



Subsection (c) requires the judge to release the arrested person with appropriate conditions unless confinement is the only method to secure the appearance of the witness. When the judge orders the person confined, the judge must hold the material witness hearing within 48 hours of the person's arrest.

2C:104-5. Arrest Without Warrant

a. A law enforcement officer may arrest an alleged material witness without a warrant only if the arrest occurs prior to the filing of an indictment, accusation or complaint for a crime, or the initiation of a criminal investigation before a grand jury, and if the officer has probable cause to believe that:

- (1) a crime has been committed,**
- (2) the alleged material witness has information material to the prosecution of that crime,**
- (3) the alleged material witness will refuse to cooperate with the officer in the investigation of that crime, and**
- (4) the delay necessary to obtain an arrest warrant or order to appear would result in the unavailability of the alleged material witness.**

b. Following the warrantless arrest of an alleged material witness, the law enforcement officer shall bring the person immediately before a judge. If court is not in session, the officer shall immediately bring the person before the emergency-duty Superior Court judge. The judge shall determine whether there is probable cause to believe that the person is a material witness of a crime and, if an indictment, accusation or complaint for that crime has not issued or if a grand jury has not commenced a criminal investigation of that crime, the judge shall determine whether there is probable cause to believe that, within 48 hours of the arrest, an indictment, accusation or complaint will issue or a grand jury investigation will commence. The judge then shall proceed as if an application for a warrant has been made under 2C:104-4.

COMMENT

This subsection settles the law regarding the right to arrest material witnesses without a warrant. Compare State v. Hand, 101 N. J. Super. at 56 (allowing warrantless arrests) with State v. Misik, 238 N. J. Super. at 388 (forbidding warrantless arrests). Subsection (a) allows the warrantless arrest of alleged material witnesses under precisely defined circumstances. The warrantless arrest power applies in exigent circumstances such as the encounter between a law enforcement officer and a witness at the scene of a crime. As a result, the power to arrest without a warrant ceases to exist subsequent to the filing of an indictment, accusation or complaint for a crime or the initiation of a criminal investigation before a grand jury.

Subsection (b) follows the procedure set forth in 2C:104-4 regarding arrests upon warrant. The law enforcement officer must bring the arrested person before a judge immediately after arrest so that the judge may review the propriety of the arrest and set appropriate conditions of release. The failure of the law enforcement officer to comply with the requirement to bring the arrested person before a judge immediately after arrest makes the arrest unlawful thereby providing the wrongfully arrested person with remedies for an unlawful arrest.

2C:104-6. Material witness hearing

a. At the material witness hearing, the following rights shall be afforded to the person: (1) the right to be represented by an attorney and to have an attorney appointed if the person cannot afford one, (2) the right to be heard and to present witnesses and evidence, (3) the right to have all of the evidence considered by the court in support of the application, and (4) the right to confront and cross-examine witnesses.

b. If the judge finds that there is probable cause to believe that the person is unlikely to respond to a subpoena and has information material to the prosecution or defense of a pending indictment, accusation or complaint for a crime, or a criminal investigation before a grand jury, the judge shall determine that the person is a material witness and may set the conditions of release of the material witness.

c. If the judge finds by clear and convincing evidence that confinement is the only method that will secure the appearance of the material witness, the judge may order the confinement of the material witness.

d. The judge shall set forth the facts and reasons in support of the material witness order on the record.

Source: 2A:162-2

COMMENT

Subsection (a) establishes the rights afforded to the alleged material witness at the hearing. The alleged material witness has the full panoply of rights afforded to a person at an adversarial hearing. Among the rights granted is the right to know the evidence used by the court as the basis for grant of the application. If disclosure of particular evidence would obstruct the ongoing criminal investigation, the court may exclude that evidence from consideration in deciding whether to grant the application. Cf. State v. Kunz, 55 N. J. 128 (1969) and R. 3:21-2(a).

Subsections (b) and (c) distinguish conceptually between the finding that a person is a material witness and the decision to impose restraints to assure the appearance of the witness. Subsection (b) identifies the standard of review for determining that a person is a material witness and to impose non-custodial restraints on the witness. The standard of review is the probable cause standard. Subsection (c) identifies the standard of review for ordering the confinement of the witness. The judge may order the confinement of the material witness only when the judge finds by clear and convincing evidence that no other form of restraint will assure the appearance of the material witness. The clear and convincing standard is used to indicate that confinement is a last resort. The clear and convincing standard protects the constitutional right of the person to be free from arbitrary seizure. State v. Misik, 238 N. J. Super. at 387.

Subsection (d) requires that the judge set forth facts and reasons in support of the order. The requirement to set forth facts and reasons furnishes a record for appeal.

2C:104-7. Conditions of release; confinement

a. A confined person shall not be held in jail or prison, but shall be lodged in comfortable quarters and served ordinary food.

b. The conditions of release for a material witness or for a person held on an application for a material witness order shall be the least restrictive to effectuate the appearance of the material witness. A judge may: (1) place the witness in the

custody of a designated person or organization agreeing to supervise the person, (2) restrict the travel of the person, (3) require the person to report (4) set bail or (5) impose other reasonable restrictions on the material witness.

c. A person confined shall be paid \$40 per day, and when the interests of justice require it, the judge may order additional payment not exceeding the actual financial loss resulting from the confinement. The party obtaining the material witness order bears the cost of confinement and payment unless the party is indigent.

Source: 2A:162-3, 2A:162-4

COMMENT

Subsection (a) identifies the conditions of detention, and is substantially identical to the requirements of N.J.S. 2A:162-3. A material witness, if confined, cannot be treated like a prisoner because the material witness has not committed a crime. Rather, the state or defendant must provide comfortable lodging and ordinary food to a confined material witness.

Subsection (b) requires the judge to impose the least restrictive restraint upon a non-confined material witness to secure the appearance of the material witness. The list of alternatives is designed to guide the judge in the decision making process, but is not meant to exhaust the range of possible and appropriate alternatives. Subsection (b) permits the judge to exercise discretion in setting the appropriate restraints.

Subsection (c) substantially departs from present law which provides for payment of \$3 for each day the person is "committed or detained in jail." N.J.S. 2A:162-4. Subsection (c) requires the payment of \$40 for each day the material witness is confined. The amount of payment is the same as that provided by federal law. 28 U.S.C.A. § 1821(b). In addition, this subsection allows a court to order additional payment not to exceed actual financial losses, if the additional payment would serve the interests of justice.

N.J.S. 2A:164-2 required the board of chosen freeholders of the county where the confinement occurs to pay the costs of confinement regardless of the entity seeking the confinement. Subsection (c) reflects the fact that the county is not always responsible for the costs of prosecution when the prosecution is brought by the State. Cf. 2A:73A-9. The effect of subsection (c) is that the prosecution, whether county or State, bears the cost of a material witness confined on its behalf. Likewise, a defendant obtaining the material witness order requiring confinement is obligated to pay the cost of confinement, plus additional payment if ordered, unless the party is indigent.

2C:104-8. Deposition

A material witness may apply to the Superior Court for an order directing that a deposition be taken to preserve the witness's testimony. After the deposition is taken, the judge shall vacate the terms of confinement contained in the material witness order and impose the least restrictive conditions to secure the appearance of the material witness.

Source: New

COMMENT

This section gives a material witness a statutory right to apply to the Superior Court for an order requiring the taking of a deposition pursuant to court rules to preserve the testimony of the witness. Deposition as an alternative to continued confinement is now allowed by court rule. R. 3:13-2. The

federal rules and other state laws take a similar approach. E.g. Fed. R. Crim. P. 15; Ariz. Rev. Stat. Ann. § 13-4083(b) (1989). The taking of a deposition to preserve testimony vacates the confinement terms of the material witness order and requires the judge to modify the material witness order to assure that the least restrictive conditions of release remain imposed on the material witness.

2C:104-9. Orders appealable

A material witness order shall constitute a final order for purposes of appeal, but, on motion of the material witness, may be reconsidered at any time by the court which entered the order.

Source: New

COMMENT

This section makes a material witness order a final order for purposes of appeal entitling the material witness to file an appeal without leave of the Appellate Division. In the absence of the statute it would be unclear whether a material witness order is interlocutory or final. The Superior Court which entered the order retains jurisdiction when an appeal is taken to enable the witness to apply to the court for a modification of the original order.

TABLE OF DISPOSITIONS

<u>SECTION</u>	<u>DISPOSITION</u>
2A:162-2	2C:104-2, 4 and 6
2A:162-3	2C:104-7
2A:162-4	2C:104-7

HEB

325

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 9, 2006

FURTHER REFERRALS: Finance

Date of Committee Action: 04/10/06

The JUDICIARY Committee considered:

HB 325

HOUSE BILL NO. 325

POST-CONVICTION DNA TESTING

"An Act relating to post-conviction DNA testing; and amending Rule 35.1, Alaska Rules of Criminal Procedure."


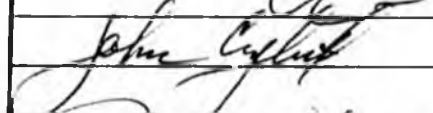
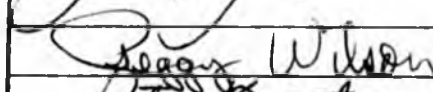
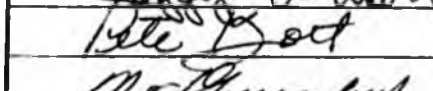
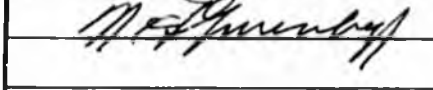
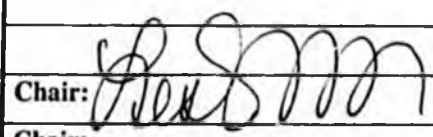
Recommends it be replaced with HCS or CS for HB 325 (JUD)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LEG
 LAW
 LWF
 MVA
 DNR
 DPS
 REV
 DOT
 UA

NEW FISCAL NOTES				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW				X
COR				X

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Sara	✓			
	Coghill			✓	
	WILSON	✓			
	Gott	✓			
	Mendenhall	-			
Chair: 	McGuire				✓
Chair:					

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 325
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title "An Act relating to post-conviction DNA testing. RDU Institutional Facilities
and amending Rule 35.1, Alaska Rules of Criminal Procedure." Component Institution Director's Office
 Sponsor Representative Ledoux
 Requester (H) Judicial Component No. 1381

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	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The legislation provides for court-ordered post-conviction DNA testing upon application by an incarcerated offender. As the cost of DNA sampling and analysis shall be borne by the petitioner, the fiscal impact to the Department of Corrections should be negligible. The department does not anticipate a significant fiscal impact due to the passage of the legislation.

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 3/27/06 12:41 PM
 Date 3/27/2006

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB325-LAW-CJL-3-28-2006
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act relating to post-conviction DNA testing; RDU CRIMINAL
and amending Rule 35.1, Alaska Rules of Criminal Procedure." Component Criminal Justice Litigation
 Sponsor: Representative LeDoux
 Requester: House Judiciary 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 adds a new article allowing an incarcerated person to apply to the court for post-conviction DNA testing.

The Department of Law does not anticipate many instances of post-conviction DNA testing to occur, and as a result no fiscal impact is anticipated from passage of this legislation.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division: Administrative Services Division Date/Time 3/28/06 1:11 PM
 Approved by: Kathryn Daughhete for David Marquez, Attorney General Date 3/28/2006
 Agency: Department of Law

ALASKA STATE LEGISLATURE



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Representative Gabrielle LeDoux

SPONSOR STATEMENT FOR HB 325

An Act relating to post-conviction DNA testing; and amending Rule 35.1, Alaska Rules of Criminal Procedure.

DNA testing is a new technology that has enabled criminal justice systems worldwide to prove the guilt or innocence of many people who claim they were mistakenly convicted. This Act would enable Alaska criminal law to keep up with new technology, joining 40 other states in providing a statutory right to DNA testing where meaningful claims of innocence have been made by those convicted. In cases where the DNA would be probative of guilt or innocence, this Act will enable Alaska to quell any lingering doubts where such claims of innocence have been made. Providing access to such testing so will serve victims, police, prosecutors, the public, and public faith in our criminal justice system.

This Act would help enable Alaska to receive funds under the Congressional Justice for All Act of 2004 (H.R. 5107), which, under the leadership of Senator Frist, Speaker Hastert and President Bush, provides financial incentives for states to allow post-conviction DNA testing, and provides funds for qualifying states to pay for such tests.

Specifically, this act establishes a procedure for application for DNA test and the appointment of counsel. A person who has been convicted of a crime may petition the court for testing. If the court determines that the facts warrant testing, the court will appoint a public defender if the petitioner is indigent and that agency will pay for the testing. Law enforcement agencies will retain any collected biological evidence pertaining to the offense.

In this way, a person has an opportunity for testing in order to prove actual innocence. The court will determine whether the case merits this extra step so not every person who requests such testing will automatically receive it. In some states this is only done in death sentence situations, but only 14 of the nation's 175 DNA exonerations involved innocent people facing execution. The other 161 innocent people were simply being forced to endure large parts of their lives behind bars for crimes they did not commit. It therefore makes more sense to simply expand this right to all deserving people. This legislation can help free an innocent person and let law enforcement and the public know that a guilty and dangerous person is still at large.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 27, 2006

SUBJECT: HB 325 - Sectional Summary (Work Order No. 24-LS1222\A)

TO: Representative Gabrielle LeDoux

FROM: Gerald P. Luckhaupt
Legislative Counsel 

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1. Creates a new procedure in statute for convicted persons to request DNA testing of biological evidence from the conviction and sentence the person is serving.

Section 2. Provides notice that a portion of sec. 1 has the effect of amending Rule 35.1, A.R.Cr.P.

GPL:med
06-169.med

INNOCENCE PROJECT

Benjamin N. Cardozo School of Law, Yeshiva University

ACCESS TO POST-CONVICTION DNA EVIDENCE

Despite its ability to prove innocence, some courts will not consider newly discovered DNA evidence after trial.

- The traditional appeals process is often insufficient for proving a wrongful conviction. It is not uncommon for an innocent person to exhaust all possible appeals without being allowed access to the DNA evidence in his case.
- Sometimes it comes to light that DNA evidence available at the time of the defendant's trial was never tested.
- Often the methods of DNA testing used at the time of the trial were not exact and yielded unreliable results. Today's more sophisticated technology provides irrefutable results.
- The only way a person can access the DNA evidence associated with his criminal case, absent a protracted legal battle, is through post-conviction DNA testing access statutes.

Do all states have post-conviction DNA access statutes?

States Without Statutes Allowing for Access to DNA Evidence:

At present, the following ten states do not have any DNA access statutes incorporated into their state laws: Alabama, Alaska, Massachusetts, Mississippi, Ohio, Oklahoma, South Carolina, South Dakota, Vermont, & Wyoming.

***** Although forty states have post-conviction DNA testing access statutes, many of these testing laws are limited in scope and substance*****

What are the common shortcomings of existing DNA access laws?

- Some laws present insurmountable hurdles to the individual seeking access, putting the burden on the defense to effectively solve the crime and prove that the DNA evidence promises to implicate another individual.
- Certain laws do not permit access to DNA when the defendant originally pled guilty.
- Many laws fail to include adequate safeguards for the preservation of DNA evidence.
- Several laws do not allow individuals to appeal denied petitions for testing.
- A number of states fail to require full, fair and prompt proceedings once a DNA testing petition has been filed, allowing the potentially innocent to languish interminably in prison.

What key elements should be included in a good DNA access law?

Most states have post-conviction DNA testing access statutes. For those that do not, or for those state statutes with deadlines for individuals seeking access, a federal law, the Justice For All Act (JFAA) of 2004 (H.R. 5107), provides financial incentives for states to allow permanent post-conviction DNA testing access to qualified defendants.

The Innocence Project recommends the following elements be contained in new statutes or existing statutes in need of amending:

- Include a reasonable standard to establish proof of innocence at the stage where an individual is petitioning for post-conviction DNA testing;
- Allow access to post-conviction DNA testing wherever it can establish innocence, including cases where the defendant pled guilty;
- Exclude "sunset provisions," or absolute deadlines, for when access to post-conviction DNA evidence will expire;
- Require state officials to account for evidence in their custody;
- Require state officials to preserve biological evidence properly and for a reasonable period of time;
- Disallow procedural hurdles that stymie DNA testing petitions and proceedings that govern other forms of post-conviction relief;
- Allow convicted persons to appeal from orders denying DNA testing;
- Require a full, fair and prompt response to DNA testing petitions, including the avoidance of debate around whether currently available DNA technology was available at the time of the trial;
- Avoid unfunded mandates by providing funding to DNA testing statutes; and
- Provide flexibility in where, and how, DNA testing is conducted.

Case in Point: Pennsylvania Man Originally Denied Access to DNA

In May of 1987, Bruce Godschalk was convicted of rape and burglary in Pennsylvania. The conviction was based primarily on eyewitness identification and a confession later proven to be false. Forensics techniques available at the time of the trial and used to test the semen from the crimes could not exclude Mr. Godschalk as the perpetrator. Following his conviction, Mr. Godschalk petitioned for access to DNA testing and was denied. After contacting the Innocence Project in 1995, which sought testing on his behalf, the District Attorney refused to allow access to the DNA evidence. It was not until November of 2000 that a Federal District Court granted access to the DNA testing. Delays in setting a testing protocol and delivering the evidence, in addition to some legal hurdles, deferred testing of the evidence until January of 2002. Mr. Godschalk was eventually excluded as the donor of the semen in the crimes and released from prison. Mr. Godschalk had spent seven of his fifteen years of incarceration fighting for access to DNA evidence. As a result of Mr. Godschalk's case, Pennsylvania introduced and later passed a law creating access to DNA evidence.

adn.com

Anchorage Daily News

Print Page

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Case tests Alaska's post-conviction DNA policies**LEGAL BATTLE: An inmate's claim of innocence has led to lawsuits against the state.**

By TATABOLINE BRANT

Anchorage Daily News

(Published: August 21, 2005)

For 12 years, William Osborne has been sitting in a prison cell for a crime he says he didn't commit.

Osborne, 32, has maintained since his arrest in 1993 that he was not involved in the brutal rape and beating of an Anchorage prostitute that year near Earthquake Park. He says that the state convicted the wrong man and that he can prove it, if they would just let him retest hair and semen found at the crime scene using DNA technology more advanced than what was available at the time.

But the state says no. It insists that even if the DNA came back as someone else's, the results still would not prove Osborne innocent. He was identified by the victim, prosecutors say, and fingered by co-defendant Dexter Jackson, who also went to prison. So what's the point?

The state's refusal to allow the testing has provoked the first legal battle in Alaska over post-conviction DNA testing -- an issue most states have already wrestled with and made laws about. The New York-based Innocence Project, whose intervention on DNA issues has helped free more than 80 wrongly convicted people across the country, has sued the state on Osborne's behalf.

"We want the state of Alaska to get with the rest of the country in allowing post-conviction DNA testing," said Colin Starger, staff attorney for the Innocence Project.

Prosecutors leaned heavily on the biological evidence to sway jurors during Osborne's 1993 trial, his lawyers say. Eyewitness identification is notoriously unreliable and the co-defendant may have had his own reasons for lying, they say. Retesting the hair and semen -- at Osborne's expense -- could help determine if what he's saying is true: that it wasn't him.

If it turns out the hair and semen belong to someone else, Osborne wouldn't automatically be freed, the lawyers said. It might just mean a new trial, where the state could convict him again without using it.

Two separate civil suits -- one in federal court and one in state court -- are now working their way through the system, demanding that the state hand over the evidence for testing. The federal suit, filed by the Innocence Project, went before three judges of the 9th U.S. Circuit Court of Appeals last month.

It was not the state's best day.

The short presentation at the Federal Building in downtown Anchorage started with local attorney Bob Bundy, a former state and federal prosecutor, arguing on behalf of Osborne and the Innocence Project.

The judges had been briefed on the background of the case. Press accounts and court records stemming from the 1993 attack laid it out this way:

DENIAL FROM THE START

The victim, a prostitute and drug addict, told authorities she was trolling for customers near Chilkoot Charlie's on March 22 of that year when two men in a red Nissan picked her up and agreed to pay her \$100 to have sex with them.

The men refused to take the woman to her usual transaction site in Spenard, instead driving her to a cul-de-sac at Earthquake Park. From the witness stand at Osborne's trial, she said the pair refused to pay for sex, raped her, beat her with a club, grazed her with a shot, buried her in the snow and left her for dead.

Jackson and Osborne were charged. A Swiss Army knife taken from the victim was found on Jackson, who initially denied any involvement but then claimed he and Osborne had consensual sex with the woman. From the get-go, Osborne denied any part in the attack, but he and Jackson were tried together so Jackson's version undercut Osborne's denial with jurors. The victim said a blue condom was used and police tested one found at the scene.

The results, using an early type of testing, matched the DNA to 16 percent of the African American population, a group that included Osborne.

Osborne asked his attorney to do more advanced testing, but she refused, strategizing that the first results actually helped him ---- they showed the semen could have come from any number of people. Further testing might narrow it to Osborne, she reasoned. Clients often lie to their lawyers.

It is unclear how much weight jurors put on the biological evidence, but in the end they convicted both men. Osborne is "currently incarcerated serving a 26-year sentence for horrendous crimes -- kidnapping, sex assault and assault," Bundy told the 9th Circuit judges last month. "Mr. Osborne has steadfastly maintained from the beginning that he is innocent of these crimes."

There are now tests, Bundy said, that could identify the source of the DNA "virtually to elimination of everybody else on the planet."

For at least four years, state prosecutors have flatly refused to allow this test, court records show.

Although the legal issue before the appeals court was essentially whether Osborne can file in federal court without first exhausting his options in state court, the judges quickly zeroed in on the real question: Why is the state refusing to allow the test?

"There's nothing preventing you from simply giving him this evidence," Judge William Fletcher said to assistant attorney general Nancy Simel. "Why don't you do it?"

"Well, there's a number of reasons for it," Simel responded, "but we're not here to argue the merits of that today."

"Well, but I asked you a question," Fletcher said, more firmly.

Simel stonewalled. The judges seemed puzzled. The courtroom spectators, mostly other lawyers, shuffled in their seats and eyed each other during the unusual and tense exchange.

"It's a really simple question," Fletcher pressed. "And as a practical matter, we have this evidence

sitting there that may or may not clear this man ..."

"Correct."

"And you have it in your custody and you're refusing to hand it over -- how come?"

"Because we don't think that Mr. Osborne satisfies the requirements for handing over evidence in this case. ... It has to do with complicated issues of fact and --"

"You know it's a simple question, and I don't think the answer has to be that complicated," Fletcher said. "... I don't get it yet."

"Well, be that as it may, that has not been litigated yet," Simel said. "And I am not willing or able in the sense of answering the question in the context of this case."

The argument continued, and at one point, Simel even told the judge, who was in mid-sentence, to hold on a second.

The exchange continued:

JUDGE: "... Pretty straightforward -- hand it over."

SIMEL: "I understand."

JUDGE: "And you don't want to do it."

SIMEL: "That is correct."

JUDGE: "And you're really not willing to tell me why. But, I guess you'll tell somebody sometime."

SIMEL: "Not in this instance. Not at this time, is the answer."

THE OTHER EVIDENCE

Dean Guaneli, Alaska's chief assistant attorney general in the criminal division, said in an interview after the oral argument that the state stands firm in its belief that the biological evidence in Osborne's case should not be retested. "We think the conviction was valid. ... We're confident in it. We feel there is no need to go back and revisit the case."

The victim identified Osborne as a perpetrator, he said. And so did Jackson. "This is why we are fighting this case."

If the DNA results -- broad as they were -- had been the only evidence in the case, Guaneli said, "it's hard to imagine the jury would have convicted."

And then there is the idea of finality. "There's a strong interest in saying a case is over," he said, "that the laws and Constitution were applied, and applied fairly and we need to move on. I think that needs to be carefully considered. We don't want innocent people convicted, but we don't think that this guy fits into that category."

Starger of the Innocence Project disagreed: "DNA can only help advance the cause of truth here," he said. "It doesn't hurt the cause of finality to have the test done."

Randall Cavanaugh, Osborne's attorney in the state suit, said the victim's identification of Osborne was uncertain from the beginning.

The woman, he said, was upset and stressed out at the time of the assault, Cavanaugh said. She had a crack pipe on her; she had bad eyesight and wasn't wearing her glasses or contacts; she initially lied to police about what happened; she had a head injury; it was dark out except for a dome light in the vehicle; and the initial description the woman gave police of the second man didn't quite fit Osborne, Cavanaugh said: It was 9 years off in age, 3 inches off in height, up to 45 pounds off in weight and said he didn't have facial hair when witnesses testified he had a mustache.

Also worrisome, he said, the victim did not seem certain when she picked Osborne from a photo lineup. She said that he was "most familiar, along with others," Cavanaugh said, and "most likely to have been the passenger."

"We think she was very wrong with her identification."

Guaneli noted that the jury had time to size up the victim's credibility during her testimony. "This wasn't a situation where she was just there for a few seconds," he said of the attack. "This was a long, drawn-out affair."

Osborne's attorneys can argue that victims are always under stress and therefore prone to mistakes, Guaneli said, "but what do they say about the other guy?"

Cavanaugh said Jackson could have had a lot of motives for lying; maybe he was covering up for someone. Efforts to interview Jackson about it have been unsuccessful, Cavanaugh said.

The bottom line is, the state used the blue condom and the crude DNA results to damn Osborne to the jury, Cavanaugh said, so they ought to let him re-test now.

"I think they're just afraid of the results."

OTHER STATES HAVE LAWS

The federal government and about 40 states have laws covering post-conviction DNA testing, said Starger, the Innocence Project lawyer. Alaska does not.

That may be because the issue doesn't come up here very often, Guaneli said. Alaska has no death penalty or record of miscarriages of justice, he said, two things likely to raise the issue.

The Attorney General's Office has no written opinion or guidelines on how to handle requests for post-conviction DNA testing, Guaneli said. Certainly prosecutors would consider re-testing biological evidence "if we believed that testing would be meaningful in determining someone's innocence," he said.

Until the testing is done, Starger said, no one knows "whether or not the results will support his efforts to get a new trial."

According to the Innocence Project, a significant number of post-conviction DNA tests requested by defendants end up further implicating them.

Why they demand DNA tests when they know they committed the crime "would be the subject for a great psychological study," an Innocence Project attorney told the Los Angeles Times in 2003.

"Maybe after 15 years of telling everyone you're innocent, you start to believe yourself."

As for the broader question of whether Alaska needs a law to spell out when post-conviction DNA testing should be allowed, Guaneli said he is not familiar with what other states do, but that he has reservations.

"We don't want to find ourselves in a situation where we have to preserve all this evidence and do all this retesting when it's not going to serve any purpose" he said. "We worry that it's a never-ending process. There are already ways defendants can string things along for years."

He added later: "If there was a state law to do so in a case like (Osborne's), we would object to that."

Osborne's lawyers say the "process" is not more important than the possibility that an innocent man is spending his youth in prison for a crime he didn't commit. If the state is so confident of Osborne's guilt, Bundy said, then the DNA test will prove they are right.

"Why would anybody be afraid of the truth?" he said.

Osborne's lawsuit against the state is already paving the way for other Alaskans seeking post-conviction DNA testing. In a recent decision in the case, the Alaska Court of Appeals gave the Superior Court guidelines for determining when post-conviction DNA testing should be allowed -- a precedent that attorneys can point to in the future.

The judge in Osborne's case has not yet ruled on whether he meets the criteria.

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Viewpoints

Criminal DNA Database Expansion Working In Alaska

by Rep. Tom Anderson

March 06, 2006
Monday PM

DNA testing, usually done through a simple mouth swab, is the fingerprinting of the 21st century. Through DNA analysis of blood, hair, fingernails, or skin left at crime scenes, investigators are able to connect perpetrators with their past crimes, or to exonerate those who are falsely accused. Three years ago, the State Legislature passed legislation to broadening Alaska's DNA collection laws. HB 49 required all persons, including adjudicated juveniles, convicted of felonies, crimes against a person, sexual misdemeanors, those who are required to register as sex offenders, and those currently incarcerated or on parole for these crimes will have their DNA entered into the statewide database. This change was followed in 2005 by HB 124, which gave the Department of Public Safety the tools to collect DNA, by reasonable force, when necessary, further increasing the samples submitted into the database.

The advantages of a forensic DNA database are undeniable. Assuming a database with a critical mass of data and a laboratory system capable of rapid crime scene sample analysis, the Combined DNA Index System (CODIS) has the potential to be one of law enforcement's most powerful tools. Importantly, the database is most significant when no suspect exists or when a case is likely to go unsolved because of a lack of other evidence. The expanded database allows police to eliminate innocent parties or people having legitimate access to a crime scene.

Alaska's successes continue to mount, with the aid of federal funding from the National Institute of Justice, the number of DNA profiles from convicted offenders now in the database has more than tripled. The total funding for Alaska under NIJ's Convicted Offender Backlog Reduction Program is \$280,175.00. The total number of samples processed under this program

will be 8,500, and it is hoped Alaska will receive additional federal funds for this purpose under President Bush's National DNA Initiative.

Currently, Alaska's DNA database contains over 10,000 convicted offender DNA profiles. The expansion helps to increase the intelligence value of the database, thus making it a more powerful tool for solving crimes. This has had a tremendous impact on the number of cases being solved through the use of our DNA database. Last year alone, DNA profiles obtained from more than 90 different crime scenes around the state were matched back to known Alaskan convicted offenders. More than a third of these crimes involved sexual assault.

On a per capita basis, Alaska now has one of the most successful DNA databases in the nation and according to recent FBI statistics, has aided more investigations than 19 other states. One of Alaska's CODIS hits from last July involved matching an Alaskan convicted offender to a crime scene profile entered by the Oregon State Police from an attempted murder. The qualifying conviction for the Alaskan offender was a misdemeanor assault. This hit would not have happened if our database law had not been expanded to cover all crimes against a person.

I have made DNA database expansion my number one priority as a State Legislator. I am pleased to see these fruits coming to bear for the benefit of my constituents, fellow Alaskans and most importantly for the betterment of our children's future. As the State's database continues to grow, we can expect more cases to be solved through the use of DNA, making Alaska and Alaskans safer.


About: Rep. Tom Anderson (R) is a member of the 24th Alaska State Legislature representing District 19 - Anchorage.

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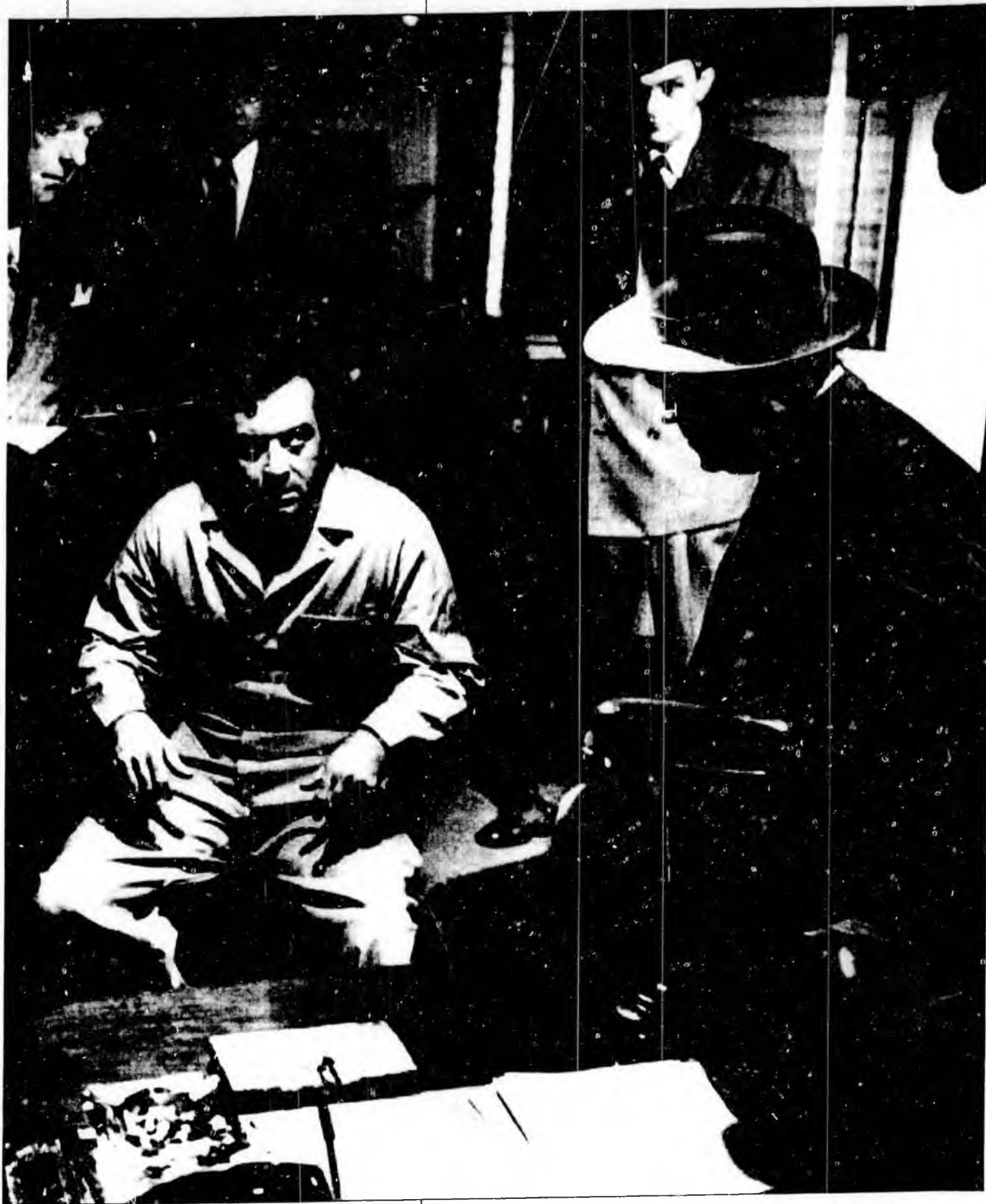
Why do innocent people confess to crimes they did not commit?

By Saul M. Kassir, and Gisli H. Gudjonsson

In 1989 a female jogger was beaten senseless, raped and left for dead in New York City's Central Park. Her skull had multiple fractures, her eye socket was crushed, and she lost three quarters of her blood. She survived, but she cannot remember anything about the incident. Within 48 hours of the attack, solely on the basis of confessions obtained by police, five African- and Hispanic-American boys, 14 to 16 years old, were arrested. The crime scene had shown a horrific act but carried no physical traces at all of the defendants. Yet it was easy to under-

stand why detectives, under the glare of a national media spotlight, aggressively interrogated the teenagers, at least some of whom were "wilding" in the park that night.

Four of the confessions were videotaped and later presented at trial. The tapes were compelling, with each of the defendants describing in vivid—though, in many ways, erroneous—detail how the jogger was attacked and what role he had played. One boy reenacted the way he pulled off her running pants. Another said he felt pressured by the others to participate in his "first rape";



he expressed remorse and promised that it would not happen again. After their arrest, the youths recanted these confessions, because they had believed that making a confession would have enabled them to go home. Regardless of the denials, the tapes collectively persuaded police, prosecutors, two trial juries, a city and a nation; the teenagers were convicted and sentenced to prison.

Thirteen years later Matias Reyes, who was in jail for three rapes and a murder committed after the jogger attack, stepped forward of his own initiative. He volunteered that he was the Central Park assailant and that he had acted alone. The Manhattan district attorney's office questioned Reyes and discovered that he had accurate, privileged and independently corroborated

crime? A scan of the scientific literature reveals how a complex set of psychological factors comes into play. First, techniques commonly used by investigators during interviews make them prone to see deceit in suspects, a perception that tends to bias the outcome of the questioning. When the accused waive their constitutional rights to silence and to counsel during questioning by the police, they may also unwittingly lose procedural safeguards and put themselves at greater risk of making a false confession. Other contributors include a given person's tendencies toward compliance or suggestibility in the face of two common interrogation tactics—the presentation of false incriminating evidence and the impression that giving a confession might bring leniency. In

(A disturbing number of cases have involved defendants who were convicted based only on false confessions.)

rated knowledge of the crime and crime scene. DNA testing further revealed that the semen samples recovered from the victim—which had conclusively excluded the boys as donors—belonged to Reyes. (Prosecutors had argued at trial that just because police did not capture *all* the alleged perpetrators did not mean they did not get *some* of them.) In December 2002 the five teenagers' convictions were vacated.

Despite its notoriety, the case illustrates a phenomenon that is not new or unique. The pages of legal history reveal many tragic miscarriages of justice involving innocent men and women who were prosecuted, wrongfully convicted, and sentenced to prison or to death. Opinions differ on prevalence rates, but it is clear that a disturbing number of cases have involved defendants who were convicted based only on false confessions that, at least in retrospect, could not have been true. Indeed, as in the case of the Central Park incident, disputed false confessions have convicted some people notwithstanding physical evidence to the contrary. As a result of technological advances in forensic DNA typing—which enables the review of past cases in which blood, hair, semen, skin, saliva or other biological material has been preserved—many new, high-profile wrongful convictions have surfaced in recent years, up to 157 in the U.S. alone at the time of this writing. Typically 20 to 25 percent of DNA exonerations had false confessions in evidence.

Why would an innocent person confess to a

short, sometimes people confess because it seems like the only way out of a terrible situation.

More troubling, confession evidence is inherently prejudicial, influencing juries even when they are shown evidence of coercion and even when there is no corroboration. Ultimately, we believe, society should discuss the urgent need to reform practices that contribute to false confessions and to require mandatory videotaping of all interviews and interrogations.

Discerning the Truth

A 2004 conference on police interviewing attended by the two of us illustrates the problem of bias during questioning. Joseph Buckley—president of John E. Reid and Associates (which has trained tens of thousands of law-enforcement professionals) and co-author of the manual *Criminal Interrogation and Confessions* (Aspen Publishers, 2001)—presented the influential Reid technique of interviewing and interrogation. Afterward, an audience member asked if the persuasive methods did not at times cause innocent people to confess. Buckley replied that they did not interrogate innocent people.

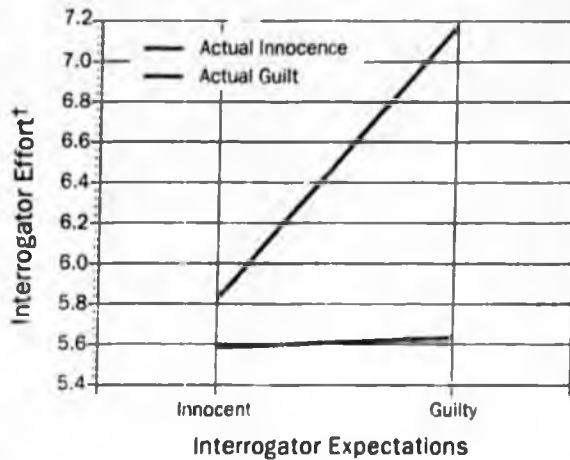
To understand the basis of this remark, it is important to know that the highly confrontational, accusatory process of interrogation is preceded by an information-gathering interview intended to determine whether the suspect is guilty or innocent. Sometimes this initial judgment is reasonably based on witnesses, informants or other ex-

COURTESY OF EVERETT COLLECTION (preceding pages)

True or False?

	Naive Students	Trained Students	Police Investigators
Total accuracy	56%	46%	50%
Confidence*	5.91	6.55	7.05

*Self-reported on a 10-point scale.



*Observer's ratings on a 10-point scale.



Training makes people more confident about their ability to distinguish truth from lies; however, it does not increase their accuracy (table). In the laboratory, interrogators tried hardest to extract a confession when they presumed guilt but the suspect was actually innocent (graph).

trinsic evidence. At other times, however, such judgments may be based on nothing more than a hunch, a clinical impression that investigators form during a preinterrogation interview.

The risk of error at this stage is clear, as in the 1986 Florida case involving Tom Sawyer, whom investigators accused of sexual assault and murder and interrogated for 16 hours, extracting a confession. His statement was later suppressed by the judge, and the charges were dropped. Sawyer had become a prime suspect because his face flushed and he appeared embarrassed during an initial interview, a reaction interpreted as a sign of deception. Investigators did not know that Sawyer was a recovering alcoholic with a social anxiety disorder that caused him to sweat profusely and blush in evaluative social situations. Many of the characteristics associated with acting "guilty" are also signs of a person under high stress.

Separating truths from lies is tricky. In fact, most experiments have shown that people perform at no better than chance levels and that training programs produce, at best, small and inconsistent improvements compared with naive control groups. In general, professional lie catchers, such as police detectives, psychiatrists, customs inspectors and polygraph examiners, exhibit accuracy rates in the 45 to 60 percent range, with a mean of 54 percent.

Even with those statistics, trained investigators believe they are more accurate in determining

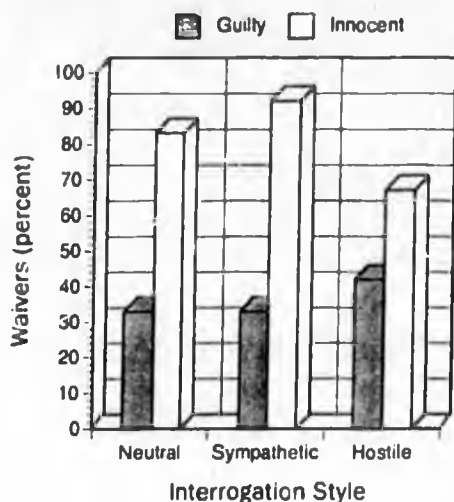
guilt or innocence. In 2002 Christian Meissner of Florida International University and one of us (Kassin) conducted a meta-analysis to examine their performance. Across studies, investigators and educated participants, relative to naive controls, exhibited a proclivity to judge targets as deceptive—and to do so with confidence [see table above]. Expressing a particularly cynical but telling point of view, one detective is quoted as saying in a 1996 article by Richard A. Leo of the University of California at Irvine, "You can tell if a suspect is lying by whether he is moving his lips."

Protections Averted

With suspects judged deceptive from their interview behavior, the police shift into a highly confrontational process of interrogation. There is, however, an important procedural safeguard in place to protect the accused. In the landmark *Miranda v. Arizona* in 1966, the U.S. Supreme Court ruled that police must inform all suspects of their constitutional rights to silence ("You have the right to remain silent; anything you say can and will be held against you in a court of law") and to counsel ("You are entitled to consult with an attorney; if you cannot afford an attorney, one will be appointed for you"). Only if suspects waive these rights "voluntarily, knowingly and intelligently" as determined in law by consideration of "a totality of the circumstances" can the statements they produce be admitted into evidence.

SOURCES: KASSIN & FONG, 1999; MEISSNER & KASSIN, 2002 (table); SOURCE: KASSIN, GOLDSTEIN & SAVITSKY, 2003 (graph); TM AND COPYRIGHT © 20TH CENTURY FOX FILM CORP. ALL RIGHTS RESERVED. COURTESY OF EVERETT COLLECTION (photograph)

Waiving Rights



Innocents are especially at risk for waiving rights to counsel and silence that were established by the U.S. Supreme Court in *Miranda*, believing they have nothing to hide (left). Yet longer exposure to questioning leaves them at greater risk for a false confession.

Miranda may not yield the protective effect for which it was designed for two reasons. First, a number of suspects—because of their youth, level of intelligence, lack of education or mental health status—do not have the capacity to understand and apply the rights they are given. Second, police use methods of presentation that elicit waivers. After observing live and videotaped police interrogations, Leo found that roughly four out of five suspects waive their rights and submit to questioning. He also observed that individuals who have no prior felony record are more likely to waive their rights than are those with a history of criminal justice “experience.” In a 2004 study by one of us (Kassin) and Rebecca Norwick of Harvard University, subjects guilty or innocent of a mock crime (stealing \$100) were confronted by a neutral, sympathetic, or hostile “Detective McCarthy” who asked if they would waive their rights and talk. Only 36 percent of guilty subjects agreed, but 81 percent of innocents waived these rights, saying later they had nothing to hide or fear [see chart above].

Interrogation Tactics

In the past, American police routinely practiced “third degree” methods of custodial interrogation—inflicting physical or mental pain and suffering to extract confessions and other types of information from crime suspects. Such tactics have mostly faded into the annals of criminal justice history, but modern police interrogations remain powerful enough to elicit confessions. At the most general level, it is clear that the two-step approach employed by Reid-trained investigators

and others—in which an interview generates a judgment of truth or deception, which in turn determines whether or not to proceed to interrogation—is inherently biased.

For innocents who are initially misjudged, one would hope that interrogators would remain open-minded and reevaluate their beliefs over the course of questioning. A warehouse of psychology research suggests, however, that once people form a belief, they selectively seek, collect and interpret new data in ways that verify their opinion. This distorting cognitive confirmation bias makes such personal convictions resistant to change, even in the face of contradictory evidence. It also contributes to the errors committed by forensic examiners whose judgments of handwriting samples, bite marks, tire marks, ballistics, fingerprints and other “scientific” observations are often corrupted by a priori expectations, a problem uncovered in many DNA exoneration cases.

In one instance in 2002, Bruce Godschalk was exonerated of two rape convictions after 15 years in prison when laboratories for both the state and the defendant found from his DNA that he was not the rapist. Yet the district attorney whose office had convicted Godschalk—even though Godschalk disavowed his initial confession—argued that the DNA tests were flawed and refused at first to release him from prison. When the district attorney was asked what foundation he had for his decision, he asserted, “I have no scientific basis. I know because I trust my detective and his tape-recorded confession. Therefore, the results must be flawed until someone proves to me otherwise.”

SOURCE: KASSIN & NORWICK, 2004 (GRAPH); TM AND COPYRIGHT © 20TH CENTURY FOX FILM CORP. ALL RIGHTS RESERVED. COURTESY OF EVERETT COLLECTION (PHOTOGRAPH)

The presumption of guilt also influences the way police conduct interrogations, perhaps leading them to adopt an aggressive and confrontational questioning style. Demonstrating that interrogators can condition the behavior of suspects through an automatic process of social mimicry, Lucy Akehurst and Aldert Vrij of the University of Portsmouth in England found in 1999 that increased gestures and physical activity among police officers triggered movement among interviewees—fidgeting behavior that is then seen by others as suspicious.

It is important to scrutinize the specific practices of social influence that get people to confess. Proponents of the Reid technique advise interro-

the figure is closer to 60 percent. In Japan, where few restraints are placed on police interrogations and where social norms favor confession as a response to the shame brought by transgression, more than 90 percent of suspects confess.

In so-called self-report studies, researchers ask why people confessed. In 1991 one of us (Gudjonsson) and Hannes Petursson of University Hospital in Reykjavik, Iceland, published the first work in this area carried out on Icelandic prison inmates, which was replicated in Northern Ireland and in a larger Icelandic prison population with an extended version of a 54-item self-report instrument, the Gudjonsson Confession Questionnaire.

Although most suspects confess for a combi-

(*Miranda* may not yield the protective effect for which it was designed.)

gators to conduct the questioning in a small, barely furnished, soundproof room. The purpose is to isolate the suspect, increasing his or her anxiety and desire to escape. To further heighten discomfort, the interrogator may seat the suspect in a hard, armless, straight-backed chair; keep light switches, thermostats and other control devices out of reach; and encroach on the suspect's personal space over the course of interrogation.

Against this physical backdrop, the Reid operational nine-step process begins when an interrogator confronts the suspect with unwavering assertions of guilt (1); develops "themes" that psychologically justify or excuse the crime (2); interrupts all efforts at denial and defense (3); overcomes the suspect's factual, moral and emotional objections (4); ensures that the passive suspect does not withdraw (5); shows sympathy and understanding and urges the suspect to cooperate (6); offers a face-saving alternative construal of the alleged guilty act (7); gets the suspect to recount the details of his or her crime (8); and converts the latter statement into a full written or oral confession (9). Conceptually, this system is designed to get suspects to incriminate themselves by increasing the anxiety associated with denial, plunging the suspect into a state of despair and then minimizing the perceived consequences of confession.

Rates of confession vary in different countries, indicating the underlying role that institutional and cultural influences play. For example, suspects detained for questioning in the U.S. confess at a rate around 42 percent, whereas in England

nation of reasons, the most critical is their belief about the strength of the evidence against them. That is why the tactic of presenting false evidence—as when police lie to suspects about an eyewitness that does not exist; fingerprints, hair or blood that has not been found; or lie detector tests they did not really fail—can lead innocent people to confess. In a 1996 laboratory experiment that illustrates the point, Kassin and Katherine L. Kiechel of Williams College falsely accused college students of crashing a desktop computer by hitting a key that they were told was off-limits. When a fellow student who was present said she had witnessed the students hit the forbidden key, the number induced to sign a confession increased by 45 percent. Also increased were the numbers who internalized a belief in their own guilt and fabricated false memories to support that belief.

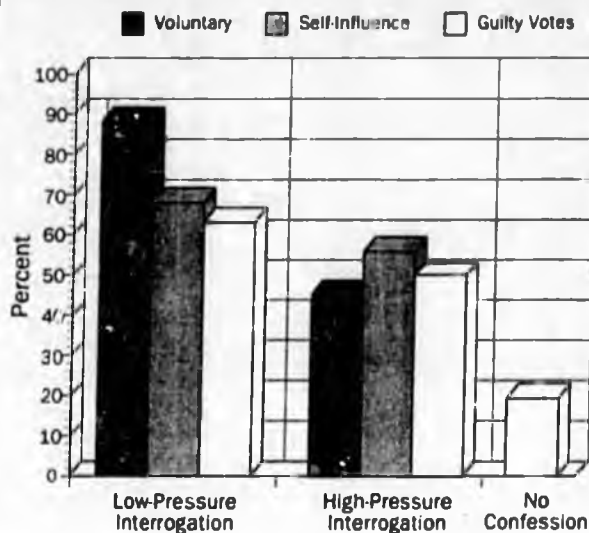
False Confessions

In 2004 Steven A. Drizin of Northwestern University School of Law and Leo analyzed 125 cases of proved false confessions in the U.S. from

(The Authors)

SAUL M. KASSIN and GISLI H. GUDJONSSON study the psychology of false confessions. Kassin is professor of psychology at Williams College. He has published many research articles on police interviewing, interrogations, and confessions—and the impact of this evidence on juries. Gudjonsson is professor of forensic psychology at King's College London. He pioneered work on the nature of suggestibility and has written extensively on the reliability of confessions, witness memories and other evidence.

Confessions and the Jury



The existence of a confession—true or false—predisposes juries toward reaching a guilty verdict. Mock jurors were asked whether they judged the confession to be voluntary, whether it influenced their verdict, and whether they voted for conviction.

between 1971 and 2002, the largest sample ever studied. Approximately two thirds were exonerated before the trial, and the rest came after conviction. Ninety-three percent of the false confessors were men. Overall, 81 percent occurred in murder cases, followed by rape (8 percent) and arson (3 percent). The most common bases for exoneration were that the real perpetrator was identified (74 percent) and that new scientific evidence was discovered (46 percent). The sample was disproportionately represented by persons who were young (63 percent were younger than 25; 32 percent were under 18), mentally retarded (22 percent) and diagnosed with mental illness (10 percent). Astonishingly, 30 percent of the cases contained more than one false confession to the same crime, as in the Central Park jogger case, typically indicating that one false confession was used to get others.

Recognizing that people confess in different ways and for different reasons, psychologists categorize false confessions into three groups:

Voluntary false confessions. When aviator Charles Lindbergh's baby was kidnapped in 1932, some 200 people stepped forward to confess. In the 1980s Henry Lee Lucas falsely admitted to hundreds of unsolved murders, making him the most prolific serial confessor in history. People might voluntarily give a false confession for reasons including a pathological desire for notoriety; a conscious or unconscious need to expiate feelings of guilt over prior transgressions; an inability to distinguish fact from fantasy; and a desire to aid and protect the real criminal.

Compliant false confessions. In these cases, the suspect confesses to achieve some end: to escape an aversive situation, to avoid an explicit or implied threat, or to gain a promised or implied reward. In *Brown v. Mississippi* in 1936, for example, three black tenant farmers admitted to murder after they were whipped with a steel-studded leather belt. And in the Central Park jogger case, each boy said he had confessed despite innocence because he was stressed and expected to go home if he cooperated.

Internalized false confessions. During interrogation, some suspects—particularly those who are young, tired, confused, suggestible and exposed to false information—come to believe that they committed the crime in question, even though they did not. In a classic case, 18-year-old Peter Reilly of Falls Village, Conn., returned home one night to find that his mother had been murdered. Reilly immediately called the police but was suspected of matricide. After gaining Reilly's trust, the police told him that he failed a lie detector test (which was not true), and which indicated that he was guilty even though he had no conscious memory of the event.

After hours of interrogation, the audiotape reveals that Reilly underwent a chilling transformation from denial to confusion, self-doubt, conversion ("Well, it really looks like I did it") and finally a full confession ("I remember slashing once at my mother's throat with a straight razor I used for model airplanes.... I also remember jumping on my mother's legs"). Two years later independent evidence revealed that Reilly

SOURCE: KASSIN & SUKEL, 1997 (GRAPH); COURTESY OF EVERETT COLLECTION (PHOTOGRAPH)

could not have possibly committed the murder.

Trial jurors, like others in the criminal justice system who precede them, can be overly influenced by confessions. Archival analyses of actual cases containing confessions later proved false tell a disturbing tale. In these cases, the jury conviction rates ranged from 73 percent (as found by Richard Ofshe of the University of California at Berkeley and Leo in 1998) to 81 percent (as found by Drizin and Leo in 2004)—about the same as cases in which the defendants had made true confessions.

colleagues found that such covert assurances can contribute to false confessions.

The Need for Reforms

To assess any given confession accurately, police, judges, lawyers and juries should have access to a videotaped record of the interrogation that produced it. In Great Britain, PACE mandated that all sessions be taped. In the U.S., four states—Minnesota, Alaska, Illinois and Maine—have mandatory videotaping, although the practice is

(Trial jurors, like others in the criminal justice system, can be overly influenced by confessions.)

In light of such findings, the time is ripe for law-enforcement professionals, policymakers and the courts to reevaluate current methods of interrogation. Although more research is needed, certain practices clearly pose a risk to the innocent. One such factor concerns time in custody and interrogation. The 2004 study by Drizin and Leo found that in proved false confession cases, the interrogations lasted for an average of 16.3 hours. In the Central Park case, the five boys were in custody for 14 to 30 hours by the time they confessed. Following the Police and Criminal Evidence Act of 1986 (PACE) guidelines implemented in England and Wales, policy discussions should begin with a proposal for the imposition of time limits for detention and interrogation or at least flexible guidelines, as well as periodic breaks for rest and meals.

A second problem concerns the tactic of lying to suspects about the evidence. Research shows that people capitulate when they believe that the authorities have strong evidence against them. The practice of confronting suspects with real evidence, or even their own inconsistent statements, should increase the reliability of the confessions ultimately elicited. When police misrepresent the evidence, however, innocent suspects come to feel as trapped as the perpetrators—which increases the risk of false confession.

A third matter revolves around the use of minimization, as when police suggest to a suspect that the conduct in question was provoked, an accident or otherwise morally justified. Such tactics lead people to infer leniency in sentencing on confession, as if explicit promises had been made. In a study that is now in press, Melissa Russano of Roger Williams University and her

often found elsewhere on a voluntary basis. Videotaping deters interrogators from using the most aggressive, psychologically coercive methods. It also will block frivolous defense claims of coercion where none existed. And it provides an objective and accurate record of all that transpired, avoiding disputes about how the confession came about.

A 1993 National Institute of Justice study revealed that many U.S. police departments already have videotaped interrogations—and the vast majority found the practice useful. More recently, in 2004, Thomas P. Sullivan of the law firm Jenner & Block interviewed officials from 238 police and sheriff's departments in 38 states who made such recordings voluntarily and found that they enthusiastically favored the practice, which increases accountability, provides an instant replay of the suspect's statement that reveals information initially overlooked and reduces the amount of time spent in court defending their interrogation conduct. As a counter to the most common criticisms, those interviewed found that videotaping is not costly and does not inhibit suspects from talking to police.

Such reforms are sorely needed. Only then can society trust the process of interrogation and the confessions that it produces—and help to promote justice for all.

(Further Reading)

- ◆ **The Psychology of Interrogations and Confessions: A Handbook.** Gisli Gudjonsson. John Wiley & Sons, 2003.
- ◆ **The Psychology of Confessions: A Review of the Literature and Issues.** Saul M. Kassin and Gisli H. Gudjonsson in *Psychological Science in the Public Interest*, Vol. 5, No. 2; November 2004. More information is available at www.psychologicalscience.org/journals/
- ◆ More on wrongful convictions is available at the Innocence Project Web site: www.InnocenceProject.org

HB

326



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

SPONSOR STATEMENT

HB 326

"An Act relating to harassment."

The rapid evolution of technology often outpaces a statute's ability to protect Alaskans from offensive and criminal behavior. The invention and widespread adoption of digital cameras in all sorts of products ranging from pens to cellular phones has opened new avenues for those bent on harassing others to cause anguish, hurt and humiliation.

House Bill 326 An Act relating to harassment builds on my previous effort in the 23rd Legislature to cover harassment through e-mail and other electronic means. With camera phones and hidden digital cameras, individuals can take lewd and obscene pictures of others and post them electronically.

When this is done as part of a pattern of threats and intimidation it should be considered harassment. HB 326 changes the current statute to include the publishing or posting of lewd or obscene pictures in the definition of harassment.



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: January 9, 2006
TO: Representative Kevin Meyer
FROM: Mike Pawlowski
RE: Sectional Analysis for HB 326
(Version No. 24 – LS1223\A)

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Adds the publishing, posting or distribution of lewd pictures of another person to the definition of harassment.

HB

329

ALASKA STATE LEGISLATURE

Vice Chair:
House Finance Committee

Chair:
House Finance Subcommittees for,
Department of Public Safety
Department of Law



Session:
Alaska State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-4958
Fax: (907) 465-4928

Interim:
PO Box 464
Chugach, AK 99567

BILL STOLTZE **State Representative**

Representative_Bill_Stoltze@legis.state.ak.us

House Bill 329

Bail Restrictions

"An Act relating to bail and unlawful evasion."

If a defendant fails to meet the court's conditions to meet bail until trial, then the defendant should not be allowed to leave temporarily based on the "softening" of those conditions. Not only does it create problems for the prisons to have them come and go, but just because they are on temporary release for a funeral or birth does not mean that they are any less of a danger to the public or flight risk.

The provisions of HB 329:

- Increases the penalty for unlawful evasion from a class A misdemeanor to a class C felony.
- Prohibits the court from allowing a defendant to be released temporarily or periodically before or after conviction.

I ask for your consideration and support of HB 329 to strengthen our current bail restriction laws.

DISTRICT 16

BIRCHWOOD • BUTTE • CHUGIAK • EKLUTNA • FAIRVIEW LOOP
KNIK RIVER ROAD • LAZY MOUNTAIN • PALMER • PETERS CREEK

5 of 9 DOCUMENTS

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The Associated Press State & Local Wire

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October 22, 2005, Saturday, BC cycle

SECTION: State and Regional

LENGTH: 281 words

HEADLINE: Troopers arrest Palmer fugitive

DATELINE: ANCHORAGE, Alaska

BODY:

A 19-year-old state prisoner on the lam after being allowed to attend his father's funeral was recaptured.

The Alaska Fugitive Task Force arrested John Pearl Smith II of Palmer Friday night at a Wasilla home.

Smith was wanted on six felony warrants for violating conditions of his release. Smith escaped Oct. 14.

He had been awaiting trial on charges that include kidnapping, assault, arson and robbery. He was charged with the September, 2004 armed robbery of a 45-year-old man at his home.

Troopers said Smith and two other men stole guns, cash and jewelry and took the man's pickup truck to a bank to steal money using his automatic teller card. The pickup truck was found torched.

Smith's father, John "Junkman John" Smith, died Oct. 8 at age 62. The younger Smith's lawyer asked the state to allow the teenager to leave Mat-Su Pre-Trial to attend the funeral.

Judge Beverly Cutler did not require a court officer to accompany Smith. Instead, she appointed Smith's mother as his third-party custodian and required him to wear an electronic monitor, an ankle bracelet with a global positioning unit attached.

Smith read a tribute to his father at a memorial service. His mother, Christine Ace, told authorities she stepped into the bathroom after the service and Smith fled. Troopers said he cut the ankle bracelet off.

Smith had not been convicted of crimes as an adult. Authorities said the teenager had escaped from confinement as a juvenile one other time and has a record of charges involving violent crimes.

Troopers warned that he would be considered armed and dangerous.

Smith was jailed with bail set at \$275,000, troopers said.

LOAD-DATE: October 13, 2005

8 of 9 DOCUMENTS

Copyright 2005 Anchorage Daily News
Anchorage Daily News (Alaska)

October 16, 2005 Sunday, FINAL EDITION

SECTION: MAIN; Pg. A1

LENGTH: 892 words

HEADLINE: Inmate flees after attending father's funeral;
JOHN PEARL SMITH: Released to the custody of his mother, man cuts ankle bracelet, escapes near Butte

BYLINE: By KYLE HOPKINS, Anchorage Daily News

DATELINE: PALMER -

BODY:

About 6:30 p.m. Friday, John Pearl Smith stood and read a tribute to his father at a memorial service in the Butte, saying he wished he could have been there when his dad died, or at least been able to spend more time with him.

"Everybody was very proud of him," said Smith's mother, Christine Ace.

A 19-year-old inmate at Mat-Su Pre-Trial facing a slew of charges, Smith hadn't seen his family much lately. But a Palmer judge allowed him a few hours away from jail wearing a tracking device and in the custody of his mother to say goodbye to his father, who died days before.

Then after the funeral, when his mother says she stepped into the bathroom, Smith fled.

According to Alaska State Troopers, he cut the ankle bracelet authorities used to keep up with him while he attended his father's service and disappeared. As of Saturday night, the teenager -- whom authorities say has escaped from confinement one other time and has a record of charges involving violent crimes -- was still at large and considered armed and dangerous by troopers.

The current charges pending against Smith include first-degree burglary, robbery, vehicle theft, weapons misconduct and felony assault, among others. He had been confined more than year awaiting disposition of those charges.

"He's not a nice kid," said Sgt. Jay Barnhardt, a shift supervisor working at Mat-Su Pre-Trial on Saturday. Barnhardt wouldn't go into detail, but said, "He's been in our lockdown unit (for problem inmates) for quite some time."

Smith entered McLaughlin Youth Center before reaching his teens, his mother said, and has fallen in and out of trouble ever since.

Ace described her son as a highly intelligent, charismatic young man who despite past gun and assault charges, "wouldn't hurt a flea." She stood on her porch in Palmer Saturday afternoon looking under the hood of a pickup and then pausing to smoke a cigarette as she described the previous 24 hours.

The family is stunned, she said. "His dad died and he does this at that time? That was really ... How can I say this without saying a cussword?"

Smith's father, John "Junkman John" Smith, died Oct. 8 at age 62, according to his obituary. The younger Smith's lawyer asked the state to allow the teenager to leave Mat-Su Pre-Trial to attend the funeral, assistant district attorney Richard Payne said.

Corrections officers sometimes escort inmates when they go on this type of temporary leave, Barnhardt said.

But the court didn't make that requirement in Smith's case. In authorizing the leave, the judge appointed Smith's mother as his third-party custodian and restricted his absence to just a few hours. Smith would also have to wear an electronic monitor - a kind of rubber ankle bracelet with a GPS unit attached.

Inmate flees after attending father's funeral; JOHN PEARL SMITH: Rel

The judge who signed the order, Beverly Cutler, couldn't be reached for comment Saturday. Payne said it's common to allow inmates to attend family members' funerals.

And despite the escape, Payne said, allowing an inmate to attend his father's memorial service was the right decision.

"The court did a very fine job in narrowing what he could do, and showing the level of mercy that I think the average citizen wants our court system to show," he said.

Payne said he didn't know why the court didn't have a corrections officer, rather than a family member, escort Smith, although someone would have had to pay for the officer's time.

Ace said she took custody of her son around 4 p.m. on Friday. Smith changed clothes and the family drove in a small, borrowed car to the Butte Community Center for the memorial service.

Afterward, Ace said, she and Smith went to a family member's house in the Butte about 8:30 p.m., half an hour before he was due back at jail. When Smith went into his brother's room to change, Ace says she ducked into the bathroom.

When she came out, Smith had vanished, she said. "I go out and say, 'Where's John? And everybody went, 'In the garage,' and I go, 'No he's not.' "

Later, someone discovered the ankle bracelet inside the borrowed car, Ace said. It could not be learned precisely how he shed the device.

Friday's episode is not the first time Smith has been involved in an escape.

At age 14 in 2000, troopers claimed he and another boy beat up the youth counselor who was guarding them, and ran away after a court hearing in Palmer, according to Daily News archives. At the time, Smith faced charges of breaking into homes and stealing firearms.

Troopers didn't catch the boys for three days.

Then in July of 2004, a month after he turned 18, troopers said, Smith crashed a stolen pickup while racing with another teen in the Butte. Later that summer, authorities again arrested Smith, this time in connection with the armed robbery of a 45-year-old man.

At the time, troopers said Smith and two other men were accused of stealing guns, cash and jewelry, then taking the victim's Ford pickup to a nearby ATM to use his stolen bank card. They later doused the truck in gasoline and set it on fire, troopers said.

Payne, who prosecuted many of the cases against Smith, said Saturday that Smith hasn't been convicted of any of the charges levied against him as an adult.

Troopers asked that anyone who has seen Smith call 745-2131, or their local police department.

Contact reporter Kyle Hopkins at khopkins@adn.com or call 352-6710.

GRAPHIC: Alaska State Troopers: Smith

LOAD-DATE: October 17, 2005

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... in the borough.
See TRAILS, Page A3

Accused robber didn't make it back to jail

Judge gave man charged with kidnapping, theft permission to attend father's funeral

MARY AMES
Frontiersman reporter

PALMER — A Wasilla man charged with a kidnapping at gunpoint and a string of burglaries and vehicle thefts in the Valley and Soldotna remained at large Saturday, a day after failing to return to jail from a court-approved trip to the Butte to attend his father's funeral, according to Alaska State Troopers.

Palmer Superior Court Judge Beverly Cutler on Thursday gave John Pearl Smith II, 19, permission to venture outside the jail between 3:30-9 p.m. Friday for the funeral of John Pearl Smith.

Cutler refused a request by

Smith's mother, Christine Ace, however, to allow her son 12 hours of freedom so they could buy clothes for him at Wal-Mart and pick up his brother and sister.

"No judge in Alaska would let him have that much freedom, with his history," Cutler said at Thursday's hearing, at which Smith was scheduled to — but did not — enter a change of plea. "What does he have to lose if he tries to crawl in a ceiling tile at Wal-Mart? I've been dealing with

him since he was 13. The reason for incarceration is the cost of what you've done."



Courtesy Alaska State Troopers
John P. Smith II

Cutler settled on Smith being released with monitoring by Alaska Monitoring Systems, including a global-positioning system device.

She ordered Smith not to consume alcohol or medication, not to be in public places, not to be around firearms and required him to be in the custody of his mother at the Butte Community Center from his release at 3:30 p.m.

Saturday until his required return to Mat-Su Pre-Trial Facility at 9 p.m.

Despite her expressed misgivings, Cutler did not order any law-enforcement officers to escort Smith to and from the funeral.

Smith reportedly made it to the funeral but then left and, according to Alaska Monitoring Systems, sliced through a rubber ankle monitor about 20 minutes before he was supposed to

return to Mat-Su Pre-Trial Facility.



John P. Smith II, at a hearing Thursday.

Trooper spokesman Greg Wilkinson on Saturday said troopers had not received any information about where Smith might be, and no reports that he had committed any criminal offenses beyond failing to return to jail as scheduled.

Smith had appeared in court Thursday so his attorney, Shelley Chaffin of Anchorage, could enter a

See SMITH, Page A2

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FINANCIAL

Continued from Page A1

Industrial Development and Export Authority officials about terms for securing a \$15-million loan backed by AJDEA and a \$9-million bank loan, with which AJDEA will participate.

The assembly was primed, at its Sept. 20 meeting, to authorize Borough Manager John Duffy to begin negotiations with JL Properties for the \$41.25-million ski area and residential resort, but called for public hearings on the plan at the urging of members Bill Allen and Talis Colberg. Colberg and Allen insisted

with the plan to rush into negotiations without allowing the public to have some input.

Allen also questioned ties between assembly member Jim Colver and AJDEA board chair Mike Barry.

The assembly held a work session Thursday to address Allen's concerns about Colver and Barry, as well as other main points of the plan.

Also on the agenda is a public hearing regarding the Meadow Lakes Comprehensive Plan, another topic some feel they have so far been denied an opportunity to address.

Contact Darrell L. Brees at 352-2267.

SMITH

Continued from Page A1

change of plea for her client to two counts of first-degree burglary, one count of first-degree robbery, two counts of first-degree vehicle theft, one count of second-degree theft one count of third-degree weapons misconduct and one count of reckless driving and go to trial on several other charges.

Smith had second thoughts, however, and opted for a trial after Cutler said he could receive a possible sentence of 66 years on the 10 charges against him.

"Don't do anything if you don't know what you're doing," Ace told her son, while sitting behind him at Thursday's hearing. Smith's first trial date was set for Oct. 24.

According to court documents, Smith and two accomplices, Kasey Malay and Yancey McDaniel, waited in William Fuger's home Sept. 13, 2004, for him to get home and, when Fuger arrived, Smith pointed a gun at him and told him to freeze. They allegedly tied up Fuger, put a pillowcase on his head and forced him at gunpoint to give up keys to his safe, money from his wallet, his ATM card and personal identification number.

Fuger's captors grabbed \$500 from Fuger's wallet, \$2,500 from his safe, \$3,500 worth of jewelry, a video

They drove away in Fuger's 2003 Ford F-250 crew-cab pickup truck, leaving him bound at the wrists with phone cord, fists wrapped in packing tape and feet latched with a belt.

The fire-gutted Ford was found on the next day on Maud Road near Mud Lake outside Palmer.

Twelve minutes after Fuger reported the robbery to troopers, a security camera at Wells Fargo

in Wasilla recorded two people withdrawing money from the ATM. Palmer police investigator Dwayne Shelton, who has had many

contacts with Smith over the previous six years, identified one of the men as Smith.

Palmer police arrested Smith, then 18, six days later during a traffic stop. Officer Donna Anthony found a 9mm Witness handgun and several empty bottles of Mike's Hard Lemonade in the car.

The 9mm handgun turned out to be one that was stolen from Fuger.

Before the Fuger robbery, on Aug. 25, Smith and another accomplice allegedly stole a 1999 Oldsmobile Bravada from a Palmer residence, drove it to Soldotna

there. The loot from that heist included five firearms, two Mag-Lite flashlights and a backpack. On the way back to Palmer, Smith reportedly fell asleep at the wheel and crashed the Bravada.

Smith fled, according to troopers, and his alleged accomplice, Brent LaFave, gave the troopers who responded to the wreck a false name for Smith.

Troopers found several stolen firearms in the back seat of the Bravada that were later linked to burglaries in Soldotna and Wasilla.

On Sept. 16, LaFave told troopers Smith was driving the Bravada and confessed to the Soldotna burglary.


Kasey Malay pleaded no contest Oct. 7, 2004 to charges of kidnapping, first-degree burglary, first-degree robbery, third-degree assault, four counts of second-degree firearm theft, first-degree vehicle theft and one count of criminal mischief.

Yancey McDaniel faced the same charges, but prosecutors dismissed them Oct. 20, 2004.

Troopers say Smith should be considered armed and dangerous and that people should not try to detain him. Anyone who sees Smith is asked to call troopers, 745-2131, or local police.

"No judge in Alaska would let him have that much freedom, with his history."

— Superior Court Judge Beverly Cutler, before allowing John Smith to attend his father's funeral.

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Around the Valley

Big Lake Chamber meeting Wednesday

BIG LAKE — The next membership meeting of the Big Lake Chamber of Commerce will be Wednesday at noon at Mahoney's in the East Lake Mall.

The scheduled guest speaker is Carolyn Johnson, from Alaska Dog and Puppy Rescue.

Interested people may contact Randi Perlman at

892-6109 for additional information.

Public hearing slated on Knik River access

MAT-SU — Sen. Charlie Huggins and Rep. Bill Stoitze are hosting a public meeting Thursday on their Knik River Public Use Area legislation. The meeting, which is scheduled from 7-9 p.m. at Butte Elementary School, will give the public another chance to provide their comments and

opinions on the proposed bill before the Legislature's upcoming session.

People who signed up to speak at the last meeting will have first priority to testify at this meeting.

Acupuncture seminar scheduled

MAT-SU — The Alaska Club in Wasilla will host an acupuncture seminar Thursday from 7-8 p.m. at the facility in the Creekside Plaza in Wasilla.

Participants will learn Asian-oriented health and fitness strategies, with a focus on wellness, prevention and potential.

Kevin Meddleton and Samantha Berg, licensed acupuncturists with the Alaska Center for Acupuncture, based in Palmer, will provide instruction at the seminar.

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FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB329-Courts-2-21-06
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Bail Restrictions RDU Alaska Court System
 Component Trial Courts
 Sponsor Representatives Stoltze and 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 329.

Prepared by: Doug Wooliver, Administrative Attorney Phone 483-4750
 Division Alaska Court System Date/Time 2/21/06 @ 2:30 pm
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 2/21/2006
 Agency Alaska Court System

HB

343

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB343-DPS-AST-1-24-06
 () Publish Date: _____

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 Phone 907-269-4532
 Division: Alaska State Troopers Date/Time 1/24/06 11:01 AM
 Approved by: Commissioner William Tandeske Date 1/24/2006
 Agency: Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

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

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 Housa 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 Phone (907) 465-3339
 Division: Administrative Services Date/Time 1/24/06 5:53 PM
 Approved by: Portia C.K. Parker, Deputy Commissioner Date 1/24/2006
 Agency: Department of Corrections

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State Affairs Committee

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Committee

Education Committee

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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

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Fax: (907) 269-0207

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 or treated 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.

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.



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. Glanz



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	OCGA 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
Source: 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.

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.

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

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(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; 86-930; 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)

LEASEE 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 L. 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. 663, § 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.