

BILL ANALYSIS

Senate Research Center

S.B. 29
By: Patrick
Transportation & Homeland Security
6/21/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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 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. S.B. 29 seeks to address these issues and traveler concerns by classifying certain intrusive touching used in searching persons seeking access to public buildings and transportation as official oppression.

As proposed, S.B. 29 amends current law relating to prosecution and punishment for the offense of official oppression by the intrusive touching of persons seeking access to public buildings and transportation and provides penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

(a) Provides that a person who is a public servant, rather than 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:

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

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

(C) intentionally subjects another person to sexual harassment; or

(2) while acting under color of the person's office or employment without probable cause to believe the other person committed an offense:

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

(B) intentionally, knowingly, or recklessly:

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

(ii) causes 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.

Makes nonsubstantive changes.

(b) Provides that for purposes of this section, a person who is a public servant acts under color of the person's office or employment if the person acts or purports to act in an official capacity or takes advantage of such actual or purported capacity. Makes nonsubstantive changes.

(c-1) Defines, for purposes of Subsection (a)(2), "public servant" to include:

(1) 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

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

(c-2) Provides that for a person described by Subsection (c-1)(1) or (2), it is a defense to prosecution for an offense under Subsection (a)(2) that the actor 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.

(c-3) Provides that for purposes of Subsection (a)(2), and notwithstanding Sections 1.07(a)(11) (defining "consent") and (19) (defining "effective consent"), consent is effective only if, immediately before any search:

(1) the actor verbally describes:

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

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

(2) the actor receives express consent for the search only from:

(A) the other person; or

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

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

(b) Requires the attorney general, in a prosecution described by Subsection (a) of this section, if the government of the United States, the defendant, or the defendant's employer challenges the validity of Section 39.03(a)(2), Penal Code, as added by this

Act, on grounds of unconstitutionality, preemption, or sovereign immunity, 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 statute. Authorizes the attorney general to make any legal arguments the attorney general considers appropriate, including that this Act constitutes a valid exercise of the state's police powers, the liberty interests of the people secured by the Ninth Amendment to the United States Constitution, the powers reserved to the states by the Tenth Amendment to the United States Constitution, or the rights and protections secured by the Texas Constitution.

SECTION 3. Requires that this Act be construed, as a matter of state law, to be enforceable up to but not 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.

SECTION 4. Effective date: the 91st day after the last day of the legislative session.