

Introduced by Senator Speier

February 22, 2001

An act to amend Sections 243 and 273.5 of the Penal Code, relating to the crime of battery.

LEGISLATIVE COUNSEL'S DIGEST

SB 564, as introduced, Speier. Battery: domestic partners.

Under existing law, any person who commits a battery against a person with a specified domestic relationship to the batterer is punishable by a fine not exceeding \$2,000, or by imprisonment in a county jail for a period of time not more than one year, or by both that fine and imprisonment. If probation is granted, it is a condition thereof that the defendant complete a batterer's treatment program, as specified.

This bill additionally would provide that when this battery is committed against a person who is pregnant and the person committing the battery knows or reasonably should know the person is pregnant, the battery is punishable by imprisonment in a county jail for not more than one year or in the state prison for 16 months, or 2 or 3 years, a fine not exceeding \$4,000 or by both that fine and imprisonment. The bill would specify that the person committing this act need not have caused the pregnancy. Because this bill would expand the scope of an existing crime, it would impose a state-mandated local program.

Existing law provides that the infliction of corporal injury resulting in a traumatic condition by any person upon his or her spouse, cohabitant, or the mother or father of his or her child is an offense punishable by imprisonment in the state prison for 2, 3, or 4 years, or in a county jail for not more than one year, or by a fine of up to \$6,000 or by both that fine and imprisonment.

This bill would specify that when this act is committed against a person who is pregnant and the person committing the offense knows or reasonably should know the person was pregnant, the offense is punishable by imprisonment in the state prison for 2, 4, or 5 years, or in a county jail for not more than one year, or by a fine not exceeding \$8,000, or by both that fine and imprisonment. The bill would specify that the person committing this act need not have caused the pregnancy. The bill would also provide that any person committing a violation of this provision within 7 years of a previous conviction under specified provisions of law is subject to increased punishment.

Because this bill would expand the scope of an existing crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 243 of the Penal Code is amended to
2 read:

3 243. (a) A battery is punishable by a fine not exceeding two
4 thousand dollars (\$2,000), or by imprisonment in a county jail not
5 exceeding six months, or by both that fine and imprisonment.

6 (b) When a battery is committed against the person of a peace
7 officer, custodial officer, firefighter, emergency medical
8 technician, lifeguard, process server, traffic officer, or animal
9 control officer engaged in the performance of his or her duties,
10 whether on or off duty, including when the peace officer is in a
11 police uniform and is concurrently performing the duties required
12 of him or her as a peace officer while also employed in a private
13 capacity as a part-time or casual private security guard or
14 patrolman, or a nonsworn employee of a probation department
15 engaged in the performance of his or her duties, whether on or off
16 duty, or a physician or nurse engaged in rendering emergency
17 medical care outside a hospital, clinic, or other health care facility,



1 and the person committing the offense knows or reasonably should
2 know that the victim is a peace officer, custodial officer,
3 firefighter, emergency medical technician, lifeguard, process
4 server, traffic officer, or animal control officer engaged in the
5 performance of his or her duties, nonsworn employee of a
6 probation department, or a physician or nurse engaged in
7 rendering emergency medical care, the battery is punishable by a
8 fine not exceeding two thousand dollars (\$2,000), or by
9 imprisonment in a county jail not exceeding one year, or by both
10 that fine and imprisonment.

11 (c) (1) When a battery is committed against a custodial officer,
12 firefighter, emergency medical technician, lifeguard, process
13 server, traffic officer, or animal control officer engaged in the
14 performance of his or her duties, whether on or off duty, or a
15 nonsworn employee of a probation department engaged in the
16 performance of his or her duties, whether on or off duty, or a
17 physician or nurse engaged in rendering emergency medical care
18 outside a hospital, clinic, or other health care facility, and the
19 person committing the offense knows or reasonably should know
20 that the victim is a nonsworn employee of a probation department,
21 custodial officer, firefighter, emergency medical technician,
22 lifeguard, process server, traffic officer, or animal control officer
23 engaged in the performance of his or her duties, or a physician or
24 nurse engaged in rendering emergency medical care, and an injury
25 is inflicted on that victim, the battery is punishable by a fine of not
26 more than two thousand dollars (\$2,000), by imprisonment in a
27 county jail not exceeding one year, or by both that fine and
28 imprisonment, or by imprisonment in the state prison for 16
29 months, or two or three years.

30 (2) When the battery specified in paragraph (1) is committed
31 against a peace officer engaged in the performance of his or her
32 duties, whether on or off duty, including when the peace officer is
33 in a police uniform and is concurrently performing the duties
34 required of him or her as a peace officer while also employed in
35 a private capacity as a part-time or casual private security guard or
36 patrolman and the person committing the offense knows or
37 reasonably should know that the victim is a peace officer engaged
38 in the performance of his or her duties, the battery is punishable
39 by a fine of not more than ten thousand dollars (\$10,000), or by
40 imprisonment in a county jail not exceeding one year or in the state



1 prison for 16 months, or two or three years, or by both that fine and
2 imprisonment.

3 (d) When a battery is committed against any person and serious
4 bodily injury is inflicted on the person, the battery is punishable
5 by imprisonment in a county jail not exceeding one year or
6 imprisonment in the state prison for two, three, or four years.

7 (e) (1) When a battery is committed against a spouse, a person
8 with whom the defendant is cohabiting, a person who is the parent
9 of the defendant's child, former spouse, fiancé, or fiancée, or a
10 person with whom the defendant currently has, or has previously
11 had, a dating or engagement relationship, the battery is punishable
12 by a fine not exceeding two thousand dollars (\$2,000), or by
13 imprisonment in a county jail for a period of not more than one
14 year, or by both that fine and imprisonment. If probation is
15 granted, or the execution or imposition of the sentence is
16 suspended, it shall be a condition thereof that the defendant
17 participate in, for no less than one year, and successfully complete,
18 a batterer's treatment program, as defined in Section 1203.097, or
19 if none is available, another appropriate counseling program
20 designated by the court. However, this provision shall not be
21 construed as requiring a city, a county, or a city and county to
22 provide a new program or higher level of service as contemplated
23 by Section 6 of Article XIII B of the California Constitution.

24 (2) *When a battery specified in paragraph (1) is committed*
25 *against a person who is pregnant and the person committing the*
26 *battery knows or reasonably should know the person is pregnant,*
27 *the battery is punishable by a fine not exceeding four thousand*
28 *dollars (\$4,000) or by imprisonment in a county jail for not more*
29 *than one year or in the state prison for 16 months, or two or three*
30 *years, or by both that fine and imprisonment. The person*
31 *committing the offense need not have caused the pregnancy for this*
32 *subdivision to apply.*

33 (3) Upon conviction of a violation of this subdivision, if
34 probation is granted, the conditions of probation may include, in
35 lieu of a fine, one or both of the following requirements:

36 (A) That the defendant make payments to a battered women's
37 shelter, up to a maximum of five thousand dollars (\$5,000).

38 (B) That the defendant reimburse the victim for reasonable
39 costs of counseling and other reasonable expenses that the court
40 finds are the direct result of the defendant's offense.



1 For any order to pay a fine, make payments to a battered
2 women’s shelter, or pay restitution as a condition of probation
3 under this subdivision, the court shall make a determination of the
4 defendant’s ability to pay. In no event shall any order to make
5 payments to a battered women’s shelter be made if it would impair
6 the ability of the defendant to pay direct restitution to the victim
7 or court-ordered child support. Where the injury to a married
8 person is caused in whole or in part by the criminal acts of his or
9 her spouse in violation of this section, the community property
10 may not be used to discharge the liability of the offending spouse
11 for restitution to the injured spouse, required by Section 1203.04,
12 as operative on or before August 2, 1995, or Section 1202.4, or to
13 a shelter for costs with regard to the injured spouse and
14 dependents, required by this section, until all separate property of
15 the offending spouse is exhausted.

16 ~~(3)~~

17 (4) Upon conviction of a violation of this subdivision, if
18 probation is granted or the execution or imposition of the sentence
19 is suspended and the person has been previously convicted of a
20 violation of this subdivision and sentenced under paragraph (1),
21 the person shall be imprisoned for not less than 48 hours in addition
22 to the conditions in paragraph (1). However, the court, upon a
23 showing of good cause, may elect not to impose the mandatory
24 minimum imprisonment as required by this subdivision and may,
25 under these circumstances, grant probation or order the suspension
26 of the execution or imposition of the sentence.

27 ~~(4)~~

28 (5) The Legislature finds and declares that these specified
29 crimes merit special consideration when imposing a sentence so as
30 to display society’s condemnation for these crimes of violence
31 upon victims with whom a close relationship has been formed.

32 (f) As used in this section:

33 (1) “Peace officer” means any person defined in Chapter 4.5
34 (commencing with Section 830) of Title 3 of Part 2.

35 (2) “Emergency medical technician” means a person who is
36 either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses a
37 valid certificate or license in accordance with the standards of
38 Division 2.5 (commencing with Section 1797) of the Health and
39 Safety Code.



1 (3) “Nurse” means a person who meets the standards of
2 Division 2.5 (commencing with Section 1797) of the Health and
3 Safety Code.

4 (4) “Serious bodily injury” means a serious impairment of
5 physical condition, including, but not limited to, the following:
6 loss of consciousness; concussion; bone fracture; protracted loss
7 or impairment of function of any bodily member or organ; a
8 wound requiring extensive suturing; and serious disfigurement.

9 (5) “Injury” means any physical injury which requires
10 professional medical treatment.

11 (6) “Custodial officer” means any person who has the
12 responsibilities and duties described in Section 831 and who is
13 employed by a law enforcement agency of any city or county or
14 who performs those duties as a volunteer.

15 (7) “Lifeguard” means a person defined in paragraph (5) of
16 subdivision (c) of Section 241.

17 (8) “Traffic officer” means any person employed by a city,
18 county, or city and county to monitor and enforce state laws and
19 local ordinances relating to parking and the operation of vehicles.

20 (9) “Animal control officer” means any person employed by
21 a city, county, or city and county for purposes of enforcing animal
22 control laws or regulations.

23 (10) “Dating relationship” means frequent, intimate
24 associations primarily characterized by the expectation of
25 affectional or sexual involvement independent of financial
26 considerations.

27 (g) It is the intent of the Legislature by amendments to this
28 section at the 1981–82 and 1983–84 Regular Sessions to abrogate
29 the holdings in cases such as *People v. Corey*, 21 Cal. 3d 738, and
30 *Cervantez v. J.C. Penney Co.*, 24 Cal. 3d 579, and to reinstate prior
31 judicial interpretations of this section as they relate to criminal
32 sanctions for battery on peace officers who are employed, on a
33 part-time or casual basis, while wearing a police uniform as private
34 security guards or patrolmen and to allow the exercise of peace
35 officer powers concurrently with that employment.

36 SEC. 2. Section 273.5 of the Penal Code is amended to read:

37 273.5. (a) Any person who willfully inflicts upon a person
38 who is his or her spouse, former spouse, cohabitant, former
39 cohabitant, or the mother or father of his or her child, corporal
40 injury resulting in a traumatic condition, is guilty of a felony, and



1 upon conviction thereof shall be punished by a fine of up to six
2 thousand dollars (\$6,000), imprisonment in the state prison for
3 two, three, or four years, or in a county jail for not more than one
4 year, or by a fine of up to six thousand dollars (\$6,000) or by both
5 that fine and imprisonment.

6 (b) *When the act specified in subdivision (a) is committed*
7 *against a person who is pregnant and the person committing the*
8 *offense knows or reasonably should know the person was*
9 *pregnant, the offense is punishable by a fine not exceeding eight*
10 *thousand dollars (\$8,000), by imprisonment in the state prison for*
11 *two, four, or five years, or in a county jail for not more than one*
12 *year, or by both that fine and imprisonment.*

13 (1) Holding oneself out to be the husband or wife of the person
14 with whom one is cohabiting is not necessary to constitute
15 cohabitation as the term is used in this section.

16 ~~(e)~~

17 (2) As used in this section, “traumatic condition” means a
18 condition of the body, such as a wound or external or internal
19 injury, whether of a minor or serious nature, caused by a physical
20 force.

21 ~~(d)~~

22 (3) For the purpose of this section, a person shall be considered
23 the father or mother of another person’s child if the alleged male
24 parent is presumed the natural father under Sections 7611 and 7612
25 of the Family Code.

26 ~~(e)~~

27 (4) *For purposes of this subdivision, the person committing the*
28 *offense need not have caused the pregnancy.*

29 (5) *This subdivision shall not apply to any person who commits*
30 *the act if the act complied with the Therapeutic Abortion Act,*
31 *Article 2 (commencing with Section 123400) of Chapter 2 of Part*
32 *2 of Division 106 of the Health and Safety Code.*

33 (c) Any person convicted of violating this section for acts
34 occurring within seven years of a previous conviction under
35 subdivision (a), ~~or subdivision (b), or (d), or paragraph (1) or (2)~~
36 ~~of subdivision (e)~~ of Section 243, or Section 243.4, 244, 244.5, or
37 245, shall be punished by imprisonment in a county jail for not
38 more than one year, or by imprisonment in the state prison for two,
39 four, or five years, or by both imprisonment and a fine of up to ten
40 thousand dollars (\$10,000).



1 ~~(f)~~
 2 (d) If probation is granted to any person convicted under
 3 subdivision (a) *or* (b), the court shall impose probation consistent
 4 with the provisions of Section 1203.097.

5 ~~(g)~~
 6 (e) *This section shall not preclude an enhancement under*
 7 *Section 12022.9.*

8 (f) If probation is granted, or the execution or imposition of a
 9 sentence is suspended, for any defendant convicted under
 10 subdivision (a) *or* (b) who has been convicted of any prior offense
 11 specified in subdivision ~~(e)~~ (c), the court shall impose one of the
 12 following conditions of probation:

13 (1) If the defendant has suffered one prior conviction within the
 14 previous seven years for a violation of any offense specified in
 15 subdivision ~~(e)~~ (c), it shall be a condition thereof, in addition to the
 16 provisions contained in Section 1203.097, that he or she be
 17 imprisoned in a county jail for not less than 15 days.

18 (2) If the defendant has suffered two or more prior convictions
 19 within the previous seven years for a violation of any offense
 20 specified in subdivision ~~(e)~~ (c), it shall be a condition of probation,
 21 in addition to the provisions contained in Section 1203.097, that
 22 he or she be imprisoned in a county jail for not less than 60 days.

23 (3) The court, upon a showing of good cause, may find that the
 24 mandatory imprisonment required by this subdivision shall not be
 25 imposed and shall state on the record its reasons for finding good
 26 cause.

27 (h) If probation is granted upon conviction of a violation of
 28 subdivision (a) *or* (b), the conditions of probation may include,
 29 consistent with the terms of probation imposed pursuant to Section
 30 1203.097, in lieu of a fine, one or both of the following
 31 requirements:

32 (1) That the defendant make payments to a battered women’s
 33 shelter, up to a maximum of five thousand dollars (\$5,000),
 34 pursuant to Section 1203.097.

35 (2) That the defendant reimburse the victim for reasonable
 36 costs of counseling and other reasonable expenses that the court
 37 finds are the direct result of the defendant’s offense.

38 For any order to pay a fine, make payments to a battered
 39 women’s shelter, or pay restitution as a condition of probation
 40 under this subdivision, the court shall make a determination of the



1 defendant's ability to pay. In no event shall any order to make
2 payments to a battered women's shelter be made if it would impair
3 the ability of the defendant to pay direct restitution to the victim
4 or court-ordered child support. Where the injury to a married
5 person is caused in whole or in part by the criminal acts of his or
6 her spouse in violation of this section, the community property
7 may not be used to discharge the liability of the offending spouse
8 for restitution to the injured spouse, required by Section 1203.04,
9 as operative on or before August 2, 1995, or Section 1202.4, or to
10 a shelter for costs with regard to the injured spouse and
11 dependents, required by this section, until all separate property of
12 the offending spouse is exhausted.

13 SEC. 3. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.

