

Legislative Analysis



NEW FELONY: PRISONERS & DETAINEES THROWING "BODILY MATERIAL"

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**House Bill 4119 (reported from committee as H-2)
Sponsor: Rep. Brandt Iden**

Analysis available at
<http://www.legislature.mi.gov>

**House Bill 4118 (reported from committee as H-1)
Sponsor: Rep. Klint Kesto**

**Committee: Law and Justice
Complete to 3-28-17**

BRIEF SUMMARY: House Bill 4119 would add Section 411x to the Michigan Penal Code to make it a felony for a detainee or prisoner in a holding cell, holding center, lockup, jail, or state correctional facility to knowingly throw or attempt to throw "bodily material," and it comes into contact with any employee or volunteer performing duties in the listed facilities.

The felony would also apply if such a detainee or prisoner causes or attempts to cause an employee or volunteer performing duties in the facilities listed above to knowingly come into contact with any bodily material.

The felony would not apply to a prisoner or detainee with a diagnosis of, or currently being treated for, a mental illness or intellectual disability.

As used in Section 411x, "bodily material" means blood, urine, saliva, semen, or feces.

House Bill 4118 would make a complementary amendment to the sentencing guidelines in the Code of Criminal Procedure to add sanctions for a violation of Section 411x under the Penal Code. The category for the crime would be considered a Class F felony against a person with a maximum punishment of four years imprisonment.

The two bills are tie-barred, meaning neither can take effect unless both are enacted.

FISCAL IMPACT: House Bill 4119 would have an indeterminate fiscal impact on the state's correctional system and on local court systems. Information is not available on the number of persons that might be convicted under the provisions of the bill, but new felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2016, the average cost of prison incarceration in a state facility was roughly \$36,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,500 per supervised offender in the same year. The fiscal impact on local court systems would depend on how the provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues. House

Bill 4118 amends sentencing guidelines and does not have a direct fiscal impact on the state or on local units of government.

THE APPARENT PROBLEM:

Employees and volunteers working in jails, state correctional facilities, or other environments with holding cells, holding centers, or lockups, are at risk for traditional assaults and batteries, which normally occur through physical contact between two people. Employees or volunteers who are assaulted are protected under the current assault and battery statutes in Michigan and can prosecute the wrongdoer. However, in many jails and correctional facilities, personnel are also assaulted with bodily materials, such as blood, urine, saliva, semen, and feces. Critics say that these non-traditional assaults can be difficult to prosecute, yet are arguably more dangerous than a traditional assault due to the risk of disease. Avoiding projectile bodily materials is not the only concern: detainees and prisoners can still cause harm and spread diseases by causing an individual to come into contact with their bodily materials through wiping bodily material on an individual or even merely requiring the materials to be cleaned up.

Communicable diseases, such as AIDS and Hepatitis C, which are carried in and transferred through bodily materials, are hazardous to people working with detainees or prisoners. There is not only the physical harm that can occur from an altercation, but also the mental anguish a victim can experience with not knowing if they have been infected with a disease. As a result, various states are developing or have adopted laws to punish individuals who throw bodily materials at correctional employees.¹ Additionally, the Michigan Corrections Organization and the Michigan Department of Corrections have created the Officer Dignity Initiative. The initiative seeks to eliminate occurrences of having to come into contact with bodily fluids by warning inmates of the current penalty for assaults, which can garner a 5-year felony.²

THE CONTENT OF THE BILL:

House Bill 4119 would create Section 411x in the Michigan Penal Code, which would specifically make it unlawful for a detainee or prisoner in a holding cell, holding center, lockup, jail, or state correctional facility to knowingly throw or attempt to throw bodily material and that bodily material comes into contact with an employee or volunteer. The detainee would also have to act knowingly when causing or attempting to cause an employee or volunteer to come into contact with bodily material.

According to Black's Law Dictionary, "knowingly" means "with knowledge; consciously, intelligently." It is further defined as when "the defendant knew what he was about to do,

¹ See South Carolina Code 24-13-470, "throwing of body fluids on correctional facility employees and certain others"; Melissa Nardo, Spit on a police officer and you could face 10-20 years behind bars (April 25, 2014), <http://fox43.com/2014/04/25/spit-on-a-police-officer-and-you-could-face-10-20-years-behind-bars/> (Pennsylvania).

² Derek Hutchinson, Michigan inmates will face 5-year felony if they throw food, bodily fluids at prison staff members, Click On Detroit (Feb. 13, 2017), <http://www.clickondetroit.com/news/michigan-inmates-will-face-5-year-felony-if-they-throw-food-bodily-fluids-at-prison-staff-members>.

and, with such knowledge, proceeded to do the act." U.S. v. Claypool (D.C.) 14 Fed. 128 (1882).

Section 411x would require a defendant to act knowingly, and the new section would specifically not apply to a prisoner or detainee with a mental illness or intellectual disability diagnosed by, or being treated by, a mental health professional.

A detainee or prisoner charged, convicted, and sentenced under this new section may also be charged, convicted, and sentenced for any other violation of law applicable.

House Bill 4118 would make a complementary amendment to the sentencing guidelines in the Code of Criminal Procedure to add sanctions for a violation of Section 411x under the Penal Code. The category for the crime would be considered a Class F felony against a person, with a maximum punishment of four years imprisonment, or up to a \$2,000 fine, or both.

Definitions

Section 411x would use the definitions in the Corrections Code for holding cell, holding center, jail, lockup, and state correctional facility.

- "Holding cell" means a cell or room in a facility of a local unit of government that is used for the detention of one or more persons awaiting processing, booking, court appearances, transportation to a jail or lockup, or discharge for not to exceed 12 hours.
- "Holding center" means a facility that is operated by a local unit of government for the detention of persons awaiting processing, booking, court appearances, transportation to a jail or lockup, or discharge, for not to exceed 24 hours.
- "Intellectual disability" means a condition manifesting before the age of 18 years that is characterized by significantly subaverage intellectual functioning and related limitations in two or more adaptive skills and that is diagnosed based on the following assumptions:
 - Valid assessment considers cultural and linguistic diversity, as well as differences in communication and behavioral factors.
 - The existence of limitation in adaptive skills occurs within the context of community environments typical of the individual's age peers and is indexed to the individual's particular needs for support.
 - Specific adaptive skill limitations often coexist with strengths in other adaptive skills or other personal capabilities.
 - With appropriate supports over a sustained period, the life functioning of the individual with an intellectual disability will generally improve.
- "Jail" means a facility that is operated by a local unit of government for the detention of persons charged with, or convicted of, criminal offenses or ordinance violations; and persons found guilty of civil or criminal contempt. It also refers to a facility housing prisoners under an agreement authorized under Public Act 164 of the Public Acts of 1861 (MCL 802.1 to 802.21) for not more than one year.

- "Lockup" means a facility that is operated by a local unit of government for the detention of persons awaiting processing, booking, court appearances, or transportation to a jail, for not to exceed 72 hours.
- "Mental health professional" means an individual who is trained and experienced in the area of mental illness or developmental disabilities and who is one of the following: a physician; a psychologist; a registered professional nurse; a licensed master's social worker; a licensed professional counselor; a therapist licensed or otherwise authorized to engage in marriage and family therapy.
- "Mental illness" means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

ARGUMENTS:

For:

Supporters believe that the bills would be a further deterrence for detainees and prisoners from engaging in dehumanizing and dangerous behavior such as throwing bodily materials. Coming into contact with bodily materials is not only a human dignity issue, but also a health issue. Dangerous communicable diseases are transmitted through bodily materials, and anyone can be infected by contact.

Proponents of the bills are also aware that persons with mental disabilities or handicaps can also engage in the behaviors that Bill 4119 is trying to deter, and that a prohibition or punishment would not actually deter their actions. Therefore, they are in favor of the exception for persons with a mental illness or intellectual disability. The additional *mens rea* requirement of "knowingly" committing the offenses would further ensure that only those detainees or prisoners who act with a specific, harmful intent are punished under the bills.

Against:

Critics of the bills question whether an additional four-year penalty and felony charge would actually deter the problematic behavior of throwing bodily material. The question arises, if there is an underlying cause, such as a hostile climate, that results in a detainee or prisoner engaging in this behavior, would an additional penalty deter the behavior?

Some argue that current laws and programs are sufficient to help deter assaults and batteries, offenses which encompass the act of throwing bodily material. The existing assault and battery law has a penalty of five years' imprisonment, and the Officer Dignity Initiative promotes the posting of signs in detention facilities to warn of the current assault and battery law. The initiative specifically seeks to deter the throwing of bodily material.

Opponents of the bills also believe that the language is overly broad. For instance, a four-year prison term, or a \$2,000 fine, or both, is an excessive punishment for a prisoner or detainee to receive for attempting to spit on an employee's shoe, especially if their aim misses and hits the floor. Note also, that some of those being detained will not have been

convicted of a crime but are being held awaiting adjudication. Is it wise to impose a significant prison sentence for these offenses on individuals who may not belong in detention in the first place?

POSITIONS:

A representative from the Michigan Sheriff's Association supported the bills. (2-28-17)

A representative from the Oakland County Sheriff's Office supported the bills. (2-28-17)

A representative from the Michigan State Police supported HB 4119. (2-28-17)

A representative from the Kalamazoo County Sheriff's Office supported HB 4119. (2-21-17)

A representative from the American Civil Liberties Union of Michigan opposed the bills. (2-28-17)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.