

**SUBJECT:** Offense for harassing public servants through contact with body secretions

**COMMITTEE:** Corrections — committee substitute recommended

**VOTE:** 6 ayes — Madden, D. Jones, R. Allen, Hochberg, McReynolds, Noriega

0 nays

1 absent — Haggerty

**WITNESSES:** For — Chris Jones, Combined, Law Enforcement Associations of Texas; David Kohler, Pflugerville Police Association; Greg Martinez, Travis County Sheriff's Officers Association; Stephen G. Nichols, Austin Police Association

Against — None

**BACKGROUND:** Under Penal Code sec. 22.11, it is an offense of harassment for a person in a correctional facility or a detention facility to cause another individual to come into contact with the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of any person or of an animal. To qualify as an offense, this action must have been taken with the intent to harass, alarm, or annoy another person. The offense is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

Penal Code sec. 1.07(41) includes in the definition of “public servant” persons elected, selected, appointed, or employed as officers, employees, or agents of government.

Under Code of Criminal Procedure, sec. 21.31, a court may require a person who is indicted for, or who waives indictment for, certain sex offenses to undergo a test for sexually transmitted diseases, acquired immune deficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, and certain other conditions relating to AIDS.

**DIGEST:** CSHB 1095 would make it a criminal offense for a person knowingly, and with intent to assault, harass, annoy, or alarm, to cause a public servant who lawfully was carrying out an official duty to come into contact with the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of any person

or animal. Further, it would be an offense for a person to perform such actions in retaliation for a public servant's performance of duty or exercise of official power. The offense would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). The actor would be presumed to have known that a person was a public servant if the person was wearing a distinctive uniform or badge.

**Enhanced penalties.** The offense of harassment of a public servant would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) if the defendant knew or was aware but consciously disregarded a substantial risk that the item used to commit the offense was infected with HIV, hepatitis A, hepatitis B, tuberculosis, or any other disease designated as a reportable communicable disease.

The current harassment offense by persons confined in correctional or detention facilities and the offense created by CSHB 1095 against public servants would be a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if the subject of harassment contracted HIV, hepatitis A, hepatitis B, tuberculosis, or another reportable communicable disease.

**Testing and payment for testing.** CSHB 1095 would require courts to order persons charged the offenses described in the bill to be tested for HIV, hepatitis A, hepatitis B, tuberculosis, or any other reportable communicable disease. The person charged with the offense would have to pay for the test.

If a victim contracted a reportable communicable disease, courts would be required to order defendants convicted of an offense described by the bill to make restitution to the victim or the victim's employer for the cost of testing and, if necessary, treating the victim for the disease.

The bill would take effect September 1, 2005, and would apply to offenses committed on or after that date.

**SUPPORTERS  
SAY:**

CSHB 1095 is necessary to help protect public servants — especially police officers and firefighters — from the disgusting and dangerous practice known as “chunking,” which involves throwing bodily secretions or waste as a means of assault. Just because someone has taken on the duties of a public servant does not mean that they should be subjected to this kind of abuse.

Currently, it is a criminal offense for prison inmates to throw these substances at prison guards or other people inside a prison, but current law does not provide the same protections for public servants who are harassed by persons outside of prisons. In one case, a police officer was stabbed with a hypodermic needle by an offender who said he had AIDS. This led to years of testing to see if the officer had contracted the disease. The person who stabbed the officer could be charged only with ordinary assault, and there was no mechanism to force the defendant to be tested and to have the defendant pay for the testing and treatment of the officer. In other cases, people at protests have brought bodily secretions specifically to throw at law enforcement officers.

CSHB 1095 would address this situation by creating an offense specifically for harassing a public servant and establishing a mechanism for testing and paying for the tests. It is appropriate to give public servants this special protection because the acts described by the bill are inflicted on them *because* of their jobs serving society. Other statutes, such as the assault statute, give special protections to public servants. The bill would protect police officers and firefighters the same way that current law protects prison guards.

Current offenses such as assault and resisting arrest are inadequate to deal with these situations. For example, criminal assault requires that bodily injury result, something that does not always occur when a bodily secretion is thrown on someone. Similarly, someone who threw a body fluid at a police officer during a rally would not fall under the resisting arrest statute.

CSHB 1095 would establish appropriate penalties that recognize the seriousness of these actions and could deter them. The penalty for harassing a public servant would be a class A misdemeanor as long as the action carried no serious health consequences or the potential for serious consequences. CSHB 1095 would increase the penalty one degree, to a state jail felony, if someone committed the offense and consciously disregarded the risk that the substance was infected with a communicable disease. The penalty would increase another step if the public servant contracted a disease. By requiring that a defendant disregard a risk to another person before an enhanced penalty could be imposed, the bill would ensure that more serious penalties were imposed only when appropriate.

The bill also would increase the penalty one degree for the current crime of harassment by a person in a correctional facility if as a result of the offense, someone contracted a reportable communicable disease. The state should do all it can to better protect correctional officers and others inside prisons who are exposed to these risks through their jobs.

The offense created by CSHB 1095 would not be overly broad. It would apply only to public servants who lawfully were discharging their duties or to acts done specifically in retaliation for public servants performing their duties. In addition, the bill would require that the actor intended to assault, harass, alarm, or annoy the person, the same intent requirement for the current offense of harassment by persons in correctional facilities. These requirements mean, for example, that the law could not be used against someone who spat inadvertently on a public servant. As always, prosecutors would use their discretion and file charges only in appropriate cases.

CSHB 1095 also would address the problem of public servants having to pay the cost of disease-testing treatment after one of these incidents. A person who caused a public servant to come in contact with body secretions should be required to pay for this testing and, if necessary, treatment.

**OPPONENTS  
SAY:**

CSHB 1095 is unnecessary because public servants have adequate protection under current law, and the bill is so broad that it could encompass some actions that are not serious enough to warrant the proposed penalties.

Other statutes could be used to protect public servants and prosecute the actions described by CSHB 1095. Currently, the assault statute makes it an offense to cause bodily injury to another, and the penalty is enhanced if the offense is committed against a public servant. Other statutes such as resisting arrest also could be used in some situations contemplated by the bill.

CSHB 1095 is so broad that it could punish harshly some actions that should, at most, be considered annoying and not serious crimes. For example, the bill would make it an offense to cause a public servant to come in contact with saliva, which could occur while a police officer was arresting an agitated drunk who, nevertheless, had no intent to harass or alarm the officer. While these incidents are not pleasant and should not be

encouraged, they are common in some situations and should not be equated with more serious, life-threatening crimes. While it can be appropriate to punish these actions when committed by someone in a prison who is required to live under strict rules, the same actions committed by someone on the street who is being placed under arrest or booked into jail do not necessarily carry the same weight.

It could be inappropriate to increase the penalty for harassment by a prisoner if the other person contracted a communicable disease because it is possible that the inmate did not know that the bodily secretions were infected.

**NOTES:**

The committee substitute changed the penalties that would be imposed for the offenses contained in the bill and would require that the courts order the testing of a person charged with such an offense.