SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: February 6, 1998 Revised: _____ _____ _____ _____

Subject: Battery

	Analyst	Staff Director	Reference	Action
1.	Barrow	Miller	CJ	Favorable
2.			WM	
3.				
4.				
5.				

I. Summary:

Senate Bill 596 would create the specific crime of aggravated battery of a facility employee by making throwing, tossing, or expelling certain fluids or materials, a third degree felony. It would apply to any person who is detained in an adult or juvenile correctional facility that is operated by the Department of Corrections, the Department of Juvenile Justice, a local government detention facility, a private adult correctional institution, or a private local government detention facility. The bill would take effect on October 1, 1998.

This bill creates or substantially amends the following sections of the Florida Statutes: 784.078 and 921.0022.

II. Present Situation:

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 §784.03 (1), Florida Statutes. 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. §784.03 (2), Florida Statutes.

Under §784.045, Florida Statutes, 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 §784.07, Florida Statutes. 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 §784.075, Florida Statutes. Persons commit this offense when they commit a battery on an intake counselor or case manager, as defined in §39.01 (34), Florida Statutes; on other staff of a detention center or facility as defined in §239.01 (23), Florida Statutes; or on a staff member of a commitment facility as defined in §39.01 (59) (c), (d), or (e), Florida Statutes. 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, persons employed at facilities licensed by the Department of Juvenile Justice, and persons employed at facilities operated under a contract with the Department of Juvenile Justice.

Under §784.076, Florida Statutes, it is also a third-degree felony for a juvenile who has been committed to or detained by the Department of Juvenile Justice 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 of Corrections' 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 Department of Juvenile Justice has for its employees and contract providers in §784.075 and §784.076, Florida Statutes. Employees of these facilities have encountered situations where inmates or detainees have thrown feces, urine, and other bodily fluids and excretions in these facilities. Not only is it a dirty and humiliating incident for the employees, but it poses a significant health threat to employees because of the risk of HIV and tuberculosis infection, as well as many other infectious diseases afflicting many inmates and detainees in Florida.

The Department of Corrections currently has a management meal program. 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), Fla. Admin. Code. Confinement areas are essentially "jails" within a prison. Inmates may be placed in confinement for a variety of reasons, including punishment.

An inmate may be placed on the special management meal for a maximum of 7 days before being returned to regular meals. If an inmate engages in any of the listed behavior prohibited in Rule 33-3.0085 (2), Florida Administrative Code, after being returned to regular meals or at the end of a 7-day period on special management meal status, the inmate may be placed on special management meal status again by following the above procedures. Rule 33-3.0085 (8), Fla. Admin. Code. 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 as determined by the Chief Health Officer or other designated medical staff. Rule 33-3.0085 (7), Fla. Admin. Code.

There are requirements for utilization and imposition of the special management meal program on inmates in the custody of the Department of Corrections. *See,* Rule 33-3.0085 (2), Fla. Admin. Code. The department's administrative regulations provide for the following:

(a) The special management meal shall meet the recommended dietary allowances established by the Food and Nutrition Board of the National Research Council.

(b) The special management meal shall meet the religious and medical needs of inmates on special religious and medical diets.

(c) The special management meal shall be served and prepared in a sanitary manner.

(d) The special management meal shall be served 3 times a day at the normal times for feeding inmates in confinement.

(e) Water and the nutrient drink which is served to the general population shall be the only beverage served with the special management meal unless the chief health officer prescribes a substitute beverage for medical reasons.

(f) The special management meal shall be utilized only at those institutions designated by the Secretary. The request for approval for an institution to utilize this meal shall be submitted to the Assistant Secretary for Security and Institutional Management. Upon determination that use of the special management meal would fit the institution profile, training for preparation and use of the special management meal will be scheduled. Upon certification of successful completion of that training, the special management meal is authorized for use on a case-by-case basis at that institution as provided in this rule. *Id.*

The administrative rule also provides for the specific situations in which inmates in any confinement status may be placed on the special management meal for creating a security problem. The rule authorizes its imposition if any of the following acts occur:

(a) The throwing of food, beverage, food utensils, food tray, or human waste products;

(b) The destruction of food trays or utensils; or

(c) Any other acts of violence that would place staff in jeopardy if a serving tray or utensils were to be provided. Rule 33-3.0085 (3), Fla. Admin. Code.

To place an inmate on the special management meal program, certain steps must be followed by the Department of Corrections. The rule requires the following:

(a) When any employee observes inmate behavior that he believes meets the criteria for application of the special management meal, the employee must prepare Form DC3-013, Special Management Meal Report, and forward the report to the Chief Correctional Officer for review.

(b) If the Chief Correctional Officer determines that the behavior cannot be corrected through routine counseling or by established disciplinary procedures, a discussion shall take place at the inmate's cell between the inmate, the Officer in Charge, and the reporting officer, if needed. The Officer in Charge shall complete the discussion section of the report. The Special Management Meal Report shall document the reasons for recommending the special management meal and shall include a summary of the inmate's comments or objections. When an inmate has been recommended for placement on the special management meal, the Chief Health Officer or other designated medical staff member shall indicate on the Special Management Meal Report whether there is any medical reason that would prohibit placing the inmate on special management meal status. When there is a medical problem, the Chief Officer or other designated medical staff member shall then determine whether the inmate can be placed on the special management meal or whether an alternative special meal can be prescribed. No inmate shall be placed on special management meal status without medical approval. The Chief Correctional Officer shall then forward the report to the Superintendent for approval.

(c) The Superintendent or his designee shall approve or disapprove all recommendations for placement on the special management meal based on the criteria set forth in subsection (2) above. Rule 33-3.0085 (4), Fla. Admin. Code.

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), Fla. Admin. Code.

If an inmate is placed on the special management meal program, other restrictions exist for an inmate. Canteen privileges authorized by 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 shall be suspended for the duration of the period that an inmate is on special management meal status. *See*, Rule 33-3.0085 (5), Fla. Admin. Code.

III. Effect of Proposed Changes:

Senate Bill 596 would create the third-degree felony crime of aggravated battery of a facility employee by throwing, tossing, or expelling certain fluids or materials occurring on or after October 1, 1998. It would make it a third-degree felony for a person who is being detained or

held in custody in a correctional facility to cause an employee of the facility to come into contact with blood, masticated food, regurgitated food, saliva, seminal fluid, urine, or feces regardless of how the detained person made the employee come into contact with the fluid or material. The proposed language would, however, specify instances of throwing, tossing, or expelling such fluid or material. In addition, to successfully prosecute such an offense, the state would also have to prove that the inmate or detainee did such act with the intent to harass, annoy, threaten, or alarm the employee.

Employees would include any person employed by or performing contractual services for a public or private entity operating a correctional facility. The definition would specifically include any person who is a parole examiner with the Florida Parole Commission. However, it appears that any person who volunteers at such correctional facilities and is a victim of such action by an inmate or detainee would not have "protection" or coverage of this proposed enhancement statute. Therefore, only simple battery would apply if such persons are victims.

To be charged and convicted of this offense, it would be required to show that the detained person knew or should have known that the person, or subject of the offense, was an employee of the facility. An employee would extend beyond a correctional officer under this proposed language to distinguish it from the offense of battery on a correctional officer under §784.07, Florida Statutes. An employee would also 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. Therefore, if an inmate or detainee who causes or attempts to cause such employees to come in contact with the fluids or material delineated in the bill with the intent to harass, annoy, threaten, or alarm that employee, the inmate or detainee could be charged with the third-degree felony offense of aggravated battery of a facility employee rather than with simple battery.

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

(a) detained in an adult jail that is operated by a local government;

(b) an inmate or detainee in a privatized prison or jail;

(c) in the custody of the Department of Corrections in any of its facilities, including institutions, work camps, and community correctional centers; or

(d) in secure facilities that the Department of Juvenile Justice operates, such as commitment facilities, assessment centers, and specialized camps.

Aggravated battery under §784.07, Florida Statutes, the enhancements of assault or battery upon a correctional officer or part-time correctional officer, would remain intact and would be applicable if a crime was elected to be charged that way because the act was committed on a correctional officer, rather than a different type of facility employee.

Persons convicted of this offense would be scored as a level 4 offense under the Criminal Punishment Code, effective October 1, 1998.

The Department of Corrections would be authorized to additionally "punish" the offender by placing such offender on the management meal program as is specified by the rules and regulations applicable to the facility.

The provisions of this bill would apply to persons who committed the proscribed act (s) on or after October 1, 1998.

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:

None.

C. Government Sector Impact:

The fiscal impact of SB 596 has not yet been determined by the Criminal Justice Impact Conference, but staff anticipates that the prison bed impact will be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is arguable that youthful offenders may not be included in the purview of §784.078, Florida Statutes, which is created by this bill, because chapter 958, Florida Statues, is not expressly stated as being included.

In 1997, Senator Mc Kay sponsored a bill (CS/SB 1304) that was identical to SB 596, which is currently before the committee. The 1997 Legislature passed HB 1165 (Identical to the substance of CS/SB 1304 (1997)). However, due to unrelated language that was amended onto the bill on the floor, the Governor vetoed the bill.

VIII. Amendments:

None.