

Introduced by Senator NielsenFebruary 27, 2015

An act to amend Section 11366.5 of the Health and Safety Code, and to amend Sections 69, 76, 146e, 148, 148.10, 243, 243.1, 244.5, 621, 836.6, and 22810 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 752, as introduced, Nielsen. Crimes.

Existing law makes it a crime to violate various provisions prohibiting certain actions against a peace officer or his or her family, other first responders, or public officials, including, but not limited to, removing an officer's firearm while resisting arrest, using a stun gun against a peace officer or firefighter, and committing a battery against a peace officer or other medical personnel engaged in the performance of his or her duties. Existing law generally makes the violation of these provisions misdemeanors or felonies punishable in a county jail, as specified, or both a misdemeanor or a felony, commonly referred to as a wobbler.

This bill would revise these provisions to make all of the misdemeanors or wobblers instead punishable as felonies in county jail and make all of the felonies punishable in county jail instead punishable in state prison, as specified.

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.

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 11366.5 of the Health and Safety Code
2 is amended to read:

3 11366.5. (a) Any person who has under his or her management
4 or control any building, room, space, or enclosure, either as an
5 owner, lessee, agent, employee, or mortgagee, who knowingly
6 rents, leases, or makes available for use, with or without
7 compensation, the building, room, space, or enclosure for the
8 purpose of unlawfully manufacturing, storing, or distributing any
9 controlled substance for sale or distribution shall be punished by
10 imprisonment in the county jail for not more than one year, or
11 pursuant to subdivision (h) of Section 1170 of the Penal Code.

12 (b) Any person who has under his or her management or control
13 any building, room, space, or enclosure, either as an owner, lessee,
14 agent, employee, or mortgagee, who knowingly allows the building,
15 room, space, or enclosure to be fortified to suppress law
16 enforcement entry in order to further the sale of any amount of
17 cocaine base as specified in paragraph (1) of subdivision (f) of
18 Section 11054, cocaine as specified in paragraph (6) of subdivision
19 (b) of Section 11055, heroin, phencyclidine, amphetamine,
20 methamphetamine, or lysergic acid diethylamide and who obtains
21 excessive profits from the use of the building, room, space, or
22 enclosure shall be punished by imprisonment ~~pursuant to~~
23 ~~subdivision (h) of Section 1170 of the Penal Code~~ *in the state*
24 *prison* for two, three, or four years.

25 (c) Any person who violates subdivision (a) after previously
26 being convicted of a violation of subdivision (a) shall be punished
27 by imprisonment pursuant to subdivision (h) of Section 1170 of
28 the Penal Code for two, three, or four years.

29 (d) For the purposes of this section, “excessive profits” means
30 the receipt of consideration of a value substantially higher than
31 fair market value.

32 SEC. 2. Section 69 of the Penal Code is amended to read:

33 69. Every person who attempts, by means of any threat or
34 violence, to deter or prevent an executive officer from performing
35 any duty imposed upon ~~such~~ *the* officer by law, or who knowingly

1 resists, by the use of force or violence, ~~such~~ *the* officer, in the
2 performance of his *or her* duty, is punishable by a fine not
3 exceeding ten thousand dollars (\$10,000), or by imprisonment
4 pursuant to subdivision (h) of Section 1170, ~~or in a county jail not~~
5 ~~exceeding one year~~, or by both ~~such~~ *that* fine and imprisonment.

6 SEC. 3. Section 76 of the Penal Code is amended to read:

7 76. (a) Every person who knowingly and willingly threatens
8 the life of, or threatens serious bodily harm to, any elected public
9 official, county public defender, county clerk, exempt appointee
10 of the Governor, judge, or Deputy Commissioner of the Board of
11 ~~Prison Terms, Parole Hearings~~, or the staff, immediate family, or
12 immediate family of the staff of any elected public official, county
13 public defender, county clerk, exempt appointee of the Governor,
14 judge, or Deputy Commissioner of the Board of ~~Prison Terms,~~
15 ~~Parole Hearings~~, with the specific intent that the statement is to
16 be taken as a threat, and the apparent ability to carry out that threat
17 by any means, is guilty of a public offense, punishable as follows:

18 (1) Upon a first conviction, the offense is punishable by a fine
19 not exceeding ~~five~~ *ten* thousand dollars ~~(\$5,000)~~ *(\$10,000)*, or by
20 imprisonment pursuant to subdivision (h) of Section 1170, ~~or in a~~
21 ~~county jail not exceeding one year~~, or by both that fine and
22 imprisonment.

23 (2) If the person has been convicted previously of violating this
24 section, the previous conviction shall be charged in the accusatory
25 pleading, and if the previous conviction is found to be true by the
26 jury upon a jury trial, or by the court upon a court trial, or is
27 admitted by the defendant, the offense is punishable by
28 imprisonment ~~pursuant to subdivision (h) of Section 1170~~ *in state*
29 *prison*.

30 (b) Any law enforcement agency that has knowledge of a
31 violation of this section involving a constitutional officer of the
32 state, a Member of the Legislature, or a member of the judiciary
33 shall immediately report that information to the Department of the
34 California Highway Patrol.

35 (c) For purposes of this section, the following definitions shall
36 apply:

37 (1) “Apparent ability to carry out that threat” includes the ability
38 to fulfill the threat at some future date when the person making
39 the threat is an incarcerated prisoner with a stated release date.

1 (2) “Serious bodily harm” includes serious physical injury or
2 serious traumatic condition.

3 (3) “Immediate family” means a spouse, parent, or child, or
4 anyone who has regularly resided in the household for the past six
5 months.

6 (4) “Staff of a judge” means court officers and employees,
7 including commissioners, referees, and retired judges sitting on
8 assignment.

9 (5) “Threat” means a verbal or written threat or a threat implied
10 by a pattern of conduct or a combination of verbal or written
11 statements and conduct made with the intent and the apparent
12 ability to carry out the threat so as to cause the person who is the
13 target of the threat to reasonably fear for his or her safety or the
14 safety of his or her immediate family.

15 (d) As for threats against staff or immediate family of staff, the
16 threat must relate directly to the official duties of the staff of the
17 elected public official, county public defender, county clerk,
18 exempt appointee of the Governor, judge, or Deputy Commissioner
19 of the Board of ~~Prison Terms~~ *Parole Hearings* in order to constitute
20 a public offense under this section.

21 (e) A threat must relate directly to the official duties of a Deputy
22 Commissioner of the Board of ~~Prison Terms~~ *Parole Hearings* in
23 order to constitute a public offense under this section.

24 SEC. 4. Section 146e of the Penal Code is amended to read:

25 146e. (a) Every person who maliciously, and with the intent
26 to obstruct justice or the due administration of the laws, or with
27 the intent or threat to inflict imminent physical harm in retaliation
28 for the due administration of the laws, publishes, disseminates, or
29 otherwise discloses the residence address or telephone number of
30 any peace officer, nonsworn police dispatcher, employee of a city
31 police department or county sheriff’s office, or public safety
32 official, or that of the spouse or children of these persons who
33 reside with them, while designating the peace officer, nonsworn
34 police dispatcher, employee of a city police department or county
35 sheriff’s office, or public safety official, or relative of these persons
36 as such, without the authorization of the employing agency, ~~is~~
37 ~~guilty of a misdemeanor shall be punished by imprisonment~~
38 ~~pursuant to subdivision (h) of Section 1170.~~

39 (b) A violation of subdivision (a) with regard to any peace
40 officer, employee of a city police department or county sheriff’s

1 office, or public safety official, or the spouse or children of these
2 persons, that results in bodily injury to the peace officer, employee
3 of the city police department or county sheriff’s office, or public
4 safety official, or the spouse or children of these persons, is a felony
5 punishable by imprisonment pursuant to subdivision (h) of Section
6 1170.

7 (c) For purposes of this section, “public safety official” is
8 defined in Section 6254.24 of the Government Code.

9 SEC. 5. Section 148 of the Penal Code is amended to read:

10 148. (a) (1) Every person who willfully resists, delays, or
11 obstructs any public officer, peace officer, or an emergency medical
12 technician, as defined in Division 2.5 (commencing with Section
13 1797) of the Health and Safety Code, in the discharge or attempt
14 to discharge any duty of his or her office or employment, when
15 no other punishment is prescribed, shall be punished by a fine not
16 exceeding one thousand dollars (\$1,000), or by imprisonment in
17 a county jail not to exceed one year, or by both that fine and
18 imprisonment.

19 (2) Except as provided by subdivision (d) of Section 653t, every
20 person who knowingly and maliciously interrupts, disrupts,
21 impedes, or otherwise interferes with the transmission of a
22 communication over a public safety radio frequency shall be
23 punished by a fine not exceeding one thousand dollars (\$1,000),
24 imprisonment in a county jail not exceeding one year, or by both
25 that fine and imprisonment.

26 (b) Every person who, during the commission of any offense
27 described in subdivision (a), removes or takes any weapon, other
28 than a firearm, from the person of, or immediate presence of, a
29 public officer or peace officer shall be punished by imprisonment
30 ~~in a county jail not to exceed one year or~~ pursuant to subdivision
31 (h) of Section 1170.

32 (c) Every person who, during the commission of any offense
33 described in subdivision (a), removes or takes a firearm from the
34 person of, or immediate presence of, a public officer or peace
35 officer shall be punished by imprisonment ~~pursuant to subdivision~~
36 ~~(h) of Section 1170~~ *in state prison*.

37 (d) Except as provided in subdivision (c) and notwithstanding
38 subdivision (a) of Section 489, every person who removes or takes
39 without intent to permanently deprive, or who attempts to remove
40 or take a firearm from the person of, or immediate presence of, a

1 public officer or peace officer, while the officer is engaged in the
2 performance of his or her lawful duties, shall be punished by
3 imprisonment ~~in a county jail not to exceed one year or pursuant~~
4 to subdivision (h) of Section 1170.

5 In order to prove a violation of this subdivision, the prosecution
6 shall establish that the defendant had the specific intent to remove
7 or take the firearm by demonstrating that any of the following
8 direct, but ineffectual, acts occurred:

9 (1) The officer's holster strap was unfastened by the defendant.

10 (2) The firearm was partially removed from the officer's holster
11 by the defendant.

12 (3) The firearm safety was released by the defendant.

13 (4) An independent witness corroborates that the defendant
14 stated that he or she intended to remove the firearm and the
15 defendant actually touched the firearm.

16 (5) An independent witness corroborates that the defendant
17 actually had his or her hand on the firearm and tried to take the
18 firearm away from the officer who was holding it.

19 (6) The defendant's fingerprint was found on the firearm or
20 holster.

21 (7) Physical evidence authenticated by a scientifically verifiable
22 procedure established that the defendant touched the firearm.

23 (8) In the course of any struggle, the officer's firearm fell and
24 the defendant attempted to pick it up.

25 (e) A person shall not be convicted of a violation of subdivision
26 (a) in addition to a conviction of a violation of subdivision (b), (c),
27 or (d) when the resistance, delay, or obstruction, and the removal
28 or taking of the weapon or firearm or attempt thereof, was
29 committed against the same public officer, peace officer, or
30 emergency medical technician. A person may be convicted of
31 multiple violations of this section if more than one public officer,
32 peace officer, or emergency medical technician are victims.

33 (f) This section shall not apply if the public officer, peace
34 officer, or emergency medical technician is disarmed while engaged
35 in a criminal act.

36 SEC. 6. Section 148.10 of the Penal Code is amended to read:

37 148.10. (a) Every person who willfully resists a peace officer
38 in the discharge or attempt to discharge any duty of his or her
39 office or employment and whose willful resistance proximately
40 causes death or serious bodily injury to a peace officer shall be

1 punished by imprisonment pursuant to subdivision (h) of Section
2 1170 for two, three, or four years, or by a fine of not less than one
3 thousand dollars (\$1,000) or more than ten thousand dollars
4 (\$10,000), or by both that fine and imprisonment, ~~or by~~
5 ~~imprisonment in a county jail for not more than one year, or by a~~
6 ~~fine of not more than one thousand dollars (\$1,000), or by both~~
7 ~~that fine and imprisonment.~~

8 (b) For purposes of subdivision (a), the following facts shall be
9 found by the trier of fact:

10 (1) That the peace officer’s action was reasonable based on the
11 facts or circumstances confronting the officer at the time.

12 (2) That the detention and arrest was lawful and there existed
13 probable cause or reasonable cause to detain.

14 (3) That the person who willfully resisted any peace officer
15 knew or reasonably should have known that the other person was
16 a peace officer engaged in the performance of his or her duties.

17 (c) This section does not apply to conduct that occurs during
18 labor picketing, demonstrations, or disturbing the peace.

19 (d) For purposes of this section, “serious bodily injury” is
20 defined in paragraph (4) of subdivision (f) of Section 243.

21 SEC. 7. Section 243 of the Penal Code is amended to read:

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

25 (b) When a battery is committed against the person of a peace
26 officer, custodial officer, firefighter, emergency medical technician,
27 lifeguard, security officer, custody assistant, process server, traffic
28 officer, code enforcement officer, animal control officer, or search
29 and rescue member engaged in the performance of his or her duties,
30 whether on or off duty, including when the peace officer is in a
31 police uniform and is concurrently performing the duties required
32 of him or her as a peace officer while also employed in a private
33 capacity as a part-time or casual private security guard or
34 patrolman, or a nonsworn employee of a probation department
35 engaged in the performance of his or her duties, whether on or off
36 duty, or a physician or nurse engaged in rendering emergency
37 medical care outside a hospital, clinic, or other health care facility,
38 and the person committing the offense knows or reasonably should
39 know that the victim is a peace officer, custodial officer, firefighter,
40 emergency medical technician, lifeguard, security officer, custody

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

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

28 (2) When the battery specified in paragraph (1) is committed
29 against a peace officer engaged in the performance of his or her
30 duties, whether on or off duty, including when the peace officer
31 is in a police uniform and is concurrently performing the duties
32 required of him or her as a peace officer while also employed in
33 a private capacity as a part-time or casual private security guard
34 or patrolman and the person committing the offense knows or
35 reasonably should know that the victim is a peace officer engaged
36 in the performance of his or her duties, the battery is punishable
37 by a fine of not more than ten thousand dollars (\$10,000), or by
38 imprisonment in a county jail not exceeding one year or pursuant
39 to subdivision (h) of Section 1170 for 16 months, or two or three
40 years, or by both that fine and imprisonment.

1 (d) When a battery is committed against any person and serious
2 bodily injury is inflicted on the person, the battery is punishable
3 by imprisonment in a county jail not exceeding one year or
4 imprisonment pursuant to subdivision (h) of Section 1170 for two,
5 three, or four years.

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

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

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

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

31 For any order to pay a fine, make payments to a battered
32 women's shelter, or pay restitution as a condition of probation
33 under this subdivision, the court shall make a determination of the
34 defendant's ability to pay. In no event shall any order to make
35 payments to a battered women's shelter be made if it would impair
36 the ability of the defendant to pay direct restitution to the victim
37 or court-ordered child support. If the injury to a married person is
38 caused in whole or in part by the criminal acts of his or her spouse
39 in violation of this section, the community property shall not be
40 used to discharge the liability of the offending spouse for restitution

1 to the injured spouse, required by Section 1203.04, as operative
2 on or before August 2, 1995, or Section 1202.4, or to a shelter for
3 costs with regard to the injured spouse and dependents, required
4 by this section, until all separate property of the offending spouse
5 is exhausted.

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

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

20 (5) If a peace officer makes an arrest for a violation of paragraph
21 (1) of subdivision (e) of this section, the peace officer is not
22 required to inform the victim of his or her right to make a citizen's
23 arrest pursuant to subdivision (b) of Section 836.

24 (f) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

28 (B) “Code enforcement officer” also includes any person who
29 is employed by the Department of Housing and Community
30 Development who has enforcement authority for health, safety,
31 and welfare requirements pursuant to the Employee Housing Act
32 (Part 1 (commencing with Section 17000) of Division 13 of the
33 Health and Safety Code); the State Housing Law (Part 1.5
34 (commencing with Section 17910) of Division 13 of the Health
35 and Safety Code); the Manufactured Housing Act of 1980 (Part 2
36 (commencing with Section 18000) of Division 13 of the Health
37 and Safety Code); the Mobilehome Parks Act (Part 2.1
38 (commencing with Section 18200) of Division 13 of the Health
39 and Safety Code); and the Special Occupancy Parks Act (Part 2.3

1 (commencing with Section 18860) of Division 13 of the Health
2 and Safety Code).

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

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

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

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

23 SEC. 8. Section 243.1 of the Penal Code is amended to read:

24 243.1. When a battery is committed against the person of a
25 custodial officer as defined in Section 831 of the Penal Code, and
26 the person committing the offense knows or reasonably should
27 know that the victim is a custodial officer engaged in the
28 performance of his or her duties, and the custodial officer is
29 engaged in the performance of his or her duties, the offense shall
30 be punished by imprisonment pursuant to subdivision (h) of Section
31 1170 *in state prison*.

32 SEC. 9. Section 244.5 of the Penal Code is amended to read:

33 244.5. (a) As used in this section, “stun gun” means any item,
34 except a less lethal weapon, as defined in Section 16780, used or
35 intended to be used as either an offensive or defensive weapon
36 that is capable of temporarily immobilizing a person by the
37 infliction of an electrical charge.

38 (b) Every person who commits an assault upon the person of
39 another with a stun gun or less lethal weapon, as defined in Section
40 16780, shall be punished by imprisonment in a county jail for a

1 term not exceeding one year, or by imprisonment pursuant to
2 subdivision (h) of Section 1170 for 16 months, two, or three years.

3 (c) Every person who commits an assault upon the person of a
4 peace officer or firefighter with a stun gun or less lethal weapon,
5 as defined in Section 16780, who knows or reasonably should
6 know that the person is a peace officer or firefighter engaged in
7 the performance of his or her duties, when the peace officer or
8 firefighter is engaged in the performance of his or her duties, shall
9 be punished by ~~imprisonment in the county jail for a term not~~
10 ~~exceeding one year, or by imprisonment pursuant to subdivision~~
11 (h) of Section 1170 for two, three, or four years.

12 (d) This section shall not be construed to preclude or in any way
13 limit the applicability of Section 245 in any criminal prosecution.

14 SEC. 10. Section 621 of the Penal Code is amended to read:

15 621. Every person who maliciously destroys, cuts, breaks,
16 mutilates, effaces, or otherwise injures, tears down, or removes
17 any law enforcement memorial or firefighter's memorial is guilty
18 of a crime punishable by imprisonment pursuant to subdivision
19 (h) of Section 1170 ~~or by imprisonment in a county jail for less~~
20 ~~than one year.~~

21 SEC. 11. Section 836.6 of the Penal Code is amended to read:

22 836.6. (a) It is unlawful for any person who is remanded by a
23 magistrate or judge of any court in this state to the custody of a
24 sheriff, marshal, or other police agency, to thereafter escape or
25 attempt to escape from that custody.

26 (b) It is unlawful for any person who has been lawfully arrested
27 by any peace officer and who knows, or by the exercise of
28 reasonable care should have known, that he or she has been so
29 arrested, to thereafter escape or attempt to escape from that peace
30 officer.

31 (c) Any person who violates subdivision (a) or (b) is guilty of
32 a misdemeanor, punishable by imprisonment in a county jail not
33 to exceed one year. However, if the escape or attempted escape is
34 by force or violence, and the person proximately causes a peace
35 officer serious bodily injury, the person shall be punished by
36 imprisonment in the state prison for two, three, or four years, ~~or~~
37 ~~by imprisonment in a county jail not to exceed one year.~~

38 SEC. 12. Section 22810 of the Penal Code is amended to read:

39 22810. Notwithstanding any other provision of law, any person
40 may purchase, possess, or use tear gas or any tear gas weapon for

1 the projection or release of tear gas if the tear gas or tear gas
2 weapon is used solely for self-defense purposes, subject to the
3 following requirements:

4 (a) No person convicted of a felony or any crime involving an
5 assault under the laws of the United States, the State of California,
6 or any other state, government, or country, or convicted of misuse
7 of tear gas under subdivision (g), shall purchase, possess, or use
8 tear gas or any tear gas weapon.

9 (b) No person addicted to any narcotic drug shall purchase,
10 possess, or use tear gas or any tear gas weapon.

11 (c) No person shall sell or furnish any tear gas or tear gas
12 weapon to a minor.

13 (d) No minor shall purchase, possess, or use tear gas or any tear
14 gas weapon.

15 (e) (1) No person shall purchase, possess, or use any tear gas
16 weapon that expels a projectile, or that expels the tear gas by any
17 method other than an aerosol spray, or that contains more than 2.5
18 ounces net weight of aerosol spray.

19 (2) Every tear gas container and tear gas weapon that may be
20 lawfully purchased, possessed, and used pursuant to this section
21 shall have a label that states: “WARNING: The use of this
22 substance or device for any purpose other than self-defense is a
23 crime under the law. The contents are dangerous — use with care.”

24 (3) After January 1, 1984, every tear gas container and tear gas
25 weapon that may be lawfully purchased, possessed, and used
26 pursuant to this section shall have a label that discloses the date
27 on which the useful life of the tear gas weapon expires.

28 (4) Every tear gas container and tear gas weapon that may be
29 lawfully purchased pursuant to this section shall be accompanied
30 at the time of purchase by printed instructions for use.

31 (f) Effective March 1, 1994, every tear gas container and tear
32 gas weapon that may be lawfully purchased, possessed, and used
33 pursuant to this section shall be accompanied by an insert including
34 directions for use, first aid information, safety and storage
35 information, and explanation of the legal ramifications of improper
36 use of the tear gas container or tear gas product.

37 (g) (1) Except as provided in paragraph (2), any person who
38 uses tear gas or any tear gas weapon except in self-defense is guilty
39 of a public offense and is punishable by imprisonment pursuant
40 to subdivision (h) of Section 1170 for 16 months, or two or three

1 years or in a county jail not to exceed one year or by a fine not to
2 exceed one thousand dollars (\$1,000), or by both the fine and
3 imprisonment.

4 (2) If the use is against a peace officer, as defined in Chapter
5 4.5 (commencing with Section 830) of Title 3 of Part 2, engaged
6 in the performance of official duties and the person committing
7 the offense knows or reasonably should know that the victim is a
8 peace officer, the offense is punishable by imprisonment ~~pursuant~~
9 ~~to subdivision (h) of Section 1170 in state prison~~ for 16 months
10 or two or three years or by a fine ~~of one~~ *not to exceed ten* thousand
11 dollars ~~(\$1,000) (\$10,000)~~, or by both the fine and imprisonment.

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