, relates to, describes, or is capable of being associated with a reproductive health care services patient, provider, or assistant, including, but not limited to their name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver’s license or state identification card number, license plate number, employment, employment history, and financial information. “Personal information” does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

This bill defines “social media” means an electronic service or account, or electronic content, including, but not limited to, videos or still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or internet website profiles or locations.

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. (Penal 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 law 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.)

This bill further provides that the penalty in Penal Code 423.3 shall apply to every person who within 100 feet of the entrance to, or within, a reproductive health services facility intentionally videotapes, films, photographs, or records by electronic means, a reproductive health services patient, provider, or assistant without that person's consent with the specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby cause the person to be intimidated.

This bill also provides that the penalty in Penal Code 423.3 shall apply to every person who in any manner or forum, including by not limited to, internet websites and social media, intentionally discloses or distributes a videotape, film photograph or recording knowing it was obtained in violation of the above with the specific intent to intimidate the person, because that person is a reproductive health services patient, provider, or assistant, or with the specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider or assistant, and thereby cause the person to be intimidated. Social media means an electronic service or account, or electronic content including, but not limited to videos or still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or internet website profiles or locations.

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).)

This bill instead makes the penalty for a first violation a misdemeanor punishable by up to one year in county jail and or a fine not to exceed \$10,000.

Existing law makes a second or subsequent violation involving 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).)

This bill instead makes second and subsequent violation a wobbler punishable by up to one year in county jail or 16 months, 2, or 3 years or a fine of up to \$25,000 or both imprisonment and fine.

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).)

This bill provides that the first violation for intimidating a person or entity that is offering reproductive health services or interference with a first amendment right, intentionally destroying property because it is a reproductive health facility or place of worship under Penal Code Section 423.2 (a) or (b) the penalty is a wobbler punishable by imprisonment in the county jail for one year or 16 months, 2, or 3 years or a fine of up to \$25,000 or both imprisonment and fine.

This bill provides that a second or subsequent violation for intimidating a person or entity that is offering reproductive health services or interference with a first amendment right under Penal Code Section 423.2 (a)(b)(e), or (f) the penalty is a wobbler punishable by imprisonment in the county jail for one year or 16 months, 2, or 3 years or a fine of up to \$50,000 or both imprisonment and fine.

Existing law provides that in imposing fines pursuant to this section, the court shall consider applicable factors in aggravation and mitigation set out in Rules of the California Rules of Court, and shall consider a prior violation of the federal Freedom of Access to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248), or a prior violation of a statute of another jurisdiction that would constitute a violation of Section 423.2 or of the federal Freedom of Access to Clinic Entrances Act of 1994, to be a prior violation of Section 423.2. (Penal Code § 423.3 (e).)

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 provides that no person shall be convicted under this article for conduct in violation of Section 423.2 that was done on a particular occasion where the identical conduct on that occasion was the basis for a conviction of that person under the federal Freedom of Access to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248). (Penal Code § 423.3 (g).)

This bill provides that the new penalties under Penal Code Section 423.3 shall sunset on January 1, 2020.

Existing law requires the Attorney General, under the Reproductive Rights Law Enforcement Act to carry out certain functions relating to anti-reproductive-rights crimes in consultation with, among others, subject matter experts. The Attorney General must:

- a) Collect information relating to anti-reproductive-rights crimes, including, but not limited to, the threatened commission of these crimes and persons suspected of committing these crimes or making these threats;
- b) Direct local law enforcement agencies to provide to the Department of Justice (DOJ), in a manner that the Attorney General prescribes, any information that may be required relative to anti-reproductive-rights crimes, as specified; and,
- c) Develop a plan to prevent, apprehend, prosecute, and report anti-reproductive-rights crimes, and to carry out the legislative intent. (Penal Code, § 13777 (a) & (b).)

Existing law requires the Attorney General to implement this section to the extent the Legislature appropriates funds in the Budget Act or another statute for this purpose. (Penal Code § 13777, (c).)

This bill instead requires the AG to direct local law enforcement agencies to provide the Department of justice all of the following on an annual basis:

- The total number of anti-reproductive rights crime related calls for assistance made to the department.
- The total number of arrests for anti-reproductive rights crimes by which Penal Code Section 423.2 is the basis for the arrest and the report for each crime that violates any other law.
- The total number of cases in which the district attorney charged an individual with a crime that violates section 423.3 including the subdivision that prohibits the crime.

This bill provides that beginning on January 1, 2023 the DOJ shall report on an annual basis the information re anti-reproductive crime.

Existing law requires the Commission on the Status of Women and Girls to convene an advisory committee that consists of members of the organizations identified as subject matter experts. Requires the advisory committee to make two reports to specified legislative entities, the POST, and the Commission on the Status of Women and Girls, the first by December 31, 2007, and the 2nd by December 31, 2011, to evaluate the implementation of the act and making recommendations. (Penal Code § 13777.2 (a)-(c).)

Existing law requires POST to develop a two-hour telecourse on anti-reproductive-rights crimes and make the telecourse available to all California law enforcement agencies and to the advisory committee. (Penal Code §§ 13777.2 (d); 13778 (a).)

This bill provides that every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to anti-reproductive rights calls by January 1, 2023.

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).)

COMMENTS

1. Need for This Bill

According to the author:

Current law has not been updated since the early-mid 2000s at a time when the internet and social media were still new. AB 1356 modernizes the language to be more in line with current online privacy needs. Specifically, the FACE Act has not been updated since being codified in CA law after Federal law enacted it in 1994. The penalties are relatively low for the harm caused – doxing online in 1994 could not endanger people the way that it can today. **Today, posting someone’s information online endangers personal and professional life, as well as posing serious long-term risk to health and wellbeing.** Anti-abortion [activists post personal information of doctors and patients online](#), with the intent to intimidate and endanger them

Current law also does not sufficiently address video and photo harassment. With the advent of smart phones, with high quality videotaping and photographing means that videos are more prevalent, and their subjects are more readily identifiable. Particularly with HD and zoom capabilities, a lot of information can be gathered and disseminated by releasing video and photos of individuals, cars, clinics, and activity. By prohibiting nonconsensual video, photo, recording within 100 feet of a reproductive health center, we are hoping to effectively protect individual’s right to privacy when accessing health care.

In addition to the literal threat faced from increased technology use, **the current law is not sufficient to the increase over time in violence, strategy, and organized harassment from extremist anti-abortion groups.** In 2019 alone, clinic invasions more that doubled and physical harassment and threats rose. According to a Feminist Majority Foundation survey of providers, over half of providers face targeted intimidation and threats. These threats often come from highly organized groups responsible for daily harassment....

2. 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.*)

3. Abortion Clinic Access and “Buffer” Zones:

While the handful of murders of abortion providers and clinic staff have attracted much media attention, family planning clinics report that they frequently experience other serious forms of antiabortion violence. These include bombings, arson and vandalism, as well as violent protests and blockades. In 1994, the federal government enacted the Freedom of Access to Clinic Entrances (FACE) Act, which prohibits intentional property damage and the use of ‘force or threat of force or...physical obstruction’ to ‘injure, intimidate or interfere with’ someone entering a health care 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; protestors 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 zone’ law. (<https://www.gutmacher.org/state-policy/explore/protecting-access-clinics> [as of April 3, 2021].)

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 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].)

Last year, the United States Supreme Court declined to take up two “buffer” zone cases. (<https://apnews.com/article/31d02c93336e9f3c2a5d9dea4a883e72c> [as of April 3, 2021].)

4. Acts within 100 feet of the entrance

In 2001, the Legislature enacted the California FACE Act, mirroring the federal FACE Act. The Act provides state criminal and civil penalties for interference with rights to reproductive health services and religious worship.

In addition to the protections already provided under the Act, this bill would create a 100 foot “buffer” zone. Notably, this exceeds Massachusetts’s 35-foot “buffer” zone which was struck down by the United States Supreme Court. (*McCullen v. Cookley* (2014) 573 U.S. 474.)

This bill specifically creates a new misdemeanor, and wobbler for a repeat offense, for a person to 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 the specific intent to intimidate the person because that person is a reproductive health services patient etc. or with the specific intent to intimidate the person from becoming or remaining a reproductive health services patient etc.

It is likely that the intent to intimidate to keep the person from becoming or remaining a reproductive health patient, provider or assistant is constitutionally sound because they are specifically interfering with a person's right to health care, but it is not clear the intent to intimidate alone would be constitutional. We generally cannot ban an otherwise legal activity just because it makes a person nervous. As ACLU California Action notes in their oppose unless amended letter:

The state has an appropriate interest in protecting patients and providers in the exercise of a fundamental right, but it does not have a compelling interest to prohibit otherwise lawful recording of a person in a public place (e.g., *Dora v. Frontline Video, Inc.* (1993) 15 Cal. App. 4th 541) simply because that recording may cause the person to experience fear, particularly if that fear is not about becoming or remaining a patient or provider. To our knowledge, no other law prohibits the usual right to record any other person or class of people in a public place. The same problem occurs in subdivision (h) with respect to the imposition of criminal penalties against people who disclose or distribute these recordings.

Should the questionably constitutional portion be amended out of this bill?

5. Increased penalties

This bill increases penalties for posting on the internet with the intent that another person will use the information to commit a crime of violence against a person associated with a reproductive health care facility. The current penalty is a six month misdemeanor with a fine up to \$2,500, plus penalty assessments, and if there is actual bodily injury the penalty is a one year misdemeanor with a fine of up to \$5,000, plus penalty assessments. This bill increases the penalty to a one year misdemeanor with a fine up to \$10,000, plus penalty assessments and makes an actual injury a wobbler with a one year misdemeanor and a jail felony and of \$50,000, plus penalty assessments.

This bill also creates the new offenses of videotaping, filming, photographing etc. with the intent to intimidate and distributing those photographs a one year misdemeanor with a fine up to \$10,000, plus penalty assessments and makes an actual injury a wobbler with a one year misdemeanor and a jail felony and of \$25,000, plus penalty assessments.

It also increases the penalty for by force, threat of, force or physical obstruction that is a crime of violence, intentionally injure, intimidate etc. any person because the person is a patient, provider or assistant at a reproductive health care facility or lawfully exercising or seeking to exercise his or her First Amendment right of religious freedom at a place of religious worship. The existing penalties are a one year misdemeanor with a fine up to \$25,000, plus penalty assessments, and a second violation is a one year misdemeanor with a fine of \$50,000, plus penalty assessments. This bill increases the first violation for those offenses to a wobbler with a one year misdemeanor and a jail felony and a fine of \$25,000, plus penalty assessments, plus penalty

assessments. A second violation is a wobbler with a one year misdemeanor or a jail felony and fine of \$50,000, plus penalty assessments.

All of these increased penalties have a sunset date of January 1, 2025.

Are these new wobblers with high fines appropriate? Consistent with recent policies of this Committee, should the felony sanctions be removed from the bill?

5. Demand not to disclose

Under existing law a person, business, etc. shall not publicly display on the internet the home address, or home telephone number or image of any provider, employee, volunteer or patient of a reproductive health facility if that person has made a demand in writing to that the information not be disclosed. The demand must be in writing and include a sworn statement that the person is subject to the protection of Government Code Section 6218 and describing a reasonable fear for the safety of that individual of someone living at the address. Injunctive relief and money damages are available if the information or image is made public despite the demand.

This bill removes the requirement that the demand be in writing. Does it make sense to delete this requirement? If the demand is not in writing, what proof will exist that the demand was made and that the person displaying the information or image should have understand that they needed to remove the information or image? Should a demand requirement be put back in the bill, even one that does not require a sworn statement?

6. Attorney General report

Under existing law the Attorney General (AG) is required to collect specified information regarding anti-reproductive-rights crime including directing what information the AG shall collect from local law enforcement.

This bill updates the information that shall be collected to include the total number of anti-reproductive crime related calls for assistance made to a department; the total number of arrests; and the total number of cases where a person was charged.

7. POST training and law enforcement policies

Existing law requires the Commission on Peace Officer Standards and Training (POST) to develop a two-hour tele course on reproductive rights to be available to all law enforcement agencies.

This bill provides that that course shall be updated every two years.

This bill also requires every law enforcement agency in this state to develop, adopt, and implement written polices and standards for officers' responses to anti-reproductive rights calls by January 1, 2023.

8. Argument in Support

In support the American College of Obstetricians and Gynecologists District IX states:

With the rise in aggressive tactics, personal security, and new opportunities to harass online, it is necessary to modernize and update our laws to ensure greater

protections for people seeking and providing critical health care services. Doxing, identifying information about an individual on the internet with malicious intent, and other forms of online harassment put new threats on reproductive health care employees, patients, volunteers, and their families at risk. The personal information shared online and in anti-abortion hate groups could be life-threatening. AB 1356 will expand online privacy laws related to reproductive health care providers to better conform with the current security concerns faced by reproductive health care providers and patients today. This bill will also update penalties for the California Freedom of Access to Clinic and Church Entrances Act and prohibit photographing and videotaping individuals outside of a reproductive health center that is often posted online and used to identify and intimidate reproductive health care providers, volunteers, and patients.

Individuals accessing reproductive health care and those providing it should not have to bear the burden of being harassed or potentially harmed just for getting the care they need and deserve or simply going to work.

9. Argument in Opposition

The California Public Defenders Association opposes stating:

While the following sections already exist as crimes, AB 1356 seeks to increase the penalties by increasing the incarceration times, making the offenses eligible for prison time, and would make those convicted life-long felons. Government Code section 6218 (currently the law) makes it a misdemeanor to publicly post the home address or phone number of people involved with reproductive health services facilities or post on the internet with the intent to harm such people. These offenses carry up to 6 months in jail, fines up to \$2,500, and individual damages of up to \$4,000. Penal Code section 423.2 makes it a misdemeanor to use force, threat, or obstruction to interfere with a person because they are involved with a reproductive health service provider. These offenses carry up to 1 year in jail and fines up to \$50,000. AB 1356 would make these offenses potential felonies with up to 3 years in jail or prison.

CPDA strongly supports everyone's rights, and our membership is made up of criminal defense practitioners who passionately devote themselves to protecting the rights of their clients in courtrooms across the state every day. While we would like to applaud any effort to protect our community's rights, AB 1356 is misguided because it is bad public policy. To protect our community, there is no need to further criminalize and incarcerate. Anyone violating these laws can be appropriately punished. California does not need to make more people felons and incarcerate them in our prisons for non-violent offenses. Well-intentioned but flawed criminal laws are how California became the state with the highest incarceration rate among developed nations.

Moreover, AB 1356 is unnecessary. Any activity covered by AB 1356 that is violent is punishable by a number of already existing assault and battery crimes.