

**SENATE . . . . . No. 2361**

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**The Commonwealth of Massachusetts**

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DEVAL L. PATRICK  
GOVERNOR

OFFICE OF THE GOVERNOR  
COMMONWEALTH OF MASSACHUSETTS  
, MA

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

*April 1, 2010*

[Governors Message Body Text]

Respectfully submitted,

Deval L. Patrick,  
*Governor*

**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Ten**  
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An Act Message from His Excellency the Governor(pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts) returning with recommendation of amendment the engrossed Bill relative to assault and battery by means of a bodily substance upon correctional facility employees and expanding the prohibition on the dissemination of obscenity.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           To the Honorable Senate and House of Representatives:

2           Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the  
3 Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment  
4 Senate Bill No. 997, “An Act Relative to Assault and Battery by Means of a Bodily Substance  
5 Upon Correctional Facility Employees and Expanding the Prohibition on the Dissemination of  
6 Obscenity.”

7           This legislation has two very distinct elements. The first section addresses assaults and  
8 batteries upon correctional officers by inmates. The following sections expand the definitions of  
9 “matter” and “visual material” in our Commonwealth’s obscenity laws, to include electronic  
10 communications. My proposed amendment concerns only the first section.

11           Section 1 rewrites G.L. c. 127, § 38B, concerning assaults and batteries on correctional  
12 officers by inmates. Under current law, the crime is a felony punishable by up to 10 years in  
13 state prison, with no possibility of a sentence to the House of Correction (the “HOC”). Because  
14 the District Court does not have final jurisdiction over felonies punishable by over 5 years in  
15 state prison, defendants charged with this crime have the right to insist upon being indicted in the  
16 Superior Court. The new law provides a possibility for this crime to be punished by 2 ½ years in  
17 the HOC in addition to the possibility of up to 10 years in state prison. The intent of this change  
18 was to permit final jurisdiction in the District Court, so that correctional officers who are victims  
19 of these crimes can initiate proceedings without first requiring indictment by the DA’s office.

20           The bill also creates, within the above-referenced General Law, the new crime of assault  
21 and battery on a correctional officer by means of a bodily substance (e.g., blood, saliva, semen,  
22 urine, or feces).

23           Finally, subsection (d) of section 1 of the bill creates a requirement that any inmate “with  
24 an open mental health case” who is charged with the crime of assault and battery upon a  
25 correctional officer must be evaluated for competency and criminal responsibility under G.L. c.  
26 123, § 15, which gives courts the option of requiring competency evaluations.

27           I am in favor of the overall bill and applaud the efforts of the legislature in strengthening  
28 protections for correctional officers and minors, but am returning it for amendment to strike  
29 subsection (d). While I certainly am sensitive to the role that mental illness plays in crime, in  
30 and out of prison, courts already have the option of requiring competency evaluations. I believe  
31 that discretion exercised by reflection of the court on the facts and circumstances at the time  
32 remains appropriate, even for this new offense.

33

34 For this reason, I recommend that House Bill No. 997 be amended as follows:

35 In Section 1, by striking out subsection (d).