

Date of Hearing: January 9, 2024

Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Kevin McCarty, Chair

AB 977 (Rodriguez) – As Amended March 15, 2023

As Proposed to be Amended in Committee

SUMMARY: Makes an assault or a battery committed against a physician, nurse, or other healthcare worker of a hospital engaged in providing services within the emergency department punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$2,000, or by both that fine and imprisonment. Specifically, **this bill:**

- 1) Makes an assault or battery committed against a physician, nurse, or other healthcare worker of a hospital engaged in providing services within the emergency department, when the person committing the offense knows or reasonably should know that the victim a physician, nurse, or other healthcare worker of a hospital engaged in providing services within the emergency department, punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$2,000, or by both.
- 2) Redefines “nurse” for purposes of these offenses, as specified, and expands the definition to include a nurse of a hospital engaged in providing services within the emergency department.
- 3) Defines “healthcare worker” as a person who in the course and scope of employment performs duties directly associated with the care and treatment rendered by the hospital’s emergency department or the department’s security.
- 4) Redefines “emergency medical technician” as specified.
- 5) Allows a health facility, as specified, to 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.”

EXISTING LAW:

- 1) Defines “assault” as an unlawful attempt, coupled with a present ability, to inflict a violent injury upon another person, and makes the offense punishable by up to six months in the county jail, by a fine not exceeding \$1,000, or by both. (Pen. Code, §§ 240 & 241, subd. (a).)
- 2) Defines “battery” as the willful and unlawful use of force or violence upon another person, and makes the offense punishable by up to six months in the county jail, by a fine not to

exceed \$2,000, or by both. (Pen. Code, §§ 242 & 243, subd. (a).)

- 3) States that when a battery is committed upon any person and serious bodily injury is inflicted upon that person, the offense is punishable as a “wobbler” with a possible sentence of up to one year in the county jail, or for two, three, or four years in the county jail. (Pen. Code, § 243, subd. (d).)
- 4) Provides that any person who commits an assault upon another by any means of force likely to produce great bodily injury shall be punished by imprisonment in a county jail for up to one year, or in the state prison for two, three, or four years, or by a fine not exceeding \$10,000, or by both the fine and imprisonment. (Pen. Code, § 245, subd. (a)(4).)
- 5) States that when an assault is committed against a peace officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of their duties, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the perpetrator knows or reasonably should know that the victim is member of one of the specified professions engaged in the performance of their duties, or rendering emergency medical care (whichever is applicable to the profession), the assault is punishable by a fine of up to \$2,000, or by imprisonment in a county jail not exceeding one year, or by both. (Pen. Code, § 241, subd. (c).)
- 6) States that when a battery is committed against 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 their 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 perpetrator knows or reasonably should know that the victim is member of one of the professions listed above engaged in the performance of their duties, or rendering emergency medical care (whichever is applicable to the profession) the battery is punishable by a fine of up to \$2,000, or by imprisonment in a county jail for up to one year, or by both. (Pen. Code, § 243, subd. (b).)
- 7) Specifies that when a battery is committed on a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the perpetrator knows or reasonably should know that the victim is a member of one of these professions and the battery causes injury, it is punishable as a “wobbler”, with a possible sentence of imprisonment in a county jail for up to one year, or by imprisonment for 16 months, or two or three years in the county jail, or by a fine of up to \$2,000, or by both the fine and imprisonment. (Pen. Code, § 243, subd. (c)(1).)
- 8) States that any person who personally inflicts great bodily injury on any person other than an accomplice in the commission, or attempted commission, of a felony shall be punished by an additional and consecutive term of imprisonment for three years. (Pen. Code, § 12022.7, subd. (a).)

- 9) Defines “great bodily injury” as “a significant or substantial physical injury.” (Pen. Code, § 12022.7, subd. (g).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “As a career first responder, I experienced firsthand how the constant threat of workplace violence (WPV) creates a dangerous and volatile environment in the emergency department (ED). Healthcare workers in this field experience burnout, stress, and trauma, which affects their ability to treat patients. Studies have shown that experiencing workplace violence inside the emergency department can cause PTSD, depression, and a lower quality of professional life. Workplace violence lowers patient-physician trust and drives poor health outcomes. Unfortunately, many think workplace violence is a part of the job, and many healthcare workers may not even report WPV. However, there should be zero tolerance for verbal or physical abuse to those dedicated to improving patients’ lives. One-third of emergency nurses have considered leaving due to WPV, and 85% of emergency physicians believe WPV in the ED has increased over the past five years. Two-thirds of emergency physicians have reportedly been assaulted, and one-third of those assaults have led to an injury. The COVID-19 pandemic only worsened this trend and further strained desperately needed healthcare staff.

“There is no reason why penalties for assaulting or committing battery against an emergency healthcare worker inside an emergency department should be weaker than those working outside an emergency department. AB 977 will provide parity on crimes in and out of an ED while also sending a message to ED staff that their work is valued and their safety is our priority. This bill will also authorize EDs to post a message that assault and battery against healthcare staff is a crime—sending a message to patients that workplace violence (WPV) is unacceptable.”

- 2) **Background:** An assault is “an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” (Pen. Code, § 240.) A battery is “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 an 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.

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. Whereas a simple assault or battery is punishable by up to six months in jail, if a simple assault or battery is committed on a physician or nurse while outside a hospital and while rendering medical care, the perpetrator faces the possibility of an additional six months in jail, for a maximum sentence of up to one year in jail. (See Pen. Code, §§ 241, subds. (a) &

(c); 243, subds. (a) & (b).)¹ In addition, if the battery on the physician or nurse rendering emergency medical care outside of the results in any injury, the conduct can be punished either as a misdemeanor or as a felony. The permissible felony sentence is imprisonment in the county jail for 16 months, or two, or three years. (Pen. Code, § 243, subd. (c)(1).)

This bill would expand the scope of the crime of simple assault or battery (i.e. without causing injury) on physicians and nurses. The enhanced maximum six-month penalty would apply to those physicians and nurses providing services within a hospital emergency department.

This bill would also expand the scope of persons covered to all health care workers within the emergency department. Specifically, it would include employees who perform duties directly associated with the care and treatment rendered by the hospital's emergency department or the department's security.²

Proponents of the bill argue that there is no reason to treat medical personnel outside of the hospital differently than those inside the emergency department.

While all hospital employees should be protected from workplace violence, arguably one reason to treat assaults and batteries outside the hospital differently than those occurring inside the hospital, whether it be the emergency department or elsewhere, is because the likelihood that the personnel will have the back up of security or other employees is greater within the facilities than if they are outside.

- 3) **Recent Governor's Veto on Particularization of Crimes:** Recently Governor Newsom vetoed SB 596 (Portantino), of the 2023 Legislative Session, a bill similar to this one in that it sought to create a new crime with increased penalties for abusive conduct targeting school officials. In his veto message the Governor said:

“Credible threats of violence and acts of harassment - whether directed against school officials, elected officials, or members of the general public - can already be prosecuted as crimes. As such, creating a new crime is unnecessary....

No school official should be subject to threats or harassment for doing their job, period. I encourage school officials to work closely with local law enforcement to use the laws already on the books to ensure the safety and security of our community's educators and governing board members, both while carrying out their school duties on school premises and while away from school sites.”

The same rationale applies to this bill.

¹ For a simple assault vs. assault on a physician or nurse rendering emergency medical care outside the hospital, the fines also differ by \$1,000.

² The proposed committee amendments remove volunteers from the definition of healthcare workers that are to be covered by this bill.

- 4) **Veto by Former Governor Brown:** AB 172 (Rodriguez), of the 2015-2016 Legislative Session, was identical to this bill. It was vetoed by former Governor Brown. The veto message said:

“This bill would increase from six months to one year in county jail the maximum punishment for assault or battery of a healthcare worker inside an emergency department.

“Emergency rooms are overcrowded and often chaotic. I have great respect for the work done by emergency room staff and I recognize the daunting challenges they face every day. If there were evidence that an additional six months in county jail (three months, once good-time credits are applied) would enhance the safety of these workers or serve as a deterrent, I would sign this bill. I doubt that it would do either.

“We need to find more creative ways to protect the safety of these critical workers. This bill isn't the answer.”

- 5) **Annual Report on Violent Incidents at Hospitals:** The Division of Occupational Safety and Health (Cal/OSHA) issues an annual report on incidents of violence committed against hospital staff. (Labor Code, § 6401.8, subd. (c).) Hospitals are required to submit reports to 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).)

According to Cal/OSHA's report covering the period starting on October 1, 2020, through September 30, 2021 (the most recent report available online), there were 10,005 incidents of violence reported by hospitals.³ (*Workplace Violent Incidents at Hospitals: October 1, 2020 through September 20, 2021*, March 25, 2022, at pp. 2, 5, available at:

<https://www.dir.ca.gov/dosh/Reports/Annual-Report-WPV-Incidents-2020-2021.pdf>)

- 6) **Other Possible Solutions:** While violence in health care settings is a continuing problem, evidence suggests that increasing the penalties for assaults and batteries on health care workers is not an effective solution.

The National Institute of Justice (NIJ) has looked into the concept of improving public safety through increased penalties. (<https://nij.ojp.gov/about-nij>.) As early as 2016, the NIJ has been publishing its findings that increasing punishment for given offenses does little to deter

³ Through September of 2018, CalOSHA's reports covered the types of assaults and batteries, who was the aggressor, and where in the hospital the conduct occurred. This information is no longer provided in the annual report. Labor Code section 6401.8 only requires CalOSHA to provide the following: the total number of reports, and which specific hospitals filed reports, the outcome of any related inspection or investigation, the citations levied against a hospital based on a violent incident, and recommendations of the division on the prevention of violent incidents at hospitals.

criminals from engaging in that behavior. (“Five Things About Deterrence,” NIJ, May 2016, available at: <https://www.ojp.gov/pdffiles1/nij/247350.pdf>.) The NIJ has found that increasing penalties are generally ineffective and may exacerbate recidivism and actually reduce public safety. (*Ibid.*) These findings are consistent with other research from national institutions of renown. (See Travis, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, National Research Council of the National Academies of Sciences, Engineering, and Medicine, April 2014, at pp. 130 -150 available at: https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1026&context=jj_pubs, [as of Feb. 25, 2022].) Rather than penalty increases, the NIJ, advocates for policies that “increase the perception that criminals will be caught and punished” because such perception is a vastly more powerful deterrent than increasing the punishment. (“Five Things About Deterrence,” *supra.*)

Lack of deterrence seems particularly likely in this scenario. When a person is seeking medical attention in an emergency room or hospital, it is often because that person is in some type of distress. As noted in an article by the Association of American Medical Colleges (AAMC) reasons for “aggression vary: patients’ anger and confusion about their medical conditions and care; grief over the decline of hospitalized loved ones; frustration while trying to get attention amid staffing shortages, especially in nursing; delirium and dementia; mental health disorders; political and social issues; and gender and race discrimination.” (*Threats Against Health Care Workers are Rising. Here’s How Hospitals are Protecting Their Staffs*, P. Boyle, Aug. 18, 2022, <https://www.aamc.org/news-insights/threats-against-health-care-workers-are-rising-heres-how-hospitals-are-protecting-their-staffs> [as of March 12, 2023].) While violence is not excusable in these situations, it seems unlikely that a person in these conditions will be deterred because they face an additional length of incarceration.

The AAMC notes that hospitals are increasingly taking steps to de-escalate potentially violent circumstances. One such method is the use of de-escalation teams, comprising of providers trained in mental health care and de-escalation techniques. U.C. Davis employs such a team, called the Behavioral Escalation Support Team. (*Threats Against Health Care Workers are Rising. Here’s How Hospitals are Protecting Their Staffs, supra.*) Some hospitals, such as Boston Medical Center are using flagging systems in their medical records to alert if a patient has been aggressive with staff in the past. Such an alert gives staff several options, such as, “maintain a greater distance than usual from the person, be particularly aware of physical or verbal cues of aggression, call security to check someone for drugs or weapons, put extra limits on the visitor’s access, or place the patient in areas of the hospital where staff who specialize in de-escalation are readily available. (*Ibid.*)

This bill would allow hospitals to post signs in the emergency department advising patients and visitors that they could be prosecuted for a criminal act if they commit violence against emergency room staff. Arguably legislation is not necessary to do this. Nevertheless, it aligns with the advice of the NIJ that increasing the perception that perpetrators will be caught and punished is more of a deterrent than an increase in criminal penalties.

- 7) **Argument in Support:** According to the *California Hospitals Association*, “Health care workers in hospitals across California are increasingly subject to violent threats and attacks. The federal Bureau of Labor Statistics reports that health care workers are five times more likely to experience workplace violence than employees in other sectors. In fact, a 2021 study found that 44% of nurses reported being subject to physical violence, while 68% reported

verbal abuse — troubling numbers that were exacerbated by the COVID-19 pandemic. A 2022 study of one hospital emergency department supported these findings, demonstrating that incidences of workplace violence increased during the pandemic and were directly associated with the COVID-19 case rate.

“California’s health care workers must be better protected while they care for others and save lives. For these reasons, the California Hospital Association, on behalf of more than 400 hospitals and health systems, supports Assembly Bill 977, which would extend the penalties for violence committed against first responders to include all health care workers who provide services within emergency departments.

“Under current law, violence against health care workers inside an emergency department is penalized differently depending on the category of health care worker and the location of the attack. AB 977 is an important step toward providing health care workers with the same protections whether they are inside a hospital emergency department or elsewhere. It would ensure that those committing assault and battery against any hospital employee in an emergency department are subject to the same penalties they would be if the crime occurred anywhere else.

“Hospital health care workers perform their duties in a high-risk environment, as many patients and visitors experience high stress when suffering an emergency medical condition that can at times lead to aggressive behavior....

“Hospitals are doing their part to protect their employees — the most critical component of our health care delivery system — but California’s penal code has fallen behind. AB 977 will deliver important safeguards for all workers in hospital emergency departments to better protect them from violence.

“Additionally, this penalty extension should apply to workers throughout the entire hospital building — health care workers in emergency departments are not the only ones experiencing increased rates of violence. Health care workers should be protected from violence regardless of where they work in a hospital.”

- 8) **Argument in Opposition:** According to the *California Public Defenders Association*, “CPDA recognizes the problem of violence and the specific challenges it poses to healthcare facilities and healthcare workers. CPDA opposes this bill because it increases the pool of potential victims, the locations of the prohibited conduct, and the potential punishment 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. Patients are often combative, either through intoxication, stress, or mental illness. Often the families are under a great deal of stress because of receiving bad news about their loved ones and reacting poorly to the news. This 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.

“AB 977 is unnecessary. 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 be, and usually is, charged as felonies.

“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. 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.

“CPDA members frequently work with individuals in need of medical assistance that are taken to healthcare facilities. Frequently these people are mentally ill, on drugs/medication, or the victims of violent assaults themselves. Often their distressed family members come to see or support them. If an assault or battery occurs, healthcare facilities usually have security and police close at hand to remove such individuals and safeguard healthcare workers. Punishing those either seeking medical assistance, or their loved ones, more harshly will not add to public safety or aid in the rendering of medical aid.”

9) Prior Legislation:

- a) AB 26 (Rodriguez), of the 2019-2020 Legislative Session, would have required an emergency ambulance provider to provide each emergency ambulance employee, who drives or rides in the ambulance, with body armor and safety equipment to wear during the employee’s work shift. AB 26 was not heard by the Assembly Labor and Employment Committee.
- b) AB 329 (Rodriguez), of the 2019-2020 Legislative Session, when heard in the Assembly, would have created a new crime for assault on hospital property punishable by up to one year in the county jail, a fine of up to \$2,000 or by both imprisonment and the fine. AB 329 was gutted and amended in the Senate to an unrelated subject matter.
- c) AB 172 (Rodriguez), of the 2015-2016 Legislative Session, would have increased 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. AB 172 was vetoed.
- d) AB 1959 (Rodriguez), of the 2015-2016 Legislative Session, would have increased the felony state prison punishment for assault on an emergency medical technician. AB 1959 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Adventist Health
Alliance of Catholic Health Care, INC.
American College of Surgeons Joint Advocacy Committee

California Chapter of The American College of Emergency Physicians
California College and University Police Chiefs Association
California District Attorneys Association
California Emergency Nurses Association
California Hospital Association
California Medical Association
California State Sheriffs' Association
Cedars Sinai
Cottage Health
Dignity Health
El Camino Health
Emergency Nurses Association, California State Council
Loma Linda University Adventist Health Sciences Center and Its Affiliated Entities
Providence
Rady Children's Hospital
Sacramento County Sheriff Jim Cooper
San Diego County District Attorney's Office
San Diego Regional Chamber of Commerce
San Francisco District Attorney Brooke Jenkins
Scripps Health
Sharp Healthcare
Stanford Engineering
Stanford Health Care
Sutter Health

3 Private Individuals

Oppose

ACLU California Action
California Attorneys for Criminal Justice
California Public Defenders Association
Drug Policy Alliance
Initiate Justice (UNREG)
San Francisco Public Defender
Sister Warriors Freedom Coalition

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