

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 2911

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 343(JUD)
(H) Publish Date: 2/13/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
Title: "An Act relating to harassment" RDU: Administrative Services & Support
Component: Office of the Commissioner
Sponsor: Representative Lynn
Requester: House Judiciary Component No.: 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Passage of this legislation should not have a significant fiscal impact on the department.

Prepared by: Sharleen Griffin, Director
Division: Administrative Services
Approved by: Portia C.K. Parker, Deputy Commissioner
Agency: Department of Corrections

Phone: (907) 465-3339
Date/Time: 1/24/06 5:53 PM
Date: 1/24/2006

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 343(JUD)
(H) Publish Date: 2/13/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
Title "An Act relating to harassment." RDU Alaska State Troopers
Component AST Detachments
Sponsor Representative Lynn
Requester House Judiciary Committee Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill creates a new section in AS 11.61 bifurcating the crime of harassment to harassment in the first and second degrees. This allows for an increase in penalties for a person who would throw human or animal bodily fluids - such as feces, urine, semen, spit, blood - at law enforcement and correctional officers, firefighters, and emergency responders.

Passage of this legislation will have no fiscal impact on the Department of Public Safety. Even though there is a potential increase in the number of arrests for violations, the increase can be absorbed by the current assets of the department.

Prepared by: Lieutenant James Helgoe
Division: Alaska State Troopers
Approved by: Commissioner William Tandeske
Agency: Department of Public Safety

Phone: 907-269-4532
Date/Time: 1/24/06 11:01 AM
Date: 1/24/2006

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB343-Courts-2-27-06
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Harassment RDU Alaska Court System
Component Trial Courts
Sponsor Representative Lynn
Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 343.

Prepared by: Doug Wooliver, Administrative Attorney
Division: Alaska Court System
Approved by: Doug Wooliver for Stephanie Cole, Administrative Director
Agency: Alaska Court System

Phone: 463-4750
Date/Time: 2-27-06 @ 10:45 am
Date: 2/27/2006

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB343 (JUD)
() Publish Date: _____

Revision Date/Time (Note if correction): 2/27/06 12:00 a.m. Dept. Affected: Administration
Title An act relating to harassment RDU Legal and Advocacy Services
Component Public Defender Agency
Sponsor Representative Lynn, Wilson, Anderson
Requester (H)Finance Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 CF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill alters the crime of harassment and the sentencing related to the conviction of harassment. This bill will not have a fiscal impact upon the Public Defender Agency.

Prepared by: Quinlan Steiner, Director Phone 334-4414
Division Public Defender Agency Date/Time 2/27/06 12:00 AM
Approved by: Mike Tibbles, Deputy Commissioner Date 2/27/2006
Agency Department of Administration

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CS HB 343(JUD)
() Publish Date: _____

Revision Date/Time (Note if correction): 2/27/06 11:31 a.m. Dept. Affected: Administration
Title An Act relating to harassment and assault. RDU Legal and Advocacy Services
Component Office of Public Advocacy
Sponsor Rep. Lynn
Requester House Judiciary Component No. 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation creates the crime of Harassment in the First Degree as a Class A Misdemeanor in a new section AS 11.61.118; amends the former harassment statute (AS 11.61.120) to create the crime of Harassment in the Second Degree, a Class B Misdemeanor; amends AS 12.55.135(d) to establish minimum sentences for defendants who are convicted of Harassment in the First Degree against a peace officer, fire fighter, correctional employee, EMT, paramedic, ambulance attendant or other medical professional; and amends the Stalking in the First Degree under AS 11.41.260(a) such that a person commits this crime if he/she has been previously convicted of Harassment of either degree against the same victim. This legislation should have a de minimum fiscal effect on OPA.

Prepared by: Joshua P. Fink, Director Phone (907) 269-3500
Division: Office of Public Advocacy Date/Time 2/27/06/11:31 a.m.
Approved by: Mike Tibbles, Deputy Commissioner Date 2/27/2006
Agency: Administration

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FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB343-LAW-CJL-2-27
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title "An Act relating to harassment and assault." RDU CRIMINAL
Component Criminal Justice Litigation
Sponsor Representative Lynn
Requester House Finance Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill bifurcates the crime of harassment into first and second degree offenses. Harassment in the first degree is expanded to further define offensive physical contact as subjecting another person to contact with human or animal bodily fluids or feces.

The Department of Law does not anticipate many prosecutions under this legislation will occur and estimates that there will be no fiscal impact as a result.

Prepared by: Kathryn Daughhettee, Director
Division: Administrative Services Division
Approved by: Kathryn Daughhettee for David Marquez, Attorney General
Agency: Department of Law

Phone: 465-3673
Date/Time: 2/27/06 9:15 AM
Date: 2/27/2006

Alaska State Legislature

Chairman

Military & Veterans' Affairs Committee

Member

Labor and Commerce Committee

State Affairs Committee

Economic Development, Trade & Tourism
Committee

Education Committee

Joint Armed Services Committee

Finance Subcommittees

Labor & Workforce Development

Community & Economic Development

Military & Veterans' Affairs



A Communication From

REPRESENTATIVE BOB LYNN

District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" AlaskaDistrict31.blogspot.com

Session:
Alaska State Capitol
Juneau, AK 99801-1182

Phone: (907) 465-4931
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Interim:
716 W. 4th Ave., #650
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SPONSOR STATEMENT HB 343

"An Act relating to harassment."

By Representative Bob Lynn

Assaulting any person with dangerous bodily fluids – such as feces, urine, semen, saliva or blood – is beyond disgusting, and is an assault that raises the specter of infectious disease, and should clearly be a more egregious crime than mere harassment. Obviously, correctional officers, law enforcement, and first responders are at greatest risk.

Currently, most assaults with bodily fluids can be charged only as a class B misdemeanor. The potential penalty for such an outrageous attack is no different than that imposed for shoplifting lip gloss, or writing a bad check for \$25.

HB343 creates the crime of harassment in the first degree for anyone who subjects another person to offensive physical contact with human or animal bodily fluids, and classifies that crime as a class A misdemeanor. The bill also redesignates the existing crime of harassment as harassment in the second degree.

HB343 also provides a minimum term of imprisonment of 60 days for persons convicted of harassment in the first degree when they direct the offense at certain specified law enforcement officers and emergency responders.

Inmate assault by bodily fluids is being increasingly recognized across the nation. Twenty-six states have now enacted laws to help address the problem. In fact, 19 states classify these assaults as a felony. If, in the committee process, a practical means of increasing the crime beyond a class A misdemeanor can be determined, I would support an appropriate amendment to make it possible.

In summary, HB343 is aimed at better protecting everyone, but especially the protectors and responders on the front line of public safety in Alaska. Your favorable consideration of this bill is respectfully requested.

Alaska State Legislature

Chairman
Military & Veterans' Affairs Committee

Member
Labor and Commerce Committee
State Affairs Committee
Economic Development, Trade & Tourism
Committee
Education Committee
Joint Armed Services Committee

Finance Subcommittees
Labor & Workforce Development
Community & Economic Development
Military & Veterans' Affairs



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" AlaskaDistrict31.blogspot.com

Session:
Alaska State Capitol
Juneau, AK 99801-1182

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Sectional Analysis for CSHB 343: Harassment and Assault

Released: February 14, 2006

Michael Sica, staff for Rep. Bob Lynn

- Section. 1** Makes conforming change to the creation of harassment in the first degree in Section 2 of the bill and to the redesignation of the current crime of harassment to harassment in the second degree in Section 3 of the bill.
- Section. 2** Adds a new section creating the crime of harassment in the first degree for harassing or annoying another person by subjecting them to offensive physical contact with human or animal bodily fluids. Harassment in the first degree would be a class A misdemeanor.
- Section. 3** Redesignates the current crime of harassment as harassment in the second degree. Harassment in the second degree would be a class B misdemeanor.
- Section. 4** Provides that a defendant convicted of assault in the fourth degree or harassment in the first degree and who knowingly directed the conduct at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder or medical professional who was engaged in the performance of official duties at the time of the assault be subject to a 60-day minimum term of imprisonment.
- Section. 5** Adds a new paragraph to read "medical professional" means a person who is an anesthesiologist, dentist, dental hygienist, health aide, nurse aide, nurse practitioner, mental health counselor, physician, physician assistant, chiropractor, psychiatrist, osteopath, psychologist, psychological associate, radiologist, surgeon, or x-ray technician, or who holds a substantially similar position.

A brief explanation of the changes from the original HB 343 by the time it passed Judiciary Committee as CSHB 343:

The title changed on the original bill from HB 343, "An Act relating to harassment." to HB343, "An Act relating to harassment and assault."

An amendment was passed to include the term, "medical professional" to the protected classes of workers in Section 4 on page 3 of the bill.

A new Section 5 was added to define "medical professional" to mean a person who is an anesthesiologist, dentist, dental hygienist, health aide, nurse aide, nurse practitioner, mental health counselor, physician, physician assistant, chiropractor, psychiatrist, osteopath, psychologist, psychological associate, radiologist, surgeon, or x-ray technician, or who holds a substantially similar position.

Public Safety Employees Association, Inc.
"Representing Alaska's Finest"

HB 343 Position Paper

The members of the Public Safety Employees Association whole heartedly support the passage of House Bill 343. No one should be subjected to the dangers of having body fluids and / or excrement thrown at while performing their job. Any attempt to increase the penalty for this type of behavior is over due.

Alaska's Police Officers as well as other first responders are subject to this type of disgusting behavior on a regular basis. This type of assault is not just disgusting it is potentially life threatening. All too often the perpetrator of this type of behavior leads a life style which places them in a high risk category for AIDS / HIV. The effects of having bodily fluids thrown in one face may not be know for years, leaving one in doubt of ones health for decades.

The Public Safety Employees Association represents Alaska State Troopers and Court Service Officers, Municipal Police Officers, Airport Police and Fire Officers as well many other ancillary personnel across the State. Our members have to deal with this type of offender from the moment of arrest to the day that they are incarcerated. The risk that our members take from this type of behavior is a daily occurrence.

The members of the Public Safety Employees Association would like to thank the sponsor of this bill as well as the members of the house for their support. Any increase in the penalty for this abusive behavior will help protect our members while they protect the public.

Comparison of Current Law to CSHB343
“An Act relating to harassment and assault.”

UNDER CURRENT LAW

If a person commits the crime of harassment and the offensive physical contact is contact with human or animal bodily fluids or feces:

Against anyone: It would probably be prosecuted as Harassment, a class B misdemeanor, which carries a sentence of zero days to 90 days.

Against certain specified classes of workers, such as law enforcement officers, emergency responders, and medical professionals: It would probably be prosecuted as Harassment, a class B misdemeanor, which carries a sentence of zero days to 90 days.

(Information based on Current Alaska Statutes and discussions with the Alaska Department of Law and Legislative Affairs Agency Legal and Research Services

UNDER CSHB 343

If a person commits the crime of harassment and the offensive physical contact is contact with human or animal bodily fluids or feces:

Against anyone: It would probably be prosecuted as Harassment in the first degree, a class A misdemeanor, which carries a sentence of zero days to one year.

Against certain specified classes of workers, such as law enforcement officers, emergency responders, and medical professionals: It would probably be prosecuted as Harassment in the first degree, a class A misdemeanor, which carries a sentence of 60 days to one year.

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355

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Anchorage

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Pres. Wrangell Chapter

Scott McCumby, Member
Valdez

Pres. Port of Valdez Chapter

January 26, 2005

Representative Bob Lynn
House of Representatives
State Capitol
Juneau AK 99801-1182

Dear Representative Lynn:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing House Bill 343, relating to harassment.

The APOA Legislative Committee recently reviewed this proposed legislation and decided to unanimously support this bill.

This legislation addresses the increasing dangers of exposure to bodily fluids by members of law enforcement, emergency services, and corrections. Personnel working in these fields are extremely concerned about the dangers of infectious diseases and take many precautions to protect themselves as well as members of the public. Being spit upon or having feces or urine thrown at you whether you are enforcing the law, aiding someone in need, or monitoring those incarcerated is demeaning and offensive as well as potentially dangerous. Treating such offensive physical contact as a crime shows support for the personnel victimized by this behavior and holds those responsible accountable for their actions.

Thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515 if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Angella Long
State President

**ORIGINAL
IN
MAIL**

Bodily fluids assault could earn inmates extra time

■ **NASTY:** Lawmaker proposes increased penalty for those who fling urine, other substances.

By **ANNE SUTTON**
The Associated Press

JUNEAU — It's been eight years, but prison guard Mae Barney said she still shudders at the memory of her bizarre encounter with an inmate.

It began when she noticed a spot of moisture on her pant leg after completing a security check at the Fairbanks Correctional Center. Barney and a co-worker who reported a similar occurrence thought an inmate may have surreptitiously sprayed them with the window cleaner prisoners use to clean their rooms.

Although she figured the substance was harmless, Barney wanted to find out who was spraying her and write up a report.

So she took note when an inmate ran up behind her clutching a saline bottle in his fist. Although he moved on saying he was headed for the hobby shop, Barney later went through his room and found a saline bottle there.

"I dumped (the contents) into a cup. It wasn't saline. It was thick and nasty and I didn't know what it was," Barney said.

She had the medical office run a test and more than a month later, the results came back. The substance was a mixture of semen, urine and spit.

Correction officers say the practice is called "gassing" in prison slang. They say similar incidents of angry inmates spitting, or flinging urine or excrement at prison guards, police officers and other first responders pose an increasing threat to their safety.

In Alaska, gassing is currently considered harassment, a class B misdemeanor that's punishable by a maximum of 90 days in jail. But at least 26 other states consider it to be a more serious crime. Now a bill that would increase the jail time by making it a class A misdemeanor is before the Legislature.

Bill sponsor, Rep. Bob Lynn, R-Anchorage, told the House Judiciary Committee on Friday the bill is designed to protect everyone, especially those on the front lines.

"These egregious acts are increasing. The number of serious infectious diseases is likewise going up," he said. "It creates a double jeopardy for anyone who comes into contact with the unsavory characters who are committing these disgusting acts."

Under his measure, an attack against law enforcement or correctional staff or emergency responders could be prosecuted as an assault with a maximum of one year in jail and a mandatory sentence of at least 60 days.

The bill also would cover assault with bodily fluids against a member of the public but would not carry a mandatory sentence.

Correctional officers, state troopers and chiefs of police spoke in support of the bill at the hearing.

Rep. Peggy Wilson, R-Wrangell, a former emergency room nurse, said she would like to see the stiffer penalties apply when hospital medical staff are attacked in a similar fashion.

"We can also get a disease that can end our lives," she said.

Rep. Les Gara, D-Anchorage, said he was worried the provisions concerning the general public could have unintended consequences and asked if saliva could be exempted from the list of bodily fluids.

"I'm uncomfortable we could be making a kid who spits on another kid a criminal," he said.

But fellow Anchorage Democrat Max Gruenberg said such behavior was putting other children at risk and he supported the bill the way it was written.

Prison guard Mae Barney, in an interview before the hearing, said she has thought many times about the inmate with the saline bottle and about what she should have done to protect herself.

She said as a result of the incident the inmate was segregated from other prisoners and lost some of the good time he had earned, but he was never prosecuted.

She believes tougher penalties would be a deterrent for others like him.

"For them it's like, 'What are you going to do, put me in jail?,' " she said. "And now we can say, 'We'll keep you in longer.' It will make a difference."

The bill is House Bill 343.



■ **ONLINE:**
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Kodiak Police Department
Office of the Chief of Police
217 Lower Mill Bay Road
Kodiak, Alaska 99615
907-486-8000 (Voice)
907-486-8026 (Fax)

February 15, 2006

Representative Bob Lynn
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Lynn:

I am writing on behalf of the women and men of the Kodiak Police Department in support of HB 343. This is a much needed bill to help protect the men and women who are at the greatest risk for this type of harassment.

On January 29th of this year, a prisoner who was being booked into our jail spit in the face of one of my officers. This prisoner was later found to be infected with the Hepatitis virus. Now this officer and his family face uncertainty for the next several months while he undergoes medical testing to see if he has contracted Hepatitis.

I agree with the comments made in your sponsor statement for HB 343 which describes the act of intentionally exposing another to your body fluids as an egregious crime which demands harsher penalties. If enacted HB 343 would make this a crime of Harassment in the First Degree, a class A misdemeanor offense carrying a maximum fine amount of up to \$5,000, and a maximum jail term of up to one year.

Assaulting another with your body fluids, is a despicable act and demands the maximum penalties the law will allow. HB 343 is a step in the right direction to protect Alaska's protectors. I urge you and your colleagues to pass HB 343 with the consequences as tough as possible.

Sincerely,

KODIAK POLICE DEPARTMENT


Charles T.C. Kamai
Chief of Police

pbs/eik

Disease	Agent	Route of Transmission	Incubation Period	Potential Complications
Acquired Immune Deficiency Syndrome (AIDS)	Suspected Retro Virus	Suspected direct contact, possibly blood	12 months or over	Death
Chicken Pox	Virus	Saliva, blood, droplets	10-21 days	Conjunctivitis, Shingles, Encephalitis
Common Cold	Virus	Saliva, blood, droplets	48-72 hours	Temporary disability
Gonorrhea	Bacteria	Sexual contact	1-7 days	Arthritis, female sterility, infant blindness
Hepatitis A	Virus	Oral, fecal	2-7 weeks	Disability
Hepatitis B	Virus	Saliva, blood, droplets	6 weeks - 6 months	Chronic disability, carrier mode, death
Hepatitis (Non-A, Non-B)	Virus	Saliva, blood, droplets	6 weeks - 5 months	Chronic disability, death
Hepatitis Delta	"Piggy back" virus	Blood, other routes under investigation	Not Known	Death, chronic carrier
Herpetic Conjunctivitis	Virus	Saliva, blood, droplets	6 - 10 weeks	Potential blindness
Herpes Simplex II	Virus	Sexual contact, possible saliva, blood	Up to 2 weeks, also latent	Painful lesions, disability, death in children
Herpetic Whitlow	Virus	Saliva, blood, droplets	2 - 12 days, also latent	Extreme pain, disability
Infectious Mononucleosis	Virus	Saliva, blood, droplets	4 - 7 weeks	Temporary disability
Influenza	Virus	Saliva, droplets	1 - 3 days	Death
Legionellosis	Bacteria	Respiratory	2 - 10 days	Death
Measles (German)	Virus	Saliva, nasal, droplets	9 - 11 days	Congenital defects, infant death
Measles (Rubeola)	Virus	Saliva, nasal, droplets	9 - 11 days	Temporary disability, encephalitis
Mumps (men)	Virus	Respiratory	14 - 25 days	Temporary disability, sterility
Pneumonia	Bacteria, Virus	Respiratory, blood, droplets	Varies with organism	Death
Staphylococcus Infections	Bacteria	Saliva, droplets, nosocomial	4 - 10 days	Skin lesions, osteomyelitis, death
Streptococcus Infections	Bacteria	Saliva, blood, droplets	1 - 3 days	Rheumatic heart, kidney problems, death
Syphilis	Bacteria	Sexual contact, congenital	2 - 12 weeks	Central nervous damage, death
Tetanus	Bacteria	Open wound	7 - 10 days	Disability, death
Tuberculosis	Bacteria	Saliva, droplets	Up to 6 months, also latent	Disability, death

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ALASKA CORRECTIONAL OFFICERS ASSOCIATION

"Walking Alaska's toughest beat"

Alaska Correctional Officers want protection from bodily fluid assaults

**Prepared by: Alaska Correctional Officers Association
January 18, 2006**

No one should have to go to work expecting to get spit in the face or have excrement thrown at them. It is degrading and dangerous, and coupled with insufficient legal recourse, it can demoralize even the most professional and best trained Correctional Officer. Too often inmate assault by bodily fluids is considered "just part of the job."

Alaska's Correctional Officers, along with other Peace Officers, Fire Fighters, Youth Counselors, Emergency Medical Technicians, Paramedics, Ambulance Attendants and other emergency responders, deserve a greater level of protection against this offensive behavior. We need support from legislators who can create tougher laws to protect the front-line officers and responders who help ensure the public safety of Alaskans.

At the Fairbanks Correctional Center, just one of 12 institutions statewide, there have been several employees assaulted with bodily fluids in the past several months. Inmates have spit in the face of officers, tried to smear them with feces and in one case sprayed a female employee with a mixture of semen, urine and saliva. During these assaults, the attackers have laughed in

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our faces, challenged us to respond, and claimed to have serious infectious diseases. The physical attack is tough enough but the mental anguish is even harder to endure.

With the growing threat of infectious diseases -- no matter how unlikely the odds of transmission -- there's always the fear of catching a lethal virus and spreading it to family, friends and co-workers. We view these bodily fluid attacks as not only vile but potentially life-threatening. So it can be tremendously demoralizing when a busy district attorney considers it a low priority, and may not even file charges, because most of these cases can only be prosecuted as a Class B misdemeanor under current statutes.

Tougher laws with stiffer sentences will have a deterrent effect because most of these assaults are committed by younger prisoners doing short terms and know they will be released soon. The long-term prisoners usually follow institutional rules. They consider the facility their home so they obey and respect officers because they want little disruption in their lives.

Correctional Officers are trained to deal professionally with such disgusting and demeaning behavior. However, we need our leaders to protect us from the threat and danger of assault by bodily fluids. We are asking that you join the growing trend across the country to create tougher laws, and consider the example of many States that now classify inmate assault by bodily fluids a felony offense. Please help deter such dangerous and offensive behavior that should not be considered "just part of the job."

David L. Colangelo



ALASKA CORRECTIONAL OFFICERS ASSOCIATION

"Walking Alaska's toughest beat"

Wednesday, Jan. 18, 2006

Interview with Daniel Colang, Board President Alaska Correctional Officers Association

Below is a transcript of an interview by Michael Sica, legislative aide for Rep. Bob Lynn, with ACOA President Daniel Colang, who is also a Sergeant and Shift Supervisor at the Fairbanks Correctional Center

QUESTION: When an inmate spits in your face or throws bodily fluids on you, isn't that just part of the job?

COLANG: We've been trained to deal professionally with such disgusting and offensive behavior. However, it's degrading, demeaning and dangerous, and it has a very negative effect on our officers. It's a growing problem that needs to be recognized. When someone is assaulted with bodily fluids, and there is little legal follow-up, it can really kill morale.

QUESTION: Do you think this problem can affect the recruiting and retaining of correctional officers?

COLANG: Yes. Who takes a job expecting to get spit on or have bodily fluids thrown at them. The work we do is tough enough. Having excrement thrown in your face shouldn't be part of anyone's job description. Sure, it can affect whether good people want to work here or stay here.

QUESTION: How will a measure such as HB 343, which increases the crime of harassment by bodily fluids from a class B misdemeanor to a class A misdemeanor, make a difference with long-term inmates, who could care less about such charges?

COLANG: The issue of assault by bodily fluids has not been a problem with the long-term inmates. That's a myth. The lifers give us the least problem. The prison is their home so the less trouble for us, the better their life will be. The biggest problem is the young kids, new to the system, who are in for the short term. They want to make a quick name for themselves before they get back out on the streets. Any penalty, and the stiffer the better, will have a deterrent effect on them.

QUESTION: This bill also covers animal fluids. When is that an issue?

COLANG: Probably at the Point McKenzie Correctional Farm.

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QUESTION: What about busy District Attorneys who consider a misdemeanor a low priority? Are you concerned they may not have time to prosecute some bodily fluids assault cases?

COLANG: We recently had a DA prosecute a case right here in Fairbanks. A hostile detainee spit right in the face of one of my officers on a Thursday, the offender was arraigned, pleaded no contest and sentenced to 10 days on Friday. It was a small measure of justice. I think this new bill (HB 343) is another step in the right direction to get the protection and justice we deserve.

QUESTION: Can this bill adversely affect the ability of a correctional facility to deal with its problems in-house?

COLANG: The current law doesn't, so I don't see how HB 343 would. In fact, being a tougher crime with a stiffer sentence will give the facility a stronger tool to protect us all. Meanwhile, the facility managers can still use whatever in-house methods they feel are necessary.

QUESTION: Some people believe bodily fluid attacks are rare or non-existent within correctional centers?

COLANG: It happens much more than you think; you just don't hear about it outside the prison system. It's an area where we could certainly use more P.R. At the Fairbanks Center, at least three of my co-workers have been recently assaulted by inmates with bodily fluids. And we're just one of 14 facilities statewide. Even if it's just once or twice a month, that's once or twice too much. It is so demeaning. I'd rather be punched in my face than to be spit on.

QUESTION: Do you consider mentally ill inmates responsible for these type of attacks?

COLANG: With them, it's playing with feces and it can be spread. But it's the ones who know better that I'm talking about, the sane but irresponsible ones who should be punished. The majority of the time it's done to degrade and intimidate, and put officers in fear or danger, and it's done by people who know exactly what they're doing.

QUESTION: So, do you believe stronger measures such as HB 343 can help?

COLANG: Absolutely! If we can get something better on the books, it would be a big morale booster. And you'd be surprised how fast this will spread throughout the prison. The word will get out quickly if someone gets tagged with extra time. It will definitely be a deterrent.

LEGISLATIVE RESEARCH REPORT

MAY 26, 2005



REPORT NUMBER 05.273

CRIMINAL STATUTES REGARDING PRISONER ASSAULT WITH BODILY FLUIDS

PREPARED FOR REPRESENTATIVE BOB LYNN

BY ROGER WITHINGTON, LEGISLATIVE ANALYST

You wished to know how many states expressly make it a crime for prison inmates to assault law enforcement or correctional facilities staff with bodily fluids. You also wanted to know how each state classifies the crime.

We identified 26 states that expressly make it a crime for prison inmates to assault law enforcement or correctional facilities staff with bodily fluids.¹ Of these 26 states, 19 have a specific statute that makes it a crime for prison inmates to assault law enforcement or correctional facilities staff with bodily fluids, while the remaining seven states make it a crime in a subsection of a statute that defines the crime of assault, or in a subsection of a statute that defines all assaults that inmates can perpetrate against law enforcement or correctional facilities staff. Of the 22 states that classified this crime, 19 classify it as a felony. The states that classify such assault as a felony offense are Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Missouri, Nevada, New York, Oregon, Pennsylvania, South Carolina, and Texas.

The statutory language that criminalizes assault with bodily fluids is somewhat similar from state to state. As example, the Arizona law states the following:

A prisoner commits prisoner assault with bodily fluids if the prisoner throws or projects any bodily fluid at or onto a correctional facility employee or private prison security officer who the prisoner knows or reasonably should know is an employee of a correctional facility or is a private prison security officer. For the purposes of this section, "bodily fluids" means saliva, blood, seminal fluid, urine or feces.

¹ We could not locate a current 50-state compilation of laws concerning assaults by prisoners with bodily fluids. We constructed our list of applicable laws by searching the electronic statutes of selected states, and the database of state statutes available from the Lexis Group (<http://www.lexis.com/research>). Some statutes may have fallen outside of our search criteria, and as a result, will not appear on our list.

The Texas law states

A person commits an offense if the person, while imprisoned or confined in a correctional or detention facility and with intent to harass, alarm, or annoy another person, causes the other person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of the actor, any other person, or an animal.

Table 1 provides the statutory citation and the offense classification for each the 26 states that expressly make it a crime for prison inmates to assault law enforcement or correctional facilities staff with bodily fluids.

Table 1: Criminalization of Assault with Bodily Fluids on Law Enforcement or Correctional Facilities Staff, by State

State	Statutory Citation	Offense Severity	Offense Class
Arizona	ARS 13-1212	Felony	Class 6
Arkansas	ACA 5-13-211	Felony	Class D
California	CPA 4501.1	Felony	Not Specified
Colorado	CRS 18-13-203	Felony	Class 3, 4 or 6
Delaware	DCA 1254	Felony	Class B or D
Florida	FS 784.078	Felony	Class 3
Georgia	OCCA 16-5-60	Felony	Not Specified
Idaho	IC 18-915B	Felony	Not Specified
Illinois	720 ILCS 5/12.4	Felony	Class 2
Indiana	ICA 35-42-2-6	Felony	Class A to D
Iowa	IC 708.3B	Felony	Class D
Kentucky	KRS 508.025	Felony	Class D
Louisiana	LSA-RS 14:43.5	Not Specified	
Maryland	ACM 3-205	Misdemeanor	Not Specified
Minnesota	MS 565.092	Misdemeanor	Class A
Missouri	MC 609.2231	Felony	Not Specified
Montana	MCA 45-5-214	Not Specified	
Nevada	NRSA 212.189	Felony	Class B
New Jersey	NJSA 2C:12-13	Not Specified	
New York	Penal Law 240.32	Felony	Class E
Oregon	ORS 163.165	Felony	Class C
Pennsylvania	PCSA 2703.1	Felony	Class 3
Rhode Island	GLRI 11-5-8.1	Not Specified	
South Carolina	CLSC 24-13-470	Felony	Not Specified
South Dakota	SDCL 22-18-26.1	Misdemeanor	Class 1
Texas	VTCA 22.11	Felony	Class 3

Sources: Matthew Bender & Company, Inc., a member of the LexisNexis Group, (<http://www.lexis.com/research/>) and the electronic statutes of selected states.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

ARIZONA REVISED STATUTES
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TITLE 13. CRIMINAL CODE
CHAPTER 12. ASSAULT AND RELATED OFFENSES

A.R.S. § 13-1212 (2004)

§ 13-1212. Prisoner assault with bodily fluids; liability for costs; classification; definition

A. A prisoner commits prisoner assault with bodily fluids if the prisoner throws or projects any bodily fluid at or onto a correctional facility employee or private prison security officer who the prisoner knows or reasonably should know is an employee of a correctional facility or is a private prison security officer.

B. A prisoner who is convicted of a violation of this section is liable for any costs incurred by the correctional facility employee or private prison security officer, including costs incurred for medical expenses or cleaning uniforms.

C. The state department of corrections shall adopt rules for the payment of costs pursuant to subsection B. Monies in the prisoner's trust fund or retention account established by the correctional facility in which the prisoner is incarcerated may be used to pay the costs pursuant to subsection B.

D. A prisoner who violates this section is guilty of a class 6 felony and the sentence imposed for a violation of this section shall run consecutively to any sentence of imprisonment for which the prisoner was confined or to any term of community supervision, probation, parole, work furlough or other release from confinement.

E. For the purposes of this section, "bodily fluids" means saliva, blood, seminal fluid, urine or feces.

Arkansas Code 5-13-211, Aggravated assault upon an employee of a correctional facility, Arkansas 84th
General Assembly,

http://170.94.58.9/data/ar_code.asp

5-13-211. Aggravated assault upon an employee of a correctional facility.

(a) A person commits aggravated assault upon an employee of a correctional facility if, under circumstances manifesting extreme indifference to the personal hygiene of the employee, he or she purposely engages in conduct that creates a potential danger of infection to an employee of any state or local correctional facility while the employee is engaged in the course of his or her employment by causing the employee to come into contact with saliva, blood, urine, feces, seminal fluid, or other bodily fluid by throwing, tossing, or expelling the fluid or material.

(b) Aggravated assault upon an employee of a correctional facility is a Class D felony.

History. Acts 1997, No. 1235, § 1; 2003, No. 1271, § 1.

California Penal Code 4501.1, California Legislature,
<http://www.leginfo.ca.gov/calaw.html>

4501.1. (a) Every person confined in the state prison who commits a battery by gassing upon the person of any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or employee of the state prison is guilty of aggravated battery and shall be punished by imprisonment in a county jail or by imprisonment in the state prison for two, three, or four years. Every state prison inmate convicted of a felony under this section shall serve his or her term of imprisonment as prescribed in Section 4501.5.

(b) For purposes of this section, "gassing" means intentionally placing or throwing, or causing to be placed or thrown, upon the person of another, any human excrement or other bodily fluids or bodily substances or any mixture containing human excrement or other bodily fluids or bodily substances that results in actual contact with the person's skin or membranes.

(c) The warden or other person in charge of the state prison shall use every available means to immediately investigate all reported or suspected violations of subdivision (a), including, but not limited to, the use of forensically acceptable means of preserving and testing the suspected gassing substance to confirm the presence of human excrement or other bodily fluids or bodily substances. If there is probable cause to believe that the inmate has violated subdivision (a), the chief medical officer of the state prison or his or her designee, may, when he or she deems it medically necessary to protect the health of an officer or employee who may have been subject to a violation of this section, order the inmate to receive an examination or test for hepatitis or tuberculosis or both hepatitis and tuberculosis on either a voluntary or involuntary basis immediately after the event, and periodically thereafter as determined to be necessary by the medical officer in order to ensure that further hepatitis or tuberculosis transmission does not occur. These decisions shall be consistent with an occupational exposure as defined by the Center for Disease Control and Prevention. The results of any examination or test shall be provided to the officer or employee who has been subject to a reported or suspected violation of this section. Nothing in this subdivision shall be construed to otherwise supersede the operation of Title 8 (commencing with Section 7500). Any person performing tests, transmitting test results, or disclosing information pursuant to this section shall be immune from civil liability for any action taken in accordance with this section.

(d) The warden or other person in charge of the state prison shall refer all reports for which there is probable cause to believe that the inmate has violated subdivision (a) to the local district attorney for prosecution.

(e) The Department of Corrections shall report to the Legislature, by January 1, 2000, its findings and recommendations on gassing incidents at the state prison and the medical testing authorized by this section. The report shall include, but not be limited to, all of the following

- (1) The total number of gassing incidents at each state prison facility up to the date of the report
- (2) The disposition of each gassing incident, including the administrative penalties imposed, the number of incidents that are prosecuted, and the results of those prosecutions, including any penalties imposed.
- (3) A profile of the inmates who commit the aggravated batteries, including the number of inmates who have one or more prior serious or violent felony convictions
- (4) Efforts that the department has taken to limit these incidents, including staff training and the use of protective clothing and goggles.
- (5) The results and costs of the medical testing authorized by this section.

(f) Nothing in this section shall preclude prosecution under both this section and any other provision of law

COLORADO REVISED STATUTES

TITLE 18. CRIMINAL CODE
ARTICLE 3. OFFENSES AGAINST THE PERSON
PART 2. ASSAULTS

C.R.S. 18-3-203 (2004)

18-3-203 Assault in the second degree

(1) A person commits the crime of assault in the second degree if:

(a) Repealed.

(b) With intent to cause bodily injury to another person, he or she causes such injury to any person by means of a deadly weapon; or

(c) With intent to prevent one whom he or she knows, or should know, to be a peace officer or firefighter from performing a lawful duty, he or she intentionally causes bodily injury to any person; or

(d) He recklessly causes serious bodily injury to another person by means of a deadly weapon; or

(e) For a purpose other than lawful medical or therapeutic treatment, he intentionally causes stupor, unconsciousness, or other physical or mental impairment or injury to another person by administering to him, without his consent, a drug, substance, or preparation capable of producing the intended harm; or

(f) While lawfully confined or in custody, he or she knowingly and violently applies physical force against the person of a peace officer or firefighter engaged in the performance of his or her duties, or a judge of a court of competent jurisdiction, or an officer of said court, or, while lawfully confined or in custody as a result of being charged with or convicted of a crime or as a result of being charged as a delinquent child or adjudicated as a delinquent child, he or she knowingly and violently applies physical force against a person engaged in the performance of his or her duties while employed by or under contract with a detention facility, as defined in section 18-8-203 (3), or while employed by the division in the department of human services responsible for youth services and who is a youth services counselor or is in the youth services worker classification series, and the person committing the offense knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, or a judge of a court of competent jurisdiction, or an officer of said court, or a person engaged in the performance of his or her duties while employed by or under contract with a detention facility or while employed by the division in the department of human services responsible for youth services. A sentence imposed pursuant to this paragraph (f) shall be served in the department of corrections and shall run consecutively with any sentences being served by the offender, except that, if the offense is committed against a person employed by the division in the department of human services responsible for youth services, the court may grant probation or a suspended sentence in whole or in part, and such sentence may run concurrently or consecutively with any sentences being served. A person who participates in a work release program, a furlough, or any other similar authorized supervised or unsupervised absence from a detention facility, as defined in section 18-8-203 (3), and who is required to report back to the detention facility at a specified time shall be deemed to be in custody.

(f 5) (I) While lawfully confined in a detention facility within this state, a person with intent to infect, injure, harm, harass, annoy, threaten, or alarm a person in a detention facility whom the actor knows or reasonably should know to be an employee of a detention facility, causes such employee to come into contact with blood, seminal fluid, urine, feces, saliva, mucus, vomit, or any toxic, caustic, or hazardous material by any means, including but not limited to throwing, tossing, or expelling such fluid or material.

(II) (A) Any adult or juvenile who is bound over for trial for the offense described in subparagraph (I) of this paragraph (f 5) subsequent to a preliminary hearing or after having waived the right to a preliminary hearing, any person who is indicted for or is convicted of any such offense, or any person who is determined to have provided blood, seminal fluid, urine, feces, saliva, mucus, or vomit to a person bound over for trial for, indicted for, or convicted of such an offense shall be ordered by the court to submit to a medical test for communicable diseases and to supply blood, feces, urine, saliva, or other bodily fluid required for the test. The results of such

test shall be reported to the court or the court's designee, who shall then disclose the results to any victim of the offense who requests such disclosure. Review and disclosure of medical test results by the court shall be closed and confidential, and any transaction records relating thereto shall also be closed and confidential. If a person subject to a medical test for communicable diseases pursuant to this sub-subparagraph (A) voluntarily submits to a medical test for communicable diseases, the fact of such person's voluntary submission shall be admissible in mitigation of sentence if the person is convicted of the charged offense.

(B) In addition to any other penalty provided by law, the court may order any person who is convicted of the offense described in subparagraph (I) of this paragraph (f.5) to meet all or any portion of the financial obligations of medical tests performed on and treatment prescribed for the victim or victims of the offense.

(C) At the time of sentencing, the court may order that an offender described in sub-subparagraph (B) of this subparagraph (II) be put on a period of probation for the purpose of paying the testing and treatment costs of the victim or victims; except that the period of probation, when added to any time served, shall not exceed the maximum sentence that can be imposed for the offense.

(III) (A) As used in this paragraph (f.5), "detention facility" means any building, structure, enclosure, vehicle, institution, or place, whether permanent or temporary, fixed or mobile, where persons are or may be lawfully held in custody or confinement under the authority of the state of Colorado or any political subdivision of the state of Colorado.

(B) As used in this paragraph (f.5), "employee of a detention facility" includes employees of the department of corrections, employees of any agency or person operating a detention facility, law enforcement personnel, and any other persons who are present in or in the vicinity of a detention facility and are performing services for a detention facility. "Employee of a detention facility" does not include a person lawfully confined in a detention facility.

(g) With intent to cause bodily injury to another person, he causes serious bodily injury to that person or another.

(2) (a) If assault in the second degree is committed under circumstances where the act causing the injury is performed upon a sudden heat of passion, caused by a serious and highly provoking act of the intended victim, affecting the person causing the injury sufficiently to excite an irresistible passion in a reasonable person, and without an interval between the provocation and the injury sufficient for the voice of reason and humanity to be heard, it is a class 6 felony.

(b) If assault in the second degree is committed without the circumstances provided in paragraph (a) of this subsection (2), it is a class 4 felony.

(b 5) Assault in the second degree by any person under subsection (1) of this section without the circumstances provided in paragraph (a) of this subsection (2) is a class 3 felony if the person who is assaulted, other than a participant in the crime, suffered serious bodily injury during the commission or attempted commission of or flight from the commission or attempted commission of murder, robbery, arson, burglary, escape, kidnapping in the first degree, sexual assault, sexual assault in the first or second degree as such offenses existed prior to July 1, 2000, or class 3 felony sexual assault on a child.

(c) If a defendant is convicted of assault in the second degree pursuant to paragraph (b), (c), (d), or (g) of subsection (1) of this section or paragraph (b 5) of this subsection (2), except with respect to sexual assault or sexual assault in the first degree as it existed prior to July 1, 2000, the court shall sentence the defendant in accordance with the provisions of *section 18-1.3-406*. A defendant convicted of assault in the second degree pursuant to paragraph (b 5) of this subsection (2) with respect to sexual assault or sexual assault in the first degree as it existed prior to July 1, 2000, shall be sentenced in accordance with *section 18-1.3-401 (8) (e)* or (8) (e 5).

HISTORY: Source L 71, R&RE, p. 420, § 1 C.R.S. 1963; § 40-3-203 L. 76, Ex. Sess. (1)(f) amended, p. 8, § 2, effective September 18 L. 79; (2) R&RE, p. 732, § 2, effective May 18 L. 81; (1)(f) amended and (1)(g) added, p. 973, § 7, effective July 1 L. 86; (1)(f) amended, p. 789, § 2, effective July 1; (2)(c) added, p. 777, § 3, effective July 1 L. 88; (2)(c) amended, p. 717, § 4, effective July 1 L. 90; (1)(f) amended, p. 992, § 2, effective April 5; (1)(f) amended, p. 986, § 9, effective April 24 L. 91; (2)(a) and (2)(c) amended, p. 405, § 9, effective June 6 L. 94; (1)(a) repealed, p. 1717, § 8, effective July 1; (1)(f) amended, p. 2655, § 138, effective July 1 L.

95: (1)(b) and (2)(c) amended and (2)(b.5) added, p. 1250, § 7, effective July 1.L. 97: (1)(f.5) added, p. 1591, § 1, effective July 1; (2)(a) amended, p. 1544, § 14, effective July 1; (1)(c) and (1)(f) amended, p. 1011, § 16, effective August 6.L. 98: (2)(c) amended, p. 1441, § 26, effective July 1.L. 2000: (1)(f) amended, p. 693, § 3, effective July 1.L. 2002: (2)(b.5) and (2)(c) amended, p. 757, § 2, effective July 1; (2)(c) amended, p. 1512, § 187, effective October 1.L. 2003: (1)(f) amended, p. 1430, § 17, effective April 29.

Delaware Code, Section 1254 of the Delaware Criminal Code, Division of Research of Legislative
Council of the General Assembly of Delaware,
<http://www.delcode.state.de.us/>

§ 1254. Assault in a detention facility; penalty; class B and class D felony.

(a) Any person who, being confined in a detention facility, intentionally causes physical injury to a correctional officer, other state employee of a detention facility acting in the lawful performance of duties, any other person confined in a detention facility or any other person at a detention facility or other place having custody of such person shall be guilty of a class D felony.

Notwithstanding Chapter 45 of this title, any person convicted for a violation of this subsection shall be imprisoned for a mandatory minimum period of 2 years which shall commence upon final judgment of conviction. Such sentence shall not be suspended nor shall the defendant be eligible for parole or probation.

(b) Any person who, being confined in a detention facility, intentionally causes serious physical injury to a correctional officer, other state employee of a detention facility acting in the lawful performance of duties, any other person confined in a detention facility or any other person at a detention facility or other place having custody of such person shall be guilty of a class B felony.

Notwithstanding Chapter 45 of this title, any person convicted for a violation of this subsection shall be imprisoned for a mandatory minimum period of 3 years which shall commence upon final judgment of conviction. Such sentence shall not be suspended nor shall the defendant be eligible for parole or probation.

(c) Any person who, being confined in a detention facility, intentionally strikes with urine, feces or other bodily fluid a correctional officer or other State employee of a detention facility acting in the lawful performance of duties or any other person at a detention facility or other place having custody of such person, other than another person confined at a detention facility shall be guilty of a class D felony.

Notwithstanding Chapter 45 of this title, any person convicted for a violation of this subsection shall be imprisoned for a mandatory minimum period of 1 year, which shall commence upon final conviction. Such sentence shall not be suspended nor shall the defendant be eligible for parole or probation.

When charged with a violation of this subsection, the defendant shall be tested for diseases transmittable through bodily fluids, the cost of such tests to be assessed as costs upon conviction. The results of such tests shall be provided only to the Attorney General, the victim of the assault, the defendant and the Department's medical care provider.

(d) The execution and operation of the sentence for any other crime causing such original confinement shall, upon the commencement of the sentence for a violation of this section, be placed in suspension, to be continued only after completion of the sentence for the violation of this section (59 Del. Laws, c. 247, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 88, §§ 1-3; 72 Del. Laws, c. 12, §§ 1-3)

2004 Florida Statute 784.078, The Florida Senate,
<http://www.flsenate.gov/Statutes/index.cfm?StatuteYear=2004&Tab=statutes&Submenu=1>

784.078 Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.--

(1) As used in this section, the term "facility" means a state correctional institution defined in s. 944.02(6); a private correctional facility defined in s. 944.710 or under chapter 957; a county, municipal, or regional jail or other detention facility of local government under chapter 950 or chapter 951; or a secure facility operated and maintained by the Department of Corrections or the Department of Juvenile Justice.

(2)(a) As used in this section, the term "employee" includes any person employed by or performing contractual services for a public or private entity operating a facility or 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.

(b) "Employee" includes any person who is a parole examiner with the Florida Parole Commission.

(3)(a) It is unlawful for any person, while being detained in a facility and with intent to harass, annoy, threaten, or alarm a person in a facility whom he or she knows or reasonably should know to be an employee of such facility, to cause or attempt to cause such employee to come into contact with blood, masticated food, regurgitated food, saliva, seminal fluid, or urine or feces, whether by throwing, tossing, or expelling such fluid or material.

(b) Any person who violates paragraph (a) commits battery of a facility employee, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--s. 2, ch. 2001-244.

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TITLE 16. CRIMES AND OFFENSES
CHAPTER 5. CRIMES AGAINST THE PERSON
ARTICLE 4. RECKLESS CONDUCT

O.C.G.A. § 16-5-60 (2004)

§ 16-5-60. Reckless conduct causing harm to or endangering the bodily safety of another; conduct by HIV infected persons; assault by HIV infected persons or hepatitis infected persons

(a) Any term used in this Code section and defined in *Code Section 31-22-9.1* shall have the meaning provided for such term in *Code Section 31-22-9.1*.

(b) A person who causes bodily harm to or endangers the bodily safety of another person by consciously disregarding a substantial and unjustifiable risk that his act or omission will cause harm or endanger the safety of the other person and the disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation is guilty of a misdemeanor.

(c) A person who is an HIV infected person who, after obtaining knowledge of being infected with HIV:

(1) Knowingly engages in sexual intercourse or performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another person and the HIV infected person does not disclose to the other person the fact of that infected person's being an HIV infected person prior to that intercourse or sexual act;

(2) Knowingly allows another person to use a hypodermic needle, syringe, or both for the introduction of drugs or any other substance into or for the withdrawal of body fluids from the other person's body and the needle or syringe so used had been previously used by the HIV infected person for the introduction of drugs or any other substance into or for the withdrawal of body fluids from the HIV infected person's body and where that infected person does not disclose to the other person the fact of that infected person's being an HIV infected person prior to such use;

(3) Offers or consents to perform with another person an act of sexual intercourse for money without disclosing to that other person the fact of that infected person's being an HIV infected person prior to offering or consenting to perform that act of sexual intercourse;

(4) Solicits another person to perform or submit to an act of sodomy for money without disclosing to that other person the fact of that infected person's being an HIV infected person prior to soliciting that act of sodomy;
or

(5) Donates blood, blood products, other body fluids, or any body organ or body part without previously disclosing the fact of that infected person's being an HIV infected person to the person drawing the blood or blood products or the person or entity collecting or storing the other body fluids, body organ, or body part, is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than ten years

(d) A person who is an HIV infected person or hepatitis infected person and who, after obtaining knowledge of being infected with HIV or hepatitis, commits an assault with the intent to transmit HIV or hepatitis, using his or her body fluids (blood, semen, or vaginal secretions), saliva, urine, or feces upon:

(1) A peace officer while the peace officer is engaged in the performance of his or her official duties or on account of the peace officer's performance of his or her official duties, or

(2) A correctional officer while the correctional officer is engaged in the performance of his or her official duties or on account of the correctional officer's performance of his or her official duties is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five nor more than 20 years

HISTORY Code 1933, § 26-2910, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1988, p. 1799, § 3; Ga. L. 2003, p. 306, § 1

Idaho Statutes, Title 18, Chapter 9, 18-1915B, the Idaho Legislature,
<http://www3.state.id.us/idstat/TOC/idstTOC.html>

18-915B. PROPELLING BODILY FLUID OR WASTE AT CERTAIN PERSONS. Any person who is housed in a state, private or county correctional facility, work release center or labor camp, or who is being transported or supervised by a correctional officer or detention officer, irrespective of whether the person is a sentenced prisoner or a pretrial detainee, and who knowingly propels any bodily fluid or bodily waste at any detention officer, correctional officer, staff member, private contractor or employee of a county or state correctional facility, or authorized visitor to a county or state correctional facility, work release center or labor camp, or who knowingly introduces any bodily fluid or bodily waste into the food or drink of such officer, staff member, private contractor, employee or authorized visitor, shall be guilty of a felony punishable by imprisonment in a correctional facility for not more than five (5) years, and such sentence shall be served consecutively to any sentence currently served.

ILLINOIS COMPILED STATUTES ANNOTATED
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CHAPTER 720. CRIMINAL OFFENSES
CRIMINAL CODE
CRIMINAL CODE OF 1961
TITLE III. SPECIFIC OFFENSES
PART B. OFFENSES DIRECTED AGAINST THE PERSON
ARTICLE 12. BODILY HARM

720 ILCS 5/12-4 (2005)

§ 720 ILCS 5/12-4. Aggravated Battery

Sec. 12-4. Aggravated Battery. (a) A person who, in committing a battery, intentionally or knowingly causes great bodily harm, or permanent disability or disfigurement commits aggravated battery.

(b) In committing a battery, a person commits aggravated battery if he or she:

(1) Uses a deadly weapon other than by the discharge of a firearm;

(2) Is hooded, robed or masked, in such manner as to conceal his identity;

(3) Knows the individual harmed to be a teacher or other person employed in any school and such teacher or other employee is upon the grounds of a school or grounds adjacent thereto, or is in any part of a building used for school purposes;

(4) Knows the individual harmed to be a supervisor, director, instructor or other person employed in any park district and such supervisor, director, instructor or other employee is upon the grounds of the park or grounds adjacent thereto, or is in any part of a building used for park purposes;

(5) Knows the individual harmed to be a caseworker, investigator, or other person employed by the State Department of Public Aid, a County Department of Public Aid, or the Department of Human Services (acting as successor to the Illinois Department of Public Aid under the Department of Human Services Act [20 ILCS 1305/1-1 et seq.]) and such caseworker, investigator, or other person is upon the grounds of a public aid office or grounds adjacent thereto, or is in any part of a building used for public aid purposes, or upon the grounds of a home of a public aid applicant, recipient, or any other person being interviewed or investigated in the employee's discharge of his duties, or on grounds adjacent thereto, or is in any part of a building in which the applicant, recipient, or other such person resides or is located;

(6) Knows the individual harmed to be a peace officer, a community policing volunteer, a correctional institution employee, an employee of the Department of Human Services supervising or controlling sexually dangerous persons or sexually violent persons, or a fireman while such officer, volunteer, employee or fireman is engaged in the execution of any official duties including arrest or attempted arrest, or to prevent the officer, volunteer, employee or fireman from performing official duties, or in retaliation for the officer, volunteer, employee or fireman performing official duties, and the battery is committed other than by the discharge of a firearm;

(7) Knows the individual harmed to be an emergency medical technician -- ambulance, emergency medical technician -- intermediate, emergency medical technician -- paramedic, ambulance driver, other medical assistance, first aid personnel, or hospital personnel engaged in the performance of any of his or her official duties, or to prevent the emergency medical technician -- ambulance, emergency medical technician -- intermediate, emergency medical technician -- paramedic ambulance driver, other medical assistance, first aid personnel, or hospital personnel from performing official duties, or in retaliation for performing official duties;

(8) Is, or the person battered is, on or about a public way, public property or public place of accommodation or amusement.

(9) Knows the individual harmed to be the driver, operator, employee or passenger of any transportation facility or system engaged in the business of transportation of the public for hire and the individual assaulted is then performing in such capacity or then using such public transportation as a passenger or using any area of any description designated by the transportation facility or system as a vehicle boarding, departure, or transfer location;

(10) Knowingly and without legal justification and by any means causes bodily harm to an individual of 60 years of age or older;

(11) Knows the individual harmed is pregnant;

(12) Knows the individual harmed to be a judge whom the person intended to harm as a result of the judge's performance of his or her official duties as a judge;

(13) Knows the individual harmed to be an employee of the Illinois Department of Children and Family Services engaged in the performance of his authorized duties as such employee;

(14) Knows the individual harmed to be a person who is physically handicapped;

(15) Knowingly and without legal justification and by any means causes bodily harm to a merchant who detains the person for an alleged commission of retail theft under Section 16A-5 of this Code [720 ILCS 5/16A-5]. In this item (15), "merchant" has the meaning ascribed to it in Section 16A-2.4 of this Code [720 ILCS 5/16A-2.4];

(16) Is, or the person battered is, in any building or other structure used to provide shelter or other services to victims or to the dependent children of victims of domestic violence pursuant to the Illinois Domestic Violence Act of 1986 or the Domestic Violence Shelters Act [750 ILCS 60/101 et seq. or 20 ILCS 1310/0.01 et seq.], or the person battered is within 500 feet of such a building or other structure while going to or from such a building or other structure. "Domestic violence" has the meaning ascribed to it in Section 103 of the Illinois Domestic Violence Act of 1986 [750 ILCS 60/103]. "Building or other structure used to provide shelter" has the meaning ascribed to "shelter" in Section 1 of the Domestic Violence Shelters Act [20 ILCS 1310/1]; or

(17) Knows the individual harmed to be an employee of a police or sheriff's department engaged in the performance of his or her official duties as such employee.

For the purpose of paragraph (14) of subsection (b) of this Section, a physically handicapped person is a person who suffers from a permanent and disabling physical characteristic, resulting from disease, injury, functional disorder or congenital condition.

(c) A person who administers to an individual or causes him to take, without his consent or by threat or deception, and for other than medical purposes, any intoxicating, poisonous, stupefying, narcotic, anesthetic, or controlled substance commits aggravated battery.

(d) A person who knowingly gives to another person any food that contains any substance or object that is intended to cause physical injury if eaten, commits aggravated battery.

(d-3) A person commits aggravated battery when he or she knowingly and without lawful justification shines or flashes a laser gunsight or other laser device that is attached or affixed to a firearm, or used in concert with a firearm, so that the laser beam strikes upon or against the person of another.

(d-5) An inmate of a penal institution or a sexually dangerous person or a sexually violent person in the custody of the Department of Human Services who causes or attempts to cause a correctional employee of the penal institution or an employee of the Department of Human Services to come into contact with blood, seminal fluid, urine, or feces, by throwing, tossing, or expelling that fluid or material commits aggravated battery. For purposes of this subsection (d-5), "correctional employee" means a person who is employed by a penal institution.

(e) Sentence.

Aggravated battery is a Class 3 felony, except a violation of subsection (a) is a Class 2 felony when the person knows the individual harmed to be a peace officer engaged in the execution of any of his or her official duties, or the battery is to prevent the officer from performing his or her official duties, or in retaliation for the officer performing his or her official duties.

HISTORY: Source: P.A. 86-979, 86-980; 86-1028, 87-921, § 1; 87-1083, § 1; 88-45, § 2-57; 88-433, § 5; 89-507, § 90L-93; 90-115, § 5; 90-651, § 5; 90-735, § 5; 91-357, § 237; 91-488, § 5; 91-619, § 5; 91-672, § 5; 92-16, § 88; 92-516, § 5; 92-841, § 5; 92-865, § 5; 93-83, § 5.

BURNS INDIANA STATUTES ANNOTATED
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TITLE 35. CRIMINAL LAW AND PROCEDURE
ARTICLE 42. OFFENSES AGAINST THE PERSON
CHAPTER 2. BATTERY AND RELATED OFFENSES

Burns Ind. Code Ann. § 35-42-2-6 (2004)

LEXSEE 2004 Ind HEA 1437 -- See section 53.

§ 35-42-2-6. Battery by body waste

(a) As used in this section, "corrections officer" includes a person employed by:

- (1) the department of correction;
- (2) a law enforcement agency;
- (3) a county jail; or
- (4) a circuit, superior, county, probate, city, or town court.

(b) As used in this section, "human immunodeficiency virus (HIV)" includes acquired immune deficiency syndrome (AIDS) and AIDS related complex.

(c) A person who knowingly or intentionally in a rude, insolent, or angry manner places blood or another body fluid or waste on a law enforcement officer or a corrections officer identified as such and while engaged in the performance of official duties or coerces another person to place blood or another body fluid or waste on the law enforcement officer or corrections officer commits battery by body waste, a Class D felony. However, the offense is:

(1) a Class C felony if the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with:

- (A) hepatitis B,
- (B) HIV, or
- (C) tuberculosis.

(2) a Class B felony if

(A) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with hepatitis B and the offense results in the transmission of hepatitis B to the other person, or

(B) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person, and

(3) a Class A felony if

(A) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with HIV, and

(B) the offense results in the transmission of HIV to the other person.

(d) A person who knowingly or intentionally in a rude, an insolent, or an angry manner places human blood, semen, urine, or fecal waste on another person commits battery by body waste, a Class A misdemeanor. However, the offense is:

(1) a Class D felony if the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with:

(A) hepatitis B;

(B) HIV; or

(C) tuberculosis;

(2) a Class C felony if:

(A) the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with hepatitis B and the offense results in the transmission of hepatitis B to the other person; or

(B) the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) a Class B felony if:

(A) the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with HIV, and

(B) the offense results in the transmission of HIV to the other person.

HISTORY: P.L.298-1995, § 1; P.L.88-2002, § 1; P.L.85-2004, § 53.

2005 Iowa Code, 708.3B, Iowa General Assembly,
<http://www.legis.state.ia.us/>

708.3B Inmate assaults - bodily fluids or secretions.

A person who, while confined in a jail or in an institution or facility under the control of the department of corrections, commits any of the following acts commits a class "D" felony:

1. An assault, as defined under section 708.1 , upon an employee of the jail or institution or facility under the control of the department of corrections, which results in the employee's contact with blood, seminal fluid, urine, or feces.
2. An act which is intended to cause pain or injury or be insulting or offensive and which results in blood, seminal fluid, urine, or feces being cast or expelled upon an employee of the jail or institution or facility under the control of the department of corrections.

97 Acts, ch 79, §1

KENTUCKY REVISED STATUTES ANNOTATED
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TITLE I. KENTUCKY PENAL CODE
CHAPTER 508. ASSAULT AND RELATED OFFENSES

KRS § 508.025 (2004)

§ 508.025. Assault in the third degree

(1) A person is guilty of assault in the third degree when the actor:

(a) Recklessly, with a deadly weapon or dangerous instrument, or intentionally causes or attempts to cause physical injury to:

1. A state, county, city, or federal peace officer;
2. An employee of a detention facility, or state residential treatment facility or state staff secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender,
3. An employee of the Department for Community Based Services employed as a social worker to provide direct client services, if the event occurs while the worker is performing job-related duties;
4. A probation and parole officer;
5. A transportation officer appointed by a county fiscal court or legislative body of a consolidated local government, urban-county government, or charter government to transport inmates when the county jail or county correctional facility is closed while the transportation officer is performing job-related duties;
6. A public or private elementary or secondary school or school district classified or certified employee, school bus driver, or other school employee acting in the course and scope of the employee's employment, or
7. A public or private elementary or secondary school or school district volunteer acting in the course and scope of that person's volunteer service for the school or school district; or

(b) Being a person confined in a detention facility, or state residential treatment facility or state staff secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender, inflicts physical injury upon or throws or causes feces, or urine, or other bodily fluid to be thrown upon an employee of the facility.

(2) Assault in the third degree is a Class D felony

HISTORY: Enact Acts 1982, ch. 429, § 1, effective July 15, 1982; 1990, ch. 380, § 1, effective July 13, 1990; 1994, ch. 397, § 1, effective July 15, 1994; 1996, ch. 345, § 1, effective July 15, 1996; 2000, ch. 14, § 56, effective July 14, 2000; 2000, ch. 193, § 17, effective July 14, 2000; 2000, ch. 345, § 7, effective July 14, 2000; 2002, ch. 208, § 1, effective July 15, 2002; 2002, ch. 360, § 1, effective July 15, 2002.

LexisNexis Louisiana Annotated Statutes
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LOUISIANA REVISED STATUTES
TITLE 14. CRIMINAL LAW
CHAPTER 1. CRIMINAL CODE
PART 2. OFFENSES AGAINST THE PERSON
SUBPART C. RAPE AND SEXUAL BATTERY

La. R.S. 14:43.5

§ 14:43.5. Intentional exposure to AIDS virus

A. No person shall intentionally expose another to any acquired immunodeficiency syndrome (AIDS) virus through sexual contact without the knowing and lawful consent of the victim.

B. No person shall intentionally expose another to any acquired immunodeficiency syndrome (AIDS) virus through any means or contact without the knowing and lawful consent of the victim.

C. No person shall intentionally expose a police officer to any AIDS virus through any means or contact without the knowing and lawful consent of the police officer when the offender has reasonable grounds to believe the victim is a police officer acting in the performance of his duty.

D. For purposes of this Section, the following words have the following meanings:

(1) "Means or contact" is defined as spitting, biting, stabbing with an AIDS contaminated object, or throwing of blood or other bodily substances

(2) "Police officer" includes a commissioned police officer, sheriff, deputy sheriff, marshal, deputy marshal, correctional officer, constable, wildlife enforcement agent, and probation and parole officer.

E. (1) Whoever commits the crime of intentional exposure to AIDS virus shall be fined not more than five thousand dollars, imprisoned with or without hard labor for not more than ten years, or both.

(2) Whoever commits the crime of intentional exposure to AIDS virus against a police officer shall be fined not more than six thousand dollars, imprisoned with or without hard labor for not more than eleven years, or both.

HISTORY: Acts 1987, No. 653, § 1; Acts 1993, No. 411, § 1.

Code of Maryland, 3-205. Prison employee - Contact with bodily fluid, 2001 Matthew Bender & Company, Inc.,
<http://198.187.128.12/maryland/lpext.dll?f=templates&fn=fs-main.htm&2.0>

§ 3-205. Prison employee - Contact with bodily fluid.

(a) Prohibited - An inmate may not maliciously cause or attempt to cause an employee of a State correctional facility, a local correctional facility, or a sheriff's office, regardless of employment capacity, to come into contact with:

(1) seminal fluid, urine, or feces; or

(2) blood, if the contact with the blood is not the result of physical injury resulting from physical body contact between the inmate and the employee.

(b) Penalty.- An inmate who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$2,500 or both.

(c) Consecutive sentence.- A sentence imposed under this section shall be consecutive to any sentence that the inmate was serving at the time of the crime or that had been imposed but was not yet being served at the time of sentencing.

(d) Suspension of sentence prohibited.- A sentence imposed under this section may not be suspended.

[An. Code 1957, art. 27, § 12A-6(a), (b)-(d); 2002, ch. 26, § 2.]

LEXISNEXIS (R) MISSOURI ANNOTATED STATUTES

TITLE 38. CRIMES AND PUNISHMENT, PEACE OFFICERS AND PUBLIC DEFENDERS
CHAPTER 565. OFFENSES AGAINST THE PERSON

§ 565.092 R.S.Mo. (2004)

§ 565.092. Aggravated harassment of an employee—penalty

1. An inmate, patient or respondent is guilty of aggravated harassment of an employee when, with intent to harass, annoy, threaten or alarm a person in a facility whom the person knows or reasonably should know to be an employee of such facility or of the department of corrections or the department of mental health or to be an employee of any law enforcement agency, the person causes or attempts to cause such employee to come into contact with blood, seminal fluid, urine or feces, by throwing, tossing or expelling such fluid or material.

2. For the purposes of this section, "inmate" means an offender, as defined in *section 217.010, RSMo*, or any person incarcerated in a local detention facility. For the purposes of this section, "patient" means any person who is a patient in a facility operated by the department of mental health. For purposes of this section, "respondent" means a juvenile in a secure facility operated and maintained by the division of youth services. For purposes of this section, "facility" means a correctional facility or local correctional facility, hospital operated by the department of mental health or a secure facility operated by the division of youth services.

3. No person convicted and serving a sentence for the crime of aggravated harassment of an employee pursuant to the provisions of this section shall be eligible to participate in a work release program pursuant to *section 217.435, RSMo*.

4. Any person who violates the provisions of this section is guilty of a class A misdemeanor.

HISTORY. L. 1997 H.B. 820 § 1

Minnesota Statutes 2004, 609.2231 Assault in the fourth degree, Subdivision 3, Correctional employees; probation officers, Office of the Revisor of Statutes, State of Minnesota,
<http://www.leg.state.mn.us/leg/statutes.asp>

609 2231 Assault in the fourth degree.

Subd. 3. Correctional employees; probation officers.

Whoever commits either of the following acts against an employee of a correctional facility as defined in section 241.021, subdivision 1, paragraph (f), or against a probation officer or other qualified person employed in supervising offenders while the employee, officer, or person is engaged in the performance of a duty imposed by law, policy, or rule is guilty of a felony and may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than \$4,000, or both:

- (1) assaults the employee and inflicts demonstrable bodily harm; or
- (2) intentionally throws or otherwise transfers bodily fluids or feces at or onto the employee.

45-5-214. Assault with bodily fluid. (1) A person commits the offense of assault with a bodily fluid if the person purposely or knowingly causes one of the person's bodily fluids to make physical contact with a law enforcement officer or staff person of a correctional or detention facility:

(a) during or after an arrest for a criminal offense;

(b) while the person is incarcerated in or being transported to or from a state prison or a county, city, or regional jail or detention facility; or

(c) if the person is a minor, while the youth is detained in or being transported to or from a county, city, or regional jail or detention facility or a youth detention facility, secure detention facility, regional detention facility, short-term detention center, state youth correctional facility, or shelter care facility.

(2) A person convicted of the offense of assault with a bodily fluid shall be fined an amount not to exceed \$1,000 or incarcerated in a county jail or a state prison for a term not to exceed 1 year, or both.

(3) The youth court has jurisdiction of any violation of this section by a minor, unless the charge is filed in district court, in which case the district court has jurisdiction.

(4) As used in this section, "bodily fluid" means any bodily secretion, including but not limited to feces, urine, blood, and saliva.

History: En. Sec. 1, Ch. 388, L. 1999.

Nevada Revised Statutes, NRS212.189, Unlawful acts related to human excrement or bodily fluid,
Nevada Law Library,
<http://www.leg.state.nv.us/law1.cfm>

NRS 212.189 Unlawful acts related to human excrement or bodily fluid, penalty; investigation; testing for communicable diseases; plea bargaining prohibited.

1. Except as otherwise provided in subsection 9, a prisoner who is in lawful custody or confinement, other than residential confinement, shall not knowingly:

- (a) Store or stockpile any human excrement or bodily fluid;
- (b) Sell, supply or provide any human excrement or bodily fluid to any other person;
- (c) Buy, receive or acquire any human excrement or bodily fluid from any other person; or
- (d) Use, propel, discharge, spread or conceal, or cause to be used, propelled, discharged, spread or concealed, any human excrement or bodily fluid:

(1) With the intent to have the excrement or bodily fluid come into physical contact with any portion of the body of an officer or employee of a prison or any other person, whether or not such physical contact actually occurs; or

(2) Under circumstances in which the excrement or bodily fluid is reasonably likely to come into physical contact with any portion of the body of an officer or employee of a prison or any other person, whether or not such physical contact actually occurs.

2 Except as otherwise provided in subsection 3, if a prisoner violates any provision of subsection 1, the prisoner is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000.

3. If a prisoner violates any provision of paragraph (d) of subsection 1 and, at the time of the offense, the prisoner knew that any portion of the excrement or bodily fluid involved in the offense contained a communicable disease that causes or is reasonably likely to cause substantial bodily harm, whether or not the communicable disease was transmitted to a victim as a result of the offense, the prisoner is guilty of a category A felony and shall be punished by imprisonment in the state prison:

- (a) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or
- (b) For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served, and may be further punished by a fine of not more than \$50,000.

4 A sentence imposed upon a prisoner pursuant to subsection 2 or 3

- (a) Is not subject to suspension or the granting of probation, and
- (b) Must run consecutively after the prisoner has served any sentences imposed upon him for the offense or offenses for which the prisoner was in lawful custody or confinement when he violated the provisions of subsection 1.

5. In addition to any other penalty, the court shall order a prisoner who violates any provision of paragraph (d) of subsection 1 to reimburse the appropriate person or governmental body for the cost of any examinations or testing

- (a) Conducted pursuant to paragraphs (a) and (b) of subsection 7, or
- (b) Paid for pursuant to subparagraph (2) of paragraph (c) of subsection 7.

6 The warden, sheriff, administrator or other person responsible for administering a prison shall immediately and fully investigate any act described in subsection 1 that is reported or suspected to have been committed in the prison.

7. If there is probable cause to believe that an act described in paragraph (d) of subsection 1 has been committed in a prison:

(a) Each prisoner believed to have committed the act or to have been the bodily source of any portion of the excrement or bodily fluid involved in the act must submit to any appropriate examinations and testing to determine whether each such prisoner has any communicable disease.

(b) If possible, a sample of the excrement or bodily fluid involved in the act must be recovered and tested to determine whether any communicable disease is present in the excrement or bodily fluid.

(c) If the excrement or bodily fluid involved in the act came into physical contact with any portion of the body of an officer or employee of a prison or any other person:

(1) The results of any examinations or testing conducted pursuant to paragraphs (a) and (b) must be provided to each such officer, employee or other person; and

(2) For each such officer or employee, the person or governmental body operating the prison where the act was committed shall pay for any appropriate examinations and testing requested by the officer or employee to determine whether a communicable disease was transmitted to him as a result of the act.

(d) The results of the investigation conducted pursuant to subsection 6 and the results of any examinations or testing conducted pursuant to paragraphs (a) and (b) must be submitted to the district attorney of the county in which the act was committed or to the Office of the Attorney General for possible prosecution of each prisoner who committed the act.

8. If a prisoner is charged with committing an act described in paragraph (d) of subsection 1 and a victim or an intended victim of the act was an officer or employee of a prison, the prosecuting attorney shall not dismiss the charge in exchange for a plea of guilty or nolo contendere to a lesser charge or for any other reason unless the prosecuting attorney knows or it is obvious that the charge is not supported by probable cause or cannot be proved at the time of trial.

9. The provisions of this section do not apply to a prisoner who commits an act described in subsection 1 if the act

(a) Is otherwise lawful and is authorized by the warden, sheriff, administrator or other person responsible for administering the prison, or his designee, and the prisoner performs the act in accordance with the directions or instructions given to him by that person,

(b) Involves the discharge of human excrement or bodily fluid directly from the body of the prisoner and the discharge is the direct result of a temporary or permanent injury, disease or medical condition afflicting the prisoner that prevents the prisoner from having physical control over the discharge of his own excrement or bodily fluid, or

(c) Constitutes voluntary sexual conduct with another person in violation of the provisions of NRS 212.187

(Added to NRS by 1999, 2676, A 2003, 1485)

New Jersey Permanent Statutes, 2C:12-13 Throwing bodily fluid at certain law enforcement officers deemed aggravated assault; grading, sentence, New Jersey State Legislature,
<http://www.njleg.state.nj.us/>

2C:12-13 Throwing bodily fluid at certain law enforcement officers deemed aggravated assault; grading, sentence.

2.A person who throws a bodily fluid at a Department of Corrections employee, county corrections officer, juvenile corrections officer, State juvenile facility employee, juvenile detention staff member, probation officer, any sheriff, undersheriff or sheriff's officer or any municipal, county or State law enforcement officer while in the performance of his duties or otherwise purposely subjects such employee to contact with a bodily fluid commits an aggravated assault. If the victim suffers bodily injury, this shall be a crime of the third degree. Otherwise, this shall be a crime of the fourth degree. A term of imprisonment imposed for this offense shall run consecutively to any term of imprisonment currently being served and to any other term imposed for another offense committed at the time of the assault. Nothing herein shall be deemed to preclude, if the evidence so warrants, an indictment and conviction for a violation or attempted violation of chapter 11 of Title 2C of the New Jersey Statutes or subsection b. of N.J.S 2C:12-1 or any other provision of the criminal laws.

L.1997,c.182,s.2; amended 1999, c.429, 2003, c.283.

Consolidated Laws of New York, Penal Law 240.32, Aggravated harassment of an employee by an inmate, New York State Legislature,
<http://public.leginfo.state.ny.us/menugtf.cgi>

§ 240.32 Aggravated harassment of an employee by an inmate.

An inmate or respondent is guilty of aggravated harassment of an employee by an inmate when, with intent to harass, annoy, threaten or alarm a person in a facility whom he knows or reasonably should know to be an employee of such facility or the division of parole or the office of mental health, or a probation department, bureau or unit or a police officer, he causes or attempts to cause such employee to come into contact with blood, seminal fluid, urine or feces, by throwing, tossing or expelling such fluid or material.

For purposes of this section, "inmate" means an inmate or detainee in a correctional facility, local correctional facility or a hospital, as such term is defined in subdivision two of section four hundred of the correction law. For purposes of this section, "respondent" means a juvenile in a secure facility operated and maintained by the office of children and family services who is placed with or committed to the office of children and family services. For purposes of this section, "facility" means a correctional facility or local correctional facility, hospital, as such term is defined in subdivision two of section four hundred of the correction law, or a secure facility operated and maintained by the office of children and family services.

Aggravated harassment of an employee by an inmate is a class E felony.

Oregon Revised Statutes 2003, 163.165 Assault in the third degree, The Oregon Legislative Counsel
Committee,
<http://www.leg.state.or.us/ors/>

163.165 Assault in the third degree.

(1) A person commits the crime of assault in the third degree if the person:

- (a) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon;
- (b) Recklessly causes serious physical injury to another under circumstances manifesting extreme indifference to the value of human life;
- (c) Recklessly causes physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life;
- (d) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a public transit vehicle while the operator is in control of or operating the vehicle. As used in this paragraph, "public transit vehicle" has the meaning given that term in ORS 166.116;
- (e) While being aided by another person actually present, intentionally or knowingly causes physical injury to another;
- (f) While committed to a youth correction facility, intentionally or knowingly causes physical injury to another knowing the other person is a staff member of a youth correction facility while the other person is acting in the course of official duty;
- (g) Intentionally, knowingly or recklessly causes physical injury to an emergency medical technician or paramedic, as those terms are defined in ORS 682.025, while the technician or paramedic is performing official duties;
- (h) Being at least 18 years of age, intentionally or knowingly causes physical injury to a child 10 years of age or younger;
- (i) Knowing the other person is a staff member, intentionally or knowingly propels any dangerous substance at the staff member while the staff member is acting in the course of official duty or as a result of the staff member's official duties; or
- (j) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a taxi while the operator is in control of the taxi.

(2) Assault in the third degree is a Class C felony. When a person is convicted of violating subsection (1)(i) of this section, in addition to any other sentence it may impose, the court shall impose a term of incarceration in a state correction facility.

(3) As used in this section:

- (a) "Dangerous substance" includes, but is not limited to, blood, urine, saliva, semen and feces.
- (b) "Staff member" means:
 - (A) A corrections officer as defined in ORS 181.610, a youth correction officer, a Department of Corrections or Oregon Youth Authority staff member or a person employed pursuant to a contract with the department or youth authority to work with, or in the vicinity of, inmates or youth offenders; and
 - (B) A volunteer authorized by the department, youth authority or other entity in charge of a corrections facility to work with, or in the vicinity of, inmates or youth offenders.

(c) "Youth correction facility" has the meaning given that term in ORS 162.135 [1971 c 743 §92, 1977 c 297 §3, 1991 c 475 §1, 1991 c 564 §1, 1995 c 738 §1, 1997 c 249 §49, 1999 c 1011 §1, 2001 c 104 §50, 2001 c 830 §1, 2001 c 851 §4]

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

PENNSYLVANIA CONSOLIDATED STATUTES
TITLE 18. CRIMES AND OFFENSES
PART II. DEFINITION OF SPECIFIC OFFENSES
ARTICLE B. OFFENSES INVOLVING DANGER TO THE PERSON
CHAPTER 27. ASSAULT

18 Pa.C.S. § 2703.1 (2004)

§ 2703.1. Aggravated harassment by prisoner

A person who is confined in or committed to any local or county detention facility, jail or prison or any State penal or correctional institution or other State penal or correctional facility located in this Commonwealth commits a felony of the third degree if he, while so confined or committed or while undergoing transportation to or from such an institution or facility in or to which he was confined or committed, intentionally or knowingly causes or attempts to cause another to come into contact with blood, seminal fluid, saliva, urine or feces by throwing, tossing, spitting or expelling such fluid or material.

State of Rhode Island General Laws, 11-5-8.1 Assault with bodily fluid, State of Rhode Island,
<http://www.ri.gov/browse.php?choice=showpage&pcat=14&mcats=1>

§ 11-5-8.1 Assault with bodily fluid. – Any person incarcerated or in custody at a state correctional facility including the juvenile training school who shall knowingly and willfully commit an assault upon a correctional officer or any other employee of the department of corrections with any bodily fluid, while the employee is engaged in the performance of his or her duty, shall be imprisoned not exceeding five (5) years, or fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), or both.

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)
TITLE 24. CORRECTIONS, JAILS, PROBATIONS, PAROLES AND PARDONS
CHAPTER 13. PRISONERS GENERALLY
ARTICLE 5. OFFENSES

S.C. Code Ann. § 24-13-470 (2004)

§ 24-13-470. Throwing of body fluids on correctional facility employees and certain others; penalty; blood borne disease testing.

(A) An inmate, detainee, a person taken into custody, or a person under arrest who attempts to throw or throws body fluids including, but not limited to, urine, blood, feces, vomit, saliva, or semen on an employee of a state or local correctional facility, a state or local law enforcement officer, a visitor of a correctional facility, or any other person authorized to be present in a correctional facility in an official capacity is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years. A sentence under this provision must be served consecutively to any other sentence the inmate is serving. This section shall not prohibit the prosecution of an inmate for a more serious offense if the inmate is determined to be HIV-positive or has another disease that may be transmitted through body fluids.

(B) A person accused of a crime contained in this section may be tested for a blood borne disease within seventy-two hours of the crime if a health care professional believes that exposure to the accused person's body fluid may pose a significant health risk to a victim of the crime.

(C) This section does not apply to a person who is a "patient" as defined in Section 44-23-10(3).

(D) For purposes of this section, "local correctional facility" includes, but is not limited to, a local detention facility.

HISTORY: Added by 1997 Act No. 136, § 6, eff June 11, 1997. Amended by 2002 Act No. 238, § 1, eff May 1, 2002; 2003 Act No. 18, § 1, eff April 21, 2003.

South Dakota Codified Laws, 22-18-26.1, South Dakota Code Commission,
<http://legis.state.sd.us/statutes/index.cfm>

22-18-26.1. Intentionally causing contact with bodily fluids or human waste—Assault upon law enforcement, court services, or emergency personnel. Any person who, with the intent to assault, throws, smears, or causes human blood, emesis, mucus, semen, excrement, or human waste to come in contact with a law enforcement officer as defined in subdivision 22-1-2(22), a firefighter, a court services officer or designee, or an emergency medical technician, while performing official duties or actions, is guilty of a Class 1 misdemeanor.

Source: SL 2002, ch 107, § 1; SL 2003, ch 124, § 1.

TEXAS STATUTES AND CODES ANNOTATED BY LEXISNEXIS(R)

PENAL CODE
TITLE 5. OFFENSES AGAINST THE PERSON
CHAPTER 22. ASSAULTIVE OFFENSES

Tex. Penal Code § 22.11 (2004)

§ 22.11. Harassment by Persons in Certain Correctional Facilities

(a) A person commits an offense if the person, while imprisoned or confined in a correctional or detention facility and with intent to harass, alarm, or annoy another person, causes the other person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of the actor, any other person, or an animal.

(b) An offense under this section is a felony of the third degree.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section.

(d) In this section, "correctional or detention facility" means:

(1) a secure correctional facility; or

(2) a "secure correctional facility" or a "secure detention facility" as defined by *Section 51.02, Family Code*, operated by or under contract with a juvenile board or the Texas Youth Commission or any other facility operated by or under contract with that commission.

HISTORY: Stats. 1999 76th Leg. Sess. Ch. 335, effective September 1, 1999; Stats. 2003 78th Leg. Sess. Chs. 457, 1006, effective September 1, 2003.

Hold it right there, gasser!

Among the new laws proposed in Juneau as the Legislature begins its session is a measure that would make spitting in a peace officer's face, or throwing urine on them, a misdemeanor punishable by 60 days in jail. Other unseemly assaults are also covered by the proposed law, which is sponsored by state representative Bob Lynn, a South Anchorage Republican.

Lynn said Alaska correctional officers came to him looking for a way to head off this form of assault, which is more common behind bars than on the streets. "Currently, the penalty for a prisoner who throws a bodily fluid at a guard - and you'll have to use your imagination on what bodily fluids are - is the same as for shoplifting a Pet Rock at Wal-Mart," said Lynn.

Online prison slang dictionaries call this practice "gassing" and media reports from Outside indicate that it can go far beyond the occasional loogie in the eye. Inmates have been known to save fecal matter and/or urine in a cup or article of clothing and then douse guards with it if they approach the inmate's cell.

The Alaska Department of Corrections doesn't keep track of gassing incidents, spokesman Richard Schmitz said, but they are aware of the problem. The Alaska Correctional Officers Association, the union representing prison guards, supports Lynn's bill. ACOA issued a press release January 9 that said correctional officers "no more want to be spit on at their job than another person would at their job."

A report prepared by Lynn's office found at least 26 states make gassing a crime and 19 states classify it as a felony. The report also shows four states rewrote their anti-gassing laws since 1999. South Dakota included "emesis" - that's Latin for "puke" - in its list of offensive bodily substances.

Lynn's bill, if passed, would create a new Class A misdemeanor under Alaska's harassment statutes. It would apply to anyone "gassing" any corrections officer, police officer or emergency responder in the line of duty.

Told that Minnesota, the state that brought you Walter Mondale, allows gassers to be sentenced up to five years, Lynn said he now wants to make his bill even tougher. "We're going with advice that we got from the legal-eagles around (the capitol), but if I can find a way to amend it in committee, I will."

- Scott Christiansen

The Daily Star

Print Story

11/08/05

Man pleads guilty to throwing blood on prison officer

By Patricia Breakey

Delhi News Bureau

Story text size

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DELHI — A Hancock man pleaded guilty in Delaware County Court on Monday to first-degree promoting prison contraband and aggravated harassment of an employee by an inmate.

Steven J. Caiati, 28, of Hancock agreed to a plea bargain on the two charges, which didn't include other outstanding charges pending against him.

Delaware County District Attorney Richard Northrup said Caiati took a plastic razor apart and used the blade to cut himself June 29.

He was being held in jail on first-degree criminal contempt charges.

Caiati admitted using a razor blade to slit one of his wrists and throwing blood on Sgt. John Lehmann, a corrections officer.

"Instead of shaving with the razor, I took the blade out of it and cut my wrist," Caiati said. "After I cut my wrist, they decided to try to help me."

Caiati indicated that he flipped his wrist and added that he did it "to make my blood go up so they would stay back."

Delaware County Judge Carl Becker sentenced Caiati to two to four years in prison on each count, to run concurrently, and issued an order of protection on Lehmann's behalf.

"I would, in all likelihood, have sentenced you to more if this had gone to trial," Becker said. "This is the most dangerous activity that an inmate can take part in. Throwing blood or other bodily fluids is something corrections officers fear more than a physical confrontation."

In other court cases:

- Sherrie L. White, 48, of Hancock pleaded innocent to two counts of driving while intoxicated and failure to keep right. The charges stem from an incident in Deposit on June 12.

White was released on her own recognizance, and her trial was scheduled to begin March 27.

- William T. Brybag, 20, of Fleischmanns pleaded innocent to two counts of third-degree criminal sale of a controlled substance. The charges stem from an incident in Fleischmanns on July 26 in which Brybag allegedly sold cocaine.

Brybag was returned to jail on \$10,000 bail. His trial is scheduled for March 27.

- Scott Mattice, 29, of Grand Gorge pleaded innocent to two counts of driving while intoxicated, resisting arrest, reckless driving, leaving the scene of a property damage accident, moving from

Man pleads guilty to throwing blood on prison officer

Page 2 of 2

lane unsafely, no seat belt and uninspected vehicle. The charges stem from an incident in Stamford on Aug. 5.

Mattice was released on his own recognizance. His trial is scheduled for March 27.



ENQUIRER LOCAL NEWS COVERAGE

Saturday, January 17, 1998

LCI inmate guilty in urine attack

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BY KYM LIEBLER
The Cincinnati Enquirer

LEBANON - A Lebanon Correctional Institution (LCI) inmate Friday became the first Ohio prisoner convicted under a new state law that prohibits throwing bodily substances inside prisons.

A Warren County Common Pleas Court jury deliberated 90 minutes before finding Thomas Blackmon, 48, guilty of harassment by an inmate for squirting urine on LCI supervisor Richard Huggins June 30.

Mr. Blackmon received the maximum sentence, one year. The law was adopted June 11 after corrections officers complained inmates used body fluids against them.

In September, Mr. Blackmon was the first inmate in Ohio charged with the offense.

"I think a lot of prison administrators around the state are paying close attention to this case," said Assistant County Prosecutor Jim Beaton. "It was a test case."

Mr. Blackmon will serve his year after he serves 40-65 years for his role in the 1993 uprising at Southern Ohio Correctional Facility in Lucasville.

"No reaction," Mr. Blackmon said after hearing the verdict. "I'm already doing 40 to 65 years. So what it means is that instead of being 112 when I get out, I'll be 113."

Mr. Huggins, now inspector of institutions at LCI, was relieved. "I hope this sends a message to all inmates that corrections staff are not fair game," Mr. Huggins said.

The jury was apparently unswayed by testimony from Mr. Blackmon and four inmates from the L cell block, the most heavily secured section at LCI.

The inmates, all of whom were convicted in the Lucasville incident, testified the liquid Mr. Blackmon squirted on Mr. Huggins was a concoction of sour milk and eggs, not urine. They said the mixture is used to keep mice and rats from cells.

Paul Boggs, a chemist with the Ohio State Highway Patrol, testified the liquid was urine.

Mr. Blackmon took the stand and said he squirted Mr. Huggins so he could be transferred to another cell. He was unhappy because his cell's toilet was clogged and he was forced to use a bedpan.

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State of Rhode Island
DEPARTMENT OF THE ATTORNEY GENERAL

Pawtucket man sentenced to 30 years, with 7 to serve at the ACI

Release date: 2005-04-08

Superior Court Associate Justice Robert D. Krause today sentenced Oliver Lyons, 55, 92 Bates Street, Pawtucket, to five years to serve at the Adult Correctional Institution for a June 13, 2002 felony assault with bodily fluids against a correctional officer. Because the crime was his third felony, Judge Krause sentenced Lyons to 25 years, with two years to serve at the ACI and 23 years suspended with probation. Under the terms imposed, the sentences are to be served consecutively, with the five years to serve on felony assault also to be served consecutively to the sentence Lyons is already serving at the ACI.

A Providence County Superior Court jury deliberated for two hours before finding Lyons guilty of the felony assault charge on February 10, 2005. Special Assistant Attorney General Ronald Gendron prosecuted the case for the State. Gendron presented evidence during the trial that when Correctional Officer Robert Dennett opened the trap on Lyons' cell door at the ACI to retrieve his lunch trash on June 13, 2002, Lyons threw a cupful of liquid through the trap door, striking Dennett on his shirt, pants, and face. Dennett, and other Correctional Officers who witnessed the incident immediately smelled urine and feces on Dennett's uniform. Lyons then proceeded to swear at, and taunt, Dennett. Gendron also presented evidence that Lyons had received more than 400 reprimands for problem behavior during four years as an ACI inmate. Lyons was in a cell in a high security area of the ACI when he assaulted Dennett.

During today's sentencing, Lyons engaged in profanity to lash out against prison guards, police, and the judicial system. Judge Krause had Lyons removed from the courtroom, after Lyons ignored the Judge's instructions that he stop talking.

Attorney General Patrick C. Lynch said, "It's important for all Rhode Islanders to know what correctional officers are up against. There's a reason it's called the toughest beat in the state. As this incident demonstrates, correctional officers confront stressful, demanding, and threatening situations on a daily basis. They deserve, and have, our respect, and our appreciation."

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Department of The Attorney General

Online: www.riag.state.ri.gov

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NWAnews.com Arkansas Democrat & Gazette

NORTHWEST ARKANSAS EDITION

Prisons crack down on 'dashing'

BY TRACI SHURLEY

Posted on Saturday, November 6, 2004

URL: <http://www.nwanews.com/adg/News/97969/>

State prison inmates who use their own bodily fluids to harass guards risk facing a punishment more severe than losing exercise or library privileges; they could end up behind bars for **additional years**.

That's the message prison officials hope to send with the first-ever conviction this week of a state prison inmate charged with two felony counts for throwing urine and feces at a guard twice in October 2003.

Izard County Circuit Judge Tim Weaver sentenced Grady Newingham, an inmate already serving a 15-year sentence for a rape conviction, to two more years in prison for two counts of aggravated assault on a correctional facility employee.

He was charged under a law that makes it a class D felony to throw blood, urine, feces or seminal fluid at a guard. It was first passed by the Arkansas Legislature in 1997 and the wording of the statute was refined during the 2003 legislative session to make it less vague, prison system officials said. "It is a real problem," Dina Tyler, an Arkansas Department of Correction spokesman said of the practice guards refer to as "dashing." "We think that by being able to prosecute it, it will drop the incident rate because an inmate might think twice if they know they can get more time."

Besides the health implications of having potentially contaminated fluids thrown at guards, it makes their already tough jobs even more uncomfortable, she said. With a turnover rate of almost 33 percent, Arkansas prison officials face a constant struggle to keep qualified staff because of low pay and stressful work conditions. The starting salary for a correctional officer is just over \$23,000 a year. "Their job is already hard enough, and this makes it even more difficult," Tyler said of the department's personnel. "No one wants this done to them, and there needs to be a penalty to it beyond just a disciplinary [infraction], and that's what we have done."

The two incidents that led to the charges against the 24-year-old Newingham happened on Oct. 10 and Oct. 29, 2003, at the North Central Unit in Calico Rock.

Both times, Newingham used a cup to dip urine and, the second time, urine mixed with feces, out of his cell toilet. Then, he flung what was in the cup through the bars of his cell, hitting a guard, Tyler said.

Prison officials believe Newingham might have been trying to get a move to the Tucker Maximum Security Unit in Jefferson County as punishment. Instead of a move to Tucker, he was sent to the Varner SuperMax Unit near Grady in November 2003. He remains there and, according to his records, hasn't thrown any bodily fluids at a guard

since, Tyler said.

Maj. Shawn Smith of the Pulaski County jail said his facility is aware of the felony statute, and administrators there have used it to gain convictions. "It certainly is a deterrent to some people.... They may not have realized it was a felony and once they do, they don't do it again," he said.

Though the prison department didn't use the "dashing" law — Ark. Code 5-13-211 — for the first time until 2003, officials say they doubt Newingham's case will be the last.

In 2005, prison officials plan to ask legislators to allow Correction Department attorneys to act as prosecutors in cases against inmates charged for crimes committed inside a correctional institution.

That way, Tyler said, crimes against guards and other inmates can be handled without burdening already busy local prosecuting attorneys.

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Contact webmaster@nwanews.com

News

Inmate convicted of throwing feces at officer

By SARA BONISTEEL
Star-Gazette

ELMIRA -- A Chemung County Court jury on Thursday found a 21-year-old inmate at Southport Correctional Facility guilty of intentionally throwing feces on a correction officer. Conceptualization Gibbs, 21, was found guilty of one count of felonious aggravated harassment of a correctional employee by an inmate, according to Chemung County District Attorney John Trice.

In December 1999, Gibbs threw feces at Correction Officer William Painter, Trice said. Another correction officer and an inmate were also hit.

"Honestly, I can say for the first time in my career that I sincerely believe the jury convicted an innocent man," said Richard W. Rich Jr., Gibbs' public defender. "He's not guilty as far as I'm concerned."

The defense contended that Gibbs did not intentionally hit the officer, and the physical evidence proved that, Rich said.

"The physical evidence is quite clear that he threw on another inmate and a small amount of splash landed on the correction officer," Rich said.

Gibbs, who will be sentenced April 2, was charged under the 1996 state law that makes it a felony for an inmate to throw bodily fluids -- blood, urine, feces and semen -- at prison staff. It is not illegal for an inmate to throw feces at another inmate.

The Chemung County district attorney's office prosecuted the state's first successful conviction of an inmate under the law in 1998.

Roger Stokes, a then 38-year-old inmate at Southport Correctional Facility, was convicted of squirting a mixture of feces and urine on Virginia Livermore, a prison counselor, in 1997.

"Since it became a felony, it's slowed down a lot, but it's still happening," said John Winant, chief steward of the Southport Correctional Facility.

"We were becoming victimized by the inmates," he said. "We had no power as far as control of the situation."

Winant said with the rising incidences of diseases such as tuberculosis and hepatitis B in prisons, the deterrent also protects prison employees' health.

Gibbs faces three to five years in prison in addition to the three- to nine-year sentence he is already serving for a second-degree robbery conviction in 1995.

But Thursday's conviction may not be the end of Gibbs' legal troubles.

"There may be assault charges coming out of what he (allegedly) did during trial," Trice said.

After the jury left court Wednesday, Gibbs got into a scuffle in a room adjoining the courtroom and allegedly assaulted the two correction officers escorting him back to the correctional facility, Trice said.

"Mr. Gibbs alleged earlier that one of the officers threatened him, and he refused to return to the facility under their transport," Rich said.

One of the unidentified officers was taken to the hospital, where he was treated for his injuries and released, Winant said.

State police are investigating the charges, Trice said.

Rich said he plans to appeal the jury's decision.

Death row guards facing escalating dangers

Tuesday, May 8, 2001

SAN QUENTIN, CALIF. -- Each time the gates clank shut behind him, prison guard Robert Trono enters a violent realm of bitter men with nothing left to lose.

The 39-year-old sergeant works in a cramped concrete cellblock that houses 85 killers awaiting execution. It is a place where riot gear, stab-proof vests, biohazard body suits and fear are standard issue.

Trono helps oversee inmates known as the Grade-B condemned, the most dangerous of San Quentin prison's 580 death row prisoners. Singled out for their unruly behavior and gang leadership roles, isolated in a three-story building called the Adjustment Center, they are waging an organized behind-bars war against San Quentin's guards and staff.

Over the last 18 months, officials say, Grade-B inmates have committed 67 attacks, triple the rate of only a few years ago. They include one attempted stabbing, 15 kicks and five slashings with prison-made knives and razors.

One convict sliced an officer's wrists and hands when he reached into the inmate's cell to deliver a food tray. And in five other incidents, small arrows fired from makeshift blowguns have stuck in the arms, necks and faces of guards who were not wearing protective shields.

"Walking those cellblocks requires every bit of your attention, every moment of the day," said Trono, a cautious, compact man. "There's no room to breathe a sigh of relief until you're walking out those doors."

What Trono and others dread most are "gassings," when prisoners hurl cups filled with feces and urine or even infected blood at the faces of guards. Prison officials say 41 gassing attacks have taken place at the Adjustment Center since 1999, requiring officers to be tested for HIV and hepatitis C.

"Being gassed turns you into a different person," said Tony Jones, president of San Quentin's 800-member correctional officers union. "It's the most disgusting thing you can ever imagine. The first time it happened to me, the stuff got into my eyes and ears. I took 15 showers that day and I still couldn't get clean."

Spring 1996

New York's Pataki Promises Action on Inmate "Anti-Thrower" Bill

Gov. George Pataki, in his first address before members of AFSCME Council 82, promised action this year on a union-sponsored bill to crack down on inmates who toss bodily fluids on corrections officers.

Speaking at Council 82's annual political action conference on February 28 in Albany, Pataki proposed a new crime, "aggravated assault upon an employee of a correction facility or a parole officer," which would subject the thrower to a Class D felony.

Inmates sentenced under the terms of the legislation would have to serve the time consecutively - after their existing sentence.

In 1995 alone, there were 218 reported incidents of inmates throwing bodily fluids at COs in New York's prison system.

"Inmates, I'm told, call it defecation education," Pataki told the union activists at the Council 82 conference. "I call it a felony, and one that should be punishable by consecutive time."

Pataki's words were greeted with a standing ovation from the assembled union leaders. Eliot Seide, Council 82 administrator, said the union will now work to reconcile differences between the Pataki proposal and a similar bill offered by the Democrats in the Assembly. "This legislation is long overdue," said Seide. "This is the year to get it done."

Seide also pointed out that, once a bill becomes law, the union must carefully monitor its application by district attorneys, since some county prosecutors have been remiss in prosecuting prison crimes to the full extent of the statute. Therefore, prohibitions against plea bargaining will be an important part of the legislative negotiations.

boston.com

THIS STORY HAS BEEN FORMATTED FOR EASY PRINTING

Prison guards seek protection from fluids

AP Associated Press

May 4, 2005

MONTPELIER, Vt. --Vermont prisons do a good job at keeping knives and other weapons away from inmates. What they can't take away from offenders are their own bodily fluids.

Urinating in a corrections guard's ice tea and throwing feces at the officers are the types of offenses that guards and prison administrators alike say should be punished more severely in Vermont.

The House Judiciary Committee is discussing whether to make such acts a specific crime after prosecutors said the best they can do is charge an inmate with disorderly conduct, a misdemeanor with a sentence of 60 days.

"For the officers working to have this happen to them in front of potentially 49 other inmates and staff, it demoralizes them on the spot," said Dominic Damato, administrative supervisor at the Southern State Correctional Facility in Springfield.

Assault with bodily fluids poses a health risk for the employees because of the potential for spreading diseases such as hepatitis or AIDS, Damato said. It also makes retention of prison guards a difficult task, he said.

Dave Bellini, a 27-year Corrections employee, said being hit with bodily fluids is worse than being punched. "I've been spit at. It's degrading. It's humiliating," he said.

Corrections staff can discipline inmates who misbehave, such as putting them in segregation, denying privileges and not recommending them for parole, said John Perry, planning director for the Corrections Department. But many inmates who do this sort of thing are in segregation, and sanctions have little or no impact.

Corrections Commissioner Rob Hofmann said the department is looking at new ways of disciplining inmates for unacceptable behavior, including the possibility of feeding them a "nutrition loaf" instead of the traditional meal. The loaf would provide all the nutrition required without the flavor. "It would encourage them to change their behavior," Hofmann said.

Information from The Burlington Free Press.

<http://www.burlingtonfreepress.com> ■

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RELEVANT STATUTES, HB 343

Sec. 11.41.260. Stalking in the first degree.

(a) A person commits the crime of stalking in the first degree if the person violates AS 11.41.270 and

(1) the actions constituting the offense are in violation of an order issued or filed under AS 18.66.100 - 18.66.180 or issued under former AS 25.35.010 (b) or 25.35.020;

(2) the actions constituting the offense are in violation of a condition of probation, release before trial, release after conviction, or parole;

(3) the victim is under 16 years of age;

(4) at any time during the course of conduct constituting the offense, the defendant possessed a deadly weapon;

(5) the defendant has been previously convicted of a crime under this section, AS 11.41.270, or AS 11.56.740, or a law or ordinance of this or another jurisdiction with elements similar to a crime under this section, AS 11.41.270, or AS 11.56.740; or

(6) the defendant has been previously convicted of a crime, or an attempt or solicitation to commit a crime, under (A) AS 11.41.100 - 11.41.250, 11.41.300 - 11.41.460, AS 11.56.807, 11.56.810, AS 11.61.120, or (B) a law or an ordinance of this or another jurisdiction with elements similar to a crime, or an attempt or solicitation to commit a crime, under AS 11.41.100 - 11.41.250, 11.41.300 - 11.41.460, AS 11.56.807, 11.56.810, or AS 11.61.120, involving the same victim as the present offense.

(b) In this section, "course of conduct" and "victim" have the meanings given in AS 11.41.270 (b).

(c) Stalking in the first degree is a class C felony.

Sec. 11.61.120. Harassment.

(a) A person commits the crime of harassment if, with intent to harass or annoy another person, that person

(1) insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response;

(2) telephones another and fails to terminate the connection with intent to impair the ability of that person to place or receive telephone calls;

(3) makes repeated telephone calls at extremely inconvenient hours;

(4) makes an anonymous or obscene telephone call, an obscene electronic communication, or a telephone call or electronic communication that threatens physical injury or sexual contact; or

(5) subjects another person to offensive physical contact.

(b) Harassment is a class B misdemeanor.

Sec. 12.55.135. Sentences of imprisonment for misdemeanors.

(a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year.

(b) A defendant convicted of a class B misdemeanor may be sentenced to a definite term of imprisonment of not more than 90 days unless otherwise specified in the provision of law defining the offense.

(c) A defendant convicted of assault in the fourth degree that is a crime involving domestic violence committed in violation of the provisions of an order issued or filed under AS 12.30.027 or AS 18.66.100 - 18.66.180 and not subject to sentencing under (g) of this section shall be sentenced to a minimum term of imprisonment of 20 days.

(d) A defendant convicted of assault in the fourth degree who knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the assault shall be sentenced to a minimum term of imprisonment of

(1) 60 days if the defendant violated AS 11.41.230 (a)(1) or (2);

(2) 30 days if the defendant violated AS 11.41.230 (a)(3).

(e) If a defendant is sentenced under (c), (d), or (h) of this section,

(1) execution of sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served;

(2) imposition of a sentence may not be suspended except upon condition that the defendant be imprisoned for no less than the minimum term of imprisonment provided in the section; and

(3) the minimum term of imprisonment may not otherwise be reduced.

(f) A defendant convicted of vehicle theft in the second degree in violation of AS 11.46.365 (a)(1) shall be sentenced to a definite term of imprisonment of at least 72 hours but not more than one year.

(g) A defendant convicted of assault in the fourth degree that is a crime involving domestic violence shall be sentenced to a minimum term of imprisonment of

(1) 30 days if the defendant has been previously convicted of a crime against a person or a crime involving domestic violence;

(2) 60 days if the defendant has been previously convicted two or more times of a crime against a person or a crime involving domestic violence, or a combination of those crimes.

(h) A defendant convicted of failure to register as a sex offender or child kidnapper in the second degree under AS 11.56.840 shall be sentenced to a minimum term of imprisonment of 35 days.

(i) If a defendant is sentenced under (g) of this section,

(1) execution of sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served;

(2) imposition of sentence may not be suspended;

(3) the minimum term of imprisonment may not otherwise be reduced.

(j) In this section,

(1) "crime against a person" means a crime under AS 11.41, or a crime in this or another jurisdiction having elements similar to those of a crime under AS 11.41;

(2) "crime involving domestic violence" has the meaning given in AS 18.66.990.

Sec. 11.41.230. Assault in the fourth degree.

(a) A person commits the crime of assault in the fourth degree if

(1) that person recklessly causes physical injury to another person;

(2) with criminal negligence that person causes physical injury to another person by means of a dangerous instrument; or

(3) by words or other conduct that person recklessly places another person in fear of imminent physical injury.

(b) Assault in the fourth degree is a class A misdemeanor.

Sec. 11.81.250. Classification of offenses.

(a) For purposes of sentencing under AS 12.55, all offenses defined in this title, except murder in the first and second degree, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, are classified on the basis of their seriousness, according to the type of injury characteristically caused or risked by commission of the offense and the culpability of the offender. Except for murder in the first and second degree, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, the offenses in this title are classified into the following categories:

(1) class A felonies, which characteristically involve conduct resulting in serious physical injury or a substantial risk of serious physical injury to a person;

(2) class B felonies, which characteristically involve conduct resulting in less severe violence against a person than class A felonies, aggravated offenses against property interests, or aggravated offenses against public administration or order;

(3) class C felonies, which characteristically involve conduct serious enough to deserve felony classification but not serious enough to be classified as A or B felonies;

(4) class A misdemeanors, which characteristically involve less severe violence against a person, less serious offenses against property interests, less serious offenses against public administration or order, or less serious offenses against public health and decency than felonies;

(5) class B misdemeanors, which characteristically involve a minor risk of physical injury to a person, minor offenses against property interests, minor offenses against public administration or order, or minor offenses against public health and decency;

(6) violations, which characteristically involve conduct inappropriate to an orderly society but which do not denote criminality in their commission.

(b) The classification of each felony defined in this title, except murder in the first and second degree, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, is designated in the section defining it. A felony under Alaska law defined outside this title for which no penalty is specifically provided is a class C felony.

(c) The classification of each misdemeanor defined in this title is designated in the section defining it. A misdemeanor under Alaska law defined outside this title for which no penalty is provided is a class A misdemeanor.



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January 25, 2006

Representative Bob Lynn
716 W. 4th Avenue
Anchorage, AK 99501-2133

Dear Representative Lynn:

Just a short note to let you know that I'm both highly appreciative- and supportive- of your efforts regarding **HB343**, which proposes more realistic levels of punishment for Peace Officers, Firefighters, and Correctional Officers who are assaulted with bodily fluids.

As your position-paper states, these type of assaults are both degrading, as well as potentially deadly. Being spit upon, having blood or feces flung at you, etc. should never be considered "just part of our job;" those offenders who commit such acts of violence should be punished at the felony level.

On behalf of the forty-two sworn police officers of the Fairbanks Police Department, we thank you for your advocacy on our behalf.

Sincerely,

A handwritten signature in black ink that reads "Daniel P. Hoffman".

Daniel P. Hoffman, Chief
Fairbanks Police Department



Alaska Association of Chiefs of Police

January 24, 2006

Representative Bob Lynn
State Capitol, Room 415
Juneau, AK 99801-1182

Dear Representative Lynn,

Reference: House Bill 343

I would like to take this opportunity to provide my unequivocal support of this House Bill.

The act of someone throwing bodily fluids at any individual is not only repulsive, but should have a penalty attached to it which will deter the activity, or at least punish the offender more appropriately than what is currently allowed under State Law.

Peace Officers are constrained in their actions by their Oath of office to Serve and Protect. No employee should ever be expected to accept this kind of an assault as part of their job duties. The current penalty for this type of offense leaves little justice for the victim.

The reckless conduct of endangering an officer with bodily fluids, such as urine, semen, spit, fecal material or blood, constitutes a real health risk which often is not something that can be immediately diagnosed. This uncertainty causes mental anguish for the victim and his/her family. This can have an effect on the Officers family unit, his morale, and for the employer can effect retention of employees.

With this type of behavior on the rise, it is imperative that some teeth be added to the law. This bill takes a positive step in that direction.

I would like to commend you for introducing this legislation. If I can be of further assistance to you in getting this bill passed please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Clemons", is written over a horizontal line.

Chief Thomas Clemons
President
Alaska Association of Chiefs of Police

HB

353

HFIN

FILE

FRANK H. MURK WSKI
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August 11, 2005

Ms. Barbara Seybold
P.O. Box 520828
Big Lake, AK 99652

Dear Ms. Seybold:

I received and read the correspondence you sent to me, voicing concerns about sex offender issues in Alaska. Thank you for taking the time to write and express your concerns about this very serious public safety issue.

First, I am a strong supporter of increasing the number of law enforcement officers in Alaska, both within the Alaska State Troopers and local police departments. During the past two legislative sessions I asked for and received funding for 25 new Department of Public Safety state trooper positions. Ten positions were added to the specialized investigation units in order to help address in part the very issue you raise. Since becoming Governor, I have directed the Department of Public Safety and the Department of Law to aggressively investigate and prosecute those persons involved in sex offender activity.

With my signature, I put into law a statute requiring judges to sentence sex offenders with multiple convictions to a minimum of 40 to 99 years. Additionally, Alaska laws deny sex offenders one-third 'good time' reduction in sentences, and sex offenders are required to register and are prosecuted if they do not.

Under recent legislation, judges must sentence sex offenders to eight to twelve years for a first serious offense. After my election to office, I passed legislation requiring judges to impose *consecutive* jail time for sex offenses involving multiple victims or for multiple crimes against the same victim. Therefore, with these sentencing guidelines in place, a first-time offender can easily receive a sentence of 24 years or more.

I am always interested in improving criminal laws to assist with the protection of our citizenry, particularly when it comes to our children. It is possible that improved legislation could be introduced, either through my office or by a legislator. I will ask the Department of Law to consider drafting a bill

Ms. Barbara Seybold
August 11, 2005
Page ?

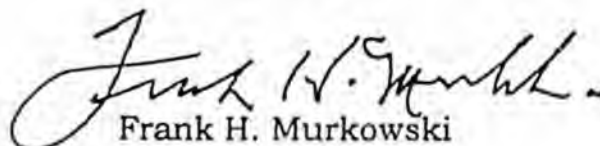
with specific intent to require additional mandatory sentencing for the crime of sexual abuse of a minor. You are certainly encouraged to work with your legislators for possible introduction of a similar bill during the next legislative session.

I certainly share your concerns and appreciate your input about this issue. I firmly believe that our children need to be protected from sexual predators. It is strong citizen advocates, such as yourself, that help create the necessary and much needed protections for those who cannot protect themselves.

Although increasing the number of police officers and enhancing the state sex offender laws are slow and complex procedures, I want to assure you that my administration is diligently working to improve these public safety issues in Alaska.

I would like to thank you again for taking your time to write about your concerns and I would encourage you to communicate with your legislators about these very important issues.

Sincerely yours,



Frank H. Murkowski
Governor

cc: William Tandeske, Commissioner, Department of Public Safety
Colonel Julia Grimes, Director, Alaska State Troopers

LEGISLATIVE RESEARCH REPORT

DECEMBER 15, 2005



REPORT NUMBER 06.060

FLORIDA'S "JESSICA'S LAW" AND ALASKA LAWS RELATING TO SEX OFFENDERS

PREPARED FOR REPRESENTATIVE MARK NEUMAN

BY BECKY TAYLOR, LEGISLATIVE ANALYST

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You asked how Florida's recently enacted "Jessica's Law" compares with Alaska law.

SUMMARY

"Jessica's Law" differs from Alaska law primarily in the areas of sentencing, monitoring, and registration requirements for sex offenders. The Florida law mandates increased research and data sharing capabilities, which exceed those of Alaska. We provide an overview of how Jessica's law compares with Alaska law in Table 1.

OVERVIEW OF "JESSICA'S LAW"

In May of 2005, Governor Jeb Bush signed House Bill 1877, known as the Jessica Lunsford Act, which amended a number of Florida statutes related to sex offenders. The bill, which passed unanimously in both the Senate and the House, was developed after a convicted sex offender was charged with the kidnapping and murder of nine-year old Jessica. Although other recent sex offender legislation has focused on punishing repeat offenders more harshly, the Jessica Lunsford Act imposes stringent sentencing and monitoring requirements on first-time sex offenders. By incarcerating offenders for longer periods of time and monitoring them more closely after they are released, supporters of the law hope to prevent offenders from having the opportunity to commit more crimes and create more victims.

The new Florida law establishes a sentence of 25 years to life imprisonment for sex offenders convicted of lewd and lascivious molestation when victims are under the age of 12. If released, these offenders are required to participate in lifetime active monitoring using Global Positioning System (GPS) technology, which allows law enforcement officers to determine their location at any time.¹ "Jessica's Law" also significantly increases the use of electronic monitoring in Florida to track other sex offenders under community supervision.²

The Jessica Lunsford Act provides for the following:

- ◆ Increasing the penalty for lewd and lascivious molestation of a child to life in prison or a split sentence of a mandatory minimum 25-year prison term, followed by lifetime supervision with electronic monitoring.
- ◆ Increasing, from 20 to 30 years, the period of time before a sexual predator is allowed to petition to have the sexual predator designation removed.
- ◆ Increasing sexual predator/offender registration and reporting requirements.
- ◆ Making status as a sexual predator an aggravating factor that may influence whether a criminal is sentenced to the death penalty in capital cases.
- ◆ Designating failing to re-register as a sexual offender/predator, or harboring or assisting a sexual predator/offender, a third degree felony.
- ◆ Requiring those already convicted of sex crimes to have electronic monitoring for the remainder of their probation.
- ◆ Requiring all county misdemeanor probation officials to search the sexual offender registry when a new offender is assigned to them.
- ◆ More than \$11 million in added funding for sex offender management:

¹ We include, as Attachment A, the following Florida Statutes which relate to sentencing and electronic monitoring: FS 775 082(3)(a), FS 775 082(3)(b), and FS 948 012(4).

² We include, as Attachment B, "House of Representatives Staff Analysis of HB 1877 CS," which explains provisions of the bill in greater detail. This analysis provides useful insight into the legislation, however, a few small modifications, such as date changes, were made in the enacted version of the bill.

may not be sentenced to a definite term of imprisonment of more than 20 years.

- ◆ Sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, or attempt, conspiracy, or solicitation to commit sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography—1 to 2 years. The defendant may not be sentenced to a definite term of imprisonment of more than 10 years.⁷

In Alaska, most prisoners are eligible for "good time", which allows them to serve the last third of their sentence on parole instead of in prison. In 2003, Senate Bill 85 (ch 90 SLA 2003) modified AS 33.20.010 to include repeat felony sex offenders on the list of prisoners not eligible for a good time deduction. Due to this legislation, repeat sex offenders are spending more time in jail. As Portia Parker, deputy commissioner of the Department of Corrections, notes, incarceration is the only thing that really guarantees public safety.⁸ According to Ms. Parker, most repeat offenders still serve ten years on probation after they complete their full sentence. This is in line with the recommendation from the National Center for Missing and Exploited Children and the Office of Juvenile Justice and Delinquency Prevention that states do not allow release without supervision.⁹

AGGRAVATING CIRCUMSTANCES IN SENTENCING

Florida law designates individuals who commit multiple or particularly severe sexual crimes as "sexual predators." "Jessica's Law" added status as a current or former registered sexual predator to the list of aggravating circumstances that can be considered when sentencing an individual convicted of a capital felony to the death penalty. Alaska law contains no provision for capital punishment, and therefore Alaska law does not contain a comparable list. Neither Florida nor Alaska include status as a sexual predator or sex offender on the list of aggravating circumstances in cases not involving a capital offense.¹⁰

⁷ We include, as Attachment D, Alaska Statute 12.55.125, which relates to sentencing for felonies.

⁸ Personal communication from Portia Parker, deputy commissioner, Alaska Department of Corrections. Ms. Parker can be reached at (907) 269-7397.

⁹ We include, as Attachment E, "A Model State Sex Offender Policy," National Center for Missing and Exploited Children and the Office of Juvenile Justice and Delinquency Prevention, 2003, p. 6.

¹⁰ "Sex offender" is the only designation applied to perpetrators of sexual violence in Alaska. We include, as Attachment F, FS 921.141 and FS 921.0016, and as Attachment G, AS 12.55.155, relating to aggravating and mitigating circumstances.

ELECTRONIC MONITORING IN FLORIDA UNDER "JESSICA'S LAW"

"Jessica's Law" requires lifetime active electronic monitoring of defendants convicted of lewd and lascivious molestation whose crimes occurred after July 1, 2005.¹⁵ The law also expands the use of electronic monitoring for sex offenders released under the conditional release program, community control, and probation.¹⁶ The new law includes the following requirements:

- ◆ All offenders designated as sexual predators, as well as all adult offenders convicted of certain sex crimes that took place on or after September 1, 2005, and that involved victims 15 years of age or younger and an offender 18 years of age or older, must be under electronic monitoring for the duration of their conditional release (FS 947.1405(10)).
- ◆ If an individual designated as a sexual offender or sexual predator due to unlawful sexual activity involving a victim 15 years of age or younger and an offender 18 years of age or older has his or her probation or community control revoked due to a violation, the court must order electronic monitoring as a condition of the subsequent term of probation or community control (FS 948.063).
- ◆ In carrying out a court or commission order to electronically monitor probationers, community controllees, or conditional releasees who have current or prior convictions for violent or sexual offenses, the department must use a system that actively monitors and identifies the offender's location and reports or records the offender's presence near or within a crime scene or in a prohibited area, or the offender's departure from specified geographic limitations (FS 948.11(6)).
- ◆ All offenders who are placed on probation or community control for crimes that took place on or after September 1, 2005 must be placed under electronic monitoring as a condition of their probation or community control supervision if they are designated as sexual predators, or have ever been convicted of certain sex crimes involving victims 15 years of age or younger and an offender who is 18 years of age or older (FS 948.30(3)).¹⁷

In order to allow for the implementation of these provisions, Florida Statute 943.04352 was created to require probation service providers to search the sex offender/predator registry whenever they place an individual on misdemeanor probation.

¹⁵ FS 948.012(4).

¹⁶ In Florida, the conditional release program requires inmates convicted of repeated violent offenses or designated as sexual predators to be released under close supervision as they near the end of their sentence. ("House of Representatives," p. 5, see Attachment B). As defined in FS 948.001, community control refers to supervised custody in the community in which an offender's behavior or location is restricted, and probation is a form of community supervision requiring specified contacts with parole and probation officers along with other conditions.

¹⁷ The provisions listed above reflect the changes made by Jessica's Law; however, Florida Statute 948.30 includes a number of additional terms and conditions of probation or community control for certain sex offenders that may be different from the conditions of community supervision in Alaska.

SEX OFFENDER REGISTRATION LAWS IN FLORIDA AND ALASKA

Florida law designates an offender as either a "sex offender" or "sexual predator" depending on the crime and when it was committed. An individual who commits any listed sex offense who is being released from the sanction imposed for the crime after October 1, 1997, or who is currently under the custody or control of the Florida Department of Corrections will be designated as a sex offender. The court can designate an individual as a sexual predator if the person is convicted of either one first-degree felony sex crime, or two second degree felony sex crimes, which were committed on or after October 1, 1993. Jessica's Law removed language that required the two second degree felony sex crimes to have been committed within a ten year period in order for an individual to qualify for the sexual predator designation. In addition, as of July 1, 2004, anyone civilly committed under the Florida Jimmy Ryce Sexually Violent Predator Act must also register as a sexual predator.²⁰

In Florida, sexual predators and offenders are generally required to maintain registration for the duration of their lives; however, under some circumstances a sexual predator may petition the court for removal of the sexual predator designation. "Jessica's Law" increased from 20 to 30 years the length of time sexual predators must wait after they are released from prison, supervision and sanction, before they are allowed to petition to have the designation removed.²¹

While Florida law now essentially requires that all sex offenders and sexual predators register for life unless they petition to have the designation removed, Alaska requires sex offenders to register for either 15 years or life, depending on the crime. Convicted sex offenders in Alaska are required to comply with Department of Public Safety Sex Offender/Child Kidnapper registration requirements for either 15 years, or the remainder of their lifetime, as follows:

- ◆ 15 years after the offender is released from all requirements of a sentence, including probation and parole, for a single conviction of a non-aggravated sex offense or for one child kidnapping conviction, not counting any year in which the offender failed to comply with the registration laws.
- ◆ Lifetime for registrants convicted of one aggravated sex offense, two or more sex offenses, two or more child kidnappings or one sex offense and one child kidnapping offense.²²

"Jessica's Law" requires all designated sexual predators and offenders to register twice a year in person at the sheriff's office in the county where they reside.²³ In Florida, sexual predators or

²⁰ "Frequently Asked Questions," Florida Sexual Offenders and Predators, Florida Department of Law Enforcement, <http://www3.fdle.state.fl.us/sopu/index.asp?PSessionId=829341881&>. See FS 775.21(3) and 943.0435(12) for additional information regarding sexual predators and sex offenders.

²¹ Pursuant to FS 775.21(6)(l), the 30-year period only applies to individuals who are designated as sexual predators by the court on or after September 1, 2005. "Jessica's Law" did not change the Florida policy that sex offenders can petition to have the designation removed after 20 years.

²² AS 12.63.020. We include, as Attachment I, "Information Pamphlet Concerning Sex Offender/Child Kidnapping Registration in Alaska," State of Alaska Department of Public Safety.

require background screening of all non-instructional school district employees and contractual personnel who are permitted access to school grounds when students are present. Previously this type of screening was only required if the employee had direct contact with students or access to school funds. Pursuant to AS 12.62.400, the Department of Public Safety may obtain a national criminal history record check for individual's who seek a teacher's certificate, school bus driver license, licensure as a nurse or nurse aide, or a position involving supervisory or disciplinary power over a minor or dependent adult.

RESEARCH AND IMPROVED DATA SHARING

In addition to making substantive changes in the criminal code, "Jessica's Law" also increased research, assessment, and information distribution. The law provides for the following:

- ◆ A task force within the Department of Law Enforcement to examine the collection and dissemination of offender information within the criminal justice system and the community, and recommend strategies and actions to enhance coordination within the criminal justice system;
- ◆ A study of the effectiveness of Florida's sexual predator and sexual offender registration process and community and public notification provisions prepared by the Office of Program Policy Analysis and Governmental Accountability;
- ◆ Developing a graduated risk assessment to identify and closely monitor high-risk sex offenders on probation or community control who have certain risk factors;
- ◆ Posting a cumulative chronology of any high-risk sex offender's history of probation, community control, and substantive violation on the Florida Department of Law Enforcement's Criminal Justice Intranet so that this information is available to the court at first appearance and subsequent hearings for high-risk sex offenders;
- ◆ Developing information relating to the number of sexual offenders and sexual predators who are required by law to be placed on community control, probation, or conditional release who are subject to electronic monitoring;
- ◆ Conducting research on factors relating to sentencing of sex offenders.²⁹

The Alaska Department of Corrections utilizes an in-depth risk assessment conducted by sex offender treatment providers in creating individualized supervision and treatment plans for offenders on probation and parole. Within the Alaska Department of Corrections, evaluation of sex offender programs may be done by the individuals administering the programs. For example, the DOC recently received funding for two positions to implement, coordinate, manage and evaluate the pilot program in Anchorage involving polygraph testing. While these individuals will

²⁹ Section 22-23, HB 1877, FS 948.061, FS 216.136.