

Assembly Bill No. 1449

Passed the Assembly August 31, 2000

Chief Clerk of the Assembly

Passed the Senate August 30, 2000

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2000, at _____ o'clock ____M.

Private Secretary of the Governor



CHAPTER _____

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, 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Existing law also provides that these provisions will only remain in effect until January 1, 2001, and on that date are repealed as specified.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. The bill would make related changes.

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.



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

SECTION 1. Section 243.9 is added to the Penal Code, to read:

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

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

(c) The person in charge of the local detention facility shall use every available means to immediately investigate all reported or suspected violations of subdivision (a), including, but not limited to, the use of forensically acceptable means of preserving and testing the suspected gassing substance to confirm the presence of human excrement or other bodily fluids or bodily substances. If there is probable cause to believe that the inmate has violated subdivision (a), the chief medical officer of the local detention facility, or his or her designee, 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 violation of this section, order the inmate to receive an examination or test for hepatitis or tuberculosis or both hepatitis and tuberculosis on either a voluntary or involuntary basis immediately after the event, and periodically thereafter as determined to be necessary by the medical officer in order to ensure that further hepatitis or tuberculosis transmission does not occur. These decisions shall be consistent with an occupational exposure as defined by



the Center for Disease Control and Prevention. The results of any examination or test shall be provided to the officer or employee who has been subject to a reported or suspected violation of this section. Nothing in this subdivision shall be construed to otherwise supersede the operation of Title 8 (commencing with Section 7500). Any person performing tests, transmitting test results, or disclosing information pursuant to this section shall be immune from civil liability for any action taken in accordance with this section.

(d) The person in charge of the local detention facility shall refer all reports for which there is probable cause to believe that the inmate has violated subdivision (a) to the local district attorney for prosecution.

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

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

4501.1. (a) Every person confined in the state prison who commits a battery by gassing upon the person of any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or employee of the state prison is guilty of aggravated battery and shall be punished by imprisonment in a county jail or by imprisonment in the state prison for two, three, or four years. Every state prison inmate convicted of a felony under this section shall serve his or her term of imprisonment as prescribed in Section 4501.5.

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

(c) The warden or other person in charge of the state prison shall use every available means to immediately investigate all reported or suspected violations of subdivision (a), including, but not limited to, the use of forensically acceptable means of preserving and testing



the suspected gassing substance to confirm the presence of human excrement or other bodily fluids or bodily substances. If there is probable cause to believe that the inmate has violated subdivision (a), the chief medical officer of the state prison or his or her designee, 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 violation of this section, order the inmate to receive an examination or test for hepatitis or tuberculosis or both hepatitis and tuberculosis on either a voluntary or involuntary basis immediately after the event, and periodically thereafter as determined to be necessary by the medical officer in order to ensure that further hepatitis or tuberculosis transmission does not occur. These decisions shall be consistent with an occupational exposure as defined by the Center for Disease Control and Prevention. The results of any examination or test shall be provided to the officer or employee who has been subject to a reported or suspected violation of this section. Nothing in this subdivision shall be construed to otherwise supersede the operation of Title 8 (commencing with Section 7500). Any person performing tests, transmitting test results, or disclosing information pursuant to this section shall be immune from civil liability for any action taken in accordance with this section.

(d) The warden or other person in charge of the state prison shall refer all reports for which there is probable cause to believe that the inmate has violated subdivision (a) to the local district attorney for prosecution.

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

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

(2) The disposition of each gassing incident, including the administrative penalties imposed, the number of



incidents that are prosecuted, and the results of those prosecutions, including any penalties imposed.

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

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

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

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

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

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

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

(c) The person in charge of the institution under the jurisdiction of the Department of the Youth Authority shall use every available means to immediately investigate all reported or suspected violations of subdivision (a), including, but not limited to, the use of forensically acceptable means of preserving and testing the suspected gassing substance to confirm the presence of human excrement or other bodily fluids or bodily substances. If there is probable cause to believe that a



ward has violated subdivision (a), the chief medical officer of the institution under the jurisdiction of the Department of the Youth Authority, or his or her designee, 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 violation of this section, order the ward to receive an examination or test for hepatitis or tuberculosis or both hepatitis and tuberculosis on either a voluntary or involuntary basis immediately after the event, and periodically thereafter as determined to be necessary by the medical officer in order to ensure that further hepatitis or tuberculosis transmission does not occur. These decisions shall be consistent with an occupational exposure as defined by the Center for Disease Control and Prevention. The results of any examination or test shall be provided to the officer or employee who has been subject to a reported or suspected violation of this section. Nothing in this subdivision shall be construed to otherwise supersede the operation of Title 8 (commencing with Section 7500). Any person performing tests, transmitting test results, or disclosing information pursuant to this section shall be immune from civil liability for any action taken in accordance with this section.

(d) The person in charge of the institution under the jurisdiction of the Department of the Youth Authority shall refer all reports for which there is probable cause to believe that the inmate has violated subdivision (a) to the local district attorney for prosecution.

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

- (1) The total number of gassing incidents at each youth correctional facility up to the date of the report.
- (2) The disposition of each gassing incident, including the administrative penalties imposed, the number of



incidents that are prosecuted, and the results of those prosecutions, including any penalties imposed.

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

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

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

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

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



Approved _____, 2000

Governor

