

AN ACT

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

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

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

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

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

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

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

(2) 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

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

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

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

8 Art. 21.31. [~~AIDS~~] TESTING FOR AIDS AND CERTAIN OTHER
9 DISEASES. (a) A person who is indicted for or who waives
10 indictment for an offense under Section 21.11(a)(1), 22.011, or
11 22.021, Penal Code, shall, at the direction of the court, undergo a
12 medical procedure or test designed to show or help show whether the
13 person has a sexually transmitted disease or has acquired immune
14 deficiency syndrome (AIDS) or human immunodeficiency virus (HIV)
15 infection, antibodies to HIV, or infection with any other probable
16 causative agent of AIDS. The court may direct the person to undergo
17 the procedure or test on its own motion or on the request of the
18 victim of the alleged offense. If the person refuses to submit
19 voluntarily to the procedure or test, the court shall require the
20 person to submit to the procedure or test. The court may require a
21 defendant previously required under this article to undergo a
22 medical procedure or test on indictment for an offense to undergo a
23 subsequent medical procedure or test following conviction of the
24 offense. The person performing the procedure or test shall make the
25 test results available to the local health authority, and the local
26 health authority shall be required to make the notification of the
27 test result to the victim of the alleged offense and to the

1 defendant.

2 (b) The court shall order a person who is charged with an
3 offense under Section 22.11, Penal Code, to undergo in the manner
4 provided by Subsection (a) a medical procedure or test designed to
5 show or help show whether the person has HIV, hepatitis A, hepatitis
6 B, tuberculosis, or any other disease designated as a reportable
7 disease under Section 81.048, Health and Safety Code. The person
8 charged with the offense shall pay the costs of testing under this
9 subsection.

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

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

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

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

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

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

8 (2) treat the victim for HIV, hepatitis A, hepatitis
9 B, tuberculosis, or any other disease designated as a reportable
10 disease under Section 81.048, Health and Safety Code, the victim
11 contracts as a result of the offense.

12 SECTION 5. The changes in law made by this Act apply only to
13 an offense committed on or after the effective date of this Act. An
14 offense committed before the effective date of this Act is covered
15 by the law in effect at the time the offense was committed, and the
16 former law is continued in effect for that purpose. For purposes of
17 this section, an offense was committed before the effective date of
18 this Act if any element of the offense was committed before that
19 date.

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

David Newkum

President of the Senate

Jim Caddell

Speaker of the House

I certify that H.B. No. 1095 was passed by the House on May 3, 2005, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1095 on May 23, 2005, by a non-record vote.

Robert Haney
Chief Clerk of the House

I certify that H.B. No. 1095 was passed by the Senate, with amendments, on May 20, 2005, by the following vote: Yeas 31, Nays 0.

Patsy Saw
Secretary of the Senate

APPROVED: 17 JUNE 05

Date

RICK PERRY

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:20 AM '05
Roger Williams
Secretary of State