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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 752                      **Hearing Date:** April 28, 2015  
**Author:** Nielsen  
**Version:** April 21, 2015  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** JM

**Subject:** *Crimes Against Law Enforcement Officers*

### HISTORY

**Source:** Electric Blue Foundation

**Prior Legislation:** None Known

**Support:** Crime Victims United of California; California Police Chiefs Association; Peace Officers Research Association of California; The Association for Los Angeles Deputy Sheriffs Association; Los Angeles Police Protective League; Riverside Sheriffs Association; Los Angeles Probation Officers Union; AFSCME Local 685; Association of Deputy District Attorneys

**Opposition:** Legal Services for Prisoners with Children; California Public Defenders Association; California Attorneys for Criminal Justice

### PURPOSE

*The purposes of this bill is to raise misdemeanor penalties to alternate felony-misdemeanors, raise alternate felony-misdemeanor penalties to straight felonies and to require specified jail sentence felonies (Pen. Code § 1170 (h)) to be served in prison, for crimes involving maliciously distributing the residence address or phone number of a peace officer or specified official, and for batteries against peace officers and first responders, such as firefighters.*

*Existing law* provides that every person who maliciously, and with the intent to obstruct justice or the due administration of the laws, or with the intent or threat to inflict imminent physical harm in retaliation for the due administration of law, publishes, disseminates, or otherwise discloses the residence address or telephone number of any peace officer, non-sworn police dispatcher, or employee of a city police department or county sheriff's office, or that of the spouse or children of these persons, as such without the authorization of the employing agency is guilty of a misdemeanor. A violation that results in bodily injury to the peace officer, employee of the city police department or county sheriff's office or their children is a felony, punishable pursuant to Penal Code Section 1170, subdivision (h) by a term of 16 months, two years or three years. (Pen. Code § 146e.)

*Existing law* provides that it is a misdemeanor to willfully resist, delay, or obstruct a public officer, peace officer, or emergency medical technician (EMT) in the discharge or attempt to

discharge his or her duty, punishable by a fine not exceeding \$1,000, or by imprisonment in a county jail for up to one year, or both. (Pen. Code § 148, subd. (a).)

*Existing law* provides that a person who, while resisting or delaying an officer, removes or takes any weapon, other than a firearm, from the person or immediate presence of an officer is guilty of an alternative felony-misdemeanor, punishable by imprisonment in the county jail for up to one year, or, pursuant to Penal Code Section 1170, subdivision (h), for a term of sixteen months, two or three years and a fine of up to \$10,000. (Pen. Code § 148, subd. (b).)

*Existing law* provides that a person who, while resisting or delaying an officer, removes or takes a firearm from the person or immediate presence of an officer is guilty of a felony, punishable by imprisonment pursuant to Penal Code Section 1170, subdivision (h), for a term of sixteen months, two or three years and a fine of up to \$10,000. (Pen. Code § 148, subd. (c).)

*Existing law* provides that any person who removes or attempts to remove a firearm from the person or immediate presence of a peace officer or public officer, without the intent to permanently deprive the officer of the firearm, is guilty of an alternate felony/misdemeanor, punishable or by a jail term of up to one year, a fine of up to \$1,000, or both, or by imprisonment pursuant to Penal Code Section 1170, subdivision (h) for a term of sixteen months, two years or three years and a fine of up to \$10,000. It is an element of this offense that the officer was performing his or her duties when the offense occurred. (Pen Code § 148, subd. (d).)

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

*Existing law* provides that simple battery (battery not causing injury requiring medical attention) is a misdemeanor punishable by a county jail term of up to 6 months, a fine of up to \$1000, or both. (Pen. Code § 242.)

*Existing law* provides that battery producing “serious bodily injury,” as defined, is an alternate felony-misdemeanor, punishable by imprisonment in the county jail for up to one year, a fine of up to \$1000 or both, or, pursuant to Penal Code Section 1170, subdivision (h) by a term of two three or four years and a fine of up to \$10,000. (Pen. Code § 243, subd. (d).)

*Existing law* defines serious bodily injury as a serious impairment of physical condition, including, but not limited to loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement. (Pen. Code § 243, subd. (f)(4).)

*Existing law* provides that where the victim of a simple battery is a peace officer custodial officer, traffic officer, firefighter, EMT, physician or nurse providing emergency care, lifeguard, process server, traffic officer, code enforcement officer, or animal control officer engaged in the performance of his or her duties, the crime is a misdemeanor, punishable by a county jail term of up to one year, a fine of up to \$2000, or both. The fact that the defendant knew, or should have known, the status of the victim is an element of this crime. (Pen. Code § 243, subd. (b).)

*Existing law* provides that where the victim of a battery is custodial officer, traffic officer, firefighter, EMT, physician or nurse providing emergency care, lifeguard, process server, traffic officer, code enforcement officer, or animal control officer engaged in the performance of his or her duties, *and an injury is inflicted* on the victim, the crime is an alternate felony-misdemeanor,

punishable by a jail term of up to one year, a fine of up to \$2000, or both, or pursuant to Penal Code Section 1170, subdivision (h) by a prison term of 16 months, 2 years or 3 years and a fine of up to \$10,000. The fact that the defendant knew, or should have known, the status of the victim is an element of this crime. (Pen. Code § 243, subd. (c)(1).)

*Existing law* provides that where the victim of a battery is a peace officer who is performing his or her duties, while on or off duty, including when the officer is in uniform and concurrently performing his duties while in a private capacity as a part-time security guard or patrolman, and an injury occurs, the crime is an alternate felony-misdemeanor, punishable by a county jail term of up to one year, a fine of up to \$2000, or both, or, pursuant to Penal Code Section 1170, subdivision (h), by a term of 16 months, 2 years or 3 years and a fine of up to \$10,000. The fact that the defendant knew, or should have known, the status of the victim is an element of this crime. (Pen. Code § 243, subd. (c)(2).)

*Existing law* provides that all cities and counties are authorized to employ custodial officers (public officers who are not peace officers) for the purpose of maintaining order in local detention facilities. (Pen. Code § 831.)

*Existing law* provides that a battery on a custodial officer committed while the officer is performing his or her duties is a felony, punishable pursuant Penal Code § 1170, subdivision (h), by imprisonment for 16 months, two years or three years and a fine of up to \$10,000 (Pen. Code § 243.1.)

*This bill* would provide that any person who publishes, disseminates or otherwise discloses the home address or phone number of a peace officer or employee of a police department or sheriff's office, or the immediate family of the officer or employee, with the malicious intent to obstruct justice or administration of the law, or with the intent to inflict imminent physical harm in retaliation for the administration of the law is guilty of a felony, punishable by imprisonment pursuant to Penal Code Section 1170, subd. (h) for 16 months, two years or three years and a fine of up to \$10,000.

*This bill* would provide that a person who, while resisting or delaying an officer, removes or takes any weapon, other than a firearm, from the person or immediate presence of an officer is guilty of a felony-misdemeanor, punishable pursuant to Penal Code Section 1170, subdivision (h), by imprisonment for sixteen months, two or three years and a fine of up to \$10,000. (Pen. Code § 148, subd. (b).)

*This bill* would provide that a person who, while resisting or delaying an officer, removes or takes a firearm from the person or immediate presence of an officer is guilty of a felony, punishable by imprisonment in a state prison for a term of sixteen months, two or three years and a fine of up to \$10,000.

*This bill* provides that where the victim of a battery is custodial officer, traffic officer, firefighter, EMT, physician or nurse providing emergency care, lifeguard, process server, traffic officer, code enforcement officer, or animal control officer engaged in the performance of his or her duties, and an injury is inflicted on the victim, the crime is a felony, punishable pursuant to Penal Code Section 1170, subdivision (h) by a prison term of 16 months, 2 years or 3 years and a fine

of up to \$10,000.<sup>1</sup> The fact that the defendant knew, or should have known, the status of the victim is an element of this crime.

*This bill* provides that where the victim of a battery is a peace officer who is performing his or her duties, while on or off duty, including when the officer is in uniform and concurrently performing his duties while in a private capacity as a part-time security guard or patrolman, and an injury occurs, the crime is an alternate felony-misdemeanor, punishable by a fine of up to \$10,000,<sup>2</sup> or pursuant to Penal Code Section 1170, subdivision (h), by a term of 16 months, 2 years or 3 years and a fine of up to \$10,000. The fact that the defendant knew, or should have known, the status of the victim is an element of this crime.

*This bill* provides that a battery on a custodial officer committed while the officer is performing his or her duties is a felony, punishable by imprisonment in a state prison for 16 months, two years or three years and a fine of up to \$10,000.

## COMMENTS

### 1. Need for This Bill

According to the author:

The mission of law enforcement is to protect the public, often times at the risk of their personal safety. Current law leaves California's first responders and public safety officers vulnerable. There must be consequences for criminal behavior. Furthermore, there must be strong consequences for crimes committed against public safety officials. One may be surprised to learn that as it stands now, the following crimes are able to be prosecuted lightly:

- Maliciously disclosing home address or personal phone number of a public safety official and their spouse and children;
- Removing an officer's weapon while resisting arrest;
- Removing an officer's firearm while resisting arrest;
- Battery of a first responder;
- Battery of an officer.

Existing law makes it a crime to violate various provisions prohibiting certain actions against a peace officer or his or her family, other first responders, or public officials, including, but not limited to, removing an officer's firearm while resisting arrest, and committing a battery against a peace officer or other medical personnel engaged in the performance of his or her duties. These crimes are generally misdemeanors or felonies punishable in a county jail, as specified, or an alternate misdemeanor-felony, commonly referred to as a wobbler.

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<sup>1</sup> When a felony does not include a specified fine, the maximum fine is \$10,000; when a misdemeanor does not include a specific fine, the maximum fine is \$1,000. (Pen. Code § 672.)

<sup>2</sup> Where a crime provides for a fine alone, with no custody penalty specified, the crime is a misdemeanor if the court imposes only the penalty of the fine. (Pen. Code §17, subd. (b)(1).)

This bill would revise these provisions to make all of the misdemeanors or wobblers instead punishable as felonies in county jail and make all of the felonies punishable in county jail instead punishable in state prison, as specified. California's law enforcement deserves to be protected. There must be serious consequences for criminal behavior against public safety officers. SB 752 will strengthen the criminal punishments for acts against law enforcement officers and take a step forward in protecting California's public safety officials.

## **2. The Felony In This Bill For a Battery With Injury Applies Not Only To Peace Officers And First Responders, But Also To Process Servers, Lifeguards And Physicians And Nurses Providing Emergency Care Outside A Hospital**

The author argues that a battery with injury against a peace officer or a first responder should be a straight felony, not an alternate felony-misdemeanor. The increased penalty would apply where the victim is a peace officer, firefighter, nurse or physician providing emergency care in the field, animal control officer, traffic officer or unsworn employee of a probation department. The penalty, however, also applies to a battery with injury committed against a process server or lifeguard. This raises the issue of whether, for purposes of felony penalties for crimes committed against specified victims, process servers, lifeguards and traffic officers should be considered to be equivalent or similar to peace officers and first responders. Arguably, process servers are integral to the system of justice and lifeguards provide an important public safety service, and may keep order at public and private beaches and swimming pools. A traffic officer performs a necessary service to the community and may be confronted by an angry citizen who has received a ticket. Nevertheless, these jobs do not require the level of training and responsibility as peace officers, firefighters and nurses and physicians.

## **3. The Stated Purposes Of This Bill Are Both Increased Punishment And Deterrence For Specified Crimes Against Law Enforcement Officers And "First Responders"**

There are three generally recognized theories of punishment. One is retribution – punishing a convicted criminal for the sake of the punishment, with no particular additional result intended or expected, so-called “just deserts.” The second is incapacitation – preventing a person from committing crimes by keeping him or her in custody. The third is deterrence – the tendency for a prospective criminal to avoid committing a crime in order to avoid the punishment he or she would face upon conviction.

It appears that the increased penalties in the bill are intended to provide retribution and deterrence, although criminals imprisoned under the increased penalties in this bill would be incapacitated for the time they remain in custody. The author's statement argues that “there must be serious consequences for criminal behavior against public safety officers.” The statement also argues that the bill takes “a step forward in protecting” public safety officials. While the bill does not explicitly argue that the increased penalties will deter prospective criminals, an expectation that the bill will help protect officials clearly implies that the increased penalties will deter some prospective offenders. Further, it can be inferred that incapacitation during these longer sentences would also protect public safety officials.

Criminal justice experts and commentators have noted that, with regard to sentencing, “a key question for policy development regards whether enhanced sanctions or an enhanced possibility of being apprehended provide any additional deterrent benefits.

Research to date generally indicates that increases in the certainty of punishment, as opposed to the severity of punishment, are more likely to produce deterrent benefits.<sup>3</sup>

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. Most of this research studies the relationship between criminal sanctions and crimes other than drug offenses. A related literature focuses specifically on enforcement of drug laws and the relationship between those criminal sanctions and the outcomes of drug use and drug prices.<sup>4</sup>

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. . . .

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.”<sup>5</sup>

Members may wish to discuss whether the “rationalistic view” of crime described above likely would apply to persons who maliciously disclose the addresses of public safety, take an officer’s firearm from his or her person and commit batteries against officers – that is, whether the increased penalties proposed by this bill would be known by these offenders and, if so, whether the additional time would discourage commission of the crime.

#### WOULD A SENTENCE INCREASES DISCOURAGE PERSONS FROM MALICIOUSLY DISCLOSING A PUBLIC SAFETY OFFICIALS ADDRESS AND

<sup>3</sup> Valerie Wright, Ph.D., *Deterrence in Criminal Justice Evaluating Certainty vs. Severity of Punishment* (November 2010), The Sentencing Project (<http://www.sentencingproject.org/doc/Deterrence%20Briefing%20.pdf>.)

<sup>4</sup> *The Growth of Incarceration in the United States* (2014), Jeremy Travis, Bruce Western and Steve Redburn, Editors, Committee on Causes and Consequences of High Rates of Incarceration, The National Research Council, p. 131 (citations omitted) ([http://johnjay.jjay.cuny.edu/nrc/NAS\\_report\\_on\\_incarceration.pdf](http://johnjay.jjay.cuny.edu/nrc/NAS_report_on_incarceration.pdf).)

<sup>5</sup> *Id.* at 132-133.

PHONE NUMBER, OR FROM TAKING AN OFFICER'S GUN, OR COMMITTING A BATTERY AGAINST AN OFFICER?

The authors of the 2014 report discussed above conclude that incapacitation of certain dangerous offenders can have “large crime prevention benefits,” but that incremental, lengthy prison sentences are ineffective for crime deterrence:

Whatever the estimated average effect of the incarceration rate on the crime rate, the available studies on imprisonment and crime have limited utility for policy. The incarceration rate is the outcome of policies affecting who goes to prison and for how long and of policies affecting parole revocation. Not all policies can be expected to be equally effective in preventing crime. Thus, it is inaccurate to speak of the crime prevention effect of incarceration in the singular. *Policies that effectively target the incarceration of highly dangerous and frequent offenders can have large crime prevention benefits, whereas other policies will have a small prevention effect or, even worse, increase crime in the long run if they have the effect of increasing postrelease criminality.*

Evidence is limited on the crime prevention effects of most of the policies that contributed to the post-1973 increase in incarceration rates. *Nevertheless, the evidence base demonstrates that lengthy prison sentences are ineffective as a crime control measure. Specifically, the incremental deterrent effect of increases in lengthy prison sentences is modest at best. Also, because recidivism rates decline markedly with age and prisoners necessarily age as they serve their prison sentence, lengthy prison sentences are an inefficient approach to preventing crime by incapacitation unless they are specifically targeted at very high-rate or extremely dangerous offenders.* For these reasons, statutes mandating lengthy prison sentences cannot be justified on the basis of their effectiveness in preventing crime.<sup>6</sup>

Members may wish to discuss whether the sentence increases proposed by this bill would provide any appreciable crime deterrent benefits and whether greater incapacitation for these offenders could generate the more and more serious criminality upon release than if they had served a shorter term.

BASED ON THE RESEARCH DESCRIBED ABOVE, WOULD THE SENTENCING INCREASES PROPOSED BY THIS BILL IMPROVE PUBLIC SAFETY?

IN A COST-BENEFIT ANALYSIS, WOULD THE ADDED COSTS OF INCARCERATION FROM THE INCREASES IN SENTENCES IN THIS BILL BE OUTWEIGHED BY ITS PUBLIC SAFETY BENEFIT, EITHER THROUGH INCAPACITATION OR DETERRENCE?

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<sup>6</sup> *Id.* at 155-156 (emphasis added).