

AMENDED IN SENATE AUGUST 7, 2000

AMENDED IN SENATE MARCH 28, 2000

AMENDED IN ASSEMBLY MAY 28, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1449

Introduced by Assembly Members Florez and Margett

February 26, 1999

An act to amend Section 4501.1 of, *and to add Section 243.9 to, the Penal Code, and to add Section 1768.85 to the Welfare and Institutions Code*, relating to prisoners.

LEGISLATIVE COUNSEL'S DIGEST

AB 1449, as amended, Florez. Prisoners: battery.

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, *a felony*. Existing law also provides that these provisions will only remain in effect until January 1, 2001, and on that date are repealed as specified.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 an institution under the jurisdiction of the Department of the Youth Authority or a local detention facility, *require a report by the Department of the Youth Authority, as specified*, and would delete the

provisions that would repeal these provisions of law after January 1, 2001, thereby continuing those provisions indefinitely. *This bill would additionally require actual contact with the victim’s skin or membranes in order to constitute the offense. This bill would also make the offense punishable as a misdemeanor or a felony, as specified.*

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 243.9 is added to the Penal Code,*
2 *to read:*

3 243.9. (a) *Every person confined in any local*
4 *detention facility who commits a battery by gassing upon*
5 *the person of any peace officer, as defined in Chapter 4.5*
6 *(commencing with Section 830) of Title 3 of Part 2, or*
7 *employee of the local detention facility is guilty of*
8 *aggravated battery and shall be punished by*
9 *imprisonment in a county jail or by imprisonment in the*
10 *state prison for two, three, or four years.*

11 (b) *For purposes of this section, “gassing” means*
12 *intentionally placing or throwing, or causing to be placed*
13 *or thrown, upon the person of another, any mixture of*
14 *human excrement or other bodily fluids or substances*
15 *that results in actual contact with the person’s skin or*
16 *membranes.*

17 (c) *The person in charge of the local detention facility*
18 *shall use every available means to immediately*
19 *investigate all reported or suspected violations of*
20 *subdivision (a). If there is probable cause to believe that*



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

24 *(d) The person in charge of the local detention facility*
25 *shall refer all reports of aggravated battery by gassing to*
26 *the local district attorney for prosecution.*

27 *(e) Nothing in this section shall preclude prosecution*
28 *under both this section and any other provision of law.*

29 *SEC. 2. Section 4501.1 of the Penal Code is amended*
30 *to read:*

31 *4501.1. (a) Every person confined in the state prison;*
32 ~~*any institution under the jurisdiction of the Department*~~
33 ~~*of the Youth Authority, or any local detention facility*~~ who
34 *commits a battery by gassing upon the person of any*
35 *peace officer, as defined in Chapter 4.5 (commencing*
36 *with Section 830) of Title 3 of Part 2, or employee of the*
37 ~~*state prison or a local detention facility by gassing*~~ is guilty
38 ~~*of aggravated battery and shall be punished as specified*~~
39 ~~*in Section 4501.5 by imprisonment in a county jail or by*~~
40 ~~*imprisonment in the state prison for two, three, or four*~~



1 years. Every state prison inmate convicted of a felony
2 under this section shall serve his or her term of
3 imprisonment as prescribed in Section 4501.5.

4 (b) For purposes of this section, “gassing” means
5 intentionally placing or throwing, or causing to be placed
6 or thrown, upon the person of another, any mixture of
7 human excrement or other bodily fluids or substances
8 that results in actual contact with the person’s skin or
9 membranes.

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



1 (d) The warden or other person in charge of the state
2 prison, ~~an institution under the jurisdiction of the~~
3 ~~Department of the Youth Authority, or a local detention~~
4 ~~facility~~ shall refer all reports of aggravated battery by
5 gassing to the local district attorney for prosecution.

6 (e) The Department of Corrections shall report to the
7 Legislature, by January 1, 2000, its findings and
8 recommendations on gassing incidents at the state prison
9 and the medical testing authorized by this section. The
10 report shall include, but not be limited to, all of the
11 following:

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

14 (2) The disposition of each gassing incident, including
15 the administrative penalties imposed, the number of
16 incidents that are prosecuted, and the results of those
17 prosecutions, including any penalties imposed.

18 (3) A profile of the inmates who commit the
19 aggravated batteries, including the number of inmates
20 who have one or more prior serious or violent felony
21 convictions.

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

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

27 (f) *Nothing in this section shall preclude prosecution*
28 *under both this section and any other provision of law.*

29 ~~SEC. 2.~~

30 *SEC. 3. Section 1768.85 is added to the Welfare and*
31 *Institutions Code, to read:*

32 *1768.85. (a) Every person confined under the*
33 *jurisdiction of the Department of the Youth Authority*
34 *who commits a battery by gassing upon the person of any*
35 *peace officer, as defined in Chapter 4.5 (commencing*
36 *with Section 830) of Title 3 of Part 2, or employee of the*
37 *institution is guilty of aggravated battery and shall be*
38 *punished by imprisonment in a county jail or by*
39 *imprisonment in the state prison for two, three, or four*
40 *years.*



1 (b) For purposes of this section, “gassing” means
2 intentionally placing or throwing, or causing to be placed
3 or thrown, upon the person of another, any mixture of
4 human excrement or other bodily fluids or substances
5 that results in actual contact with the person’s skin or
6 membranes.

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

36 (d) The person in charge of the institution under the
37 jurisdiction of the Department of the Youth Authority
38 shall refer all reports of aggravated battery by gassing to
39 the local district attorney for prosecution.



1 (e) *The Department of the Youth Authority shall*
2 *report to the Legislature, by January 1, 2003, its findings*
3 *and recommendations on gassing incidents at the*
4 *department's facilities and the medical testing*
5 *authorized by this section. The report shall include, but*
6 *not be limited to, all of the following:*

7 (1) *The total number of gassing incidents at each*
8 *youth correctional facility up to the date of the report.*

9 (2) *The disposition of each gassing incident, including*
10 *the administrative penalties imposed, the number of*
11 *incidents that are prosecuted, and the results of those*
12 *prosecutions, including any penalties imposed.*

13 (3) *A profile of the wards who commit the batteries by*
14 *gassing, including the number of wards who have one or*
15 *more prior serious or violent felony convictions.*

16 (4) *Efforts that the department has taken to limit*
17 *these incidents, including staff training and the use of*
18 *protective clothing and goggles.*

19 (5) *The results and costs of the medical testing*
20 *authorized by this section.*

21 (f) *Nothing in this section shall preclude prosecution*
22 *under both this section and any other provision of law.*

23 SEC. 4. No reimbursement is required by this act
24 pursuant to Section 6 of Article XIII B of the California
25 Constitution because the only costs that may be incurred
26 by a local agency or school district will be incurred
27 because this act creates a new crime or infraction,
28 eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section
30 17556 of the Government Code, or changes the definition
31 of a crime within the meaning of Section 6 of Article
32 XIII B of the California Constitution.

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