

## **BILL ANALYSIS**

C.S.H.B. 1937  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **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 object 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. C.S.H.B. 1937 seeks to address these issues and traveler concerns by classifying certain invasive and inappropriate conduct used in certain searches 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**

C.S.H.B. 1937 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 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 touching the other person in a manner that would be offensive to a reasonable person. 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.

C.S.H.B. 1937 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, 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 if the federal government, the defendant, or the defendant's employer challenges the validity of the bill's provision's 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.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 1937 differs from the original by expanding the conditions that constitute the offense of official oppression to include certain conduct committed by a public servant acting under color of the person's office or employment involving performing a search for the purpose of granting access to a publicly accessible building or form of transportation and touching certain body parts of another person or offensively touching the other person, whereas the original expands the conditions that constitute the offense of sexual assault to include substantially similar conduct committed as part of a search performed for the purpose of granting that same type of access without specifying that the actor is a public servant acting under color of the person's office or employment. The substitute differs from the original in the provisions describing the conduct by including intentionally, knowingly, or recklessly touching the buttocks of the other person, whereas the original does not specify that body part with regard to that conduct. The substitute contains provisions not included in the original defining "public servant" and establishing a defense to prosecution for the offense of official oppression involving the previously described conduct.

C.S.H.B. 1937 omits a provision included in the original granting the attorney general, with the consent of the appropriate local county or district attorney, concurrent jurisdiction with that consenting local prosecutor to prosecute a sexual assault offense involving the previously described conduct.

C.S.H.B. 1937 contains provisions not included in the original requiring the attorney general to take any actions necessary to defend the validity of certain of the bill's provisions under certain conditions and authorizing the attorney general to make any legal arguments the attorney general considers appropriate. The substitute differs from the original in nonsubstantive ways.