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# Overview of Selected Federal Criminal Civil Rights Statutes

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## Summary

Federal criminal civil rights laws impose criminal penalties for deprivation of certain federal rights, privileges, or immunities. These laws prohibit hate crimes based on race, color, religion, or national origin; the burning of places of worship; violence against health care providers; and the transport of persons (particularly women and children) for the purpose of enslavement or forced labor. Some of these laws require a discriminatory motivation while others, such as human trafficking, do not. Some cover offenders acting “under color of any law.”

The Federal Bureau of Investigation investigates alleged violations. Punishments can range from a fine to lifetime imprisonment; in some cases the death penalty may be imposed, depending upon the circumstances and the resulting injury, if any.

This report provides a brief summary of selected federal criminal civil right statutes:

- Conspiracy Against Rights—18 U.S.C. §241
- Deprivation of Rights Under Color of Law—18 U.S.C. §242
- Federally Protected Activities—18 U.S.C. §245
- Damage to Religious Property—18 U.S.C. §247
- Freedom of Access to Clinic Entrances—18 U.S.C. §248
- Hate Crime Acts—18 U.S.C. §249
- Criminal Interference With Right to Fair Housing—42 U.S.C. §3631

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## Introduction

Federal criminal civil rights laws impose criminal penalties for the deprivation of certain federal rights, privileges, or immunities. Most of these laws prohibit violent and intimidating acts motivated by animus based on race, ethnicity, national origin, religious beliefs, gender, sexual orientation, or disability. While some of these laws require a discriminatory motivation, others—such as those regarding human trafficking,<sup>1</sup> conspiracy against rights,<sup>2</sup> and deprivation of rights under “color of law”<sup>3</sup>—do not.

Although the FBI has authority to investigate criminal civil rights violations, the Attorney General, acting through the various U.S. Attorneys’ offices and with the assistance of the Justice Department’s Civil Rights Division, has the discretion to initiate a federal prosecution. Such a decision is dependent upon several factors, including resource availability and a sufficiency of evidence to convince a jury of guilt beyond a reasonable doubt.

## Federal Statutes

### Conspiracy Against Rights—18 U.S.C. §241<sup>4</sup>

18 U.S.C. §241 makes it unlawful for two or more persons to conspire to “injure, oppress, threaten, or intimidate any persons of any state, territory or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States (or because of his/her having exercised the same).”

Punishment for violations includes a fine and/or imprisonment for a maximum of 10 years. The law provides greater punishment to violators if their acts result in death (or an attempt to kill) or include kidnapping (or an attempt to kidnap) or aggravated sexual abuse (or an attempt to commit aggravated sexual abuse). Under such heightened circumstances, offenders may face life imprisonment or the death penalty.

### Deprivation of Rights Under Color of Law—18 U.S.C. §242

Federal civil rights prosecutions against state actors (e.g., law enforcement)<sup>5</sup> are usually conducted pursuant to 18 U.S.C. §242, which makes it a crime for “any person acting under color

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<sup>1</sup> 18 U.S.C. §§ 1581, 1584, 1589, 1590, 1591, and 1592.

<sup>2</sup> 18 U.S.C. §241.

<sup>3</sup> 18 U.S.C. §242.

<sup>4</sup> *United States v. Guest*, 383 U.S. 745 (finding that the statute encompasses the 14<sup>th</sup> amendment’s due process and equal protection clauses and is not unconstitutionally vague).

<sup>5</sup> “State actors” may also include prison guards, judges, and others who are acting as public officials. *See, United States v. Classic*, 313 U.S. 299 (1941)(finding that the actions of election commissioners who conducted a primary election and willfully altered and falsely counted and certified ballots were acts under color of state law depriving the voter of constitutional rights); (finding that state judge may be found criminally liable for civil rights violations). A private actor may also act “under color of law” under certain circumstances. *See, United States v. Price*, 383 U.S. 787 (1966); *Dennis v. Sparks*, 449 U.S. 24 (1980).

of any law, statute, ordinance regulation, or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the U.S.”

There are four elements to establish offenses under this section: (1) the victim must have been an inhabitant of a U.S. state, district, or territory when the alleged violation occurred; (2) defendant acted under color of any law;<sup>6</sup> (3) the defendant’s conduct deprived the victim of some right secured or protected by the U.S. Constitution;<sup>7</sup> and (4) the defendant acted willfully, that is, with specific intent to violate the protected constitutional right.<sup>8</sup>

In *Screws v. U.S.*,<sup>9</sup> the U.S. Supreme Court narrowly interpreted the predecessor of Section 242, 18 U.S.C. §52, and upheld its constitutionality against a due process challenge that alleged that the statute was vague and lacked the specificity constitutionally mandated for criminal statutes. In reaching its decision, the Court examined the legislative history and noted the section’s origins as an “anti-discrimination measure” that was later extended to prohibit the “deprivation of any rights, privileges, or immunities” guaranteed by federal law. The Court concluded that the legislative history indicated a desire to reduce the section’s severity. To express this reduction in severity, Congress created a special requirement of intent to violate federal rights, rather than just a generalized “bad purpose.”<sup>10</sup>

This strict interpretation has been uniformly followed by federal courts.<sup>11</sup> For example, in *U.S. v. Shaffer*,<sup>12</sup> a case involving the shooting of unarmed students by the Ohio National Guard, an Ohio

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<sup>6</sup> Acts under “color of any law” include actions within or beyond the bounds of lawful authority. *Screws v. United States*, 325 U.S. 91,111 (1945)(stating that “[a]cts of officers who undertake to perform their official duties are included whether they hew to the line of their authority or overstep it.”).

<sup>7</sup> Includes the right not to be deprived of life or liberty without due process of law, namely the right to be free from physical or sexual assaults. See, *United States v. Lanier*, 520 U.S. 259 (1997); *United States v. Stokes*, 506 F.2d 771(5<sup>th</sup> Cir. 1975)(holding that jury was properly instructed that the prisoner had a constitutional right to be free from illegal assault and battery while lawfully in custody). Also includes the right to be free from unreasonable searches and seizures. See, *United States v. Langer*, 958 F.2d 522 (2<sup>nd</sup> Cir. 1992)(finding that officer’s unlawful detention of female drivers fell within scope of section 242).

<sup>8</sup> *Screws v. U.S.* 325 U.S. 91 (1945)(finding section constitutional against a challenge based on vagueness); *United States v. Guest*, 383 U.S. 745 (1986) and *United States v. Price*, 383 U.S. 787 (1966). Specific intent to injure or reckless use of excessive force, without more, does not satisfy the intent requirement. *United States v. Shafer*, 384 F. Supp. 496 (N.D. Ohio 1974). Examples where courts have found specific intent include *United States v. Ramsey*, 336 F.2d 512 (4<sup>th</sup> Cir. 1964)(defendant was an election official who used a fraudulent warrant to arrest an individual on election day to get him out of the way) and *Apodaca v. United States*, 188 F.2d 932 (10<sup>th</sup> Cir. 1951)(police officers clamp a bicycle lock around a suspect’s testicles to persuade him to confess to a crime).

<sup>9</sup> 325 U.S. 91 (1945).

<sup>10</sup> According to the Court, “One who does act with such specific intent is aware that what he does is precisely that which the statute forbids ... He violates the statute not merely because he has a bad purpose but because he acts in defiance of announced rules of law.” *Id.* at 106. Using this narrow construction, the Court reversed concluding that the jury should have been instructed on the specific intent to deprive the prisoner of a constitutional right.

<sup>11</sup> See, *United States v. Delorme*, 457 F.2d 156, 161 (3<sup>rd</sup> Cir. 1972) stating that:

Thus we conclude that in a criminal prosecution under 242, it is only where there is supportive evidence found by the fact finder of a willful intention to deprive another of his constitutional rights that the federal statute comes into play. It is one thing to be guilty of excessive force, and thus chargeable with violating the law of the state and territory; it is quite another for a policeman to administer a physical beating as punishment for allegedly breaking the law. In the latter case the police offer has acted as prosecutor, judge, and jury; he has brought the charges, found the suspect guilty, administered punishment.

<sup>12</sup> *U.S. v. Shafer*, 384 F.Supp. 496, 501 (N.D. Ohio 1974).

district court found that there was insufficient evidence that defendants possessed the specific intent to deprive any of the students of their constitutional rights. Analogizing *Screws*, the *Shaffer* court concluded that the evidence presented “would support a finding that the amount of force used by defendants was excessive and unjustified; that they intended to harm or frighten at least some of the demonstrators; and that they fired without being ordered to do so.”<sup>13</sup> The court noted, however, that such a finding failed to meet the stringent test articulated in *Screws* and thus warranted a judgment of acquittal for all defendants.<sup>14</sup>

Arguably, the specific intent requirement established in *Screws* makes prosecution more difficult, especially in cases of police conduct that involve the use of force during the performance of an officer’s duties. For a conviction under this provision, not only must the prosecution show an intent to violate federal rights, but also that the action was done under “color of law” and that the force was unreasonable, unnecessary, and unprovoked.<sup>15</sup>

The U.S. Supreme Court’s decisions in *Graham v. Connor*<sup>16</sup> and *Tennessee v. Garner*<sup>17</sup> set the prevailing standards for determining if law enforcement’s use of force impermissibly deprives an individual of a constitutional right. In *Graham*, the Court held that determining the objective reasonableness of a particular seizure under the Fourth Amendment “requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.”<sup>18</sup> As such, the inquiry requires analyzing the totality of the circumstances from the officer’s prospective. Specifically, the Court stated:

The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain and rapidly evolving—about the amount of force that is necessary in a particular situation. The test of reasonableness is not capable of precise definition or mechanical application.<sup>19</sup>

In *Garner*, the Court set forth instances in which an officer’s use of deadly force is reasonable: (1) when threatened with a deadly weapon; (2) when the officer has probable cause to believe that the suspect poses an imminent threat of serious harm or death to the officer or to others; or (3) when probable cause exists that the suspect has committed a crime involving threatened or actual serious physical harm or death to another. For example, in *Plumhoff v. Rickard*,<sup>20</sup> the Supreme

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<sup>13</sup> *Id.* at 501.

<sup>14</sup> Specifically, the court stated:

Even the specific intent to injure, or the reckless use of excessive force, without more, does not satisfy the requirements of 242 as construed in *Screws*. There must exist an intention to ‘punish or to prevent the exercise of constitutionally guaranteed rights, such as the right to vote, or to obtain equal protection of the law.

<sup>15</sup> *Id.*

<sup>16</sup> 490 U.S. 386 (1989).

<sup>17</sup> 471 U.S. 1 (1985).

<sup>18</sup> *Graham* at 396.

<sup>19</sup> *Id.*; See also, *Plumhoff, et al., v. Rickard, et al.*, 572 U.S. (2014)(finding that officers did not use excessive force in violation of the 4<sup>th</sup> amendment when they shot and killed a fleeing motorist, ending a high-speed car chase that risked the lives of both the officers and numerous innocent bystanders).

<sup>20</sup> *Plumhoff v. Rickard*, 134 S.Ct 2012 (2014)(finding that officer did not use unreasonable force when firing 15 shots at a fleeing suspect’s vehicle).

Court found that the police officers acted reasonably in using deadly force during a high-speed chase. The officer stopped a vehicle due to an inoperable headlight. After the officer noticed damage to the vehicle, he asked the driver to exit the car. Instead of getting out of the car, the driver sped off. Officers gave chase and surrounded the driver in a parking lot. When the driver attempted to flee again, the officers fired shots into the vehicle, killing the driver and passenger. The event was captured on video.

Looking at the totality of the circumstances, the Court concluded that the officers acted reasonably as the driver's reckless driving posed a grave public safety risk. According to the Court, "a reasonable officer could have concluded that [the driver] was intent on resuming his flight and that, if he was allowed to do so, he would once again pose a deadly threat to others."<sup>21</sup> The Court went on to find that the firing of 15 shots was not excessive. The Court noted that if the officers are justified in firing at a suspect to end a severe threat to public safety, then the officers can continue shooting until the threat ends. Relevant to the Court's analysis was the fact that even after the 15 shots were fired, the driver continued to flee until he crashed the vehicle. Therefore, the Court concluded that the officers acted reasonably.

Punishment for violations includes a fine and/or imprisonment for a maximum of one year. In the case of bodily injury or the use of a dangerous weapon<sup>22</sup> the maximum term of imprisonment is 10 years. The law provides greater punishment to violators if their acts cause death (or an attempt to kill) or include kidnapping (or an attempt to kidnap) or aggravated sexual abuse (or an attempt to commit aggravated sexual abuse). Under such circumstances, offenders may face life imprisonment or the death penalty.<sup>23</sup>

The FBI has the authority to investigate allegations of 18 U.S.C. §242 violations. The Attorney General, acting through the various U.S. Attorneys' offices and with the assistance of the Justice Department's Civil Rights Division, has the discretion to initiate a federal prosecution. Whether a prosecutor elects to do so depends upon a number of factors, not the least of which is whether there is evidence sufficient to convince a jury that the accused is guilty beyond a reasonable doubt.

## Federally Protected Activities—18 U.S.C. §245

This statute prohibits certain interferences of federally protected activities regardless of discriminatory intent.<sup>24</sup> Protected activities include

- voting or qualifying to vote;
- participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States;
- applying for or enjoying employment by any U.S. agency;
- serving as a grand or petit juror in any court of the United States; or

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<sup>21</sup> *Id.* at 2011.

<sup>22</sup> Includes explosives or fire.

<sup>23</sup> 18 U.S.C. §242.

<sup>24</sup> Includes attempts to injure, intimidate, or interfere with.

- participating in or enjoying the benefits of any program receiving federal financial assistance.

Moreover, individuals are prohibited from willfully injuring, intimidating, or interfering with any person because of that person's race, color, religion, or national origin, and because of the individual's activity in one of the following:<sup>25</sup>

- enrolling or attending a public school or college;
- participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by a state or local government;
- applying for or enjoying employment, or using a labor organization or employment agency whether privately or publically run;
- serving any state court as a juror;
- travelling in or using a facility of interstate commerce or common carrier; or
- enjoying the goods, services, and/or facilities of any establishment which provides lodging, food, beverages, gasoline, or entertainment to patrons.<sup>26</sup>

This statute also prohibits willful interference, by force or threat of force, with a person because the individual is or was participating in, aiding, or encouraging other persons to participate in any of the aforementioned benefits or activities without discrimination as to race, color, religion, or national origin.

## **Damage to Religious Property—18 U.S.C. §247**

Individuals are prohibited from intentionally defacing, damaging, or destroying religious real property<sup>27</sup> based on the religious, ethnic, or racial characteristics of the property. If the destruction is based on religious animus, there must also be a showing that the property is sufficiently related or connected to interstate or foreign commerce. If the property destruction is racially motivated, a link to interstate or foreign commerce is not required. The statute also prohibits individuals from intentionally obstructing or attempting to obstruct, by force or threat of force, a person in the enjoyment of that person's religious beliefs, where the crime is committed in or affects interstate commerce.

Punishment for violations includes a fine and/or imprisonment for a maximum of one year. In the case of bodily injury by fire or explosive the maximum term of imprisonment is 40 years.<sup>28</sup> The law provides greater punishment to violators if their acts cause death (or an attempt to kill) or include kidnapping (or an attempt to kidnap) or aggravated sexual abuse (or an attempt to commit aggravated sexual abuse). Under such circumstances, offenders may face life imprisonment or the death penalty.<sup>29</sup>

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<sup>25</sup> Includes attempts to injure, intimidate, or interfere with.

<sup>26</sup> Includes hotels, motels, restaurants, lunchroom, bars, gas stations, theaters, concert halls, sports arenas, or stadiums.

<sup>27</sup> Includes churches, synagogues, mosques, or religious cemeteries. 18 U.S.C. §247(f).

<sup>28</sup> 18 U.S.C. §247(d)(2).

<sup>29</sup> 18 U.S.C. §247(d)(1).

## Freedom of Access to Clinic Entrances—18 U.S.C. §248

This statute prohibits certain violent, threatening, obstructive, or destructive actions directed toward individuals obtaining or providing reproductive health services<sup>30</sup> or exercising the right of religious freedom at a place of worship.<sup>31</sup> Section 248 also makes it unlawful for a person to intentionally damage or destroy the property of a facility because it provides reproductive health services, or because it is a place of worship.<sup>32</sup> Section 248 also prohibits anyone from attempting to commit any of the aforementioned.

Punishment for violations includes a fine and/or imprisonment for a maximum of one year for a first offense and a maximum of three years for subsequent convictions.<sup>33</sup> In the case of bodily injury, the maximum term of imprisonment is 10 years. Should death occur, violators may face life imprisonment.<sup>34</sup>

## Hate Crime Acts—18 U.S.C. §249

This law makes it unlawful to willfully cause bodily injury (or attempt to do so) with the use of “fire, a firearm, a dangerous weapon, or an explosive or incendiary device” under two circumstances: (1) when the crime was committed “because of the actual or perceived race, color, religion, or national origin of any person”;<sup>35</sup> or (2) when the crime was committed based on the “actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person”<sup>36</sup> and the crime affected interstate or foreign commerce or occurred within a federal special maritime or territorial jurisdiction.

The law broadens the circumstances under which the federal government may assert jurisdiction to prosecute such crimes. For hate crimes prosecuted under these provisions, the law requires that the Attorney General certify that pertinent state or local officials (1) were unable or unwilling to prosecute; (2) favored federal prosecution; or (3) prosecuted, but the investigation’s or trial’s results failed to satisfy the federal interest to combat hate crimes.

Punishment for violations includes a fine and/or imprisonment for a maximum of 10 years. The law provides greater punishment to violators if their acts result in death (or an attempt to kill) or include kidnapping (or an attempt to kidnap) or aggravated sexual abuse (or an attempt to commit aggravated sexual abuse). Under such circumstances, offenders may face life imprisonment.

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<sup>30</sup> Statute not limited to physicians, nurses, or social workers. Covered persons also include maintenance supervisors (*United States v. Dimwiddie*, 76 F.3d 913 (8<sup>th</sup> Cir. 1996)); volunteers offering counselling to pregnant women (*Greenhut v. Hand*, 996 F.Supp. 372 (D.N.J. 1998)); and doctors’ escorts (*United States v. Hill*, 893 F.Supp.1034 (N.D. Fla. 1994)).

<sup>31</sup> 18 U.S.C. §248(2).

<sup>32</sup> 18 U.S.C. §248(3).

<sup>33</sup> In instances of nonviolent physical obstructions there is a maximum fine of \$10,000 and imprisonment of six months. 18 U.S.C. §248(b)(2).

<sup>34</sup> 18 U.S.C. §248(b)(2).

<sup>35</sup> 18 U.S.C. §249(1)(A).

<sup>36</sup> 18 U.S.C. §249(2)(A).

## **Criminal Interference With Right to Fair Housing—42 U.S.C. §3631**

This statute makes it unlawful for an individual to use force or threaten to use force to injure, intimidate, or interfere with, or attempt to injure, intimidate, or interfere with, any person's housing rights because of that person's race, color, religion, sex, handicap, familial status, or national origin. Among those housing rights enumerated in the statute are (1) the sale, purchase, or rental of a dwelling; (2) the occupation of a dwelling; (3) the financing of a dwelling; (4) contracting or negotiating for any of the aforementioned rights; and (5) applying for or participating in any service, organization, or facility related to the sale or rental of dwellings.

This statute also makes it unlawful to use force or threaten to use force to injure, intimidate, or interfere with any person who is assisting an individual or class of persons in the exercise of their housing rights. The offense is punishable by a range of imprisonment up to a life term, depending upon the circumstances of the crime and the resulting injury, if any.

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