

AMENDED IN ASSEMBLY MARCH 19, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 545

Introduced by Assembly Member Melendez

February 23, 2015

An act to amend Section ~~273.5~~ 243 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 545, as amended, Melendez. Domestic violence.

Under existing law, a battery committed against a spouse, a person with whom the defendant is cohabitating, a person who is the parent of the defendant's child, a former spouse, a fiancé or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, is punishable by a fine not exceeding \$2,000, or by imprisonment in a county jail for a period of not more than one year, or by both that fine and imprisonment. If probation is granted, existing law requires the defendant to complete a batterer's treatment program. If probation is granted in the case of a person who has previously been convicted of a violation of these provisions, existing law requires that the person be imprisoned for not less than 48 hours.

This bill would require a person who has a previous conviction for the above-specified offense to be imprisoned for not less than 5 days if probation is granted for the subsequent offense, and would require the person to be imprisoned for not less than 10 days if the person has previously been convicted of willfully inflicting corporal injury resulting in a traumatic condition upon a spouse or former spouse, cohabitant or former cohabitant, fiancé or fiancée, or someone with whom the

offender has, or previously had, an engagement or dating relationship, or the mother or father of the offender’s child. By increasing the punishment for a 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.

~~Existing law makes it a crime, punishable by a fine, by imprisonment, or by both a fine and imprisonment, for a person to willfully inflict corporal injury resulting in a traumatic condition upon a person with whom the defendant has been in a specified domestic relationship.~~

~~This bill would make technical, nonsubstantive changes to these provisions:~~

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) 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, animal control officer, or search
10 and rescue member engaged in the performance of his or her duties,
11 whether on or off duty, including when the peace officer is in a
12 police uniform and is concurrently performing the duties required
13 of him or her as a peace officer while also employed in a private
14 capacity as a part-time or casual private security guard or
15 patrolman, or a nonsworn employee of a probation department
16 engaged in the performance of his or her duties, whether on or off
17 duty, or a physician or nurse engaged in rendering emergency
18 medical care outside a hospital, clinic, or other health care facility,
19 and the person committing the offense knows or reasonably should

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

11 (c) (1) When a battery is committed against a custodial officer,
12 firefighter, emergency medical technician, lifeguard, process server,
13 traffic officer, or animal control officer engaged in the performance
14 of his or her duties, whether on or off duty, or a nonsworn
15 employee of a probation department engaged in the performance
16 of his or her duties, whether on or off duty, or a physician or nurse
17 engaged in rendering emergency medical care outside a hospital,
18 clinic, or other health care facility, and the person committing the
19 offense knows or reasonably should know that the victim is a
20 nonsworn employee of a probation department, custodial officer,
21 firefighter, emergency medical technician, lifeguard, process server,
22 traffic officer, or animal control officer engaged in the performance
23 of his or her duties, or a physician or nurse engaged in rendering
24 emergency medical care, and an injury is inflicted on that victim,
25 the battery is punishable by a fine of not more than two thousand
26 dollars (\$2,000), by imprisonment in a county jail not exceeding
27 one year, or by both that fine and imprisonment, or by
28 imprisonment pursuant to subdivision (h) of Section 1170 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
33 is 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
36 or 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 pursuant

1 to subdivision (h) of Section 1170 for 16 months, or two or three
2 years, or by both that fine and 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 pursuant to subdivision (h) of Section 1170 for two,
7 three, or four years.

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

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

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

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

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

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

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

19 (B) *Upon conviction of a violation of this subdivision, if*
20 *probation is granted or the execution or imposition of sentence is*
21 *suspended and the person has previously been convicted of a*
22 *violation of Section 273.5, the person shall be imprisoned for not*
23 *less than 10 days in addition to the conditions in paragraph (1).*
24 *However, the court, upon a showing of good cause, may elect not*
25 *to impose the mandatory minimum imprisonment as required by*
26 *this subparagraph and may, under these circumstances, grant*
27 *probation or order the suspension of the execution or imposition*
28 *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 (5) If a peace officer makes an arrest for a violation of paragraph
34 (1) of subdivision (e) of this section, the peace officer is not
35 required to inform the victim of his or her right to make a citizen's
36 arrest pursuant to subdivision (b) of Section 836.

37 (f) As used in this section:

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

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

6 (3) “Nurse” means a person who meets the standards of Division
7 2.5 (commencing with Section 1797) of the Health and Safety
8 Code.

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

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

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

20 (7) “Lifeguard” means a person defined in paragraph (5) of
21 subdivision (d) of Section 241.

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

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

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

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

1 (B) “Code enforcement officer” also includes any person who
2 is employed by the Department of Housing and Community
3 Development who has enforcement authority for health, safety,
4 and welfare requirements pursuant to the Employee Housing Act
5 (Part 1 (commencing with Section 17000) of Division 13 of the
6 Health and Safety Code); the State Housing Law (Part 1.5
7 (commencing with Section 17910) of Division 13 of the Health
8 and Safety Code); the Manufactured Housing Act of 1980 (Part 2
9 (commencing with Section 18000) of Division 13 of the Health
10 and Safety Code); the Mobilehome Parks Act (Part 2.1
11 (commencing with Section 18200) of Division 13 of the Health
12 and Safety Code); and the Special Occupancy Parks Act (Part 2.3
13 (commencing with Section 18860) of Division 13 of the Health
14 and Safety Code).

15 (12) “Custody assistant” means any person who has the
16 responsibilities and duties described in Section 831.7 and who is
17 employed by a law enforcement agency of any city, county, or city
18 and county.

19 (13) “Search and rescue member” means any person who is part
20 of an organized search and rescue team managed by a government
21 agency.

22 (14) “Security officer” means any person who has the
23 responsibilities and duties described in Section 831.4 and who is
24 employed by a law enforcement agency of any city, county, or city
25 and county.

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

35 *SEC. 2. No reimbursement is required by this act pursuant to*
36 *Section 6 of Article XIII B of the California Constitution because*
37 *the only costs that may be incurred by a local agency or school*
38 *district will be incurred because this act creates a new crime or*
39 *infraction, eliminates a crime or infraction, or changes the penalty*
40 *for a crime or infraction, within the meaning of Section 17556 of*

1 *the Government Code, or changes the definition of a crime within*
2 *the meaning of Section 6 of Article XIII B of the California*
3 *Constitution.*

4 SECTION 1. ~~Section 273.5 of the Penal Code is amended to~~
5 ~~read:~~

6 ~~273.5.—(a) Every person who willfully inflicts corporal injury~~
7 ~~that results in a traumatic condition upon a victim described in~~
8 ~~subdivision (b) is guilty of a felony, and upon conviction thereof~~
9 ~~shall be punished by imprisonment in the state prison for two,~~
10 ~~three, or four years, or in a county jail for not more than one year,~~
11 ~~or by a fine of up to six thousand dollars (\$6,000), or by both that~~
12 ~~fine and imprisonment.~~

13 ~~(b) Subdivision (a) applies if the victim is or was one or more~~
14 ~~of the following:~~

15 ~~(1) The offender's spouse or former spouse.~~

16 ~~(2) The offender's cohabitant or former cohabitant.~~

17 ~~(3) The offender's fiancé or fiancée, or someone with whom~~
18 ~~the offender has, or previously had, an engagement or dating~~
19 ~~relationship, as defined in paragraph (10) of subdivision (f) of~~
20 ~~Section 243.~~

21 ~~(4) The mother or father of the offender's child.~~

22 ~~(e) Holding oneself out to be the husband or wife of the person~~
23 ~~with whom one is cohabiting is not necessary to constitute~~
24 ~~cohabitation as that term is used in this section.~~

25 ~~(d) As used in this section, "traumatic condition" means a~~
26 ~~condition of the body, such as a wound, or external or internal~~
27 ~~injury, including, but not limited to, injury as a result of~~
28 ~~strangulation or suffocation, whether of a minor or serious nature,~~
29 ~~caused by a physical force. For purposes of this section,~~
30 ~~"strangulation" and "suffocation" include impeding the normal~~
31 ~~breathing or circulation of the blood of a person by applying~~
32 ~~pressure on the throat or neck.~~

33 ~~(e) For the purpose of this section, a person shall be considered~~
34 ~~the father or mother of another person's child if the alleged male~~
35 ~~parent is presumed the natural father under Sections 7611 and 7612~~
36 ~~of the Family Code.~~

37 ~~(f) (1) Every person convicted of violating this section for acts~~
38 ~~occurring within seven years of a previous conviction under~~
39 ~~subdivision (a), or subdivision (d) of Section 243, or Section 243.4,~~
40 ~~244, 244.5, or 245, shall be punished by imprisonment in a county~~

1 jail for not more than one year, or by imprisonment in the state
2 prison for two, four, or five years, or by both imprisonment and a
3 fine of up to ten thousand dollars (\$10,000).

4 (2) Every person convicted of a violation of this section for acts
5 occurring within seven years of a previous conviction under
6 subdivision (e) of Section 243 shall be punished by imprisonment
7 in the state prison for two, three, or four years, or in a county jail
8 for not more than one year, or by a fine of up to ten thousand
9 dollars (\$10,000), or by both that imprisonment and fine.

10 (g) If probation is granted to a person convicted under
11 subdivision (a), the court shall impose probation consistent with
12 the provisions of Section 1203.097.

13 (h) If probation is granted, or the execution or imposition of a
14 sentence is suspended, for a defendant convicted under subdivision
15 (a) who has been convicted of a prior offense specified in
16 subdivision (f), the court shall impose one of the following
17 conditions of probation:

18 (1) If the defendant has suffered one prior conviction within the
19 previous seven years for a violation of an offense specified in
20 subdivision (f), it shall be a condition of probation, in addition to
21 the provisions contained in Section 1203.097, that he or she be
22 imprisoned in a county jail for not less than 15 days.

23 (2) If the defendant has suffered two or more prior convictions
24 within the previous seven years for a violation of an offense
25 specified in subdivision (f), it shall be a condition of probation, in
26 addition to the provisions contained in Section 1203.097, that he
27 or she be imprisoned in a county jail for not less than 60 days.

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

32 (i) If probation is granted upon conviction of a violation of
33 subdivision (a), the conditions of probation may include, consistent
34 with the terms of probation imposed pursuant to Section 1203.097,
35 in lieu of a fine, one or both of the following requirements:

36 (1) That the defendant make payments to a battered women's
37 shelter, up to a maximum of five thousand dollars (\$5,000);
38 pursuant to Section 1203.097.

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

4 ~~(B) For an 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. An order to make payments to a battered~~
8 ~~women's shelter shall not be made if it would impair the ability~~
9 ~~of the defendant to pay direct restitution to the victim or~~
10 ~~court-ordered child support. If the injury to a married person is~~
11 ~~caused in whole or in part by the criminal acts of his or her spouse~~
12 ~~in violation of this section, the community property may not be~~
13 ~~used to discharge the liability of the offending spouse for restitution~~
14 ~~to the injured spouse, required by Section 1203.04, as operative~~
15 ~~on or before August 2, 1995, or Section 1202.4, or to a shelter for~~
16 ~~costs with regard to the injured spouse and dependents, required~~
17 ~~by this section, until all separate property of the offending spouse~~
18 ~~is exhausted.~~

19 ~~(j) Upon conviction under subdivision (a), the sentencing court~~
20 ~~shall also consider issuing an order restraining the defendant from~~
21 ~~any contact with the victim, which may be valid for up to 10 years,~~
22 ~~as determined by the court. It is the intent of the Legislature that~~
23 ~~the length of any restraining order be based upon the seriousness~~
24 ~~of the facts before the court, the probability of future violations,~~
25 ~~and the safety of the victim and his or her immediate family. This~~
26 ~~protective order may be issued by the court whether the defendant~~
27 ~~is sentenced to state prison or county jail, or if imposition of~~
28 ~~sentence is suspended and the defendant is placed on probation.~~

29 ~~(k) If a peace officer makes an arrest for a violation of this~~
30 ~~section, the peace officer is not required to inform the victim of~~
31 ~~his or her right to make a citizen's arrest pursuant to subdivision~~
32 ~~(b) of Section 836.~~

O