

Introduced by Senator Liu

February 16, 2011

An act to amend Section 243 of the Penal Code, relating to battery.

LEGISLATIVE COUNSEL'S DIGEST

SB 406, as introduced, Liu. Battery: security officers and custodial officers.

Existing law makes the crime of battery punishable by a fine not exceeding \$2,000, or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. When a battery is committed against specified persons, including, among other persons, a custodial officer, firefighter, or emergency medical technician, and the person committing the offense knows or reasonably should know that the victim is such a person, the battery is punishable by a fine not exceeding \$2,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. When a battery is committed, and the person committing the offense knows or reasonably should know that the victim is such a person, and an injury is inflicted on that victim, the battery 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 add security officers and custody assistants to those lists of persons against whom the commission of a battery will result in enhanced penalties. The bill would define a security officer and a custody assistant for purposes of these provisions, as specified. Because the bill would expand the scope of existing crimes, the 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 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 technician,
8 lifeguard, *security officer*, *custody assistant*, process server, traffic
9 officer, code enforcement officer, or animal control officer engaged
10 in the performance of his or her duties, whether on or off duty,
11 including when the peace officer is in a police uniform and is
12 concurrently performing the duties required of him or her as a
13 peace officer while also employed in a private capacity as a
14 part-time or casual private security guard or patrolman, 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 peace officer, custodial officer, firefighter,
21 emergency medical technician, lifeguard, *security officer*, *custody*
22 *assistant*, process server, traffic officer, code enforcement officer,
23 or animal control officer engaged in the performance of his or her
24 duties, nonsworn employee of a probation department, or a
25 physician or nurse engaged in rendering emergency medical care,
26 the battery is punishable by a fine not exceeding two thousand
27 dollars (\$2,000), or by imprisonment in a county jail not exceeding
28 one year, or by both that fine and imprisonment.

29 (c) (1) When a battery is committed against a custodial officer,
30 firefighter, emergency medical technician, lifeguard, *security*

officer, custody assistant, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty, or a nonsworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a nonsworn employee of a probation department, custodial officer, firefighter, emergency medical technician, lifeguard, *security officer, custody assistant*, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, and an injury is inflicted on that victim, the battery is punishable by a fine of not more than two thousand dollars (\$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 two or three years.

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

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

(e) (1) When a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable

1 by a fine not exceeding two thousand dollars (\$2,000), or by
2 imprisonment in a county jail for a period of not more than one
3 year, or by both that fine and imprisonment. If probation is granted,
4 or the execution or imposition of the sentence is suspended, it shall
5 be a condition thereof that the defendant participate in, for no less
6 than one year, and successfully complete, a batterer's treatment
7 program, as ~~defined~~ *described* in Section 1203.097, or if none is
8 available, another appropriate counseling program designated by
9 the court. However, this provision shall not be construed as
10 requiring a city, a county, or a city and county to provide a new
11 program or higher level of service as contemplated by Section 6
12 of Article XIII B of the California Constitution.

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

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

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

21 For any order to pay a fine, make payments to a battered
22 women's shelter, or pay restitution as a condition of probation
23 under this subdivision, the court shall make a determination of the
24 defendant's ability to pay. In no event shall any order to make
25 payments to a battered women's shelter be made if it would impair
26 the ability of the defendant to pay direct restitution to the victim
27 or court-ordered child support. ~~Where~~ *If* the injury to a married
28 person is caused in whole or in part by the criminal acts of his or
29 her spouse in violation of this section, the community property
30 ~~may~~ *shall* not be used to discharge the liability of the offending
31 spouse for restitution to the injured spouse, required by Section
32 1203.04, as operative on or before August 2, 1995, or Section
33 1202.4, or to a shelter for costs with regard to the injured spouse
34 and dependents, required by this section, until all separate property
35 of the offending spouse is exhausted.

36 (3) Upon conviction of a violation of this subdivision, if
37 probation is granted or the execution or imposition of the sentence
38 is suspended and the person has been previously convicted of a
39 violation of this subdivision and sentenced under paragraph (1),
40 the person shall be imprisoned for not less than 48 hours in addition

1 to the conditions in paragraph (1). However, the court, upon a
2 showing of good cause, may elect not to impose the mandatory
3 minimum imprisonment as required by this subdivision and may,
4 under these circumstances, grant probation or order the suspension
5 of the execution or imposition of the sentence.

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

10 (f) As used in this section:

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 who is
14 either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses
15 a valid certificate or license in accordance with the standards of
16 Division 2.5 (commencing with Section 1797) of the Health and
17 Safety Code.

18 (3) "Nurse" means a person who meets the standards of Division
19 2.5 (commencing with Section 1797) of the Health and Safety
20 Code.

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

26 (5) "Injury" means any physical injury which requires
27 professional medical treatment.

28 (6) "Custodial officer" means any person who has the
29 responsibilities and duties described in Section 831 and who is
30 employed by a law enforcement agency of any city or county or
31 who performs those duties as a volunteer.

32 (7) "Lifeguard" means a person defined in paragraph (5) of
33 subdivision ~~(e)~~ (d) of Section 241.

34 (8) "Traffic officer" means any person employed by a city,
35 county, or city and county to monitor and enforce state laws and
36 local ordinances relating to parking and the operation of vehicles.

37 (9) "Animal control officer" means any person employed by a
38 city, county, or city and county for purposes of enforcing animal
39 control laws or regulations.

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

4 (11) (A) “Code enforcement officer” means any person who
5 is 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, who 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 ~~Mobilehomes-Manufactured~~ *Manufactured*
22 *Housing Act of 1980* (Part 2 (commencing with Section 18000)
23 of Division 13 of the Health and Safety Code); the Mobilehome
24 Parks Act (Part 2.1 (commencing with Section 18200) of Division
25 13 of the Health and Safety Code); and the Special Occupancy
26 Parks Act (Part 2.3 (commencing with Section 18860) of Division
27 13 of the Health and Safety Code).

28 (12) “Custody assistant” means any person who has the
29 responsibilities and duties described in Section 831.7 and who is
30 employed by a law enforcement agency of any city, county, or city
31 and county or who performs those duties as a volunteer.

32 (13) “Security officer” means any person who has the
33 responsibilities and duties described in Section 831.4 and who is
34 employed by a law enforcement agency of any city, county, or city
35 and county.

36 (g) It is the intent of the Legislature by amendments to this
37 section at the 1981–82 and 1983–84 Regular Sessions to abrogate
38 the holdings in cases such as *People v. Corey*, 21 Cal. 3d 738, and
39 *Cervantez v. J.C. Penney Co.*, 24 Cal. 3d 579, and to reinstate prior
40 judicial interpretations of this section as they relate to criminal

1 sanctions for battery on peace officers who are employed, on a
2 part-time or casual basis, while wearing a police uniform as private
3 security guards or patrolmen and to allow the exercise of peace
4 officer powers concurrently with that employment.

5 SEC. 2. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.