
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 977 **Hearing Date:** June 4, 2024
Author: Rodriguez
Version: January 10, 2024
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Emergency departments: assault and battery*

HISTORY

Source: California Hospital Association
California Medical Association
American College of Surgeons

Prior Legislation: AB 329 (Rodriguez), held in Sen. Public Safety, 2019
AB 172 (Rodriguez), vetoed, 2015

Support: Adventist Health; Alliance of Catholic Health Care, INC.; American Nurses Association; California Chapter of The American College of Emergency Physicians; California College and University Police Chiefs Association; California District Attorneys Association; California Emergency Nurses Association; California State Sheriffs' Association; Cedars Sinai; Cottage Health; County of Yolo; Dignity Health; El Camino Health; Emergency Nurses Association, California State Council; John Muir Health; Loma Linda University Adventist Health Sciences Center and Its Affiliated Entities; Providence; Public Risk Innovation, Solutions, and Management (PRISM); Rady Children's Hospital; Riverside Community Hospital; Sacramento County Sheriff Jim Cooper; San Diego County District Attorney's Office; San Diego Regional Chamber of Commerce; San Francisco District Attorney Brooke Jenkins; San Francisco Marin Medical Society; Sharp Healthcare; Southwest Healthcare Rancho Springs Hospital; Stanford Engineering; Stanford Health Care; Sutter Health; USC Keck School of Medicine; Washington Township Health Care District; 50+ Individuals

Opposition: ACLU California Action; California Attorneys for Criminal Justice; California Public Defenders Association (CPDA); Drug Policy Alliance; Initiate Justice (UNREG); La Defensa; San Francisco Public Defender; Sister Warriors Freedom Coalition

Assembly Floor Vote: 68 - 0

PURPOSE

The purpose of this bill is to increase the punishment for assault or battery against a physician, nurse, or other healthcare worker of a hospital engaged in providing services within the emergency department.

Existing law defines “assault” as an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another. (Pen. Code, § 240.)

Existing law states that simple assault is punishable by a fine not exceeding \$1,000.00, or by the imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment. (Pen. Code, § 241, subd. (a).)

Existing law increases the maximum punishment for assault to a fine not exceeding \$2,000, or by the imprisonment in the county jail not exceeding six months, or by the both the fine and imprisonment, if an assault is committed against a peace officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process sever, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing assault knows or reasonably should know that the victim is a member of any of the aforementioned professions. (Pen. Code, § 241, subd. (c).)

Existing law punishes assault by any means of force likely to produce great bodily injury by imprisonment in the state prison for two, three or four years, or in a county jail for not less than 6 months and not exceeding one year, or by both imprisonment and a fine not exceeding \$10,000. (Pen. Code, § 245, subd. (a)(4).)

Existing law defines “battery” as any unlawful use of force or violence upon the person of another. (Pen. Code, § 242.)

Existing law states that simple battery is punishable by a fine of up to \$2,000, or by imprisonment in county jail not exceeding 6 months, or by both a fine and imprisonment. (Pen. Code, § 243, subd. (a).)

Existing law increases the maximum punishment for battery to a fine not exceeding \$2,000 or imprisonment in the county jail not exceeding one year, or both the fine and imprisonment if the battery is committed against the following: a peace officer; custodial officer; firefighter; emergency medical technician; lifeguard; security officer; custody assistant; process server; traffic officer; code enforcement officer; animal control officers; 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 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, and the person committing the offense knows or reasonably should know that the victim is 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, nonsworn employee of a probation department, or a physician or nurse engaged in rendering emergency medical care. (Pen. Code, § 243, subd. (b).)

Existing law increases the maximum punishment for battery to an alternate felony-misdemeanor punishable by a fine not exceeding \$2,000, by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment, or by imprisonment for two, three, or four years

when committed against the categories of persons listed above, except peace officers engaged in the performance of their duties which is specified in a separate subdivision, and injury is inflicted on that victim. (Pen. Code, § 243, subd. (c).)

Existing law states that if battery is committed against a person and serious bodily injury is inflicted on the person, the battery is an alternate felony-misdemeanor punishable by imprisonment in a county jail not exceeding one year or imprisonment for two, three, or four years. (Penal Code §243, subd. (d).)

This bill specifies that when an assault is committed against a physician, nurse, or other health care worker of a hospital engaged in providing services within the emergency department, the assault is punishable by a fine not exceeding \$2,000, or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

This bill defines “hospital” as a facility for the diagnosis, care, and treatment of human illness that is subject to, or specifically exempted from, specified licensure requirements, consistent with the definition provided in Penal Code section 243.2.

This bill specifies that a health facility, as specified, may post a notice in a conspicuous place in any area of the facility stating substantially the following: “WE WILL NOT TOLERATE any form of threatening or aggressive behavior toward our staff, patients, or visitors. Assaults and batteries against our staff, patients, or visitors are crimes and may result in a criminal conviction. All staff have the right to carry out their work without fearing for their safety.”

COMMENTS

1. Need for This Bill

According to the author of this bill:

As a career first responder, I experienced firsthand how the constant threat of workplace violence (WPV) creates a dangerous and volatile environment in the emergency department (ED). Healthcare workers in this field experience burnout, stress, and trauma, which affects their ability to treat patients. Studies have shown that experiencing workplace violence inside the emergency department can cause PTSD, depression, and a lower quality of life. Workplace violence lowers patient-physician trust and drives poor health outcomes. Unfortunately, many think workplace violence is a part of the job, and many healthcare workers may not even report WPV. However, there should be zero tolerance for verbal or physical abuse to those dedicated to improving patients’ lives. One-third of emergency nurses have considered leaving due to WPV, and 85% of emergency physicians believe WPV in the ED has increased over the past five years. Two-thirds of emergency physicians have reportedly been assaulted, and one-third of those assaults have led to an injury. The COVID-19 pandemic only worsened this trend and further strained desperately needed healthcare staff.

There is no reason why penalties for assaulting or committing battery against an emergency healthcare worker inside an emergency department should be weaker than those working outside an emergency department. AB 977 will provide parity

on crimes in and out of an ED while also sending a message to ED staff that their work is valued and their safety is our priority.

2. Existing Laws: Assault versus Battery

Assault and battery are two similar but different offenses. Assault is defined as “an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” (Pen. Code, § 240.) Battery is defined as “any willful and unlawful use of force or violence upon the person of another.” (Pen. Code, § 242.) Assault is essentially attempted battery. (“Simple assault” is included in the offense of battery, and a conviction of the latter would subsume the assault. By definition one cannot commit battery without also committing a “simple” assault which is nothing more than an attempted battery. *People v. Fuller* (1975) 53 Cal. App. 3d 417.)

An example of assault would be if a person swung at another person without hitting them, whereas if the person did strike the other person, the conduct would become a battery.

Existing law generally punishes simple assault and battery by imprisonment not exceeding 6 months, or by both a fine (maximum of \$1,000 or \$2,000 respectively) and imprisonment. (Pen. Code, §§ 241 and 243.) However, assaults and batteries that are committed under certain circumstances are subject to higher misdemeanor penalties, and in some circumstances felony penalties. The higher misdemeanor penalty currently apply when the assault or battery is committed against specified categories of persons such as peace officers, firefighters, among others. Also included are emergency medical technicians and nurses and physicians rendering emergency care. (Pen. Code, §§ 241, subd. (c); 243, subd. (c) and (d).) These offenses are still misdemeanors however the maximum fine is \$2,000 and the maximum term of imprisonment is one year, as opposed to the standard misdemeanor penalty of up to a \$1,000 fine and up to 6 months imprisonment.

This bill would add a physician, nurse, or other health care worker of a hospital engaged in providing services within the emergency department to the assault and battery statutes that authorize higher misdemeanor penalties.

This bill also specifies that a hospital that maintains and operates an emergency department may post a notice in a conspicuous place stating the following: “WE WILL NOT TOLERATE any form of threatening or aggressive behavior toward our staff. Assaults and batteries against our staff are crimes and may result in a criminal conviction. All staff have the right to carry out their work without fearing for their safety.” According to supporters of this bill, some hospitals are already posting similar notices in an attempt to provide more notice to patients that this behavior may result in criminal punishment.

3. Annual Report on Violent Incidents at Hospitals

Hospitals are required to submit reports to the Division of Occupational Safety and Health (Cal/OSHA) regarding any incident involving either of the following:

- (A) The use of physical force against an employee by a patient or a person accompanying a patient that results in, or has a high likelihood of resulting in, injury, psychological trauma, or stress, regardless of whether the employee sustains an injury;

(B) An incident involving the use of a firearm or other dangerous weapon, regardless of whether the employee sustains an injury. (Cal. Code Regs., tit. 8, § 3342, subd. (g).)

Cal/OSHA issues an annual report on incidents of violence committed at hospitals based on reports submitted by the hospitals. The report must include which hospitals submitted reports, the total number of incidents reported, the outcome of any related inspection or investigation, citations levied against a hospital based on a violent incident, and recommendations for the prevention of violent incidents in hospitals (Labor Code, § 6401.8, subd. (c).) For reporting purposes, “injury” is defined as any injury that results in loss of consciousness, medical treatment beyond first aid, days away from work, restricted work or transfer to another job, significant injury or illness diagnosed by a physician or other licensed health care professional, or death.

According to Cal/OSHA’s report covering the period starting on October 1, 2021, through September 30, 2022, there were 10,289 incidents of violence reported from 301 hospital facilities. The report does not provide information how many of those incidents resulted in an arrest or criminal conviction.

4. Increasing Penalties Has Minimal Deterrent Effect

A comprehensive report published in 2014, entitled *The Growth of Incarceration in the United States*, discusses the effects on crime reduction through incapacitation and deterrence, and describes general deterrence compared to specific deterrence:

A large body of research has studied the effects of incarceration and other criminal penalties on crime. Much of this research is guided by the hypothesis that incarceration reduces crime through incapacitation and deterrence. Incapacitation refers to the crimes averted by the physical isolation of convicted offenders during the period of their incarceration. Theories of deterrence distinguish between general and specific behavioral responses. General deterrence refers to the crime prevention effects of the threat of punishment, while specific deterrence concerns the aftermath of the failure of general deterrence—that is, the effect on reoffending that might result from the experience of actually being punished.

(National Research Council (2014) *The Growth of Incarceration in the United States: Exploring Causes and Consequences* Committee on Causes and Consequences of High Rates of Incarceration, J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press. (http://johnjay.jjay.cuny.edu/nrc/NAS_report_on_incarceration.pdf.)

In regard to deterrence, the authors note that in “the classical theory of deterrence, crime is averted when the expected costs of punishment exceed the benefits of offending. Much of the empirical research on the deterrent power of criminal penalties has studied sentence enhancements and other shifts in penal policy.” (National Research Council, *supra*, *The Growth of Incarceration in the United States*, p. 132.)

Deterrence theory is underpinned by a rationalistic view of crime. In this view, an individual considering commission of a crime weighs the benefits of offending against the costs of punishment. Much offending, however, departs from the strict

decision calculus of the rationalistic model. Robinson and Darley (2004) review the limits of deterrence through harsh punishment. They report that offenders must have some knowledge of criminal penalties to be deterred from committing a crime, but in practice often do not.

(*Id.* at p. 133.) The report concludes: The incremental deterrent effect of increases in lengthy prison sentences is modest at best. “Because recidivism rates decline markedly with age, lengthy prison sentences, unless they specifically target very high-rate or extremely dangerous offenders, are an inefficient approach to preventing crime by incapacitation.” (*Id.* at p. 5.)

This bill increases the potential sentence assault or battery committed against certain hospital employees. Generally, a person convicted of assault or battery is subject to imprisonment for up to 6 months in county jail. This bill would increase the maximum term of imprisonment to one year. As discussed above, studies show that increasing penalties does little to deter crimes.

5. Veto by of Similar Legislation

AB 172 (Rodriguez), of the 2015-2016 Legislative Session, was substantially similar to this bill. It was vetoed by former Governor Brown. The veto message said:

This bill would increase from six months to one year in county jail the maximum punishment for assault or battery of a healthcare worker inside an emergency department.

Emergency rooms are overcrowded and often chaotic. I have great respect for the work done by emergency room staff and I recognize the daunting challenges they face every day. If there were evidence that an additional six months in county jail (three months, once good-time credits are applied) would enhance the safety of these workers or serve as a deterrent, I would sign this bill. I doubt that it would do either.

We need to find more creative ways to protect the safety of these critical workers. This bill isn't the answer.

6. Argument in Support

According to California Hospitals Association, a cosponsor of this bill:

The federal Bureau of Labor Statistics reports that health care workers are five times more likely to experience workplace violence than employees in other sectors. In fact, a 2021 study found that 44% of nurses reported being subject to physical violence, while 68% reported verbal abuse — troubling numbers that were exacerbated by the COVID-19 pandemic. A 2022 study of one hospital emergency department supported these findings, demonstrating that incidences of workplace violence increased during the pandemic and were directly associated with the COVID-19 case rate.

Hospital health care workers perform their duties in a high-risk environment, as many patients and visitors experience high stress when suffering an emergency medical condition that can at times lead to aggressive behavior. Importantly,

health care workers are trained to recognize when a patient's behavior is related to their physical or mental health condition, versus when a patient or visitor is just being violent.

Hospitals and health systems make significant investments in infrastructure, staff, and training to keep workers, patients, and visitors safe, including:

- Development and implementation of comprehensive workplace violence prevention plans
- Regular reporting of incidents of violence to CalOSHA
- Designing facilities and workflows that increase safety, such as installation of metal detectors, use of additional security personnel, and enhanced weapon detection protocol.

Hospitals are doing their part to protect their employees — the most critical component of our health care delivery system — but California's penal code has fallen behind. AB 977 will deliver important safeguards for all workers in hospital emergency departments to better protect them from violence.

7. Argument in Opposition

According to California Public Defenders Association (CPDA):

The World Health Organization and countless other organizations have recognized that almost all violence in hospitals occurs between staff and patients or their families. Patients are often combative, either through intoxication, stress, or mental illness. Often the families are under a great deal of stress because of receiving bad news about their loved ones and reacting poorly to the news. This is not to say that such behavior should be excused, only that increased incarceration and fines for these individuals is not in the public interest, nor likely to be an effective deterrent to such behavior. AB 977 is unnecessary. Existing law covers the situations that the proposed law purports to address. While simple assault or battery is currently a misdemeanor, there is a broad spectrum of assaultive conduct that can be, and usually is, charged as felonies. Doctors, nurses, and other hospital health care workers working in the emergency department have a right to do their jobs without being harmed. The current laws, and sentencing structure, accomplish that goal.

CPDA members frequently work with individuals in need of medical assistance that are taken to healthcare facilities. Frequently these people are mentally ill, on drugs/medication, or the victims of violent assaults themselves. Often their distressed family members come to see or support them. If an assault or battery occurs, healthcare facilities usually have security and police close at hand to remove such individuals and safeguard healthcare workers. Punishing those either seeking medical assistance, or their loved ones, more harshly will not add to public safety or aid in the rendering of medical aid.