

STORAGE NAME: h1165.cp
DATE: March 29, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1165
RELATING TO: Aggravated Battery
SPONSOR(S): Representative Harrington
STATUTE(S) AFFECTED: 784.078
COMPANION BILL(S): SB 1304

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT
- (2) CRIMINAL JUSTICE APPROPRIATIONS
- (3)
- (4)
- (5)

I. SUMMARY:

Currently, employees of jails, prisons and other government detention facilities are subjected to potentially disease bearing bodily fluids thrown or spat upon them by inmates of the facilities. Current law addresses this conduct with felony penalties for battery on a law enforcement officer ("LEO") under Section 784.07(2)(b), F.S., but non-LEO employees are covered only by simple battery. Moreover, it is often difficult to prosecute a person for spitting or throwing urine under the battery statute which requires touching, striking or the causing of bodily harm.

This bill creates a new third-degree felony offense which covers all employees of detention facilities, not just LEO's. Moreover, this bill leaves no doubt that the legislature intended this type of conduct to be treated with felony status.

To the extent that this new offense will result in new arrests, prosecutions and convictions, the bill may have a fiscal impact on state and local governments. However, the Criminal Justice Estimating Conference believes this impact will be minimal, because the bill does not rank the new offense for the purposes of the sentencing guidelines.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 784.03, F.S. (simple battery) requires:

- (1) the intentional striking of another person against their will, or
- (2) intentionally causing bodily harm to another.

Battery is classified as a first-degree misdemeanor, punishable by up to 1-year in jail, and a \$1,000 fine. Battery may be enhanced to a third-degree felony (up to 5-years in prison and a \$5,000 fine) where the perpetrator uses a deadly weapon or intends to cause serious bodily harm (Section 784.045 - aggravated battery) or where the victim is a LEO, firefighter, emergency medical technician, an inmate or visitor to a detention facility, a security guard at a community college, a parking enforcement officer, any elected official, any person over 65-years of age, or an employee of a school district (Sections 784.07, 784.08, & 784.081, F.S.).

Prison guards are Law Enforcement Officers ("LEO's") and are therefore protected under Section 784.07. However, battery on other employees of detention facilities such as teachers and medical care providers is only a misdemeanor. Sections 784.075 & 784.076 make it a felony to commit a battery on non-LEO employees and health-care providers in juvenile detention facilities. By contrast, non-LEO employee's of adult detention facilities are only protected by Section 784.03 (simple battery) -- a misdemeanor. Depending upon an inmate's prior record, conviction for simple battery, or battery on a LEO, could result in no additional prison time.

B. EFFECT OF PROPOSED CHANGES:

This bill creates a new offense, Section 784.078, F.S. which proscribes intentional conduct of inmates which:

- 1) causes or attempts to cause any employee of a detention facility to come into contact with:
- 2) blood,
masticated food,
regurgitated food,
saliva,
seminal fluid,
urine or feces,
- 3) whether by throwing, tossing, or expelling such fluid or material,
- 4) with intent to harass, annoy, threaten, or alarm that individual.

All employees of detention facilities (prisons, jails and all other secure facilities operated by Department of Corrections or Department of Juvenile Justice) will be covered under

this bill, not just LEO's. This conduct will be punished as a third-degree felony (up to 5-years in prison and a \$5,000 fine).

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Not applicable.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Not applicable.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION RESEARCH:

See Effect of Proposed Changes.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate. See Fiscal Comments, below.

2. Recurring Effects:

Indeterminate. See Fiscal Comments, below.

3. Long Run Effects Other Than Normal Growth:

None anticipated.

4. Total Revenues and Expenditures:

Indeterminate. See Fiscal Comments, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate. See Fiscal Comments, below.

2. Recurring Effects:

Indeterminate. See Fiscal Comments, below.

3. Long Run Effects Other Than Normal Growth:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None anticipated.

2. Direct Private Sector Benefits:

None anticipated.

3. Effects on Competition, Private Enterprise and Employment Markets:

None anticipated.

D. FISCAL COMMENTS:

To the extent that the creation of this new offense will result in longer sentences for some inmates, this bill may have a fiscal impact on state and local governments. However, it is estimated by the Criminal Justice Estimation Conference to have minimal or no impact. The bill does not rank the new offense for purposes of the sentencing guidelines, therefore the offense is ranked as a Level One offense by default. Level One offenses are the least serious and a defendant must have an extensive history to qualify for prison for a Level One offense.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

It is often difficult to prosecute a person for spitting or throwing an object under the battery statute because it requires touching, striking or the causing of bodily harm. This bill more clearly proscribes certain conduct. Judges and juries will not have to make the logical inference that spitting or throwing a liquid is a touching.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Legislative Research Director:

Jamie Spivey

J. Willis Renuart