Montana Code Annotated, 45-5-214, Assault with bodily fluid, Montana Legislative Service, *http://www.montana.gov/govt/mca_const.asp*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 240 32 Aggravated harassment of an employee by an inmate.

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

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

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

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

163.165 Assault in the third degree.

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

(a) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon;

(b) Recklessly causes serious physical injury to another under circumstances manifesting extreme indifference to the value of human life;

(c) Recklessly causes physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life;

(d) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a public transit vehicle while the operator is in control of or operating the vehicle. As used in this paragraph, "public transit vehicle" has the meaning given that term in ORS 166.116;

(e) While being aided by another person actually present, intentionally or knowingly causes physical injury to another;

(f) While committed to a youth correction facility, intentionally or knowingly causes physical injury to another knowing the other person is a staff member of a youth correction facility while the other person is acting in the course of official duty;

(g) Intentionally, knowingly or recklessly causes physical injury to an emergency medical technician or paramedic, as those terms are defined in ORS 682.025, while the technician or paramedic is performing official duties;

(h) Being at least 18 years of age, intentionally or knowingly causes physical injury to a child 10 years of age or younger;

(i) Knowing the other person is a staff member, intentionally or knowingly propels any dangerous substance at the staff member while the staff member is acting in the course of official duty or as a result of the staff member's official duties; or

(j) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a taxi while the operator is in control of the taxi.

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

(3) As used in this section:

(a) "Dangerous substance" includes, but is not limited to, blood, urine, saliva, semen and feces.

(b) "Staff member" means:

(A) A corrections officer as defined in ORS 181.610, a youth correction officer, a Department of Corrections or Oregon Youth Authority staff member or a person employed pursuant to a contract with the department or youth authority to work with, or in the vicinity of, inmates or youth offenders; and

(B) A volunteer authorized by the department, youth authority or other entity in charge of a corrections facility to work with, or in the vicinity of, inmates or youth offenders.

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

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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

18 Pa.C.S. § 2703.1 (2004)

§ 2703.1. Aggravated harassment by prisoner

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

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

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

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

TITLE 24. CORRECTION, JAILS, PROBATIONS, PAROLES AND PARDONS
CHAPTER 13. PRISONERS GENERALLY
ARTICLE 5. OFFENSES

S.C. Code Ann. § 24-13-470 (2004)

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

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

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

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

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

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

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

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

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

TEXAS STATUTES AND CODES ANNOTATED BY LEXISNEXIS(R)

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

Tex. Penal Code § 22.11 (2004)

§ 22.11. Harassment by Persons in Certain Correctional Facilities

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

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

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

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

(1) a secure correctional facility; or

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

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

Hold it right there, gasser!

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

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

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

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

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

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

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

- *Scott Christiansen*

The Daily Star

Print Story

11/08/05

Man pleads guilty to throwing blood on prison officer

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By Patricia Breakey

Delhi News Bureau

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

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

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

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

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

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

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

Delaware County Judge Carl Becker sentenced Caiati to two to four years in prison on each count, to run concurrently, and issued an order of protection on Lehmann's behalf.
I would, in all likelihood, have sentenced you to more if this had gone to trial," Becker said. "This is the most dangerous activity that an inmate can take part in. Throwing blood or other bodily fluids is something corrections officers fear more than a physical confrontation."

In other court cases:

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

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

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

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

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

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

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

ENQUIRER LOCAL NEWS COVERAGE

Saturday, January 17, 1998

LCI inmate guilty in urine attack

BY KYM LIEBLER
The Cincinnati Enquirer

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

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

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

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

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

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

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

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

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

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

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

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

State of Rhode Island
DEPARTMENT OF THE ATTORNEY GENERAL

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

Release date: 2005-04-08

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

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

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

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

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Department of The Attorney General

Online: www.riag.state.ri.gov

Back

NWAnews.com Arkansas Democrat Gazette
NORTHWEST ARKANSAS EDITION

Prisons crack down on 'dashing'

BY TRACI SHURLEY
Posted on Saturday, November 6, 2004
URL: http://www.nwanews.com/adg/News/97969/

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

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

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

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

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

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

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

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

since, Tyler said.

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

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

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

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

News

Inmate convicted of throwing feces at officer

By SARA BONISTEEL
Star-Gazette

ELMIRA -- A Chemung County Court jury on Thursday found a 21-year-old inmate at Southport Correctional Facility guilty of intentionally throwing feces on a correction officer.
Conceptualization Gibbs, 21, was found guilty of one count of felonious aggravated harassment of a correctional employee by an inmate, according to Chemung County District Attorney John Trice.
In December 1999, Gibbs threw feces at Correction Officer William Painter, Trice said. Another correction officer and an inmate were also hit.
"Honestly, I can say for the first time in my career that I sincerely believe the jury convicted an innocent man," said Richard W. Rich Jr , Gibb's public defender. "He's not guilty as far as I'm concerned."
The defense contended that Gibbs did not intentionally hi the officer, and the physical evidence proved that, Rich said.
"The physical evidence is quite clear that he threw on another inmate and a small amount of splash landed on the correction officer," Rich said.
Gibbs, who will be sentenced April 2, was charged under the 1996 state law that makes it a felony for an inmate to throw bodily fluids -- blood, urine, feces and semen -- at prison staff. It is not illegal for an inmate to throw feces at another inmate.
The Chemung County district attorney's office prosecuted the state's first successful conviction of an inmate under the law in 1998.
Roger Stokes, a then 38-year-old inmate at Southport Correctional Facility, was convicted of squirting a mixture of feces and urine on Virginia Livermore, a prison counselor, in 1997.
"Since it became a felony, it's slowed down a lot, but it's still happening," said John Winant, chief steward of the Southport Correctional Facility.
"We were becoming victimized by the inmates," he said. "We had no power as far as control of the situation."
Winant said with the rising incidences of diseases such as tuberculosis and hepatitis B in prisons, the deterrent also protects prison employees' health.
Gibbs faces three to five years in prison in addition to the three- to nine-year sentence he is already serving for a second-degree robbery conviction in 1995.
But Thursday's conviction may not be the end of Gibbs' legal troubles.
"There may be assault charges coming out of what he (allegedly) did during trial," Trice said.
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Death row guards facing escalating dangers

Tuesday, May 8, 2001

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

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

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

Spring 1996

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

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boston.com

THIS STORY HAS BEEN FORMATTED FOR EASY PRINTING

Prison guards seek protection from fluids

AP Associated Press

May 4, 2005

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

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

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

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

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

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

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

Information from: The Burlington Free Press, http://www.burlingtonfreepress.com ■

Hold it right there, gasser!

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

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

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

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

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

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

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

- *Scott Christiansen*

The Daily Star

Print Story

11/08/05

Man pleads guilty to throwing blood on prison officer

Story text size
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By Patricia Breakey

Delhi News Bureau

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

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

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

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

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

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

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

Delaware County Judge Carl Becker sentenced Caiati to two to four years in prison on each count, to run concurrently, and issued an order of protection on Lehmann's behalf.
I would, in all likelihood, have sentenced you to more if this had gone to trial," Becker said. "This is the most dangerous activity that an inmate can take part in. Throwing blood or other bodily fluids is something corrections officers fear more than a physical confrontation."

In other court cases:

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

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

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

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

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

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

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

ENQUIRER LOCAL NEWS COVERAGE
Saturday, January 17, 1998

LCI inmate guilty in urine attack

BY KYM LIEBLER
The Cincinnati Enquirer

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

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

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

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

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

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

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

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

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

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

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

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

State of Rhode Island
DEPARTMENT OF THE ATTORNEY GENERAL

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

Release date: 2005-04-08

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

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

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

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

# # #

Department of The Attorney General

Online: www.riag.state.ri.gov

Back

NWAnews.com Arkansas Democrat Gazette
NORTHWEST ARKANSAS EDITION

Prisons crack down on 'dashing'

BY TRACI SHURLEY
Posted on Saturday, November 6, 2004
URL: http://www.nwanews.com/adg/News/97969/

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

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

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

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

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

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

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

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

since, Tyler said.

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

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

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

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

News

Inmate convicted of throwing feces at officer

By SARA BONISTEEL
Star-Gazette

ELMIRA -- A Chemung County Court jury on Thursday found a 21-year-old inmate at Southport Correctional Facility guilty of intentionally throwing feces on a correction officer.
Conceptualization Gibbs, 21, was found guilty of one count of felonious aggravated harassment of a correctional employee by an inmate, according to Chemung County District Attorney John Trice.
In December 1999, Gibbs threw feces at Correction Officer William Painter, Trice said. Another correction officer and an inmate were also hit.
"Honestly, I can say for the first time in my career that I sincerely believe the jury convicted an innocent man," said Richard W. Rich Jr., Gibb's public defender. "He's not guilty as far as I'm concerned."
The defense contended that Gibbs did not intentionally hit the officer, and the physical evidence proved that, Rich said.
"The physical evidence is quite clear that he threw on another inmate and a small amount of splash landed on the correction officer," Rich said.
Gibbs, who will be sentenced April 2, was charged under the 1996 state law that makes it a felony for an inmate to throw bodily fluids -- blood, urine, feces and semen -- at prison staff. It is not illegal for an inmate to throw feces at another inmate.
The Chemung County district attorney's office prosecuted the state's first successful conviction of an inmate under the law in 1998.
Roger Stokes, a then 38-year-old inmate at Southport Correctional Facility, was convicted of squirting a mixture of feces and urine on Virginia Livermore, a prison counselor, in 1997.
"Since it became a felony, it's slowed down a lot, but it's still happening," said John Winant, chief steward of the Southport Correctional Facility.
"We were becoming victimized by the inmates," he said. "We had no power as far as control of the situation."
Winant said with the rising incidences of diseases such as tuberculosis and hepatitis B in prisons, the deterrent also protects prison employees' health.
Gibbs faces three to five years in prison in addition to the three- to nine-year sentence he is already serving for a second-degree robbery conviction in 1995.
But Thursday's conviction may not be the end of Gibbs' legal troubles.
"There may be assault charges coming out of what he (allegedly) did during trial," Trice said.
After the jury left court Wednesday, Gibbs got into a scuffle in a room adjoining the courtroom and allegedly assaulted the two correction officers escorting him back to the correctional facility, Trice said.
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Information from: The Burlington Free Press, http://www.burlingtonfreepress.com ■

RELEVANT STATUTES, HB 343

Sec. 11.41.260. Stalking in the first degree.

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

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

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

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

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

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

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

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

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

Sec. 11.61.120. Harassment.

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

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

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

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

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

(5) subjects another person to offensive physical contact.

(b) Harassment is a class B misdemeanor.

Sec. 12.55.135. Sentences of imprisonment for misdemeanors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) imposition of sentence may not be suspended;

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

(j) In this section,

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

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

Sec. 11.41.230. Assault in the fourth degree.

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

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

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

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

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

Sec. 11.81.250. Classification of offenses.

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

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

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

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

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

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

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

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

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

FAIRBANKS POLICE DEPARTMENT

911 Cushman Street
Fairbanks, AK 99701-4616
Phone: (907) 450-6500
Fax: (907) 452-1588
Email: fpd@ci.fairbanks.ak.us

January 25, 2006

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

Dear Representative Lynn:

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

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

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

Sincerely,

Daniel P. Hoffman, Chief
Fairbanks Police Department

Alaska Association of Chiefs of Police

January 24, 2006

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

Dear Representative Lynn,

Reference: House Bill 343

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

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

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

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

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

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

Sincerely,

Chief Thomas Clemons
President
Alaska Association of Chiefs of Police

(907) 224-3338 P.O. Box 167 Seward, AK 99664

HB

347

HOUSE COMMITTEE REPO

(7)
Date Referred to Committee: February 17, 2006 **FURTHER REFERRALS:**

Date of Committee Action: 04/07/06

The JUDICIARY Committee considered: **HB 347**

HOUSE BILL NO. 347 **MOTOR VEHICLE INSURANCE & NOTICE**

"An Act relating to mandatory motor vehicle insurance, license suspensions, and notices relating to motor vehicles and driver's licenses."

Recommends it be replaced with [ ] HCS *or* [X] CS *for* HB 347 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[X] 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

PREVIOUS FISCAL NOTES

List by Dept(s):	FN#	Fiscal	Indet.	Zero
DPS				X
ADM				X
ADM				X

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Gara	✓			
Peggy Wilson	WILSON	✓			
	ANDERSON				X
	KOTT	–			
	Greenberg	–			
			✓		
Chair:	McGuire	✓			
Chair:					

ALASKA STATE LEGISLATURE

REPRESENTATIVE LES GARA

HB 347: Motor Vehicle License Suspensions / DMV Notification Procedure

Sponsor Statement

House Bill 347 closes a loophole in the law that has caused a number of drivers to be charged criminally for driving without auto insurance when, in fact, they had insurance. This past summer we heard from two constituents who were properly insured, who proved they had insurance, but who were charged with the crime of driving without a license because the Department of Motor Vehicles did not receive the requested paperwork. In at least one case, and perhaps both, DMV send the paperwork request to a dated address.

Under current law a driver can lose his or her license for driving without insurance, and can be criminally charged for driving when their license is subsequently suspended. Those are proper penalties. But a loophole exists in the law that lets drivers who in fact had insurance to be charged with a crime. Currently drivers involved in an accident must show law enforcement proof of insurance. When they do, an officer then asks the driver to fill out paperwork informing the DMV that the driver had insurance at the time of the accident. Many drivers incorrectly assume that when they show proof of insurance at the accident scene, the subsequent paperwork is unnecessary. If DMV does not receive the paperwork, even if the law enforcement office substantiated that the driver had insurance at the scene of the accident, the driver's license will be suspended. DMV will send a reminder notice to the driver when the paperwork is not received, however, rather than sending the notice to the latest address the state knows about - normally the address provided to the police officer at the time of the accident - the law requires the notice be sent to the address on the person's driver's license.

In the two cases we know about drivers who had insurance were charged with the crime of driving without a license even though they presented proof of insurance at the scene of their car accidents. The DMV simply did not receive the required paperwork.

HB 347 does two things. First, it provides that if a person's driver's license is suspended because of lack of insurance, it is a defense to the criminal charge of driving without a valid license that the driver in fact had the legally required auto insurance.

HB 347 also provides that DMV should send the required insurance paperwork to a driver's last known address, not just the address DMV has on file. This rule will minimize the number of cases where DMV sends required insurance paperwork to the wrong address.

HB 347 serves the dual goals of requiring drivers to have automobile insurance, and preventing drivers from being charged with crimes they did not commit.

January-May: State Capitol • Juneau, AK 99801-1182 • (907) 465-2647 • Fax (907) 465-3518
June-December: 716 W. 4th Avenue • Anchorage, AK 99501• (907) 269-0106• Fax (907) 269-0109
Representative_Les_Gara@legis.state.ak.us

Tricia Moen
8766 Row Ln SE
Port Orchard, WA 98367
Moentm@hotmail.com

December 7, 2005

Duane Bannock, Director
Division of Motor Vehicles
3300B Fairbanks Street
Anchorage, AK 99503

Dear Mr. Bannock:

I am writing about an incident that happened to me when I lived in Alaska. In June, I was traveling North on the Parks Highway. Near Talkeetna, and a state trooper pulled me over for speeding. When he ran my license he discovered it was suspended and I was supposed to have SR 22 insurance. The reason? The Department of Motor Vehicles had no record of receiving proof of insurance paperwork.

Let me back up. In September of 2004 I was involved in a car accident. I had my proof of insurance at the scene, which I offered to show the police officer. I also sent in the yellow proof-of-insurance sheet. I didn't think anything more of the accident. Nine months later, when I was pulled over, I found out that the DMV never got the proof-of-insurance sheet, and my license had been suspended. The Trooper let me go, he said it was obvious I didn't have a lapse of insurance; he let me go with a summons to appear in court on criminal charges. Since my license was suspended, I also had to have one of my friends drive the remainder of the trip. The criminal charge was eventually dropped.

I would like to suggest some of efficient way to make sure drivers are insured. I understand insurance companies have ways of letting the DMV know when someone drops their insurance company. Perhaps officers should check for proof of insurance when drivers are pulled over. If the driver does not have proof of insurance, then the driver would be ticketed.

I am aware that Representative Gara's office is working on a bill to this effect and hope that this will solve the problem. I want to do what I can to make sure no other drivers have the same experience I did. Thank you for your consideration into this matter. I am a law abiding citizen, and it is a bit of a nuisance to be considered a criminal. Especially when my "criminal" status could have been prevented.

Sincerely,

Tricia Moen

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 347(STA)
(H) Publish Date: 2/17/06

Revision Date/Time (Note if correction):
Dept. Affected: Administration
Title: An Act relating to mandatory motor vehicle insurance, license suspensions, and notices.....
RDU: Legal and Advocacy Services
Component: Office of Public Advocacy
Sponsor: Rep. Gara and Lynn
Requester: (H) STA
Component No. 43

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
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						
CHANGE IN REVENUES ( )						

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)*

If passed, this legislation should have no fiscal impact on the Office of Public Advocacy.

Prepared by: Joshua P. Fink, Director
Phone 907.269-3500
Division: Office of Public Advocacy
Date/Time 2/13/06 at 3:10 p.m.
Approved by: Mike Tibbles, Deputy Commissioner
Date
Agency: Administration

(Revised 9/..2005 OMB)

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 347(STA)
(H) Publish Date: 2/17/06

Revision Date/Time (Note if correction):
Dept. Affected: Administration

Title: "An Act relating to mandatory motor vehicle insurance. . ."
RDU: Division of Motor Vehicles
Component: Motor Vehicles

Sponsor: Rep. Gara
Requester: (H) State Affaris
Component No.: 2348

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						
CHANGE IN REVENUES ( )						

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 will allow the Division of Motor Vehicles (DMV) a greater ability to make contact with customers via mail by recognizing a mailing address from a citation, police report or permanent fund dividend application if it is more current the Division's official record.

The DMV does not anticipate any additional expense as a result of this change.

Prepared by: Duane Bannock, Director
Phone 269 5008
Division: Motor Vehicles
Date/Time 2/9/06 3:00p

Approved by: Mike Tibbles, Deputy Commissioner
Date 2/9/2006
Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSHB 347(STA)
(H) Publish Date: 2/17/06

Revision Date/Time (Note if correction):
Dept. Affected: Public Safety
Title: "An Act relating to mandatory vehicle insurance, license suspensions, and notices..."
RDU: Alaska State Troopers
Component: AST Detachments
Sponsor: Representatives Gara
Requester: House State Affairs 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						
CHANGE IN REVENUES ( )						

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 legislation makes it an infraction if a person fails to notify the appropriate department of a change of name or address if convicted. Section two adds an affirmative defense clause under driver license violations. The bill also provides for the appropriate department to use the latest address records available from the department, police reports, or addresses provided in permanent fund dividend applications to the Department of Revenue. This so the department can notify the licensee involved in a motor vehicle accident notifying them that their license suspension may become effective if they don't make an oral or written answer controverting any point or issue regarding their failure to provide proof of motor vehicle insurance.

This bill will have no fiscal impact upon the division of the Alaska State Troopers.

Prepared by: Lieutenant James Helgoe
Phone: 907-269-4532
Division: Alaska State Troopers
Date/Time: 1/31/06 8:58 AM
Approved by: Commissioner William Tandeske
Date: 1/31/2006
Agency: Department of Public Safety

HB

353

HOUSE COMMITTEE REPO

(7)

Date Referred to Committee: January 9, 2006 **FURTHER REFERRALS: Finance**

Date of Committee Action: 02/17/06

The JUDICIARY Committee considered: **HB 353**

HOUSE BILL NO. 353 **SENTENCING FOR SEXUAL OFFENSES**

"An Act relating to sentences for sexual offenses."

Recommends it be replaced with [ ] HCS *or* [X] CS *for* HB 353 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [X] 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
I.WF
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
CRT			X	

***PREVIOUS* FISCAL NOTES**

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

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Gara			ND	✓
	Coghill			✓	
	Stoltz				✓
	Gruenberg			–	
VICE Chair:	ANDERSON		✓	X	
Chair:	McGuire	✓			

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 353
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected:
Title: Sentencing for Sexual Offenses
RDU: Alaska Court System
Component: Trial Courts
Sponsor: Representatives Neuman 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	*	*	*	*	*	*
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

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	*	*	*	*	*	*

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)*

House Bill 353 significantly increases the presumptive sentences for those convicted of sexual offenses. It is likely that the longer sentences will increase a defendant's willingness to go to trial. Although the additional costs associated with those trials will fiscally impact the court system, the extent of the impact is too speculative to support a fiscal note.

Prepared by: Doug Wooliver, Administrative Attorney
Phone 463-4750
Division: Alaska Court System
Date/Time 1/31/06 @ 9:00 am
Approved by: Doug Wooliver for Stephanie Cole, Adminstrative Director
Date 1/31/2006
Agency: Alaska Court System

Alaska State Legislature

Session Address:
Alaska State Capitol
Juneau, AK 99801
Phone. (907) 465-2679
1-800-505-2678
Fax: (907) 465-4822

Interim Address:
600 E. Railroad Avenue
Wasilla, AK 99654
Phone: (907) 376-2679
Fax: (907) 376-4745
Representative.Mark.Neuman@legis.state.ak.us

Representative Mark A. Neuman

District 15

House Bill 353

Sentencing For Sexual Offenses

Sponsor Statement

HB 353 will effectively double the present p sumptive sentencing of all sexual assault offenses against minors, resulting in a clear message of zero-tolerance to anyone contemplating or involved in this most egregious act against the most vulnerable members of our society. This legislation establishes a minimum sentence of 24 years for those who commit an Unclassified Sexual Offense with a weapon or cause bodily injury, even when it's a first time felony offense. HB 353 introduces periodic polygraph testing for sex offenders on probation, which will give the Department of Corrections an additional tool to identify potential repeat offenders before another child is victimized.

With the amount of sexual assault crimes on the rise in Alaska and increasing numbers of Alaskans speaking out, it is time to toughen our laws. Other states have enacted, or are in the process of enacting, laws with stiffer penalties for those who commit such heinous crimes. Alaska should be first in the nation in protecting our children from sexual predation, not first in the rate of sexual assault.

According to the Federal Bureau of Investigation Uniform Crime Report (UCR), Alaska has the highest per capita rate of reported rapes ("rapes" in this case refer to child sexual abuse as well as adult assaults). Alaska's per capita rape rate is nearly 71% greater than that of the next highest state.

According to the "Kilpatrick Rape in America Report (1992)" reporting of these cases is as low as 16%. Arrest rates are also low, with as few as 27% of reported crimes resulting in arrest (Snyder 2000). Alaska has 4300 registered sex offenders in communities

statewide. These figures lead us to conclude that the number of actual sex offenders in Alaska is no doubt significantly higher.

While there is no record of any treatment or therapy having significant effects on sex offender recidivism rates (SOTEP Report, 1995), there are steps we can take to reduce repeat offenses. Longer sentences will ensure that the most dangerous offenders are kept away from our children. Regular polygraph testing for all sexual offenders has proven to have an effect on sexual behavior. Supervision of offenders with polygraph tests leads to 69% compliance with probation requirements, while supervision without polygraph tests leads to a 26% compliance rate (Abrams and Ogard, 1986). Requiring a probation period as part of a sentence, along with mandating regular polygraph tests will make our State safer, and reduce the numbers of sexual assault over time.

This legislation is imperative to changing our position as the number one state in the nation for sexual assault and sexual abuse and providing a safer place for our residents. I urge your support.

###

###

24-LS1449\G
Luckhaupt
2/2/06

CS FOR HOUSE BILL NO. 353( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES NEUMAN AND LYNN, Elkins, McGuire, Stoltze, LeDoux

A BILL

FOR AN ACT ENTITLED

"An Act relating to sentences for sexual offenses; relating to polygraph examinations for sex offenders; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 12.55.100 is amended by adding a new subsection to read:

(e) While on probation and as a condition of probation for a sex offense, the defendant shall be required to submit to regular periodic polygraph examinations. In this subsection, "sex offense" has the meaning given in AS 12.63.100.

*** Sec. 2.** AS 12.55.125(i) is amended to read:

(i) A defendant convicted of

(1) sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction and does not

involve circumstances described in (B) of this paragraph, **16 to 24** [EIGHT TO 12] years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, **24 to 32** [12 TO 16] years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, **30 to 40** [15 TO 20] years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, **40 to 60** [20 TO 30] years;

(E) if the offense is a third felony conviction and the defendant is not subject to sentencing under (F) of this paragraph or (*l*) of this section, **50 to 70** [25 TO 35] years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (*l*) of this section, and the defendant has two prior convictions for sexual felonies, **60 to 80** [30 TO 40] years;

(2) attempt, conspiracy, or solicitation to commit sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than **99** [30] years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction and does not involve circumstances described in (B) of this paragraph, **10 to 16** [FIVE TO EIGHT] years;

(B) if the offense is a first felony conviction, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, **20 to 28** [10 TO 14] years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, **24 to 32** [12 TO 16] years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, **30 to 40** [15 TO 20] years;

(E) if the offense is a third felony conviction, does not involve circumstances described in (F) of this paragraph, and the defendant is not subject to sentencing under (*l*) of this section, **30 to 50** [15 TO 25] years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (*l*) of this section, and the defendant has two prior convictions for sexual felonies, **40 to 60** [20 TO 30] years;

(3) sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography may be sentenced to a definite term of imprisonment of not more than **60** [20] years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, **four to eight** [TWO TO FOUR] years;

(B) if the offense is a second felony conviction and does not involve circumstances described in (C) of this paragraph, **10 to 16** [FIVE TO EIGHT] years;

(C) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, **20 to 28** [10 TO 14] years;

(D) if the offense is a third felony conviction and does not involve circumstances described in (E) of this paragraph, **20 to 28** [10 TO 14] years;

(E) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, **30 to 40** [15 TO 20] years;

(4) sexual assault in the third degree, **sexual abuse of a minor in the third degree,** incest, indecent exposure in the first degree, possession of child pornography, or attempt, conspiracy, or solicitation to commit sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of

a minor, or distribution of child pornography, may be sentenced to a definite term of imprisonment of not more than **30** [10] years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, **two to four** [ONE TO TWO] years;

(B) if the offense is a second felony conviction and does not involve circumstances described in (C) of this paragraph, **four to 10** [TWO TO FIVE] years;

(C) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, **six to 12** [THREE TO SIX] years;

(D) if the offense is a third felony conviction and does not involve circumstances described in (E) of this paragraph, **six to 12** [THREE TO SIX] years;

(E) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, **12 to 20** [SIX TO 10] years.

*** Sec. 3.** AS 33.16.150(a) is amended to read:

(a) As a condition of parole, a prisoner released on special medical, discretionary, or mandatory parole

(1) shall obey all state, federal, or local laws or ordinances, and any court orders applicable to the parolee;

(2) shall make diligent efforts to maintain steady employment or meet family obligations;

(3) shall, if involved in education, counseling, training, or treatment, continue in the program unless granted permission from the parole officer assigned to the parolee to discontinue the program;

(4) shall report

(A) upon release to the parole officer assigned to the parolee;

(B) at other times, and in the manner, prescribed by the board or the parole officer assigned to the parolee;

(5) shall reside at a stated place and not change that residence without notifying, and receiving permission from, the parole officer assigned to the parolee;

(6) shall remain within stated geographic limits unless written permission to depart from the stated limits is granted the parolee;

(7) may not use, possess, handle, purchase, give, distribute, or administer a controlled substance as defined in AS 11.71.900 or under federal law or a drug for which a prescription is required under state or federal law without a prescription from a licensed medical professional to the parolee;

(8) may not possess or control a firearm; in this paragraph, "firearm" has the meaning given in AS 11.81.900;

(9) may not enter into an agreement or other arrangement with a law enforcement agency or officer that will place the parolee in the position of violating a law or parole condition without the prior approval of the board;

(10) may not contact or correspond with anyone confined in a correctional facility of any type serving any term of imprisonment or a felon without the permission of the parole officer assigned to a parolee;

(11) shall agree to waive extradition from any state or territory of the United States and to not contest efforts to return the parolee to the state;

(12) shall provide a blood sample, an oral sample, or both, when requested by a health care professional acting on behalf of the state to provide the sample or samples, or an oral sample when requested by a juvenile or adult correctional, probation, or parole officer, or a peace officer, if the prisoner is being released after a conviction of an offense requiring the state to collect the sample or samples for the deoxyribonucleic acid identification system under AS 44.41.035;

(13) from a conviction for a sex offense shall submit to regular periodic polygraph examinations; in this paragraph, "sex offense" has the meaning given in AS 12.63.100.

*** Sec. 4.** Sections 1 and 3 of this Act take effect July 1, 2007.

*** Sec. 5.** Except as provided in sec. 4 of this Act, this Act takes effect immediately under AS 01.10.070(c).

LEGISLATIVE RESEARCH REPORT

DECEMBER 15, 2005

REPORT NUMBER 06.060

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

PREPARED FOR REPRESENTATIVE MARK NEUMAN

BY BECKY TAYLOR, LEGISLATIVE ANALYST

SUMMARY 1

Table 1: Comparison of Florida's "Jessica's Law" and Alaska Laws 2

OVERVIEW OF "JESSICA'S LAW" 3

SEX OFFENDER SENTENCING LAWS IN ALASKA 4

Aggravating Circumstances in Sentencing 5

ELECTRONIC MONITORING 6

Electronic Monitoring in Florida under "Jessica's Law" 7

Electronic Monitoring in Alaska 8

SEX OFFENDER REGISTRATION LAWS IN FLORIDA AND ALASKA 9

RESEARCH AND IMPROVED DATA SHARING 11

LIST OF ATTACHMENTS 13

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

SUMMARY

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

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Alaska Legislature
Legislative Research Services
w3.legis.state.ak.us/Research/research_home.htm

State Capitol
Juneau, AK 99801

OVERVIEW OF "JESSICA'S LAW"

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

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

The Jessica Lunsford Act provides for the following:

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

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[1] We include, as Attachment A, the following Florida Statutes which relate to sentencing and electronic monitoring: FS 775.082(3)(a), FS 800.04(5)(b), and FS 948.012(4).

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

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

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

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

AGGRAVATING CIRCUMSTANCES IN SENTENCING

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

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

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

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

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

ELECTRONIC MONITORING IN FLORIDA UNDER "JESSICA'S LAW"

"Jessica's Law" requires lifetime active electronic monitoring of defendants convicted of lewd and lascivious molestation whose crimes occurred after July 1, 2005.[15] The law also expands the use of electronic monitoring for sex offenders released under the conditional release program, community control, and probation.[16] The new law includes the following requirements:

- All offenders designated as sexual predators, as well as all adult offenders convicted of certain sex crimes that took place on or after September 1, 2005, and that involved victims 15 years of age or younger and an offender 18 years of age or older, must be under electronic monitoring for the duration of their conditional release (FS 947.1405[10]).

- If an individual designated as a sexual offender or sexual predator due to unlawful sexual activity involving a victim 15 years of age or younger and an offender 18 years of age or older has his or her probation or community control revoked due to a violation, the court must order electronic monitoring as a condition of the subsequent term of probation or community control (FS 948.063).

- In carrying out a court or commission order to electronically monitor probationers, community controllees, or conditional releasees who have current or prior convictions for violent or sexual offenses, the department must use a system that actively monitors and identifies the offender's location and reports or records the offender's presence near or within a crime scene or in a prohibited area, or the offender's departure from specified geographic limitations (FS 948.11[6]).

- All offenders who are placed on probation or community control for crimes that took place on or after September 1, 2005 must be placed under electronic monitoring as a condition of their probation or community control supervision if they are designated as sexual predators, or have ever been convicted of certain sex crimes involving victims 15 years of age or younger and an offender who is 18 years of age or older (FS 948.30[3]).[17]

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

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[15] FS 948.012(4).

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

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

SEX OFFENDER REGISTRATION LAWS IN FLORIDA AND ALASKA

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

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

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

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

- Lifetime for registrants convicted of one aggravated sex offense, two or more sex offenses, two or more child kidnappings or one sex offense and one child kidnapping offense.[22]

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

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

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

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

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

RESEARCH AND IMPROVED DATA SHARING

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

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

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

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

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

August 11, 2005

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

Dear Ms. Seybold:

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

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

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

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

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

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

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

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

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

Sincerely yours,

Frank H. Murkowski
Governor

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

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 353
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected:
Title: Sentencing for Sexual Offenses
RDU: Alaska Court System
Component: Trial Courts
Sponsor: Representatives Neuman and Lynn
Requester:
Component No.:

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 200*	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

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	*	*	*	*	*	*

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)*

House Bill 353 significantly increases the presumptive sentences for those convicted of sexual offenses. It is likely that the longer sentences will increase a defendant's willingness to go to trial. Although the additional costs associated with those trials will fiscally impact the court system, the extent of the impact is too speculative to support a fiscal note.

Prepared by: Doug Wooliver, Administrative Attorney — Phone 463-4750
Division: Alaska Court System — Date/Time 1/31/06 @ 9:00 am
Approved by: Doug Wooliver for Stephanie Cole, Adminstrative Director — Date 1/31/2006
Agency: Alaska Court System

(Revised 9/7/2005 OMB)

NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN®

OJJDP Office of Juvenile Justice and Delinquency Prevention
Office of Justice Programs ◆ U.S. Department of Justice

A Model State Sex-Offender Policy

2003

We're here because they're out there

INTRODUCTION: THE NEED FOR ACTION

The total federal, state, and local adult correctional population has reached an all-time high of more than 6.5 million.[1] It is estimated that more than 3 percent of the adult population in the United States, or 1 in every 32 adults, is incarcerated or living in the community while on probation or parole.[2] In state prisons alone, 49 percent of prisoners are serving time for violent offenses[3] including rape and other forms of sexual assault.

The National Center for Missing & Exploited Children® (NCMEC) is particularly concerned with the incidence of sex offenses committed against children. In 67 percent of all reported incidents of sexual assault,[4] the victims are younger than 18, and 34 percent of all victims are younger than 12.[5] One in seven victims of sexual assault reported to law-enforcement agencies nationwide is a child younger than 6.[6] For victims younger than 12, 4-year-olds are at the greatest risk of sexual assault.[7] Of those offenders actually convicted of rape or sexual assault, two-thirds have a victim who is younger than 18, with the vast majority of these victims being 12 or younger.[8]

Even more disconcerting, perhaps, is that juvenile victimizations are likely to include more than one victim. In 19 percent of juvenile sexual assault victimizations, the juvenile is victimized along with another individual.[9] Thirteen percent of juvenile victimizations involve a second victim, and the remaining 6 percent involve three or more victims, although not necessarily victims of sexual assault.[10]

Of further concern to NCMEC is that 40 percent of offenders who victimize children younger than 6 are, themselves, juveniles younger than 18.[11] Yet few prosecutor offices handling juvenile cases have a specialized unit dealing with juvenile transfers to criminal court, and even fewer have written guidelines about such transfers.[12]

As policymakers address the issue of sex offenders, they are confronted with several basic, and unfortunate, realities as noted below.

- Sex offenders who are in prison tend to serve limited sentences.[13]
- Most sex offenders are not in prison, but rather live in our own cities, towns, and neighborhoods;[14] however, their presence is largely unknown.[15]
- Some sex offenders, particularly those who go without treatment, are at a high risk to reoffend;[16] yet, state-sponsored treatment programs are under attack and disappearing around the country.[17]
- While community supervision and oversight is widely recognized as essential, the system for providing such supervision is overwhelmed.[18]

Nationwide there are more than 400,000 registered sex offenders.[19] This particular criminal group poses an enormous challenge for policymakers. Sex offenders can evoke unparalleled fear, and their offenses can result in lifelong and damaging consequences for victims.

The most frequent victims of sexual attacks are often the most vulnerable segment of our society, with more than one-third of all sexual assaults involving a child victim younger than 12.[20] **There is an urgent need for action.**

TRIAGE: THE STRATEGY

NCMEC believes that each state must adopt a triage approach to sex offenders. We must develop a range of responses, depending on the severity of the crime, with maximum sentences for those offenders who represent the greatest risk to the community. The criteria for seriousness, however, should not be limited to "violent" offenders. NCMEC believes that many of the most predatory offenders are not violent in the traditional sense. Thus we encourage legislative language that addresses both **violent and predatory** sex offenders.

In order to implement this triage concept, we must develop mechanisms for performing effective evaluation of sex offenders at the earliest possible stage. Since juveniles are perpetrators as well as victims of sexual assault, the strategy must expressly address this group of offenders. We must also create a variety of options and alternatives for early, effective intervention with all sex offenders.

Although the public at-large generally expresses a desire for harsher penalties for sex offenders, in many cases the actual victims often desire that one result of prosecution be supervised treatment either in a prison or community setting. This is particularly true when the offender is related to or an acquaintance of the victim or the victim's family. A criminal-justice response that does not include treatment opportunities for at least some sex offenders may undermine victim cooperation with the prosecution.[21] In this time of controversy regarding the efficacy of treatment, a general consensus has been reached on several basic points.

- Treatment is effective for some sex offenders.[22]
- Treatment is generally more effective for those who participate voluntarily and have the motivation to change.[23]
- Treatment may result in a reduction of additional offenses.[24]
- Treatment goes beyond counseling in a therapist's office.[25]

On the other hand, however, there are some offenders for whom there is no effective treatment at the current time.[26] Consequently our overall standard must be to **reduce harm**, and we caution against community-based studies with random assignment to treatment and non-treatment control groups, as such studies cannot seem to be conducted without introducing unacceptable risks into the community.[27]

Finally we must make post-release supervision and follow-up a priority. It is not enough to merely ensure that an offender completes his or her particular program or sentence. Since most sex offenders will eventually return to the community, the community is interested in policies and practices that will ensure the greatest level of safety over the long term.[28] This makes it imperative that there be continuing contact, supervision, and resources directed to the largest segment of the sex-offender population – those who are in the community.

COMPREHENSIVE POLICY: THE RESPONSE

A comprehensive criminal-justice response is key to effectively addressing the issue of sex offenders, particularly those living within our communities and not within the confines of a prison cell. The concepts, policies, and laws noted below need not be accomplished strictly through legislation and state statute, but can also be carried out in regulations, administrative practices, codes, policies, and/or prosecutor charging and filing standards. State officials should evaluate their own current approaches to identify possible areas for change.

The eight goals of our recommended sex-offender policy are listed below.

- States should develop a comprehensive policy regarding sex offenders.
- Sex offenders should be correctly identified and charged within the criminal-justice system.
- A systematic decision-making process regarding disposition of cases should be implemented.
- A sentencing structure permitting a range of degrees of confinement and levels of supervision should be available.
- Treatment programs should be part of the criminal-justice-system response.
- Convicted sex offenders should receive community supervision.
- Sex-offender-registration and community-notification programs should be implemented.
- States should involve victims and community members and use individual interest and knowledge to improve laws, education, and prevention mechanisms.

Each element is discussed in greater detail below.

I. STATES SHOULD DEVELOP A COMPREHENSIVE POLICY REGARDING SEX OFFENDERS

A. Evaluate and Assess Available Options

States should start by evaluating and assessing the broad spectrum of laws and policies in place in other jurisdictions as well as their own. Key areas to look at are definitions of various sex offenses, punishment and sentencing requirements, treatment and supervision programs, and successful strategies that have been implemented to address the growing public concern of what to do with sex offenders.

Calculate the cost of sanctions versus the cost of services. Within this framework, decisions can be made about the essential steps needed to create a comprehensive system that responds differently to high-, medium- and low-risk situations and offenders.

B. Prosecute Vigorously

Cases for which there is legal sufficiency should be vigorously prosecuted to the fullest extent of the law. Persons who commit sex offenses, whether adults or juveniles being tried as adults, should, whenever possible, be convicted of crimes that accurately reflect the serious nature of their conduct. Such individuals should also be properly labeled as "sex offenders" so that future protective steps can be taken.

C. Encourage Victim Cooperation

Victims should be encouraged to cooperate with and participate in the criminal-justice system. Unnecessary system-induced trauma should be minimized through the implementation of a thorough crime victims' rights policy including victim-witness support programs, specialized units, and appropriately trained personnel within prosecutor offices and other law-enforcement agencies; "secondary-victim" treatment provisions for victim family members; prosecutions sensitive to child victims; and legislation adopting a comprehensive Victim Bill of Rights.

D. Focus Sentencing on Public Safety

Sentencing practices should be primarily focused on community safety. Victim wishes should be heard and considered, including requests for treatment of the offender; however, where victim requests conflict with community interests, such wishes should not be determinative.

Maximum sentences should be imposed for those offenders who represent the greatest risk to the community.

Probation should not be allowed for the majority of sex offenses committed against children or those deemed particularly violent or predatory.

Among standard probation and parole requirements for sex offenders should be to refrain from contact with the victim(s) and all immediate family members. Those convicted of crimes against children should be ordered to refrain from contact with all children.

States should create child-safety zones around the areas where children normally play. Offenders should be prohibited from entering these zones. This measure will also rule out the possibility that sex offenders will participate in activities or professions involving children such as coaching or working at daycare centers.

E. Treatment Is an Opportunity

Treatment for offenders should be viewed as an opportunity and not a right. States should support offender treatment within realistic means. Treatment programs for offenders should not receive funding disproportionate to that given to treatment programs for crime victims.

F. Make Research a Priority

Research must be a priority focusing on what does and does not work in terms of sentencing practices, treatment programs, and the like. To reiterate, however, we caution against community-based studies with random assignment to treatment and non-treatment control groups as such studies cannot seem to be conducted without introducing unacceptable risks into the community.

II. SEX OFFENDERS SHOULD BE CORRECTLY IDENTIFIED AND CHARGED WITHIN THE CRIMINAL-JUSTICE SYSTEM

A. Identify Sex Offenders Early

Sex offenders should be identified early on in their criminal careers and properly charged with any offenses they commit. Even when incarceration is not possible, prosecutors should, at a minimum, obtain a conviction that conveys the essence and egregious nature of the act(s) committed. Prosecutors should rarely agree to pleas to a nonsexual offense. It is imperative that prosecutors "build a record" from the first moment possible.

B. Disallow *Alford*[29] Pleas

The *Alford* Doctrine allows a defendant to plead guilty to a crime while not admitting that he or she actually committed it. Prosecutors should not allow sex offenders to plead guilty under the *Alford* Doctrine, especially if they are going to seek treatment or registration as conditions of probation.

C. Sex-Offender Registration Is Imperative

Sex offenders should not be allowed to plea bargain out of sex-offender registration.

D. Allow for Special Findings

A special finding of "sexual motivation" should be established for use with sex offenders who are charged with or convicted of a nonsexual offense that was, however, sexually motivated such as burglary or murder.

E. Address Juvenile Offenders

Juvenile offenders who victimize their peers should be identified and addressed at the first offense. When possible, prosecutor offices handling juvenile cases should have a specialized unit dealing with juvenile cases transferred to criminal court. At a minimum all offices should have written guidelines addressing such transfers.

F. Investigate Child Pornography

States should aggressively pursue investigations that involve or uncover child pornography as these materials represent evidence of actual sexual abuse of a child and may signal a proclivity for active sexual exploitation of children.

G. Adopt Child-Enticement Laws

Child-enticement laws should be enacted to help identify would-be sex offenders.

H. Address New Areas of Sexual Exploitation

States should develop the capacity, technology, and expertise for attacking new areas of sexual exploitation including illegal uses of cyberspace. States should establish specialized "cyber" units within law enforcement to combat child sexual exploitation, child pornography, and child enticement.

III. A SYSTEMATIC DECISION-MAKING PROCESS REGARDING DISPOSITION OF CASES SHOULD BE IMPLEMENTED

A. Require Pre-Sentence Reports

Pre-sentence reports (PSR) should be required for all sex offenders. A PSR should be prepared to assist the court in determining the defendant's sentence after conviction. The PSR should include any relevant sentencing guidelines, information on prior arrests or convictions, employment and family background, and an analysis of the impact of the crime on the victim(s). The person preparing the PSR should make a reasonable effort to consult with the victim. If the victim is not available or declines to speak with the individual preparing the report, the report should reflect such information.

B. Develop Uniform Sentencing Standards

Standards identifying which offenders are eligible for different sentencing alternatives should be developed and uniformly followed. Level of risk of the offender and the offense(s) committed should be taken into consideration when developing such standards.

C. Dispositions Should Be Systematic

Dispositions should be systematic and implemented uniformly statewide. An efficient method of statewide communication, such as the Internet, should be developed to keep all prosecutors aware of developments and setbacks in the prosecution and sentencing of sex offenders.

D. Make Training Available

Training on a variety of topics should be made available to law enforcement, prosecutors, judges, and community-corrections officers who handle sex-offender cases. Possible topics include developments in state and federal law and working with child victims and witnesses.

IV. A SENTENCING STRUCTURE PERMITTING A RANGE OF DEGREES OF CONFINEMENT AND LEVELS OF SUPERVISION SHOULD BE AVAILABLE

A. Consider Certain Factors in Sentencing Decisions

Seriousness of the crime, number of victims involved, age of the victim(s), relationship of the victim(s) to the offender, injury to the victim(s), extensiveness and seriousness of the offender's criminal record, and risk to the community should all be considered in making a sentencing decision.

B. Develop Innovative Approaches to Community Supervision

Innovative approaches to community supervision, such as day-reporting and electronic monitoring, should be evaluated and encouraged.

C. Restrict Eligibility for Community-Based Treatment

Eligibility for community-based treatment programs should be restricted to less dangerous offenders. Violent rapists and repeat sex offenders should be excluded.

Eligibility for community-based treatment programs should be denied to those who plead *nolo contendere* or use *Alford* pleas.

Treatment should be available only to those who genuinely accept responsibility for their acts and remorsefully admit their guilt.

D. Back Treatment Alternatives with Suspended Prison Time

Treatment alternatives should be backed by suspended prison time so that the system maintains leverage and offenders are given the strongest possible incentive to participate in a meaningful and serious way.

E. Enact Truth-in-Sentencing Laws and Policies

States should enact truth-in-sentencing laws and policies and study them for efficacy. In addition to reducing "good time" accumulation for violent criminals, truth-in-sentencing laws should require inmates to earn sentence reductions through active participation in work, education, vocational, substance-abuse-prevention, and mental-health programs.

F. Eliminate Flat-Time Release Without Supervision

States should eliminate flat-time release without supervision for sex offenders.

G. Enact Civil-Commitment Laws

Laws should be enacted that would allow the limited and carefully constructed use of civil commitment for sex offenders displaying a mental abnormality of such severity that the offender represents a clear danger to public health and safety.[30]

H. Construct Provisions for Repeat and Extremely Dangerous Offenders

Special provisions for repeat and/or extremely dangerous sex offenders should be considered, debated, implemented, and evaluated. Such provisions include habitual criminal statutes, civil commitment, and lifetime parole.

V. TREATMENT PROGRAMS SHOULD BE PART OF THE CRIMINAL-JUSTICE RESPONSE

A. Reduce Recidivism

To the extent possible, treatment approaches within prisons and the community should be based on current research and programs with demonstrated effectiveness in reducing recidivism. The primary concern should always be public safety and reducing potential harm to the community.

B. Offenders Should Not Select the Treatment Program

The selection of community-based treatment as a condition of probation or parole should be approved by corrections' officials. Offenders should not be allowed to select their own treatment program or provider.

C. Demand Minimum Standards of Mental-Health Practitioners

Mental-health practitioners who provide treatment services to sex offenders as a result of probation or parole requirements must meet minimum standards for competence and accountability including training in and experience with sex offenders, willingness to report infractions, and limited confidentiality. It is essential that practitioners have specialized knowledge and skill in order to effectively monitor public-safety risks.

D. "One-Size-Fits-All" Treatment Programs Are Not Effective

Treatment programs should be offender-specific and tailored to offender typology and paraphilia. States should further implement programs geared toward the treatment of juvenile sex offenders.

E. Take Culture and Language into Consideration

Culturally relevant and acceptable treatment programs and providers should be made available including ethnically diverse providers and providers with foreign-language abilities.

F. Offenders Should Be Expected to Pay for Community-Based Treatment

A revolving loan fund should be created for otherwise eligible offenders who are truly indigent.

Offenders should also be expected to contribute to a victim-restitution fund.

VI. CONVICTED SEX OFFENDERS SHOULD RECEIVE COMMUNITY SUPERVISION

A. Supervise Release of Sex Offenders

Sex offenders who remain in or are released into the community should be supervised. The level, degree, and intensity of follow-up and supervision should be based on the level of risk assigned to the offender.

States should create long periods of supervision, such as life, for the most serious sex offenders.

In developing a supervised release policy, consider the points listed below.

- Supervision should be meaningful such as face-to-face contact and unannounced visits.
- Supervision should incorporate "relapse prevention," a model for identifying precursors to offending. The supervising officer should have knowledge of and closely monitor individual precursors.
- Those who are supervising sex offenders should have specialized training.
- Polygraphs should be used by probation and parole officers at regular intervals.

B. Include Individual Restrictions

Parole and probation restrictions should be limited to a plausible few, as failure to do so sets offenders up for violation.[31]

Community supervision should include individualized restrictions on high-risk activities such as unsupervised contact with minors and alcohol or drug use. If an individual completes a prison sentence and the probation or parole supervisor feels he or she constitutes a risk to a potential victim, then that individual should not be allowed to live within a certain proximity to that particular victim.

C. Develop "Failure-to-Comply" Guidelines

Guidelines for failure-to-comply with conditions of release should be developed and strictly followed. Options to consider are an increase in the level of supervision and revocation of community-release privileges.

Parole and probation officers should also be given special authority to intervene if they determine that a registered sex offender is improperly interacting with children.

D. Limit Caseloads

Due to the need for more intensive supervision, states should seek to limit probation- and parole-officer caseloads and develop sex-offender specialists.

VII. SEX-OFFENDER REGISTRATION AND COMMUNITY-NOTIFICATION PROGRAMS SHOULD BE IMPLEMENTED

A. Require Sex-Offender Registration

Sex-offender registration with law enforcement should be required for released offenders or those who remain in the community. Convicted child molesters and other sexually violent offenders should be forced to register and provide the appropriate law-enforcement agency with a current address for a minimum of 10 years.[32]

States should identify and counter attempts by sex offenders to avoid the registration obligation such as through a legal name change.

Systems must be developed for ensuring the transfer, use, and exchange of registration information between states, addressing the problem of offenders moving and traveling from state-to-state.

B. Verify Addresses

States must ensure they maintain accurate registries. Addresses of registered sex offenders should be verified annually for most offenders and every 90 days for sexually violent predators.[33]

C. Obtain Key Scientific Materials

As a part of the sex-offender registration process, key scientific material should be obtained from the offender including Deoxyribonucleic Acid (DNA), Human Immunodeficiency Virus (HIV)/ Acquired Immune Deficiency Syndrome (AIDS) status; fingerprints; and handwriting samples. This material can be of value in either identifying or exonerating these individuals in connection with subsequent criminal acts.

Optimally the court should order these tests at sentencing.

D. Build and Maintain Files

Law enforcement should build and maintain files on registered sex offenders including, but not limited to, information on *modus operandi*, patterns, and rituals.

E. Flag Driver-License and Vehicle-Registration Files

States should adopt policies that flag driver-license and vehicle-registration files of registered sex offenders as a means of keeping law-enforcement authorities informed of address changes, vehicle information, and personal data. Reference to an individual's status as a registered sex offender, however, must not appear anywhere on the actual driver's license or vehicle-registration documents. Such information should only be available to law-enforcement authorities so that when, for example, a law-enforcement officer makes a stop and checks an individual's license-plate or driver's license number, the officer will also know whether or not he or she is dealing with a registered sex offender.

F. Develop Risk Assessment Procedures

States should establish an Advisory Board to help create tier designations and determine the level of risk represented by each offender. Those appointed to the Advisory Board should include individuals with knowledge and specialization in the field.

Factors to be considered in assessing an individual offender's risk include prior felony convictions for a sex crime, whether the current offense caused injury or death to the victim, whether the offender's criminal history indicates a high probability of recidivism, whether the offender has been receiving or will receive counseling or therapy, conditions of release or post-release supervision,

physical conditions that may minimize the risk of reoffense such as age or physical incapacitation, psychological or psychiatric profiles, response to treatment, and behavior such as if the offender has made recent threats that he or she will commit another sexual or violent crime, and if the offender has accepted responsibility for the crime(s) committed.

G. Create Victim-Notification Programs

Victim-notification programs should exist to inform victims of relevant release or parole hearings.

H. Enact Community-Notification Laws

Laws permitting law enforcement to notify the community of the release of dangerous offenders into the community should be enacted.

Community notification should be based on levels of risk, with offenders deemed to represent the greatest threat to the community subject to active notification.[34] These classifications should be informed by science as well as a multidisciplinary perspective, defined in clinical terms, and determined as a result of objective criteria.

Only a small percentage of juveniles should be subject to community notification. In many states only juveniles who are prosecuted as adults and convicted of very serious offenses are included. When a juvenile sex offender is required to register, the law-enforcement agency responsible for notification should inform school superintendents, who, in turn, should notify school principals. All other community notification of juvenile sex offenders should be limited and discretionary.

The community-notification process should be coordinated with those responsible for supervising the offender in the community.

Case studies on community notification should be developed to help communities implement effective guidelines and decrease vigilantism.

I. Educate Offenders

Offenders who are about to be released and will be subject to community notification should receive education regarding the increased vigilance that will accompany their release. Offenders should also be informed of their rights once they enter the community such as the right to not be harassed.

J. Educate the Community

The community should be educated and prepared for the release of sex offenders through the use of community programs and public-education forums. The community should also be informed of the rights of the offender.

K. Adopt a Zero-Tolerance Policy

States should adopt a zero-tolerance policy regarding acts of harassment or vigilante violence directed at offenders. It must be each state's commitment to ensure that community notification regarding released offenders is handled responsibly and properly by each individual member of the community.

States should enact legislation that prohibits the sale or exchange of sex-offender-registry information for profit, makes the misuse of sex-offender-registry information a misdemeanor, and subjects to criminal prosecution any use of sex-offender-registry information to commit a crime against another person.

Any response by the appropriate law-enforcement agency to an individual's request for a sex-offender-registry list should also include a cautionary statement pertaining to the misuse of information.

VIII. STATES SHOULD INVOLVE VICTIMS AND COMMUNITY MEMBERS AND USE INDIVIDUAL INTEREST AND KNOWLEDGE TO IMPROVE LAWS, EDUCATION, AND PREVENTION MECHANISMS

A. Appoint Task Forces

State officials should appoint Task Forces and Blue Ribbon Panels to evaluate state law and policy. Recommendations should be made on an annual basis.

B. Use the Media

Public-awareness campaigns and media coverage that encourage realistic, rational, and safe responses to sex offenders should be undertaken.

The media must play a key role in educating the community about the problem of sex offenses and offenders. The media should promote public awareness regarding the complexity of the problem and the fact that there is a wide range of offenders representing varying degrees of risk.

C. Mandate Child-Safety Curricula

States should mandate child-safety and protection curricula in schools. Research has demonstrated that positive, comprehensive, and empowering content will not frighten children, but rather better enable them to successfully deal with challenges they may encounter. States have a key role in ensuring that basic messages on safety and self-protection are taught to children.

CONCLUSION

In a time of tight budgets, limited prison space,[35] increased awareness of incidents and reporting, and growing public demand to address the sex-offender problem more effectively, policymakers and public officials must develop a comprehensive strategy and response.

A coordinated, interagency approach is key to establishing a comprehensive sex-offender policy. By joining forces across departmental, geographic, and political boundaries, resources can be targeted toward the common goals[36] of holding offenders accountable and keeping the public safe from future violent crime.