

By: Patrick, et al.

S.B. No. 29

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

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

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

(2) while acting under color of the person's office or employment without reasonable suspicion of the presence of an

1 unknown, unlawful, or prohibited object:

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 touches the anus, sexual organ, buttocks, or breast of the other
7 person, including touching through clothing.

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

12 (c-1) For purposes of Subsection (a)(2), "public servant"
13 means:

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

15 (A) the United States;

16 (B) a branch, department, or agency of the United
17 States; or

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

21 (2) any other person acting under color of federal
22 law.

23 (c-2) For purposes of Subsection (a)(2), and
24 notwithstanding Sections 1.07(a)(11) and (19), consent is
25 effective only if, immediately before any search:

26 (1) the actor verbally describes:

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

1 and

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

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

4 only from:

5 (A) the other person; or

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

7 (c-3) This section shall be construed, as a matter of state
8 law, to be enforceable up to but no further than the maximum
9 possible extent consistent with federal constitutional
10 requirements, even if that construction is not readily apparent, as
11 such constructions are authorized only to the extent necessary to
12 save the section from judicial invalidation.

13 SECTION 2. (a) This section applies only to a prosecution
14 of an offense under Subdivision (2), Subsection (a), Section 39.03,
15 Penal Code, as added by this Act, in which the defendant was, at the
16 time of the alleged offense, acting under the color of federal law.

17 (b) In a prosecution described by Subsection (a) of this
18 section, if the government of the United States, the defendant, or
19 the defendant's employer challenges the validity of Subdivision
20 (2), Subsection (a), Section 39.03, Penal Code, as added by this
21 Act, on grounds of unconstitutionality, preemption, or sovereign
22 immunity, the attorney general of this state, with the consent of
23 the appropriate local county or district attorney, shall take any
24 actions necessary on behalf of the state to defend the validity of
25 the statute. The attorney general may make any legal arguments the
26 attorney general considers appropriate, including that this Act
27 constitutes a valid exercise of:

- 1 (1) the state's police powers;
- 2 (2) the liberty interests of the people that are
- 3 secured by the United States Constitution;
- 4 (3) the powers reserved to the states by the Tenth
- 5 Amendment to the United States Constitution; or
- 6 (4) the rights and protections secured by the Texas
- 7 Constitution.

8 SECTION 3. This Act takes effect on the 91st day after the

9 last day of the legislative session.