

AMENDED IN ASSEMBLY MARCH 26, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 732**

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**Introduced by Assembly Member DeVore**

February 22, 2007

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An act to amend Sections 243 and 490 of, and to repeal Section 490.1 of, the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 732, as amended, DeVore. Crimes: punishment.

Existing law establishes the offense of battery, and provides it is punishable by a fine not exceeding \$2,000, or by imprisonment in a county jail not exceeding 6 months, or by both that fine and imprisonment, as specified.

This bill would provide that where the battery is a first offense, it may be charged as an infraction or a misdemeanor. *The bill would increase the maximum fine for the misdemeanor from \$2,000 to \$3,000, and would set the maximum fine for the infraction at \$1,000. The bill would increase the maximum fine from \$2,000 to \$3,000 for a misdemeanor battery against specified persons.*

Existing law establishes the offense of petty theft, and provides that it is punishable as a misdemeanor. However, existing law provides that petty theft, where the value of the money, labor, real or personal property taken is of a value which does not exceed \$50, may be charged as a misdemeanor or an infraction, at the discretion of the prosecutor, provided that the person charged with the offense has no other theft or theft-related conviction.

This bill would instead provide that where the petty theft is a first offense, and the offender has no prior theft or theft-related convictions,

it may be charged as an infraction or a misdemeanor. *The bill would increase the maximum fine for the misdemeanor from \$1,000 to \$2,000, and would set the maximum fine for the infraction at \$1,000.*

*This bill, by changing the penalties for specified crimes and infractions, 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: ~~no~~-yes.  
 State-mandated local program: ~~no~~-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) (1) A battery is punishable by a fine not exceeding  
 4 ~~two thousand dollars (\$2,000)~~ *three thousand dollars (\$3,000)*, or  
 5 by imprisonment in a county jail not exceeding six months, or by  
 6 both that fine and imprisonment, provided however, that a first  
 7 offense may be charged as a misdemeanor or an infraction, at the  
 8 discretion of the prosecutor.

9 (2) Any offense charged as an infraction under this section shall  
 10 be subject to the provisions of subdivision (d) of Section 17 and  
 11 Sections 19.6 and 19.7.

12 (3) A violation which is an infraction under this section is  
 13 punishable by a fine not exceeding ~~two hundred fifty dollars (\$250)~~  
 14 *one thousand dollars (\$1,000)*.

15 (b) When a battery is committed against the person of a peace  
 16 officer, custodial officer, firefighter, emergency medical technician,  
 17 lifeguard, process server, traffic officer, code enforcement officer,  
 18 or animal control officer engaged in the performance of his or her  
 19 duties, whether on or off duty, including when the peace officer  
 20 is in a police uniform and is concurrently performing the duties  
 21 required of him or her as a peace officer while also employed in  
 22 a private capacity as a part-time or casual private security guard  
 23 or patrolman, or a nonsworn employee of a probation department  
 24 engaged in the performance of his or her duties, whether on or off

1 duty, or a physician or nurse engaged in rendering emergency  
2 medical care outside a hospital, clinic, or other health care facility,  
3 and the person committing the offense knows or reasonably should  
4 know that the victim is a peace officer, custodial officer, firefighter,  
5 emergency medical technician, lifeguard, process server, traffic  
6 officer, code enforcement officer, or animal control officer engaged  
7 in the performance of his or her duties, nonsworn employee of a  
8 probation department, or a physician or nurse engaged in rendering  
9 emergency medical care, the battery is punishable by a fine not  
10 exceeding ~~two thousand dollars (\$2,000)~~ *three thousand dollars*  
11 *(\$3,000)*, or by imprisonment in a county jail not exceeding one  
12 year, or by both that fine and imprisonment.

13 (c) (1) When a battery is committed against a custodial officer,  
14 firefighter, emergency medical technician, lifeguard, process server,  
15 traffic officer, or animal control officer engaged in the performance  
16 of his or her duties, whether on or off duty, or a nonsworn  
17 employee of a probation department engaged in the performance  
18 of his or her duties, whether on or off duty, or a physician or nurse  
19 engaged in rendering emergency medical care outside a hospital,  
20 clinic, or other health care facility, and the person committing the  
21 offense knows or reasonably should know that the victim is a  
22 nonsworn employee of a probation department, custodial officer,  
23 firefighter, emergency medical technician, lifeguard, process server,  
24 traffic officer, or animal control officer engaged in the performance  
25 of his or her duties, or a physician or nurse engaged in rendering  
26 emergency medical care, and an injury is inflicted on that victim,  
27 the battery is punishable by a fine of not more than ~~two thousand~~  
28 ~~dollars (\$2,000)~~ *three thousand dollars (\$3,000)*, by imprisonment  
29 in a county jail not exceeding one year, or by both that fine and  
30 imprisonment, or by imprisonment in the state prison for 16  
31 months, or two or three years.

32 (2) When the battery specified in paragraph (1) is committed  
33 against a peace officer engaged in the performance of his or her  
34 duties, whether on or off duty, including when the peace officer  
35 is in a police uniform and is concurrently performing the duties  
36 required of him or her as a peace officer while also employed in  
37 a private capacity as a part-time or casual private security guard  
38 or patrolman and the person committing the offense knows or  
39 reasonably should know that the victim is a peace officer engaged  
40 in the performance of his or her duties, the battery is punishable

1 by a fine of not more than ten thousand dollars (\$10,000), or by  
2 imprisonment in a county jail not exceeding one year or in the  
3 state prison for 16 months, or two or three years, or by both that  
4 fine and imprisonment.

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

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

26 (2) Upon conviction of a violation of this subdivision, if  
27 probation is granted, the conditions of probation may include, in  
28 lieu of a fine, one or both of the following requirements:

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

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

34 For any order to pay a fine, make payments to a battered  
35 women's shelter, or pay restitution as a condition of probation  
36 under this subdivision, the court shall make a determination of the  
37 defendant's ability to pay. In no event shall any order to make  
38 payments to a battered women's shelter be made if it would impair  
39 the ability of the defendant to pay direct restitution to the victim  
40 or court-ordered child support. Where the injury to a married person

1 is caused in whole or in part by the criminal acts of his or her  
2 spouse in violation of this section, the community property may  
3 not be used to discharge the liability of the offending spouse for  
4 restitution to the injured spouse, required by Section 1203.04, as  
5 operative on or before August 2, 1995, or Section 1202.4, or to a  
6 shelter for costs with regard to the injured spouse and dependents,  
7 required by this section, until all separate property of the offending  
8 spouse is exhausted.

9 (3) Upon conviction of a violation of this subdivision, if  
10 probation is granted or the execution or imposition of the sentence  
11 is suspended and the person has been previously convicted of a  
12 violation of this subdivision and sentenced under paragraph (1),  
13 the person shall be imprisoned for not less than 48 hours in addition  
14 to the conditions in paragraph (1). However, the court, upon a  
15 showing of good cause, may elect not to impose the mandatory  
16 minimum imprisonment as required by this subdivision and may,  
17 under these circumstances, grant probation or order the suspension  
18 of the execution or imposition of the sentence.

19 (4) The Legislature finds and declares that these specified crimes  
20 merit special consideration when imposing a sentence so as to  
21 display society's condemnation for these crimes of violence upon  
22 victims with whom a close relationship has been formed.

23 (f) As used in this section:

24 (1) "Peace officer" means any person defined in Chapter 4.5  
25 (commencing with Section 830) of Title 3 of Part 2.

26 (2) "Emergency medical technician" means a person who is  
27 either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses  
28 a valid certificate or license in accordance with the standards of  
29 Division 2.5 (commencing with Section 1797) of the Health and  
30 Safety Code.

31 (3) "Nurse" means a person who meets the standards of Division  
32 2.5 (commencing with Section 1797) of the Health and Safety  
33 Code.

34 (4) "Serious bodily injury" means a serious impairment of  
35 physical condition, including, but not limited to, the following:  
36 loss of consciousness; concussion; bone fracture; protracted loss  
37 or impairment of function of any bodily member or organ; a wound  
38 requiring extensive suturing; and serious disfigurement.

39 (5) "Injury" means any physical injury which requires  
40 professional medical treatment.

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

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

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

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

13 (10) “Dating relationship” means frequent, intimate associations  
14 primarily characterized by the expectation of affectional or sexual  
15 involvement independent of financial considerations.

16 (11) (A) “Code enforcement officer” means any person who  
17 is not described in Chapter 4.5 (commencing with Section 830) of  
18 Title 3 of Part 2 and who is employed by any governmental  
19 subdivision, public or quasi-public corporation, public agency,  
20 public service corporation, any town, city, county, or municipal  
21 corporation, whether incorporated or chartered, who has  
22 enforcement authority for health, safety, and welfare requirements,  
23 and whose duties include enforcement of any statute, rules,  
24 regulations, or standards, and who is authorized to issue citations,  
25 or file formal complaints.

26 (B) “Code enforcement officer” also includes any person who  
27 is employed by the Department of Housing and Community  
28 Development who has enforcement authority for health, safety,  
29 and welfare requirements pursuant to the Employee Housing Act  
30 (Part 1 (commencing with Section 17000) of Division 13 of the  
31 Health and Safety Code); the State Housing Law (Part 1.5  
32 (commencing with Section 17910) of Division 13 of the Health  
33 and Safety Code); the Mobilehomes-Manufactured Housing Act  
34 (Part 2 (commencing with Section 18000) of Division 13 of the  
35 Health and Safety Code); the Mobilehome Parks Act (Part 2.1  
36 (commencing with Section 18200) of Division 13 of the Health  
37 and Safety Code); and the Special Occupancy Parks Act (Part 2.3  
38 (commencing with Section 18860) of Division 13 of the Health  
39 and Safety Code).

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

10 SEC. 2. Section 490 of the Penal Code is amended to read:

11 490. (a) Petty theft may be charged as a misdemeanor  
12 punishable by a fine not exceeding ~~one thousand dollars (\$1,000)~~  
13 *two thousand dollars (\$2,000)*, or by imprisonment in the county  
14 jail not exceeding six months, or both or as an infraction, at the  
15 discretion of the prosecutor, provided that the person charged with  
16 the offense has no other theft or theft-related conviction.

17 (b) Any offense charged as an infraction under this section shall  
18 be subject to the provisions of subdivision (d) of Section 17 and  
19 Sections 19.6 and 19.7.

20 (c) A violation which is an infraction under this section is  
21 punishable by a fine not exceeding ~~two hundred fifty dollars (\$250)~~  
22 *one thousand dollars (\$1,000)*.

23 SEC. 3. Section 490.1 of the Penal Code is repealed.

24 SEC. 4. *No reimbursement is required by this act pursuant to*  
25 *Section 6 of Article XIII B of the California Constitution because*  
26 *the only costs that may be incurred by a local agency or school*  
27 *district will be incurred because this act creates a new crime or*  
28 *infraction, eliminates a crime or infraction, or changes the penalty*  
29 *for a crime or infraction, within the meaning of Section 17556 of*  
30 *the Government Code, or changes the definition of a crime within*  
31 *the meaning of Section 6 of Article XIII B of the California*  
32 *Constitution.*