



February 22, 2002

**ENGROSSED
SENATE BILL No. 293**

DIGEST OF SB 293 (Updated February 20, 2002 2:40 PM - DI 107)

Citations Affected: IC 35-42; IC 35-45; IC 35-50; noncode.

Synopsis: Battery by body waste. Makes it battery by body waste, a Class A misdemeanor, for a person to place body waste on another person. Makes it malicious mischief, a Class B misdemeanor, for a person to place body waste where there is a risk that another person will come into contact with the waste. Makes it malicious mischief with food, a Class A misdemeanor, for a person to place body waste in a location that another person will ingest the body waste. Establishes enhanced penalties if the waste is infected with disease. Permits a trial court to order restitution for the costs of testing to determine whether a victim has become infected as a result of the crime.

Effective: July 1, 2002.

Lawson C, Meeks C, Broden, Lanane
(HOUSE SPONSORS — WHETSTONE, HERRELL)

January 7, 2002, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.
January 31, 2002, amended, reported favorably — Do Pass.
February 4, 2002, read second time, ordered engrossed. Engrossed.
February 5, 2002, read third time, passed. Yeas 45, nays 3.

HOUSE ACTION

February 11, 2002, read first time and referred to Committee on Human Affairs.
February 21, 2002, amended, reported — Do Pass.

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February 22, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

ENGROSSED SENATE BILL No. 293

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-42-2-6 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 6. (a) As used in this
3 section, "corrections officer" includes a person employed by:
4 (1) the department of correction;
5 (2) a law enforcement agency; or
6 (3) a county jail.
7 (b) As used in this section, "human immunodeficiency virus (HIV)"
8 includes acquired immune deficiency syndrome (AIDS) and AIDS
9 related complex.
10 (c) A person who knowingly or intentionally in a rude, insolent, or
11 angry manner places blood or another body fluid or waste on a law
12 enforcement officer or a corrections officer identified as such and while
13 engaged in the performance of official duties or coerces another person
14 to place blood or another body fluid or waste on the law enforcement
15 officer or corrections officer commits battery by body waste, a Class D
16 felony. However, the offense is:
17 (1) a Class C felony if the person knew or recklessly failed to

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- 1 know that the **person blood, bodily fluid, or waste** was infected
 2 with:
- 3 (A) hepatitis B;
 4 (B) HIV; or
 5 (C) tuberculosis;
- 6 (2) a Class B felony if:
- 7 (A) the person knew or recklessly failed to know that the
 8 **person blood, bodily fluid, or waste** was infected with
 9 hepatitis B and the offense results in the transmission of
 10 hepatitis B to the other person; or
 11 (B) the person knew or recklessly failed to know that the
 12 **person blood, bodily fluid, or waste** was infected with
 13 tuberculosis and the offense results in the transmission of
 14 tuberculosis to the other person; and
- 15 (3) a Class A felony if:
- 16 (A) the person knew or recklessly failed to know that the
 17 **person blood, bodily fluid, or waste** was infected with HIV;
 18 and
 19 (B) the offense results in the transmission of HIV to the other
 20 person.
- 21 **(d) A person who knowingly or intentionally in a rude, an**
 22 **insolent, or an angry manner places human blood, semen, urine, or**
 23 **fecal waste on another person commits battery by body waste, a**
 24 **Class A misdemeanor. However, the offense is:**
- 25 (1) a Class D felony if the person knew or recklessly failed to
 26 know that the blood, semen, urine, or fecal waste was infected
 27 with:
- 28 (A) hepatitis B;
 29 (B) HIV; or
 30 (C) tuberculosis;
- 31 (2) a Class C felony if:
- 32 (A) the person knew or recklessly failed to know that the
 33 blood, semen, urine, or fecal waste was infected with
 34 hepatitis B and the offense results in the transmission of
 35 hepatitis B to the other person; or
 36 (B) the person knew or recklessly failed to know that the
 37 blood, semen, urine, or fecal waste was infected with
 38 tuberculosis and the offense results in the transmission of
 39 tuberculosis to the other person; and
- 40 (3) a Class B felony if:
- 41 (A) the person knew or recklessly failed to know that the
 42 blood, semen, urine, or fecal waste was infected with HIV;

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and
(B) the offense results in the transmission of HIV to the other person.

SECTION 2. IC 35-45-16 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

Chapter 16. Malicious Mischief

Sec. 1. (a) As used in this chapter, "HIV" refers to the human immunodeficiency virus.

(b) The term includes acquired immune deficiency syndrome (AIDS) and AIDS related complex.

Sec. 2. (a) A person who recklessly, knowingly, or intentionally places human:

- (1) blood;**
- (2) semen;**
- (3) urine; or**
- (4) fecal waste;**

in a location with the intent that another person will involuntarily touch the blood, semen, urine, or fecal waste commits malicious mischief, a Class B misdemeanor.

(b) An offense described in subsection (a) is a:

(1) Class D felony if the person knew or recklessly failed to know that the blood, urine, or waste was infected with:

- (A) hepatitis B;**
- (B) HIV; or**
- (C) tuberculosis;**

(2) Class C felony if:

- (A) the person knew or recklessly failed to know that the blood, urine, or waste was infected with hepatitis B and the offense results in the transmission of hepatitis B to the other person; or**
- (B) the person knew or recklessly failed to know that the waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and**

(3) Class B felony if:

- (A) the person knew or recklessly failed to know that the waste was infected with HIV; and**
- (B) the offense results in the transmission of HIV to the other person.**

(c) A person who recklessly, knowingly, or intentionally places human:

- (1) blood;**

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1 (2) body fluid; or
 2 (3) fecal waste;
 3 **in a location with the intent that another person will ingest the**
 4 **blood, body fluid, or fecal waste, commits malicious mischief with**
 5 **food, a Class A misdemeanor.**

6 **(d) An offense described in subsection (c) is:**

7 (1) a Class D felony if the person knew or recklessly failed to
 8 know that the blood, body fluid, or fecal waste was infected
 9 with:

10 (A) hepatitis B;

11 (B) HIV; or

12 (C) tuberculosis;

13 (2) a Class C felony if:

14 (A) the person knew or recklessly failed to know that the
 15 blood, body fluid, or fecal waste was infected with hepatitis
 16 B and the offense results in the transmission of hepatitis B
 17 to the other person; or

18 (B) the person knew or recklessly failed to know that the
 19 blood, body fluid, or fecal waste was infected with
 20 tuberculosis and the offense results in the transmission of
 21 tuberculosis to the other person; and

22 (3) a Class B felony if:

23 (A) the person knew or recklessly failed to know that the
 24 blood, body fluid, or fecal waste was infected with HIV;
 25 and

26 (B) the offense results in the transmission of HIV to the
 27 other person.

28 SECTION 3. IC 35-50-5-3 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) Except as
 30 provided in subsection (i), in addition to any sentence imposed under
 31 this article for a felony or misdemeanor, the court may, as a condition
 32 of probation or without placing the person on probation, order the
 33 person to make restitution to the victim of the crime, the victim's estate,
 34 or the family of a victim who is deceased. The court shall base its
 35 restitution order upon a consideration of:

36 (1) property damages of the victim incurred as a result of the
 37 crime, based on the actual cost of repair (or replacement if repair
 38 is inappropriate);

39 (2) medical and hospital costs incurred by the victim (before the
 40 date of sentencing) as a result of the crime;

41 (3) **the cost of medical laboratory tests to determine if the**
 42 **crime has caused the victim to contract a disease or other**

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1 **medical condition;**

2 **(4)** earnings lost by the victim (before the date of sentencing) as
 3 a result of the crime including earnings lost while the victim was
 4 hospitalized or participating in the investigation or trial of the
 5 crime; and

6 ~~(4)~~ **(5)** funeral, burial, or cremation costs incurred by the family
 7 or estate of a homicide victim as a result of the crime.

8 (b) A restitution order under subsection (a) or (i) is a judgment lien
 9 that:

10 (1) attaches to the property of the person subject to the order;

11 (2) may be perfected;

12 (3) may be enforced to satisfy any payment that is delinquent
 13 under the restitution order by the person in whose favor the order
 14 is issued or the person's assignee; and

15 (4) expires;

16 in the same manner as a judgment lien created in a civil proceeding.

17 (c) When a restitution order is issued under subsection (a), the
 18 issuing court may order the person to pay the restitution, or part of the
 19 restitution, directly to the victim services division of the Indiana
 20 criminal justice institute in an amount not exceeding:

21 (1) the amount of the award, if any, paid to the victim under
 22 IC 5-2-6.1; and

23 (2) the cost of the reimbursements, if any, for emergency services
 24 provided to the victim under IC 16-10-1.5 (before its repeal) or
 25 IC 16-21-8.

26 The victim services division of the Indiana criminal justice institute
 27 shall deposit the restitution received under this subsection in the
 28 violent crime victims compensation fund established by IC 5-2-6.1-40.

29 (d) When a restitution order is issued under subsection (a) or (i), the
 30 issuing court shall send a certified copy of the order to the clerk of the
 31 circuit court in the county where the felony or misdemeanor charge was
 32 filed. The restitution order must include the following information:

33 (1) The name and address of the person that is to receive the
 34 restitution.

35 (2) The amount of restitution the person is to receive.

36 Upon receiving the order, the clerk shall enter and index the order in
 37 the circuit court judgment docket in the manner prescribed by
 38 IC 33-17-2-3. The clerk shall also notify the department of insurance
 39 of an order of restitution under subsection (i).

40 (e) An order of restitution under subsection (a) or (i) does not bar a
 41 civil action for:

42 (1) damages that the court did not require the person to pay to the

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1 victim under the restitution order but arise from an injury or
 2 property damage that is the basis of restitution ordered by the
 3 court; and
 4 (2) other damages suffered by the victim.
 5 (f) Regardless of whether restitution is required under subsection (a)
 6 as a condition of probation or other sentence, the restitution order is not
 7 discharged by the completion of any probationary period or other
 8 sentence imposed for a felony or misdemeanor.
 9 (g) A restitution order under subsection (a) or (i) is not discharged
 10 by the liquidation of a person's estate by a receiver under IC 34-48-1,
 11 IC 34-48-4, IC 34-48-5, and IC 34-48-6 (or IC 34-1-12 and IC 34-2-7
 12 before their repeal).
 13 (h) The attorney general may pursue restitution ordered by the court
 14 under subsections (a) and (c) on behalf of the victim services division
 15 of the Indiana criminal justice institute established under IC 5-2-6-8.
 16 (i) The court may order the person convicted of an offense under
 17 IC 35-43-9 to make restitution to the victim of the crime. The court
 18 shall base its restitution order upon a consideration of the amount of
 19 money that the convicted person converted, misappropriated, or
 20 received, or for which the convicted person conspired. The restitution
 21 order issued for a violation of IC 35-43-9 must comply with
 22 subsections (b), (d), (e), and (g), and is not discharged by the
 23 completion of any probationary period or other sentence imposed for
 24 a violation of IC 35-43-9.
 25 **SECTION 4. [EFFECTIVE JULY 1, 2002] IC 35-42-2-6, as**
 26 **amended by this act, and IC 35-45-16, as added by this act, apply**
 27 **only to crimes committed after June 30, 2002.**

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SENATE MOTION

Mr. President: I move that Senator Broden be added as coauthor of Senate Bill 293.

LAWSON C

SENATE MOTION

Mr. President: I move that Senator Meeks C be added as second author of Senate Bill 293.

LAWSON C

SENATE MOTION

Mr. President: I move that Senator Lanane be added as coauthor of Senate Bill 293.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Corrections, Criminal and Civil Procedures, to which was referred Senate Bill No. 293, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 1, strike "person" and insert "**blood, bodily fluid, or waste**".

Page 2, line 7, strike "person" and insert "**blood, bodily fluid, or waste**".

Page 2, line 10, strike "person" and insert "**blood, bodily fluid, or waste**".

Page 2, line 14, strike "person" and insert "**blood, bodily fluid, or waste**".

Page 2, line 18, after "places" insert "**human**".

Page 2, line 22, delete "person" and insert "**blood, semen, urine, or fecal waste**".

Page 2, line 28, delete "person" and insert "**blood, semen, urine, or fecal waste**".

Page 2, line 31, delete "person" and insert "**blood, semen, urine, or fecal waste**".

Page 2, line 36, delete "person" and insert "**blood, semen, urine, or fecal waste**".

Page 3, line 6, after "places" insert "**human**".

and when so amended that said bill do pass.

(Reference is to SB 293 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 7, Nays 1.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Human Affairs, to which was referred Senate Bill 293, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 19, delete "waste," and insert "**waste**".

Page 3, between lines 39 and 40, begin a new paragraph and insert:

"(c) A person who recklessly, knowingly, or intentionally places human:

- (1) blood;**
- (2) body fluid; or**
- (3) fecal waste;**

in a location with the intent that another person will ingest the blood, body fluid, or fecal waste, commits malicious mischief with food, a Class A misdemeanor.

(d) An offense described in subsection (c) is:

- (1) a Class D felony if the person knew or recklessly failed to know that the blood, body fluid, or fecal waste was infected with:**

- (A) hepatitis B;**
- (B) HIV; or**
- (C) tuberculosis;**

- (2) a Class C felony if:**

(A) the person knew or recklessly failed to know that the blood, body fluid, or fecal waste was infected with hepatitis B and the offense results in the transmission of hepatitis B to the other person; or

(B) the person knew or recklessly failed to know that the blood, body fluid, or fecal waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

- (3) a Class B felony if:**

(A) the person knew or recklessly failed to know that the blood, body fluid, or fecal waste was infected with HIV; and

(B) the offense results in the transmission of HIV to the other person."

and when so amended that said bill do pass.

(Reference is to SB 293 printed February 1, 2002.)

SUMMERS, Chair

Committee Vote: yeas 8, nays 0.

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