

## BILL ANALYSIS

Senate Research Center

H.B. 1095  
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Criminal Justice  
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Engrossed

### AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, Section 22.11, Penal Code, provides that it is a third degree felony offense for a person who is incarcerated to cause a person to contact the bodily waste or fluids of the actor, any other person, or an animal. However, this law does not apply to a person who causes bodily wastes or fluids to come into contact with a public servant, such as a police officer or firefighter, who is lawfully discharging his or her duties. Current law also does not provide any criminal enhancements if the actor knows that the bodily wastes or fluids are contaminated with certain contagious diseases or if the contact causes the victim to contract certain contagious diseases.

H.B. 1095 creates an offense for any person who, with the intent to assault, harass, alarm, or annoy, causes certain bodily waste or fluids to come into contact with a public servant discharging his or her duties. The offense is a third degree felony, unless the actor knew that the bodily fluids or wastes were infected with a contagious disease, in which case the offense would be a second degree felony. In addition, the bill requires a person convicted of the offense to be ordered to pay restitution for testing and treatment for HIV, hepatitis B, or tuberculosis.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 22.11, Penal Code, to read as follows:

Sec. 22.11. HARASSMENT BY PERSONS IN CERTAIN CORRECTIONAL FACILITIES; HARASSMENT OF PUBLIC SERVANT.

SECTION 2. Amends Section 22.11, Penal Code, by amending Subsections (a) and (b) and adding Subsection (b-1), (b-2), and (e), as follows:

(a) Provides that a person commits an offense if, with the intent to assault, harass, or alarm, the person causes another person the actor knows to be a public servant to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of the actor, any other person, or an animal while the public servant is lawfully discharging an official duty or in retaliation or on account of an exercise of the public servant's official power or performance of an official duty. Makes nonsubstantive changes.

(b) Provides that the offense of causing another person to come into contact with certain bodily fluids or wastes while imprisoned or confined in a correctional facility is a felony of the third degree, and an offense of causing a public servant to come into contact with certain bodily fluids or wastes is a Class A misdemeanor, except as provided by Subsections (b-1) and (b-2). Makes conforming and nonsubstantive changes.

(b-1) Provides that the offense of causing another person to come into contact with certain bodily fluids or wastes while imprisoned or confined in a correctional facility is a felony of the second degree if, as a result of the offense, a person contracts one of certain reportable diseases.

(b-2) Provides that the offense of causing a public servant to come into contact with certain bodily fluids or wastes is a state jail felony if the actor knows or is aware of but consciously disregards a substantial risk that the bodily fluid used to commit the offense is infected with one of certain reportable diseases, except that the offense is a felony of the second degree if, as a result of the offense, a person contracts a reportable disease.

(e) Provides that for the purpose of an offense of causing a public servant to come into contact with certain bodily fluids or wastes, the actor is presumed to have known the person was a public servant if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant.

SECTION 3. Amends Article 21.31, Code of Criminal Procedure, as follows:

Art. 21.31. New heading: TESTING FOR AIDS AND CERTAIN OTHER DISEASES.

(a) Redesignates a portion of this subsection to Subsection (c).

(b) Requires the court to order a person who is charged with an offense under Section 22.11, Penal Code, to undergo in the manner provided by Subsection (a) a medical procedure or test determined to show whether the person has one of certain reportable diseases.

(c) Makes conforming changes.

(d) Redesignated from existing Subsection (b). Makes conforming and nonsubstantive changes.

(e) Provides that this article does not permit a court to release a test result to anyone other than those authorized by law, rather than specifically authorized by this law. Makes conforming and nonsubstantive changes.

SECTION 4. Amends Article 42.037, Code of Criminal Procedure, by adding Subsection (p), as follows:

(p) Requires the court to order a defendant convicted of an offense under Section 22.11, Penal Code, to make restitution to the victim of the offense or the victim's employer in an amount equal to the sum of any expenses incurred by the victim or employer to test the victim for a reportable disease, or to treat the victim for any reportable disease that the victim contracts as a result of the offense.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2005.