



# Ohio Legislative Service Commission

## 122nd House Bill Analysis

### H.B. 37

122nd General Assembly  
(As Introduced)

**Reps. Bateman, Thompson, Haines, Lucas, Thomas, Ogg, Sawyer, Mottley, Taylor, Terwilleger, Corbin, Bender, Fox**

- Prohibits a person confined in a detention facility from causing or attempting to cause, in any manner and with a specified intent, an employee of the detention facility or of the entity that operates the facility to come into contact with a bodily substance.
- Prohibits a person who has knowledge that the person is a carrier of the HIV virus, the hepatitis virus, or TB from engaging in such activity.
- Specifies that any person who violates either prohibition commits the offense of harassment of an employee by an inmate.
- Prescribes a range of penalties for the offense depending on the offense for which the person is under detention and whether the person is infected with the HIV virus, hepatitis virus, or tuberculosis.

## CONTENT AND OPERATION

### Harassment of an employee by an inmate

#### Prohibition and penalties

The bill creates the offense of harassment of an employee (see "***Definitions***," below) by an inmate and sets forth two sets of circumstances in which the offense may be committed and penalties for the offense as follows:

(1) The bill prohibits a person who is confined in a detention facility (see "***Definitions***," below), with intention to harass, annoy, threaten, or alarm another person whom the person knows or has reason to know is an employee of the detention facility or of the department, political subdivision, or other entity that operates the detention facility, from causing or attempting to cause the employee to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the employee, by expelling the bodily substance upon the employee, or in any other manner. A person who violates this prohibition is guilty of "harassment of an employee by an inmate." A violation of this prohibition generally is a felony of the fifth degree. A violation of this prohibition is a felony of the fourth degree if the most serious offense for which the offender was under detention at the time of the commission of the violation is a felony of the third degree or, if the person was under detention as an alleged or adjudicated delinquent child, the most serious act for which the person was under detention at the time of the commission of the violation would be a felony of the third degree if committed by an adult. A violation of this prohibition is a felony of the third degree if the most serious offense for which the offender was under detention at the time of the commission of the violation is aggravated murder, murder, or a felony of the first or second degree or, if the person was under detention as an alleged or adjudicated delinquent child, the most serious act for which the person was under detention at the time of the commission of the violation would be aggravated murder, murder, or a felony of the first or second degree if committed by an adult. (Sec. 2921.38(A), (C) (1), and (C)(2).)

(2) The bill also prohibits a person who is confined in a detention facility, with knowledge that the person is a carrier of the virus that causes acquired immunodeficiency syndrome (hereafter, "the HIV virus"), is a carrier of a hepatitis virus, or is infected with tuberculosis and with intent to harass, annoy, threaten, or alarm another person whom the offender knows or has reason to know is an employee of the detention facility or of the entity that operates the facility, from causing or attempting to cause the employee to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the employee, by expelling the bodily substance upon the employee, or in any other

manner. A person who violates this prohibition is guilty of "harassment of an employee by an inmate." A violation of this prohibition is a felony of the fourth degree. A violation of this prohibition is a felony of the third degree if the most serious offense for which the offender was under detention at the time of the commission of the violation is a felony of the second degree or, if the person was under detention as an alleged or adjudicated delinquent child, the most serious act for which the person was under detention at the time of the commission of the violation would be a felony of the second degree if committed by an adult. A violation of this prohibition is a felony of the second degree if the most serious offense for which the offender was under detention at the time of the commission of the violation is aggravated murder, murder, or a felony of the first degree or, if the person was under detention as an alleged or adjudicated delinquent child, the most serious act for which the person was under detention at the time of the commission of the violation would be aggravated murder, murder, or a felony of the first degree if committed by an adult. (Sec. 2921.38 (B), (C)(1), and (C)(3).)

**OFFENSE CLASSIFICATION FOR "HARASSMENT  
OF AN EMPLOYEE BY AN INMATE"**

<b>Circumstances of offender's commission of "harassment of an employee by an inmate"</b>	<b>Most serious offense or delinquent act for which offender is in detention</b>	<b>Offense classification of "harassment of an employee by an inmate"</b>
Offender not a carrier of HIV or hepatitis virus and does not have TB or is unaware of that condition (div. (A))	Misdemeanor or felony of the fourth or fifth degree	Felony of the fifth degree
Same as above	Felony of the third degree	Felony of the fourth degree
Same as above	Aggravated murder, murder, or felony of the first or second degree	Felony of the third degree
Offender is a carrier of HIV or hepatitis virus or has TB and is aware of that condition (div. (B))	Misdemeanor or felony of the third, fourth, or fifth degree	Felony of the fourth degree
Same as above	Felony of the second degree	Felony of the third degree
Same as above	Aggravated murder, murder, or felony of the first degree	Felony of the second degree

**Procedures for tests**

The bill requires a court, when a person is indicted for the offense of harassment of an employee by an inmate, to order the person to submit to one or more tests designated by the Director of Health under the Health Law to determine whether the person is a carrier of the HIV virus and to submit to tests to determine if the person is infected with a hepatitis virus or with tuberculosis. With respect to the test for the HIV virus, the court must follow the procedure for tests of that nature specified for tests performed upon persons charged with certain sex offenses (see **COMMENT**). The court must report the results of the tests to the prosecutor in the case, and the results may be used as the basis for a charge described in (2) under "**Prohibitions and penalties**," above, and as evidence in the trial of the charge.

The court must charge the offender with the costs of the test or tests that it orders unless the court determines that the offender is unable to pay, in which case the costs must be charged to the entity that operates the detention facility in which the alleged offense occurred. (Sec. 2921.38(D).)

**Definitions**

"Detention facility" is defined in existing law (sec. 2921.01(F)) as any place used for the confinement of a person charged with or convicted of any crime or alleged or found to be a delinquent child or unruly child. Under the bill, "detention" means "arrest, confinement in any vehicle subsequent to an arrest; confinement in any facility for custody of persons charged with or convicted of crime or alleged or found to be a delinquent child or unruly child; confinement in any vehicle for transportation to or from any facility of those natures; detention for extradition or deportation; supervision by an employee of any facility of those natures that is incidental to institutionalization or confinement in the facility but that occurs outside the facility; or supervision by an employee of the Department of Rehabilitation and Correction of a person on any type of release from a state correctional institution." For a person confined in a county jail who participates in a

county jail industry program, "detention" includes time spent at an assigned work site and going to and from the work site. (Sec. 2921.38(E)(1).)

Under the bill, "employee" includes, but is not limited to, a person who is rendering medical, nursing, dental, podiatric, optometric, physical therapeutic, psychiatric, or psychological services to any person in a detention facility pursuant to a personal services contract or purchased service contract (sec. 2921.38(E)(2)).

## COMMENT

Existing law (sec. 2907.07) prescribes requirements and procedures for a court to follow with respect to HIV tests for a person who is charged with a specified sex offense. With respect to HIV tests ordered under the bill, a court must follow certain procedures that are specified in section 2907.07(B)(1)(b) and that are described in this paragraph. Section 2907.07(B)(1)(b) requires that the results of an HIV test be communicated in confidence to the court and that the court inform the accused of the result. The court must inform the victim that the test was performed and that the victim has a right to receive the results on request. If the test was performed upon the request of a person other than the prosecutor or the victim, the court must inform the person who made the request that the test was performed and that the person has a right to receive the results upon request. If the court reasonably believes that, in circumstances related to the violation, a person other than the victim had contact with the accused that could have resulted in the transmission of the virus to that person, the court may inform that person that the test was performed and that the person has a right to receive the results of the test on request. If the accused tests positive for the HIV virus, the test results must be reported to the Department of Health and to the sheriff, head of the state correctional institution, or other person in charge of a jail or prison in which the accused is incarcerated. With one other exception not relevant to a charge of harassment of an employee by an inmate, no other disclosure of the test results or the fact that a test was performed may be made, other than as evidence in a grand jury proceeding or as evidence in a judicial proceeding in accordance with the Rules of Evidence. If the test result is negative, and the charge has not been dismissed or if the accused has been convicted of the charge or a different offense arising out of the same circumstances as the offense charged, the court must order that the test be repeated not earlier than three months nor later than six months after the original test.

## HISTORY

### ACTION DATE JOURNAL ENTRY

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