SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1318

SPONSOR: Criminal Justice Committee and Senator Saunders

SUBJECT: Correctional Facilities

DATE: April 3, 2001 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gardner	Cannon	CJ	Favorable/CS
2.			APJ	
3.			AP	
4.				
5.				
6.				

I. Summary:

Committee Substitute for Senate Bill 1318 would create the new, third-degree felony offense of "battery upon a facility employee by throwing, tossing, or expelling certain fluids or materials." The offense would apply to any person being detained in any public or privatized jail, prison, or detention facility that causes or attempts to cause an employee to come into contact with saliva, blood, masticated food, regurgitated food, seminal fluid, urine or feces. Such offense would be ranked as a level 4 offense under the Criminal Punishment Code.

If there is reason to believe that an employee or other person in the facility may have been exposed to a communicable disease, inmates would have to be promptly tested at the request of the affected person for the presence of a communicable disease. The test results would be inadmissible in any civil or criminal proceeding against the tested person. Appropriate access to counseling would have to be provided by the Department of Corrections to the affected person that was an employee of the department.

The bill would also create laws providing enhanced penalties for persons who commit assaults and batteries against the staff of the Sexually Violent Predator Program (SVPP), and criminal mischief against the property of the SVPP. This bill would mirror the law providing enhanced penalties for those who commit crimes against law enforcement, with similar offense sentencing levels.

The provisions of the bill would take effect on October 1, 2001.

This bill would create section 784.078 and substantially amend sections 921.0022 and 945.35 of the Florida Statutes.

II. 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 (department). After a hearing, the disciplinary committee may impose disciplinary infraction penalties on the inmate, the harshest of which include the revocation of accrued gain-time 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 Rule 33-3.0085 (3), *Florida Administrative Code*, inmates may be placed on the special management meal for creating a security problem by committing any of the following acts:

- Throwing food, beverage, food utensils, food trays, or human waste products;
- Destroying food trays or utensils; or
- Any other act of violence that would place staff in jeopardy if a serving tray or utensils were provided.

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. The department rules provide procedures for the placement of an inmate on the program, and further requires 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 the case of a 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 Rules 33-3.0081 (9) (m), 33-3.0082 (9) (j) (6), and 33-3.0083 (3) (f), *Florida Administrative Code*, 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. 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 department 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 criminal penalties for several types of battery offenses.

The criminal offense of battery occurs when a person actually and intentionally touches or strikes another person against the will of the other, or a person intentionally causes bodily harm to another person as provided in s. 784.03(1), F.S. The offense of simple battery is a first-degree misdemeanor, which is punishable by up to one year in jail and up to a $1,000 fine. If a person has two prior convictions for battery and commits a third or subsequent battery, the third or subsequent battery is enhanced to a third-degree felony, which is punishable by up to five years in prison and up to a $5,000 fine. s. 784.03 (2), F.S.

Under s. 784.045, F.S., the criminal offense of aggravated battery occurs when a person intentionally or knowingly causes great bodily harm, permanent disability, permanent disfigurement, or uses a deadly weapon. It is also aggravated battery to knowingly commit battery on a pregnant woman. Aggravated battery is a second-degree felony and is punishable by up to 15 years in prison and up to a $10,000 fine.

The offenses of battery and aggravated battery on a correctional officer are currently enhanced by one crime level under s. 784.07, F.S. This section of the Florida Statutes, commonly referred to as "battery on a law enforcement officer," includes correctional officers and part-time correctional officers in the definition of "law enforcement officer" for purposes of applying the enhancement of penalty to the offense.

Battery on detention or commitment facility staff is also enhanced to a third-degree felony under s. 784.075, F.S. Persons commit this offense when they commit a battery on an intake counselor or case manager, as defined in s. 39.01(34), F.S.; on other staff of a detention center or facility as defined in s. 39.01(23), F.S.; or on a staff member of a commitment facility as defined in s. 39.01(59) (c), (d), or (e), F.S. To have a simple battery enhanced to a third-degree felony under this section, a staff member of the facilities listed includes persons employed by the Department of Juvenile Justice (DJJ), persons employed at facilities licensed by the DJJ, and persons employed at facilities operated under a contract with the DJJ.

Under s. 784.076, F.S., it is also a third-degree felony for a juvenile who has been committed to or detained by the DJJ pursuant to a court order to commit battery upon a person who provides health services. Under this section, a simple battery by a juvenile is enhanced to a third-degree felony when it is committed on a person who provides preventative, diagnostic, curative, or rehabilitative services, including alcohol treatment, drug abuse treatment, and mental health services.

The department's employees and employees of local detention facilities, other than the correctional officers, do not have the statutory protection for battery by inmates and detainees that the DJJ has for its employees and contract providers in ss. 784.075 and 784.076, F.S. Employees of these facilities have encountered situations where inmates or detainees have thrown feces, urine, and other bodily fluids and excretions in these facilities.

Although the department 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 1997-98, there were 712 incidents reported to the department's Office of the Inspector General where an inmate committed a battery upon staff. In FY 1999-2000, the number had decreased to 646. In FY 1997-98, there were 1,410 inmate on inmate batteries reported, and in FY 1999-2000, the number increased to 2,065. 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 department staff.

Section 945.035(3), F.S., authorizes the department 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 is performed immediately after the incident, unless the inmate is known to be HIV positive. Tests are repeated at six weeks, three months, and six months if the affected inmate remains HIV negative. The Office of Health Services in the department reports the number of HIV tests administered to average 13,000 per year. In the year 2000, the cost per HIV test (without confirmation tests) was $10.73 per test.

The prevalence of HIV in Florida prisons is higher than in the general population. Statistics provided by the department indicate that there are 2,640 known HIV positive inmates, 768 of whom have full blown AIDS, as of December 2000. This means about 3.5 percent of inmates are known to be HIV positive; 3.3 percent of men and 10.3 percent of women. 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; however, the Senate is considering Senate Bill 954, which would require the department to test inmates not less than 60 days prior to their release.

The Sexually Violent Predator Program

In 1998, the Legislature enacted the Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators Treatment and Care Act. The Act provides a procedure for the civil confinement of a sexual offender who is determined to be a Asexually violent predator@ subsequent to his or her release from custody or upon the expiration of his or her incarcerative sentence. The person is then committed to the Department of Children and Family Services for long-term residential treatment, care, and custody in a secure facility.

In 1999, the Legislature transferred the Jimmy Ryce Act from ch. 916, F.S., relating to mentally deficient and mentally ill criminal defendants, to ch. 394, F.S., relating to mental health, and created Part V of that chapter, which is entitled AInvoluntary Commitment of Sexually Violent Predators.@ This transfer reflects the legislative intent and policy that commitments under the Jimmy Ryce Act procedures are civil in nature and relate to mental health issues, rather than criminal in nature and punitive in purpose.

Currently, there is no special protection for the staff of the SVPP. There are other sections of ch. 784, F.S., dealing with assaults and batteries, that provide for enhanced penalties when the victim is on duty in a security related position or especially vulnerable. Section 784.07, F.S., applies to assaults and batteries against law enforcement officers (including correctional officers), fire fighters, emergency medical care providers, public transit workers and other specified officers. Section 784.075, F.S., applies to assaults and batteries against certain security officers of the Department of Juvenile Justice. Section 784.08, F.S., applies to assaults and batteries against persons over the age of 65. These offenses are generally enhanced one degree level. As a result:

- An aggravated battery is enhanced from a second degree felony to a first degree felony.
- An aggravated assault is enhanced from a third degree felony to a second degree felony.
- A battery is enhanced from a first degree misdemeanor to a third degree felony.
- An assault is enhanced from a second degree misdemeanor to a first degree misdemeanor.

Section 784.045, F.S., enhances a simple battery to an aggravated battery if the defendant knew or should have known that the victim was pregnant.

Currently, there is no special protection for the property of the SVPP. There are other sections of ch. 806, F.S., dealing with criminal mischief, that provide for enhanced penalties based on the

type of property destroyed or the place where the vandalism takes place. The level of offense for an act of criminal mischief is based on the cost of the damage done, s. 806.13(1)(b), F.S.:

- damage of less than $200 is punished as a second degree misdemeanor;
- damage between $200 and $1,000 is a first degree misdemeanor; and
- damage greater than $1,000 is a third degree felony.

Section 806.13(2), F.S., provides that any person who vandalizes a house of worship, causing more than $200 in damage, commits a third degree felony. Section 806.13(3), F.S., provides that a person who vandalizes a public telephone commits a third degree felony.

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 1318 would create a new offense of battery of a facility employee by throwing, tossing, or expelling certain bodily fluids or other materials. The offense would be classified as a third degree felony and would be ranked as a level 4 offense in the offense severity ranking chart of the Criminal Punishment Code. The offense would be punishable by up to 5 years in prison and a $5,000 fine.

The new offense would 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 specific intent on the part of the detained person. The detained person would have to cause such contact with the intent to harass, annoy, threaten or alarm the victim. Furthermore, the detained person would have to know or would have to have reasonably known that the victim is an employee of the facility.

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

- A detainee in an adult jail that is operated by a local government,
- An inmate or detainee in a privatized prison or jail,
- In the custody of the department in any of its facilities, including institutions, work camps, and community correctional centers, or
- In a secure facility operated and maintained by the department or DJJ.

The bill would define employee to include:

- Any person employed by a public or private entity operating a facility,
- Any person performing contractual services for a public or private entity operating a facility, and
- 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, PRIDE or PIE employees, 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 bill would amend 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 would also provide for the prompt testing for communicable diseases of state correctional officers, other department 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 department staff or other persons. The testing must be at the request of the person who was exposed to the communicable disease.

If the test results show the presence of a communicable disease, the department would be required to provide appropriate access for counseling, health care, and support services to the affected correctional officer, employee, other person, and inmate tested.

An express provision would state that the test results would be inadmissible in any civil or criminal proceeding against the tested person.

Administrative rule authority is given to the department to implement the testing after exposure and request to test, provide access to counseling and health care to the necessary persons, ensure the non-use of test results against an inmate in any court proceeding, and maintain the privacy of the tested person and person who was exposed to a communicable disease.

Enhanced penalties for crimes against the staff and property of the Sexually Violent Predator Program

The bill would create a new offense of "assault or battery on sexually violent predators detention or commitment facility staff." This new statute would be numbered s. 784.074, F.S. The bill would provide that any person who committed an assault or battery against a member of the staff of the SVPP would be subject to reclassification of the offense and enhanced penalties. The offense would be reclassified as follows:

- An aggravated battery would be enhanced from a second degree felony to a first degree felony.
- An aggravated assault would be enhanced from a third degree felony to a second degree felony.
- A battery would be enhanced from a first degree misdemeanor to a third degree felony.
- An assault would be enhanced from a second degree misdemeanor to a first degree misdemeanor.

For the purposes of this bill, a staff member of the SVPP includes persons employed by the Department of Children and Family Services, and persons employed at facilities operated by the Department of Children and Family Services. The bill also provides offense severity rankings under s.921.0022, F.S., similar to those related to other enhanced assault and battery crimes.

This bill amends s. 806.13, F.S., to add a subsection (4), which would enhance the level of offense and penalty for any person who commits the offense of criminal mischief against the

property of the Sexually Violent Predator Program. This amendment would make vandalism resulting in over $200 damage constitute a third degree felony.

The provisions of the bill would take effect on October 1, 2001, and the criminal provisions would apply to conduct occurring on or after October 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Insignificant. Any person who is exposed to a communicable disease in a correctional facility and is given the right to request and obtain prompt testing of an inmate or detainee that may have a communicable disease may realize a positive fiscal impact to the extent that they would no longer have to sue to obtain testing of an inmate or detainee and possibly pay for testing after possible exposure.

C. Government Sector Impact:

The Department of Corrections would have to absorb the costs of testing inmates in its custody if there has been a possible exposure to a communicable disease and testing has been requested by the affected person. However, the department already provides inmates with an HIV test, if requested by an inmate. There would also be some fiscal impact where the department is required to provide "appropriate access for counseling, health care, and support services to the affected correctional officer, employee, or other person *lawfully* present in a correctional facility, and to the affected inmate." This negative fiscal impact, however, is indeterminate.

The department would also experience an indeterminate, and probably insignificant, fiscal impact regarding the promulgating of rules to implement the new requirements of: promptly testing inmates that may have caused an exposure of a communicable disease to a correctional officer, employee, or other person present in a correctional facility; providing

"appropriate access for counseling, health care, and support services to the affected correctional officer, employee, or other person, and to the inmate tested." This bill would not allow the use of test results in any civil or criminal proceeding against the tested person and protects the privacy of the tested person as well as the exposed or affected person.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.