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THIRD READING

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Bill No: AB 848  
Author: Soria (D)  
Amended: 6/25/25 in Senate  
Vote: 21

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SENATE PUBLIC SAFETY COMMITTEE: 6-0, 6/24/25  
AYES: Arreguín, Seyarto, Caballero, Gonzalez, Pérez, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/29/25  
AYES: Caballero, Seyarto, Cabaldon, Dahle, Grayson, Richardson, Wahab

ASSEMBLY FLOOR: 77-0, 6/2/25 - See last page for vote

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**SUBJECT:** Sexual battery

**SOURCE:** Author

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**DIGEST:** This bill allows the court to consider as a factor in aggravation for purposes of sentencing a defendant convicted of felony sexual battery that the defendant was employed at a hospital where the offense occurred and that the victim was in the defendant's care or seeking medical care at the hospital.

**ANALYSIS:**

Existing law:

- 1) Provides that the following persons are guilty of sexual battery:
  - a) Any person who touches the intimate body part of another person while that person is unlawfully restrained by the accused or accomplice, and if the touching is against the will of the person touched, and is for the purpose of sexual arousal, sexual gratification, or sexual abuse;
  - b) 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;

- c) Any person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, 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 purpose; and,
  - d) Any person who, 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. (Penal (Pen.) Code, § 243.4, subds. (a)–(d).)
- 2) Makes sexual battery punishable as an alternate felony-misdemeanor by imprisonment in a county jail for not more than one year, and by a fine not exceeding \$2,000; or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding \$10,000. (Pen. Code, § 243.4, subds. (a)–(d).)
  - 3) Defines “touches,” as used in the aforementioned sexual battery offenses, as meaning physical contact with the skin of another person whether accomplished directly or through the clothing of the person committing the offense. (Pen. Code, § 243.4, subd. (f).)
  - 4) Provides that “touches,” for the purpose of sexual battery, means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim. (Pen. Code, § 243.4, subd. (e)(2).)
  - 5) Provides that any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, or 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, is guilty of misdemeanor sexual battery, punishable by a fine not exceeding \$2,000, or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. However, if the defendant was an employer and the victim was an employee of the defendant, the misdemeanor sexual battery is punishable by a fine not

exceeding \$3,000, or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. (Pen. Code, § 243.4, subd. (e)(1).)

- 6) Provides that “touches,” for the purpose of misdemeanor sexual battery, means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim. (Pen. Code, § 243.4, subd. (e)(2).)
- 7) Defines “intimate part” for purposes of sexual battery as the sexual organ, anus, groin, or buttocks of any person, and the breast of a female. (Pen. Code, § 243.4, subd. (g)(1).)
- 8) States that in the case of a sexual battery conviction, the fact that the defendant was an employer and the victim was an employee of the defendant shall be a factor in aggravation in sentencing. (Pen. Code, § 243.4, subd. (i).)
- 9) Specifies that “sexual battery” does not include rape or sexual penetration. (Pen. Code, § 243.4, subd. (g)(2).)
- 10) Requires a person convicted of sexual battery to register as a sex offender. (Pen. Code, § 290, subd. (c)(1).)
- 11) Provides that when a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall in its sound discretion order imposition of a sentence not to exceed the middle term, except as specified. (Pen. Code, § 1170, subd. (b)(1).)
- 12) Provides that the court may impose a sentence exceeding the middle term only when there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term and the facts underlying those circumstances have been stipulated to by the defendant or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial. (Pen. Code, § 1170, subd. (b)(2).)
- 13) Provides that notwithstanding the presumption for the middle term, and unless the court finds that the aggravating circumstances outweigh the mitigating circumstances and that imposition of the lower term would be contrary to the interests of justice, the court shall order imposition of the lower term if the defendant experienced psychological, physical, or childhood trauma, is a youth (under age 26), or is or has been a victim of domestic violence or human trafficking. (Pen. Code, § 1170, subd. (b)(6).)

- 14) Provides that sentencing choices requiring a statement of a reason include "[s]electing one of the three authorized prison terms referred to in section 1170(b) for either an offense or an enhancement." (Cal. Rules of Court, rule 4.406(b)(4).)
- 15) Requires the sentencing judge to consider relevant criteria enumerated in the Rules of Court. (Cal. Rules of Court, rule 4.409.)
- 16) Enumerates circumstances in aggravation, relating both to the crime and to the defendant, as specified. In addition, any other factors statutorily declared to be circumstances in aggravation or that reasonably relate to the defendant or the circumstances under which the crime was committed can be considered in aggravation. (Cal. Rules of Court, rule 4.421.)
- 17) Enumerates circumstances in mitigation, relating both to the crime and to the defendant, as specified. In addition, any other factors statutorily declared to be circumstances in mitigation or that reasonably relate to the defendant or the circumstances under which the crime was committed can be considered. (Cal. Rules of Court, rule 4.423.)

This bill:

- 1) Provides that for purposes of sentencing a person for felony sexual battery, the fact that the defendant was employed at a hospital where the offense occurred and the victim was in the defendant's care or seeking medical care at the hospital is a factor in aggravation – i.e., a factor that the court may consider in sentencing the defendant.
- 2) Defines "hospital" as a facility for the diagnosis, care, and treatment of human illness that is subject to, or specifically exempted from, the licensure requirements of the Health and Safety Code, as specified.

## Comment

*Sexual Battery.* The sexual battery statute, Penal Code section 243.4, includes five subdivisions that define sexual battery based on the defendant's conduct and set the punishment for each respective situation.

Subdivisions (a), (b), and (c) cover situations where the defendant touches the intimate parts of the victim. These subdivisions require that the victim be unlawfully restrained, institutionalized for medical treatment, or not conscious of the sexual nature of the act because of a fraudulent representation. (*People v. Elam* (2001) 91 Cal.App.4th 298, 310; Pen. Code, § 234.4, subds. (a)-(c).) Subdivisions

(a), (b), and (c) are wobblers – i.e., either a felony or misdemeanor. (*People v. Dayan* (1995) 34 Cal.App.4th 707, 715, fn. 4; Pen. Code, § 17.)

Subdivision (d) proscribes conduct different from the other sexual batteries. Subdivision (d) covers the situation where the defendant causes the victim to masturbate or touch the intimate part of the defendant, another person, or themselves. Subdivision (d) is a wobbler, and like the other wobblers, subdivision (d) requires that the victim is unlawfully restrained or institutionalized for medical treatment, and the “touching” requires the victim to touch the skin of the defendant or another person’s intimate parts. (Pen. Code, § 234.4, subds. (d) & (f); *People v. Elam* (2001), *supra*, at p. 310.)

Subdivision (e) is misdemeanor sexual battery. This subdivision covers situations where the defendant touches the intimate parts of the victim. For misdemeanor sexual battery, unlike subdivisions (a), (b), (c), and (d), there is no requirement that the victim be unlawfully restrained, institutionalized for medical treatment, or not conscious of the sexual nature of the act. (Pen. Code, § 243.4, subd. (e).) And there is no requirement that there be actual contact with the victim’s skin, as it applies to touching through the clothes of the victim. (*Ibid.*; *People v. Dayan* (1995) 34 Cal.App.4th 707, 715-716.) These differences make the misdemeanor definition broader than the wobbler definition and as such, subdivision (e) proscribes a wider variety of conduct than the other subdivisions.

Subdivision (i) specifies that in the case of a felony conviction, the fact that the defendant was an employer and the victim was an employee of the defendant shall be a factor in aggravation in sentencing.

This bill specifies that that in the case of a felony sexual battery, the fact that the defendant was an employee at a hospital where the offense occurred and the victim was in the defendant’s care or seeking medical care at the hospital is a factor in aggravation at sentencing.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

**Fiscal Impact:**

- **Trial Courts:** Unknown, potentially significant costs to the state funded trial court system (Trial Court Trust Fund, General Fund) to adjudicate the increased criminal penalties in this bill. Defendants are constitutionally guaranteed certain

rights during criminal proceedings, including the right to a jury trial and the right to counsel (at public expense if the defendants are unable to afford the costs of representation). The Sixth Amendment right to a jury trial applies to any factual finding necessary to warrant any sentence beyond the presumptive maximum – e.g., a factor in aggravation.<sup>1</sup> Increasing penalties leads to lengthier and more complex court proceedings with attendant workload and resource costs to the court. The fiscal impact of this bill to the courts will depend on many unknowns, including the numbers of people charged with an offense and the factors unique to each case. An eight-hour court day costs approximately \$10,500 in staff in workload. This is a conservative estimate, based on the hourly rate of court personnel including at minimum the judge, clerk, bailiff, court reporter, jury administrator, administrative staff, and jury per-diems. If court days exceed 10, costs to the trial courts could reach hundreds of thousands of dollars. While the courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources and to increase the amount appropriated to backfill for trial court operations.

- **County Jail:** Unknown, potentially significant costs (local funds) to the counties to incarcerate people under the increased sentences in this bill. The average annual cost to incarcerate one person in county jail varies by county, but likely ranges from \$70,000 to \$90,000 per year. For example, in 2021, Los Angeles County budgeted \$1.3 billion for jail spending, including \$89,580 per incarcerated person. Actual incarceration costs to counties will depend on the number of convictions and the length of each sentence. Generally, county incarceration costs are not reimbursable state mandates pursuant to Proposition 30 (2012).
- **California Department of Corrections and Rehabilitation (CDCR):** Unknown, potentially significant costs (General Fund) to the Department of Corrections and Rehabilitation (CDCR) to incarcerate people for increased sentences in this bill. The Legislative Analyst's Office (LAO) estimates the average annual cost to incarcerate one person in state prison is \$133,000. The annual cost of operating a mental health crisis bed at CDCR is around \$400,000. As part of the ongoing Coleman court case, CDCR has been incurring fines monthly since April 2023 for failing to reduce vacancy rates for five mental health classifications. The state has paid over \$200 million in fines to date, and is still accruing fines. Thus, if even if just one person is sentenced

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<sup>1</sup> Apprendi v. New Jersey (2000) 530 U.S. 466, 490; Blakely v. Washington (2004) 524 U.S. 296, 301, 303-04; see also Cunningham v. California (2007) 549 U.S. 270.

to state prison for an additional year under this bill, it will add significant costs pressures to CDCR. The May Revision to the Governor's 2025-26 Budget proposes total funding of \$13.6 billion (\$13.2 billion General Fund and \$385.4 million other funds) for CDCR in 2025-26. Of this amount, \$4.1 billion General Fund is for health care programs.

- **Department of State Hospitals (DSH):** Potential cost pressures (General Fund) to the Department of State Hospitals (DSH), in order to adequately house, treat, and care for persons committed to DSH that otherwise would not. Cost pressures to DSH are connected with an increase in state prison sentences. Creating a new crime will increase the number of defendants declared incompetent to stand trial (IST), or committed to DSH due to their being not guilty by reason of insanity. DSH's proposed budget for fiscal year 2025-26 totals \$3.4 billion – an increase of \$3.4 million from the 2024 Budget Act. An increase the DSH population would result in the need for additional funding.

**SUPPORT:** (Verified 8/29/25)

Arcadia Police Officers' Association  
 Brea Police Association  
 Burbank Police Officers' Association  
 California Association of School Police Chiefs  
 California Coalition of School Safety Professionals  
 California District Attorneys Association  
 California Narcotic Officers' Association  
 California Police Chiefs Association  
 California Reserve Peace Officers Association  
 California State Sheriffs' Association  
 Claremont Police Officers Association  
 Corona Police Officers Association  
 Culver City Police Officers' Association  
 Fullerton Police Officers' Association  
 Los Angeles School Police Management Association  
 Los Angeles School Police Officers Association  
 Murrieta Police Officers' Association  
 Newport Beach Police Association  
 Palos Verdes Police Officers Association  
 Peace Officers Research Association of California  
 Placer County Deputy Sheriffs' Association  
 Pomona Police Officers' Association  
 Riverside Police Officers Association  
 Riverside Sheriffs' Association

**OPPOSITION:** (Verified 8/29/25)

None received

**ARGUMENTS IN SUPPORT:**

According to the California District Attorneys Association:

A health care professional who preys on a vulnerable patient violates the most basic ethical principles. Such a breach of trust is damaging to the patient, the health care professional and the medical profession. When a vulnerable patient is betrayed and exploited within the hospital setting, the offender should be subject to an upper term sentence. AB 848 would create an aggravating factor in these situations to permit the possibility of an upper term sentence for the commission of a felony sexual battery that occurred at the hospital upon a patient receiving medical care by a hospital employee. For these reasons, CDAA supports AB 848.

**ASSEMBLY FLOOR:** 77-0, 6/2/25

**AYES:** Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Calderon, Caloza, Carrillo, Castillo, Chen, Connolly, Davies, DeMaio, Dixon, Elhawary, Ellis, Flora, Fong, Gabriel, Gallagher, Garcia, Gipson, Jeff Gonzalez, Mark González, Hadwick, Haney, Harabedian, Hart, Hoover, Irwin, Jackson, Kalra, Krell, Lackey, Lee, Lowenthal, Macedo, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Sanchez, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Ta, Tangipa, Valencia, Wallis, Ward, Wicks, Wilson, Zbur, Rivas

**NO VOTE RECORDED:** Bryan, McKinnor

Prepared by: Cheryl Anderson / PUB. S. /  
8/29/25 20:57:14

\*\*\*\* **END** \*\*\*\*