
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguín, Chair
2025 - 2026 Regular

Bill No: AB 848 **Hearing Date:** June 24, 2025
Author: Soria
Version: April 28, 2025
Urgency: No **Fiscal:** Yes
Consultant: CA

Subject: *Sexual battery.*

HISTORY

Source: Author

Prior Legislation: SB 442 (Limon), Ch. 981, Stats. of 2024
SB 567 (Bradford), Ch. 731, Stats. of 2021
SB 1421 (Romero), Ch. 302, Stats. of 2002
AB 3388 (Alpert), Ch. 1219, Stats. of 1992

Support: Arcadia Police Officers' Association; Brea Police Association; Burbank Police Officers' Association; California Association of School Police Chiefs; California Coalition of School Safety Professionals; California District Attorneys Association; California Narcotic Officers' Association; California Reserve Peace Officers Association; California State Sheriffs' Association; Claremont Police Officers Association; Corona Police Officers Association; Culver City Police Officers' Association; Fullerton Police Officers' Association; Los Angeles School Police Management Association; Los Angeles School Police Officers Association; Murrieta Police Officers' Association; Newport Beach Police Association; Palos Verdes Police Officers Association; Peace Officers Research Association of California (PORAC); Placer County Deputy Sheriffs' Association; Pomona Police Officers' Association; Riverside Police Officers Association; Riverside Sheriffs' Association

Opposition: Initiate Justice

Assembly Floor Vote: 77-0

PURPOSE

The purpose of this bill is to allow the court to consider as a factor in aggravation for purposes of sentencing a defendant convicted of felony sexual battery that the defendant was employed at a hospital where the offense occurred and that the victim was in the defendant's care or seeking medical care at the hospital.

Existing law provides that the following persons are guilty of sexual battery:

- Any person who touches the intimate body part of another person while that person is unlawfully restrained by the accused or accomplice, and if the touching is against the will

of the person touched, and is for the purpose of sexual arousal, sexual gratification, or sexual abuse;

- Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, sexual gratification, or sexual abuse;
- Any person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose; and,
- Any person who, for the purpose of sexual arousal, sexual gratification, or sexual abuse, causes another, against that person's will while that person is unlawfully restrained either by the accused or an accomplice, or is institutionalized for medical treatment and is seriously disabled or medically incapacitated, to masturbate or touch an intimate part of either of those persons or a third person. (Pen. Code, § 243.4, subs. (a) – (d).)

Existing law makes sexual battery punishable as an alternate felony-misdemeanor by imprisonment in a county jail for not more than one year, and by a fine not exceeding \$2,000; or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding \$10,000. (Pen. Code, § 243.4, subs. (a) – (d).)

Existing law defines “touches,” as used in the aforementioned sexual battery offenses, as meaning physical contact with the skin of another person whether accomplished directly or through the clothing of the person committing the offense. (Pen. Code, § 243.4, subd. (f).)

Existing law provides that “touches,” for the purpose of sexual battery, means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim. (Pen. Code, § 243.4, subd. (e)(2).)

Existing law provides that any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, or any person who, for the purpose of sexual arousal, sexual gratification, or sexual abuse, causes another, against that person's will, to masturbate or touch an intimate part of either of those persons or a third person, is guilty of misdemeanor sexual battery, punishable by a fine not exceeding \$2,000, or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. However, if the defendant was an employer and the victim was an employee of the defendant, the misdemeanor sexual battery is punishable by a fine not exceeding \$3,000, or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. (Pen. Code, § 243.4, subd. (e)(1).)

Existing law provides that “touches,” for the purpose of misdemeanor sexual battery, means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim. (Pen. Code, § 243.4, subd. (e)(2).)

Existing law defines “intimate part” for purposes of sexual battery as the sexual organ, anus, groin, or buttocks of any person, and the breast of a female. (Pen. Code, § 243.4, subd. (g)(1).)

Existing law states that in the case of a sexual battery conviction, the fact that the defendant was an employer and the victim was an employee of the defendant shall be a factor in aggravation in sentencing. (Pen. Code, § 243.4, subd. (i).)

Existing law specifies that “sexual battery” does not include rape or sexual penetration. (Pen. Code, § 243.4, subd. (g)(2).)

Existing law requires a person convicted of sexual battery to register as a sex offender. (Pen. Code, § 290, subd. (c)(1).)

Existing law provides that when a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall in its sound discretion order imposition of a sentence not to exceed the middle term, except as specified. (Pen. Code, § 1170, subd. (b)(1).)

Existing law provides that the court may impose a sentence exceeding the middle term only when there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term and the facts underlying those circumstances have been stipulated to by the defendant or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial. (Pen. Code, § 1170, subd. (b)(2).)

Existing law provides that notwithstanding the presumption for the middle term, and unless the court finds that the aggravating circumstances outweigh the mitigating circumstances and that imposition of the lower term would be contrary to the interests of justice, the court shall order imposition of the lower term if the defendant experienced psychological, physical, or childhood trauma, is a youth (under age 26), or is or has been a victim of domestic violence or human trafficking. (Pen. Code, § 1170, subd. (b)(6).)

Existing law provides that sentencing choices requiring a statement of a reason include “[s]electing one of the three authorized prison terms referred to in section 1170(b) for either an offense or an enhancement.” (Cal. Rules of Court, rule 4.406(b)(4).)

Existing law requires the sentencing judge to consider relevant criteria enumerated in the Rules of Court. (Cal. Rules of Court, rule 4.409.)

Existing law enumerates circumstances in aggravation, relating both to the crime and to the defendant, as specified. In addition, any other factors statutorily declared to be circumstances in aggravation or that reasonably relate to the defendant or the circumstances under which the crime was committed can be considered in aggravation. (Cal. Rules of Court, rule 4.421.)

Existing law enumerates circumstances in mitigation, relating both to the crime and to the defendant, as specified. In addition, any other factors statutorily declared to be circumstances in mitigation or that reasonably relate to the defendant or the circumstances under which the crime was committed can be considered. (Cal. Rules of Court, rule 4.423.)

This bill provides that for purposes of sentencing a person for felony sexual battery, the fact that the defendant was employed at a hospital where the offense occurred and the victim was in the

defendant's care or seeking medical care at the hospital is a factor in aggravation – i.e., a factor that the court may consider in sentencing the defendant.

COMMENTS

1. Need for This Bill

According to the author:

The medical sector has seen several recent high profile cases across the state of serial sexual abuse in hospitals where medical professionals have preyed on patients while fraudulently disguising their actions as providing critical medical care. At Memorial Hospital Los Banos, an ultrasound technician allegedly sexually battered at least ten women over the course of multiple years during sensitive examinations, and is charged with multiple counts of felony sexual battery. Current law already recognizes that the significant power imbalance between an employer and an employee merits aggravated sentencing in cases of felony sexual battery. However, there is no comparable aggravating factor for a medical professional who sexually batters a patient under their care, despite the power imbalance being similar if not even greater.

AB 848 equitably addresses this problem by creating an aggravating factor in the sentencing of felony sexual battery committed by a hospital employee against a patient. The betrayal of a medical professional using their trusted position to sexually abuse rather than heal patients is a grievous offense that merits sentencing in line with sexual abuse of an employee by their employer. AB 848 preserves the judicial discretion to convict sexual battery as either a misdemeanor or a felony, while also recognizing that the uniquely vulnerable nature of hospital patients merits sentencing to the fullest extent of the law for those medical professionals who would prey on them.

2. Sexual Battery

The sexual battery statute, Penal Code section 243.4, includes five subdivisions that define sexual battery based on the defendant's conduct and set the punishment for each respective situation.

Subdivisions (a), (b), and (c) cover situations where the defendant touches the intimate parts of the victim. These subdivisions require that the victim be unlawfully restrained, institutionalized for medical treatment, or not conscious of the sexual nature of the act because of a fraudulent representation. (*People v. Elam* (2001) 91 Cal.App.4th 298, 310; Pen. Code, § 234.4, subs. (a)-(c).) Subdivisions (a), (b), and (c) are wobblers – i.e., either a felony or misdemeanor. (*People v. Dayan* (1995) 34 Cal.App.4th 707, 715, fn. 4; Pen. Code, § 17.)

Subdivision (d) proscribes conduct different from the other sexual batteries. Subdivision (d) covers the situation where the defendant causes the victim to masturbate or touch the intimate part of the defendant, another person, or themselves. Subdivision (d) is a wobbler, and like the other wobblers, subdivision (d) requires that the victim is unlawfully restrained or

institutionalized for medical treatment, and the “touching” requires the victim to touch the skin of the defendant or another person’s intimate parts. (Pen. Code, § 234.4, subds. (d) & (f); *People v. Elam* (2001), *supra*, at p. 310.)

Subdivision (e) is misdemeanor sexual battery. This subdivision covers situations where the defendant touches the intimate parts of the victim. For misdemeanor sexual battery, unlike subdivisions (a), (b), (c), and (d), there is no requirement that the victim be unlawfully restrained, institutionalized for medical treatment, or not conscious of the sexual nature of the act. (Pen. Code, § 243.4, subd. (e).) And there is no requirement that there be actual contact with the victim’s skin, as it applies to touching through the clothes of the victim. (*Ibid.*; *People v. Dayan* (1995) 34 Cal.App.4th 707, 715-716.) These differences make the misdemeanor definition broader than the wobbler definition and as such, subdivision (e) proscribes a wider variety of conduct than the other subdivisions.

Subdivision (i) specifies that in the case of a felony conviction, the fact that the defendant was an employer and the victim was an employee of the defendant shall be a factor in aggravation in sentencing.

This bill specifies that that in the case of a felony sexual battery, the fact that the defendant was an employee at a hospital where the offense occurred and the victim was in the defendant’s care or seeking medical care at the hospital is a factor in aggravation at sentencing.

3. Factors in Aggravation

California’s sentencing scheme is, for the most part, determinate and is referred to as the determinate sentencing law (DSL). (Pen. Code, § 1170, subd. (b).) Any person convicted of a felony is sentenced to one of three sentences referred to as the “triad.” For instance, a person convicted of a felony shall be sentenced to 16 months, two years, or three years in the county jail or state prison, unless the statute specifies another term. Burglary of a home or occupied residence, for example, is punishable by two, three, or four years in state prison, as specified in statute. (See Pen. Code, § 461.) “The court may impose a sentence exceeding the middle term only when there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term and the facts underlying those circumstances have been stipulated to by the defendant or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial. (Pen. Code, § 1170, subd. (b)(2).) The Sixth Amendment right to a jury trial applies to any factual finding, other than that of a prior conviction, necessary to warrant any sentence beyond the presumptive maximum – e.g., the middle term. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490; *Blakely v. Washington* (2004) 524 U.S. 296, 301, 303-04; see also *Cunningham v. California* (2007) 549 U.S. 270.)

Additionally, were certain factors contributed to the offense, the court is required to impose the low term unless aggravating circumstances outweigh mitigating circumstances. These factors are where the defendant experienced psychological, physical, or childhood trauma, is a youth (under age 26), or is or has been a victim of domestic violence or human trafficking. (Pen. Code, § 1170, subd. (b)(6).)

4. Rules of Court, rule 4.421 states that circumstances in aggravation include factors relating to the crime (12 enumerated criteria) and factors relating to the defendant (five enumerated criteria), as well as those statutorily declared to be circumstances in aggravation. In a residual clause, the Rule permits a court to consider “any other factors statutorily declared to be circumstances in aggravation or that reasonably relate to the defendant or the circumstances under which the crime was committed.” (Cal. Rules of Court, rule 4.421.) However, in *Lovelace v. Superior Court* (2025) 108 Cal.App.5th 1081, the First District Court of Appeal, Division Four, held that the residual clause allowing unenumerated aggravating factors was “so vacuous as to be devoid of meaning.” (*Id.* at p. 1089.) The court found it violated the separation of powers clause in the California Constitution, because “by granting prosecutors—and ultimately juries—an open-ended power to define sentencing criteria on an ad hoc basis, the residual clause exceeds the Judicial Council’s delegated authority to adopt rules designed to ‘promote uniformity in sentencing’ under section 1170.3.” (*Ibid.*)

Rather than rely on the questionable residual clause, this bill statutorily declares that sexual battery when committed by a defendant who was employed at a hospital where the offense occurred and the victim was in the defendant’s care or seeking medical care at the hospital is a factor in aggravation that would authorize imposition of the upper term if it is pled and proved beyond a reasonable doubt. This is somewhat analogous to the existing factor in aggravation specified in the sexual battery statute when the defendant was an employer and the victim was an employee of the defendant. (Pen. Code, § 243.4, subd. (i).) That being said, the conduct this bill is directed at appears to already be covered under the current aggravating factors listed in the Rules of Court. (Cal. Rules of Court, rule 4.421(a)(3) [the victim was particularly vulnerable], (a)(11) [the defendant took advantage of a position of trust or confidence to commit the offense].)

5. Reason for the Bill

According to background information provided by the author's office, the impetus for this bill arose out of reported incidents of sexual battery committed against six women who received ultrasound examinations at a hospital in Los Banos between 2020 and 2022. (<https://www.sfchronicle.com/california/article/los-banos-lawsuits-18451159.php> [as of June 5, 2025].) The acts ranged between touching one woman's breasts and simulated sex using an ultrasound probe. (*Ibid.*) Several of the women have filed lawsuits against the hospital alleging that the hospital knew or should have known that the technician was harassing and assaulting female patients. Additionally, criminal charges have been filed against the technician alleging four counts of sexual battery by fraud as well as enhancements on each count.

Cedars-Sinai Medical Center is also facing multiple lawsuits alleging the hospital knew of the patient complaints against a longtime OB-GYN doctor but failed to address the issue. (<https://www.cbsnews.com/losangeles/news/107-women-lawsuit-alleging-sexual-misconduct-former-cedars-sinai-obgyn/> [as of June 5, 2025].)

6. Related Legislation

AB 352 (Pacheco) allows the court to consider as a factor in aggravation for purposes of sentencing a defendant convicted of a criminal threat that the defendant willfully threatened to commit a crime that would result in the death or great bodily injury of a

judge or court commissioner. AB 352 is being heard in this Committee today.

7. Argument in Support

According to the California District Attorneys Association:

A health care professional who preys on a vulnerable patient violates the most basic ethical principles. Such a breach of trust is damaging to the patient, the health care professional and the medical profession. When a vulnerable patient is betrayed and exploited within the hospital setting, the offender should be subject to an upper term sentence. AB 848 would create an aggravating factor in these situations to permit the possibility of an upper term sentence for the commission of a felony sexual battery that occurred at the hospital upon a patient receiving medical care by a hospital employee. For these reasons, CDAA supports AB 848.

8. Argument in Opposition

According to Initiate Justice:

We unequivocally condemn sexual battery and support accountability and existing law already classifies this offense, when committed under fraudulent pretense, as a felony punishable by two, three, or four years in state prison.

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