

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

VERONICA AGUAYO,

Defendant and Appellant.

Case No. S254554

Fourth Appellate District Division One, Case No. SCS295489
San Diego County Superior Court, Case No. D073304
The Honorable Dwayne K. Moring, Judge

RESPONDENT’S MOTION FOR JUDICIAL NOTICE; PROPOSED ORDER

XAVIER BECERRA
Attorney General of California
LANCE E. WINTERS
Chief Assistant Attorney General
JULIE L. GARLAND
Senior Assistant Attorney General
MEREDITH S. WHITE
Deputy Attorney General
*STEVE OETTING
Supervising Deputy Attorney General
State Bar No. 142868
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9207
Fax: (619) 645-2012
Email: Steve.Oetting@doj.ca.gov
Attorneys for Plaintiff and Respondent

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INTRODUCTION

In the event this Court decides to consider the legislative history behind the 2011 amendments to Penal Code section 245, respondent respectfully moves this Court, pursuant to Evidence Code sections 452 and 459 and rule 8.252 of the California Rules of Court, to take judicial notice of the Assembly Committee on Criminal Justice Bill Analysis of A.B. 846 (4/27/1981) at page 3, which is appended to this motion as Attachment No. 1.

In 1982, the Legislature first divided Penal Code section 245, subdivision (a), into two separate subparagraphs. (Stats. 1982, ch. 136, § 1, at p. 437.) Respondent has maintained that it is unnecessary to examine the legislative history of the 2011 amendments in order to determine whether the Legislature created more than one offense; the structure and text of the amendments, by themselves, demonstrate that this is the case. Nonetheless, to the extent the Court is inclined to rely on the legislative history behind the 2011 amendments to determine whether the addition of Penal Code section 245, subdivision (a)(4), created a separate offense from the other subparagraphs of that subdivision, it is important to consider the entire legislative history behind each of those amendments to subdivision (a) that established different subdivisions for that provision. It is not sufficient to focus solely on the more recent legislative history without considering the Legislature's intent in enacting the earlier amendments as well.

The Assembly Bill Analysis regarding the 1982 amendments is a relevant part of the legislative history behind the amendment

of Penal Code section 245, subdivision (a). It is appropriate to take judicial notice of committee analyses and reports. (*People v. Snyder* (2000) 22 Cal.4th 304, 309 [judicial notice of senate analysis]; *People v. Ledesma* (1997) 16 Cal.4th 90, 98 [judicial notice of assembly bill analysis]; *People v. Eubanks* (1996) 14 Cal.4th 580, 591, fn. 3 [judicial notice of committee reports].)

The Assembly Committee Analysis is relevant to the instant case because it demonstrates the Legislature intended the enactment of Penal Code section 245, subdivision (a)(2), to create a separate offense from the previously undifferentiated and unified aggravated assault statute. That intent to create separate subdivisions and separate offenses in 1982 is relevant to the Legislature's later actions in 2011 when it once again created another separate subparagraph and ostensibly created another separate offense as it had earlier done.

Respondent did not previously request the trial court or the Court of Appeal to take judicial notice of these materials. Appellant first raised the question regarding whether she could be convicted under both Penal Code section 245, subdivisions (a)(1) and (a)(4), in her reply brief in the Court of Appeal; before that time, the issue of multiple convictions was not raised, and therefore it was also not briefed. (ABM 48.)

Accordingly, to the extent it is appropriate to consider any extrinsic sources regarding legislative history behind the amendments to Penal Code section 245, subdivision (a), it is important to consider all relevant materials rather than just some.

CONCLUSION

For the reasons stated above, respondent respectfully requests that in the event this Court considers the legislative history behind any of the amendments to Penal Code section 245, subdivision (a), it also consider, and take judicial notice of, the Assembly Committee on Criminal Justice Bill Analysis of A.B. 846 (4/27/1981) at page 3 as relevant to the first division of that provision into distinct subparagraphs and separate offenses.

Dated: May 22, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
LANCE E. WINTERS
Chief Assistant Attorney General
JULIE L. GARLAND
Senior Assistant Attorney General
MEREDITH S. WHITE
Deputy Attorney General

/s/ Steve Oetting

STEVE OETTING
Supervising Deputy Attorney General
Attorneys for Plaintiff and Respondent

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Attachment No. 1

Assembly Committee on Criminal Justice Bill
Analysis of A.B. 846 (4/27/1981) at page 3

ASSEMBLY COMMITTEE ON CRIMINAL JUSTICE
TERRY GOGGIN, Chairman

BILL ANALYSIS

State Capitol - Room 2136
(916) 445-3268

Consultant JPR
Ways & Means YES
Rev. & Tax NO
Urgency YES

BILL: AB 846 (as introduced)

Hearing
Date: April 27, 1981

AUTHOR: Levine

SUBJECT: Firearms

BILL DESCRIPTION:

AB 846 would impose minimum sentences for various firearm-related crimes and restrict probation for same:

1. Assault with a Deadly Weapon.

- Current Law: Wobbler; 2, 3, or 4 years in prison, or up to one year in county jail or \$5,000 fine or combination. No minimum.
- AB 846: New crime of assault with a firearm. Wobbler; 2, 3, or 4 years in prison, or county jail not less than 6 months, not more than one year; or \$5,000 fine and imprisonment.

2. Willfully Discharging a Firearm at Inhabited Dwelling or Vehicle.

- Current Law: Wobbler; 2, 3, or 4 years in prison, or up to one year in county jail.
- AB 846: Same as current law except a six month minimum in county jail.

3. Brandishing a Firearm.

- Current Law: Misdemeanor; felony if in immediate presence of peace officer; maximum one year in county jail, or state prison.
- AB 846: Misdemeanor with three month minimum, six month maximum in a county jail; or \$500 fine and imprisonment if in presence of peace officer; felony - six month minimum in county jail.

4. Carrying a Concealable Weapon Without a Permit.

- Current Law: Misdemeanor; wobbler if past conviction on record.
- AB 846: Misdemeanor with three month minimum, 6 month maximum in county jail or \$500 fine and imprisonment.

Wobbler with three month minimum if past conviction on record.

5. Carrying a Loaded Firearm in a Prohibited Area.

- Current law: Misdemeanor.

- AB 846: Misdemeanor with three month minimum, six month maximum in county jail or \$500 fine and imprisonment.

6. Probation.

AB 846 provides that as a condition of probation for any of the above crimes, the person must serve the prescribed minimum time in county jail unless the court finds such conditions would not serve "the interests of justice" and sets forth the reasons on the record.

COMMENTS:

1. Purpose of Bill.

According to the author, the purpose of AB 846 is to impose "mandatory minimum jail sentences for persons convicted of various firearms-related offenses".

a. Are mandatory minimum sentences appropriate for these crimes?

b. Are judges now sentencing firearms violators inappropriately?

2. Presumption of Jail as a Condition of Probation.

AB 846 requires that the person serve the minimum jail time as a condition of probation unless such condition would not serve the interests of justice.

Presumably, courts which impose fines or straight probation now do so in the interests of justice. Why will sentencing practice necessarily change under AB 846?

3. Assault With a Firearm

a. Assault Against a Peace Officer or Fireman. AB 846 does not impose a mandatory minimum sentence for assault with a deadly weapon (including a firearm) against a peace officer or fireman (P.C. 245(b) - a felony, 3, 4, or 5 years in prison) but does provide that six months in jail must be served as a condition of probation - the same condition of probation as for assault with a firearm against a civilian.

1. Why is this? Should they be equivalent?

2. 245(b) includes assaults with instruments other than a firearm. Is this the author's intent?

b. Assault With a Firearm. AB 846 creates a new crime of assault with a firearm P.C. 245(a)(2).

1. It is unclear whether assault with a firearm includes pistol whipping or use of a gun as a club.
2. Assault with a deadly weapon other than a firearm would no longer be a lesser included offense. If the proof of firearm use is unclear (e.g., the firing pin is missing) this delineation may result in unnecessary dismissals.

4. Fine and Imprisonment.

Sections 1, 3, 5, and 6 of AB 846 give the judge the sentencing option of "both imprisonment and a fine. . ."

However, the bill does not specify the length of imprisonment when coupled with a fine. For the sake of clarity, the bill should so specify.

5. Probation Language.

Section 4 of the bill (pg. 4, line 30) speaks in terms of a grant of probation alone without mentioning suspension of sentence.

The language should be rewritten to conform with the surrounding probation denial sections if it is the author's intent to also limit the suspension of imposition or execution of sentences.

SOURCE: Los Angeles City Attorney

SUPPORT: Los Angeles Councilmen Cunningham and Yaroslavsky

OPPOSITION: Unknown

**[PROPOSED] ORDER GRANTING
MOTION FOR JUDICIAL NOTICE**

Good cause appearing, it is hereby ordered that Respondent's Motion for Judicial Notice of the Assembly Committee on Criminal Justice Bill Analysis of A.B. 846 (4/27/1981) at page 3 is GRANTED.

Dated: _____
Chief Justice

DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **People v. Veronica Aguayo**
No.: **S254554**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On May 22, 2020, I electronically served the attached **RESPONDENT'S MOTION FOR JUDICIAL NOTICE; PROPOSED ORDER** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on May 22, 2020, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Via TrueFiling
Linnéa M. Johnson
Attorney for Defendant and
Appellant

Via TrueFiling
Eservice, ADI
eservice-court@adi-
sandiego.com

Via TrueFiling
District Attorney, *San*
Diego
da.appellate@sdcca.org

Via TrueFiling
Superior Court, *San Diego*
Appeals.Central@SDCourt.ca.gov

Via U.S. Mail
Court of Appeal
4th District Division 1
750 B Street, Suite 300
San Diego, CA 92101

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 22, 2020, at San Diego, California.

E. Blanco-Wilkins
Declarant



Signature

STATE OF CALIFORNIA
Supreme Court of California**PROOF OF SERVICE**STATE OF CALIFORNIA
Supreme Court of CaliforniaCase Name: **PEOPLE v. AGUAYO**Case Number: **S254554**Lower Court Case Number: **D073304**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **Steve.Oetting@doj.ca.gov**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
MOTION	Respondent's Motion for Judicial Notice and Proposed Order
BRIEF	Respondent's Supplemental Brief on the Merits

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

5/22/2020

Date

/s/Elmer Blanco-Wilkins

Signature

Oetting, Steve (142868)

Last Name, First Name (PNum)

Department of Justice, Office of the Attorney General-San Diego

Law Firm