

By: Turner

H.B. No. 3639

A BILL TO BE ENTITLED

AN ACT

1
2 relating to an independent office of Inspector General to
3 investigate abuse in facilities operated by the Texas Department of
4 Criminal Justice or the Texas Youth Commission.

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

6 SECTION 1. Title 4, Government Code, is amended by adding
7 new CHAPTER 512 as follows:

8 CHAPTER 512. OFFICE OF INSPECTOR GENERAL

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 512.001. DEFINITION. In this chapter, "office" means
11 the Office of Inspector General.

12 Sec. 512.002. OFFICE OF INSPECTOR GENERAL. The independent
13 office of inspector general conducts audits of policies and
14 procedures and investigates allegations of sexual, physical and
15 psychological abuse within facilities controlled or contracted by
16 the Texas Department of Criminal Justice and the Texas Youth
17 Commission (hereinafter, Departments).

18 Sec. 512.003. SUNSET PROVISION. The office is subject to
19 Chapter 325, Government Code (Texas Sunset Act). Unless continued
20 in existence as provided by that chapter, the office is abolished
21 September 1, 2018.

22 Sec. 512.004. PUBLIC INTEREST INFORMATION. (a) The office
23 shall prepare information of public interest describing the
24 functions of the office including statistical information about

1 allegations investigated, the outcome of each investigation, and
2 the disciplinary action taken for each allegation affirmed.

3 (b) The office shall make the information available to the
4 public and appropriate state agencies.

5 Sec. 512.005. ACCESS TO PROGRAMS AND FACILITIES. (a) The
6 office shall prepare and maintain a written plan that describes how
7 a person who does not speak English can request an investigation by
8 the Office of Inspector General.

9 (b) The office shall comply with federal and state laws for
10 program and facility accessibility.

11 SUBCHAPTER B. INSPECTOR GENERAL

12 Sec. 512.100. APPOINTMENT; TERM. (a) The governor, with the
13 advice and consent of the senate, shall appoint an Inspector
14 General. The Inspector General serves a two-year term that expires
15 on February 1 of each odd-numbered year.

16 (b) The governor shall appoint the inspector general
17 without regard to the race, color, disability, sex, religion, age,
18 or national origin of the appointee.

19 Sec. 512.101. QUALIFICATIONS. To be eligible to serve as
20 public counsel, a person must:

- 21 (1) be licensed to practice law in this state;
22 (2) have demonstrated a strong commitment to and
23 involvement in efforts to safeguard the rights of the public.

24 Sec. 512.102. BUSINESS INTEREST; SERVICE AS INSPECTOR
25 GENERAL. A person is not eligible for appointment as Inspector
26 General if the person or the person's spouse:

- 27 (1) is employed by or participates in the management

1 of a business entity or other organization regulated by or
2 receiving funds from the Texas Department of Criminal Justice or
3 the Texas Youth Commission;

4 (2) owns or controls, directly or indirectly, more
5 than a 10 percent interest in a business entity or other
6 organization regulated by or receiving funds from the Texas
7 Department of Criminal Justice or the Texas Youth Commission;

8 (3) an officer, employee, or paid consultant of a trade
9 association acting on behalf of corporations contracting with the
10 Texas Department of Criminal Justice or the Texas Youth Commission;

11 (2) the spouse of an officer, manager, or paid
12 consultant of a trade association in on behalf of corporations
13 contracting with the Texas Department of Criminal Justice or the
14 Texas Youth Commission; or

15 (3) uses or receives a substantial amount of tangible
16 goods, services, or funds from the Texas Department of Criminal
17 Justice or the Texas Youth Commission, other than compensation or
18 reimbursement authorized by law for department or office
19 membership, attendance, or expenses.

20 Sec. 512.103. LOBBYING ACTIVITIES. A person may not serve
21 as Inspector General or act as general counsel to the office if the
22 person is required to register as a lobbyist under Chapter 305,
23 Government Code, because of the person's activities for
24 compensation related to the corporations contracting with the Texas
25 Department of Criminal Justice or the Texas Youth Commission.

26 Sec. 512.104. GROUNDS FOR REMOVAL.(a) It is a ground for
27 removal from office if Inspector General:

1 program must require intra-agency posting of all nonentry level
2 positions concurrently with any public posting.

3 (b) The Inspector General or the Inspector General's
4 designee shall develop a system of annual performance evaluations.
5 All merit pay for office employees must be based on the system
6 established under this subsection.

7 Sec. 512.108. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

8 (a) The Inspector General or the Inspector General's designee shall
9 prepare and maintain a written policy statement to ensure
10 implementation of an equal employment opportunity program under
11 which all personnel transactions are made without regard to race,
12 color, disability, sex, religion, age, or national origin. The
13 policy statement must include:

14 (1) personnel policies, including policies relating
15 to recruitment, evaluation, selection, appointment, training, and
16 promotion of personnel that are in compliance with the requirements
17 of Chapter 21, Labor Code;

18 (2) a comprehensive analysis of the office workforce
19 that meets federal and state guidelines;

20 (3) procedures by which a determination can be made
21 about areas of significant underuse in the office workforce of all
22 persons for whom federal or state guidelines encourage a more
23 equitable balance; and

24 (4) reasonable methods to appropriately address those
25 areas of significant underuse.

26 (b) A policy statement prepared under Subsection (a) must:

27 (1) cover an annual period;

1 (2) be updated at least annually;

2 (3) be reviewed by the Commission on Human Rights for
3 compliance with Subsection (a)(1); and

4 (4) be filed with the governor.

5 (c) The governor shall deliver a biennial report to the
6 legislature based on the information received under Subsection (b).
7 The report may be made separately or as a part of other biennial
8 reports to the legislature.

9 SUBCHAPTER D. POWERS AND DUTIES

10 Sec. 512.200. POWERS AND DUTIES OF OFFICE.

11 (a) (1) With respect to the Texas Department of Criminal
12 Justice and the Texas Youth Commission, the Inspector General shall
13 review departmental policy and procedures, conduct audits of
14 investigatory practices and other audits, and conduct
15 investigations of the Departments, as requested by the Director of
16 the Texas Department of Criminal Justice, the Director of the Texas
17 Youth Commission or a Member of the Legislature, under policies to
18 be developed by the Inspector General. The Inspector General may,
19 under policies developed by the Inspector General, initiate an
20 investigation or an audit on his or her own accord.

21 (2) The Inspector General shall audit each
22 correctional institution at least once every six years. These audit
23 reports shall be provided to the Legislature and shall be made
24 public. The requirements of this paragraph shall be phased in by the
25 Inspector General so that they are fully met by July 1, 2010.

26 (b) Upon completion of an investigation or audit, the
27 Inspector General shall provide a response to the requester and the

1 parties to any specific incident under investigation.

2 (c) The Inspector General shall, during the course of an
3 investigatory audit or investigation, identify areas of full and
4 partial compliance, or noncompliance, with departmental
5 investigatory policies and procedures, specify deficiencies in the
6 completion and documentation of investigatory processes, and
7 recommend corrective actions, including, but not limited to,
8 additional training with respect to investigative policies,
9 additional policies, or changes in policy, as well as any other
10 findings or recommendations that the Inspector General deems
11 appropriate.

12 (d) In connection with an audit or investigation pursuant to
13 this chapter, the Inspector General, or his or her designee, may do
14 any of the following:

15 (1) Administer oaths.

16 (2) Certify to all official acts.

17 (3) Issue subpoenas for the attendance of witnesses
18 and the production of papers, books, accounts, or documents in any
19 medium, or for the making of oral or written sworn statements, in
20 any investigative interview conducted as part of an audit or
21 investigation.

22 (e) Any subpoena issued under this chapter extends as
23 process to all parts of the state and may be served by any person
24 authorized to serve process of courts of record. The person serving
25 this process may receive compensation as is allowed by the
26 Inspector General, or his or her designee, not to exceed the fees
27 prescribed by law for similar service.

1 (f) The district court in the county in which any
2 investigative interview is held under the direction of the
3 Inspector General or his or her designee has jurisdiction to compel
4 the attendance of witnesses, the making of oral or written sworn
5 statements, and the production of papers, books, accounts, and
6 documents, as required by any subpoena issued by the Inspector
7 General or his or her designee.

8 (g) If any witness refuses to attend or testify or produce
9 any papers required by the subpoena, the Inspector General or his or
10 her designee may petition the district court for an order
11 compelling the person to attend and answer questions under penalty
12 of perjury or produce the papers required by the subpoena before the
13 person named in the subpoena.

14 (h) The office of the Inspector General may, in accordance
15 with policies and procedures set out by the Office of the Inspector
16 General, receive communications from any individual, including
17 those employed by any department, board, or authority who believes
18 he or she may have information that may describe incidents of
19 sexual, physical and psychological abuse within facilities
20 controlled by the Departments.

21 (i) In order to properly respond to any allegation of
22 improper governmental activity, the Inspector General shall
23 establish a toll-free public telephone number for the purpose of
24 identifying any alleged wrongdoing by an employee of the
25 Departments. This telephone number shall be posted by the
26 Departments, and their respective subdivisions, in clear view of
27 all employees, inmates and the public. When appropriate, the

1 Inspector General shall initiate an investigation or audit of any
2 alleged improper governmental activity in accordance with policies
3 and procedures set out by the Office of the Inspector General.
4 However, any request to conduct an investigation shall be in
5 writing.

6 (j) All identifying information, and any personal papers or
7 correspondence from any person who initiated the investigation
8 shall not be disclosed, except in those cases where the Inspector
9 General determines that disclosure of the information is necessary
10 in the interests of justice.

11 (k) Retaliation against employees of the Departments who
12 provide information to the Office of Inspector General related to
13 alleged wrongdoing by any other employee of the Departments is
14 prohibited.

15 (1) For purposes of this section, "employee" means any
16 person employed by the Departments.

17 (2) For purposes of this section, "retaliation" means
18 intentionally engaging in acts of reprisal, retaliation, threats,
19 coercion, or similar acts against another employee who has done
20 either of the following:

21 (A) Has disclosed or is disclosing to any
22 employee at a supervisory or managerial level, what the employee,
23 in good faith, believes to be improper governmental activities.

24 (B) Has cooperated or is cooperating with any
25 investigation of improper governmental activities.

26 (C) Has refused to obey an illegal order or
27 directive.

1 (3) Upon receiving a complaint of retaliation from an
2 employee against a member of management, the Inspector General may
3 commence an inquiry into the complaint and shall conduct a formal
4 investigation where a legally cognizable cause of action is
5 presented. The Inspector General may refer all other matters for
6 investigation by the appropriate employing entity, subject to
7 investigative oversight by the Inspector General. In a case in
8 which the employing entity declines to investigate the complaint,
9 it shall, within 30 days of receipt of the referral by the Inspector
10 General, notify the Inspector General of its decision. The
11 Inspector General may thereafter, conduct his or her own inquiry
12 into the complaint. If, after reviewing the complaint, the
13 Inspector General determines that a legally cognizable cause of
14 action has not been presented by the complaint, the Inspector
15 General shall thereafter notify the complaining employee and the
16 Department that a formal investigation is not warranted.

17 Sec. 512.201. ADMINISTRATION OF OFFICE. The Inspector
18 General shall administer and enforce this chapter, including
19 preparing and submitting to the legislature a budget for the office
20 and approving expenditures for professional services, travel, per
21 diem, and other actual and necessary expenses incurred in
22 administering the office.

23 Sec. 512.202. RECOMMENDATION OF LEGISLATION. The Inspector
24 General may recommend legislation to the legislature that the
25 Inspector General determines would reduce or eliminate abuse of
26 inmates in Texas juvenile and adult correctional facilities.

27 Sec. 512.203. ACCESS TO INFORMATION. (a) The office is

1 entitled to information that is confidential under any law of this
2 state, including Chapter 552, Government Code, but subsequent
3 release of that information shall be controlled by Chapter 552,
4 Government Code, and information collected during an investigation
5 of an individual complaint shall be considered law enforcement
6 information subject to confidentiality in accordance with Chapter
7 552.108.

8 (b) The office may not make public any otherwise
9 confidential information provided to the office under this
10 subchapter but may disclose a summary of the information that
11 generally describes incidents that have been investigated,
12 failures of policy or procedure that facilitated incidents of
13 abuse, and recommendations for improvements in facility
14 supervision to prevent further incidents.

15 SECTION 2. If any provision of this Act or its application
16 to any person or circumstance is held invalid, the invalidity does
17 not affect other provisions or applications of this Act that can be
18 given effect without the invalid provision or application, and to
19 this end the provisions of this Act are declared to be severable.

20 SECTION 3. EFFECTIVE DATE. This Act takes effect
21 immediately if it receives a vote of two-thirds of all the members
22 elected to each house, as provided by Section 39, Article III, Texas
23 Constitution. If this Act does not receive the vote necessary for
24 immediate effect, this Act takes effect September 1, 2007.