

By: Turner of Harris

H.B. No. 47

A BILL TO BE ENTITLED

AN ACT

relating to the office of advocate for children in the custody of a governmental entity.

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

SECTION 1. Subtitle B, Title 3, Human Resources Code, is amended by adding Chapter 71 to read as follows:

CHAPTER 71. OFFICE OF ADVOCATE FOR CHILDREN IN CUSTODY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 71.001. DEFINITIONS. In this chapter:

(1) "Center" means the University of Houston Center for Youth Policy Development.

(2) "Child advocate" means the individual who has been appointed under this chapter to the office of advocate for children in custody.

(3) "Commission" means the Texas Youth Commission.

(4) "Department" means the Department of Protective and Regulatory Services.

(5) "Juvenile justice agency" means an agency that has custody or control over juvenile offenders, including a juvenile court.

Sec. 71.002. JURISDICTION. For the purposes of this chapter, the office of advocate for children in custody has jurisdiction over a child:

(1) in the custody of the commission, including a

1 child released under supervision before final discharge;

2 (2) in the custody or control of a juvenile justice
3 agency under the authority of Title 3, Family Code; or

4 (3) involved in any proceeding or action under
5 Subtitle E, Title 5, Family Code, including a child who is:

6 (A) the subject of a report of abuse or neglect
7 under Chapter 261, Family Code;

8 (B) taken possession of by a governmental entity
9 under Chapter 262, Family Code; or

10 (C) placed in the care of the department.

11 Sec. 71.003. PURPOSE. The purpose of the office of advocate
12 for children in custody is to secure the rights of certain children
13 who are in the care or custody of a governmental entity.

14 [Sections 71.004-71.050 reserved for expansion]

15 SUBCHAPTER B. APPOINTMENT AND MANAGEMENT OF OFFICE

16 Sec. 71.051. OFFICE. (a) The office of advocate for
17 children in custody is administratively attached to the center. The
18 organization, control, and management of the office is vested in
19 the board of regents of the University of Houston.

20 (b) The board of regents must approve:

21 (1) the employment of personnel by the office; and

22 (2) the operating budget of the office.

23 (c) An employee of the office is an employee of the
24 University of Houston.

25 (d) The staff of the center serve as the staff of the office.

26 Sec. 71.052. CHILD ADVOCATE. (a) The child advocate is the
27 director of the center.

1 (b) The child advocate must be:

2 (1) an attorney who has been licensed to practice law
3 in this state for at least three years; and

4 (2) a person qualified by training and experience to
5 perform the duties and exercise the power under Subchapter C.

6 (c) The child advocate is an employee of the University of
7 Houston and reports to the legislature at the beginning of each
8 regular legislative session or as otherwise directed by the
9 legislature.

10 Sec. 71.053. ASSISTANTS. The child advocate may appoint
11 assistants to perform, under the direction of the child advocate,
12 the same duties and exercise the same powers as the child advocate.

13 Sec. 71.054. INDEPENDENCE. The child advocate, in the
14 performance of the duties under Subchapter C, acts independently of
15 the commission, the department, and juvenile justice agencies.

16 Sec. 71.055. REPORT. On or before January 1 of each
17 odd-numbered year, the child advocate shall submit to the governor,
18 the lieutenant governor, and each member of the legislature a
19 report that describes, for the two-year period preceding the
20 report:

21 (1) the work of the child advocate;

22 (2) the results of any review or investigation
23 undertaken by the child advocate; and

24 (3) any recommendations that the child advocate has in
25 relation to the children over which the advocate has jurisdiction
26 as described by Section 71.002.

27 Sec. 71.056. CONFIDENTIALITY. (a) Except as otherwise

1 provided by this section, the records of the child advocate are
2 confidential.

3 (b) The child advocate shall disclose its records if
4 required by a court order on a showing of good cause.

5 (c) The child advocate may make reports relating to an
6 investigation public after the investigation is complete but the
7 names of all children, parents, and employees must remain
8 confidential.

9 Sec. 71.057. GIFTS AND GRANTS. The board of regents of the
10 University of Houston may accept gifts, grants, and donations from
11 any person for the benefit of the office of advocate for children in
12 custody.

13 [Sections 71.058-71.100 reserved for expansion]

14 SUBCHAPTER C. DUTIES AND POWERS

15 Sec. 71.101. RIGHTS OF CHILDREN. (a) The child advocate
16 shall, for the children over which the advocate has jurisdiction as
17 described by Section 71.002:

18 (1) ensure that each child 10 years of age or older is
19 apprised of the rights of the child;

20 (2) review the procedures established by the
21 commission, the department, and juvenile justice agencies, to
22 ensure that the rights of the children in the custody of those
23 respective agencies are fully observed; and

24 (3) take any appropriate action, including
25 establishing public education programs, administrative action,
26 mediation, and formal legal action, to secure the rights of the
27 children.

1 (b) The child advocate may apprise persons other than the
2 child who are interested in the child's welfare of the rights of the
3 child.

4 (c) The child advocate may, to assess if a child's rights
5 have been violated, contact or consult with an administrator,
6 employee, child, parent, expert, or any other individual in its
7 investigation or to secure information.

8 (d) The child advocate shall develop a children's bill of
9 rights.

10 Sec. 71.102. INVESTIGATION OF DEATHS. The child advocate
11 shall investigate the death of any child in the custody of the
12 commission, the department, or a juvenile justice agency.

13 Sec. 71.103. REVIEW, INVESTIGATION, AND RECOMMENDATIONS.
14 The child advocate shall:

15 (1) review complaints filed with the child advocate
16 and investigate each complaint in which it appears that a child over
17 which the advocate has jurisdiction as described by Section 71.002
18 may be in need of assistance from the child advocate;

19 (2) review or inspect periodically the facilities and
20 procedures of any public or private institution or residence in
21 which a child over which the child advocate has jurisdiction as
22 described by Section 71.002 has been placed by the commission, the
23 department, or a juvenile justice agency to ensure that the rights
24 of children are fully observed;

25 (3) review orders of juvenile courts;

26 (4) review orders of courts in which a suit has been
27 filed after a child has been taken into possession without a court

1 order by a governmental entity under Chapter 262, Family Code;

2 (5) review procedures by the department in
3 investigating reports of child abuse or neglect under Subchapter D,
4 Chapter 261, Family Code; and

5 (6) recommend changes in any procedure relating to the
6 treatment of children over which the advocate has jurisdiction as
7 described by Section 71.002.

8 Sec. 71.104. TRAINING. (a) The child advocate shall
9 provide training and technical assistance to a guardian ad litem
10 appointed by a juvenile court under Section 51.11, Family Code, or
11 any other guardian ad litem representing a child over which the
12 child advocate has jurisdiction as described by Section 71.002.

13 (b) The child advocate may develop and provide a training
14 curriculum for the standardization of training of the persons
15 described by Subsection (a).

16 Sec. 71.105. PROMOTION OF AWARENESS OF OFFICE. The child
17 advocate shall promote awareness among the public and the children
18 over which the advocate has jurisdiction as described by Section
19 71.002 of how the office may be contacted and of:

20 (1) the purpose of the office of advocate for children
21 in custody as described by Section 71.003; and

22 (2) the services the office provides.

23 Sec. 71.106. RESEARCH AND OUTREACH. The office of advocate
24 for children in custody may:

25 (1) conduct, coordinate, collect, and evaluate
26 research in all areas relating to child advocacy and protecting the
27 rights of children;

1 (2) serve as a state and national resource for
2 information on the protection of children's rights; and

3 (3) assist communities, governmental agencies, or
4 private entities in implementing programs, policies, and
5 strategies that address the protection of children's rights, create
6 partnerships, engage in collaborative efforts or outreach, perform
7 public service, or conduct training or technical assistance
8 programs.

9 Sec. 71.107. AGREEMENTS AND CONTRACTS. The office for
10 advocate of children in custody may enter into a cooperative
11 agreement or contract with any person to perform the duties of the
12 office.

13 [Sections 71.108-71.150 reserved for expansion]

14 SUBCHAPTER D. INFORMATION AND COMMUNICATION

15 Sec. 71.151. ACCESS TO INFORMATION OF GOVERNMENTAL
16 ENTITIES. (a) The commission shall allow the child advocate access
17 to its records relating to the children in its custody or under its
18 jurisdiction.

19 (b) The department shall allow the child advocate access to:

20 (1) its central registry of reported cases of child
21 abuse or neglect established under Section 261.002, Family Code,
22 and any other reports of child abuse or neglect that the department
23 maintains; and

24 (2) records relating to any child in its possession or
25 protective custody or under its jurisdiction.

26 (c) The Department of Public Safety shall allow the child
27 advocate access to the juvenile justice information system

1 established under Subchapter B, Chapter 58, Family Code.

2 (d) A local law enforcement agency shall allow the child
3 advocate access to its records relating to any child over which the
4 advocate has jurisdiction as described by Section 71.002.

5 (e) A juvenile justice agency shall allow the child advocate
6 access to its records relating to any child in its custody or under
7 its jurisdiction.

8 Sec. 71.152. ACCESS TO INFORMATION OF PRIVATE ENTITIES. The
9 child advocate may subpoena the records of a private entity that
10 relate to a child over which the advocate has jurisdiction as
11 described by Section 71.002.

12 Sec. 71.153. COMMUNICATION. (a) For any child in the
13 custody of the commission, the department, or a juvenile justice
14 agency, the respective entity shall allow the child advocate to
15 communicate with the child. The communication is a confidential
16 and privileged communication within the attorney-client
17 relationship.

18 (b) The communication may be in person, by mail, or by any
19 other means.

20 [Sections 71.154-71.200 reserved for expansion]

21 SUBCHAPTER E. ENFORCEMENT

22 Sec. 71.201. CIVIL ACTION FOR DAMAGES. (a) The child
23 advocate may institute a suit on behalf of any child that is in the
24 custody of the commission, the department, or a juvenile justice
25 agency for damages against the commission, the department, or the
26 agency if the suit is authorized under:

27 (1) Chapter 101, Civil Practice and Remedies Code; or

1 (2) federal law.

2 (b) Any judgment for damages or order for settlement of a
3 claim for damages entered by a court is the estate of the child for
4 whose benefit the judgment or order is entered. The child advocate
5 shall:

6 (1) deposit the money as a result of a judgment or
7 order in a trust account outside the state treasury to be
8 administered by the advocate on behalf of the child; and

9 (2) administer the trust for the child by exercising
10 the powers and carrying out the duties of a trustee under Chapter
11 113, Property Code.

12 Sec. 71.202. CIVIL ACTION FOR DECLARATORY OR INJUNCTIVE
13 RELIEF. The child advocate may represent any child that is in the
14 custody of the commission, the department, or a juvenile justice
15 agency in a suit for declaratory or injunctive relief against the
16 commission, the department, or the agency.

17 SECTION 2. Chapter 54, Family Code, is amended by adding
18 Section 54.0412 to read as follows:

19 Sec. 54.0412. OFFICE OF ADVOCATE FOR CHILDREN IN CUSTODY
20 FUND. (a) If a disposition hearing is held under Section 54.04, the
21 juvenile court, after giving the child, parent, or other person
22 responsible for the child's support a reasonable opportunity to be
23 heard, shall order the child, parent, or other person, if
24 financially able to do so, to pay a \$1 fee as costs of court in
25 addition to the fee under Section 54.0411.

26 (b) Orders for the payment of fees under this section may be
27 enforced in the same manner and in conjunction with the payment of

1 fees under Section 54.0411.

2 (c) An officer collecting court costs under this section
3 shall keep separate records of the funds collected as costs under
4 this section and shall deposit the funds in the county treasury.

5 (d) Each officer collecting court costs under this section
6 shall file the reports required under Article 103.005, Code of
7 Criminal Procedure. If no funds due as costs under this section
8 have been collected in any quarter, the report required for each
9 quarter shall be filed in the regular manner, and the report must
10 state that no funds due under this section were collected.

11 (e) The custodian of the county treasury may deposit the
12 funds collected under this section in interest-bearing accounts.
13 The custodian shall keep records of the amount of funds on deposit
14 collected under this section and not later than the last day of the
15 month following each calendar quarter shall send to the comptroller
16 the funds collected under this section during the preceding
17 quarter. A county may retain 10 percent of the funds as a service
18 fee and may retain the interest accrued on the funds if the
19 custodian of a county treasury keeps records of the amount of funds
20 on deposit collected under this section and remits the funds to the
21 comptroller within the period prescribed under this subsection.

22 (f) Funds collected are subject to audit by the comptroller
23 and funds expended are subject to audit by the state auditor.

24 (g) The comptroller shall deposit the funds to the credit of
25 an account in the state treasury to be used only for the
26 establishment and operation of the office of advocate for children
27 in custody attached to the University of Houston Center for Youth

1 Policy Development.

2 SECTION 3. Section 58.106(a), Family Code, is amended to
3 read as follows:

4 (a) Except as otherwise provided by this section,
5 information contained in the juvenile justice information system is
6 confidential information for the use of the department and may not
7 be disseminated by the department except:

8 (1) with the permission of the juvenile offender, to
9 military personnel of this state or the United States;

10 (2) to a person or entity to which the department may
11 grant access to adult criminal history records as provided by
12 Section 411.083, Government Code;

13 (3) to a juvenile justice agency; ~~and~~

14 (4) to the Criminal Justice Policy Council, the Texas
15 Youth Commission, and the Texas Juvenile Probation Commission for
16 analytical purposes; and

17 (5) to the office of advocate for children in custody.

18 SECTION 4. Article 102.075, Code of Criminal Procedure, is
19 amended by adding Subsection (o) to read as follows:

20 (o) In addition to the cost on conviction imposed by
21 Subsection (a), a person convicted of an offense described by
22 Subsection (a) shall pay \$1 on conviction of the offense. The
23 comptroller shall deposit money received under this subsection to
24 the credit of an account in the state treasury to be used only for
25 the establishment and operation of the office of advocate for
26 children in custody attached to the University of Houston Center
27 for Youth Policy Development. Subsection (h) does not apply to

1 money received under this subsection.

2 SECTION 5. This Act takes effect immediately if it receives
3 a vote of two-thirds of all the members elected to each house, as
4 provided by Section 39, Article III, Texas Constitution. If this
5 Act does not receive the vote necessary for immediate effect, this
6 Act takes effect September 1, 2003.