

AMENDED IN SENATE JANUARY 4, 2016

AMENDED IN SENATE APRIL 21, 2015

SENATE BILL

No. 752

Introduced by Senator Nielsen

February 27, 2015

An act to amend Sections 146e, 148, ~~243, and 243.1~~ and 244.5 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 and committing a battery against a peace officer or other medical personnel engaged in the performance of his or her duties. *arrest, maliciously disclosing specified personal information about the officer with the intent to obstruct justice or the due administration of the laws, and using a stun gun against a peace officer or firefighter.* 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 instead punishable as wobblers,~~ the wobblers instead punishable as felonies in county jail ~~jail, as specified,~~ 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 146e of the Penal Code is amended to
2 read:

3 146e. (a) Every person who maliciously, and with the intent
4 to obstruct justice or the due administration of the laws, or with
5 the intent or threat to inflict imminent physical harm in retaliation
6 for the due administration of the laws, publishes, disseminates, or
7 otherwise discloses the residence address or telephone number of
8 any peace officer, nonsworn police dispatcher, employee of a city
9 police department or county sheriff's office, or public safety
10 official, or that of the spouse or children of these persons who
11 reside with them, while designating the peace officer, nonsworn
12 police dispatcher, employee of a city police department or county
13 sheriff's office, or public safety official, or relative of these persons
14 as such, without the authorization of the employing agency, shall
15 be punished by imprisonment *in a county jail not to exceed one*
16 *year or pursuant to subdivision (h) of Section 1170.*

17 (b) A violation of subdivision (a) with regard to any peace
18 officer, employee of a city police department or county sheriff's
19 office, or public safety official, or the spouse or children of these
20 persons, that results in bodily injury to the peace officer, employee
21 of the city police department or county sheriff's office, or public
22 safety official, or the spouse or children of these persons, is a felony
23 punishable by imprisonment pursuant to subdivision (h) of Section
24 1170.

25 (c) For purposes of this section, "public safety official" is
26 defined in Section 6254.24 of the Government Code.

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

28 148. (a) (1) Every person who willfully resists, delays, or
29 obstructs any public officer, peace officer, or an emergency medical
30 technician, as defined in Division 2.5 (commencing with Section

1 1797) of the Health and Safety Code, in the discharge or attempt
2 to discharge any duty of his or her office or employment, when
3 no other punishment is prescribed, shall be punished by a fine not
4 exceeding one thousand dollars (\$1,000), or by imprisonment in
5 a county jail not to exceed one year, or by both that fine and
6 imprisonment.

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

14 (b) Every person who, during the commission of any offense
15 described in subdivision (a), removes or takes any weapon, other
16 than a firearm, from the person of, or immediate presence of, a
17 public officer or peace officer shall be punished by imprisonment
18 pursuant to subdivision (h) of Section 1170.

19 (c) Every person who, during the commission of any offense
20 described in subdivision (a), removes or takes a firearm from the
21 person of, or immediate presence of, a public officer or peace
22 officer ~~shall be punished~~ *is guilty of a felony punishable* by
23 imprisonment in state prison.

24 (d) Except as provided in subdivision (c) and notwithstanding
25 subdivision (a) of Section 489, every person who removes or takes
26 without intent to permanently deprive, or who attempts to remove
27 or take a firearm from the person of, or immediate presence of, a
28 public officer or peace officer, while the officer is engaged in the
29 performance of his or her lawful duties, shall be punished by
30 imprisonment *in a county jail not to exceed one year or* pursuant
31 to subdivision (h) of Section 1170.

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

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

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

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

1 (4) An independent witness corroborates that the defendant
2 stated that he or she intended to remove the firearm and the
3 defendant actually touched the firearm.

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

7 (6) The defendant’s fingerprint was found on the firearm or
8 holster.

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

11 (8) In the course of any struggle, the officer’s firearm fell and
12 the defendant attempted to pick it up.

13 (e) A person shall not be convicted of a violation of subdivision
14 (a) in addition to a conviction of a violation of subdivision (b), (c),
15 or (d) when the resistance, delay, or obstruction, and the removal
16 or taking of the weapon or firearm or attempt thereof, was
17 committed against the same public officer, peace officer, or
18 emergency medical technician. A person may be convicted of
19 multiple violations of this section if more than one public officer,
20 peace officer, or emergency medical technician are victims.

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

24 ~~SEC. 3. Section 243 of the Penal Code is amended to read:~~

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

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

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

12 ~~(e) (1) When a battery is committed against a custodial officer,
13 firefighter, emergency medical technician, lifeguard, process server,
14 traffic officer, or animal control officer engaged in the performance
15 of his or her duties, whether on or off duty, or a nonsworn
16 employee of a probation department engaged in the performance
17 of his or her duties, whether on or off duty, or a physician or nurse
18 engaged in rendering emergency medical care outside a hospital,
19 clinic, or other health care facility, and the person committing the
20 offense knows or reasonably should know that the victim is a
21 nonsworn employee of a probation department, custodial officer,
22 firefighter, emergency medical technician, lifeguard, process server,
23 traffic officer, or animal control officer engaged in the performance
24 of his or her duties, or a physician or nurse engaged in rendering
25 emergency medical care, and an injury is inflicted on that victim,
26 the battery is punishable by imprisonment pursuant to subdivision
27 (h) of Section 1170 for 16 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 pursuant to subdivision (h) of Section 1170 for 16
39 months, or two or three years, or by both that fine and
40 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 (c) 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. 4. 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 ~~eustodial 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 in state prison.~~

31 ~~SEC. 3. Section 244.5 of the Penal Code is amended to read:~~

32 244.5. (a) As used in this section, “stun gun” means any item,
33 except a less lethal weapon, as defined in Section 16780, used or
34 intended to be used as either an offensive or defensive weapon
35 that is capable of temporarily immobilizing a person by the
36 infliction of an electrical charge.

37 (b) Every person who commits an assault upon the person of
38 another with a stun gun or less lethal weapon, as defined in Section
39 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. 5.~~

15 *SEC. 4.* No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.