

By: Menendez

H.B. No. 1095

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the offense of harassment by persons in certain  
3 correctional facilities and to creating the offense of harassment  
4 of public servant.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. The heading to Section 22.11, Penal Code, is  
7 amended to read as follows:

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

10 SECTION 2. Section 22.11, Penal Code, is amended by  
11 amending Subsections (a) and (b) and adding Subsections (b-1),  
12 (b-2), and (e) to read as follows:

13 (a) A person commits an offense if, with the intent to  
14 assault, harass, or alarm, the person:

15 (1) [~~7~~] while imprisoned or confined in a correctional  
16 or detention facility [~~and with intent to harass, alarm, or annoy~~  
17 ~~another person~~], causes another [~~the other~~] person to contact the  
18 blood, seminal fluid, vaginal fluid, saliva, urine, or feces of the  
19 actor, any other person, or an animal; or

20 (2) causes another person the actor knows to be a  
21 public servant to contact the blood, seminal fluid, vaginal fluid,  
22 saliva, urine, or feces of the actor, any other person, or an animal  
23 while the public servant is lawfully discharging an official duty  
24 or in retaliation or on account of an exercise of the public

1 servant's official power or performance of an official duty.

2 (b) Except as provided by Subsections (b-1) and (b-2), an  
3 [An] offense under Subsection (a)(1) [~~this section~~] is a felony of  
4 the third degree and an offense under Subsection (a)(2) is a Class A  
5 misdemeanor.

6 (b-1) An offense under Subsection (a)(1) is a felony of the  
7 second degree if, as a result of the offense, a person contracts  
8 HIV, hepatitis A, hepatitis B, tuberculosis, or any other disease  
9 designated as a reportable disease under Section 81.048, Health and  
10 Safety Code.

11 (b-2) An offense under Subsection (a)(2) is a state jail  
12 felony if the actor knows or is aware of but consciously disregards  
13 a substantial risk that the blood, seminal fluid, vaginal fluid,  
14 saliva, urine, or feces used to commit the offense is infected with  
15 HIV, hepatitis A, hepatitis B, tuberculosis, or any other disease  
16 designated as a reportable disease under Section 81.048, Health and  
17 Safety Code, except that the offense is a felony of the second  
18 degree if, as a result of the offense, a person contracts HIV,  
19 hepatitis A, hepatitis B, tuberculosis, or the reportable disease.

20 (e) For purposes of Subsection (a)(2), the actor is presumed  
21 to have known the person was a public servant if the person was  
22 wearing a distinctive uniform or badge indicating the person's  
23 employment as a public servant.

24 SECTION 3. Article 21.31, Code of Criminal Procedure, is  
25 amended to read as follows:

26 Art. 21.31. [AIDS] TESTING FOR AIDS AND CERTAIN OTHER  
27 DISEASES. (a) A person who is indicted for or who waives

1 indictment for an offense under Section 21.11(a)(1), 22.011, or  
2 22.021, Penal Code, shall, at the direction of the court, undergo a  
3 medical procedure or test designed to show or help show whether the  
4 person has a sexually transmitted disease or has acquired immune  
5 deficiency syndrome (AIDS) or human immunodeficiency virus (HIV)  
6 infection, antibodies to HIV, or infection with any other probable  
7 causative agent of AIDS. The court may direct the person to undergo  
8 the procedure or test on its own motion or on the request of the  
9 victim of the alleged offense. If the person refuses to submit  
10 voluntarily to the procedure or test, the court shall require the  
11 person to submit to the procedure or test. The court may require a  
12 defendant previously required under this article to undergo a  
13 medical procedure or test on indictment for an offense to undergo a  
14 subsequent medical procedure or test following conviction of the  
15 offense. The person performing the procedure or test shall make the  
16 test results available to the local health authority, and the local  
17 health authority shall be required to make the notification of the  
18 test result to the victim of the alleged offense and to the  
19 defendant.

20 (b) The court shall order a person who is charged with an  
21 offense under Section 22.11, Penal Code, to undergo in the manner  
22 provided by Subsection (a) a medical procedure or test designed to  
23 show or help show whether the person has HIV, hepatitis A, hepatitis  
24 B, tuberculosis, or any other disease designated as a reportable  
25 disease under Section 81.048, Health and Safety Code. The person  
26 charged with the offense shall pay the costs of testing under this  
27 subsection.

1           (c) The state may not use the fact that a medical procedure  
2 or test was performed on a person under Subsection (a) [~~this~~  
3 ~~subsection~~] or use the results of a [~~the~~] procedure or test  
4 conducted under Subsection (a) in any criminal proceeding arising  
5 out of the alleged offense.

6           (d) [~~(b)~~] Testing under this article [~~section~~] shall be  
7 conducted in accordance with written infectious disease control  
8 protocols adopted by the Texas Board of Health that clearly  
9 establish procedural guidelines that provide criteria for testing  
10 and that respect the rights of the person accused and any victim  
11 [~~the victims~~] of the alleged offense.

12           (e) This article does not permit [~~(c) Nothing in this~~  
13 ~~section would allow~~] a court to release a test result to anyone  
14 other than those [~~specifically~~] authorized by [~~this~~] law, and the  
15 provisions of Section 81.103(d), Health and Safety Code, may  
16 [~~shall~~] not be construed to allow that [~~such~~] disclosure.

17           SECTION 4. Article 42.037, Code of Criminal Procedure, is  
18 amended by adding Subsection (p) to read as follows:

19           (p) The court shall order a defendant convicted of an  
20 offense under Section 22.11, Penal Code, to make restitution to the  
21 victim of the offense or the victim's employer in an amount equal to  
22 the sum of any expenses incurred by the victim or employer to:

23                   (1) test the victim for HIV, hepatitis A, hepatitis B,  
24 tuberculosis, or any other disease designated as a reportable  
25 disease under Section 81.048, Health and Safety Code; or

26                   (2) treat the victim for HIV, hepatitis A, hepatitis  
27 B, tuberculosis, or any other disease designated as a reportable

1 disease under Section 81.048, Health and Safety Code, the victim  
2 contracts as a result of the offense.

3 SECTION 5. The changes in law made by this Act apply only to  
4 an offense committed on or after the effective date of this Act. An  
5 offense committed before the effective date of this Act is covered  
6 by the law in effect at the time the offense was committed, and the  
7 former law is continued in effect for that purpose. For purposes of  
8 this section, an offense was committed before the effective date of  
9 this Act if any element of the offense was committed before that  
10 date.

11 SECTION 6. This Act takes effect September 1, 2005.