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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 172                      **Hearing Date:** July 7, 2015  
**Author:** Rodriguez  
**Version:** May 28, 2015  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** JRD

**Subject:** *Emergency Departments: Assaults and Batteries*

### HISTORY

**Source:** Emergency Nurses Association California Chapter

**Prior Legislation:** SB 390 (La Malfa) – Chapter 249, Statutes of 2011  
SB 406 (Lieu) – Chapter 250, Statutes of 2011  
SB 409 (Lowenthal) – Chapter 410, Statutes of 2009  
AB 1686 (Leno) – Chapter 243, Statutes of 2007

**Support:** The Association of California Healthcare Districts; California College and University Police Chiefs Association; California District Attorneys Association; California Hospital Association; California State Sheriffs' Association; County of San Bernardino; Dignity Health; Los Angeles County board of Supervisors; Organization of SMUD employees; San Bernardino Public Employees Association; San Luis Obispo county Employees Association; LIUNA Locals 777 and 792

**Opposition:** Legal Services for Prisoners with Children

**Assembly Floor Vote:** 78 - 0

### PURPOSE

*The purpose of this legislation is to increase the penalties for assault and battery committed against a physician, nurse, or other health care worker engaged in performing services within the emergency department, if the person committing the offense knows or reasonably should know that the victim is a physician, nurse, or other health care worker engaged in performing services within the emergency department, as specified.*

*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* provides that when an assault is committed against a physician, nurse, or other health care worker engaged in performing services within the emergency department , and the person committing the offense knows or reasonably should know that the victim is a physician, nurse, or other health care worker engaged in performing services within the emergency department, the assault is punishable by a fine not to exceed \$2,000, by imprisonment in a county jail up to one year, or by both that fine and imprisonment.

*This bill* states that when a battery is committed against a physician, nurse, or other health care worker engaged in performing services within the emergency department, and the person

committing the offense knows or reasonably should know that the victim is a physician, nurse, or other health care worker engaged in performing services within the emergency department the battery shall be punished by a fine not exceeding \$2,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

*This bill* provides that a licensed health facility that maintains and operates an emergency department may post a notice in a conspicuous place in the emergency department stating substantially the following: WE WILL NOT TOLERATE any form of threatening or aggressive behavior toward our staff. Assaults and batteries against our staff 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* defines “nurse” as a licensed nurse of a hospital providing services within the emergency department.

*This bill* defines “health care worker” as a person who, in the course and scope of employment or as a volunteer, performs duties directly associated with the care and treatment rendered by the hospital’s emergency department or the security thereof.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state’s ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.” ( Defendants’ February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for This Legislation

According to the author:

Under current law, an assault or battery against a physician or nurse rendering emergency medical care *outside* of a hospital, clinic or health care facility is a misdemeanor punishable by a fine of up to \$2,000, or a one year in county jail, or both. However, if an assault or battery occurs *inside* the health care facility, the crime is punishable as a lower misdemeanor with a jail time of up to six months. If a serious injury is sustained, or weapons are used, a battery is a felony punishable by a fine up to \$2,000, or a one year in county jail or both; or by a jail time of 16 months, two or three years.

AB 172 specifically, increases the penalties for an assault or battery committed against a healthcare worker providing emergency services inside the emergency department equal to the punishment for an assault or battery committed outside a hospital, clinic, or other health care facility.

Also, AB 172 allows a health facility that maintains and operates an emergency department to post a notice in the emergency room stating that an assault and battery against hospital staff is a crime and may result in a felony conviction.

### 2. Effect of Legislation

This legislation would increase the penalty for assault and battery on healthcare providers, who are providing emergency medical services in a health care facility. According the California Hospital Association, who is in support of the legislation:

As a community resource, hospitals have an obligation to treat all members of the community, including gang members, behavioral health patients, substance abusers and victims of domestic violence. Unfortunately, these situations may increase the chance of violence, particularly in the emergency department. Hospitals are very concerned about creating a safe environment for patients, employees and visitors and this take a variety of steps to balance the creation of a healing environment

with a safe workplace. This includes use of screening techniques, alarms and security staff. Hospitals welcome yet another tool towards this effort.

Legal Services for Prisoners with Children, opposes the legislation, stating:

The stated goal of this bill is to try and ensure the safety of health care workers. Unfortunately, this bill is misguided and would not produce the intended results. The vast majority of assaults on health care workers are caused by individuals who are severely mentally ill, suffering from dementia, or undergoing significant psychological stress. Such individuals are not likely to be deterred by the threat of an increased penalty. Moreover, sending mentally ill individuals to jails is no substitute for treatment. Cycling mentally ill people in and out of jail would not prevent the assaults that AB 172 seeks to address.

**-- END --**