

STORAGE NAME: h0085a.cp

DATE: October 6, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HB 85

RELATING TO: Correctional Facilities

SPONSOR(S): Rep. Harrington

TIED BILL(S): SB 88

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

- (1) CRIME AND PUNISHMENT YEAS 7 NAYS 0
 - (2) CRIMINAL JUSTICE APPROPRIATIONS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HB 85 would create the offense of battery upon a correctional facility employee by throwing, tossing, or expelling certain fluids or materials including blood, masticated food, regurgitated food, saliva, seminal fluid or urine with the intent to harass, annoy, threaten or alarm the victim. The offense will be classified as a third degree felony, punishable by up to five years in prison.

In addition, HB 85 provides that if the Department of Corrections has reason to believe that an inmate may have transmitted a communicable disease to a correctional employee, the department shall upon request of the employee, test the inmate for a communicable disease. If the test indicates that the inmate has a communicable disease, the bill requires DOC to provide the affected employee and inmate with counseling, health care and support services. The results of the test are inadmissible against the person tested in any federal or state civil or criminal case.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Employees at correctional facilities have encountered situations in which they have been struck by feces, urine or other bodily fluids thrown by inmates.

Florida law currently provides criminal penalties for several types of battery offenses.

- Battery 784.03: The offense of battery occurs when a person actually and intentionally touches or strikes another person against the will of the other or intentionally causes bodily harm to another person. This offense is a first degree misdemeanor, which is punishable by up to one year in jail.
- Battery of a Law Enforcement Officer 784.07: When the victim of the battery is a law enforcement officer engaged in the lawful performance of his or her duties, the offense is reclassified as a third degree felony. The definition of law enforcement officer includes correctional officers, correctional probation officers, any employee or agent of the Department of Corrections who supervises or provides services to inmates and officers of the Parole Commission, among others.
- Battery Upon a Visitor or Detainee of a Detention Center 784.082: When a detainee in a prison, jail or other detention facility is charged with battery upon a visitor or other detainee, the battery is reclassified from a first degree misdemeanor to a third degree felony.

Education and Testing Acquired Immune Deficiency Syndrome

Section 945.35(1) requires the Department of Corrections, in conjunction with the Department of Health to establish educational programs on human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) for all inmates. Section 945.35(2) requires DOC to establish a mandatory education program on AIDS and HIV for correctional staff.

Section 945.35(3) authorizes DOC to test an inmate when there is evidence that the inmate has engaged in behavior which places the inmate at a high risk of transmitting or contacting a human immunodeficiency disorder. "High risk behavior" includes: sexual contact with any person; an altercation involving exposure to bodily fluids; the use of intravenous drugs;

tattooing and any other activity medically known to transmit the virus. This testing program must be consistent with the guidelines of the Centers for Disease Control and Prevention and recommendations of the Correctional Medical Authority.

Section 945.35(6) requires DOC to establish policies on the housing, physical contact, dining, recreation and exercise hours and locations for inmates with immunodeficiency disorders. The Department is required to submit a report to the legislature by March 1 of each year on the implementation of this program.

C. EFFECT OF PROPOSED CHANGES:

Battery of Facility Employee

The bill makes it unlawful for any person while being detained in a facility and with the intent to harass, annoy, threaten, or alarm, to cause a facility employee 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 bill defines the term "facility" to include:

1. state correctional institutions as defined in s. 944.02(6);
2. private correctional institutions as defined in s. 944.710;
3. county, municipal or regional jails or other facilities of local government and
4. secure facilities operated and maintained by the Department of Corrections or the Department of Juvenile Justice.

The bill defines the term "employee" to mean any person employed by or performing contractual services for a public or private entity operating a facility. The term also includes any person who is a parole examiner with the Florida Parole Commission. This definition could include mental health, medical, dental, food services, educational or administrative personnel, chaplains among others. However, it would not include visitors or volunteers.

Any person who violates this section commits a battery of a facility employee which is a third degree felony punishable by up to five years in prison. The bill also ranks the newly created offense as a level three offense in the offense severity ranking chart of the Florida Punishment Code. This is the same rank as the offenses of battery of a law enforcement officer and battery of a detention or commitment facility staff.

Transmission of Communicable Diseases

The bill amends section 945.35 which requires DOC to educate inmates and staff on HIV and AIDS and to test inmates who engage in "high risk" behavior by expanding the subject area to include all communicable diseases.

The bill also provides that if DOC has reason to believe that an inmate may have intentionally or unintentionally transmitted a communicable disease to any correctional officer, employee of the department or to any person lawfully present in a correctional facility who is not incarcerated there, the department shall, upon request of the affected person, test the inmate for communicable diseases. The Department is required to release the results to the person requesting the test and to the inmate.

The bill further provides that if the results of the test indicate the presence of a communicable disease, the department shall provide counseling, health care and support service to the person affected and to the inmate. The result of the test are inadmissible against the person tested in a federal or state civil or criminal case. The bill also requires DOC to promulgate rules regarding the testing.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates offense of battery of facility employee by throwing, tossing or expelling certain fluids or materials.

Section 2: Amends Criminal Punishment Code to rank offense of battery of facility employee by throwing, tossing or expelling certain fluids.

Section 3: Requires Department of Corrections to educate inmates regarding communicable diseases. Provides for testing of inmate for communicable disease when department has reason to believe that an inmate may have transmitted communicable disease to a corrections employee.

Section 4: Provides effective date of October 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

Last session, the Criminal Justice Estimating Conference reviewed CS/HB 45 which was substantially the same as this bill. The CJEC determined that the new offense contained within the bill would require an insignificant number of prison beds.

The Department of Corrections will also incur costs for education regarding communicable diseases and for testing prisoners for communicable diseases as well as for counseling and health care for any correctional workers who may have come into contact with a communicable disease.

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:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Department of Corrections to promulgate rules to provide for testing of an inmate when the Department has reason to believe that the inmate may have transmitted a communicable disease.

C. OTHER COMMENTS:

During the 1999 session, CS/HB 45 which was substantially similar to this bill was approved by the Committee on Crime & Punishment and the Committee on Corrections and dies in Criminal Justice Appropriations. The companion bill, SB 956, passed the Senate and died in House messages.

It may be difficult to prosecute actions like spitting or throwing urine under the existing battery statutes because they require a showing that a touching, striking or bodily harm occurred. A search of Florida case law did not reveal any reported cases in which a court

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specifically ruled on whether spitting on or throwing bodily fluids at a victim constituted a battery. However, in Signorelli v. State, 491 So.2d 349, 350 (Fla. 4th DCA 1986), the Court affirmed the trial court's revocation of the appellant's probation based on the appellant committing a battery against his community control officer by spitting in his face.

The existing battery statute requires the defendant to "actually and intentionally" touch the victim. In order to commit the crime created by this bill, the defendant must cause or attempt to cause an employee to come into contact with food or bodily fluid. Thus, if a prisoner throws feces or urine with the intent that it hit an employee and it does not hit the employee, the prisoner would still be guilty of the offense.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Representative Hart offered an amendment which adds to the definition of the word employee by including "any person employed by or performing contractual services for the corporation operating the prison industry enhancement programs or the correctional work programs, pursuant to Part II of Chapter 946." The amendment was adopted by the Committee on Crime & Punishment.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

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David de la Paz