

1-1 By: Patrick, et al. S.B. No. 29
1-2 (In the Senate - Filed June 2, 2011; June 21, 2011, read
1-3 first time and referred to Committee on Transportation and Homeland
1-4 Security; June 27, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 5, Nays 3;
1-6 June 27, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 29 By: Hinojosa
1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to prosecution and punishment for the offense of official
1-11 oppression by the intrusive touching of persons seeking access to
1-12 public buildings and transportation; providing penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 39.03, Penal Code, is amended by
1-15 amending Subsections (a) and (b) and adding Subsections (c-1),
1-16 (c-2), (c-3), (c-4), and (c-5) to read as follows:

1-17 (a) A person who is a public servant ~~[acting under color of~~
1-18 ~~his office or employment]~~ commits an offense if the person:

1-19 (1) while acting under color of the person's office or
1-20 employment ~~[he]~~:

1-21 (A) ~~[(1)]~~ intentionally subjects another person
1-22 to mistreatment or to arrest, detention, search, seizure,
1-23 dispossession, assessment, or lien that the actor ~~[he]~~ knows is
1-24 unlawful;

1-25 (B) ~~[(2)]~~ intentionally denies or impedes
1-26 another person in the exercise or enjoyment of any right,
1-27 privilege, power, or immunity, knowing the actor's ~~[his]~~ conduct is
1-28 unlawful; or

1-29 (C) ~~[(3)]~~ intentionally subjects another person
1-30 to sexual harassment; or

1-31 (2) while acting under color of the person's office or
1-32 employment without reasonable suspicion to believe the other person
1-33 committed an offense:

1-34 (A) performs a constitutionally unreasonable
1-35 search without effective consent for the purpose of granting access
1-36 to a publicly accessible building or form of transportation; and

1-37 (B) intentionally, knowingly, or recklessly, and
1-38 in violation of the United States Constitution, touches the anus,
1-39 sexual organ, buttocks, or breast of the other person, including
1-40 touching through clothing.

1-41 (b) For purposes of this section, a person who is a public
1-42 servant acts under color of the person's ~~[his]~~ office or employment
1-43 if the person ~~[he]~~ acts or purports to act in an official capacity
1-44 or takes advantage of such actual or purported capacity.

1-45 (c-1) For purposes of Subsection (a)(2), "public servant"
1-46 includes:

1-47 (1) an officer, employee, or agent of:

1-48 (A) the United States;

1-49 (B) a branch, department, or agency of the United
1-50 States; or

1-51 (C) another person acting under contract with a
1-52 branch, department, or agency of the United States for the purpose
1-53 of providing a security or law enforcement service; and

1-54 (2) any other person acting under color of federal
1-55 law.

1-56 (c-2) For a person described by Subsection (c-1)(1) or (2),
1-57 it is a defense to prosecution for an offense under Subsection
1-58 (a)(2) that the actor performed the search pursuant to and
1-59 consistent with the United States Constitution.

1-60 (c-3) For purposes of Subsection (a)(2), and
1-61 notwithstanding Sections 1.07(a)(11) and (19), consent is
1-62 effective only if, immediately before any search:

1-63 (1) the actor verbally describes:

2-1 (A) the area of the other person to be searched;
2-2 and
2-3 (B) the method to be used in the search; and
2-4 (2) the actor receives express consent for the search
2-5 only from:

2-6 (A) the other person; or
2-7 (B) the parent or guardian of the other person.

2-8 (c-4) It is a defense to prosecution for a person described
2-9 by Subsection (c-1)(1) or (2) that a reasonable person in the
2-10 defendant's position would have believed the defendant's conduct to
2-11 be lawful.

2-12 (c-5) This section shall be construed, as a matter of state
2-13 law, to be enforceable up to but no further than the maximum
2-14 possible extent consistent with federal constitutional
2-15 requirements, even if that construction is not readily apparent, as
2-16 such constructions are authorized only to the extent necessary to
2-17 save the section from judicial invalidation. If any court
2-18 determines that a provision of this section is unconstitutionally
2-19 vague, the court shall interpret the provision, as a matter of state
2-20 law, to avoid the vagueness issue and shall enforce the provision to
2-21 the maximum possible extent.

2-22 SECTION 2. (a) This section applies only to a prosecution
2-23 of an offense under Subdivision (2), Subsection (a), Section 39.03,
2-24 Penal Code, as added by this Act, in which the defendant was, at the
2-25 time of the alleged offense, acting under the color of federal law.

2-26 (b) In a prosecution described by Subsection (a) of this
2-27 section, if the government of the United States, the defendant, or
2-28 the defendant's employer challenges the validity of Subdivision
2-29 (2), Subsection (a), Section 39.03, Penal Code, as added by this
2-30 Act, on grounds of unconstitutionality, preemption, or sovereign
2-31 immunity, the attorney general of this state, with the consent of
2-32 the appropriate local county or district attorney, shall take any
2-33 actions necessary on behalf of the state to defend the validity of
2-34 the statute. The attorney general may make any legal arguments the
2-35 attorney general considers appropriate, including that this Act
2-36 constitutes a valid exercise of:

2-37 (1) the state's police powers;

2-38 (2) the liberty interests of the people that are
2-39 secured by the United States Constitution;

2-40 (3) the powers reserved to the states by the Tenth
2-41 Amendment to the United States Constitution; or

2-42 (4) the rights and protections secured by the Texas
2-43 Constitution.

2-44 SECTION 3. This Act takes effect on the 91st day after the
2-45 last day of the legislative session.

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