

## **BILL ANALYSIS**

H.B. 41  
By: Simpson  
Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Recently, the Transportation Security Administration (TSA) began deploying federally funded units of advanced imaging technology (AIT) in airports around the country. Concerned parties assert that AIT scanners, commonly referred to as full-body scanner technology, virtually strip a person being scanned and can generate a nude image of the person's body. In addition to the potential for humiliation, these devices can bombard a traveler with radiation or radio waves, posing health risks. A traveler's only alternative to walking through the scanner is to allow a TSA employee to search the traveler's entire body, which may include reaching up under clothing and touching of the private parts of the body. It has been reported that individuals with disabilities have suffered the degradation of having to remove prosthetics, having the seals on urine bags broken, and being detained while wheelchairs and crutches are scrutinized.

Initially, a traveler could opt to go through traditional metal detectors rather than through the more invasive AIT scan or personal search process. This is no longer a guaranteed option as reports indicate that people are being randomly selected for the metal detector screening in some airports and pulled aside for the invasive search. H.B. 41 seeks to address these issues by classifying certain intrusive touching used in searching persons seeking access to public buildings and transportation as official oppression.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 41 amends the Penal Code to expand the conditions that constitute the offense of official oppression to include the following conduct committed by a public servant while acting under color of the person's office or employment without probable cause to believe the other person committed an offense: performing a search without effective consent for the purpose of granting access to a publicly accessible building or form of transportation and intentionally, knowingly, or recklessly touching the anus, sexual organ, buttocks, or breast of the other person, including touching through clothing, or causing physical contact with the other person when the actor knows or should reasonably believe that the other person will regard the contact as offensive or provocative. The bill defines "public servant" for purposes of that conduct to mean an officer, employee, or agent of the United States; a branch, department, or agency of the United States; or another person acting under contract with a branch, department, or agency of the United States for the purpose of providing a security or law enforcement service and any other person acting under color of federal law. The bill establishes a defense to prosecution for the offense of official oppression involving the previously described conduct for such a public servant who performed the search pursuant to and consistent with an explicit and applicable grant of federal statutory authority that is consistent with the United States Constitution. The bill establishes that, for purposes of the previously described conduct, consent is effective only if, immediately before any search, the actor verbally describes the area of the other person to be searched and the

method to be used in the search and the actor receives express consent for the search only from the other person or the parent or guardian of the other person.

H.B. 41 requires the attorney general, in the prosecution of an official oppression offense involving the previously described conduct in which the defendant was acting under the color of federal law at the time of the alleged offense and with the consent of the appropriate local county or district attorney, to take any actions necessary on behalf of the state to defend the validity of the bill's provisions establishing that conduct if the federal government, the defendant, or the defendant's employer challenges the validity of the bill's provisions establishing that conduct on grounds of unconstitutionality, preemption, or sovereign immunity. The bill authorizes the attorney general to make any legal arguments the attorney general considers appropriate. The bill requires its provisions to be construed, as a matter of state law, to be enforceable up to but no further than the maximum possible extent consistent with federal constitutional requirements, even if that construction is not readily apparent, as such constructions are authorized only to the extent necessary to save the statute from judicial invalidation.

**EFFECTIVE DATE**

91st day after the last day of the legislative session.