

BILL ANALYSIS

Senate Research Center
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S.B. 816
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Criminal Justice
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As Filed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Current Texas law, under Section 22.11, Penal Code, provides that its a third degree felony offense for an incarcerated individual to cause a person to come into contact with the body waste or fluids of the actor, any other person, or an animal. This law, however, does not apply to a person who causes body wastes or fluids to come into contract with a public servant, such as a police officer or firefighter, who is lawfully discharging the person's duties. It also does not provide any criminal enhancements if the actor knows that he or she is infected with certain contagious diseases or if the contact causes the victim to contract said diseases.

As proposed, S.B. 816 provides that if any person, with the intent to assault, harass, alarm, or annoy, causes the contact with body wastes or fluids with a public servant discharging his or her duties, it is a third degree felony. The offense becomes a second degree felony if the actor knew he or she was infected with a contagious disease. In addition, S.B. 816 requires the person convicted of the offense to pay restitution for testing and treatment for certain diseases.

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 Subsections (b-1) and (e), as follows:

(a) Provides that a person commits an offense if, with the intent to assault, harass, alarm, or annoy the person while imprisoned in a correctional or detention facility causes another person to contact certain fluids or substances of any other person or animal or causes another person the actor knows to be a public servant to contact those certain fluids or substances 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.

(b) Provides that an offense under this section is a felony of the third degree, except as provided by Subsection (b-1).

(b-1) Provides that an offense under this section is a second degree felony if the actor knows or is aware but consciously disregards a substantial risk that the specific fluid or substance used to commit the offense is infected with HIV, hepatitis B, or tuberculosis; except that, if as a result of the offense, the person contracts the mentioned diseases, the offense becomes a first degree felony.

(e) Provides that for purposes of Subsection (a)(2), 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 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 their employer in an amount totaling the expenses incurred by the victim or employer to test and/or treat the victim for HIV, hepatitis B, or tuberculosis.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2005.