

Date of Hearing: April 29, 2014

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND  
INTERNET MEDIA  
Ian C. Calderon, Chair

AB 2457 (Levine) – As Amended: April 24, 2014

SUBJECT: Assault and battery: stadium or arena: enhancement.

SUMMARY: Provides that a person who commits an assault or batters on stadium or arena property on an event day shall be subject to an additional fine of up to \$2,000 for assault and \$4,000 for battery. Specifically, this bill:

- 1) Provides that any person who commits an assault on stadium or arena property on an event day, shall be subject to a fine of up to \$2,000, by imprisonment in the county jail not exceeding six months, or by both that fine and imprisonment.
- 2) Further provides, that any person who commits battery on stadium or arena property on an event day, shall be subject to a fine of up to \$4,000, by imprisonment in the county jail not exceeding six months, or by both that fine and imprisonment.
- 3) Allows an exception for players or sports officials, as defined in Penal Section 243.8.
- 4) Contains the following definitions:
  - a) "Event day" as the period of time 12 hours prior to the start of an event at a stadium or arena through 12 hours after the conclusion of the event.
  - b) "Stadium or arena" as a venue within the state that is capable of seating an audience.
  - c) "Stadium or arena property" means within or upon the stadium or arena structure, the parking structure, and parking lot adjacent to or serving the stadium or arena.
  - d) "Stadium or arena event" means an event at a stadium or arena where attendees have paid an admission.

EXISTING LAW:

- 1) Provides that an assault is punishable by a fine not exceeding \$1,000, or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment.
- 2) Provides that a battery is 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.
- 3) Requires the owner of any professional sports facility shall post, visible from a majority of the seating in the stands at all times, at controlled entry areas, and at parking facilities that are part

of the professional sports facility, written notices displaying the text message number and telephone number to contact security in order to report a violent act.

- 4) Provides that an assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.
- 5) Provides that when an assault is committed against the person of a parking control officer engaged in the performance of his or her duties, and the person committing the offense knows or reasonably should know that the victim is a parking control officer, the assault is punishable by a fine not exceeding \$2,000, or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment.
- 6) Provides that when an assault is committed against the person of a peace officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a peace officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, the assault is punishable by a fine not exceeding \$2,000, or by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.
- 7) Defines battery as any willful and unlawful use of force or violence upon the person of another.
- 8) Provides when a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, security officer, custody assistant, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman, or a non-sworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, security officer, custody assistant, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties, non-sworn 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 \$2,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Author's Statement: According to the author, "California is home to a long list of rival sports teams. These rivalries are good for sports. But recently we have seen an alarming increase in fan violence. Such violence often starts with a friendly banter and razzing amongst fans of rival teams. This may quickly escalate and these exchanges can turn into loud arguments, aggressive pushing and shoving, and dangerous violent acts.

"This bill would create a mandatory fine for these crimes. My hope is that this mandatory fine will create a deterrent for sports fans that act out violently against fans of rival teams. I would like to see sports teams engage in a public education campaign where fans are reminded, "It's Just A Game." This campaign may involve public service announcements during the game. Fans would be reminded that fan violence will not be tolerated and will result in a mandatory fine. With this kind of campaign, I believe the escalation of good natured banter will stop short of actual violence."

- 2) Background: Fan Violence: Professional Sports Responds With Codes of Fan Conduct: According to the author, this bill is necessary to restore Californians' faith in their ability to safely attend professional games, in part because of the high profile attack near Dodger Stadium in Los Angeles of Brian Stow last year and the tragic stabbing death of Dodgers fan Jonathan Denver in San Francisco following a Giants baseball game last season.

With regard to those incidents, San Francisco police say Denver, 24, was with his father, brother and two other people a few blocks from the San Francisco Giants' ballpark following a Giants game when their group exchanged words with some Giants fans who were leaving a nightclub. The exchange turned physical and Denver, who was wearing Dodgers gear, was stabbed to death. His attackers did not attend the game, police said.

This story is tragically similar to another incident of fan violence, which happened in Los Angeles. According to the Los Angeles Police Department, Bryan Stow was leaving Dodger Stadium along with several of his friends following the conclusion of the Los Angeles Dodgers vs. the San Francisco Giants baseball game. The two suspects, who were wearing Dodger attire, began taunting the victims because of their affiliation with the San Francisco Giants. As the victim and his friends attempted to walk away from the suspects, the victim was hit from behind and fell to the ground. The victim's friends attempted to intervene and they too were hit by the suspects. This incident happened in a private off-site parking lot, not controlled by the Dodger organization.

In response to that incident, the LA Dodgers have instituted greater safety measures, and tightened their enforcement of their Fan Code of Conduct, including a ban on all tailgating before games. In fact all 30 teams in Major League Baseball have long had their own code of conduct, according to information found on MLB.com. It is also a case-by-case team decision how that code will be communicated to the fans. The vast majority of the teams (24 of 30) have a fan phone or text number, to which fans may report unruly behavior. And many stadiums have visible signage with the numbers displayed.

In the NBA, their Fan Code of Conduct, adopted on Feb. 17, 2005, sets forth expected standards of decorum for all fans attending NBA games, is posted prominently in all NBA arenas, and public address announcements concerning some of its key elements are made during each NBA game. Guests who fail to adhere to these standards are subject to ejection and revocation of season tickets.

The NBA Guidelines also set forth minimum standards regarding the serving of alcohol, including the provision that alcohol be served only until the start of the fourth quarter, restrictions on the size (24 ounces) and number (two) of alcoholic beverages sold per individual customer, the training of arena personnel in effective alcohol management, and the maintenance of designated driver programs in each NBA arena.

The NFL and all 32 NFL clubs have followed a fan code of conduct to help promote a "positive fan environment at NFL stadiums," since Nov. 18, 2008, according to NFL.com.

"The fan code of conduct is designed to set clear expectations and encourage a stadium environment that is enjoyable for all fans. Teams may add additional provisions to the standard code based on local circumstances or preferences. Each team will communicate its code of conduct during the preseason to season-ticket holders and fans through mailings, online, and in-stadium signage, and other messages."

These policies have not come without controversy. In San Diego, a Kansas City fan who was removed from a Chargers game and subsequently charged with battery on the stadium security guards who escorted him out (charges later dismissed by the court), has sued the NFL and Qualcomm Stadium for infringing his first amendment rights to free speech. Asserting that fans have the right to express their support for their teams through language and gestures, Jason Ensign claims a constitutional right to engage in obscenities.

The San Diego City Attorney stated in support of the code of conduct, "I'm concerned about the deterrence of crime at these sporting events. The code of conduct is designed to be a deterrent and stop that. The idea of families going to a ballgame, they should not fear there being brawls and all this. People say, 'We should be able to do what we want and say what we want, but I buy tickets too'. And if I'm sitting there with my kids, I don't want someone in front of me provoking a brawl behind me." The NFL is defending the policy saying, the code of conduct has reduced fan incidents at stadiums and they are not aware of any other legal challenges it.

*(San Diego court case tests legality of NFL's fan conduct code, June 15, 2011, AP June 15, 2011, retrieved 4/23/12 at <http://www.nfl.com/news/story/09000d5d8205634f/printable/sa...>)*

However, the chances of Mr. Ensign winning his first amendment case were slim at the outset. "Historically, courts presented with issues relating to season tickets and personal seat licenses have treated season tickets as licenses and have supported the team's ownership of tickets. This stems from the commonly accepted rule that a single admission ticket to a place of amusement is 'a mere license to witness the performance, which the owner or proprietor may revoke at will.'" Davis, *The Myth and Mystery of Personal Seat Licenses and Season Tickets*, (2007) Saint Louis University School of Law, 241. This notion was supported by *People v. Waisvisz*, 582 N.E.2d 1383, 1386 (Ill. App. Ct. 1991), appeal denied, 591 N.E.2d 30 (Ill. 1992) "A ticket to a sporting or entertainment event is a license which may be revoked at the

will of its issuer.” See also *Finnesey v. Seattle Baseball Club*, 210 P. 679, 681 (Wash. 1922) (“[A] ticket of admission [to baseball park] is a mere license, revocable at the will of the proprietor, even after the holder has entered the [park] and has taken the seat.”).

3) Double Fines and Double Punishment Issues Raised in Public Safety Committee:

- a) Considerations Regarding the Fine: This bill imposes an additional fine of up to \$2,000 or \$4,000 on top of an existing base fine of up to \$1,000 to \$2,000.

Setting the penalty, or range of penalties, for a crime is an inherently legislative function. The Legislature does have the power to require a minimum term or other specific sentence. (*Keeler v. Superior Court* (1970) 2 Cal.3d 619, 631.) Sentencing, however, is solely a judicial power. [*People v. Tenorio* (1970) 3 Cal.3d 89, 90-93; *People v. Superior Court (Fellman)* (1976) 59 Cal.App.3d 270, 275.] California law effectively directs judges to impose an individualized sentence that fits the crime and the defendant’s background, attitude, and record. (Cal. Rules of Court, rules 4.401-4.425.) This bill limits judicial discretion and requires a minimum fine of \$500 to be imposed in each case, regardless of the facts of the case and the defendant's record.

Also, there are penalty assessments and fees assessed on the base fine for a crime. Assuming a defendant was fined \$10,000 as the maximum fine, the following penalty assessments would be imposed pursuant to the Penal Code and the California Government Code:

|   |                                  |
|---|----------------------------------|
| Base Fine:                                  | \$ 10,000                        |
| Penal Code 1464 assessment:                 | \$10,000 (\$10 for every \$10)   |
| Penal Code 1465.7 surcharge:                | \$ 2,000 (20% surcharge)         |
| Penal Code 1465.8 assessment:               | \$ 40 (\$40 fee per offense)     |
| Government Code 70372 assessment:           | \$ 5,000 (\$5 for every \$10)    |
| Government Code 70373 assessment:           | \$30 (\$30 for felony or misdo.) |
| Government Code 76000 assessment:           | \$7,000 (\$7 for every \$10)     |
| Government Code 76000.5 assessment:         | \$2,000 (\$2 for every \$10)     |
| Government Code 76104.6 assessment:         | \$1,000 (\$1 for every \$10)     |
| Government Code 76104.7 assessment:         | \$4,000 (\$4 for every \$10)     |
| <br>Total Additional Fine with Assessments: | <br>\$41,070                     |

- b) Double Punishment: This bill seeks to impose a second punishment for a single act. The bill is not increasing the misdemeanor fines for assault and battery in a sports facility. The bill is imposing an additional fine on top of the existing punishment. As a public policy, the Legislature imposes a distinct fine for each distinct criminal act. As outlined above, each fine is subject to individual penalties and assessments. An offender suffering two fines for one act would pay many of the assessments twice for one act.

4) Recent Amendments Taken in Committee on Public Safety Reduce Fines: This bill was recently heard in the Assembly Public Safety Committee and was amended in that committee to substantially reduce the penalty for a person who commits an assault or batters on stadium

or arena property on an event day, from an additional fine of up to \$10,000, down to the current levels which are a potential \$2,000 for assault and up to \$4,000 for a battery.

- 5) Opposition: The Taxpayers for Improving Public Safety continue to oppose as amended, based upon their belief that, "Sporting event stadiums have already taken prudent and increased measures to proactively address disruptive behavior which may later contribute to angry outbursts; and this is demonstrated by the increase in security staff, and making immediate texting technology available to attendees so as to alert security to trouble areas, among other things such as cutting-off of alcohol sales."

They also point out that, "Both crime examples cited by the author's office as the impetus for the bill occurred off of stadium grounds and yet AB 2457 seems to focus upon stadium property." Finally, they assert, "If improving public safety is the overall objective of the measure, then it defies logic to focus upon stadium sporting event assault and battery crimes while ignoring assault and battery at community sporting events, parades and other public gatherings, or upon someone's mother/sister/daughter who is simply walking down the street. As for increasing fiscal penalties, there is no evidence to our knowledge that any offenders ever stop to contemplate fines before letting their emotions erupt into violence and so the justification for AB 2457 is unclear as to how public safety will be improved, if passed into law."

- 6) Prior Related Legislation: AB 2464 (Gatto), Chapter 261, Statutes of 2012, also came in the wake of the Bryan Stowe incident in Los Angeles. That bill required owners of professional sports facilities to post written notices displaying the text message number and telephone number to contact security in order to report a violent act in a place visible from a majority of seating in the stands at all times, at controlled entry areas, and at parking facilities which are part of the professional sports arena.

REGISTERED SUPPORT / OPPOSITION:

Support

San Francisco Giants

Opposition

California Attorneys for Criminal Justice  
Taxpayers for Improving Public Safety

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