

## **BILL ANALYSIS**

C.S.H.B. 1095  
By: Menendez  
Corrections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, Section 22.11 of the Penal Code provides a third degree felony offense for a person who is incarcerated to cause a person to contact the body waste or fluids of the actor, any other person, or an animal. However, this law does not apply to a person who causes body wastes or fluids to come into contact with a public servant, such as a police officer or firefighter, who is lawfully discharging their duties.

C.S.H.B. 1095 would provide the same protection for a police officer or firefighter, that a correction officer currently is afforded, in instances where body waste or fluids are purposely made to contact the public servant. C.S.H.B 1095 also provides criminal enhancements if the actor knows that they are infected with certain contagious diseases or if the contact causes the victim to contract certain contagious diseases. In addition, the bill provides that a person convicted of the offense pay restitution for testing and treatment for HIV, hepatitis B, or tuberculosis. Finally, a person charged with an offense under the statute would be required to undergo testing to show whether the actor has a contagious disease.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1. Amends the heading of Section 22.11, Penal Code.

SECTION 2. Amends Section 22.11, Penal Code, by adding Subdivision (a)(2), which provides that a person commits an offense if, with intent to assault, harass, alarm, or annoy, they cause the body waste or fluids of a person or animal to come into contact with a person the actor knows to be a public servant. Provides that an offense under current law, committed by a person incarcerated in a correctional facility under Subdivision (a)(1) remains a third degree felony. An offense under Subsection (a)(1) is a felony of the second degree if the victim contracts a contagious disease as a result of the offense. If the victim of an offense under Subdivision (a)(2) contracts a contagious disease as a result of the offense, the offense would be a felony of the second degree. For the 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.

SECTION 3. Amends Article 21.31, Code of Criminal Procedure to provide that the court shall order a person who is charged with an offense under Section 22.11, Penal Code, to undergo testing to show whether the person has a contagious disease and requires that the person pay the costs of the testing.

SECTION 4. Amends Article 42.037, Code of Criminal Procedure, to provide that a court shall 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 contagious disease or to treat the victim for a contagious disease contracted as a result of the offense.

SECTION 5. Provides that the change in the law made by the Act applies only to an offense committed on or after the effective date of the Act. An offense committed before the effective date of the Act is covered by the law in effect at the time the offense was committed.

C.S.H.B. 1095 79(R)

SECTION 6. Effective Date, September 1, 2005.

**EFFECTIVE DATE**

September 1, 2005

**COMPARISON OF ORIGINAL TO SUBSTITUTE**

Both the original and substitute amend Section 22.11, Penal Code, by adding Subsection (a)(2) which creates an offense for a person to cause a public servant who is discharging an official duty to come into contact with the body waste or fluids of a person or animal. The original bill made this offense a third degree felony. The substitute makes the offense a Class A misdemeanor.

The original bill enhanced the penalty of the offense to a felony of the second degree if the actor knew or was aware or consciously disregarded a substantial risk that the body waste or fluid used to commit the offense was infected with a contagious disease. If the victim contracted a contagious disease as a result of the offense, the offense would be enhanced to a felony of the first degree. Under the substitute, an offense committed by a person incarcerated in a correctional facility would be enhanced to a felony of the second degree if a person contracted a contagious disease as a result of the offense. Also, under the substitute an offense committed against a public servant would be enhanced to a state jail felony if the actor knew or was aware or consciously disregarded a substantial risk that the body waste or fluid used to commit the offense was infected with a contagious disease. The substitute further provides that the offense committed against a public servant would be enhanced to a felony of the second degree if victim contracted a contagious disease as a result of the offense.

C.S.H.B 1095 amends Article 21.31, Code of Criminal Procedure, requiring that the court order a person charged with an offense under Section 22.11, Penal Code, be tested for a contagious disease and requiring that the person charged pay for the testing. This language was absent from the original bill.