

# **NATIONAL PARK SERVICE**



## **CIVIL RIGHTS STATUTES**

### **STUDENT GUIDE**

FEDERAL LAW ENFORCEMENT TRAINING CENTER  
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CIVIL RIGHTS STATUTES

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## FOREWORD

This text is intended to provide the student law enforcement officer with the essential raw materials for a classroom discussion about and analysis of the major federal civil rights statutes affecting him.

Because it presents a relatively simplified approach to a very complex subject, this text should not be used for legal guidance and should only be considered as material supplementary to a classroom presentation by a competent legal instructor.

18 USC 242  
DEPRIVATION OF RIGHTS UNDER COLOR OF LAW  
(1966)

A. TEXT OF THE STATUTE:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life.

B. ELEMENTS OF THE STATUTE:

1. The defendant must act under color of any law.
2. The defendant must act willfully.
3. The defendant must subject a person either:
  - a. To a deprivation of rights, privileges, or immunities secured by the Constitution or federal laws; OR
  - b. To different punishments than are prescribed for citizens on account of his being an alien or by reason of his color or race.

C. PENALTY:

Conviction may result in a fine of up to \$1,000 and/or imprisonment for up to a year; or if the victim died as a result of the defendant's act, the punishment may be imprisonment for up to life (this statute may be either a misdemeanor or a felony, depending on the results of the defendant's act).



D. OBSERVATIONS:

1. This is a criminal statute.

2. The defendant's act must be "under color of law", meaning that it must have the appearance or pretense of legal authority, even though the legal authority may not actually exist. Purely personal actions are not subject to this law.

3. The defendant's act must be "willful", which implies, as applied to this law, that it must be with specific intent. The act must be done not merely with a conscious purpose to do wrong, but also with an intent to deprive a person of a right which has been made specific either by the express terms of the federal Constitution or laws or by decisions interpreting them.

4. This law does not necessarily require the use or threatened use of force. In fact, one may violate the statute by a willful failure to carry out his duty.

5. This statute generally applies only to law enforcement officers or other government agents, but it could apply to others assisting a law enforcement officer or otherwise acting under "color of law".

42 USC 1983  
CIVIL ACTION FOR DEPRIVATION OF RIGHTS  
(1871)

A. TEXT OF THE STATUTE:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

B. ELEMENTS OF THE STATUTE:

1. The defendant must act under color of law of a state or territory.
2. The victim must be a citizen or other person within United States jurisdiction.
3. The defendant must subject the victim to a deprivation of rights, privileges, or immunities secured by the Constitution or federal laws.

C. PENALTY:

Personal liability to the injured party in a civil suit (this penalty is civil, not criminal).

D. OBSERVATIONS:

1. This statute does not apply directly to federal officers unless they act under color of state or territorial law, BUT the right to sue federal officers on similar grounds was established by the Supreme Court in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 91 S.Ct. 1999 (1971). Thus federal officers, not acting under color of state or territorial law and thus not directly subject to the provisions of 42 USC

1983, may nonetheless be sued under the judicially created "Bivens analogy" to this statute.

2. This statute may be used in addition to criminal prosecution.

3. The result of action under this provision may be judgment for actual (compensatory) damages, judgment for punitive or exemplary damages, or injunction.

4. Under this statute, the plaintiff need not prove that the defendant acted willfully or with a specific intent to deprive the plaintiff of a federal right, but an assertion by the defendant that he acted in good faith and reasonably may constitute a valid defense.

5. This law is inapplicable where the defendant acts as a private individual, except where a private person jointly engages with state officials in a prohibited action, resulting in his acting "under color of state law".

6. Among other things, this statute makes actionable the conduct of state and local police officers in unlawfully searching a person's home and unlawfully arresting and detaining him, in beating a prisoner so as to force him to incriminate himself, and in intimidating an accused to force him to change his plea to guilty.

7. Liability under this section cannot be based solely upon supervisory authority (i.e., the doctrine of respondeat superior is inapplicable in an action brought under this section).



18 USC 245  
FEDERALLY PROTECTED ACTIVITIES  
(1968)

A. TEXT OF THE STATUTE:

(a)(1) Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State, any possession or Commonwealth of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section, nor shall anything in this section be construed as depriving State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State and local law. No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the Attorney General or the Deputy Attorney General that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice, which function of certification may not be delegated.

(2) Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

(b) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with--

(1) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from--

(A) voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher, or any legally authorized election official, in any primary, special, or general election;

(B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States;

(C) applying for or enjoying employment, or any perquisite thereof, by any agency of the United States;

(D) serving, or attending upon any court in connection with possible service, as a grand or petit juror in any court of the United States;

(E) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance; or

(2) any person because of his race, color, religion or national origin and because he is or has been--

(A) enrolling in or attending any public school or public college;

(B) participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof;

(C) applying for or enjoying employment, or any perquisite thereof, by any private employer or any agency of any State or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency;

(D) serving, or attending upon any court of any State in connection with possible service, as a grand or petit juror,

(E) traveling in or using any facility of interstate commerce, or using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air;

(F) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other



establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility which serves the public and which is principally engaged in selling food or beverages for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment which serves the public, or of any other establishment which serves the public and (i) which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments, and (ii) which holds itself out as serving patrons of such establishments; or

(3) during or incident to a riot or civil disorder, any person engaged in a business in commerce or affecting commerce, including, but not limited to, any person engaged in a business which sells or offers for sale to interstate travelers a substantial portion of the articles, commodities, or services which it sells or where a substantial portion of the articles or commodities which it sells or offers for sale have moved in commerce; or

(4) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from--

(A) participating, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F); or

(B) affording another person or class of persons opportunity or protection to so participate; or

(5) any citizen because he is or has been, or in order to intimidate such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination

on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate--

shall be fined not more than \$1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than \$10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life. As used in this section, the term "participating lawfully in speech or peaceful assembly" shall not mean the aiding, abetting, or inciting of other persons to riot or to commit any act of physical violence upon any individual or against any real or personal property in furtherance of a riot. Nothing in subparagraph (2)(F) or (4)(A) of this subsection shall apply to the proprietor of any establishment which provides lodging to transient guests, or to any employee acting on behalf of such proprietor, with respect to the enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of such establishment if such establishment is located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor as his residence.

(c) Nothing in this section shall be construed so as to deter any law enforcement officer from lawfully carrying out the duties of his office; and no law enforcement officer shall be considered to be in violation of this section for lawfully carrying out the duties of his office or lawfully enforcing ordinances and laws of the United States, the District of Columbia, any of the several States, or any political subdivision of a State. For purposes of the preceding sentence, the term "law enforcement officer" means any officer of the United States, the District of Columbia, a State, or political subdivision of a State, who is empowered by law to conduct investigations of, or make arrests because of, offenses against the United States, the District of Columbia, a State, or a political subdivision of a State.

#### B. ELEMENTS OF THE STATUTE:

##### 1. Protection of traditional "federal" activities:



- a. The defendant need not necessarily act under color of law.
- b. The defendant must use force or threaten the use of force.
- c. The defendant must act willfully.
- d. The defendant must interfere with the victim's right to:
  - (1) Vote or run for office;
  - (2) Participate in a federally administered or sponsored program;
  - (3) Apply for or enjoy the benefit of federal employment; OR
  - (4) Serve as a federal juror.

2. Protection of traditional "state" activities:

- a. The defendant need not necessarily act under color of law.
- b. The defendant must use force or threaten the use of force.
- c. The defendant must act willfully.
- d. The defendant's action must be because of the victim's race, color, religion or national origin.
- e. The defendant must interfere with the victim in order to prevent him from:
  - (1) Attending public school;
  - (2) Participating in a state administered or sponsored program;
  - (3) Applying for or enjoying the benefit of state or private employment;
  - (4) Serving as a state juror;
  - (5) Traveling interstate; OR
  - (6) Using public accommodations.

3. Other protected activities:

- a. The defendant need not necessarily act under color of law.
- b. The defendant must use force or threaten the

use of force.

- c. The defendant must act willfully.
- d. The defendant must interfere with the victim because of the victim's encouraging or furnishing an opportunity to others to participate in any activity listed under 1 and 2 above.

C. PENALTY:

Conviction may result in a fine of up to \$1,000 and/or imprisonment for up to a year; or if the victim was physically injured as a result of the defendant's act, the punishment may be a fine of up to \$10,000 and/or imprisonment for up to 10 years; or if the victim died as a result of the defendant's act, the punishment may be imprisonment for up to life (this statute may be either a misdemeanor or a felony, depending on the results of the defendant's act).

D. OBSERVATIONS:

- 1. This is a criminal statute.
- 2. The defendant's act must be "willful", but as applied to this law, it need not be with specific intent.
- 3. This statute applies whether or not the violator acted "under color of law".
- 4. This law requires the use or threatened use of force.
- 5. This statute specifically provides that it does not apply to a law enforcement officer who is lawfully carrying out the duties of his office.

18 USC 241  
CONSPIRACY AGAINST RIGHTS OF CITIZENS  
(1870)

A. TEXT OF THE STATUTE:

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured--

They shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

B. ELEMENTS OF THE STATUTE:

1. Conspiracy:

- a. There must be two or more persons involved.
- b. There must be a conspiracy.
- c. The object of the conspiracy must be to injure, oppress, threaten, or intimidate the victim in exercising any right or privilege secured to him by the Constitution or federal law.
- d. The victim of the conspiracy must be a citizen.

2. Disguise:

- a. There must be two or more persons involved.
- b. The defendants must go in disguise.
- c. The defendants must go on a highway or the premises of another.



- d. The defendants must have the intent to prevent the exercise of a right or privilege secured by the Constitution or federal law.

C. PENALTY:

Conviction may result in a fine of up to \$10,000 and/or imprisonment for up to 10 years; or if the victim died as a result of the defendants' acts, the punishment may be imprisonment for up to life (this statute is a felony).

D. OBSERVATIONS:

1. This is a criminal statute.
2. This law is different from the general federal conspiracy statute 18 USC 371 in that no overt act is necessary to prove the conspiracy.
3. The defendant need not act under color of law.
4. "Specific intent" is required (see observations re specific intent on page 2 under 18 USC 242). The intent of the conspiracy must be to hinder and prevent the exercise of a right granted or secured by the Constitution or laws of the United States.
5. This statute protects the rights of citizens, but not the rights of aliens.
6. Among the rights protected by this law are the right of a federal prisoner to be free from violence at the hands of private persons; a citizen's right to be free from violence visited upon him by private persons because of his having informed a federal officer of such private person's crimes; the right to enforce a federal court order; the right of one arrested and charged with a crime to a trial to resolve guilt; the right to testify at a federal trial in response to a request or demand of a federal court; the right to be free from slavery and involuntary servitude; the right to be free from unlawful violence committed under color of state law; the right to peaceably assemble for the purpose of petitioning Congress for a redress of grievances, or for anything else connected with the powers or duties of the national government; the right to travel freely from one state to another; the



right to service in a restaurant and other places of public accommodation; the right to worship as one pleases; and the right to vote.

# COMPARISON OF CIVIL RIGHTS STATUTES

STATUTE	CIVIL OR CRIMINAL?	NATURE OF PENALTY?	DOES STATUTE REQUIRE COLOR OF LAW?	DOES STATUTE APPLY TO PURELY PRIVATE ACTS?	DOES STATUTE APPLY TO FEDERAL OFFICERS?	MUST DEFENDANT ACT WILLFULLY ?	MUST DEFENDANT ACT WITH SPECIFIC INTENT?	MUST DEFENDANT USE FORCE OR THREAT?	MUST VICTIM BE A U.S. CITIZEN?
18 USC 242 Deprivation of Rights Under Color of Law	Criminal	Misde- meanor or felony	Yes— <u>any</u> law	No	Yes— and also state and local officers	Yes	Yes	No	No—need only be inhabitant of state, district, or terri- tory
42 USC 1983 Civil Action for Deprivation of Rights	Civil	Personal liability (actual or puni- tive damages or injunc- tion	Yes— <u>state</u> or <u>territor- ial</u> law	No	No— not directly, BUT— remember "Bivens analogy"	No	No	No	No— need only be within U.S. jur- isdiction
18 USC 245 Federally Protected Activities	Criminal	Misde- meanor or felony	No	Yes	Yes	Yes	No	Yes	No
18 USC 241 Conspiracy Against Rights of Citizens	Criminal	Felony	No	Yes	Yes	Yes	Yes	No	Yes