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Territorial Aggression? Expanding California's Penal Code Regarding Assault and Battery of Code Enforcement Officers

Roy Shannon

Code Sections Affected

Penal Code §§ 241, 243 (amended).
SB 919 (Ortiz); 2003 STAT. Ch. 274.

I. INTRODUCTION: A RUN THROUGH THE JUNGLE

Everyone knows the dangers faced by police officers in the performance of their duties, but code enforcement officers often face the same perils to life and limb.¹ Threats to kill and injure code enforcement professionals are apparently relatively commonplace.² For example, one man accosted a city supervisor and threatened to kill a code enforcement officer working under the supervisor's direction.³ Another county inspector received voice mail death threats and was confronted by a machete wielding property owner.⁴ A San Diego health inspector was about to give inspection results to someone when the man placed a sawed-off shotgun on the desk and stated "go ahead and tell me what you found."⁵

Similar to police officers, code enforcement officers are tasked with enforcing the regulations and standards of state and local governments.⁶ Unlike police officers, however, code enforcement officers are not "peace officers" under California law and are not empowered to effect arrests or to carry weapons in the course of duty.⁷ Interestingly, while there is a general lay understanding of what a code enforcement officer does, there is no adequately precise legal

1. See Scott Hadly, *Inspectors Are Learning Code of Cautiousness; Safety: Government Enforcement Officers Face Threats, Assaults, Sometimes Death As They Make Their Rounds*, L.A. TIMES, Jan. 21, 1996, at B1 (reporting the atmosphere of dangerous physical risks code enforcement officers face at work on a routine basis).

2. *Id.*

3. See Alice Boozer, *Camarillo Man Jailed over Alleged Threat*, VENTURA COUNTY STAR, Feb. 14, 1995, at O1 (describing how Tomas Guerra entered Camarillo City Hall, found Code Supervisor John McCurley, and told him he would kill the inspector who cited him for repairing a roof without a permit).

4. See Jeanne Bailey, *Code Enforcement Officers Seek Protection*, VENTURA COUNTY STAR, Dec. 30, 1995, at A1 (describing assaults and threats on code officers in Ventura County).

5. See CALIFORNIA ASSOCIATION OF CODE ENFORCEMENT & CALIFORNIA ENVIRONMENTAL HEALTH ASSOCIATION, 2001 SURVEY RESULTS 8 (2002) [hereinafter SURVEY RESULTS] (copy on file with the *McGeorge Law Review*) (reporting the testimonials of code enforcement officers about dangerous experiences in the field).

6. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 919, at 4 (Apr. 29, 2003) (describing the general duties mandated to code enforcement officials).

7. CAL. PENAL CODE §§ 830-32.6 (West 2003).

definition in the current body of California law.⁸ Only the Toxic Mold Act of 2001 attempts to define a code enforcement officer as a “local official responsible for enforcing housing codes and maintaining public safety.”⁹ In any event, whether or not his or her status has been explicated, it is clear that the code enforcement officer more than occasionally confronts the same risks to personal safety as does the licensed peace officer.¹⁰

Attacks on code enforcement officers run the gamut from using firearms, explosives, all manner of bludgeons, knives, and motor vehicles to beatings and even human bites on the officer’s person.¹¹ One officer reported being splashed with boiling grease.¹² A 2001 California Association of Code Enforcement survey of association members reported that over sixty-three percent of those who responded to the survey had been assaulted or threatened.¹³ News reports are replete with examples of horrendous attacks and even vendettas carried out against code enforcement professionals targeting them and their families for death.¹⁴ Code enforcers are apprehensive about what they will encounter every time they depart for the field.¹⁵

Code enforcers have the unpleasant responsibility of investigating violations and requiring compliance with the law.¹⁶ Correcting deficient conditions is often inconvenient and costly. Orders to correct deficient conditions are often taken personally and produce anger, resentment, and hostility in the affected parties.¹⁷ These intense negative feelings aroused by code enforcement officers may be rooted in human nature, which includes biological, cultural, and social determinants to stake out and defend our personal environments.¹⁸ Personal territory, as in a home or business, is significant for humans because it is where

8. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 919, at 8-9 (Apr. 29, 2003).

9. CAL. HEALTH & SAFETY CODE § 26101(d) (West 2003).

10. See Hadly, *supra* note 1 (describing various threats and assaults that code enforcement officers have suffered).

11. *Id.*

12. SURVEY RESULTS, *supra* note 5, at 7.

13. *Id.*

14. *E.g.*, Hadly, *supra* note 1 (reporting the shocking case of health inspector Cindy Volpe, who was severely beaten by a man she cited for dumping raw sewage on his land; the man later stalked her, broke into her home and murdered her, her husband, and mother); Sandra Stokley, *When Neighbor Turns Against Neighbor*, RIVERSIDE PRESS ENTERPRISE, Nov. 21, 1993, at B01 (reporting that a code enforcement officer was struck on the head with a garden hoe during an attack).

15. See Hadly, *supra* note 1 (describing the apprehensions of veteran code enforcer Liz Cameron of Ventura County, California).

16. See Open Letter from Southern California Code Enforcement Association Members to California State Senators (Mar. 1, 2003) [hereinafter Open Letter] (on file with the *McGeorge Law Review*) (describing the regulatory enforcement characteristics of the work performed by the typical code officer).

17. *Id.*

18. See ROBERT A. BARON & DONN BYRNE, SOCIAL PSYCHOLOGY: UNDERSTANDING HUMAN INTERACTION 440-42, 450-52 (5th ed. 1987) (discussing the innate predilections humans have when it comes to the spaces they inhabit).

people carry on long-term essential activities.¹⁹ It is the desire for privacy and control that causes someone to become distressed and attempt to assume dominance over uninvited intrusions into their primary space.²⁰ This predilection to control and defend one's space can manifest itself in aggression and violence.²¹ Thus, enforcing housing, zoning, building, health, and other codes puts the code enforcement officer in an adversarial position from the outset and on a potential collision course with the inhabitants of the "invaded" territories.²²

II. LEGAL BACKGROUND: TERRITORIAL AGGRESSION

Confronting unlawful, aggressive individuals in the course of enforcing the law has long been the responsibility of the California peace officer.²³ Yet, code enforcement officers "routinely encounter felons, gang members, unstable homeless individuals, irate tenants and potentially violent property owners."²⁴ In addition, code enforcement officers investigate violations, issue citations, prepare criminal cases, arrange arrests for failures to appear, and obtain court orders.²⁵ Despite having quasi-police responsibilities, prior law had virtually neglected the code enforcement officer's status as a government official with respect to his or her heightened risk of attack in the field.²⁶ On the other hand, lifeguards and process servers, as public employees, both have greater protective status under the law.²⁷ Before Chapter 274 was enacted, the code enforcer had the same protective status as any private citizen that was the victim of assault or battery.²⁸

This is not to say that California law does not seek to punish those who commit assaults and batteries.²⁹ Current law certainly provides for punishment of individuals who physically attack or menace their fellow citizens.³⁰ However, the law has traditionally enhanced the penalties for aggressors who make certain categories of officials the target of their wrath.³¹ Unfortunately, the code enforcement officer was not included in the list of recognized classes of

19. *Id.* at 440, 451.

20. *Id.*

21. *Id.*; see also Open Letter, *supra* note 16 (detailing the threat of violence among the range of behaviors exhibited by those confronting code enforcers); Hadly, *supra* note 1 (quoting one enforcement officer saying, "I think people believe it's their property and they can do whatever they want.").

22. See Open Letter, *supra* note 16 (listing the field reports of code officers who have faced aggressive or combative property owners).

23. CAL. PENAL CODE § 830.1(a)(1) (West 1999 & Supp. 2003).

24. Open Letter, *supra* note 16.

25. *Id.*

26. CAL. PENAL CODE §§ 830-32.6, 240-45.5 (West 1999 & Supp. 2003).

27. *Id.* § 241(b).

28. *Id.* §§ 240-45.5.

29. *Id.*

30. *Id.*

31. *Id.* §§ 241(b)-(c), 243(b)-(c).

government professionals who have “special protective status.”³² Yet, the code enforcer is the government representative who, next to the peace officer, is the most likely to encounter and uncover areas where serious criminal activities may be taking place.³³

The risks facing code enforcement officers have been known for some time.³⁴ Furthermore, the Legislature was aware that a lack of proper code enforcement could lead to the deterioration of neighborhoods, leaving abandoned and substandard structures, increasing crime rates, and dragging down the surrounding areas.³⁵ When these neglected areas are eventually targeted for renewed code enforcement efforts, code officers face exacerbated dangers.³⁶ Abandoned buildings can be a “magnet” for a variety of illegal activities, including gang activities and clandestine drug labs.³⁷ In fact, as late as 2000, there was a legislative declaration to this effect.³⁸

Recent legislative sessions attempted to address the safety risks facing these government officials.³⁹ Introduced in 1999, AB 1310 would have made an assault on a code officer punishable by up to one year’s confinement, a \$2000 fine, or both.⁴⁰ The same bill would have made battering a code officer punishable by sixteen months to three years in prison.⁴¹ Additionally, the proposed law defined the term “code enforcement official” as “any regular employee of a public agency vested with enforcement authority” for the various health, safety, and building regulations.⁴² This bill would have added code officers to the list of

32. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 919, at 3-5 (Apr. 29, 2003) (describing the legislative intent of Senate Bill 919 and observing the failure to include the code enforcement officer among those enjoying protected status).

33. See Michael Krikorian, *Trailer Park Is Heaped with Violations*, L.A. TIMES, Aug. 19, 2002, at B3 (describing a notorious Los Angeles trailer park with severe crime, drug and prostitution problems, with accompanying serious code violations).

34. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE BACKGROUND INFORMATION REQUEST ON SB 919, at 1-2 (copy on file with the *McGeorge Law Review*) (citing the extensive media coverage of incidents of violence against code officers).

35. CAL. HEALTH & SAFETY CODE § 17998(c) (West Supp. 2003).

36. See Charles Levin, *Enforcing the Code: Field Work for Enforcement Officers Can Be Dangerous to Health, Safety*, INSIDE VENTURA COUNTY, Feb. 2000, at A1 (explaining that a lack of code enforcement funds leads to reduced enforcement overall, thereby increasing the negative conditions and that when funds are restored the efforts to “clean up” are redoubled, thus officers face proportionately higher risks from the compounded deterioration that occurred during the period of neglect).

37. See Guy McCarthy, *Experts Clean Up Toxic Mess at Meth Lab*, RIVERSIDE PRESS-ENTERPRISE, Mar. 12, 2003, at B2 (reporting about a remote ranch where a drug lab was set up in violation of criminal laws and numerous health and safety codes); see also Bailey, *supra* note 4, at A7 (describing how individuals seeking to avoid the law are likely to gravitate to areas where code enforcement is lax or nonexistent).

38. CAL. HEALTH & SAFETY CODE § 17998.

39. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 919, at 11-14 (Apr. 29, 2003) (discussing prior legislative attempts to pass bills to enhance the penalties for assault/battery of code officers).

40. See AB 1310 (1999) (as amended on May 28, 1999, but not enacted) (proposing the addition of language to Penal Code section 241.8).

41. *Id.* at 3.

42. *Id.* at 2-3.

government officials whose home addresses are to be kept strictly confidential.⁴³ However, during amendment, the subject matter of this bill was completely replaced and the enacted law contained nothing for the protection of the code enforcement officer.⁴⁴ The confidentiality provision and the expansion of offenses subject to the California Three Strikes Law were later cited as the reasons for removing the code enforcement officer provisions.⁴⁵

There was one more attempt to enhance the legal status of the code enforcement officer in 2000 with proposal of AB 2584.⁴⁶ It would have created a new specific intent crime of assault on a “state or local public safety official . . . engaged in the performance of his or her duties, or in retaliation for an act performed in the course of . . . dut[y].”⁴⁷ The bill would have required prosecutors to prove a defendant assaulted a code officer with the “intent to inflict serious bodily injury.”⁴⁸ The “[s]tate or local public official” was defined as “any regular employee of a state or local agency vested with enforcement authority for health, safety, and welfare requirements, and whose primary duties include enforcement of state codes and regulations.”⁴⁹ The proposed law drew a distinction between the code officer and peace officers, but recognized the code officer’s “authority to issue criminal citations . . . [and file] criminal complaints.”⁵⁰ However, the specific intent assault provision was implicated in the bill’s failure to pass out of the Senate Public Safety Committee during the session.⁵¹

III. CHAPTER 274: ATTACK AT YOUR OWN RISK?

Chapter 274 addresses some of the obstacles to passage of previous legislation while enhancing the penalties for assaulting or battering a code enforcement officer.⁵² The new law begins by crafting a precise and comprehensive legal definition for the term “code enforcement officer.”⁵³ The code enforcement officer is anyone who is not a peace officer but “is employed

43. *Id.* at 3.

44. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 919, at 7 (Apr. 29, 2003); *see* AB 1310 (1999) (as amended July 8, 1999) (eliminating all reference to code officer assault/battery and ending up as an amendment to California Welfare Code section 14132.765 concerning prosthetic devices).

45. *See* SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 919, at 7 (Apr. 29, 2003) (discussing legislative reluctance to create new felonies in general, especially ones subject to California Penal Code section 1170.12 “Three Strikes,” and opposition to the confidentiality provision).

46. AB 2584 (2000) (as amended on May 26, 2000, but not enacted).

47. *Id.*

48. *Id.*; SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 919, at 7 (Apr. 29, 2003).

49. AB 2584 (2000) (as amended on May 26, 2000, but not enacted).

50. *Id.*

51. *See* ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 919, at 7 (Apr. 29, 2003) (explaining that the assault provision could have impeded punishment in many cases).

52. CAL. PENAL CODE §§ 241, 243 (amended by Chapter 274).

53. *Id.* §§ 241(c)(9)(A)-(B), 243(f)(1)(A)-(B) (enacted by Chapter 274).

by any governmental subdivision . . . whose duties include enforcement of any statute, rules, regulations, or standards, and who is authorized to issue citations, or file formal complaints.”⁵⁴ The new definition also covers employees of the Department of Housing and Community Development who enforce the health, safety, and welfare requirements of listed housing acts.⁵⁵

Next, Chapter 274 enhances the penalty for assaulting a code officer in the performance of his or her duties.⁵⁶ Assaulting an on-duty code officer under Chapter 274 can result in imprisonment in a county jail for up to one year, up to a \$2000 fine, or both.⁵⁷ Further, battery on a code officer under the new law can also result in a one-year jail term, \$2000 fine, or both.⁵⁸ Thus, Chapter 274 adds the code enforcement officer to the list of public servants protected by law in both the assault and battery provisions.⁵⁹

While the new law adds the code enforcer to the protected class list for a non-injurious battery, it *does not* include code enforcement officers in the list of public servants for which punishment is increased for an injury as a result of battery.⁶⁰ Injury is defined by the new law as “any physical injury which requires professional medical treatment.”⁶¹ The punishment for battering and injuring one of the public servants that are enumerated under the injury provision can result in a county jail term up to one year, or state prison terms of sixteen months to three years, a \$2000 fine, or some combination of imprisonment and fine.⁶² However, the new law does provide that battery inflicted on *any* person which results in serious bodily injury is an alternate felony/misdemeanor which can result in a one year county jail sentence or from two to four years in a California state prison.⁶³ Serious bodily injury is defined as 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.”⁶⁴ Chapter 274 merely enhances the “penalties for relatively minor assaults and batteries” the code officer might face.⁶⁵

54. *Id.*

55. *Id.* (specifying the Employee Housing Act, State Housing Law, Mobilehomes-Manufactured Housing Act, Mobilehomes Parks Act, and the Special Occupancy Act).

56. *Id.* § 241(b) (amended by Chapter 274).

57. *Id.*

58. *Id.* § 243(b).

59. *Id.* §§ 241(b), 243(b).

60. *Id.* § 243(b)-(c)(1).

61. *Id.* § 243(f)(5).

62. *See id.* § 243(c)(1) (reciting the list of public servants under the injury provision to include the peace officer, firefighter, EMT, lifeguard, process server, traffic officer, animal control officer, nonsworn probation officer, or a physician or nurse rendering emergency care outside a health care facility).

63. *Id.* § 243(d).

64. *Id.* § 243(f)(4).

65. *See* ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 919, at 3 (July 15, 2003) (discussing the changes to the Penal Code and noting the legislative intent to raise the penalties as a deterrent to more severe violence against code officers).

IV. ANALYSIS: TEETH AND CLAWS OR SKIN AND BONES?

Chapter 274 succeeded in elevating the status of the code enforcement officer facing physical threats where other legislative measures failed.⁶⁶ The enthusiasm for the measure and the consensus that assaults and batteries against the code enforcement officer are a real problem were reflected in the unanimous votes in favor of the measure.⁶⁷ Numerous agencies and associations registered support for Chapter 274, and none filed notices of opposition.⁶⁸ While it is apparent that the new law has made some progress in creating a new protective status for the code enforcement professional, it remains to be seen whether the law has the teeth to live up to its stated purpose.⁶⁹

Chapter 274 does not create new crimes as was attempted by prior legislation, nor does it significantly alter existing law.⁷⁰ However, the law adds a new member, the code enforcement officer, to the list of public servants with enhanced status.⁷¹ By enacting Chapter 274, California joins other states that have established enhanced punishments for assaultive conduct directed at code officers, most notably Texas and Nevada.⁷² While Chapter 274 effectively doubles the assault penalty, the sentencing options are not as harsh as those imposed in these other western jurisdictions.⁷³ Texas sends those who assault code officers away for two to ten years.⁷⁴ Nevada punishes the same violations with one to six years in prison, a \$5000 fine, or both.⁷⁵ Chapter 274 does not coddle those who assault code officers, but those committing the offense in California face less punishment than they might in other states.

Furthermore, Chapter 274 addresses battery on a code officer only if it is a simple battery not involving a serious injury.⁷⁶ The punishment for simple battery

66. See *supra* notes 39-51 and accompanying text (reviewing prior failed legislation).

67. COMPLETE BILL HISTORY OF SB 919 (Aug. 15, 2003).

68. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 919, at 4-5 (July 15, 2003) (evidencing the groups in support of Chapter 274, including District Attorneys, code officer associations, labor organizations, and private citizens and the lack of any registered opposition).

69. See *id.* at 3 (documenting the author's statement of what the new law is crafted to achieve).

70. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 919, at 6-9 (Apr. 29, 2003) (describing how earlier bills were doomed by trying to create new felony crimes, especially ones subject to Three Strikes).

71. CAL. PENAL CODE §§ 241(c)(9)(A)-(B), 243(f)(11)(A)-(B) (enacted by Chapter 274).

72. TEX. PENAL CODE ANN. § 22.01 (West 2003); NEV. REV. STAT. ANN. § 200.471(2)(c) (West 2003).

73. See TEX. PENAL CODE ANN. § 22.01(a)(1) (making any assault on a "public servant" a third degree felony); *id.* § 1.07(a)(41)(A) (defining public servant as "an officer, employee, or agent of government"); *id.* § 12.34 (providing third degree felonies punishable by two to ten years in prison, with possible additional fine up to \$10,000.00); NEV. REV. STAT. ANN. 200.471(2)(c) (providing one to six years in prison, a \$5000 fine, or both, for assaults on "officers" which include employees of the state or its political subdivisions).

74. TEX. PENAL CODE ANN. §§ 22.01(a)(1), 12.34.

75. NEV. REV. STAT. ANN. § 200.471(2)(c).

76. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 919, at 5 (July 15, 2003) (describing how the law increases punishment for less serious attacks while noting more serious batteries causing injury are already covered by existing provisions covering all persons); CAL. PENAL CODE § 243(b)

on a California code officer is now doubled.⁷⁷ While Chapter 274 is moving in the right direction, Texas and Nevada go farther in protecting their code officers.⁷⁸ Texas treats attacks on public servants the same whether or not harmful contact is made or just threatened.⁷⁹ Inflicting serious bodily injury on a Texas code officer is a first-degree felony and can result in a five to ninety-nine year prison term and \$10,000 fine.⁸⁰ Nevada punishes battery on government employees with prison terms of two to ten years, a \$10,000 fine, or both.⁸¹ Existing California law makes battery accompanied by an injury on a custodial officer, firefighter, emergency medical technician, process server, or a traffic or animal control officer an alternate felony/misdemeanor punishable by a year in county jail or sixteen months to three years in prison, a \$2000 fine, or a combination of fines and imprisonment.⁸² The code enforcement officer is absent from this list of public officials that is found in the battery with injury provision.⁸³ However, California law punishes batteries inflicting serious bodily injury on *any* person with up to four years in prison.⁸⁴ Those who batter code enforcement officers in California, while getting far more than a wrist slap, may suffer less for their crimes than in other states.

The author of Chapter 274 posited that raising the penalties for “low-level” assaults and batteries against the code officer would reduce the likelihood of more serious violence.⁸⁵ It was presumed that “violent confrontations” between citizens and code officers usually began as “moderately threatening behavior in an initial contact” where an offender is given notice and required to correct a violation.⁸⁶ The reasoning was that when the code enforcement officer returned to issue a citation or take other formal action, tensions may escalate into more “serious, direct violence.”⁸⁷ However, this line of reasoning does not account for situations where the code officer faces immediate risks of death or severe injury during an initial encounter with an alleged violator.⁸⁸

(enacted by Chapter 274) (adding code enforcement officers to the list that calls for increased punishment for simple battery).

77. CAL. PENAL CODE § 243(b) (enacted by Chapter 274).

78. TEX. PENAL CODE ANN. §§ 12.32, 12.34, 22.01(a)(1), 22.02(b)(2); NEV. REV. STAT. ANN. §§ 200.471(2)(c), 200.481.

79. TEX. PENAL CODE ANN. §§ 22.01(a)(1), 12.34.

80. *Id.* §§ 22.02(b)(2), 12.32.

81. NEV. REV. STAT. ANN. § 200.481.

82. CAL. PENAL CODE § 243(c)(1) (amended by Chapter 274).

83. *Id.*

84. *Id.* § 243(d).

85. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 919, at 5 (Apr. 29, 2003) (discussing the rationale behind raising only the penalties for minor assaults and batteries).

86. *Id.*

87. *Id.*

88. *Cf. id.* (relying on existing law to impose penalties for more serious attacks).

V. CONCLUSION: INCREASING THE CHANCES FOR SURVIVAL?

If the legislative goal was to increase the penalties for assault and simple battery, then Chapter 274 certainly achieved it.⁸⁹ Undoubtedly, the law's author appreciative of the dangers facing California code officers at work.⁹⁰ The new law is designed to deter severe violence against the beleaguered code officers by raising the penalties for "relatively minor assaults and batteries."⁹¹ In addition, the new law succeeded in providing a legal definition of code enforcement officer, correcting a long-standing oversight.⁹²

Prior legislation championing the code enforcement officer was hindered by lawmakers' reluctance to create new categories of crimes, felonies in particular.⁹³ Legislators were particularly loathe to create new felonies subject to California's Three Strikes Law, which provides lengthy prison terms up to life imprisonment for habitual felony offenders.⁹⁴ The new law avoided the same fate by merely expanding the scope of existing law.⁹⁵ The comments in the Public Safety Committee analyses of the bill that became Chapter 274 reflect an abiding consciousness of the risks the code officer faces on the job.⁹⁶ The new law's author clearly stated the intent of the enactment is to help deter "more serious violence" against the on-duty code officer.⁹⁷ The cautious approach of Chapter 274 to achieve the desired deterrence is to double the penalties for misdemeanor assault and battery and to rely on existing law for more serious injurious attacks on the code enforcer.⁹⁸

However, given the magnitude of the attacks on code officers from the news reports, with some resulting in multiple fatalities,⁹⁹ the current implementation

89. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 919, at 3 (July 15, 2003) (stating the author's intent to add the code enforcement officer to the class of officials already afforded protection by enhanced penalties for assault and battery).

90. *Id.*

91. *Id.*

92. CAL. PENAL CODE §§ 241(c)(9)(A)-(B), 243(f)(11)(A)-(B) (enacted by Chapter 274).

93. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 919, at 7 (Apr. 29, 2003) (describing the factors contributing to the failure of the prior legislation enhancing the penalties for assault/battery of code officers).

94. *Id.*; see also CAL PENAL CODE § 1170.12 (providing for lengthy indeterminate sentences from twenty-five years to life for a felony conviction subsequent to two or more prior felony convictions).

95. CAL. PENAL CODE §§ 241(b), 243(b) (enacted by Chapter 274).

96. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 919, at 4-6 (Apr. 29, 2003); ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 919, at 4-5 (July 15, 2003) (each describing the profundity of news articles and official reports of attacks on and threats against code enforcement officers in the course of duty).

97. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 919, at 3 (July 15, 2003) (quoting the statement of intent of the author of SB 919, Senator Deborah Ortiz).

98. See *supra* Part III (reviewing the intent and implementation of Chapter 274).

99. See Brian Anderson, *Officers Vigilant Year After Rampage*, L.A. TIMES, Jun. 24, 2000, at B1 (reporting on the case of how three of four state and federal meat inspectors were shot to death by the irate owner of a sausage factory for failing his plant).

seems inadequate. The new law expresses an intention to raise the protective status of the code officer, and if the overall goal is to protect the code enforcement officer, then they should be placed on an equal footing with the other protected public servants in all categories of offenses against the person.¹⁰⁰ Legislative reluctance to create a new class of felony offense, while well known and understood,¹⁰¹ should be set aside when it comes to defining attacks on public servants. Undoubtedly, anyone lacking compunction about attacking a public servant, like police, firefighters, or code officers, as opposed to a private citizen, represents an even greater danger to society.¹⁰² Such public servants are the “foot soldiers of an ordered society” and deserve added protection.¹⁰³ Now that the Legislature has laid the foundation with Chapter 274, they should take the next step and elevate the code enforcement officers’ status to be on a par with their peers in public service, whether or not it creates a new felony.

100. *Id.*

101. *See* SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 919, at 7 (Apr. 29, 2003) (describing legislative reluctance to create new felonies in general, particularly ones subject to the Three Strikes provisions and policies behind the hesitation).

102. *See generally* Anthony Gosserand, Note, “*Protecting the Foot Soldiers of an Ordered Society*”: An Analysis of State Statutory Aggravating Circumstances of Murdering a Police Officer in the Performance of His or Her Duty, 58 U. MO. KAN. CITY L.R. 675 (1990) (discussing policy behind enhancing crimes against public officials, the theory is persons willing to attack an official represent an even greater danger to the average person).

103. *Id.* at 690-94.