
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 329 **Hearing Date:** June 25, 2019
Author: Rodriguez
Version: June 17, 2019
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Hospitals: Assaults and Batteries*

HISTORY

Source: California State Council, Emergency Nurses Association

Prior Legislation: SB 513 (Bradford), vetoed, 2017
AB 172 (Rodriguez), vetoed, 2015
AB 1959 (Rodriguez), held on suspense in Assembly Approps.
SB 390 (LaMalfa), Ch. 249, Stats. 2011
SB 406 (Lieu), Ch. 250, Stats. 2011
SB 409 (Lowenthal), Ch. 410, Stats. 2009
AB 1686 (Leno), Ch. 243, Stats. 2007
AB 653 (Horton), Ch. 484, Stats. 2001
SB 587 (Hughes), Ch. 252, Stats. 1993
Ch. 678, Stats. 1981

Support: Alliance of Catholic Health Care; American College of Obstetricians and Gynecologists; California Chapter of the American College of Emergency Physicians; California Hospital Association; California Emergency Nurses Association; California Orthopedic Association; California Special Districts Association; California State Sheriff' Association; Hollywood Presbyterian Medical Center; Los Angeles County Board of Supervisors; Rady Children's Hospital – San Diego; Scripps Health; Washington Hospital Healthcare System

Opposition: American Civil Liberties Union of California; California Attorneys for Criminal Justice; California Public Defenders Association

Assembly Floor Vote: 72 - 0

PURPOSE

The purpose of this bill is to increase the maximum term of imprisonment and fines for a person convicted of committing assault while on hospital property.

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).)

Existing law punishes battery when committed on school property, park property, or the grounds of a public or private hospital by a fine not exceeding \$2,000, or by imprisonment in the county jail not exceeding one year, or by both the fine and imprisonment. (Pen. Code, § 243.2.)

Existing law punishes assault committed on school or park property by a fine not exceeding two \$2,000, or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment. (Pen. Code, § 241.2.)

This bill specifies that when an assault is committed against any person on the property of a public or private hospital, 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 allows a health facility, as specified, to 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.”

This bill states numerous legislative findings and declarations related to incidents of violence at hospitals.

COMMENTS

1. Need for This Bill

According to the author of this bill:

This bill would address inconsistencies in penalties for assaults versus battery committed against all healthcare workers on hospital property. Under current law, battery committed on park, school or hospital property is punishable by a fine of up to \$2,000, or one year in county jail, or both. Assault on park and school property has the same punishment, however, if assault is committed on hospital property, the fine reduces to \$1,000 and the jail time reduces to 6 months. This bill will allow those penalties to be equalized.

In 2017, The California Occupational Safety and Health Administration (Cal/OSHA) received a total of 2,177 incident reports during the span of 3 months. This year, Cal/Osha released a full report on hospital violence where a total of 9,436 violent incidents were reported from October of 2017-September 2018. Disturbingly, incidents of workplace violence regularly go unreported in large part due to limited or no remedial action taken against the perpetrator. The discrepancy in penalties does not serve as a

deterrent against violence and puts the health and safety of hospital staff at risk. As a result, many are choosing to abandon the health profession, further contributing to the existing shortage of healthcare providers.

2. Assault versus Battery

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.

3. Effect of this Legislation

Existing law generally punishes misdemeanor assault and battery by a fine of up to \$1,000, imprisonment not exceeding 6 months, or by both the fine 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 circumstances felony penalties. The higher misdemeanor penalties would apply when the assault or battery is committed against specified categories of persons which include nurses and physicians rendering emergency care outside of a hospital or emergency medical technicians. (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.

Existing law also provides that battery, when committed on school property, park property, or the grounds of a public or private hospital may be punished by a maximum fine of \$2,000 and the maximum term of imprisonment of one year. There is a similar statute that punishes assault committed on school or park property with the same enhanced penalties – up to a \$2,000 fine and up to one year in jail – however that statute does not include assaults on hospital property.

This bill adds assaults committed on hospital property to the statute authorizing higher misdemeanor penalties for assaults committed on school or park property.

4. 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 against hospital staff. (Labor Code, § 6401.8, subd. (c).)

According to Cal/OSHA's report covering the period starting on October 1, 2017, through September 30, 2018, there were 9,042 incidents of violence reported by hospitals. Patients made up the largest percentage of aggressor types (93 percent), followed by a person accompanying the patient (3 percent). The most commonly reported types of assault were punching/slapping (34 percent) and kicking (21 percent). The vast majority of reports (approximately 92 percent) were for physical assault without the use of a weapon. Employee injuries occurred in 43 percent of all incidents, with the most common injury type being bruising or abrasion. The next highest specified types of injury were stress/psychological impairment (5 percent) and sprain/strain (5 percent). Potentially serious injuries, such as head injuries, dislocations and fractures, asphyxiation, and amputations, were reported with much less frequency (between 2 and 4 percent). 14 percent of the incidents occurred when the employee was alone, and 5 percent occurred when the employee was isolated. During incidents of violence, employees were most frequently assisted by nearby employees (59 percent of incidents) and internal security (50 percent of incidents). Hospitals reported that they called for assistance from local law enforcement via 911 in 9 percent of incidents. (Cal/OSHA, *Workplace Violent Incidents at Hospitals* (October 1, 2017 through September 30, 2018), pp. 2-5.) The aggressor was arrested by law enforcement in 4 percent of the reported incidents. (*Id.* at p. 22.) (For the full report, see <https://www.dir.ca.gov/dosh/Reports/Annual-Report-WPV-Incidents-2017-2018.pdf>.)

According to Cal/OSHA's data, it appears that law enforcement assistance was not requested in the majority of violent incidents that occurred at hospitals. Additionally, only 4% of all aggressors were arrested. Of that 4%, it is unclear from the data how many people were criminally charged or convicted of any crime. Existing laws specifically address assault and battery on physicians and nurses engaged in rendering emergency medical care outside of a hospital, clinic or other health care facility, and battery that occurs on hospital grounds.

Would creating a specific provision for assault committed on hospital property lead to more arrests or convictions?

5. Legislative Findings and Declarations

This bill contains various legislative findings and declarations related to violence in hospitals. While these statements are not codified into statute if the bill is signed into law, they provide a factual context for the bill. Several findings and declarations in the bill are inaccurate or misleading:

- 1) *Higher penalties act as a deterrent from future assaultive behavior.* Much of the empirical research on crimes and penalties show that that higher penalties have little to no deterrent effect on criminal behavior. ((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, pp. 132-133, <http://johnjay.jjay.cuny.edu/nrc/NAS_report_on_incarceration.pdf>.)
- 2) *Under California law, if a serious injury is sustained or weapons are used, a battery may be prosecuted as a felony.* This statement is misleading because it seems to indicate that these

are the only circumstances that would authorize filing a battery as a felony. However, under Penal Code section 243, subdivision (c), a battery may be charged as a felony when any injury is inflicted, which is separate from subdivision (d) of the same section that authorizes a felony for serious bodily injury. Battery may also be charged as a felony in a variety of other scenarios (see below).

- 3) *As of 2018, California is one of the few states that has not passed a felony law that pertains to violence inside a health care facility.* This statement is misleading because California does have enhanced penalties, albeit not a felony, specifically for battery on hospital grounds which is the same penalty provided for battery that occurs on school or park property or on public transportation. (Pen. Code, §§ 243.2, 243.35.) None of the existing battery and assault statutes authorize felony penalties based on the location of an offense. Instead, felony penalties are authorized depending on the type of force used (Pen. Code, §§ 243.4, 244, 244.5, 245, 245.2, 245.3, 245.5); whether injury is inflicted (Pen. Code, §§ 243, subd. (c), (d), 245.6, subd. (d)); or the category of victim (Pen. Code, §§ 241.1, 241.7, 243, subd. (c), 243.1, 243.3, 243.4, 243.6, 243.7). Thus, if the battery or assault meets one of these other circumstances, the conduct could be charged as a felony, regardless of where the battery occurs.

Should these legislative findings and declarations be stricken from the bill?

6. Argument in Support

According to the Washington Hospital Healthcare System (WHHS):

The impact of these assaultive patients has created an environment where hospital staff fear for their safety when caring for patients in their most vulnerable moments. A survey done by the American Nurses Association of more than 10,000 nurses found that 25% of nurses had been assaulted by a patient or a patient's family member.

WHHS has taken numerous measures to protect their staff and everyone in the hospital but additional help is needed to ensure when patients do assault individuals in the hospital they are held accountable and the penalties act as a deterrent from future assaultive behavior.

AB 329 would increase penalties when law enforcement prosecutes these patient incidents which we believe will help deter future incidents. The increase in penalties will also assist our staff giving them additional tools to persuade combative patients from escalating situations that may lead to an assault or battery.

7. Argument in Opposition

According to California Public Defenders Association (CPDA):

CPDA recognizes the problem of workplace violence, and the specific challenges it poses to healthcare facilities and workers. However, we oppose this bill because it increases jail time and fines for offenses that are largely committed by individuals in crisis. The World Health Organization and countless other

organizations have recognized that almost all violence in hospitals occurs between staff and patients or their families. These individuals are frequently desperate, scared, and in need. That 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. 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, and usually is, charged as felonies. This bill itself notes the failure to prosecute such crimes (noting it can be as low as 3 percent). Increasing the penalties for these crimes because of the frustration with prosecutors' low filing rates is counterproductive, and will likely lead to unfair outcomes when some individuals are not prosecuted at all, but others are prosecuted with increasing sentences.

Doctors, nurses, and other hospital health care workers have a right to do their jobs without being harmed. The current laws, and sentencing structure, accomplish that goal. The studies and statistics show that the tools at hand are not being used effectively. A larger hammer is not the answer to every problem. We need to use tools at hand, not get bigger ones.

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