

AMENDED IN SENATE APRIL 21, 2015

SENATE BILL

No. 752

Introduced by Senator Nielsen

February 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~~ *243, and 243.1* of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 752, as amended, 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,~~ *arrest* 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 in the state prison~~
23 ~~for two, three, or four years.~~

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

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

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

32 ~~69. Every person who attempts, by means of any threat or~~
33 ~~violence, to deter or prevent an executive officer from performing~~

1 any duty imposed upon the officer by law, or who knowingly
2 resists, by the use of force or violence, the officer, in the
3 performance of his or her duty, is punishable by a fine not
4 exceeding ten thousand dollars (\$10,000), or by imprisonment
5 pursuant to subdivision (h) of Section 1170, or by both that fine
6 and imprisonment.

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

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

19 (1) Upon a first conviction, the offense is punishable by a fine
20 not exceeding ten thousand dollars (\$10,000), or by imprisonment
21 pursuant to subdivision (h) of Section 1170, or by both that fine
22 and 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 in state prison.

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

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

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

39 (2) "Serious bodily harm" includes serious physical injury or
40 serious traumatic condition.

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

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

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

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

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

22 ~~SEC. 4.~~

23 ~~SECTION 1.~~ Section 146e of the Penal Code is amended to
 24 ~~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, shall
 37 be punished by imprisonment pursuant to subdivision (h) of Section
 38 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.~~

10 *SEC. 2.* Section 148 of the Penal Code is amended to read:

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

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

27 (b) Every person who, during the commission of any offense
28 described in subdivision (a), removes or takes any weapon, other
29 than a firearm, from the person of, or immediate presence of, a
30 public officer or peace officer shall be punished by imprisonment
31 pursuant to subdivision (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 in state prison.

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

1 performance of his or her lawful duties, shall be punished by
2 imprisonment pursuant to subdivision (h) of Section 1170.

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

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

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

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

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

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

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

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

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

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

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

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

35 ~~148.10. (a) Every person who willfully resists a peace officer~~
36 ~~in the discharge or attempt to discharge any duty of his or her~~
37 ~~office or employment and whose willful resistance proximately~~
38 ~~causes death or serious bodily injury to a peace officer shall be~~
39 ~~punished by imprisonment pursuant to subdivision (h) of Section~~
40 ~~1170 for two, three, or four years, or by a fine of not less than one~~

1 ~~thousand dollars (\$1,000) or more than ten thousand dollars~~
2 ~~(\$10,000), or by both that fine and imprisonment.~~

3 ~~(b) For purposes of subdivision (a), the following facts shall be~~
4 ~~found by the trier of fact:~~

5 ~~(1) That the peace officer's action was reasonable based on the~~
6 ~~facts or circumstances confronting the officer at the time.~~

7 ~~(2) That the detention and arrest was lawful and there existed~~
8 ~~probable cause or reasonable cause to detain.~~

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

12 ~~(e) This section does not apply to conduct that occurs during~~
13 ~~labor picketing, demonstrations, or disturbing the peace.~~

14 ~~(d) For purposes of this section, "serious bodily injury" is~~
15 ~~defined in paragraph (4) of subdivision (f) of Section 243.~~

16 ~~SEC. 7.~~

17 *SEC. 3.* Section 243 of the Penal Code is amended to read:

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

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

1 emergency medical care, the battery is punishable by a fine not
2 exceeding two thousand dollars (\$2,000), or by imprisonment in
3 a county jail not exceeding one year, or by both that fine and
4 imprisonment.

5 (c) (1) When a battery is committed against a custodial officer,
6 firefighter, emergency medical technician, lifeguard, process server,
7 traffic officer, or animal control officer engaged in the performance
8 of his or her duties, whether on or off duty, or a nonsworn
9 employee of a probation department engaged in the performance
10 of his or her duties, whether on or off duty, or a physician or nurse
11 engaged in rendering emergency medical care outside a hospital,
12 clinic, or other health care facility, and the person committing the
13 offense knows or reasonably should know that the victim is a
14 nonsworn employee of a probation department, custodial officer,
15 firefighter, emergency medical technician, lifeguard, process server,
16 traffic officer, or animal control officer engaged in the performance
17 of his or her duties, or a physician or nurse engaged in rendering
18 emergency medical care, and an injury is inflicted on that victim,
19 the battery is punishable by imprisonment pursuant to subdivision
20 (h) of Section 1170 for 16 months, or two or three years.

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

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

39 (e) (1) When a battery is committed against a spouse, a person
40 with whom the defendant is cohabiting, a person who is the parent

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

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

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

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

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

39 (3) Upon conviction of a violation of this subdivision, if
40 probation is granted or the execution or imposition of the sentence

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

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

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

17 (f) As used in this section:

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

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

25 (3) "Nurse" means a person who meets the standards of Division
26 2.5 (commencing with Section 1797) of the Health and Safety
27 Code.

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

33 (5) "Injury" means any physical injury which requires
34 professional medical treatment.

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

39 (7) "Lifeguard" means a person defined in paragraph (5) of
40 subdivision (d) of Section 241.

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

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

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

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

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

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

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

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

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

14 ~~SEC. 8.~~

15 *SEC. 4.* Section 243.1 of the Penal Code is amended to read:

16 243.1. When a battery is committed against the person of a
 17 custodial officer as defined in Section 831 of the Penal Code, and
 18 the person committing the offense knows or reasonably should
 19 know that the victim is a custodial officer engaged in the
 20 performance of his or her duties, and the custodial officer is
 21 engaged in the performance of his or her duties, the offense shall
 22 be punished by imprisonment in state prison.

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

24 ~~244.5.~~ (a) ~~As used in this section, “stun gun” means any item,~~
 25 ~~except a less lethal weapon, as defined in Section 16780, used or~~
 26 ~~intended to be used as either an offensive or defensive weapon~~
 27 ~~that is capable of temporarily immobilizing a person by the~~
 28 ~~infliction of an electrical charge.~~

29 ~~(b) Every person who commits an assault upon the person of~~
 30 ~~another with a stun gun or less lethal weapon, as defined in Section~~
 31 ~~16780, shall be punished by imprisonment in a county jail for a~~
 32 ~~term not exceeding one year, or by imprisonment pursuant to~~
 33 ~~subdivision (h) of Section 1170 for 16 months, two, or three years.~~

34 ~~(c) Every person who commits an assault upon the person of a~~
 35 ~~peace officer or firefighter with a stun gun or less lethal weapon,~~
 36 ~~as defined in Section 16780, who knows or reasonably should~~
 37 ~~know that the person is a peace officer or firefighter engaged in~~
 38 ~~the performance of his or her duties, when the peace officer or~~
 39 ~~firefighter is engaged in the performance of his or her duties, shall~~

1 be punished by imprisonment pursuant to subdivision (h) of Section
2 1170 for two, three, or four years.

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

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

6 ~~621. Every person who maliciously destroys, cuts, breaks,~~
7 ~~mutilates, effaces, or otherwise injures, tears down, or removes~~
8 ~~any law enforcement memorial or firefighter's memorial is guilty~~
9 ~~of a crime punishable by imprisonment pursuant to subdivision~~
10 ~~(h) of Section 1170.~~

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

12 ~~836.6. (a) It is unlawful for any person who is remanded by a~~
13 ~~magistrate or judge of any court in this state to the custody of a~~
14 ~~sheriff, marshal, or other police agency, to thereafter escape or~~
15 ~~attempt to escape from that custody.~~

16 ~~(b) It is unlawful for any person who has been lawfully arrested~~
17 ~~by any peace officer and who knows, or by the exercise of~~
18 ~~reasonable care should have known, that he or she has been so~~
19 ~~arrested, to thereafter escape or attempt to escape from that peace~~
20 ~~officer.~~

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

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

28 ~~22810. Notwithstanding any other provision of law, any person~~
29 ~~may purchase, possess, or use tear gas or any tear gas weapon for~~
30 ~~the projection or release of tear gas if the tear gas or tear gas~~
31 ~~weapon is used solely for self-defense purposes, subject to the~~
32 ~~following requirements:~~

33 ~~(a) No person convicted of a felony or any crime involving an~~
34 ~~assault under the laws of the United States, the State of California,~~
35 ~~or any other state, government, or country, or convicted of misuse~~
36 ~~of tear gas under subdivision (g), shall purchase, possess, or use~~
37 ~~tear gas or any tear gas weapon.~~

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

1 ~~(e) No person shall sell or furnish any tear gas or tear gas~~
2 ~~weapon to a minor.~~

3 ~~(d) No minor shall purchase, possess, or use tear gas or any tear~~
4 ~~gas weapon.~~

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

9 ~~(2) Every tear gas container and tear gas weapon that may be~~
10 ~~lawfully purchased, possessed, and used pursuant to this section~~
11 ~~shall have a label that states: "WARNING: The use of this~~
12 ~~substance or device for any purpose other than self-defense is a~~
13 ~~crime under the law. The contents are dangerous — use with care."~~

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

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

21 ~~(f) Effective March 1, 1994, every tear gas container and tear~~
22 ~~gas weapon that may be lawfully purchased, possessed, and used~~
23 ~~pursuant to this section shall be accompanied by an insert including~~
24 ~~directions for use, first aid information, safety and storage~~
25 ~~information, and explanation of the legal ramifications of improper~~
26 ~~use of the tear gas container or tear gas product.~~

27 ~~(g) (1) Except as provided in paragraph (2), any person who~~
28 ~~uses tear gas or any tear gas weapon except in self-defense is guilty~~
29 ~~of a public offense and is punishable by imprisonment pursuant~~
30 ~~to subdivision (h) of Section 1170 for 16 months, or two or three~~
31 ~~years or in a county jail not to exceed one year or by a fine not to~~
32 ~~exceed one thousand dollars (\$1,000), or by both the fine and~~
33 ~~imprisonment.~~

34 ~~(2) If the use is against a peace officer, as defined in Chapter~~
35 ~~4.5 (commencing with Section 830) of Title 3 of Part 2, engaged~~
36 ~~in the performance of official duties and the person committing~~
37 ~~the offense knows or reasonably should know that the victim is a~~
38 ~~peace officer, the offense is punishable by imprisonment in state~~
39 ~~prison for 16 months or two or three years or by a fine not to~~

1 ~~exceed ten thousand dollars (\$10,000), or by both the fine and~~
2 ~~imprisonment.~~

3 ~~SEC. 13.~~

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

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