H-2332.1

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**HOUSE BILL 2200**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives Shea, Taylor, Condotta, Scott, and McCaslin

AN ACT Relating to acts of official oppression by public servants; adding new sections to chapter 42.20 RCW; creating a new section; prescribing penalties; and declaring an emergency.

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

NEW SECTION. **Sec.**  (1) A public servant acting under color of his or her office or employment commits an offense of official oppression if he or she:

(a) Intentionally subjects another person to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he or she knows is unlawful;

(b) Intentionally denies or impedes another person in the exercise or enjoyment of any right, privilege, power, or immunity that he or she knows is unlawful;

(c) Intentionally subjects another person to harassment, as defined in RCW 9A.46.020, or sexual harassment; or

(d) As part of a determination of whether to grant another person access to a public accessible venue or form of transportation, intentionally and without probable cause:

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

(ii) Removes a child younger than eighteen years of age from the physical custody or control of a parent or guardian of the child, or of a person who has been given authority or permission by a parent or guardian of the child to have physical custody or control of the child;

(iii) Intentionally causes physical contact with another when he or she knows or should reasonably believe that the other will regard the contact as offensive or provocative; or

(iv) Harasses, delays, coerces, threatens, intimidates, or effectively denies or conditions access to the other person because of the other person's refusal to consent to (a), (b), or (c) of this subsection.

(2) For purposes of this section:

(a) "Public servant" includes:

(i) An officer, official, employee, or agent of:

(A) The United States or a branch, department, or agency of the United States; or

(B) A person acting under contract with a branch, department, or agency of the United States to manage, supervise, administer, or otherwise provide or participate in the provision of a safety, security, or law enforcement service activity; and

(ii) Any other person acting under color of federal law.

(b) "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.

(3) A person who commits the offense of official oppression by a public servant is guilty of a class C felony.

NEW SECTION. **Sec.**  (1) This section applies only to a prosecution of an offense under section 1(1)(d)(iv) of this act in which the defendant was, at the time of the alleged offense, a public servant as defined in section 1(2)(a) of this act.

(2) If the United States, the defendant, or the defendant's employer challenges the validity of section 1(1)(d)(iv) of this act on grounds of unconstitutionality, preemption, or sovereign immunity, the attorney general of this state, with the consent of the appropriate prosecuting attorney, shall take any actions necessary on behalf of the state to defend the validity. The attorney general may make any legal arguments the attorney general considers in good faith and after due diligence, to be appropriate to defend the validity of this act, including that this act constitutes a valid exercise of:

(a) The state's police powers;

(b) The liberty interests of the people secured by the United States Constitution;

(c) The rights and powers reserved to the states by the ninth and tenth amendments to the United States Constitution; or

(d) The liberty interests of the people secured by the Washington state Constitution.

NEW SECTION. **Sec.**  This act shall 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.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  Sections 1 and 2 of this act are each added to chapter 42.20 RCW.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**