

AMENDED IN SENATE APRIL 7, 2011

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 390

Introduced by Senator La Malfa

February 15, 2011

An act to amend Sections 241 and 243 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 390, as amended, La Malfa. Crimes: assault and battery: search and rescue teams.

Existing law establishes the crime of assault against specified public safety officers, such as peace officers, firefighters, and emergency medical technicians, among others, while engaged in the performance of their duties, as specified. The offense is punishable by a fine not exceeding \$2,000, or by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

This bill would expand the scope of the offense to include search and rescue members, as defined, while engaged in the performance of their duties, as specified.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

Existing law establishes the crime of battery against specified public safety officers, such as peace officers, firefighters, and emergency medical technicians, among others, while engaged in the performance of their duties, as specified. The offense is punishable, *except when the victim sustains an injury*, by a fine not exceeding \$2,000, or by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment, ~~or if the victim sustains an injury, the offense~~

is punishable by a fine of not more than \$2,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by imprisonment in the state prison for 16 months, or 2 or 3 years.

This bill would expand the scope of the battery offense and the battery offense where described above where the victim sustains does not sustain an injury, to include a search and rescue member, as defined, while engaged in the performance of his or her duty, as specified.

By expanding the scope of an existing crime, this bill 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 241 of the Penal Code is amended to
2 read:

3 241. (a) An assault is punishable by a fine not exceeding one
4 thousand dollars (\$1,000), or by imprisonment in the county jail
5 not exceeding six months, or by both the fine and imprisonment.

6 (b) When an assault is committed against the person of a parking
7 control officer engaged in the performance of his or her duties,
8 and the person committing the offense knows or reasonably should
9 know that the victim is a parking control officer, the assault is
10 punishable by a fine not exceeding two thousand dollars (\$2,000),
11 or by imprisonment in the county jail not exceeding six months,
12 or by both the fine and imprisonment.

13 (c) When an assault is committed against the person of a peace
14 officer, firefighter, emergency medical technician, mobile intensive
15 care paramedic, lifeguard, process server, traffic officer, code
16 enforcement officer, animal control officer, or search and rescue
17 member engaged in the performance of his or her duties, or a
18 physician or nurse engaged in rendering emergency medical care
19 outside a hospital, clinic, or other health care facility, and the
20 person committing the offense knows or reasonably should know

1 that the victim is a peace officer, firefighter, emergency medical
2 technician, mobile intensive care paramedic, lifeguard, process
3 server, traffic officer, code enforcement officer, animal control
4 officer, or search and rescue member engaged in the performance
5 of his or her duties, or a physician or nurse engaged in rendering
6 emergency medical care, the assault is punishable by a fine not
7 exceeding two thousand dollars (\$2,000), or by imprisonment in
8 a county jail not exceeding one year, or by both the fine and
9 imprisonment.

10 (d) As used in this section, the following definitions apply:

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

13 (2) “Emergency medical technician” means a person possessing
14 a valid course completion certificate from a program approved by
15 the State Department of Health Care Services for the medical
16 training and education of ambulance personnel, and who meets
17 the standards of Division 2.5 (commencing with Section 1797) of
18 the Health and Safety Code.

19 (3) “Mobile intensive care paramedic” refers to those persons
20 who meet the standards set forth in Division 2.5 (commencing
21 with Section 1797) of the Health and Safety Code.

22 (4) “Nurse” means a person who meets the standards of Division
23 2.5 (commencing with Section 1797) of the Health and Safety
24 Code.

25 (5) “Lifeguard” means a person who is:

26 (A) Employed as a lifeguard by the state, a county, or a city,
27 and is designated by local ordinance as a public officer who has a
28 duty and responsibility to enforce local ordinances and
29 misdemeanors through the issuance of citations.

30 (B) Wearing distinctive clothing which includes written
31 identification of the person’s status as a lifeguard and which clearly
32 identifies the employing organization.

33 (6) “Process server” means any person who meets the standards
34 or is expressly exempt from the standards set forth in Section 22350
35 of the Business and Professions Code.

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

1 (8) “Animal control officer” means any person employed by a
2 county or city for purposes of enforcing animal control laws or
3 regulations.

4 (9) (A) “Code enforcement officer” means any person who is
5 not described in Chapter 4.5 (commencing with Section 830) of
6 Title 3 of Part 2 and who is employed by any governmental
7 subdivision, public or quasi-public corporation, public agency,
8 public service corporation, any town, city, county, or municipal
9 corporation, whether incorporated or chartered, that has
10 enforcement authority for health, safety, and welfare requirements,
11 and whose duties include enforcement of any statute, rules,
12 regulations, or standards, and who is authorized to issue citations,
13 or file formal complaints.

14 (B) “Code enforcement officer” also includes any person who
15 is employed by the Department of Housing and Community
16 Development who has enforcement authority for health, safety,
17 and welfare requirements pursuant to the Employee Housing Act
18 (Part 1 (commencing with Section 17000) of Division 13 of the
19 Health and Safety Code); the State Housing Law (Part 1.5
20 (commencing with Section 17910) of Division 13 of the Health
21 and Safety Code); the Manufactured Housing Act of 1980 (Part 2
22 (commencing with Section 18000) of Division 13 of the Health
23 and Safety Code); the Mobilehome Parks Act (Part 2.1
24 (commencing with Section 18200) of Division 13 of the Health
25 and Safety Code); and the Special Occupancy Parks Act (Part 2.3
26 (commencing with Section 18860) of Division 13 of the Health
27 and Safety Code).

28 (10) “Parking control officer” means any person employed by
29 a city, county, or city and county, to monitor and enforce state
30 laws and local ordinances relating to parking.

31 (11) “Search and rescue member” means any person who is part
32 of an organized search and rescue team managed by a governmental
33 ~~law enforcement~~ agency.

34 SEC. 2. Section 243 of the Penal Code is amended to read:

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

38 (b) When a battery is committed against the person of a peace
39 officer, custodial officer, firefighter, emergency medical technician,
40 lifeguard, process server, traffic officer, code enforcement officer,

1 animal control officer, or search and rescue member engaged in
2 the performance of his or her duties, whether on or off duty,
3 including when the peace officer is in a police uniform and is
4 concurrently performing the duties required of him or her as a
5 peace officer while also employed in a private capacity as a
6 part-time or casual private security guard or patrolman, or a
7 nonsworn employee of a probation department engaged in the
8 performance of his or her duties, whether on or off duty, or a
9 physician or nurse engaged in rendering emergency medical care
10 outside a hospital, clinic, or other health care facility, and the
11 person committing the offense knows or reasonably should know
12 that the victim is a peace officer, custodial officer, firefighter,
13 emergency medical technician, lifeguard, process server, traffic
14 officer, code enforcement officer, animal control officer, or search
15 and rescue member engaged in the performance of his or her duties,
16 nonsworn employee of a probation department, or a physician or
17 nurse engaged in rendering emergency medical care, the battery
18 is punishable by a fine not exceeding two thousand dollars
19 (\$2,000), or by imprisonment in a county jail not exceeding one
20 year, or by both that fine and imprisonment.

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

1 (2) When the battery specified in paragraph (1) is committed
2 against a peace officer engaged in the performance of his or her
3 duties, whether on or off duty, including when the peace officer
4 is in a police uniform and is concurrently performing the duties
5 required of him or her as a peace officer while also employed in
6 a private capacity as a part-time or casual private security guard
7 or patrolman and the person committing the offense knows or
8 reasonably should know that the victim is a peace officer engaged
9 in the performance of his or her duties, the battery is punishable
10 by a fine of not more than ten thousand dollars (\$10,000), or by
11 imprisonment in a county jail not exceeding one year or in the
12 state prison for 16 months, or two or three years, or by both that
13 fine and imprisonment.

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

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

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

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

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

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

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

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

33 (f) As used in this section:

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

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

1 (3) “Nurse” means a person who meets the standards of Division
2 2.5 (commencing with Section 1797) of the Health and Safety
3 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 wound
8 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 a
21 city, county, or city and county for purposes of enforcing animal
22 control laws or regulations.

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

26 (11) (A) “Code enforcement officer” means any person who
27 is not described in Chapter 4.5 (commencing with Section 830) of
28 Title 3 of Part 2 and who is employed by any governmental
29 subdivision, public or quasi-public corporation, public agency,
30 public service corporation, any town, city, county, or municipal
31 corporation, whether incorporated or chartered, who has
32 enforcement authority for health, safety, and welfare requirements,
33 and whose duties include enforcement of any statute, rules,
34 regulations, or standards, and who is authorized to issue citations,
35 or file formal complaints.

36 (B) “Code enforcement officer” also includes any person who
37 is employed by the Department of Housing and Community
38 Development who has enforcement authority for health, safety,
39 and welfare requirements pursuant to the Employee Housing Act
40 (Part 1 (commencing with Section 17000) of Division 13 of the

1 Health and Safety Code); the State Housing Law (Part 1.5
2 (commencing with Section 17910) of Division 13 of the Health
3 and Safety Code); the Manufactured Housing Act of 1980 (Part 2
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5 and Safety Code); the Mobilehome Parks Act (Part 2.1
6 (commencing with Section 18200) of Division 13 of the Health
7 and Safety Code); and the Special Occupancy Parks Act (Part 2.3
8 (commencing with Section 18860) of Division 13 of the Health
9 and Safety Code).

10 (12) “Search and rescue member” means any person who is part
11 of an organized search and rescue team managed by a governmental
12 ~~law enforcement~~ agency.

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

22 SEC. 3. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.

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