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HOUSE OF REPRESENTATIVES
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS

BILL #: CS/HB 131
RELATING TO: Correctional Facilities
SPONSOR(S): Council for Healthy Communities and Representative Harrington
TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 9 NAYS 0
 - (2) FISCAL POLICY & RESOURCES YEAS 13 NAYS 0
 - (3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 15 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

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

In addition, CS/HB 131 provides that if the Department of Corrections (DOC) has reason to believe that an inmate may have transmitted a communicable disease to a correctional employee, the department shall upon request of the employee, test the inmate for a communicable disease. If the test indicates that the inmate has a communicable disease, the bill requires DOC to provide the affected employee and inmate with counseling, health care and support services. The results of the test are inadmissible against the person tested in any federal or state civil or criminal case.

The council substitute amends the criminal mischief statute to provide that any person who willfully and maliciously defaces, injures, or damages a sexually violent predator facility or any property contained therein commits a third degree felony if the damage to property is greater than \$200.

The council substitute also provides for the reclassification of assault or battery offenses committed upon a staff member of a sexually violent predator detention or commitment facility.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Employees at correctional facilities have encountered situations in which they have been struck by feces, urine or other bodily fluids thrown by inmates.

Florida law currently provides criminal penalties for several types of battery offenses.

- Battery 784.03: The offense of battery occurs when a person actually and intentionally touches or strikes another person against their will or intentionally causes bodily harm to another person. This offense is a first degree misdemeanor, which is punishable by up to one year in jail.
- Battery of a Law Enforcement Officer 784.07: When the victim of the battery is a law enforcement officer engaged in the lawful performance of his or her duties, the offense is reclassified as a third degree felony. The definition of law enforcement officer includes correctional officers, correctional probation officers, employees or agents of the Department of Corrections who supervise or provide services to inmates and officers of the Parole Commission, among others.
- Battery Upon a Visitor or Detainee of a Detention Center 784.082: When a detainee in a prison, jail or other detention facility is charged with battery upon a visitor or other detainee, the battery is reclassified from a first degree misdemeanor to a third degree felony.

Education and Testing - Acquired Immune Deficiency Syndrome

Section 945.35(1), F.S., requires the Department of Corrections (DOC), in conjunction with the Department of Health, to establish educational programs on human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) for all inmates. Section 945.35(2), F.S., requires DOC to establish a mandatory education program on AIDS and HIV for correctional staff.

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

contact with any person; an altercation involving exposure to bodily fluids; the use of intravenous drugs; tattooing and any other activity medically known to transmit the virus.

Section 945.35(5), F.S., requires DOC to establish policies on the housing, physical contact, dining, recreation and exercise hours and locations for inmates with immunodeficiency disorders consistent with guidelines of the Centers for Disease Control and the Correctional Medical Authority. The Department is required to submit a report to the Legislature by March 1 of each year on the implementation of this program.

Criminal Mischief

Section 806.13, F.S. provides that a person commits the offense of criminal mischief if the person willfully and maliciously injures or damages by any means (including graffiti and vandalism) any real or personal property belonging to another. If the damage to property is less than \$200, the offense is a second degree misdemeanor; if the damage is between \$200 and \$1000, the offense is a first degree misdemeanor; if the damage is greater than \$1000, the offense is a third degree felony. s. 806.13(b), F.S. The section also provides for enhanced penalties for criminal mischief against a church or other place of worship if the damage to the property is greater than \$200.

C. EFFECT OF PROPOSED CHANGES:

Battery of Facility Employee

The council substitute makes it unlawful for any person being detained in a facility and with the intent to harass, annoy, threaten, or alarm, to cause or attempt to cause a facility employee to come into contact with blood, masticated food, regurgitated food, saliva, seminal fluid, urine or feces by throwing, tossing, or expelling such fluid or material.

The council substitute defines the term "facility" to include:

- a. state correctional institutions as defined in s. 944.02(6), F.S.;
- b. private correctional institutions as defined in s. 944.710, F.S.;
- c. county, municipal or regional jails or other detention facilities of local government under Chapter 950 or Chapter 951;
- d. sexually violent predator detention or commitment facilities operated pursuant to part V of chapter 394;
- e. secure facilities operated and maintained by the Department of Corrections or the Department of Juvenile Justice.

The council substitute defines the term "employee" to mean any person employed by or performing contractual services for a public or private entity operating a facility. The term includes any person employed by or performing contractual services for the corporation operating the prison industry enhancement programs or the correctional work programs pursuant to part II of Chapter 946. The term also includes any person who is a parole examiner with the Florida Parole Commission. The definition of "employee" would therefore include chaplains, mental health, medical, dental, food service, educational or administrative personnel among others. However, it would not include visitors or volunteers.

Any person who violates this section commits a battery of a facility employee which is a third degree felony punishable by up to five years in prison. The council substitute also ranks the newly created offense as a level four offense in the offense severity ranking chart of the Florida Punishment Code. This is the same rank as the offenses of battery of a law enforcement officer and battery of a detention or commitment facility staff.

Transmission of Communicable Diseases

The council substitute amends s. 945.35, F.S., which requires DOC to educate inmates and staff on HIV and AIDS and to test inmates who engage in "high risk" behavior by expanding the subject area to include all communicable diseases.

The council substitute also provides that if DOC has reason to believe that an inmate may have intentionally or unintentionally transmitted a communicable disease to any correctional officer or employee of the department who is not incarcerated there, the department shall, upon request of the affected person, test the inmate for communicable diseases. The Department is required to release the results to the person requesting the test and to the inmate if the inmate so requests.

The council substitute further provides that if the results of the test indicate the presence of a communicable disease, the department shall provide counseling, health care and support service to the person affected and to the inmate. The results of the test are inadmissible against the person tested in a federal or state civil or criminal case. The bill also requires DOC to promulgate rules regarding the testing. The rules must require that the results of the test be communicated only to the person requesting the test, to the inmate tested and to the DOC reception center. The rules must also create procedures designed to protect the privacy of the person requesting the test and of the inmate.

Assault or Battery on Sexual Violent Predators Detention or Facility Staff

The council substitute creates section 784.074, F.S. to provide for a reclassification of assault and battery offenses committed on a staff member of a sexually violent predator detention or commitment facility (created as part of the "Jimmy Ryce Act") while the staff member is engaged in the lawful performance of his or her duties. The offenses are reclassified as follows:

- In the case of an aggravated battery, from a felony of the second degree to a felony of the first degree.
- In the case of an aggravated assault, from a third degree felony to a second degree felony.
- In the case of a battery, from a first degree misdemeanor to a first degree felony.
- In the case of assault, from a second degree misdemeanor to a first degree misdemeanor.

With the exception of the reclassification of the offense of battery, these offenses will be reclassified in the same manner as the reclassification of assault or battery offenses on law enforcement or correctional officers. s. 784.07, F.S. A "staff member" includes persons employed by the Department of Children and Family Services as well as persons employed at facilities licensed by and contracted with the Department.

Criminal Mischief

The council substitute amends the criminal mischief statute, s. 806.13, F.S., to provide that any person who willfully and maliciously defaces, injures, or damages by any means a sexually violent predators detention or commitment facility, as defined in part V of chapter 394, or any property contained therein, commits a third degree felony, if the damage to property is greater than \$200.

D. SECTION-BY-SECTION ANALYSIS:

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

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

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

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

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

Before it was made a council substitute, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections. It is not expected that the amendments to this bill will alter that impact.

The Department of Corrections will incur costs for education regarding communicable diseases and for testing prisoners for communicable diseases as well as for counseling and health care for any correctional workers who may have come into contact with a communicable disease.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The council requires the Department of Corrections to promulgate rules to provide for testing of an inmate when the Department has reason to believe that the inmate may have transmitted a communicable disease.

C. OTHER COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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

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

The Council for Healthy Communities adopted four amendments. The first amendment, offered by the bill sponsor, adds “a sexually violent predator detention or commitment facility operated pursuant to part V of chapter 394”, (also known as facilities created by the Jimmy Ryce Act) to the definition of the term “facility”. This will provide the protection given by the bill to correctional officers to employees of sexually violent predator facilities. The other three amendments were offered by Representative Murman. The first of these amendments creates a new section of statute which reclassifies assault and battery offenses committed against a staff member of a sexually violent predators detention or commitment facility. Another amendment ranks this newly created offense as a Level 4 offense under the Offense Severity Ranking Chart. This is the same rank as the offense of battery of a law enforcement officer. The final amendment amends the criminal mischief statute, section 806.13, F.S., to provide that any person who willfully and maliciously defaces, injures, or damages by any means a sexually violent predators detention or commitment facility commits a third degree felony if the damage to the property is over \$200.

The bill with the eight amendments was made a council substitute by the Council for Healthy Communities.

VII. SIGNATURES:

COMMITTEE ON FISCAL POLICY & RESOURCES:

Prepared by:

Trina Kramer

Staff Director:

David De La Paz

AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

Prepared by:

Doug Pile

Staff Director:

Greg Turbeville

AS FURTHER REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

Trina Kramer

Council Director:

Mary Pat Moore
