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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** SB 586                      **Hearing Date:** April 18, 2017  
**Author:** Vidak  
**Version:** February 17, 2017  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** JRD

**Subject:** *Assault and Battery of a Federal Peace Officer*

### HISTORY

**Source:** Constituent

**Prior Legislation:** AB 172 (Rodriguez) Vetoed by Governor, 2015  
SB 390 (La Malfa) Chapter 249, Stats. of 2011  
SB 406 (Lieu) Chapter 250, Stats. of 2011

**Support:** California District Attorneys Association; California State Sheriffs' Association; Federal Law Enforcement Officers Association; Fresno County District Attorney; Kern County District Attorney; Tulare County District Attorney; Several Individuals

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

### PURPOSE

*The purpose of this legislation is to increase the penalties for assault and battery committed against a federal officer, as specified.*

*Existing federal law provides that whoever:*

- Forcibly assaults, resists, opposes, impedes, intimidates, or interferes with a federal employee or employee, as specified, while engaged in or on account of the performance of official duties; or forcibly assaults or intimidates any person who formerly served as a federal employee or employee, as specified, on account of the performance of official duties during such person's term of service, shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and where such acts involve physical contact with the victim of that assault or the intent to commit another felony, be fined under this title or imprisoned not more than 8 years, or both.
- If, in the commission of the acts described above, the person uses a deadly or dangerous weapon (including a weapon intended to cause death or danger but that fails to do so by reason of a defective component) or inflicts bodily injury, that person shall be fined or imprisoned not more than 20 years, or both.

(18 U.S.C. 111.)

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

*Existing law* provides that assault is punishable by a fine not exceeding \$1,000, by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment. (Penal Code § 241(a).)

*Existing law* states that when an assault is committed against the person of a peace officer, firefighter, emergency medical technician (EMT), mobile intensive care paramedic, lifeguard, process server, traffic officer, code enforcement officer, animal control officer, or a 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 the offense knows or reasonably should know that the victim is a peace officer, firefighter, EMT, mobile intensive care paramedic, lifeguard, process server, traffic officer, code enforcement officer, animal control officer, or a search and rescue member engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, the assault is punishable by a fine not exceeding \$2,000, by imprisonment in the county jail not exceeding one year, or by both fine and imprisonment. (Penal Code § 241(c).)

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

*Existing law* makes battery punishable by a fine not exceeding \$2,000, by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. (Penal Code § 243(a).)

*Existing law* states that when a battery is committed against the person of 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, 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 a 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, the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. (Penal Code § 243(b).)

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

*This bill* makes an assault committed against a federal peace officer engaged in the performance of his or her duties when the person committing the offense knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties punishable by a fine not exceeding \$2,000, or by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

*This bill* would make battery committed against a federal peace officer engaged in the performance of his or her duties, when the person committing the offense knows or reasonably should know that the victim is a federal peace officer engaged in the performance of his or her duties, and an injury is inflicted on that federal peace officer, punishable by a fine of not more than \$10,000, by imprisonment in a county jail not exceeding one year, or by imprisonment in a county jail for 16 months, or 2 or 3 years, or by both the fine and imprisonment.

## COMMENTS

### 1. Need for This Legislation

According to the author:

Current California law does not protect Federal Peace Officers from crimes of violence while they are on duty. If a crime of violence is committed against a federal peace officer working in California, the penalty is often equivalent to that of a simple assault. Many of these federal peace officers have similar responsibilities, work hand-in-hand with state and local law enforcement to protect our communities and have completed equal to or similar training to that of a California Peace Officer. However, if a crime of violence is committed against a federal peace officer, they are not protected by the same laws that protect California Peace Officers.

In 2015, a total of 1,336 federal law enforcement officers were assaulted. Of these officers, 1 was killed and 172 were reported injured. (See tables 123 and 125, attached)

**Weapons** (See Table 126, attached)

- 543 federal officers were assaulted with personal weapons such as hands, fists, or feet, and 99 of these assaults resulted in injuries to the officers. For 144 of these incidents, the extent of the injuries (if any) was not reported.
- 135 officers were assaulted with blunt instruments, resulting in 1 officer being injured. The extent of injuries (if any) was not reported for 134 officers.
- 97 officers were assaulted with firearms, resulting in 1 officer being killed and 14 officers being injured. The extent of the injuries (if any) was not reported for 19 officers assaulted with firearms.
- 89 federal officers were assaulted with vehicles; of these, 13 officers suffered injuries. For 30 of the officers assaulted with vehicles, the extent of their injuries (if any) was not reported.

- 33 officers were assaulted with knives or other cutting instruments, resulting in 7 officers being injured.
- 439 officers were assaulted with various other types of weapons, resulting in 38 officers being injured. The extent of injuries was not reported for 22 officers.

**Type of activity** (See Table 130, attached)

- 561 of the federal officers assaulted in 2015 were on patrol or guard duty when they were assaulted.
- 349 officers were assaulted while conducting investigations or searches.
- 293 officers were assaulted while attempting arrests or serving summonses.
- 48 officers were assaulted while maintaining custody of prisoners.
- 20 officers were on protection duty at the time of the assaults.
- 18 officers were assaulted while on court duty.

## 2. Effect of Legislation

Federal officers are currently protected under federal law. In order for the defendant to be found guilty of assault on a peace officer, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant forcibly assaulted [name of federal officer or employee]; [and]

Second, the defendant did so while [name of federal officer or employee] was engaged in, or on account of [his] [her] official duties[.] [; and]

[Third, the defendant [made physical contact] [acted with the intent to commit another felony].]

There is a forcible assault when one person intentionally strikes another, or willfully attempts to inflict injury on another, or intentionally threatens another coupled with an apparent ability to inflict injury on another which causes a reasonable apprehension of immediate bodily harm.

(Ninth Circuit Model Jury Instruction 8.3; <http://www3.ce9.uscourts.gov/jury-instructions/node/458>.)

According to the Uniform Crime Report of 2015, this law is being regularly utilized to prosecute offenders, specifically:

- 832 alleged assailants were identified in connection with the 1,336 attacks on federal officers. (See Table 123.)
- Of the 832 offenders, dispositional information was reported for 445 of them. (See Table 131.)
- At the time of this report, the following dispositional information was available for 445 of the suspects (See Table 131):

- 276 were found guilty, and 6 were found not guilty or the charges were dismissed.
- 95 of the offenders were awaiting trial.
- 48 offenders' cases were pending prosecutive opinion.
- 12 offenders' prosecutions were declined.
- 7 offenders are deceased.
- 1 offender remained a fugitive.

([https://ucr.fbi.gov/leoka/2015/federal/federal\\_topic\\_page\\_-2015](https://ucr.fbi.gov/leoka/2015/federal/federal_topic_page_-2015))

This legislation would increase penalties for assault and battery under California law. Members may wish to consider whether this legislation is necessary given that this is a federal crime.

### **3. Argument in Opposition**

According to the California Public Defenders Association:

Currently, a battery committed against a peace officer, engaged in the performance of his or her duties, as specified, when the person committing the offense knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties is a crime. This bill would expand Penal Code sections 241 and 243 to include a federal peace officer engaged in the performance of his or her duties, when the person committing the offense knows or reasonably should know that the victim is a federal peace officer engaged in the performance of his or her duties.

The expansion of these statutes to include federal peace officers is extremely problematic given the rampant well-publicized abuses by Immigration and Customs Enforcement (hereinafter "ICE"). The intimidation tactics employed by ICE agents in courthouses and other public spaces cannot be ignored when evaluating the consequences of expanding the reach of Penal Code sections 241 and 243. This bill would undermine the efforts to empower individuals not to submit to unlawful searches and arrests when confronted by ICE agents. The potential for abuse is real. The expansion of these statutes is likely to result in the prosecution of individuals who simply asserted their right against unlawful searches and unjustified detentions when confronted by ICE agents.

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