4-01/020.10 Battery By Gassing

Penal Code (PC) section 243.9, subsection (a) states, "every person confined in any local detention facility who commits a battery by gassing upon the person of any peace officer or employee of the local detention facility is guilty of aggravated battery." This crime is classified as a felony.

In subsection (b), "Gassing" is defined as "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 mixtures containing human excrement or other bodily fluids or bodily substances that result in actual contact with the person's skin or membranes."

Custody Personnel Responsibilities:

In addition to writing an Incident Report (SH-R-49), it is imperative for custody personnel to collect and preserve all physical evidence at the time of the incident regardless of the quantity/quality of the evidence. Simply stating, "the material smelled like bodily substances," does not satisfy the burden of proof according to PC section 243.9 subsection (c). Furthermore, subsection (c) dictates all custody facilities "shall use every available means to immediately investigate all reported or suspected violations of subdivision (a)," which includes the use of forensically acceptable means of preserving and testing the suspected gassing material.

If the criminal elements of battery by gassing are not satisfied (e.g. not a bodily fluid or excrement, no direct skin contact), personnel shall use the appropriate penal code section to document the crime. Examples may include, but are not limited to the following: 243.15 PC, 243(b) PC, and 241(c) PC.

When a gassing incident occurs at a custody facility, the following procedures shall be followed:

- An Incident Report shall be completed and the case will be referred to the District Attorney's Office for criminal prosecution. The classification line on the Incident Report shall read: "Battery by Gassing, 243.9(a) PC / F / 057";
- The incident shall be documented in the Inmate Reports Tracking System (IRTS) as a major incident;
- The victim's soiled and/or contaminated clothing shall be preserved and booked in accordance to Manual of Policy and Procedures (MPP) section 5-04/010.20, "Items Requiring Special Handling";
- Prior to booking the evidence, a black or red marker shall be used to circle around the area of the contaminated clothing that was exposed to the gassing material or substance(s), and photographs of the evidence shall be taken while the clothing is still wet;
- Once the fluid dries, the contaminated clothes shall be placed inside a brown paper bag and sealed with red biohazard tape. Each article of clothing shall be placed in a separate brown paper bag for booking. Once the brown paper bag is sealed, the brown paper bag shall be labeled "biohazard evidence" and booked as evidence for the crime laboratory to analyze;
- An item label shall be printed from Property Evidence Laboratory Information Management System (PRELIMS) and affixed to both sides of each brown paper bag. All items shall be booked individually, with individual item labels;
- If possible, a sample of any bodily fluid or substance(s) (or suspected gassing material) shall be collected and booked as evidence. The bodily fluid or substances shall be collected utilizing a sterile specimen collection container obtained from the facility's evidence locker and booked as biohazard evidence for analysis;

- If the gassing material or substance(s) makes direct contact with victim's bare skin but does not contact victim's clothing, use a clean paper towel to wipe it off and book the paper towel as evidence as outlined above;
- If possible, the empty container used to propel the bodily fluid or substance(s) shall be collected and booked as evidence in a brown paper bag. An item label shall be printed from PRELIMS and affixed to both sides of the brown paper bag;
- All evidence collected from the gassing incident shall be booked at the custody facility where the incident occurred. Evidence may also be booked at a pre-designated Sheriff's station as an alternative location;
- Victim(s) shall have the access and the opportunity to shower immediately after the incident;
- Custody facilities shall have clean alternative clothing available (e.g., disposable jumpsuits). In the event of gassing, clean alternative clothing shall be offered to the victim(s) so the soiled clothes can be booked as evidence;
- Any supportive evidence such as witness statements, video surveillance footage, and photographs shall be collected and booked as evidence;
- Medical attention shall be offered to the victim(s); and
- Per MPP section 3-03/060.20, "Replacing Employee's Damaged Personal Property," the following guidelines shall be followed within five (5) working days of the incident by personnel desiring to file a claim for reimbursement for damaged personal property:
    - Submit a "Claim for Reimbursement for Damaged Personal Property" (form 76C212V6), in triplicate to their unit commander
    - Submit an Incident Report (SH-R-49)
    - Submit a "Uniform and Equipment Replacement Request" Form (SH-AD-588)
    - Attach all documents which substantiate the claim to the claim form, such as replacement uniform purchase receipts, complaint reports, etc.
    - Submit the damaged article(s), or if taken as evidence, photographs of the damaged items with the claim form to the unit commander

Note: Unit commanders shall reviewthe claim and submit approved forms to Fiscal Operations, Attention: Accounts Payable (refer to MPP section 3-03/060.20, "Replacing Employee's Damaged Personal Property").

Supervisor's Responsibilities:

Supervisors shall adhere to the "Supervisor's Gassing Checklist" (SH-J-459) following an assault on staff: gassing incident. The checklist ensures notifications are made, the incident is documented, the evidence is preserved properly, and the employee(s) involved are properly cared for.

- Victims shall be offered to be tested for communicable diseases. Supervisors shall immediately complete the following documents:
    - "Hazardous Materials Injury/Toxic Substances/Communicable Disease Exposure" Report (SH-R-426); and
    - "Department of Health Service's Report of Request and Decision for HIV Testing" form (DHS 8459).
- The facility operations sergeant shall refer all victims of non-egregious gassings to a Department

psychologist at Psychological Services Bureau (PSB) for a confidential outreach contact;

- An egregious or subsequent gassing shall be identified by the unit commander as a Critical Incident. Refer to (MPP) section 3-10/460.00, "Department Psychologist Response to Critical Incidents." The operations sergeant shall ensure the victim(s) is sent to debrief with PSB within five (5) days of the incident;
- Supervisors shall ensure all appropriate evidence was collected and booked according to the procedures listed above;
- If an employee elects not to relinquish their clothing/uniform as evidence, notation shall be made by marking the appropriate box on the "Supervisor's Gassing Checklist" (SH-J-459);
- Supervisors shall make notification to the Jail Investigations Unit (JIU) via the Department e-mail to the "JIU" e-mail group, in accordance with Custody Division Manual (CDM) section 4-07/015.00, "Notification of Incidents to Custody Investigative Services Unit";
- Supervisors shall provide the victim with the appropriate claim form (Claim for Reimbursement for Damaged Personal Property [Form 76C212V6]) for the replacement of their damaged uniform.

Note: If an employee sustains an injury that results in their absence from work beyond the five (5) day period required to complete the reimbursement paperwork, a supervisor may complete the paperwork on behalf of the employee.

Completed forms shall be forwarded to the facility operations staff for retention.

Custody Facility Evidence Custodian's Responsibilities:

- The facility's evidence custodian shall ensure the evidence is booked, with the item label attached to it, and is delivered to the crime laboratory within three (3) business days; and
- Once the evidence is delivered to the crime laboratory, the evidence custodian shall notify JIU via email of the Uniform Reference Number (URN), laboratory receipt number, and the articles which were delivered for analysis.

Custody Investigative Services (CIS) Responsibilities:

- It is the responsibility of the CIS lieutenant (or their designee) to brief the victim/employee of the status of the case and the results of the evidence testing.