

AMENDED IN ASSEMBLY MAY 28, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 172**

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**Introduced by Assembly Member Rodriguez**

January 22, 2015

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An act to add Section 1317.5a to the Health and Safety Code, and to amend Sections 241 and 243 of the Penal Code, relating to hospital emergency departments.

LEGISLATIVE COUNSEL'S DIGEST

AB 172, as amended, Rodriguez. Emergency departments: assaults and batteries.

(1) Existing law defines an assault as an unlawful attempt, coupled with present ability, to commit a violent injury on the person of another. Under existing law, an assault committed against a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility is punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$2,000, or by both that fine and imprisonment.

This bill would also make an assault committed against a physician, nurse, or other health care worker of a hospital engaged in providing services within the emergency department punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$2,000, or by both that fine and imprisonment. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(2) Existing law defines a battery as any willful and unlawful use of force or violence upon the person of another. Under existing law a battery committed against a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care

facility is punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$2,000, or by both that fine and imprisonment. ~~Under existing law, if an injury is inflicted the battery is punishable by imprisonment in a county jail not exceeding one year, by a fine of \$2,000, or by both that fine and imprisonment, or by imprisonment in a county jail for 16 months, or 2 or 3 years.~~

This bill would also make a battery committed against a physician, nurse, or other health care worker of a hospital engaged in providing services within the emergency department punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$2,000, or by both that fine and imprisonment. ~~The bill would, if the battery results in an injury, make the battery punishable by imprisonment in a county jail not exceeding one year, by a fine of \$2,000, or by both that fine and imprisonment, or by imprisonment in a county jail for 16 months, or 2 or 3 years.~~ By expanding the scope of a crime, this bill would impose a state-mandated local program.

(3) This bill would allow a health facility that maintains and operates an emergency department to post a notice in the emergency department stating that an assault or battery against staff is a crime, and may result in a ~~felony~~ *criminal* conviction, as provided.

(4) 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 1317.5a is added to the Health and Safety
- 2 Code, to read:
- 3 1317.5a. A health facility licensed under this chapter that
- 4 maintains and operates an emergency department may post a notice
- 5 in a conspicuous place in the emergency department stating
- 6 substantially the following:
- 7
- 8 WE WILL NOT TOLERATE any form of threatening or
- 9 aggressive behavior toward our staff. Assaults and batteries against
- 10 our staff are crimes and may result in a ~~felony~~ *criminal* conviction.

1 All staff have the right to carry out their work without fearing for  
2 their safety.

3  
4 SEC. 2. Section 241 of the Penal Code is amended to read:

5 241. (a) An assault is punishable by a fine not exceeding one  
6 thousand dollars (\$1,000), or by imprisonment in the county jail  
7 not exceeding six months, or by both the fine and imprisonment.

8 (b) When an assault is committed against the person of a parking  
9 control officer engaged in the performance of his or her duties,  
10 and the person committing the offense knows or reasonably should  
11 know that the victim is a parking control officer, the assault is  
12 punishable by a fine not exceeding two thousand dollars (\$2,000),  
13 or by imprisonment in the county jail not exceeding six months,  
14 or by both the fine and imprisonment.

15 (c) When an assault is committed against the person of a peace  
16 officer, firefighter, emergency medical technician, mobile intensive  
17 care paramedic, lifeguard, process server, traffic officer, code  
18 enforcement officer, animal control officer, or search and rescue  
19 member engaged in the performance of his or her duties, or a  
20 physician or nurse engaged in rendering emergency medical care  
21 outside a hospital, clinic, or other health care facility, or a  
22 physician, nurse, or other health care worker of a hospital engaged  
23 in providing services within the emergency department, and the  
24 person committing the offense knows or reasonably should know  
25 that the victim is a peace officer, firefighter, emergency medical  
26 technician, mobile intensive care paramedic, lifeguard, process  
27 server, traffic officer, code enforcement officer, animal control  
28 officer, or search and rescue member engaged in the performance  
29 of his or her duties, or a physician or nurse engaged in rendering  
30 emergency medical care, or a physician, nurse, or other health care  
31 worker of a hospital engaged in providing services within the  
32 emergency department, the assault is punishable by a fine not  
33 exceeding two thousand dollars (\$2,000), or by imprisonment in  
34 a county jail not exceeding one year, or by both the fine and  
35 imprisonment.

36 (d) As used in this section, the following definitions apply:

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

39 (2) "Emergency medical technician" means a person possessing  
40 a valid course completion certificate from a program approved by

1 the State Department of Health Care Services for the medical  
2 training and education of ambulance personnel, and who meets  
3 the standards of Division 2.5 (commencing with Section 1797) of  
4 the Health and Safety Code.

5 (3) “Mobile intensive care paramedic” refers to those persons  
6 who meet the standards set forth in Division 2.5 (commencing  
7 with Section 1797) of the Health and Safety Code.

8 (4) “Nurse” means a person who meets the standards of Division  
9 2.5 (commencing with Section 1797) of the Health and Safety  
10 Code or a nurse of a hospital engaged in providing services within  
11 the emergency department.

12 (5) “Lifeguard” means a person who is:

13 (A) Employed as a lifeguard by the state, a county, or a city,  
14 and is designated by local ordinance as a public officer who has a  
15 duty and responsibility to enforce local ordinances and  
16 misdemeanors through the issuance of citations.

17 (B) Wearing distinctive clothing which includes written  
18 identification of the person’s status as a lifeguard and which clearly  
19 identifies the employing organization.

20 (6) “Process server” means any person who meets the standards  
21 or is expressly exempt from the standards set forth in Section 22350  
22 of the Business and Professions Code.

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

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

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

39 (B) “Code enforcement officer” also includes any person who  
40 is employed by the Department of Housing and Community

Development who has enforcement authority for health, safety, and welfare requirements pursuant to the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code); the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code); the Manufactured Housing Act of 1980 (Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code); the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code); and the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(10) "Parking control officer" means any person employed by a city, county, or city and county, to monitor and enforce state laws and local ordinances relating to parking.

(11) "Search and rescue member" means any person who is part of an organized search and rescue team managed by a governmental agency.

(12) "Health care worker" means a person who, in the course and scope of employment or as a volunteer, performs duties directly associated with the care and treatment rendered by the hospital's emergency department or the security thereof.

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

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

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

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

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

38 (2) When the battery specified in paragraph (1) is committed  
39 against a peace officer engaged in the performance of his or her  
40 duties, whether on or off duty, including when the peace officer

1 is in a police uniform and is concurrently performing the duties  
2 required of him or her as a peace officer while also employed in  
3 a private capacity as a part-time or casual private security guard  
4 or patrolman and the person committing the offense knows or  
5 reasonably should know that the victim is a peace officer engaged  
6 in the performance of his or her duties, the battery is punishable  
7 by a fine of not more than ten thousand dollars (\$10,000), or by  
8 imprisonment in a county jail not exceeding one year or pursuant  
9 to subdivision (h) of Section 1170 for 16 months, or two or three  
10 years, or by both that fine and imprisonment.

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

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

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

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

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

1 For any order to pay a fine, make payments to a battered  
2 women's shelter, or pay restitution as a condition of probation  
3 under this subdivision, the court shall make a determination of the  
4 defendant's ability to pay. In no event shall any order to make  
5 payments to a battered women's shelter be made if it would impair  
6 the ability of the defendant to pay direct restitution to the victim  
7 or court-ordered child support. If the injury to a married person is  
8 caused in whole or in part by the criminal acts of his or her spouse  
9 in violation of this section, the community property shall not be  
10 used to discharge the liability of the offending spouse for restitution  
11 to the injured spouse, required by Section 1203.04, as operative  
12 on or before August 2, 1995, or Section 1202.4, or to a shelter for  
13 costs with regard to the injured spouse and dependents, required  
14 by this section, until all separate property of the offending spouse  
15 is exhausted.

16 (3) Upon conviction of a violation of this subdivision, if  
17 probation is granted or the execution or imposition of the sentence  
18 is suspended and the person has been previously convicted of a  
19 violation of this subdivision and sentenced under paragraph (1),  
20 the person shall be imprisoned for not less than 48 hours in addition  
21 to the conditions in paragraph (1). However, the court, upon a  
22 showing of good cause, may elect not to impose the mandatory  
23 minimum imprisonment as required by this subdivision and may,  
24 under these circumstances, grant probation or order the suspension  
25 of the execution or imposition of the sentence.

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

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

34 (f) As used in this section:

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

37 (2) "Emergency medical technician" means a person who is  
38 either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses  
39 a valid certificate or license in accordance with the standards of



1 Division 2.5 (commencing with Section 1797) of the Health and  
2 Safety Code.

3 (3) “Nurse” means a person who meets the standards of Division  
4 2.5 (commencing with Section 1797) of the Health and Safety  
5 Code or a nurse of a hospital engaged in providing services within  
6 the emergency department.

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

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

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

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

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

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

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

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

39 (B) “Code enforcement officer” also includes any person who  
40 is employed by the Department of Housing and Community

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

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

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

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

24 (15) “Health care worker” means a person who, in the course  
25 and scope of employment or as a volunteer, performs duties directly  
26 associated with the care and treatment rendered by the hospital’s  
27 emergency department or the security thereof.

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

37 SEC. 4. No reimbursement is required by this act pursuant to  
38 Section 6 of Article XIII B of the California Constitution because  
39 the only costs that may be incurred by a local agency or school  
40 district will be incurred because this act creates a new crime or

1   infraction, eliminates a crime or infraction, or changes the penalty  
2   for a crime or infraction, within the meaning of Section 17556 of  
3   the Government Code, or changes the definition of a crime within  
4   the meaning of Section 6 of Article XIII B of the California  
5   Constitution.

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