STORAGE NAME: h0045s1.cor
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HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CORRECTIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 45

RELATING TO: Battery/Corrections Employee

SPONSOR(S): Representative Harrington

COMPANION BILL(S):

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

(1) CRIME AND PUNISHMENT YEAS 7 NAYS 0
(2) CORRECTIONS YEAS 7 NAYS 0
(3) CRIMINAL JUSTICE APPROPRIATIONS
(4)
(5)

I. SUMMARY:

Employees at correctional and detention facilities have encountered situations in which inmates and detainees throw feces, urine, and other bodily fluids and excretions. HB 45 will create a new offense of aggravated battery of a facility employee by throwing, tossing or expelling certain fluids or materials. The offense will be classified as a third degree felony, punishable by up to five years in prison and a $5,000 fine, or up to ten years as a habitual felony offender. In addition, upon a request of an employee at a state correctional facility who has been the target of an inmate's bodily fluids, the department shall test the affected employee and the inmate for communicable diseases. If the test(s) are positive, the department shall provide access to counseling, health care, and support services to the employee and the inmate if requested. Test results shall not be used against the person tested in any court proceeding.

This bill will have an insignificant positive fiscal impact in terms of prison bed impact. However, there will be additional but indeterminate costs involved in the testing and treating of affected persons testing positive for communicable diseases.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Employees at correctional and detention facilities have encountered situations in which inmates and detainees have thrown feces, urine, and other bodily fluids and excretions. This can be an unsanitary and humiliating incident for the recipient, and, in addition, poses a significant health threat because of the risk of HIV and tuberculosis infection, as well as many other infectious diseases afflicting many inmates and detainees in Florida.

Currently, inmates may be disciplined for such behavior under the rules of the Department of Corrections (DOC). After a hearing, Chapter 33-22 F.A.C. allows a disciplinary committee to impose disciplinary infraction penalties on the inmate, the harshest of which include the revocation of accrued gaintime or assignment to disciplinary confinement. Disciplinary confinement areas are small, single-cell prisons within the prison in which liberties are further restricted.

In addition to disciplinary confinement and revocation of accrued gain time, the department may also require the inmate to adhere to a special management meal program under certain situations. Management meals are specially prepared meals designed to be utilized as a management tool in order to maintain a clean, safe and healthful environment in confinement areas. Rule 33-3.0085(1) F.A.C. The meal consists of a loaf containing carrots, spinach, black-eyed peas, beans, vegetable oil, tomato paste, dry grits and rolled oats. The loaf is served, without eating utensils, three times daily at the normal times for feeding inmates in confinement, and may continue for up to seven days. Under the rules of the DOC, inmates may be placed on the special management meal for creating a security problem by committing any of the following acts:

1. Throwing food, beverage, food utensils, food trays, or human waste products;

2. Destroying food trays or utensils; or

3. Any other act of violence that would place staff in jeopardy if a serving tray or utensils were provided.

Rule 33-3.0085(3) F.A.C.

An inmate may be removed from special management meal status at any time based on the recommendation of the Chief Correctional Officer and the approval of the Superintendent or for medical reasons. Rule 33-3.0085(7) F.A.C. DOC rules provide procedures for the placement of an inmate on the program, and further require that such meals meet dietary standards and religious and medical needs and be served in a sanitary manner. Rule 33-3.0085(2) F.A.C.

In order to utilize special management meals, the Superintendent must seek authorization from the Secretary of the Department of Corrections. Such requests for approval may only be granted to institutions that fit the management meal profile and upon certification of successful completion of training in management meal preparation and use. Such authorization is only for use on a case-by-case basis.

The Chief Correctional Officer and a representative of the medical staff within a departmental facility are required by rule to visit each inmate on special management meal status on a daily basis, except in case of riot or other institutional emergency. The purpose of the daily visit is to follow the inmate's progress while on the special management meal and to determine when the inmate should be removed from the special management meal status. Rule 33-3.0085(6), F.A.C.

If an inmate is placed on the special management meal program, other restrictions exist for an inmate. Canteen privileges authorized by rule 33-3.0081(9)(m), 33-3.0082(9)(j)(6), and 33-3.0083(3)(f), F.A.C., for inmates in administrative confinement, protective confinement, and close management status are suspended for the duration of the period that an inmate is on special management meal status. *See*, Rule 33-3.0085(5) F.A.C.

The Eighth Amendment ban on cruel and unusual punishment places certain limitations on the use of management meals. Although the constitution does *not* require that an inmate's food be tasty or attractive, federal courts have held that food may not be used as a punishment in situations where the behavior in question does not involve food or food utensils. *See* United States v. Michigan, 680 F.Supp. 270, 275 (W.D. Mich. 1988). However, courts have held that the use of management meals *can* be a valid, temporary safety measure *when* the use is directly connected to the misconduct it is intended to curb. Le Maire v. Maas, 745 F.Supp 623 (D. Oregon 1990). Therefore, the use of management meals must be limited to situations in which inmates misuse food or eating utensils. Because their use must be related to controlling related behavior, rather than punishment, the use of management meals for behavior such as spitting or urinating may not be constitutional. Id.

In addition to pursuing administrative penalties, the DOC may also attempt to prosecute the inmate under existing battery statutes. However, it may be difficult to prosecute actions like spitting or throwing urine under a battery statute, which requires a showing that a touching, striking or bodily harm occurred. Florida law currently provides for the following battery offenses:

- *Simple battery*. §784.03. The criminal offense of simple battery occurs when a person intentionally touches or strikes another person against their will, or intentionally causes bodily harm to another, as provided in §784.03(1). Simple battery is classified as a first degree misdemeanor, which is punishable by up to one year in jail and up to a $1,000 fine.

- *Aggravated battery*. §784.045. The penalty for simple battery may be enhanced to aggravated battery, a third-degree felony punishable by up to five years in prison and a $5,000 fine, when the perpetrator uses a deadly weapon or intends to cause serious bodily harm.

- *Battery of law enforcement officer*. §784.07. The penalty for simple battery may also be enhanced when the victim is a known law enforcement officer, or other officer, as provided in §784.07. This section defines law enforcement officer to include correctional officers and correctional probation officers, employees or agents of the DOC who supervise or provide services to inmates, officers of the Parole Commission and FDLE law enforcement personnel, among others. A battery on someone known to be such an officer while the officer is engaged in the lawful

performance of duty is a third degree felony. An aggravated battery of a law enforcement officer is a first degree felony.

- *Battery upon visitor to detention facility*. §784.082. When a detainee in a prison, jail or other detention facility is charged with battery or aggravated battery upon a visitor or another detainee, the battery is reclassified from a first degree misdemeanor to a third degree felony, and an aggravated battery is reclassified from a second degree felony to a first degree felony.

Again, because battery requires proof of a touching, striking or bodily harm, in some situations it may be difficult to prosecute a person for spitting or throwing urine.

Although the Department of Corrections does not collect data on the number of incidents involving inmates throwing bodily fluids on correctional staff, data are collected on the number of batteries occurring (both inmate on inmate and inmate on staff batteries). In FY 1992-93, there were 275 incidents reported to the department's Office of the Inspector General where an inmate committed a battery upon staff. In FY 1997-98, the number has increased to 712. In FY 1992-93, there were 978 inmate on inmate batteries reported and in FY 1997-98, the number increased to 1,410. According to department staff, incidents involving the throwing of bodily fluids are captured by these data.

Section 945.035, F.S., requires the Department of Corrections to establish a mandatory introductory and continuing education program on HIV/AIDS for all inmates while incarcerated and upon their release back to the community. In addition, the department shall establish an annual mandatory HIV/AIDS education program for all DOC staff.

Section 945.035(3), F.S., authorizes DOC to test inmates when there is evidence that the inmate has engaged in "high-risk behavior" where the transmission of HIV/AIDS may occur. High risk behavior includes sexual contact with any person, an altercation involving the exposure to bodily fluids, using intravenous drugs, tattooing, and any other activity medically known to transmit the HIV virus. Testing after an incident where body fluids have been exchanged are performed immediately after the incident, unless the inmate is known to be HIV+. Tests are repeated at six weeks, three months, and six months if the affected inmate remains HIV negative.

In FY 1997-98, there were 2,274 HIV+ inmates (2,038 males and 236 females) and 745 inmates with AIDS (711 males and 34 females) in Florida's prisons. In addition to the HIV/AIDS testing provisions in s. 945.035, F.S., the department encourages inmates to voluntary submit to an HIV/AIDS test, especially inmates who are known to have engaged in high risk behavior. Inmates who have less than 60 days remaining of their sentence are generally not tested for HIV/AIDS.

The Office of Health Services in DOC reports the number of HIV tests administered from FY 1992-93 through FY 1995-96. No data exists for subsequent fiscal years. In FY 1995-96, there were 16,389 HIV tests administered of which 710 tests were positive. 1998 costs for HIV tests (without confirmation tests) is about $25 per test.

B. EFFECT OF PROPOSED CHANGES:

HB 45 will create a new offense of aggravated battery of a facility employee by throwing, tossing, or expelling certain fluids or materials. The offense will be classified as a third degree felony. The offense is defined to make it unlawful for persons detained in facilities to cause or attempt to cause an employee of the facility to come into contact with blood, masticated food, regurgitated food, saliva, seminal fluid, urine or feces by throwing, tossing or expelling such fluid or material. The offense would also require that the detained person cause such contact with the intent to harass, annoy, threaten or alarm the victim. Furthermore, the detained person must know or reasonably should know that the victim is an employee of the facility.

The bill will apply to any person, juvenile or adult, who is:

1. A detainee in an adult jail that is operated by a local government,

2. An inmate or detainee in a privatized prison or jail,

3. In the custody of the Department of Corrections in any of its facilities, including institutions, work camps, and community correctional centers, or

4. In a secure facility operated and maintained by the DOC or DJJ.

The bill defines employee to include:

1. Any person employed by a public or private entity operating a facility,

2. Any person performing contractual services for a public or private entity operating a facility, and

3. Any person who is a parole examiner with the Florida Parole Commission.

This definition could include mental health personnel, medical personnel, dental personnel, chaplains, educational personnel, administrative personnel, food services personnel, janitorial personnel, and environmental inspectors, among others who, from time to time, must move about the facility and come in contact with inmates or detainees. However, it would not cover volunteers or visitors.

The offense will be punishable by up to 5 years in prison and a $5,000 fine, or up to 10 years as a habitual felony offender. In addition, the bill will allow the facility administration to place the inmate on a “management meal program” as provided by rule.

A conviction for this offense would be scored as a level 4 offense under the Criminal Punishment Code, effective October 1, 1999.

The bill amends s. 945.035, F.S., regarding requiring the department to educate inmates and staff on HIV/AIDS and testing inmates who engage in “high-risk” behavior by expanding the subject area to include all communicable diseases. The bill also provides for the testing (upon request) for communicable diseases of state correctional officers,

other DOC staff, and other persons visiting the facility and the testing of inmates should the department believe that an inmate has intentionally or unintentionally transmitted a communicable disease to DOC staff or other persons.

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?

DOC will be required to promulgate rules relating to the testing requirements of this bill.

(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?

N/A

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

N/A

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

N/A

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?

N/A

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

N/A

5. Family Empowerment:

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

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

S. 784.078 is created, S. 921.0022 is amended, S. 945.035 is amended.

E. SECTION-BY-SECTION RESEARCH:

See Section B above.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments, below.

2. Recurring Effects:

See Fiscal Comments, below.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments, below.

4. Total Revenues and Expenditures:

See Fiscal Comments, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments, below.

2. Recurring Effects:

See Fiscal Comments, below.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments, below.

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:

The fiscal impact of this bill was heard by the Criminal Justice Estimating Conference on 12/18/98 where it was determined that the impact would be insignificant in terms of prison bed space. The Department of Juvenile Justice projects that the bill will have no fiscal impact on its commitment or detention costs.

There will be an indeterminate positive fiscal impact in terms of costs incurred by the Department of Corrections for the education on, testing for, and treatment of communicable diseases. According to the department, although data exists on the costs for testing and treatment, no data are kept on the number of incidents where an inmate has intentionally or unintentionally transmitted a communicable disease to an employee or a visitor.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This 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:

The language of the bill would not apply when the victim is a volunteer in a correctional facility. If such a case occurred, it would be prosecuted as a simple battery.

It may be difficult to prosecute a person for spitting or throwing an object under current battery statutes because they require a touching, striking, or the causing or bodily harm. This bill will more clearly proscribe certain specific conduct. As a result, judges and juries will not have to make the logical inference that spitting or throwing a liquid is touching.

Representative Harrington sponsored an identical bill, HB 1165, in 1997 and HB 3137 in 1998. The 1997 Legislature passed HB 1165. However, unrelated language was amended onto the bill on the floor. The Governor vetoed the bill based on the language of the unrelated amendment. HB 3137 passed the House of Representatives and died in Senate messages in 1998.

Although the bill as originally filed applied to DOC, DJJ, and county correctional staff, the amendment adopted in the January 6, 1999 Committee on Corrections meeting related to the testing for communicable diseases applies only to DOC staff and visitors to state facilities (see Section VI below).

There may also be questions raised concerning the applicability of the testing amendment to this bill (see Section VI below) to private correctional facilities. A recent Attorney General opinion (11/23/98) concerning whether correctional facilities run by the Correctional Privatization Commission are subject to medical audits by the Department of Corrections may provide some insight into the question of whether private facilities would be covered by the testing amendment to this bill. The conclusion of the 11/23/98 Attorney General's opinion is that DOC's ultimate responsibility for the legal custody of inmates allows medical audits by the department to ensure that inmates in private correctional facilities receive medical care at a level received by inmates in comparable DOC facilities.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 6, 1999, the Corrections Committee unanimously adopted two amendments to this bill. The first amendment deleted the provision in the bill which authorizes the Department of Corrections to use its management meal program should an inmate throw a bodily fluid on a correctional officer. The second amendment authorizes the testing of DOC staff, visitors, and inmates for communicable diseases (upon the request of DOC staff or visitors) should an inmate intentionally or unintentionally transmits a communicable disease.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:	Staff Director:
Johana P. Hatcher	J. Willis Renuart

AS REVISED BY THE COMMITTEE ON CORRECTIONS:

Prepared by:	Staff Director:
Ken Winker	Ken Winker