

AMENDED IN ASSEMBLY MAY 28, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1449**

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**Introduced by Assembly Member ~~Florez~~ Members *Florez*  
*and Margett***

February 26, 1999

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An act to ~~add Section 4501.2 to~~ *amend Section 4501.1* of the Penal Code, relating to prisoners.

LEGISLATIVE COUNSEL'S DIGEST

AB 1449, as amended, Florez. Prisoners: medical testing.

~~Under existing law, if there is probable cause to believe that an inmate has committed a battery upon the person of any officer or employee of the state prison by gassing, as defined, the chief medical officer of the state prison may, when he or she deems it medically necessary to protect the health of an officer or employee who may have been subject to a battery by gassing, order the inmate to receive an examination or test for hepatitis and tuberculosis immediately after the event, and periodically thereafter as determined to be necessary by the medical officer. The results of any examination or test are required to be provided to the officer or employee who was the target of the aggravated battery.~~

~~This bill, in addition, would apply these provisions, including the element of assault, to local prison facilities. By creating a new crime, the bill would impose a state-mandated local program.~~

Existing law provides that every person confined in the state prison who commits a battery upon the person of any officer or employee of the state prison by “gassing,” as defined, is guilty of aggravated battery. Existing law also provides that these provisions will only remain in effect until January 1, 2001, and on that date are repealed as specified.

This bill would provide that the above-described provisions of law are applicable to any “peace officer” rather than “officer of the state prison,” extend the prohibition in those provisions to any person confined in a local detention facility, and would delete the provisions that would repeal these provisions of law after January 1, 2001, thereby continuing those provisions indefinitely.

By expanding the scope of, and extending the effective operation of, an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 4501.2 is added to the Penal~~  
 2     SECTION 1. Section 4501.1 of the Penal Code is  
 3     amended to read:  
 4     4501.1. (a) Every person confined in the state prison  
 5     or any local detention facility who commits a battery  
 6     upon the person of any ~~officer~~ peace officer, as defined in  
 7     Chapter 4.5 (commencing with Section 830) of Title 3 of  
 8     Part 2, or employee of the state prison or a local detention  
 9     facility by gassing is guilty of aggravated battery and shall  
 10    be punished as specified in Section 4501.5.  
 11    (b) For purposes of this section, “gassing” means  
 12    intentionally placing or throwing, or causing to be placed



1 or thrown, upon the person of another, any mixture of  
2 human excrement or other bodily fluids or substances.

3 (c) The warden or other person in charge of the state  
4 prison *or a local detention facility* shall use every available  
5 means to immediately investigate all reported or  
6 suspected violations of subdivision (a). If there is  
7 probable cause to believe that the inmate has violated  
8 subdivision (a), the chief medical officer of the state  
9 prison *or a local detention facility*, or his or her designee,  
10 may, when he or she deems it medically necessary to  
11 protect the health of an officer or employee who may  
12 have been subject to a violation of this section, order the  
13 inmate to receive an examination or test for hepatitis or  
14 tuberculosis or both hepatitis and tuberculosis on either  
15 a voluntary or involuntary basis immediately after the  
16 event, and periodically thereafter as determined to be  
17 necessary by the medical officer in order to ensure that  
18 further hepatitis or tuberculosis transmission does not  
19 occur. These decisions shall be consistent with an  
20 occupational exposure as defined by the Center for  
21 Disease Control and Prevention. The results of any  
22 examination or test shall be provided to the officer or  
23 employee who has been subject to a reported or  
24 suspected violation of this section. Nothing in this  
25 subdivision shall be construed to otherwise supersede the  
26 operation of Title 8 (commencing with Section 7500).  
27 Any person performing tests, transmitting test results, or  
28 disclosing information pursuant to this section shall be  
29 immune from civil liability for any action taken in  
30 accordance with this section.

31 (d) The warden or other person in charge of the state  
32 prison *or a local detention facility* shall refer all reports  
33 of aggravated battery by gassing to the local district  
34 attorney for prosecution.

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

1 (1) The total number of gassing incidents at each state  
2 prison facility up to the date of the report.

3 (2) The disposition of each gassing incident, including  
4 the administrative penalties imposed, the number of  
5 incidents that are prosecuted, and the results of those  
6 prosecutions, including any penalties imposed.

7 (3) A profile of the inmates who commit the  
8 aggravated batteries, including the number of inmates  
9 who have one or more prior serious or violent felony  
10 convictions.

11 (4) Efforts that the department has taken to limit  
12 these incidents, including staff training and the use of  
13 protective clothing and goggles.

14 (5) The results and costs of the medical testing  
15 authorized by this section.

16 ~~(f) This section shall remain in effect only until  
17 January 1, 2001, and as of that date is repealed, unless a  
18 later enacted statute, that is enacted before January 1,  
19 2001, deletes or extends that date.~~

20 *SEC. 2. No reimbursement is required by this act  
21 pursuant to Section 6 of Article XIII B of the California  
22 Constitution because the only costs that may be incurred  
23 by a local agency or school district will be incurred  
24 because this act creates a new crime or infraction,  
25 eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section  
27 17556 of the Government Code, or changes the definition  
28 of a crime within the meaning of Section 6 of Article  
29 XIII B of the California Constitution.*

30 ~~Code, to read:~~

31 ~~4501.2. (a) Every person confined in a local  
32 detention facility who commits an assault or battery upon  
33 the person of any officer or employee of that detention by  
34 gassing is guilty of aggravated battery and shall be  
35 punished as specified in Section 4501.5.~~

36 ~~(b) For purposes of this section, "gassing" means  
37 placing or throwing, or causing to be placed or thrown,  
38 upon the person of another, any mixture of excrement or  
39 other bodily fluids or substances.~~



1 ~~(c) The person in charge of the detention facility shall~~  
2 ~~use every available means to immediately investigate all~~  
3 ~~reported or suspected violations of subdivision (a). If~~  
4 ~~there is a reasonable suspicion that the inmate or ward has~~  
5 ~~violated subdivision (a), the chief medical officer of the~~  
6 ~~detention facility, or his or her designee, shall order the~~  
7 ~~inmate or ward to receive an examination or test for~~  
8 ~~hepatitis and tuberculosis immediately after the event,~~  
9 ~~and periodically thereafter as determined to be necessary~~  
10 ~~by the medical officer. The results of any examination or~~  
11 ~~test shall be provided to the officer or employee who was~~  
12 ~~the target of the assault or battery.~~

13 ~~(d) The person in charge of the detention facility shall~~  
14 ~~refer all reports of assault or battery by gassing to the local~~  
15 ~~district attorney for prosecution.~~

16 ~~SEC. 2. No reimbursement is required by this act~~  
17 ~~pursuant to Section 6 of Article XIII B of the California~~  
18 ~~Constitution because the only costs that may be incurred~~  
19 ~~by a local agency or school district will be incurred~~  
20 ~~because this act creates a new crime or infraction,~~  
21 ~~eliminates a crime or infraction, or changes the penalty~~  
22 ~~for a crime or infraction, within the meaning of Section~~  
23 ~~17556 of the Government Code, or changes the definition~~  
24 ~~of a crime within the meaning of Section 6 of Article~~  
25 ~~XIII B of the California Constitution.~~

