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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** SB 442                      **Hearing Date:** March 21, 2023  
**Author:** Limón  
**Version:** February 13, 2023  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Sexual battery*

## HISTORY

**Source:** Erik Nasarenko, District Attorney of Ventura County

**Prior Legislation:** AB 1692 (Shirley Horton) not heard Assm. Pub. Safety 2003

**Support:** California District Attorneys Association; California State Sheriffs' Association

**Opposition:** None known

## PURPOSE

*The purpose of this bill is to expand misdemeanor sexual battery to include a person who for the purpose of sexual gratification, or sexual abuse causing another, against their will , to masturbate or touch an intimate part of either those persons or a third person.*

*Existing law* provides that any person who touches an intimate person while that person is unlawfully restrained by the accused or an accomplice, and if touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse is guilty of sexual battery, punishable as a wobbler, with up to one year in county jail and a fine not exceeding \$2,000, plus penalty assessments, or a 2, 3 or 4 years in state prison and a fine not exceeding \$10,000, plus penalty assessments. (Penal Code § 243.4(a))

*Existing law* provides that 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, is guilty of sexual battery punishable as a wobbler, with up to one year in county jail and a fine not exceeding \$2,000, plus penalty assessments, or a 2, 3 or 4 years in state prison and a fine not exceeding \$10,000, plus penalty assessments. (Penal Code § 243.4(b))

*Existing law* provides that any person who touches and intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuses, 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 purposes is guilty of sexual battery punishable as a wobbler, with up to one year in county jail and a fine not exceeding \$2,000, plus penalty assessments, or a 2, 3 or 4 years in state prison and a fine not exceeding \$10,000, plus penalty assessments. (Penal Code § 243.4(c))

*Existing law* provides that any person, 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, is guilty of sexual battery punishable as a wobbler, with up to one year in county jail and a fine not exceeding \$2,000, plus penalty assessments, or a 2, 3 or 4 years in state prison and a fine not exceeding \$10,000, plus penalty assessments. (Penal Code § 243.4(d))

*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 for the specific purpose of sexual arousal, sexual gratification, or sexual abuse is guilty of misdemeanor sexual battery, punishable by a fine not exceeding \$2,000, plus penalty assessments, and/or by a imprisonment in county jail for six months. If the perpetrator was the employer and the victim the employee the fine is up to \$3,000 plus penalty assessments. (Penal Code § 243.4(e))

*This bill* would include in the definition of misdemeanor battery, 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.

## COMMENTS

### 1. Need for this bill.

According to the author:

Current law defines a misdemeanor violation of sexual battery as the unwanted touching of the intimate body part of another. Missing from this definition of misdemeanor sexual battery is the situation where a perpetrator causes the victim to touch an intimate body part of the perpetrator. This gap in the law is creating real world examples of sexual abuse, where no charges of sexual battery can be brought.

In one recent incident, an employer took an employee's hand against her will and placed it on his groin area over his clothes. Because the physical contact was done by the victim's hand- not the perpetrators- the perpetrator could not be charged with misdemeanor sexual battery. Under current law, the perpetrator could only be charged with simple battery, the same charge that would apply to a simple push on the shoulder. This change ensures that all individuals that seek to commit sexual battery are held accountable. Victims feel no less violated when their hands are forced to touch another person than when another person touches the victim.

### 2. Expansion of sexual battery

Existing law delineates different types of sexual battery. Depending on the behavior and circumstances: Touching an intimate part of a person while they are restrained, a wobbler; touching an intimate part of someone who is institutionalized, seriously disabled, or medically incapacitated, a wobbler; touching an intimate part of another person through fraud, a wobbler; causing someone who is unlawfully restrained, institutionalized, seriously disabled, or medically

incapacitated to touch an intimate part of any person, a wobbler; touching an intimate part of another person against their will, a misdemeanor.

Misdemeanor sexual battery includes any person who touches an intimate part of another person, if the touching is against the will of the person touched, and for the specific purpose of sexual arousal, sexual gratification, or sexual abuse. This bill expands misdemeanor battery to include 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 the those persons or a third person.

### **3. Argument in Support**

According to the California District Attorneys Association:

The current definition of misdemeanor sexual battery in Penal Code section 243.4 omits the situation where a perpetrator causes the victim to touch an intimate body part of the perpetrator or other person without applying restraint or force in excess of the act that causes the touching. Common examples include a perpetrator who thrusts their groin against a victim or places a victim's hand on the perpetrator's groin area. This gap in the law lets perpetrators remain unaccountable for what is objectively offensive and criminal behavior. Victims feel no less violated when they are forced to touch another person than when another person touches the victim, and thus sexual batterers need to be held accountable, irrespective of whether the perpetrator touches the victim's intimate body part or forces the victim to touch the body of another.

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