

STORAGE NAME: h0131.fpr.doc
DATE: March 2, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FISCAL POLICY & RESOURCES
ANALYSIS**

BILL #: HB 131
RELATING TO: Correctional Facilities
SPONSOR(S): Representative Harrington
TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 9 NAYS 0
 - (2) FISCAL POLICY & RESOURCES
 - (3) COUNCIL FOR HEALTHY COMMUNITIES
 - (4)
 - (5)
-

I. SUMMARY:

House Bill 131 would create the offense of battery of a correctional facility employee by throwing, tossing or expelling blood, masticated food, regurgitated food, saliva, seminal fluid, urine, or feces with the intent to harass, annoy, threaten or alarm the employee. The offense would be classified as a third degree felony, punishable by up to five years in prison.

In addition, HB 131 provides that if the Department of Corrections (DOC) 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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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 their will 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, employees or agents of the Department of Corrections who supervise or provide 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), F.S., 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), F.S., requires DOC to establish a mandatory education program on AIDS and HIV for correctional staff.

Section 945.35(3), F.S., authorizes DOC to begin a testing program on an inmate consistent with guidelines of the Centers for Disease Control and the Correctional Medical Authority when there is evidence that the inmate has engaged in behavior which places the inmate at a high risk of transmitting or contracting 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.

Section 945.35(5), F.S., requires DOC to establish policies on the housing, physical contact, dining, recreation and exercise hours and locations for inmates with immunodeficiency disorders consistent with guidelines of the Centers for Disease Control and the Correctional Medical Authority. 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 being detained in a facility and with the intent to harass, annoy, threaten, or alarm, to cause or attempt 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), F.S.;
2. private correctional institutions as defined in s. 944.710, F.S.;
3. county, municipal or regional jails or other detention facilities of local government under Chapter 950 or Chapter 951 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 includes 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 term also includes any person who is a parole examiner with the Florida Parole Commission. The definition of "employee" would therefore include chaplains, mental health, medical, dental, food service, educational or administrative personnel 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 four 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 s. 945.35, F.S., 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 if the inmate so requests.

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 results 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. The rules must require that the results of the test be communicated only to the person requesting the test and to the inmate tested. The rules must also create procedures designed to protect the privacy of the person requesting the test and of the inmate.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates s. 784.078, F.S., offense of battery of facility employee by throwing, tossing or expelling certain fluids or materials.

Section 2: Amends Offense Severity Ranking Chart to make newly created offense a Level 4 offense.

Section 3: Amends s. 945.35, F.S.; relating to testing of inmates for communicable disease.

Section 4: Provides effective date of October 1, 2001.

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 determined that HB 85, which was substantially similar to this bill, would have an insignificant prison bed impact on the Department of Corrections.

The Department of Corrections will 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 2000 session, HB 85, which was substantially similar to this bill, was approved by the Committee on Crime & Punishment and died on the calendar.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Crime Prevention, Corrections & Safety adopted four amendments which will travel with the bill. The first three amendments amend the part of the bill dealing with the testing of an inmate if the Department of Corrections has reason to believe that the inmate may have transmitted a communicable disease. The first and second amendments remove the ability of "any person lawfully present in a correctional facility who is not incarcerated there" to request that the inmate be tested. Thus, a visitor to a facility would not be entitled to make such a request under this section. The third amendment removes the department's responsibility to provide such a person with counseling, health care and support services if the results of the test indicate the presence of a communicable disease.

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The fourth amendment requires the department to promulgate rules requiring that the results of any tests for communicable diseases be given only to the person requesting the test and the inmate tested. The amendment will also require that the results of the test be given to the Department of Corrections Reception Center.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

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David De La Paz

AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

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