

1-1 By: Menendez (Senate Sponsor - Deuell) H.B. No. 1095
1-2 (In the Senate - Received from the House May 4, 2005;
1-3 May 5, 2005, read first time and referred to Committee on Criminal
1-4 Justice; May 19, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;
1-6 May 19, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1095 By: Seliger

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the offense of harassment by persons in certain
1-11 correctional facilities and to creating the offense of harassment
1-12 of public servant.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. The heading to Section 22.11, Penal Code, is
1-15 amended to read as follows:

1-16 Sec. 22.11. HARASSMENT BY PERSONS IN CERTAIN CORRECTIONAL
1-17 FACILITIES; HARASSMENT OF PUBLIC SERVANT.

1-18 SECTION 2. Section 22.11, Penal Code, is amended by
1-19 amending Subsection (a) and adding Subsection (e) to read as
1-20 follows:

1-21 (a) A person commits an offense if, with the intent to
1-22 assault, harass, or alarm, the person:

1-23 (1) ~~[]~~ while imprisoned or confined in a correctional
1-24 or detention facility ~~[and with intent to harass, alarm, or annoy~~
1-25 ~~another person]~~, causes another ~~[the other]~~ person to contact the
1-26 blood, seminal fluid, vaginal fluid, saliva, urine, or feces of the
1-27 actor, any other person, or an animal; or

1-28 (2) causes another person the actor knows to be a
1-29 public servant to contact the blood, seminal fluid, vaginal fluid,
1-30 saliva, urine, or feces of the actor, any other person, or an animal
1-31 while the public servant is lawfully discharging an official duty
1-32 or in retaliation or on account of an exercise of the public
1-33 servant's official power or performance of an official duty.

1-34 (e) For purposes of Subsection (a)(2), the actor is presumed
1-35 to have known the person was a public servant if the person was
1-36 wearing a distinctive uniform or badge indicating the person's
1-37 employment as a public servant.

1-38 SECTION 3. Article 21.31, Code of Criminal Procedure, is
1-39 amended to read as follows:

1-40 Art. 21.31. ~~[AIDS]~~ TESTING FOR AIDS AND CERTAIN OTHER
1-41 DISEASES. (a) A person who is indicted for or who waives

1-42 indictment for an offense under Section 21.11(a)(1), 22.011, or
1-43 22.021, Penal Code, shall, at the direction of the court, undergo a
1-44 medical procedure or test designed to show or help show whether the
1-45 person has a sexually transmitted disease or has acquired immune
1-46 deficiency syndrome (AIDS) or human immunodeficiency virus (HIV)
1-47 infection, antibodies to HIV, or infection with any other probable
1-48 causative agent of AIDS. The court may direct the person to undergo
1-49 the procedure or test on its own motion or on the request of the
1-50 victim of the alleged offense. If the person refuses to submit
1-51 voluntarily to the procedure or test, the court shall require the
1-52 person to submit to the procedure or test. The court may require a
1-53 defendant previously required under this article to undergo a
1-54 medical procedure or test on indictment for an offense to undergo a
1-55 subsequent medical procedure or test following conviction of the
1-56 offense. The person performing the procedure or test shall make the
1-57 test results available to the local health authority, and the local
1-58 health authority shall be required to make the notification of the
1-59 test result to the victim of the alleged offense and to the
1-60 defendant.

1-61 (b) The court shall order a person who is charged with an
1-62 offense under Section 22.11, Penal Code, to undergo in the manner
1-63 provided by Subsection (a) a medical procedure or test designed to

2-1 show or help show whether the person has HIV, hepatitis A, hepatitis
2-2 B, tuberculosis, or any other disease designated as a reportable
2-3 disease under Section 81.048, Health and Safety Code. The person
2-4 charged with the offense shall pay the costs of testing under this
2-5 subsection.

2-6 (c) The state may not use the fact that a medical procedure
2-7 or test was performed on a person under Subsection (a) [~~this~~
2-8 ~~subsection~~] or use the results of a [~~the~~] procedure or test
2-9 conducted under Subsection (a) in any criminal proceeding arising
2-10 out of the alleged offense.

2-11 (d) [~~(b)~~] Testing under this article [~~section~~] shall be
2-12 conducted in accordance with written infectious disease control
2-13 protocols adopted by the Texas Board of Health that clearly
2-14 establish procedural guidelines that provide criteria for testing
2-15 and that respect the rights of the person accused and any victim
2-16 [~~the victims~~] of the alleged offense.

2-17 (e) This article does not permit [~~(c) Nothing in this~~
2-18 ~~section would allow~~] a court to release a test result to anyone
2-19 other than those [~~specifically~~] authorized by [~~this~~] law, and the
2-20 provisions of Section 81.103(d), Health and Safety Code, may
2-21 [~~shall~~] not be construed to allow that [~~such~~] disclosure.

2-22 SECTION 4. Article 42.037, Code of Criminal Procedure, is
2-23 amended by adding Subsection (p) to read as follows:

2-24 (p) The court shall order a defendant convicted of an
2-25 offense under Section 22.11, Penal Code, to make restitution to the
2-26 victim of the offense or the victim's employer in an amount equal to
2-27 the sum of any expenses incurred by the victim or employer to:

2-28 (1) test the victim for HIV, hepatitis A, hepatitis B,
2-29 tuberculosis, or any other disease designated as a reportable
2-30 disease under Section 81.048, Health and Safety Code; or

2-31 (2) treat the victim for HIV, hepatitis A, hepatitis
2-32 B, tuberculosis, or any other disease designated as a reportable
2-33 disease under Section 81.048, Health and Safety Code, the victim
2-34 contracts as a result of the offense.

2-35 SECTION 5. The changes in law made by this Act apply only to
2-36 an offense committed on or after the effective date of this Act. An
2-37 offense committed before the effective date of this Act is covered
2-38 by the law in effect at the time the offense was committed, and the
2-39 former law is continued in effect for that purpose. For purposes of
2-40 this section, an offense was committed before the effective date of
2-41 this Act if any element of the offense was committed before that
2-42 date.

2-43 SECTION 6. This Act takes effect September 1, 2005.

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