

A LEGAL GUIDE FOR

SIDEWALK COUNSELORS

*Compassion,
Counseling,
and the
Constitution*



This resource is brought to you by:



The mission of 40 Days for Life is to end abortion in every neighborhood, in every city, in every state, and around the world through prayer, fasting, peaceful vigil, and community outreach.

info@40daysforlife.com
1-888-543-3316



ADF exists to help you exercise your right to freedom of speech under the First Amendment, so that you can continue to serve in your life-saving mission. If you ever find your rights being threatened or taken away in your activities as a sidewalk counselor, please contact ADF.

info@ADFlegal.org
1-800-835-5233

We are the **voice of the unborn child** when that child is about to lose his or her life. **No child wants to die** in the womb; **every child wants a birthday.**

Eleanor McCullen

WE

Defend

THOSE WHO DEFEND

Life



As a pro-life advocate, you have the opportunity to relay a message of hope and empower pregnant women to choose life.

Alliance Defending Freedom (ADF) is a legal organization advocating for your right to continue your life-saving work. ADF defends religious freedom, the sanctity of life, and marriage and family.



To learn more about ADF
and our work,
visit ADFLegal.org.

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ADF WORKS WITH OVER
3,200
ALLIED ATTORNEYS



AND PARTNERS
WITH OVER
300
ALLIED
ORGANIZATIONS

**WITH A GOD-GRANTED
SUCCESS RECORD**



ADF HAS WON NEARLY
80%
OF ALL OUR CASES



AND PLAYED A
ROLE IN
54
U.S. SUPREME
COURT VICTORIES



Introduction

Over the past 27 years, a surging pro-life movement has helped force the closure of 75 percent of surgical abortion businesses in America. But the work is not done. Nearly 500 abortion facilities still exist in the United States.

That's where you come in.

As a sidewalk counselor, you bring hope and clarity to men and women who are scared and confused in the face of an unplanned pregnancy. Often, you are the last face that they see before going into an abortion facility. Many of them feel hopeless – that getting an abortion is the only way out. Many of the women entering these facilities have never been offered another option. Many do not understand the physical, psychological, and emotional consequences of abortion.

You are doing vital Kingdom work as you connect with these men and women to bring them a message of hope and empower them to choose life for their unborn child. To keep doing this work faithfully and effectively, you should familiarize yourself with your rights as a sidewalk counselor.

The Supreme Court has recognized that sidewalk counseling is protected by the First Amendment. That does not mean, however, that sidewalk counselors and other pro-life advocates do not receive any pushback from pro-abortion interests. All over the country, sidewalk counselors face unique legal challenges when engaging in their life-saving work. These challenges may not be immediately obvious and can range from buffer zones, to permit requirements, and even restrictions on signs.

Alliance Defending Freedom (ADF) and 40 Days for Life created this manual to educate you about your legal rights when engaging in sidewalk counseling. Because this manual covers your legal rights and other legal topics, there might be words or phrases that you are not familiar with. There is a glossary on page 17 for your reference – which we hope is useful to you as you learn about your rights as a sidewalk counselor. More than that, we pray that this resource will help you be better equipped to serve the women and men entering abortion facilities every day.

Contents

Q&A

Does the First Amendment apply to sidewalk counseling?	1
What does the First Amendment allow me to do as a sidewalk counselor?	1
What are different types of peaceful sidewalk counseling?	2
What types of activities are not protected by the First Amendment?	2
How does the Federal Access to Clinic Entrances Act (FACE) apply to sidewalk counseling?	5
How can an injunction or temporary restraining order affect my sidewalk counseling?	6
What is a picketing ordinance, and how does it apply to sidewalk counseling?.....	8
What is a “buffer zone,” and how does it affect me?	8
What is a fixed buffer zone?	8
What are floating buffer zones or “bubble” zones?	8
What if there is a buffer zone in my area?	9
How do I challenge my local buffer zone?	9
What do I do if there is a buffer zone outside of the local abortion facility?	10
How do I know if I am trespassing?	10
Can law enforcement order us to leave a public premise?	10
Are there laws that limit how loud we can be?	11
Are there restrictions on signs?	11
Can I talk to people on driveways or in parking lots?	11
Can laws differ based on my location?	12
Do I need permission or permits to engage in sidewalk counseling?	12
Does it matter where I stand while sidewalk counseling?	14
What should I do if the police are called to the abortion facility?	14
What if I am arrested?	15
Glossary of Terms	17
Appendix A: Sample Letter for Law Enforcement	18
Appendix B: A Checklist for Peaceful and Lawful Sidewalk Counseling and Vigils	19

Congress shall **make no law** respecting an establishment of religion, or prohibiting the free exercise thereof; or **abridging the freedom of speech**, or of the press; **or the right of the people peaceably to assemble**, and to petition the government for a redress of grievances.

The First Amendment

QUESTION Does the First Amendment apply to sidewalk counseling?

Yes, the First Amendment protects your activities as a sidewalk counselor. Your right to free speech includes your speech in public areas, like the sidewalk. Public sidewalks and other public areas are often used as a forum for speech activities, such as rallies or other peaceful assemblies,¹ so it is difficult for the government to limit speech in such areas.

The Supreme Court defended your First Amendment right to be on the sidewalk outside of an abortion facility in *McCullen v. Coakley*, which held that the Commonwealth of Massachusetts could not impose a statewide buffer zone outside of abortion facilities because it restricted the free speech of peaceful sidewalk counselors substantially more than necessary to protect those entering and leaving the abortion facilities.² (For more on buffer zones, see the question, “What is a ‘buffer zone’ and how does it affect me?” on page 8.) In doing so, the Supreme Court recognized the powerful speech of sidewalk counselors.

The following pages contain some guidelines on types of speech and activities that are protected and those that are not protected. It is important to understand where your rights on the sidewalk begin and end as you may encounter some of these issues on the sidewalk.

QUESTION What does the First Amendment allow me to do as a sidewalk counselor?

It is important to remember that the First Amendment provides the most protection on public property. Speech occurring on property where you are not permitted is not protected. That means speech by you on the private property of an abortion facility is not protected by the First Amendment. So, you should stay on public property when sidewalk counseling. The following pages contain several examples of common sidewalk counseling activities that are protected by the First Amendment.

QUESTION

What are different types of peaceful sidewalk counseling?

You have the right to engage and speak with those entering an abortion facility. But keep in mind that you should remain calm and peaceful, and you should never attempt to touch someone (such as a hug or touch their hand) without their permission, and you should never block someone's way.

Prayer

Feel free to pray on the public ways and sidewalks, as this is a protected form of speech.

Leafleting

Handing out leaflets, brochures, cards, and other handouts is protected speech. However, you should be aware of any littering laws in your jurisdiction³ so that you do not break these in handing out your materials.

Picketing

Having signs which express your views is a protected form of speech. But you should familiarize yourself with any sign codes in your jurisdiction — such laws may limit your ability to place freestanding⁴ signs in the ground or attach sticks to the signs. (See the question, “Are there restrictions on signs?” on page 11 for additional information.)

Demonstrating

Demonstrations – such as rallies or protests in support of your views – are protected speech. However, for larger demonstrations, or for demonstrations in certain locations, you may be required to get a permit. (See the question, “Do I need permission or permits to engage in sidewalk counseling?” on page 12 for additional information.)

QUESTION

What types of activities are not protected by the First Amendment?

There are certain activities you should avoid while sidewalk counseling. The following examples are types of speech that the First Amendment does not protect.

Crimes Involving Speech

The First Amendment does not protect criminal speech, such as harassment, blackmail, and making certain false statements – including perjury, false declarations, lying to the police, etc.

Trespassing / Activities on Private Property

Any unauthorized activities on private property are not protected by the First Amendment. This is because the government recognizes the rights of property owners, and so the First Amendment does not apply unless you have permission to be there. Generally, if one is not authorized to be on private property, this is trespassing, which is a crime.

So, in order to be protected by the First Amendment, you must stay on public property such as public sidewalks and rights-of-way. Remember, even the activities that are protected on *public* property are not protected on *privately* owned property such as the property of an abortion facility, unless you have permission to be there. If you have permission to be on private property, it is best to obtain permission in writing and specifically include the activities that you will engage in.

Incitement

The First Amendment does not protect speech that can be considered an “incitement” of criminal activity, which is any speech that urges or encourages others to commit an imminent crime. For example, an “incitement” could occur where someone suggests to a large group of people that they trespass immediately at an abortion facility or that they approach an abortion facility employee to “teach him a lesson.”

The Supreme Court defined “incitement” in *Brandenburg v. Ohio* (1969) as speech that “is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”⁵ This definition is very narrow and will only include speech which is intended to get others to immediately engage in criminal activity.

Fighting Words

Fighting words are also an unprotected form of speech. The Supreme Court defined fighting words in *Chaplinsky v. New Hampshire* (1942) as common words or phrases that are likely to cause a fight at that time.⁶ In *R.A.V. v. City of St. Paul* (1992), the Supreme Court noted that fighting words can be criminalized due to their “non-speech” elements of communication which could cause an ordinary person to fight.⁷ “Non-speech” elements refer to anything that is not speaking or another expressive activity, such as body language.

For example, if you become angry and agitated and tell someone seriously that you will “beat them up” – and it appears that you will actually carry out this threat by moving threateningly close or balling up your fists and raising them or trying to hit someone – it is likely to be considered “fighting words.”

Threats

Credible threats of criminal activity are generally unprotected speech. Threatening someone with bodily harm or death is not protected speech, nor is threatening violence to intimidate someone into not entering an abortion facility.

Defamation

Defamation is defined as “malicious or groundless harm to the reputation or good name of another by the making of a false statement to a third person.”⁸ In other words, you could get sued for making a false statement about someone else that is damaging to them in some way. Defamation can be either written (libel) or oral (slander). In order to avoid defamation issues, stick to the facts! Do not make knowingly false statements about others. Similarly, do not make statements that are unlikely to be true. It is important to remember that just because someone disagrees with what you say, doesn’t mean you have made a false statement. If the issue is a matter of public debate, as abortion nearly always is, statements about it are usually protected speech. You are free to voice your opinion on matters of debate – but make sure that it is clear that it is your opinion and not fact.

Abby Johnson

It was the hot pink that first caught Abby Johnson's eye, as she walked through her university's student center. Pink is Abby's favorite color, and the Planned Parenthood information booth was draped in it. The company was recruiting volunteers to work in its local facilities, and Abby – deeply naïve in the realities of the abortion industry – bought the Planned Parenthood “we're just here to help women” pitch hook, line, and sinker. She spent the next eight years working long hours for the company, and eventually became director of their Bryan, Texas facility.



But moving up the corporate ladder opened Abby's eyes to some hard realities: Planned Parenthood in action was nothing at all like Planned Parenthood on paper. The company was less interested in helping women, she learned, than in building its profit margin on aborted children. When she was ordered one day to help with an ultrasound-guided abortion, she saw a

13-week-old child struggling to avoid abortion instruments – and all her illusions came crashing down.

Several days later, Abby looked out the window of her office to see two women from Coalition for Life outside the facility, praying. She walked out of Planned Parenthood and swore she would never return. From that moment on, she committed herself to fighting the abortion industry – saving babies from death, women from the heartache and physical scars, abortion workers from the lies they believed, and people all over the world from the lies of Planned Parenthood.

With the help of Alliance Defending Freedom attorneys, Abby filed suit in 2010 against two Planned Parenthood Texas facilities, alleging that they knowingly filed at least 87,075 fraudulent Medicaid claims between 2007 to 2009, receiving illegal reimbursements totaling more than \$5.7 million. Although her case was dismissed on jurisdictional grounds, it was one of several around the country that has drawn widespread legal attention to the company's financial misdeeds.

Abby still prays outside abortion facilities across the country.

“We're the face of Christ outside those clinics, the last glimmer of hope before they enter,” Abby says. “Trust me, they won't see any hope inside that abortion clinic's walls.”

Abby is also the founder and president of And Then There Were None (ATTWN), a nonprofit organization working “to end abortion from the inside out.” While other sidewalk counselors focus primarily on women considering abortion, ATTWN tries to engage those working at abortion facilities who want to leave that industry.

“Nobody grows up wanting to work in the abortion industry,” Abby says. “We want to love these workers out of the [abortion] clinics; we want to love them onto the path of healing.” It's a life-changing, life-saving job, and Abby is good at it. Nowadays, the woman who fell for the pink facade now calls herself blessed to fight against the abortion giant.

Solicitation & Conspiracy to Commit Crime

You can't ask someone else to do what you are not allowed to do. A solicitation is asking another person to commit a crime, either verbally or non-verbally. For example, encouraging someone to trespass on private property, such as an abortion facility, can be considered solicitation. Such encouragement can lead to criminal charges. If you both agree to a criminal plan, it could be a conspiracy as well.

Obscenity

Most material is protected by the First Amendment, even if it could be considered obscene. However, the First Amendment does not protect material that meets all three of the following factors: (1) most people find the material offensive, (2) it is pornographic, and (3) the material has no redeeming educational or artistic value. This exemption is very narrow, and it is unlikely to apply to any activities of sidewalk counseling.

Blocking Access

People have the right to come and go freely – just as you do. So, blocking their path on sidewalks, driveways, parking lots and the like is illegal in most, if not all, jurisdictions.

Touching

Generally, one person may not touch another without permission. For instance, putting your hand on someone's shoulder and asking them to wait and talk before they go into an abortion facility is not protected speech and may be considered an unlawful assault or battery.

Vandalism

Even though the vandalism may contain protected speech, such as spray-painting "Choose Life" on the side of a building or a car, the act itself is a crime (destruction of property/vandalism) and therefore is no longer protected. You may be able to write on the public sidewalks in chalk, but check your local laws.

QUESTION How does the Federal Access to Clinic Entrances (FACE) Act apply to sidewalk counseling?

In response to several incidents that took place outside of abortion facilities in the 1980s and 1990s, the federal government passed the Freedom of Access to Clinic Entrances (FACE) Act.

This law applies if a person "by **force** or **threat of force** or by **physical obstruction**, intentionally **injures, intimidates** or **interferes** with" any person because that person is "obtaining or providing reproductive health services."⁹ In other words, as a sidewalk counselor, the FACE Act says you cannot physically block, injure, intimidate, or interfere with anyone entering or exiting an abortion facility. However, peacefully conversing with, leafleting, educating, or demonstrating towards abortion facility visitors or workers does not violate the FACE Act. For example, a sidewalk counselor standing on the sidewalk who is engaging in peaceful speech and prayer, and is not physically blocking the doorway, driveway, or entrance to the abortion facility, does not violate the FACE Act.

Below are a list of examples of prohibited and allowed behaviors. However, be aware that this list is not exhaustive.

Prohibited:

- Blocking access to the entrance or driveway of a facility
- Impairing cars from entering and/or exiting a facility
- Physically blocking people as they are trying to walk toward an entrance or through a parking lot
- Making it difficult or dangerous to get in or out of a facility
- Trespassing on the property of a facility
- Committing any act of violence on a facility employee, escort, volunteer, or patient
- Vandalism
- Threats of violence
- Stalking an abortion facility employee or reproductive health care provider
- Arson or threats of arson
- Bombings or bomb threats

Not prohibited:

- Demonstrating/protesting outside of abortion facilities
- Distributing literature
- Counseling
- Carrying signs
- Singing hymns

QUESTION

How can an injunction or temporary restraining order affect my sidewalk counseling?

In some jurisdictions, past conduct and activities at a particular abortion facility may have led to an injunction¹⁰ or temporary restraining order. These bar certain people or groups from engaging in certain activities outside of that location. These court orders are often aimed at specific people or specific activities and still allow other individuals not named in the injunction to engage in sidewalk counseling or protesting. It is possible, however, that the restraining order covers a broad group of people. If you are aware of an injunction, check with a local attorney before you go. These are unique to a particular area, so if there is a court order in your community, it is best to consult with a local attorney to clarify what the court order actually prohibits.

The Supreme Court has allowed injunctions against specific individuals prohibiting specific conduct outside of abortion facilities in *Madsen v. Women's Health Center* (1994) and *Schenck v. Pro-Choice Network of Western New York* (1996). In these cases, the particular individuals had a history of committing obstructive or legally punishable activities outside abortion facilities. The Supreme Court said that forbidding these individuals was permissible, and in *McCullen* it said that narrow injunctions that only apply to specific people are more preferable than laws that restrict the speech of everyone.

Eleanor McCullen

Eleanor McCullen came to sidewalk counseling rather late in life – but once she began, there was no doubt of her calling.

She was in her mid-60s, and a devout Catholic, when she felt a growing restlessness that culminated in a life-changing experience with Jesus Christ. Her heart overflowing, she sought out a priest for advice on what she might do to serve her Savior, and he suggested that she go down to the nearest Planned Parenthood facility and pray for the women she found there. When Eleanor protested that she was too old for that kind of thing, the priest asked if she was 103.

“No,” Eleanor said.

“Then you’re not too old,” the priest told her.

But Planned Parenthood officials soon decided she was too good at her newfound ministry. Like many of her fellow counselors, Eleanor stood out on the sidewalk in front of their Boston facility for hours at a time... rain or shine... two days a week... week after week after week.

Worse – in the abortionists’ view – her efforts were having good effect. Of the dozens of women each year her team is able to dissuade from having abortions, Eleanor’s friends credit her warm, winning way for reaching 90 percent of them.

So bent was Planned Parenthood on silencing Eleanor’s gentle, persuasive voice that in 2007 it successfully lobbied the Commonwealth of Massachusetts to create a 35-foot “buffer zone” around the entrance to their facility. Eleanor and her fellow sidewalk counselors were required to stay outside that zone... which effectively meant calling out to the women entering the abortion facility from the middle of a busy street.

So, for six years, Eleanor had almost nowhere to stand but in the street. She dodged trucks and taxis and called out words of hope and grace to young women entering the facility.



Meanwhile, Eleanor filed a lawsuit against Massachusetts in federal court. ADF funded her case; and three of the ministry’s allied attorneys represented her. The lower courts ruled against her, but early in 2014, the U.S. Supreme Court heard her case – and ruled 9-0 in her favor. The buffer zone was ruled unconstitutional.

The law she challenged is similar to laws in other states, where government officials have made their own efforts to silence voices for life. Now, because of Eleanor’s victory, many of those states are also changing their laws and letting sidewalk counselors speak freely again.

And best of all, Eleanor, now in her late 70s, is back on the sidewalk, week after week... face to face with young women, who now can see the love in her eyes, and hear the mercy in her sweet voice.

/// To learn more, visit: bit.ly/wisecounsel

QUESTION

What is a picketing ordinance, and how does it apply to sidewalk counseling?

Sometimes picketing is prohibited in parts of a residential neighborhood. This means you cannot carry signs or protest in residential areas, even though these types of activities may be legal elsewhere. This can become a problem if you want to go to the neighborhood of an abortion doctor or abortion facility employee and picket. You can usually find all of your municipality's laws online on your local government's website, or at your local government building. However, the Supreme Court has suggested that laws against residential picketing might not be allowed to ban you from the entire neighborhood, so if you encounter such an ordinance, contact an attorney.

QUESTION

What is a "buffer zone," and how does it affect me?

In the past 20 years, some local governments have tried to limit activity near abortion facilities, including sidewalk counseling efforts. They have done so by creating zones outside of abortion facilities or health care facilities in which free speech is either limited or completely prohibited. These laws often limit free speech in a public area. The Supreme Court, in *McCullen v. Coakley*, dealt a harsh blow to these types of laws when it struck down a Massachusetts law creating 35-foot buffer zones outside of abortion facilities.¹¹ Several similar laws still exist in the United States, however. You should be aware of how these laws impact you, how to comply, and how to ensure that your rights have not been violated. If you find yourself affected by a buffer zone, contact ADF at 1-800-835-5233.

QUESTION

What is a fixed buffer zone?

These zones have a fixed distance, usually measured from the driveways and entrances of abortion facilities, where sidewalk counselors or protestors may not enter, or perhaps may not demonstrate, and therefore cannot engage in pro-life speech. In some cases, the buffer zone area is painted on the sidewalk or driveway outside of an abortion facility, marking the line which you cannot go past as a sidewalk counselor. If there is no line painted or sign posted on the sidewalk outside of a facility, you may need to know the correct distance yourself if a buffer zone exists.

QUESTION

What are floating buffer zones or "bubble" zones?

Floating buffer zones create an area, usually between 50-100 feet outside the entrances and driveways of an abortion facility, where a sidewalk counselor or protestor can stand and speak but cannot *approach* a person within a certain distance, usually 8 feet or so, without the consent of the other person. This means that a sidewalk counselor could not approach a woman going inside or leaving an abortion facility without first having consent from the woman to do so. What is required for "consent" may vary based on your local law, but if your municipality¹² has a law like this, get verbal confirmation from a woman that she will speak to you before approaching her within the restricted area. Typically, a

floating buffer zone law will let you stand in a stationary location even near the abortion facility entrance holding a leaflet that may be taken, and if the person approaches you instead of you approaching them, they may take the leaflet and you may speak as long as you did not step towards the person. If you encounter a floating buffer zone law, you will need to consider what distance you need to remain without approaching a facility visitor.

QUESTION \ What if there is a buffer zone in my area?

If there is a buffer zone in your area, there is good news!

The Supreme Court defended the right of sidewalk counselors to speak freely in public areas outside of abortion facilities in *McCullen v. Coakley*. In this case, Massachusetts had put a statewide buffer zone law in place, which required sidewalk counselors to remain at least 35 feet away from the entrance of an abortion facility. Supporters of this law claimed it was for the safety of those entering and leaving the facility – even though there had not been evidence of violence for many years. But the court ruled in favor of free speech and struck down the buffer zone, restoring free-speech rights to sidewalk counselors.¹³

While *McCullen* is an encouraging victory, the Supreme Court has not always ruled so favorably. In *Hill v. Colorado* (2000), the Supreme Court upheld a floating buffer zone in Colorado, which prevented sidewalk counselors from approaching women without their consent within a certain distance of an abortion facility. The Court stated that the law did not limit the speech of sidewalk counselors because they were still permitted to engage in speech, but only had to get permission to approach someone entering the abortion facility.¹⁴ *Hill* remains the greatest potential obstacle for those desiring to engage in sidewalk counseling who encounter a buffer zone law. But another recent case, *Reed v. Town of Gilbert*, seems to imply that the law allowed in *Hill* may not have been reviewed under the correct constitutional standard.¹⁵ This could lead courts to revisit the constitutionality of floating buffer zones.

Despite this mixture of cases, *McCullen* is still a very powerful precedent. It reaffirmed that the peaceful activities of sidewalk counselors is protected speech. Shortly following the decision, several buffer zone laws were repealed. Unfortunately, *McCullen* only applies to Massachusetts law, and therefore similar laws across the United States were not automatically eliminated by the decision. This does not mean that such laws are constitutional.

QUESTION \ How do I challenge my local buffer zone?

A buffer zone law can be struck down two different ways: (1) the buffer zone law could be challenged in a lawsuit, or (2) a representative body could repeal the law. If there is a buffer zone law in your community, you must follow the law until it is repealed or struck down by a court. To learn more about how you can help challenge a buffer zone law in your area, contact ADF at 1-800-835-5233.

QUESTION

What do I do if there is a buffer zone outside of the local abortion facility?

There are only a few buffer zone laws remaining in the United States, and an unknown number of injunctions. If you live in a jurisdiction with a buffer zone law or an injunction, it is important that you follow the law. If a fixed buffer zone exists, for example, do not enter the prohibited area outside of the abortion facility. Consult with an attorney to determine the exact limitations in your jurisdiction, as they will differ widely. Call ADF at 1-800-835-5233 for questions about the limitations in your jurisdiction. Additionally, you can usually find all of your municipality's laws online on your local government's website, or at your local government building.

QUESTION

How do I know if I am trespassing?

Generally, you are trespassing if you are on property that is clearly marked as private (property with a “no trespassing” sign, for example), or if you remain on the property after being ordered to leave. Most jurisdictions prohibit trespass. In most jurisdictions, no particular method of telling someone to stay off private property is required. Notice can be oral or written. Some jurisdictions even allow physical markings, such as “no trespassing” signs or simple paint markings, to serve as sufficient notice.

This is particularly important to keep in mind while sidewalk counseling. Sometimes it is difficult to determine where the public property ends and the private property begins outside of an abortion facility. To be safe, remain off of property that clearly belongs to the abortion facility. For example, do not enter the building or walk past a fence, if there is one. Additionally, if you are asked to move after accidentally stepping on private property, you must move off of the private property. If there is confusion about the status of an area of property, ask the police. If you think the police are incorrect, obey their order, but politely obtain the officer's name and the reason for his command, and then contact an attorney to see if his order is constitutional.

QUESTION

Can law enforcement order us to leave a public premise?

Yes, in some circumstances law enforcement officers can order a crowd of people (at least two or more) to leave and remain off a premise for a set period of time under “dispersal laws.”

While laws like these are questionable since they are often applied to suppress certain viewpoints, it is still important to know about these laws before sidewalk counseling to determine whether a dispersal law could be applied to you. If the police command you to disperse, politely obey but obtain the officer's information and try to clarify his command, and then contact an attorney. It is best to comply and resolve the matter through proper channels.

QUESTION \ Are there laws that limit how loud we can be?

Yes, many jurisdictions place restrictions on noise levels, even on public property. Generally, these laws prohibit sounds above a certain level early in the morning and late at night, in order to preserve the peace. Sometimes, these laws also prohibit the use of sound amplification devices in certain places. Therefore, it is important to be aware of noise ordinances wherever you are sidewalk counseling. Likewise, before you use sound amplification equipment, you should check your local laws to determine if this is allowed. Many older noise ordinances use the “unreasonably loud” standard instead of a certain decibel standard.

QUESTION \ Are there restrictions on signs?

Some jurisdictions put restrictions on the placement, size, lighting of signs, or mounting them on sticks. For example, a jurisdiction may ban all freestanding¹⁶ signs that do not have a permit. This affects you as a sidewalk counselor if you want to place a pro-life sign or perhaps a fetal model display outside of an abortion facility, on the ground without you holding it at all times. If you would like to place a freestanding sign as part of your sidewalk counseling efforts, first check your local laws to see if there are any restrictions. Theoretically, a sign could also be restricted if it blocks passage on the sidewalk. But generally if you are holding the sign at all times, your sign is a protected form of demonstration.

QUESTION \ Can I talk to people on driveways or in parking lots?

Yes, but you can't delay or obstruct them. Most jurisdictions prohibit obstructing traffic due to safety issues. This means that pedestrians cannot stand in the way of traffic. This becomes relevant in sidewalk counseling outside of the driveways and streets of abortion facilities.

It is important not to block driveways. Driveways generally include private property, so it could be trespassing to be on certain parts of them, even on the portion of the driveway that overlaps with the sidewalk. If a car is entering or exiting while you are in the driveway that could be considered blocking access under the FACE Act or similar local laws. If you are trying to speak to someone entering or exiting the driveway, stand to the side of the driveway, preferably on a piece of sidewalk the driveway does not cross over. Visibly invite the vehicle to stop, but do not place your body or your extended arm in the path of the oncoming vehicle. Try to keep these conversations short so people coming in and out of the facility are not unintentionally delayed. You could simply hand them a brochure as they pass, for example. Most importantly, make sure that you do not place yourself in the path of a vehicle that is entering or exiting the facility, but clearly approach the vehicle from the side.

If a car is traveling on the street and the driver stops to speak to a sidewalk counselor, that car may be blocking traffic. Encourage drivers to pull into a parking area off the property where you can speak longer.

QUESTION Can laws differ based on my location?

Yes, laws differ greatly by state or city; this is why it is so important to be aware of and understand the federal and local laws that may affect you as a sidewalk counselor. In fact, there are several frequently encountered laws which raise particular issues for sidewalk counselors outside of abortion facilities. In order to get a full picture of the laws affecting a particular location, contact ADF.

Here are some examples of local laws that may apply to pro-life advocacy:

Sign Regulation

Be aware of regulations on the location of signs. For example, some jurisdictions restrict the placement of signs in the ground. Generally, jurisdictions do not restrict handheld signs, though some prohibit mounting them on sticks.

Noise Restrictions

Some jurisdictions may have a restriction on the allowable maximum noise level without a permit. If you are using sound amplification equipment such as speakers, you may want to check the local noise ordinance.

Large Gatherings

Some jurisdictions require a permit for a certain number of people (usually 50 or more) to gather in one area, due to the likelihood of the gathering blocking the sidewalks or traffic.

Lights

If you are using bright lights or holding night vigils with lights along a public way or sidewalk, some jurisdictions require a light pollution permit.

QUESTION Do I need permission or permits to engage in sidewalk counseling?

Some bigger events require permission from local government, such as parades or larger protests, in the form of a permit. Before engaging in any of these activities, consult local law to determine if you need a permit.

Under the First Amendment, permits are generally unconstitutional when they are used to silence individual speech on a public sidewalk, and therefore, permits are not generally needed for one-on-one leafleting, sidewalk counseling, or small groups that pray or picket. Check your local ordinances to see if there is a law requiring permits and if it indicates the minimum size of a group for which a permit is needed.

Elizabeth Walsh

It was the near-end of a hot, late summer day and of a weeklong adventure in advocacy for the young participants of the “Face the Truth” tour, led by Elizabeth Walsh. She and her crew of about 20 representing a group called Defend Life had been working their way across parts of Maryland, the District of Columbia, and West Virginia for five days, standing along roadsides to display signs with pro-life messages, photos of children in the womb, and graphic pictures of aborted babies (some distance before the pictures, group members held up signs warning those passing of the images to come).

The young people had met a wide spectrum of responses – some sweet and encouraging, some almost irrationally angry. At their last stop, just inside the city limits of Bel Air, Maryland, they were suddenly approached by three state troopers who told Elizabeth that some motorists had called to say they were offended by her team’s message. If her team didn’t have a permit, they would have to leave.

Given that her team was on public land and not interfering with the passing traffic, Elizabeth asked what kind of permit she needed and from whom. The officers refused to answer. “You need to pack up and go, or you’re going to jail; that’s it,” one told her.

Although Elizabeth had encountered quite a few police officers in the course of the week, none had threatened the team with arrest or required them to disperse elsewhere. Nevertheless, to avoid arrest, she and the team moved down the road a few miles to another broad roadside area, inside the city limits.

Soon, a swarm of troopers, deputies, and local police officers descended on Elizabeth’s team, arresting them and handcuffing them in full view of the passing traffic. Team members repeatedly asked what they were being charged with; the troopers refused to say. They took Elizabeth and the others to the nearest police station where – in the parking lot – male officers watched as a female officer performed sexually invasive searches of the young women.

Just the young women.



Inside, the young women were placed in one holding cell, the young men in another. None of them were told why they were being arrested. They weren’t read their rights. And no one informed them of how long they’d be held in custody. None were allowed to call their families to tell them where they were or what was going on. When an ADF allied attorney they’d chanced to meet the night before heard what had happened, he came to the station and asked to meet with the team, if only to get phone numbers to call their families. He was refused. Team members were never even told he’d come by.

Sometime after midnight, Elizabeth was handcuffed again and taken alone in an unmarked car to a nearby detention center. Inside, officers placed shackles around her ankles; then a female officer performed a second sexually invasive search – again, within easy sight of male officers.

The officers finally brought her before the local police commissioner, who charged her with: loitering (for standing briefly on a public road); disorderly conduct (for standing quietly while she was handcuffed); and failure to obey a lawful order (although the First Amendment protects the right of citizens to stand and hold signs on public property), all of which were dropped just 11 days later. Elizabeth would have her choice: a \$2,000 fine or up to 10 months in jail. The commissioner pushed some papers toward her and told her if she wanted out, she needed to sign them.

Exhausted, Elizabeth finally did. The police released her out on the street at about 3 a.m.

She enlisted ADF attorneys to represent her and, four years later, won a decisive victory. The county and the state troopers formally acknowledged that the officers’ behavior was unconstitutional and agreed to train them about First Amendment and free-speech issues.

QUESTION \ Does it matter where I stand while sidewalk counseling?

Yes. While sidewalk counseling, it is imperative that you remain on public property or on property where you have been given explicit permission (preferably in writing) to stand (such as a pro-life counseling center next door to an abortion facility that lets you stand on its property). But you must first be able to determine where the public property begins and ends.

Abortion facilities will often put up a perimeter around their property with a fence or with signs, tapes, or chains. This is an easy way to determine the perimeter of the facility's property. If you suspect the abortion facility's perimeter or signs falsely describe the property line, consult your local government office's property maps or an attorney to see where the line may be.

Generally, the Zoning Administrator or Land Use Office will have a plat (map) of the area showing property lines and ownership. They are easy to find and inexpensive to copy. Having the plat on-site when law enforcement is called will be helpful.

It is generally safe to stand on the city sidewalks, which are public property. If you do stand on the sidewalk, make sure that you are never blocking others from walking or driving past you.

If you cannot easily determine public property, you can research land records in your community which will explicitly show what property is public and what is private. In order to do this, you will need to determine the government office that records ownership of land. Oftentimes, this will be a county or large city office, such as a county recorder's office.

QUESTION \ What should I do if the police are called to the abortion facility?

Because abortion is a controversial topic, sidewalk counseling can often result in encounters with law enforcement. Abortion facility employees often call the police even when no criminal activity has occurred. If you are a regular sidewalk counselor, it is likely that you will deal with law enforcement from time to time. Below are some tips to keep in mind in those situations.

First and foremost, always be courteous when dealing with a law enforcement officer. Be firm about your rights, but comply with his orders and ask an attorney about it afterwards if necessary.

If an officer questions your presence outside of the abortion facility, politely inform them that the First Amendment protects your right to speak freely on the public ways and sidewalks. Assure the officer that you will remain off of private property, will not obstruct passage, and will follow all of the laws that are applicable to you.

As a precaution, it is a good idea to have a printed version of the laws applicable to your jurisdiction in your sidewalk counseling supplies. This will help you remember which laws to cite, and you can hand them to the police officer if questioned. *See Appendix A for a sample letter to law enforcement.* If you would like assistance in determining which laws are applicable to you, it is best to consult a local attorney or contact ADF at 1-800-835-5233.

If you are ordered to leave the premises, even if you believe what you are doing is completely lawful, you should obey an officer's command. If you believe that your rights have been violated, you can contact ADF or a local attorney. Try to politely obtain the officer's name and a clear description of what he is requiring you to do, and what law he believes prohibits your activity. Your attorney will need this information. In the past, attorneys have successfully advised law enforcement agencies of sidewalk counselors' rights, so that sidewalk counseling can continue.

QUESTION \ What if I am arrested?

If you are ever arrested outside of an abortion facility for engaging in sidewalk counseling, keep these tips in mind.

Invoke your rights. The most important thing to do when you are arrested is to invoke your rights under *Miranda v. Arizona*, which protects your right to remain silent and to have an attorney present. In order to do this, clearly state that you are exercising your right to remain silent and that you wish to have an attorney present.¹⁷

Stay calm and silent. Once you have made it clear that you are invoking your right to remain silent, stay that way! Do not try to make excuses or explain your way out of things. While this may seem like a good idea at the time, it is actually best not to say anything at all. If they come back later asking you questions, clearly inform them that you will continue to remain silent.

Only speak to police with an attorney present. Tell the police up front that you do not want to speak to them until you have an attorney present. It is likely that they will come back and ask to speak with you. Do not give in! Clearly remind them that you will not speak to them without an attorney present.

Resist the urge to defend yourself. Do not give the police officers anything to use against you. Resist the urge to tell your side of the story until you have an attorney present. Do not be concerned that this makes you appear untrustworthy: these are your protected rights under the Constitution, and your side of the story will be best described later through the legal process with your attorney's involvement.

Immediately contact an attorney. ADF has a network of trained attorneys and can oftentimes refer you to a local attorney who will be able to assist and evaluate your situation. You can contact us at our website (www.ADFlegal.org) or 480-444-0020 to get the legal assistance you will need in such a situation.

Conclusion

You are engaging in vital work to serve women experiencing unplanned pregnancies, their unborn children, and their families.

Knowing how you are protected by the law is an important element of that work. That is why we at ADF created this handbook: to help guide you in your legal rights, so that you can be an even more effective advocate.

We hope this guide better equips you to engage in your important efforts on the sidewalk outside of abortion facilities, so that you are able to reach more hurting souls with the message of life, and save many women, men, and children from the harms of abortion.

Glossary of Terms

Buffer Zone: A buffer zone is a fixed zone outside of certain places (abortion facilities, voting facilities, etc.) where certain activities are generally prohibited. Several examples of prohibited activities include picketing, demonstrating, leafleting, and holding signs.

Defamation: A false written or oral statement that damages another's reputation (*Black's Law Dictionary* 10th ed. 2014)

Freestanding: Standing on its own foundation

Incitement: The act or an instance of provoking, urging on, or stirring up (*Black's Law Dictionary* 10th ed. 2014)

Injunction: A court order commanding or preventing an action (*Black's Law Dictionary* 10th ed. 2014)

Jurisdiction: Where a person is located and the governmental bodies that apply to that location; your city, county, state, and country

Miranda Rule (commonly referred to as Miranda Rights): The *Miranda* Rule is the policy that a criminal suspect in police custody must be informed of certain constitutional rights before being interrogated. The suspect must be advised of the right to remain silent, the right to have an attorney present during questioning, and the right to have an attorney appointed if the suspect cannot afford one. If the suspect is not advised of these rights or does not validly waive them, any evidence obtained during the interrogation cannot be used against the suspect at trial. *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966). (*Black's Law Dictionary* 10th ed. 2014)

Municipality: A city, town, or other local political entity with the powers of self-government (*Black's Law Dictionary* 10th ed. 2014)

Obscenity: The quality, state, or condition of being morally abhorrent or socially taboo, especially as a result of referring to or depicting sexual or excretory functions (*Black's Law Dictionary* 10th ed. 2014)

Perjury: The act or an instance of a person's deliberately making material false or misleading statements while under oath (*Black's Law Dictionary* 10th ed. 2014)

Trespass[ing]: An unlawful act committed against the person or property of another; especially, wrongful entry on another's real property (*Black's Law Dictionary* 10th ed. 2014)

Appendix A

SAMPLE LETTER FOR LAW ENFORCEMENT

To Whom It May Concern:

I am engaging in lawful and peaceful expressive activities on the public ways and/or sidewalks outside of this facility. The First Amendment to the United States Constitution protects my right to engage in these activities on public property.

Traditional public fora such as sidewalks and public ways “have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.” *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 152 (1969) (internal citations omitted).

The Supreme Court has stated that “[l]eafleting and commenting on matters of public concern are classic forms of speech that lie at the heart of the First Amendment, and speech in public areas is most protected on sidewalks, a prototypical example of a traditional public forum.” *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357, 377 (1997). Furthermore, “handing out leaflets in the advocacy of a politically controversial viewpoint . . . is the essence of First Amendment expression; no form of speech is entitled to greater constitutional protection.” *McCullen v. Coakley*, 134 S. Ct. 2518, 2536 (2014) (internal citations omitted).

The First Amendment protects my right to remain on public property in order to engage in peaceful and non-disruptive expressive activities.

The above sample is demonstrative only, and is meant to help guide you in creating a document reflecting applicable federal and local laws. In crafting a letter for law enforcement at your specific location of sidewalk counseling, it is important to make reference to local laws in your area that may apply.

Appendix B

A CHECKLIST FOR PEACEFUL AND LAWFUL SIDEWALK COUNSELING AND VIGILS

- Stay safe, always.
- Try to have at least two participants.
- Never be alone after dark.
- Conduct activities in a safe and public or otherwise lawful location.
- Do not threaten anyone.
- If you feel threatened - leave and call the police.
- Do not block anyone's path.
- Do not touch anyone.
- If your path is blocked - call the police.
- If you are touched - call the police.
- If the police arrive, be polite and cooperative.
- If you are ordered to leave by competent governmental authority, do so and contact ADF.
- Do not trespass.
- Do not curse.
- Obey all laws.

Notes

¹ *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 152 (1969).

² *McCullen v. Coakley*, 134 S. Ct. 2518, 2537 (2014).

³ See glossary for definition.

⁴ See glossary for definition.

⁵ *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

⁶ *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942)

⁷ *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992)

⁸ *Black's Law Dictionary* (9th ed. 2009).

⁹ 18 U.S.C. § 248 (1994).

¹⁰ See glossary for definition

¹¹ *McCullen v. Coakley*, 134 S. Ct. 2518, 2537 (2014).

¹² See glossary for definition.

¹³ *Id.* at 2525, 2541.

¹⁴ *Hill v. Colorado*, 120 S. Ct. 2480, 2493 (2000).

¹⁵ *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015).

¹⁶ See glossary for definition.

¹⁷ *Miranda v. Arizona*, 384 U.S. 436, 479 (1966).



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