

By: Simpson

H.B. No. 41

A BILL TO BE ENTITLED

AN ACT

1
2 relating to prosecution and punishment for the offense of official
3 oppression by the intrusive touching of persons seeking access to
4 public buildings and transportation; providing penalties.

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

6 SECTION 1. Section 39.03, Penal Code, is amended by
7 amending Subsections (a) and (b) and adding Subsections (c-1),
8 (c-2), and (c-3) to read as follows:

9 (a) A person who is a public servant [~~acting under color of~~
10 ~~his office or employment~~] commits an offense if the person:

11 (1) while acting under color of the person's office or
12 employment [~~he~~]:

13 (A) [(1)] intentionally subjects another person
14 to mistreatment or to arrest, detention, search, seizure,
15 dispossession, assessment, or lien that the actor [~~he~~] knows is
16 unlawful;

17 (B) [(2)] intentionally denies or impedes
18 another person in the exercise or enjoyment of any right,
19 privilege, power, or immunity, knowing the actor's [~~his~~] conduct is
20 unlawful; or

21 (C) [(3)] intentionally subjects another person
22 to sexual harassment; or

23 (2) while acting under color of the person's office or
24 employment without probable cause to believe the other person

1 committed an offense:

2 (A) performs a search without effective consent
3 for the purpose of granting access to a publicly accessible
4 building or form of transportation; and

5 (B) intentionally, knowingly, or recklessly:

6 (i) touches the anus, sexual organ,
7 buttocks, or breast of the other person, including touching through
8 clothing; or

9 (ii) causes physical contact with the other
10 person when the actor knows or should reasonably believe that the
11 other person will regard the contact as offensive or provocative.

12 (b) For purposes of this section, a person who is a public
13 servant acts under color of the person's [~~his~~] office or employment
14 if the person [~~he~~] acts or purports to act in an official capacity
15 or takes advantage of such actual or purported capacity.

16 (c-1) For purposes of Subsection (a)(2), "public servant"
17 includes:

18 (1) an officer, employee, or agent of:

19 (A) the United States;

20 (B) a branch, department, or agency of the United
21 States; or

22 (C) another person acting under contract with a
23 branch, department, or agency of the United States for the purpose
24 of providing a security or law enforcement service; and

25 (2) any other person acting under color of federal
26 law.

27 (c-2) For a person described by Subsection (c-1)(1) or (2),

1 it is a defense to prosecution for an offense under Subsection
2 (a)(2) that the actor performed the search pursuant to and
3 consistent with an explicit and applicable grant of federal
4 statutory authority that is consistent with the United States
5 Constitution.

6 (c-3) For purposes of Subsection (a)(2), and
7 notwithstanding Sections 1.07(a)(11) and (19), consent is
8 effective only if, immediately before any search:

9 (1) the actor verbally describes:

10 (A) the area of the other person to be searched;

11 and

12 (B) the method to be used in the search; and

13 (2) the actor receives express consent for the search

14 only from:

15 (A) the other person; or

16 (B) the parent or guardian of the other person.

17 SECTION 2. (a) This section applies only to a prosecution
18 of an offense under Section 39.03(a)(2), Penal Code, as added by
19 this Act, in which the defendant was, at the time of the alleged
20 offense, acting under the color of federal law.

21 (b) In a prosecution described by Subsection (a) of this
22 section, if the government of the United States, the defendant, or
23 the defendant's employer challenges the validity of Section
24 39.03(a)(2), Penal Code, as added by this Act, on grounds of
25 unconstitutionality, preemption, or sovereign immunity, the
26 attorney general of this state, with the consent of the appropriate
27 local county or district attorney, shall take any actions necessary

1 on behalf of the state to defend the validity of the statute. The
2 attorney general may make any legal arguments the attorney general
3 considers appropriate, including that this Act constitutes a valid
4 exercise of:

5 (1) the state's police powers;

6 (2) the liberty interests of the people that are
7 secured by the United States Constitution;

8 (3) the powers reserved to the states by the Tenth
9 Amendment to the United States Constitution; or

10 (4) the rights and protections secured by the Texas
11 Constitution.

12 SECTION 3. This Act shall be construed, as a matter of state
13 law, to be enforceable up to but no further than the maximum
14 possible extent consistent with federal constitutional
15 requirements, even if that construction is not readily apparent, as
16 such constructions are authorized only to the extent necessary to
17 save the statute from judicial invalidation.

18 SECTION 4. This Act takes effect on the 91st day after the
19 last day of the legislative session.