

LEXSTAT CAL PEN CODE § 243

DEERING'S CALIFORNIA CODES ANNOTATED
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*** THIS DOCUMENT REFLECTS ALL URGENCY LEGISLATION ENACTED ***
THROUGH 2007-2008 THIRD EXTRAORDINARY SESSION CH. 6 AND
CH. 12 OF THE 2008 REGULAR SESSION APPROVED 4/29/08

PENAL CODE
Part 1. Of Crimes and Punishments
Title 8. Of Crimes Against the Person
Chapter 9. Assault and Battery

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Pen Code § 243 (2007)

§ 243. Punishment for battery generally; Punishment for assault against specified officers or others

(a) A battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

(b) When a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, code enforcement officer, or animal control officer 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, process server, traffic officer, code enforcement officer, or animal control officer 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.

(c)

(1) When a battery is committed against a custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty, 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 nonsworn employee of a probation department, custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, and an injury is inflicted on that victim, the battery is punishable by a fine of not more than two thousand dollars (\$2,000), by imprisonment in a county jail not exceeding one year, or

by both that fine and imprisonment, or by imprisonment in the state prison for 16 months, or two or three years.

(2) When the battery specified in paragraph (1) is committed against a peace officer 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 and 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, the battery is punishable by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment in a county jail not exceeding one year or in the state prison for 16 months, or two or three years, or by both that fine and imprisonment.

(d) When a battery is 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 in the state prison for two, three, or four years.

(e)

(1) When a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancée, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail for a period of not more than one year, or by both that fine and imprisonment. If probation is granted, or the execution or imposition of the sentence is suspended, it shall be a condition thereof that the defendant participate in, for no less than one year, and successfully complete, a batterer's treatment program, as defined in Section 1203.097, or if none is available, another appropriate counseling program designated by the court. However, this provision shall not be construed as requiring a city, a county, or a city and county to provide a new program or higher level of service as contemplated by *Section 6 of Article XIII B of the California Constitution*.

(2) Upon conviction of a violation of this subdivision, if probation is granted, the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars (\$5,000).

(B) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

(3) Upon conviction of a violation of this subdivision, if probation is granted or the execution or imposition of the sentence is suspended and the person has been previously convicted of a violation of this subdivision and sentenced under paragraph (1), the person shall be imprisoned for not less than 48 hours in addition to the conditions in paragraph (1). However, the court, upon a showing of good cause, may elect not to impose the mandatory minimum imprisonment as required by this subdivision and may, under these circumstances, grant probation or order the suspension of the execution or imposition of the sentence.

(4) The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence so as to display society's condemnation for these crimes of violence upon victims with whom a close relationship has been formed.

(f) As used in this section:

(1) "Peace officer" means any person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) "Emergency medical technician" means a person who is either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses a valid certificate or license in accordance with the standards of Division 2.5 (commencing with *Section 1797*) of the *Health and Safety Code*.

(3) "Nurse" means a person who meets the standards of Division 2.5 (commencing with *Section 1797*) of the *Health and Safety Code*.

(4) "Serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: 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.

(5) "Injury" means any physical injury which requires professional medical treatment.

(6) "Custodial officer" means any person who has the responsibilities and duties described in Section 831 and who is employed by a law enforcement agency of any city or county or who performs those duties as a volunteer.

(7) "Lifeguard" means a person defined in paragraph (5) of subdivision (c) of Section 241.

(8) "Traffic officer" means any person employed by a city, county, or city and county to monitor and enforce state laws and local ordinances relating to parking and the operation of vehicles.

(9) "Animal control officer" means any person employed by a city, county, or city and county for purposes of enforcing animal control laws or regulations.

(10) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations.

(11)

(A) "Code enforcement officer" means any person who is not described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 and who is employed by any governmental subdivision, public or quasi-public corporation, public agency, public service corporation, any town, city, county, or municipal corporation, whether incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements, and whose duties include enforcement of any statute, rules, regulations, or standards, and who is authorized to issue citations, or file formal complaints.

(B) "Code enforcement officer" also includes any person who is employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements pursuant to the Employee Housing Act (Part 1 (commencing with *Section 17000*) of *Division 13* of the *Health and Safety Code*); the State Housing Law (Part 1.5 (commencing with *Section 17910*) of *Division 13* of the *Health and Safety Code*); the Mobilehomes-Manufactured Housing Act (Part 2 (commencing with *Section 18000*) of *Division 13* of the *Health and Safety Code*); the Mobilehome Parks Act (Part 2.1 (commencing with *Section 18200*) of *Division 13* of the *Health and Safety Code*); and the Special Occupancy Parks Act (Part 2.3 (commencing with *Section 18860*) of *Division 13* of the *Health and Safety Code*).

Cal Pen Code § 243

(g) It is the intent of the Legislature by amendments to this section at the 1981-82 and 1983-84 Regular Sessions to abrogate the holdings in cases such as *People v. Corey*, 21 Cal. 3d 738, and *Cervantez v. J.C. Penney Co.*, 24 Cal. 3d 579, and to reinstate prior judicial interpretations of this section as they relate to criminal sanctions for battery on peace officers who are employed, on a part-time or casual basis, while wearing a police uniform as private security guards or patrolmen and to allow the exercise of peace officer powers concurrently with that employment.

HISTORY:

Enacted 1872. Amended Code Amdts 1873-74 ch 614 § 21; Code Amdts 1875-76 ch 290 § 1; Stats 1881 ch 16 § 1; Stats 1961 ch 1639 § 1; Stats 1965 ch 1985 § 1; Stats 1st Ex Sess 1966 ch 21 § 3, effective April 18, 1966; Stats 1968 ch 1222 § 56; Stats 1972 ch 618 § 113; Stats 1975 ch 1114 § 1; Stats 1976 ch 1138 § 3, ch 1139 § 150.5, operative July 1, 1977; Stats 1980 ch 1117 § 2, ch 1340 § 2.2, effective September 30, 1980; Stats 1981 ch 678 § 2; Stats 1982 ch 1300 § 2, ch 1353 § 2; Stats 1983 ch 1092 § 252, effective September 27, 1983, operative January 1, 1984; Stats 1984 ch 475 § 2, ch 1665 § 2. Amended Stats 1986 ch 713 § 2; Stats 1987 ch 828 § 11; Stats 1988 ch 816 § 2; Stats 1989 ch 191 § 2; Stats 1992 ch 184 § 1 (AB 2439); Stats 1993 ch 421 § 1 (AB 2066); Stats 1st Ex Sess 1993-94 ch 28 § 1 (AB 93 X), effective November 30, 1994; Stats 1996 ch 904 § 4 (AB 2224), ch 1077 § 14.5 (AB 2898); Stats 1997 ch 592 § 1 (AB 149); Stats 1998 ch 699 § 1 (AB 1767); Stats 1999 ch 660 § 1 (SB 563); Stats 2000 ch 236 § 1 (AB 1899); Stats 2003 ch 274 § 2 (SB 919).

NOTES:**Amendments:****1873-74 Amendment:**

Prior to 1873-74 the section read: "A battery is punishable by fine not exceeding one thousand dollars, or by imprisonment in the County Jail not exceeding one year."

1873-74 Amendment added "or an assault and battery" after "A battery" at the beginning.

1875-76 Amendment:

Amended the section to read: "A battery is punishable by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months, or if committed upon the wife of the assailant, it shall be in the discretion of the court to punish the offender by the infliction of not less than twenty-one lashes on the bare back, to be administered by the sheriff of the county or any constable of the township."

1881 Amendment:

Amended the section to read: "A battery is punishable by fine of not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both."

1961 Amendment:

Added (1) the second sentence of the first paragraph; and (2) the second paragraph.

1965 Amendment:

(1) Substituted "imprisonment in the state prison for not less than 1 nor more than ten years" for "a fine of not more than one thousand dollars (\$1,000) or imprisonment in the county jail for not more than one year, or both"; and (2) added "any member of the California State Police,"

1966 Amendment:

Added "or fireman" after "peace officer" wherever it appears.

1968 Amendment:

(1) Added "imprisonment in the county jail not exceeding one year or by" in the first paragraph; and (2) amended the second paragraph to read: "As used in this section, 'peace officer' refers to any person designated as a peace officer by Section 830.1, Section 830.2, or by subdivision (a) of Section 830.6, as well as any policeman of the San Francisco Port Authority and each deputized law enforcement member of the Wildlife Protection Branch of the Department of Fish and Game."

1972 Amendment:

Substituted "Commission" for "Authority" in the second paragraph.

1975 Amendment:

Added (1) the third sentence in the first paragraph; and (2) the third paragraph.

1976 Amendment (ch 1138):

Substituted "by subdivisions (a) to (e), inclusive, of Section 830.2, Section 830.5" for "Section 830.2" in the second paragraph.

1976 Amendment (ch 1139):

Amended the first paragraph by (1) deleting "for not less than one nor more than 10 years" after "state prison" in the second sentence; and (2) substituting "two, three, or four years" for "a period of not more than five years" in the third sentence.

1980 Amendment:

(1) Added "such fine and imprisonment" at the end of the first sentence of the first paragraph; (2) amended the second sentence of the first paragraph by (a) substituting ", as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of this code, or a fireman" for "or fireman"; (b) adding "a fine not exceeding one thousand dollars (\$1,000), or by"; and (c) substituting ", or by both such fine and imprisonment" for "or by imprisonment in the state prison"; (3) added the first sentence in the second paragraph; (4) designated the former third sentence of the first paragraph to be the second sentence of the second paragraph; (5) deleted the former second paragraph which read: "As used in this section, 'peace officer' refers to any person designated as a peace officer by Section 830.1, by subdivisions (a) to (e), inclusive, of Section 830.2, Section 830.5, or by subdivision (a) of Section 830.6, as well as any policeman of the San Francisco Port Commission and each deputized law enforcement member of the Wildlife Protection Branch of the Department of Fish and Game."; and (6) added the last paragraph. (As amended by Stats 1980, ch 1340, compared to the section as it read prior to 1980. This section was also amended by an earlier chapter, ch 1117. See *Gov C § 9605*.)

1981 Amendment:

(1) Restructured the former section by adding subdivision designations; (2) added "a" after "punishable by" in subd (a); (3) substituted "a battery" for "it" in subds (b)-(d); (4) amended subds (b) and (c) by (a) substituting "firefighter" for "or fireman"; (b) adding references to medical care specialists; and (c) substituting "battery is punishable" for "offense shall be punished"; (5) amended subd (d) by substituting (a) "any" for "a" after "committed against"; (b) "the" for "such" after "inflicted on"; and (c) "battery is punishable" for "offense shall be punished"; and (6) added subds (e)(1)-(e)(4).

1982 Amendment:

In addition to making technical changes, added (1) "custodial officer," and "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 for a public entity as a part-time or casual private security guard or patrolman," wherever they appear in subds (b) and (c); (2) subd (e)(7); and (3) the last paragraph. (As amended by Stats 1982, ch 1353, compared to the section as it read prior to 1982. This section was also amended by an earlier chapter, ch 1300. See *Gov C § 9605*.)

1983 Amendment:

Doubled the fines in subds (a), (b), and (c).

1984 Amendment:

In addition to making technical changes, (1) amended subds (b) and (c) by (a) deleting "or" after "medical technician" wherever it appears; (b) adding "or lifeguard" wherever it appears; and (c) deleting "for a public entity" after "private capacity" wherever it appears; (2) added subd (e)(8); and (3) amended the last paragraph by (a) substituting "1983-84 Regular Sessions" for "Regular Session"; and (b) deleting "by a public entity," after "casual basis". (As amended by Stats 1984, ch 1665, compared to the section as it read prior to 1984. This section was also

amended by an earlier chapter, ch 475. See *Gov C* § 9605.)

1986 Amendment:

(1) Substituted "lifeguard, traffic officer, or animal control officer" for "or lifeguard," after "care paramedic," wherever it appears in subs (b) and (c); and (2) added subs (e)(9) and (e)(10).

1987 Amendment:

Substituted "Section 1797.84" for "Section 1481" in subd (e)(3).

1988 Amendment:

Added "process server," wherever it appears in subs (b) and (c).

1989 Amendment:

(1) Added subd (e); (2) redesignated former subd (e) to be subd (f); and (3) added subd (f)(11).

1992 Amendment:

(1) Substituted "the" for "such" after "or by both" in subs (a) and (b); and (2) amended subd (e) by (a) substituting the period for the semi-colon after "designated by the court" in the second sentence; and (b) adding the second and third paragraphs.

1993 Amendment:

(1) Added subdivision designations (e)(1)-(e)(3); (2) deleted "in" after "none if available" in the second sentence of subd (e)(1); (3) amended the introductory clause of subd (e)(2) by (a) deleting "If probation is granted" at the beginning; and (b) adding "if probation is granted" after "subdivision, "; (4) redesignated former subs (e)(1) and (e)(2) to be subs (e)(2)(A) and (e)(2)(B); (5) added subd (e)(3); and (6) substituted "these" for "such" after "condemnation for" in the last paragraph of subd (e).

1994 Amendment:

(1) Added "as defined in Section 1203.097," in the second sentence of subd (e)(1); and (2) substituted "five thousand dollars (\$5,000)" for "one thousand dollars (\$1,000)" in subd (e)(2)(A).

1996 Amendment:

Added (1) "spouse, person with whom the defendant is cohabiting, person who is the parent of the defendant's child," in the first sentence of subd (e)(1); and (2) "as operative on or before August 2, 1995, or Section 1202.4," in the last paragraph of subd (e)(2)(B). (As amended Stats 1996 ch 1077, compared to the section as it read prior to 1996. This section was also amended by an earlier chapter, ch 904. See *Gov C § 9605*.)

1997 Amendment:

(1) Deleted "mobile intensive care paramedic," after "medical technician," wherever it appears in subds (b) and (c)(1); (2) designated former subd (c) to be subd (c)(1); (3) amended subd (c)(1) by (a) deleting "peace officer," before "custodial officer" both times it appears; (b) deleting ", 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," after "whether on or off duty"; and (c) substituting "a fine of not more than two thousand dollars (\$2,000), by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment, or by imprisonment in the state prison for 16 months, or two or three years" for "imprisonment in a county jail for a period of not more than one year, or by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in the state prison for 16 months, or two or three years" at the end; (4) added subd (c)(2); (5) substituted "not exceeding" for "for a period of not more than" in subd (d); (6) substituted "who is either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses a valid certificate or license in accordance with" for "possessing a valid course completion certificate from a program approved by the State Department of Health Services for the medical training and education of ambulance personnel, and who meets" in subd (f)(2); (7) deleted former subd (f)(3) which read: "(3) 'Mobile intensive care paramedic' means any person who meets the standards set forth in Section 1797.84 of, and Division 2.5 (commencing with *Section 1797*) of, the *Health and Safety Code*."; (8) redesignated former subds (f)(4)-(f)(11) to be subds (f)(3)-(f)(10); and (9) designated the former last paragraph to be subd (g).

1998 Amendment:

Amended the first sentence of subd (e)(1) by (1) adding "a" before "person" both times it appears; (2) deleting "noncohabiting" before "former spouse"; (3) adding "or" after "fiance,,"; and (4) adding "or engagement" before "relationship".

1999 Amendment:

(1) Deleted "of" after "by a fine" in subd (a); (2) substituted "that" for "the" before "fine and imprisonment" wherever it appears in subds (a)-(c); (3) amended subd (e) by adding (a) "that fine and imprisonment" at the end of the first sentence in subd (e)(1); and (b) subdivision designation (e)(4); and (4) deleted the comma after "or city and county" in subd (f)(8).

2000 Amendment:

Added (1) "or a nonsworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty," in subds (b) and (c)(1); and (2) "nonsworn employee of a probation department," before "or a physician or nurse" the second time it appears in subd (b), and after "the victim is a" in subd (c)(1).

2003 Amendment:

Added (1) "code enforcement officer," both times it appears in subd (b); and (2) subd (f)(11).

Historical Derivation:

Crimes and Punishment Act § 51 (Stats 1850 ch 99 § 51).

Editor's Notes

For legislative intent, see the 1980 Note following *Pen C § 241*.

Note

Stats 2003 ch 274 provides:

SEC. 3. No reimbursement is required by this act pursuant to *Section 6 of Article XIII B of the California Constitution* because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of *Section 17556 of the Government Code*, or changes the definition of a crime within the meaning of *Section 6 of Article XIII B of the California Constitution*.

Cross References:

Unspecified felony punishment: *Pen C § 18*.

Resisting or obstructing public officers or peace officers in discharge of their duties: *Pen C § 148*.

Interfering with fireman or emergency rescue personnel at fire: *Pen C § 148.2*.

Aggravated assault against peace officer or fireman: *Pen C § 245*.

"Fireman or firefighter": *Pen C § 245.1*.

School district's duty to inform teacher of student's violation of section: *Ed C § 49079*.

Collateral References:

Cal Forms Pl & Practice, "Assault and Battery," "Harassment and Domestic Violence (Pt II)".

Cal Forms Pl & Practice (Matthew Bender) ch 58 "Assault and Battery".

Cal Forms Pl & Practice (Matthew Bender) ch 293 "Harrassment and Domestic Violence" Pt. II.

11 Witkin Summary (10th ed) Husband and Wife § 372.

12 Witkin Summary (10th ed) Real Property § 786.

Cal Jur 3d (Rev) Criminal Law § 553.

Cal. Legal Forms, (Matthew Bender) § 39.121[9].

California Judges Benchguide S216: Mandatory criminal jury instructions. Cal Center Jud Edu & Research No. 11.

Judicial Council of California Criminal Jury Instruction (LexisNexis Matthew Bender), CALCRIM No. 800, Aggravated Mayhem.

Judicial Council of California Criminal Jury Instruction (LexisNexis Matthew Bender), CALCRIM No. 801, Mayhem.

Judicial Council of California Criminal Jury Instruction (LexisNexis Matthew Bender), CALCRIM No. 840, Inflicting Injury on Spouse, Cohabitant, or Fellow Parent Resulting in Traumatic Condition.

Judicial Council of California Criminal Jury Instruction (LexisNexis Matthew Bender), CALCRIM No. 841, Simple Battery: Against Spouse, Cohabitant, or Fellow Parent.

Judicial Council of California Criminal Jury Instruction (LexisNexis Matthew Bender), CALCRIM No. 926, Battery Causing Injury to Specified Victim Not a Peace Officer.

Judicial Council of California Criminal Jury Instruction (LexisNexis Matthew Bender), CALCRIM No. 945, Battery Against Peace Officer.

Judicial Council of California Criminal Jury Instruction (LexisNexis Matthew Bender), CALCRIM No. 947, Simple Battery on Military Personnel.

Judicial Council of California Criminal Jury Instruction (LexisNexis Matthew Bender), CALCRIM No. 948, Battery Against Transportation Personnel or Passenger.

Judicial Council of California Criminal Jury Instruction (LexisNexis Matthew Bender), CALCRIM No. 949, Battery Against School Employee.

Judicial Council of California Criminal Jury Instruction (LexisNexis Matthew Bender), CALCRIM No. 960, Simple Battery.

Judicial Council of California Criminal Jury Instruction (LexisNexis Matthew Bender), CALCRIM No. 965, Shooting at Inhabited House or Occupied Motor Vehicle.

Judicial Council of California Criminal Jury Instruction (LexisNexis Matthew Bender), CALCRIM No. 2180, Evading Peace Officer: Death or Serious Bodily Injury.

Judicial Council of California Criminal Jury Instruction (LexisNexis Matthew Bender), CALCRIM No. 2201, Speed Contest.

Judicial Council of California Criminal Jury Instruction (LexisNexis Matthew Bender), CALCRIM No. 2202, Exhibition of Speed.

Judicial Council of California Criminal Jury Instruction (LexisNexis Matthew Bender), CALCRIM No. 2655, Causing Death or Serious Bodily Injury While Resisting Peace Officer.

Judicial Council of California Criminal Jury Instruction (LexisNexis Matthew Bender), CALCRIM No. 2736, Inciting a Riot in a Prison or Jail.

Judicial Council of California Criminal Jury Instruction (LexisNexis Matthew Bender), CALCRIM No. 2763, Escape After Remand or Arrest: Force or Violence.

Judicial Council of California Criminal Jury Instruction (LexisNexis Matthew Bender), CALCRIM No. 2929, Trespass After Making Credible Threat.

Judicial Council of California Criminal Jury Instruction (LexisNexis Matthew Bender), CALCRIM No. 2950, Failing to Maintain Control of Dangerous Animal.

Judicial Council of California Criminal Jury Instruction (LexisNexis Matthew Bender), CALCRIM No. 3163, Great Bodily Injury: Domestic Violence.

Forms:

For form of allegation charging battery, see form set out under *Pen C § 242*.

Law Review Articles:

Domestic violence as a crime against the state: the need for mandatory arrest in California. *85 Cal LR 643*.

Review of Selected 2003 California Legislation: Penal: Territorial Aggression? Expanding California's Penal Code Regarding Assault and Battery of Code Enforcement Officers. *35 McGeorge L. Rev. 606*.

Review of Selected 2003 California Legislation: Penal: Territorial Aggression? Expanding California's Penal Code Regarding Assault and Battery of Code Enforcement Officers. *35 McGeorge L. Rev. 606*.

Annotations:

Sufficiency of allegations or evidence of victim's mental injury or emotional distress to support charge of aggravated degree of rape, sodomy, or other sexual offense. *44 ALR 5th 651*.

Sufficiency of bodily injury to support charge of aggravated assault. *5 ALR5th 243*.

Hierarchy Notes:

Pt. 1, Tit. 8, Ch. 9 Note

NOTES OF DECISIONS 1. In General 2. Peace Officers 3. Security Guards 4. Lawfulness of Arrest; Resisting

Arrest 5. Prosecution 6. Instructions 7. Rights of Defendant in Proceedings 8. Mental State 9. Dating Relationship

1. In General

One who commits battery on a parole officer commits a battery under *Pen Code*, § 242, and is punishable by a fine or a county jail sentence (*Pen Code*, § 243), since a parole officer is declared to be a peace officer under *Pen Code*, § 830.5, which section was not included in that part of *Pen Code*, § 243, governing punishment for battery on a peace officer as amended in 1968 (Stats 1968, ch 1222); thus, a defendant convicted of the offense is entitled to be sentenced as a misdemeanor rather than as a felon. *People v. Cloud* (1969, Cal App 2d Dist) 1 Cal App 3d 591, 81 Cal Rptr 716, 1969 Cal App LEXIS 1306.

The mental element involved in reckless driving is different from that required for battery on a police officer or assault with an automobile being used as a deadly weapon on a police officer; the commission of such offenses against an officer depends on the status of the victim as a peace officer in the performance of his duties. *People v. Hartfield* (1970, Cal App 4th Dist) 11 Cal App 3d 1073, 90 Cal Rptr 274, 1970 Cal App LEXIS 1803.

The right of self-defense as to a charge of battery upon a police officer engaged in the performance of his duties (*Pen Code*, § 243), is subject to the same rules as in other cases, and one qualification is that the right of self-defense is based on the appearance of imminent peril to the person attacked; when that danger has passed and the attacker has withdrawn, there can be no justification for the use of further force. *People v. Perez* (1970, Cal App 5th Dist) 12 Cal App 3d 232, 90 Cal Rptr 521, 1970 Cal App LEXIS 1622.

In a prosecution for felony batteries on police officers arising out of a fracas at a high school dance, the trial court's instruction defining battery in terms of the statute was rendered confusing by the addition of a statement, applicable to an assault and not a battery, that "the necessary elements of the offense are the unlawful attempt with the specific intent to commit a violent injury upon the person of another, and the then present ability to accomplish the injury." Under that instruction the jury could have found a battery without even an offensive touching of the victim's person. *People v. Townsend* (1971, Cal App 2d Dist) 20 Cal App 3d 688, 98 Cal Rptr 25, 1971 Cal App LEXIS 1213, overruled *People v. Corey* (1978) 21 Cal 3d 738, 147 Cal Rptr 639, 581 P2d 644, 1978 Cal LEXIS 258.

A defendant charged with a stabbing was properly convicted of aggravated assault in violation of *Pen. Code*, § 245, subd. (a), rather than felony battery in violation of *Pen. Code*, § 243, since felony battery does not constitute a specific statute intended by the Legislature to supplant aggravated assault. *Pen. Code*, § 245, subd. (a) specifically addresses the assaultive conduct of a defendant by prohibiting an attack upon another person, while *Pen. Code*, § 243, merely addresses the result of conduct rather than prescribing specific conduct. *People v. Bertoldo* (1978, Cal App 5th Dist) 77 Cal App 3d 627, 143 Cal Rptr 675, 1978 Cal App LEXIS 1245.

The crime of battery causing serious bodily injury (*Pen. Code*, § 243) has not preempted or superseded the crime of assault by means of force likely to produce great bodily injury (*Pen. Code*, § 245, subd. (a)). The two statutes do not cover the same subject matter, since § 243 focuses on the actual injury inflicted, not on the force used, and all the elements of the so-called general statute (*Pen. Code*, § 245, subd. (a)) are not included in the special statute (*Pen. Code*, § 243). Thus, a defendant was properly charged and convicted of assault by means of force likely to produce great bodily injury in violation of *Pen. Code*, § 245, subd. (a), rather than felony battery in violation of *Pen. Code*, § 243, after he and a companion were observed by police officers to be involved in a scuffle with the victim whose injuries, although not serious, consisted of a cut on the forehead, a bloody and swollen nose, and puffed eyes. *People v. Hopkins* (1978, Cal App 2d Dist) 78 Cal App 3d 316, 142 Cal Rptr 572, 1978 Cal App LEXIS 1309.

In a prosecution for pimping and pandering, during the commission of which defendant was charged with inflicting great bodily injury on the prostitute, and for battery resulting in the infliction of serious bodily injury, the trial court gave adequate instructions on the term "great bodily injury." The record indicated the court informed the jury that great bodily injury within the meaning of *Pen. Code*, § 12022.7, was a significant or substantial physical injury. On the

felonious battery charge, the court instructed the jury in the language of *Pen. Code, § 243*, that serious bodily injury was a serious impairment of physical condition, including but not limited to the 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. *People v. Kent (1979, Cal App 1st Dist) 96 Cal App 3d 130, 158 Cal Rptr 35, 1979 Cal App LEXIS 2048*.

The crime of assault with force likely to cause great bodily injury (*Pen. Code, § 245, subd. (a)*) is distinct from battery crimes (*Pen. Code, § 243*) because in a prosecution for assault it is immaterial whether the force actually results in injury. The fact that actual injury does occur in the course of an assault by means of force likely to produce serious injury, and thus may also be punished under *Pen. Code, § 12022.7* (enhancement for infliction of great bodily injury), does not alter the basic difference between sections 243 and 245, subd. (a). Thus punishment under *Pen. Code, §§ 245, subd. (a), and 12022.7*, for a longer period of time than is allowable under *Pen. Code, § 243*, does not violate equal protection. *People v. Parrish (1985, Cal App 5th Dist) 170 Cal App 3d 336, 217 Cal Rptr 700, 1985 Cal App LEXIS 2237*.

Pen. Code, § 243 (battery) is not a special statute supplementing *Pen. Code, § 245, subd. (a)* (aggravated assault); neither statute is the more specific so as to supplant the other, since the specificity of each depends on the type of injury, the force involved, and the type of weapon, if any, used. *People v. Parrish (1985, Cal App 5th Dist) 170 Cal App 3d 336, 217 Cal Rptr 700, 1985 Cal App LEXIS 2237*.

Pen. Code, § 654, proscribes only double punishment and not multiple convictions for a single act or a course of conduct, so that a defendant may properly be convicted of both where the charges arising from a single act involves different offenses entailing different elements of proof. Thus, a juvenile court did not err in finding defendant guilty of both aggravated assault (*Pen. Code, § 245, subd. (a)(1)*) and felony battery (*Pen. Code, § 243, subd. (d)*) for discharge of a B-B gun which resulted in chipping two of the victim's teeth, since aggravated assault (in violation of *Pen. Code, § 245, subd. (a)*) is not a lesser included offense of battery causing serious injury (in violation of *Pen. Code, § 243, subd. (d)*). *In re Ronnie N. (1985, Cal App 1st Dist) 174 Cal App 3d 731, 220 Cal Rptr 365, 1985 Cal App LEXIS 2777*.

In a prosecution for battery with serious bodily injury (*Pen. Code, § 243, subd. (d)*), the trial court properly considered great violence as a circumstance in aggravation (*Cal. Rules of Court, rule 421(a)(1)*) in sentencing defendant to the upper term. The definition of the crime focuses entirely upon the effect of the battery, not the manner in which the battery was inflicted. A requisite level of violence is not necessary to commit such crime; moderate, even innocuous, acts may lead to serious bodily injury. Thus, great violence is not an element of battery with serious bodily injury, and was properly relied upon as a circumstance in aggravation. *People v. Marshall (1987, Cal App 4th Dist) 196 Cal App 3d 1253, 242 Cal Rptr 319, 1987 Cal App LEXIS 2417*.

Under the "least adjudicated elements" test, defendant's prior conviction for felony battery (*Pen. Code, § 243, subd. (d)*) was not a crime involving moral turpitude, and the trial court therefore erred in ruling that it could be used to impeach defendant if he testified. The least adjudicated elements of battery resulting in serious bodily injury do not necessarily involve force "likely" to cause serious injury and, since the crime could occur from the least offensive "push," it is not a crime of moral turpitude. *People v. Mansfield (1988, Cal App 5th Dist) 200 Cal App 3d 82, 245 Cal Rptr 800, 1988 Cal App LEXIS 318*.

As distinguished from the crime of simple battery (*Pen. Code, § 242*), the crime of battery upon a police officer (*Pen. Code, § 243, subd. (c)*) clearly involves moral turpitude and demonstrates a readiness to do evil, since it requires as an intent element that defendant must know or reasonably should have known the victim was a peace officer in the performance of his or her duties. Thus, evidence of defendant's prior conviction for battery upon a peace officer was properly admitted to impeach him in a prosecution for robbery (*Pen. Code, § 211*) and auto theft (*Veh. Code, § 10851*). *People v. Lindsay (1989, Cal App 5th Dist) 209 Cal App 3d 849, 257 Cal Rptr 529, 1989 Cal App LEXIS 347*.

Battery (*Pen. Code, § 243*) is committed whenever there is the slightest intentional touching, even though there is

no intent to harm, and even though the degree of force used is unlikely to cause harm. Since *Pen. Code, § 243*, does not require an intention to do any act that would be judged to be evil by generally accepted community standards of morality, battery is not a crime of moral turpitude, for purposes of determining whether it may be used for impeachment, even though it may unintentionally result in serious bodily injury. *People v. Thornton* (1992, *Cal App 4th Dist*) 3 *Cal App 4th* 419, 4 *Cal Rptr 2d* 519, 1992 *Cal App LEXIS* 135.

In a prosecution for battery with serious bodily injury (*Pen. Code, § 243*, subd. (d)), the trial court erred in imposing a three-year enhancement under *Pen. Code, § 12022.7* (intentional infliction of great bodily injury), since great bodily injury, as defined in *Pen. Code, § 12022.7*, is an element of the crime of battery under *Pen. Code, § 243*, subd. (d). Although a violation of *Pen. Code, § 243*, subd. (d), is a general intent crime, and enhancement under *Pen. Code, § 12022.7*, requires specific intent, the gravamen of both provisions is not intent; rather, it is the degree of injury to the victim. Battery, under *Pen. Code, § 243*, subd. (d), cannot be punished as a felony absent a finding of serious bodily injury. Likewise, the enhancement under *Pen. Code, § 12022.7*, only applies to a felony, and cannot be found true unless great bodily injury was inflicted. The terms "serious bodily injury" and "great bodily injury" have substantially the same meaning. *People v. Hawkins* (1993, *Cal App 2d Dist*) 15 *Cal App 4th* 1373, 19 *Cal Rptr 2d* 434, 1993 *Cal App LEXIS* 538.

Two officers involved in an altercation with a driver after one of the officers stopped the driver for driving without a license plate light were "peace officers" within the meaning of *Pen. Code, § 830.1* (peace officer includes police officer employed in that capacity and appointed by chief of police or chief executive of agency), so as to support the driver's convictions of battery on a peace officer with a deadly weapon (*Pen. Code, §§ 242, 243*, subd. (c), 12022, subd. (b)), resisting arrest with a weapon (*Pen. Code, § 148*, subd. (b)), and assault on a peace officer with a deadly weapon (*Pen. Code, § 245*, subd. (c)). The statute confers peace officer status on any person officially hired to be a police officer by a city agency. The definition is not limited to those officers personally hired by the police chief or agency chief executive. Each officer testified that he was employed by a city police department as a police officer and that, on the night in question, he was in uniform and driving a police cruiser on regular patrol in an assigned area. That testimony was substantial, direct evidence that both officers were employed as police officers by the police department, an agency of the city. *People v. Lara* (1994, *Cal App 6th Dist*) 30 *Cal App 4th* 658, 35 *Cal Rptr 2d* 886, 1994 *Cal App LEXIS* 1228, review denied (1995, Cal) 1995 *Cal LEXIS* 1941.

The determination whether multiple counts are necessarily included offenses of one another (*Pen C § 954*) is based on the elements of the offenses charged, not the stated offenses with their attached enhancements. Accordingly, in a juvenile proceeding, charges of felony assault (*Pen C § 245(a)*) with a great bodily injury enhancement (*Pen C § 12022.7*) and felony battery (*Pen C § 243(d)*) with a great bodily injury enhancement were properly sustained, since assault with force likely to produce great bodily injury is not a lesser included offense of battery with serious bodily injury. *In re Jose H.* (2000, *Cal App 6th Dist*) 77 *Cal App 4th* 1090, 92 *Cal Rptr 2d* 228, 2000 *Cal App LEXIS* 56, review denied (2000, Cal) 2000 *Cal LEXIS* 4272.

A juvenile charged with battery with serious injury (*Pen C § 243(d)*) was not entitled to strike a great bodily injury enhancement (*Pen C § 12022.7*), where he did not receive a separate sentence for the great bodily injury enhancement and thus was not punished twice for the battery and the enhancement. *In re Jose H.* (2000, *Cal App 6th Dist*) 77 *Cal App 4th* 1090, 92 *Cal Rptr 2d* 228, 2000 *Cal App LEXIS* 56, review denied (2000, Cal) 2000 *Cal LEXIS* 4272.

Where a dentist was convicted of three misdemeanor domestic violence offenses, *Pen C §§ 240, 242, 243*, and the Board of Dental Examiners subjected his license to discipline, under *B & P C §§ 1670, 1670.1*, and *1681(a)*, the dentist was bound by his stipulation to an administrative discipline order, notwithstanding that his conviction was later vacated, because absent extraordinary circumstances, a licensee, like a dentist, who stipulated to a disciplinary order with a licensing agency motivated by existence of a criminal conviction, could not avoid that order just because his conviction was later vacated. *Stermer v. Board of Dental Examiners* (2002, *Cal App 2d Dist*) 95 *Cal App 4th* 128, 115 *Cal Rptr 2d* 294, 2002 *Cal App LEXIS* 159, review denied (2002) 2002 *Cal. LEXIS* 2249.

Where *Pen C* § 243 was amended to make battery on a custodial officer a misdemeanor, and if injury was inflicted, it might be sentenced as a felony under *Pen C* § 243.1, which made battery on a custodial officer a felony even if there was no significant injury, was not impliedly repealed. *People v. Chenze* (2002, *Cal App 4th Dist*) 97 *Cal App 4th* 521, 118 *Cal Rptr 2d* 362, 2002 *Cal App LEXIS* 2935, review denied (2002, Cal) 2002 *Cal LEXIS* 3861.

Defendant's conviction for battery with serious bodily injury could not qualify as a violent felony under *Cal. Penal Code* § 667.5(c)(8), even if it included a great bodily injury allegation under *Cal. Penal Code* 12022.7, because the crime was not committed under circumstances involving domestic violence. *People v. Hawkins* (2003, *Cal App 2d Dist*) 108 *Cal App 4th* 527, 133 *Cal Rptr 2d* 548, 2003 *Cal App LEXIS* 668, modified, rehearing denied (2003, *Cal App 2d Dist*) 2003 *Cal App LEXIS* 807.

In an unpublished portion of the decision, defendant's sentence for mayhem and battery charges was modified by striking a three-year enhancement for inflicting great bodily injury. Defendant had argued that the enhancement had to be stricken because such injury was an element of mayhem. *People v. Hayes* (2004, *Cal App 6th Dist*) 120 *Cal App 4th* 796, 15 *Cal Rptr 3d* 884, 2004 *Cal App LEXIS* 1130, review denied (2004, Cal) 2004 *Cal LEXIS* 9732.

Board of Immigration Appeals did not err when it found alien to be removable under 8 *USCS* § 1227(a)(2)(E)(i) because he was convicted of a crime of violence, namely, battery upon a person with whom he had a dating relationship in violation of *Pen C* § 243(e)(1). *Mascardo v. Ashcroft* (2003, 9th Cir) 71 *Fed Appx* 715, 2003 *US App LEXIS* 15457.

Battery with serious bodily injury is not one of the enumerated crimes that qualify as per se serious felonies. *People v. Taylor* (2004, *Cal App 4th Dist*) 118 *Cal App 4th* 11, 12 *Cal Rptr 3d* 693, 2004 *Cal App LEXIS* 623.

Where defendant attacked the victim with swords, evidence did not warrant an instruction on battery with serious bodily injury under *Pen C* §§ 242, 243, a lesser included offense of aggravated and simple mayhem, violations of *Pen C* §§ 203, 205. There was no evidence that the general-intent component of mayhem was absent, and the jury could not reasonably have found that the victim did not suffer permanent facial disfigurement within the meaning of *Pen C* § 203. *People v. Manuel* (2004, *Cal App 5th Dist*) 119 *Cal App 4th* 957, 14 *Cal Rptr 3d* 775, 2004 *Cal App LEXIS* 988, rehearing granted, republished (2004, *Cal App 5th Dist*) 2004 *Cal App LEXIS* 1271.

Torture defendant was not entitled to a lesser-included-offense instruction on battery because the statutory definition of torture did not require a direct use of touching, physical force, or violence, but instead was satisfied if the defendant, directly or indirectly, inflicted great bodily injury on the victim; thus a defendant could commit torture without necessarily committing a battery; further, nothing in the allegations of the information in support of the torture count established that defendant used force or violence against the victim. *People v. Lewis* (2004, *Cal App 4th Dist*) 120 *Cal App 4th* 882, 16 *Cal Rptr 3d* 498, 2004 *Cal App LEXIS* 1155, review denied (2004, Cal) 2004 *Cal LEXIS* 10297.

Rational basis test applied to an equal protection challenge to the statutory scheme regarding battery on a custodial officer, *Pen C* §§ 243, 243.1; a defendant does not have a fundamental interest in a specific term of imprisonment or in the designation a particular crime receives. *People v. Wilkinson* (2004) 33 *Cal 4th* 821, 16 *Cal Rptr 3d* 420, 94 *P3d* 551, 2004 *Cal LEXIS* 6833, cert den (2005) 543 *U.S.* 1064, 125 *S. Ct.* 892, 160 *L. Ed. 2d* 796, 2005 *U.S. LEXIS* 59, 73 *U.S.L.W.* 3398.

Circumstance that the legislature did not grant to the trial court the same discretion in prosecutions under *Pen C* § 243.1 to reduce the charge to a misdemeanor as it did for prosecutions under *Pen C* § 243(c) does not render the statutory scheme unconstitutional. The legislature reasonably could have concluded that reduction of the *Pen C* § 243.1 offense is not appropriate in cases of a battery on a custodial officer that is deemed serious enough by the prosecutor to warrant felony prosecution under the latter statute. *People v. Wilkinson* (2004) 33 *Cal 4th* 821, 16 *Cal Rptr 3d* 420, 94 *P3d* 551, 2004 *Cal LEXIS* 6833, cert den (2005) 543 *U.S.* 1064, 125 *S. Ct.* 892, 160 *L. Ed. 2d* 796, 2005 *U.S. LEXIS* 59, 73 *U.S.L.W.* 3398.

In an attempted murder case, the relationship between defendant and the victim was sufficiently intimate to be a

dating relationship within the meaning of *Ev C § 1109* because it was not just a casual relationship but was an affectionate, sexually involved relationship with frequent contact over a period of six to eight months; the definition of a "dating relationship" in *Fam C § 6210* and *Pen C § 243(f)(10)*, which refers to frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations, was applicable. *People v. Rucker* (2005, Cal App 4th Dist) 126 Cal App 4th 1107, 25 Cal Rptr 3d 62, 2005 Cal App LEXIS 231, modified, rehearing denied (2005) 2005 Cal. App. LEXIS 319, review denied (2005) 2005 Cal. LEXIS 5536.

Although defendant's sentences for assault and battery under *Pen C §§ 245(a)(1), 243(d)* were stayed under *Pen C § 654*, there was a serious potential consequence of multiple convictions, and because of the great bodily injury allegations under *Pen C § 12022.7(c)*, each of the offenses was a serious felony and would have qualified as a strike in a subsequent prosecution for any felony; by assaulting and personally inflicting great bodily injury upon defendant's spouse in violation of *Pen C § 273.5*, defendant necessarily committed both aggravated assault and battery with serious bodily injury, and in keeping with the purpose of the Three Strikes Law, *Pen C § 667(b)*, enhancements were to be considered in determining whether there were necessarily included offenses and multiple convictions were improper, as in this case. *People v. Sloan* (2005, Cal App 3d Dist) 126 Cal App 4th 1148, 24 Cal Rptr 3d 497, 2005 Cal App LEXIS 234, rehearing granted, depublished (2005, Cal) 29 Cal Rptr 3d 739, 113 P3d 533, 2005 Cal LEXIS 5958, rev'd, superseded (2007, Cal) 2007 Cal LEXIS 8704.

Defendant did not qualify for mandatory probation under the Substance Abuse and Crime Prevention Act of 2000, *Pen C §§ 1210 et seq.*, when he committed a nonviolent drug possession offense (NDPO) while on probation for inflicting corporal injury and battery on a police officer, *Pen C §§ 273.5, 242, 243(b)*, which were not NDPOs under *Pen C § 1210.1(a)*. *People v. Guzman* (2005) 35 Cal 4th 577, 25 Cal Rptr 3d 761, 107 P3d 860, 2005 Cal LEXIS 2828, cert den (2005) 546 US 861, 163 L Ed 2, 126 S Ct 144, 2005 US LEXIS 7048.

Doctors properly relied on a probation report as the basis for their opinions that conviction for evading police involved force or violence, as defined by *Pen C § 243(f)(4)*, for purposes of a mentally disordered offender determination. *People v. Martin* (2005, Cal App 2d Dist) 127 Cal App 4th 970, 26 Cal Rptr 3d 174, 2005 Cal App LEXIS 399, review denied (2005) 2005 Cal. LEXIS 6873.

One can commit a battery within the meaning of *Pen C § 243(d)* without committing a serious felony within the meaning of *Pen C § 1192.7(c)(8)*. To establish that a battery was a serious felony, the People must show that defendant personally inflicted the injury, rather than that the defendant aided and abetted another, and that the victim was not an accomplice. *People v. Bueno* (2006, Cal App 1st Dist) 143 Cal App 4th 1503, 50 Cal Rptr 3d 161, 2006 Cal App LEXIS 1625, modified (2006, Cal App 1st Dist) 2006 Cal App LEXIS 1804.

2. Peace Officers

In prosecutions for battery on a peace officer (*Pen Code, § 243*), the question whether the peace officer was actually engaged in the performance of his duties at the time is not an evidentiary question or a question of law to be resolved by the trial judge, rather it is a question of fact and an essential part of the corpus delicti itself. *People v. Soto* (1969, Cal App 5th Dist) 276 Cal App 2d 81, 80 Cal Rptr 627, 1969 Cal App LEXIS 1776.

An assault on a peace officer by a person who is resisting an unlawful arrest is not a felony under *Pen Code, § 243*, but is a misdemeanor. *People v. Soto* (1969, Cal App 5th Dist) 276 Cal App 2d 81, 80 Cal Rptr 627, 1969 Cal App LEXIS 1776.

In a prosecution for battery of peace officers, the trial court erred in failing to instruct on the effect of evidence of conduct by the officers which, if true, caused them to be no longer engaged in the performance of their duties; and the lack of instruction on the officers' status was necessarily prejudicial, depriving defendant of his constitutional right to have the jury determine every material issue presented by the evidence. *People v. Muniz* (1970, Cal App 2d Dist) 4 Cal App 3d 562, 84 Cal Rptr 501, 1970 Cal App LEXIS 1559.

The trial court properly found that defendant, in committing a battery against a police officer, inflicted an "injury" upon the officer within the meaning of *Pen. Code, § 243, subd. (c)*. The statute prescribes as a qualifying injury an injury that "requires" professional medical treatment (*Pen. Code, § 243, subd. (f)(6)*). It is the nature, extent, and seriousness of the injury—not the inclination or disinclination of the victim to seek medical treatment—which is determinative. A peace officer who obtains "medical treatment" when none is required has not sustained an "injury" within the meaning of *Pen. Code, § 243, subd. (c)*, while a peace officer who does not obtain "medical treatment" when such treatment is required has sustained an "injury" within the meaning of that provision. The test is objective and factual. "Injury" as defined in *Pen. Code, § 243, subd. (f)(6)*, is not equated with serious or great bodily injury as referred to in *Pen. Code, § 243, subd. (f)(5)*. In the present case, there was substantial evidence from which a rational trier of fact could have found that the officer's injuries required professional medical treatment. The officer was kicked in the groin and knocked to his knees, the fingers and bottom side of his right hand were cut, his hand was crushed, he could not hold his firearm and had difficulty unwrapping his holster, and he was placed on restrictive phone duty for three to five days. *People v. Longoria (1995, Cal App 2d Dist) 34 Cal App 4th 12, 40 Cal Rptr 2d 213, 1995 Cal App LEXIS 370*, review denied (1995, Cal) *1995 Cal LEXIS 4699*.

Following an incident in which a juvenile ward of the court, while being transported to a youth facility, repeatedly kicked the van's steering wheel and its driver, a juvenile crew instructor employed by the county probation department, causing the van to swerve back and forth across the roadway and nearly causing a head-on accident, there was insufficient evidence of injury to support the juvenile court's finding that the minor committed a battery with injury on a peace officer in violation of *Pen. Code, § 243, subd. (c)*. Therefore, the offense was required to be reduced to a *Pen. Code, § 243, subd. (b)*, battery. The victim testified that he suffered soreness in the chest and chin from the kicking and no bruising, but did not further describe how hard he was kicked or his injury so as to support a finding that the soreness was the sort of injury requiring professional medical treatment, as required by *Pen. Code, § 243, subd. (f)(6)*. Further, he did not report to the medical staff that he had injuries and did not see a nurse or doctor. Since *Pen. Code, § 243, subd. (c)*, measures culpability by the seriousness of the inflicted injury, the victim's failure to further describe his injuries rendered the evidence insufficient to support the juvenile court's finding of battery with injury on a peace officer. *In re Michael P. (1996, Cal App 2d Dist) 50 Cal App 4th 1525, 58 Cal Rptr 2d 362, 1996 Cal App LEXIS 1085*.

In determining culpability under *Pen. Code, § 243, subd. (c)* (battery with injury on peace officer), there is no requirement in *Pen. Code, § 243, subd. (f)(6)*, which defines injury as any physical injury requiring professional medical treatment, that the victim of the battery actually receive medical treatment. The language in the statute merely defines the degree of the injury. It is the nature, extent, and seriousness of the injury, not the inclination or disinclination of the victim to seek medical treatment, that is determinative. The inquiry is whether there is substantial evidence from which a rational trier of fact could have found that the officer's injuries required professional medical treatment. *In re Michael P. (1996, Cal App 2d Dist) 50 Cal App 4th 1525, 58 Cal Rptr 2d 362, 1996 Cal App LEXIS 1085*.

Where defendant was found guilty of battery on a peace officer with injuries, The United States Supreme Court decision of *Florida v. J.L.* did not require reversal where, although acting on an anonymous tip, when the deputy arrived at the scene they saw the described vehicle in the place described by the caller and the deputy saw conduct he believed, based on his training and experience, was drug transaction, which was the conduct explicitly alleged in the anonymous call. That was sufficient to justify a temporary detention and no Fourth Amendment violation occurred when defendant was detained. *People v. Butler (2003, Cal App 2d Dist) 111 Cal App 4th 150, 4 Cal Rptr 3d 1, 2003 Cal App LEXIS 1232*, rehearing denied (2003, Cal App 2d Dist) *2003 Cal App LEXIS 1426*, review denied (2003, Cal) *2003 Cal LEXIS 9151*.

Defendant was properly convicted of making a criminal threat to a peace officer based on an altercation with police that occurred after defendant's parents called the police to their home. The fact that some crimes could be committed only against peace officers and other crimes were punished more severely when committed against peace officers did not mean that peace officers were excluded from the protection of laws that applied to persons generally. *People v. Schnathorst (2004, Cal App 3d Dist) 120 Cal App 4th 1310, 16 Cal Rptr 3d 312, 2004 Cal App LEXIS 1222*, review denied (2004, Cal) *2004 Cal LEXIS 9940*.

Habeas petitioner was denied relief where his retrial on battery charges stemming from his breaking an officer's arm with a broom did not amount to double jeopardy in violation of the Fifth Amendment, his representation of himself was knowing and voluntary and did not violate the Sixth Amendment, and the use of a stun belt on petitioner during his trial did not violate due process or equal protection. *Hill v. Cambra* (2005, ND Cal) 2005 US Dist LEXIS 4145, aff'd (2007, 9th Cir Cal) 2007 US App LEXIS 14194.

3. Security Guards

At the time of an arrest for shoplifting a policeman working as a part-time employee for a drug store in detecting and apprehending shoplifters was acting as a peace officer within the meaning of *Pen Code*, § 243, making battery on a peace officer engaged in the performance of his duties punishable as a felony, and the one committing the battery should be punished thereunder. *People v. Hooker* (1967, Cal App 2d Dist) 254 Cal App 2d 878, 62 Cal Rptr 675, 1967 Cal App LEXIS 1467, overruled *People v. Corey* (1978) 21 Cal 3d 738, 147 Cal Rptr 639, 581 P2d 644, 1978 Cal LEXIS 258.

In a prosecution for felony batteries on police officers arising out of a fracas at a high school dance, the evidence established that an officer struck by defendant was engaged in performance of his duty, where, though the officer was "moonlighting" at the time, the main purpose of his presence at the school was to maintain peace at the dance and to assist the school officials in keeping out intruders who were not members of the student body, where, at the time he was struck, he was in the act of retrieving his baton which he intended to use, in lieu of a firearm, to restore order and to prevent further damage to public property, and where, at the time of an earlier altercation with defendant, he was assisting an assistant vice principal in enforcing provisions of *Pen. Code*, § 626.8, relating to the presence of unauthorized persons on school grounds. *People v. Townsend* (1971, Cal App 2d Dist) 20 Cal App 3d 688, 98 Cal Rptr 25, 1971 Cal App LEXIS 1213, overruled *People v. Corey* (1978) 21 Cal 3d 738, 147 Cal Rptr 639, 581 P2d 644, 1978 Cal LEXIS 258.

While a city police officer is technically a peace officer as defined by *Pen. Code*, § 830.1, while performing private security functions for compensation while in uniform, in order for him to come within the ambit of *Pen. Code*, § 243 (battery on a peace officer), he must be actually engaged in the performance of his duties and must actually or reasonably be known by the accused to be acting in that capacity. *People v. Corey* (1978) 21 Cal 3d 738, 147 Cal Rptr 639, 581 P2d 644, 1978 Cal LEXIS 258.

In light of the legislative intent to make off-duty peace officers employed as private security guards or patrolmen subject to the regulations of the Private Investigators and Adjusters Act (located at former B & P C § 7500 et seq.; see now B & P C § 7512 et seq.), *Pen. Code*, § 243, which served to protect peace officers engaged in the performance of their duties, by providing enhanced punishment for those committing batteries on such peace officers, did not apply to peace officers who were assaulted within the course and scope of their private employment as security guards. Accordingly, where a city police officer was employed as a part-time private security guard when he was assaulted by defendant at a public dance sponsored by a private association, he was subject to the regulations of the act and therefore could not properly have been acting in his official capacity when, during the scope of that employment, he was battered by defendant. Thus, the evidence was insufficient to support defendant's conviction of battery on a peace officer. (Disapproving *People v. Hooker* (1967) 254 Cal App 2d 878, 62 Cal Rptr 675, 1967 Cal App LEXIS 1467 and *People v. Townsend* (1971) 20 Cal App 3d 688, 98 Cal Rptr 25, 1971 Cal App LEXIS 1213, to the extent they are inconsistent.) *People v. Corey* (1978) 21 Cal 3d 738, 147 Cal Rptr 639, 581 P2d 644, 1978 Cal LEXIS 258.

4. Lawfulness of Arrest; Resisting Arrest

A person may not use force to resist any arrest, lawful or unlawful, except that he may use reasonable force to defend life and limb against excessive force; but if it should be determined that resistance was not thus justified, the felony provisions of *Pen Code*, § 243, apply when the arrest is lawful, and if the arrest is determined to be unlawful the defendant may be convicted only of a misdemeanor (construing *Pen Code*, §§ 834a and 243). *People v. Curtis* (1969)

70 Cal 2d 347, 74 Cal Rptr 713, 450 P2d 33, 1969 Cal LEXIS 338; *People v. Soto* (1969, Cal App 5th Dist) 276 Cal App 2d 81, 80 Cal Rptr 627, 1969 Cal App LEXIS 1776.

Normally it is not the jury's function to resolve factual conflicts on the issue of probable cause for an arrest, but where there is a question of application of the rule that *Pen Code*, § 834a, only eliminates the common-law defense of resistance to unlawful arrest but does not make such resistance a new substantive crime, the legality of the arrest becomes an essential part of the corpus delicti, and any factual conflict as to the legality of an arrest at the time of committing a battery on a police officer must be resolved by the jury. *People v. Muniz* (1970, Cal App 2d Dist) 4 Cal App 3d 562, 84 Cal Rptr 501, 1970 Cal App LEXIS 1559.

That portion of *Pen Code*, § 243, raising battery, a misdemeanor, to felony status where the victim is a peace officer engaged in performing his duties, does not come into play where the officer makes an illegal arrest, simply because an officer is under no duty to make an unlawful arrest. *People v. Muniz* (1970, Cal App 2d Dist) 4 Cal App 3d 562, 84 Cal Rptr 501, 1970 Cal App LEXIS 1559.

Though resistance to an illegal arrest is no defense to a charge of battery on the arresting officer, whether the battery is a misdemeanor or a felony depends on whether the officer is engaged in the performance of his duties at the time of the arrest; and in a prosecution for batteries on peace officers allegedly committed at the time of defendant's arrest for possession of a machine gun, the failure to submit the issue of the legality of the arrest to the jury was prejudicial. *People v. Muniz* (1970, Cal App 2d Dist) 4 Cal App 3d 562, 84 Cal Rptr 501, 1970 Cal App LEXIS 1559.

Pen Code, § 243, makes felonious an assault on a peace officer who is actually engaged in the performance of his duties; however, since a peace officer is under no duty to make an unlawful arrest, an assault on a peace officer by a person who is resisting an unlawful arrest is not a felony under *Pen Code*, § 243, but may be a misdemeanor under *Pen Code*, § 834a, which prohibits forcible resistance to unlawful as well as to lawful arrests. *People v. Cuevas* (1971, Cal App 5th Dist) 16 Cal App 3d 245, 93 Cal Rptr 916, 1971 Cal App LEXIS 1582.

In a prosecution for felonious assault on a peace officer engaged in the performance of his duties (*Pen Code*, § 243), where the conflicting testimony of the officer and of the defendant created a factual question as to whether, at the time of the alleged battery, the officer had been acting within the scope of his duties as an officer and whether he had been acting legally or illegally, it was reversible error for the trial court to fail to submit to the jury those issues and the defendant's reasonable belief with respect thereto, together with an appropriate instruction on the lesser included offense of simple battery, a misdemeanor. *People v. Cuevas* (1971, Cal App 5th Dist) 16 Cal App 3d 245, 93 Cal Rptr 916, 1971 Cal App LEXIS 1582.

In a prosecution for assault upon a police officer in violation of *Pen. Code*, §§ 242, 243 in which the facts placed in issue whether the officer used excessive or unreasonable force, the trial court erred in failing to instruct the jury, *sua sponte*, that defendant was entitled to an acquittal on all charges, including the lesser included offense of resisting, delaying or obstructing a police officer, if the jury found that he only used reasonable force in protecting himself. *People v. Olguin* (1981, Cal App 5th Dist) 119 Cal App 3d 39, 173 Cal Rptr 663, 1981 Cal App LEXIS 1727.

On retrial following reversal of defendant's conviction in a prosecution for battery on a police officer and resisting arrest in which defendant claimed excessive use of force by the arresting officer and offered evidence supporting that defense, the trial court should give the standard jury instruction informing the jury an officer who uses excessive force in making an arrest is not engaged in the performance of his duties. The jury should also be instructed that it may not find defendant guilty of either offense if it finds the arrest or detention was unlawful, and, on request, should be instructed the People have the burden of proving the arrest's lawfulness beyond a reasonable doubt. Though the court need not tell the jury a citizen has a right to question a police officer's authority, the court should instruct the jury as to an arresting officer's obligation, if asked, to tell an arrestee why he is being arrested. Furthermore, if defendant should choose not to have the jury instructed on the lesser included offense of simple battery, the court should instruct the jury concerning the use of unreasonable or excessive force by a police officer engaged in the performance of his duties and

should omit reference to the reasonableness of defendant's response. *People v. Castain* (1981, Cal App 4th Dist) 122 Cal App 3d 138, 175 Cal Rptr 651, 1981 Cal App LEXIS 2008.

Pen Code, § 243, relating to commitment of battery against a peace officer, excludes unlawful arrests from its definition of duty, and while a resisting arrestee commits a public offense, if the arrest is ultimately determined factually to be unlawful, the defendant can be validly convicted only of simple assault and battery (disapproving cases holding or implying the contrary: *People v. Rhone*, 267 CA2d 652, 73 Cal Rptr 463, 1968 Cal App LEXIS 1435; *Pittman v. Superior Court of Los Angeles County* (1967) 256 Cal App 2d 795, 64 Cal Rptr 473, 1967 Cal App LEXIS 1922; *People v. Hooker* (1967) 254 Cal App 2d 878, 62 Cal Rptr 675, 1967 Cal App LEXIS 1467; *People v. Baca* (1966) 247 Cal App 2d 487, 55 Cal Rptr 681, 1966 Cal App LEXIS 988; *People v. Gaines* (1966) 247 Cal App 2d 141, 55 Cal Rptr 283, 1966 Cal App LEXIS 947; *People v. Burns* (1961) 198 Cal App 2d Supp 839, 18 Cal Rptr 921, 1961 Cal App LEXIS 2600). *People v. Curtis* (1969) 70 Cal 2d 347, 74 Cal Rptr 713, 450 P2d 33, 1969 Cal LEXIS 338.

5. Prosecution

In a prosecution for battery upon an arresting peace officer, the question of the exercise of reasonable force and the right to self-defense (distinct from that of the lawfulness of arrest) is for the trier of fact to determine. *People v. Curtis* (1969) 70 Cal 2d 347, 74 Cal Rptr 713, 450 P2d 33, 1969 Cal LEXIS 338.

In a felony prosecution for battery on a police officer, the information was sufficient to withstand a general demurrer, even though it did not directly allege that the officer was "engaged in the performance of his duties," where it did allege the wilful, unlawful, and felonious use of force by defendant on a peace officer knowing that he was a peace officer engaged in the performance of his duty; such allegation gave defendant ample notice of the crime for which he was charged and the technical defect, if raised by special demurrer, could be cured by an appropriate amendment. *People v. Soto* (1969, Cal App 5th Dist) 276 Cal App 2d 81, 80 Cal Rptr 627, 1969 Cal App LEXIS 1776.

Defendant was properly charged with battery on a peace officer engaged in the performance of his duties, even though the information charged only a violation of *Pen Code*, § 242, defining battery on the person without differentiation as to the status of the person involved, where the word description in the information was in conformity with *Pen Code*, § 243, dealing with punishment and specifically setting forth the implications of committing such a battery on a peace officer engaged in the performance of his duty, and where the charge under those two sections was not only more specific than either that of resisting a public officer (*Pen Code*, § 148), or that of preventing an executive officer from performing his duty (*Pen Code*, § 69), but was the only charge which truly fit the fact situation found by the trial court. *People v. Scrivens* (1969, Cal App 2d Dist) 276 Cal App 2d 429, 81 Cal Rptr 86, 1969 Cal App LEXIS 1824.

After the imposition of sentence on defendant for assault on a peace officer, in violation of *Pen Code*, § 241, and battery of a police officer, in violation of § 243, a change in the law making violations of § 240, defining assault, and § 242, defining battery, committed on a peace officer felony-misdemeanors, required remand of the case to the trial court to permit it to determine whether to impose felony or misdemeanor sentences. *People v. Colbert* (1970, Cal App 2d Dist) 6 Cal App 3d 79, 85 Cal Rptr 617, 1970 Cal App LEXIS 1310.

A prosecution for battery upon a police officer (*Pen. Code*, § 243), an alternative felony-misdemeanor, was barred by the one-year statute of limitations applicable to misdemeanors (*Pen. Code*, § 801), where the charge was filed more than one year after the date of the alleged crime, and where, after a preliminary examination, the court reduced the charge to a misdemeanor pursuant to *Pen. Code*, § 17, subd. (b)(5). *Keener v. Municipal Court* (1979, Cal App 1st Dist) 91 Cal App 3d 213, 154 Cal Rptr 107, 1979 Cal App LEXIS 1565, superseded by statute as stated in *People v. Superior Court (Ongley)* (1987, Cal App 1st Dist) 195 Cal App 3d 165, 240 Cal Rptr 487, 1987 Cal App LEXIS 2176.

A jury found defendant guilty of assault with a deadly weapon and by means of force likely to produce great bodily injury (*Penal C* § 245(a)(1)), during the commission of which he personally inflicted great bodily injury under

circumstances involving domestic violence (*Penal C § 12022.7(d)*), misdemeanor battery of a cohabitant (*Penal C § 243(e)*), and misdemeanor assault (*Penal C § 240*). Defendant was sentenced under the three strikes law, *Penal C § 667(b)-(i)*, to 25 years to life in prison. The Court of Appeal held that the trial court erred when it allowed the prosecutor to present expert testimony regarding battered women's syndrome because this testimony was irrelevant in that no evidence showed the victim in this case was a battered woman, and the evidence was highly prejudicial. Although *Ev C § 1107* permits expert testimony regarding battered women's syndrome when it is relevant, other than evidence of the present incident, there was no evidence indicating that defendant abused or behaved violently toward the victim. The expert's testimony regarding battered women's syndrome was irrelevant. Both the trial court and the prosecutor emphasized the expert's inflammatory testimony. On reviewing the whole record, it was reasonably probable that the jury would have reached a result more favorable to defendant had the court excluded the expert's testimony. *People v. Gomez* (1999, Cal App 2d Dist) 72 Cal App 4th 405, 85 Cal Rptr 2d 101, 1999 Cal App LEXIS 499, review denied (1999) Supreme Court Minute 09-01-1999, 1999 Cal. LEXIS 6135, overruled in part *People v. Brown* (2004) 33 Cal 4th 892, 16 Cal Rptr 3d 447, 94 P3d 574, 2004 Cal LEXIS 7078.

In a trial for battering a peace officer, counsel was rendered ineffective by the failure to object to evidence that defense witnesses had been arrested for misdemeanor batteries because the evidence was more prejudicial than probative and thus inadmissible. The error was prejudicial because the witnesses testified consistently and contrary to the State's witnesses that defendant did not struggle when the police manhandled him. *People v. Lopez* (2005, Cal App 6th Dist) 129 Cal App 4th 1508, 29 Cal Rptr 3d 586, 2005 Cal App LEXIS 914.

Defendant's conviction for battery with serious bodily injury, in violation of *Pen. Code, § 243*, subd. (d), had to be reversed because it was an included offense of defendant's aggravated mayhem conviction under *Pen. Code, § 205*. *People v. Quintero* (2006, Cal App 4th Dist) 135 Cal App 4th 1152, 37 Cal Rptr 3d 884, 2006 Cal App LEXIS 63, review denied (2006, Cal) 2006 Cal LEXIS 4756.

Trial court's finding that defendant's prior battery conviction qualified as a strike was reversed, where defendant did not admit that the prior offense was a serious felony and the People did not present evidence below supporting such a finding. *People v. Bueno* (2006, Cal App 1st Dist) 143 Cal App 4th 1503, 50 Cal Rptr 3d 161, 2006 Cal App LEXIS 1625, modified (2006, Cal App 1st Dist) 2006 Cal App LEXIS 1804.

6. Instructions

In a trial for assault and battery with serious bodily injury, the trial court's aiding and abetting instruction was not rendered erroneous by the failure to define "misdemeanor assault," "felony assault," or "felony battery." The court noted that after defining the charged assault and battery under *Pen C §§ 245, 242, and 243*, the trial court instructed that those crimes were felonies. *People v. Pena* (2005, Cal App 6th Dist) 128 Cal App 4th 1219, 28 Cal Rptr 3d 69, 2005 Cal App LEXIS 684, modified, rehearing denied (2005) 2005 Cal. App. LEXIS 867, review gr, unpublished (2005) 32 Cal. Rptr. 3d 2, 116 P.3d 476, 2005 Cal. LEXIS 8234, 2005 Cal. Daily Op. Service 6653, 2005 D.A.R. 9114, transferred (2007, Cal) 56 Cal Rptr 3d 474, 154 P3d 1000, 2007 Cal LEXIS 2775.

Where the record contained substantial evidence that would absolve defendant of battery with injury on a deputy probation officer under *Pen C § 243(c)(1)*, but justify conviction of the lesser included offense of battery without injury on a deputy probation officer under § 243(b), the trial court erred in failing to instruct sua sponte on the lesser included offense because it appeared that the officer's injury was not severe enough to require professional medical treatment, and no evidence was presented that the injury had interfered with the officer's physical activity or the performance of his duties. Because it was reasonably probable that defendant would have obtained a more favorable outcome if the jury had not been presented with an unwarranted all-or-nothing choice between conviction of the charged offense and complete acquittal, the error was prejudicial. *People v. Hayes* (2006, Cal App 2d Dist) 142 Cal App 4th 175, 47 Cal Rptr 3d 695, 2006 Cal App LEXIS 1281.

7. Rights of Defendant in Proceedings

Speedy trial rights of a defendant charged with battery on a peace officer were violated by a continuance beyond the statutory deadline because an officer's unavailability was not good cause for the continuance. There was no 10-day grace period following defendant's withdrawal of his general time waiver and the subsequent 30-day deadline. *Baustert v. Superior Court* (2005, Cal App 4th Dist) 129 Cal App 4th 1269, 29 Cal Rptr 3d 208, 2005 Cal App LEXIS 879.

In a trial for assault and battery with gang enhancements, defendants' Sixth Amendment right to confrontation was violated by the admission of a non-testifying codefendant's extrajudicial statement to an officer that the victim had disrespected a gang member and had to be checked; under Crawford, the statement was testimonial and as such required full rights of confrontation under the Sixth Amendment. The court could not conclude that the erroneous admission of the statements was harmless in the context of the joint trial for criminal street gang activity, notwithstanding the trial court's limiting instruction. *People v. Pena* (2005, Cal App 6th Dist) 128 Cal App 4th 1219, 28 Cal Rptr 3d 69, 2005 Cal App LEXIS 684, modified, rehearing denied (2005) 2005 Cal. App. LEXIS 867, review gr, depublished (2005) 32 Cal. Rptr. 3d 2, 116 P.3d 476, 2005 Cal. LEXIS 8234, 2005 Cal. Daily Op. Service 6653, 2005 D.A.R. 9114, transferred (2007, Cal) 56 Cal Rptr 3d 474, 154 P3d 1000, 2007 Cal LEXIS 2775.

Although a violation of *Pen C* § 243(e) (battery committed against a spouse) does not necessarily involve force or violence, the crime is sufficiently related to violent conduct that the charge by itself justifies a strip search. *Bull v. City & County of San Francisco* (2006, ND Cal) 2006 US Dist LEXIS 9120.

Where defendant waived a jury trial regarding prior allegations, it was proper for the trial court to determine whether defendant's current offense was a serious felony for purposes of *Pen C* § 667(a)(1). Thus, the trial court was warranted in concluding that defendant's battery with serious bodily injury in violation of *Pen C* § 243(d) was such a felony. *People v. Arnett* (2006, Cal App 3d Dist) 139 Cal App 4th 1609, 44 Cal Rptr 3d 206, 2006 Cal App LEXIS 820, rehearing denied (2006, Cal App 3d Dist) 2006 Cal App LEXIS 1080, review denied (2006, Cal) 2006 Cal LEXIS 11465, cert den (2007, US) 127 S Ct 2247, 167 L Ed 2d 1096, 2007 US LEXIS 5231.

8. Mental State

Substantial evidence supported a jury's implied finding that defendant had the required mental state for battery where a reasonable trier of fact could find beyond a reasonable doubt that he intentionally kicked an ashtray that was approximately three feet high and that weighed about fifty pounds, which hit a deputy probation officer in the shin, with great force, knowing that the officer was standing beside the ashtray, and thus a reasonable trier of fact could further find beyond a reasonable doubt that defendant knew facts sufficient to establish that his intentional act would directly, naturally, and probably result in a battery by causing the ashtray to fall on the officer. Furthermore, defendant conceded that he intentionally kicked the ashtray with the purpose of knocking it over, and it was of no consequence whether he might have honestly believed that his intentional act was unlikely to result in a battery. *People v. Hayes* (2006, Cal App 2d Dist) 142 Cal App 4th 175, 47 Cal Rptr 3d 695, 2006 Cal App LEXIS 1281.

9. Dating Relationship

Defendant's conviction under *Pen C* § 243(e)(1) for battery on a spouse, cohabitant, or person with whom he had a dating relationship was proper where there was substantial evidence that his relationship with the complainant was a dating relationship within the meaning of the statutory definition, and not merely a casual social relationship. Defendant's own testimony provided some indication that the relationship with the complainant was something more than a casual social relationship because he alternatively referred to her as "my lady friend" and "my girl" throughout his testimony, both on direct and on cross-examination in his defense case, and based on statements that he made on cross-examination, the jury could reasonably infer that he became fearful when police arrived because his relationship with the complainant was of sufficient intimacy that, if police concluded they were fighting, he might be facing another domestic violence charge. *People v. Upsher* (2007, 4th Dist) 155 Cal App 4th 1311, 66 Cal Rptr 3d 481, 2007 Cal App LEXIS 1662.