

SENATE AMENDMENTS

2nd Printing

By: Coleman

H.B. No. 1944

A BILL TO BE ENTITLED

AN ACT

relating to the elimination of sexual assault against inmates confined in a facility operated by or under contract with the Texas Department of Criminal Justice.

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

SECTION 1. Chapter 501, Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. ELIMINATION OF SEXUAL ASSAULT AGAINST INMATES

Sec. 501.171. DEFINITIONS. In this subchapter:

(1) "Correctional facility" means a facility operated by or under contract with the department.

(2) "Inmate" means an inmate or state jail defendant confined in a facility operated by or under contract with the department.

Sec. 501.172. APPOINTMENT OF OMBUDSPERSON. The board shall appoint an ombudsperson to coordinate the department's efforts to eliminate the occurrence of sexual assault in correctional facilities. The ombudsperson is based in the office of the inspector general.

Sec. 501.173. POWERS AND DUTIES OF OMBUDSPERSON. (a) The ombudsperson shall:

(1) monitor department policies for the prevention of sexual assault in correctional facilities;

(2) initiate and oversee appropriate criminal and

1 civil investigations on notification of an inmate complaint of
2 sexual assault;

3 (3) ensure the impartial resolution of inmate
4 complaints of sexual assault; and

5 (4) collect statistics regarding all allegations of
6 sexual assault from each correctional facility in accordance with
7 the standards established by the National Prison Rape Elimination
8 Commission.

9 (b) The ombudsperson may collect evidence at correctional
10 facilities and interview inmates or employees at correctional
11 facilities in conducting an investigation of an inmate complaint of
12 sexual assault under this section.

13 (c) The ombudsperson may not require an inmate who reports a
14 sexual assault to assist in the investigation or prosecution of the
15 offense.

16 Sec. 501.174. DEPARTMENT TO ADOPT POLICY. The department
17 shall adopt a policy providing for:

18 (1) a designated administrator at each correctional
19 facility to post information throughout the facility describing how
20 an inmate may confidentially contact the ombudsperson regarding a
21 sexual assault;

22 (2) an inmate to write a confidential letter to the
23 ombudsperson regarding a sexual assault;

24 (3) employees at correctional facilities, on
25 notification of the occurrence of a sexual assault, to immediately:

26 (A) contact the office of the inspector general;

27 and

1 (B) ensure that the alleged victim is safe;

2 (4) the office of the inspector general, at the time
3 the office is notified of the sexual assault, to transport an
4 alleged victim to the nearest emergency room for medical treatment
5 and evidence collection;

6 (5) a qualified employee at each correctional facility
7 to conduct a medical forensic exam of an alleged victim of sexual
8 assault in accordance with Article 56.06, Code of Criminal
9 Procedure;

10 (6) a reasonable deadline for an inmate to initiate a
11 grievance proceeding under Section 501.008 based on an alleged
12 sexual assault; and

13 (7) each correctional facility to collect statistics
14 on all alleged sexual assaults against inmates confined in the
15 facility and to report the statistics to the ombudsperson.

16 SECTION 2. Not later than December 1, 2008, the Texas
17 Department of Criminal Justice shall appoint an ombudsperson and
18 adopt a policy as required by Subchapter F, Chapter 501, Government
19 Code, as added by this Act.

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

ADOPTED

MAY 21 2007

Leta Spaw
Secretary of the Senate

By: Coleman/Ellis

H.B. No. 1944

Substitute the following for H.B. No. 1944:

By: *Rodney Ellis*

C.S.H.B. No. 1944

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the elimination of sexual assault against inmates
3 confined in a facility operated by or under contract with the Texas
4 Department of Criminal Justice.

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

6 SECTION 1. Article 57.02, Code of Criminal Procedure, is
7 amended by adding Subsection (i) to read as follows:

8 (i) This article does not prohibit the inspector general of
9 the Texas Department of Criminal Justice from disclosing a victim's
10 identifying information to the department's ombudsperson if the
11 victim is an inmate or state jail defendant confined in a facility
12 operated by or under contract with the department.

13 SECTION 2. Article 57.03, Code of Criminal Procedure, is
14 amended by adding Subsection (c-1) to read as follows:

15 (c-1) It is an exception to the application of this article
16 that:

17 (1) the person who discloses the name, address, or
18 telephone number of a victim is the inspector general of the Texas
19 Department of Criminal Justice;

20 (2) the victim is an inmate or state jail defendant
21 confined in a facility operated by or under contract with the
22 department; and

1 (3) the person to whom the disclosure is made is the
2 department's ombudsperson.

3 SECTION 3. Chapter 501, Government Code, is amended by adding
4 Subchapter F to read as follows:

5 SUBCHAPTER F. ELIMINATION OF SEXUAL ASSAULT AGAINST INMATES

6 Sec. 501.171. DEFINITIONS. In this subchapter:

7 (1) "Correctional facility" means a facility operated by
8 or under contract with the department.

9 (2) "Inmate" means an inmate or state jail defendant
10 confined in a facility operated by or under contract with the
11 department.

12 Sec. 501.172. APPOINTMENT OF OMBUDSPERSON. The board shall
13 appoint an ombudsperson to coordinate the department's efforts to
14 eliminate the occurrence of sexual assault in correctional
15 facilities. The ombudsperson shall report to the board.

16 Sec. 501.173. POWERS AND DUTIES OF OMBUDSPERSON. (a) The
17 ombudsperson shall:

18 (1) monitor department policies for the prevention of
19 sexual assault in correctional facilities;

20 (2) oversee the administrative investigation of inmate
21 complaints of sexual assault;

22 (3) ensure the impartial resolution of inmate complaints
23 of sexual assault; and

24 (4) collect statistics regarding all allegations of
25 sexual assault from each correctional facility in accordance with

1 the standards established by the National Prison Rape Elimination
2 Commission.

3 (b) The ombudsperson may collect evidence at correctional
4 facilities and interview inmates or employees at correctional
5 facilities in conducting an investigation of an inmate complaint of
6 sexual assault under this section.

7 (c) The ombudsperson may not require an inmate who reports a
8 sexual assault to assist in the investigation or prosecution of the
9 offense.

10 Sec. 501.174. DEPARTMENT TO ADOPT POLICY. The department
11 shall adopt a policy providing for:

12 (1) a designated administrator at each correctional
13 facility to post information throughout the facility describing how
14 an inmate may confidentially contact the ombudsperson regarding a
15 sexual assault;

16 (2) an inmate to write a confidential letter to the
17 ombudsperson regarding a sexual assault;

18 (3) employees at correctional facilities, on
19 notification of the occurrence of a sexual assault, to immediately:

20 (A) contact the ombudsperson and the office of the
21 inspector general; and

22 (B) ensure that the alleged victim is safe;

23 (4) the office of the inspector general, at the time the
24 office is notified of the sexual assault, to arrange for a medical
25 examination of the alleged victim to be conducted in accordance

1 with Article 56.06, Code of Criminal Procedure, or, if an
2 appropriate employee of the office of the inspector general is not
3 available at the time the office is notified of the sexual assault,
4 a qualified employee at the correctional facility to conduct a
5 medical examination of the alleged victim in accordance with
6 Article 56.06, Code of Criminal Procedure;

7 (5) a grievance proceeding under Section 501.008 based
8 on an alleged sexual assault to be exempt from any deadline
9 applicable to grievances initiated under that section; and

10 (6) each correctional facility to collect statistics on
11 all alleged sexual assaults against inmates confined in the
12 facility and to report the statistics to the ombudsperson.

13 Sec. 501.175. OMBUDSPERSON TO MAKE AVAILABLE TO PUBLIC
14 CERTAIN INFORMATION. The ombudsperson shall make available to the
15 public and appropriate state agencies:

16 (1) information regarding the powers and duties of the
17 ombudsperson; and

18 (2) statistical information regarding the total number
19 of allegations of sexual assault investigated by the department,
20 the outcome of the investigations, and any disciplinary sanctions
21 imposed as a result of the investigations.

22 Sec. 501.176. ANNUAL REPORT. (a) Not later than January 1
23 of each year, the ombudsperson shall submit a written report
24 regarding the activities of the ombudsperson during the preceding
25 fiscal year to:

- 1 (1) the governor;
2 (2) the lieutenant governor;
3 (3) the speaker of the house of representatives;
4 (4) the presiding officer of each house and senate
5 committee having jurisdiction over the department;
6 (5) the board;
7 (6) the executive director;
8 (7) the state auditor; and
9 (8) the comptroller.

10 (b) The report must include public information regarding:

11 (1) each investigation and monitoring activity relating
12 to sexual assault completed during the fiscal year by the
13 ombudsperson and the inspector general; and

14 (2) statistics collected by the ombudsperson regarding
15 allegations of sexual assault.

16 (c) The annual report must meet the financial reporting
17 requirements of the General Appropriations Act.

18 (d) Upon review of the findings of the annual report submitted
19 to the board, the board shall make recommendations on, or implement
20 policy that has the goal of, lowering the rate and incidence of
21 sexual assault against inmates at a correctional facility. That
22 policy will include methods to address a correctional facility
23 where the rate and incidence of sexual assault against inmates has
24 not shown improvement.

25 Sec. 501.177. STATE AUDITOR AUDITS, INVESTIGATIONS, AND

1 ACCESS TO INFORMATION NOT IMPAIRED. This subchapter or other law
2 related to the operation of the ombudsperson or the office of the
3 inspector general does not prohibit the state auditor from
4 conducting an audit, investigation, or other review or from having
5 full and complete access to all records and other information,
6 including witnesses and electronic data, that the state auditor
7 considers necessary for the audit, investigation, or other review.

8 Sec. 501.178. AUTHORITY OF STATE AUDITOR TO CONDUCT TIMELY
9 AUDITS NOT IMPAIRED. This subchapter or other law related to the
10 operation of the ombudsperson or the office of the inspector
11 general does not take precedence over the authority of the state
12 auditor to conduct an audit under Chapter 321 or other law.

13 SECTION 4. Subsection (c-1), Article 57.03, Code of Criminal
14 Procedure, as added by this Act, applies only to an offense
15 committed on or after the effective date of this Act. An offense
16 committed before the effective date of this Act is governed by the
17 law in effect when the offense was committed, and the former law is
18 continued in effect for that purpose. For purposes of this
19 section, an offense was committed before the effective date of this
20 Act if any element of the offense was committed before that date.

21 SECTION 5. Not later than December 1, 2008, the Texas
22 Department of Criminal Justice shall appoint an ombudsperson and
23 adopt a policy as required by Subchapter F, Chapter 501, Government
24 Code, as added by this Act.

25 SECTION 6. Not later than January 1, 2009, the ombudsperson

1 of the Texas Department of Criminal Justice shall submit the first
2 report required by Section 501.176, Government Code, as added by
3 this Act.

4 SECTION 7. This Act takes effect immediately if it receives a
5 vote of two-thirds of all the members elected to each house, as
6 provided by Section 39, Article III, Texas Constitution. If this
7 Act does not receive the vote necessary for immediate effect, this
8 Act takes effect September 1, 2007.

9 * * * * *

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LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 17, 2007

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1944 by Coleman (Relating to the elimination of sexual assault against inmates confined in a facility operated by or under contract with the Texas Department of Criminal Justice.),
Committee Report 2nd House, Substituted

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure and the Government Code by requiring the Texas Department of Criminal Justice (TDCJ) to appoint an ombudsperson to coordinate TDCJ's efforts to eliminate the occurrence of sexual assault in correctional facilities. The bill further provides the duties and responsibilities of the ombudsperson, including that TDCJ shall adopt policies to administer the program in each facility. Policies shall address inmate confidentiality, safety, and medical treatment and evidence collection. No later than December 1, 2008, TDCJ shall appoint an ombudsperson. The bill specifies that not later than January 1, 2009, the ombudsperson would be required to submit the first written report regarding the activities during the preceding year. The Texas Department of Criminal Justice has determined that the cost of implementing the bill would not be significant.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 696 Department of Criminal Justice

LBB Staff: JOB, ES, GG, SDO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 11, 2007

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1944 by Coleman (Relating to the elimination of sexual assault against inmates confined in a facility operated by or under contract with the Texas Department of Criminal Justice.),
As Engrossed

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code by having the Texas Department of Criminal Justice (TDCJ) appoint an ombudsman to coordinate TDCJ's efforts to eliminate the occurrence of sexual assault in correctional facilities. The bill further provides the duties and responsibilities of the ombudsman, including that TDCJ shall adopt policies to administer the program in each facility. Policies shall address inmate confidentiality, safety, and medical treatment and evidence collection. The Texas Department of Criminal Justice does not anticipate a significant cost to implement the bill; however, depending on the intent of the bill relative to the Office of the Inspector General transporting the inmate to the nearest emergency room, the agency estimates that it could potentially cost \$1.2 million annually for additional FTEs and operating costs.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 696 Department of Criminal Justice

LBB Staff: JOB, ES, GG, SDO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 10, 2007

TO: Honorable Jerry Madden, Chair, House Committee on Corrections

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1944 by Coleman (Relating to the elimination of sexual assault against inmates confined in a facility operated by or under contract with the Texas Department of Criminal Justice.),
As Introduced

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code by having the Texas Department of Criminal Justice (TDCJ) appoint an ombudsman to coordinate TDCJ's efforts to eliminate the occurrence of sexual assault in correctional facilities. The bill further provides the duties and responsibilities of the ombudsman, including that TDCJ shall adopt policies to administer the program in each facility. Policies shall address inmate confidentiality, safety, and medical treatment and evidence collection. The Texas Department of Criminal Justice does not anticipate a significant cost to implement the bill; however, depending on the intent of the bill relative to the Office of the Inspector General transporting the inmate to the nearest emergency room, the agency estimates that it could potentially cost \$1.2 million annually for additional FTEs and operating costs.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 696 Department of Criminal Justice

LBB Staff: JOB, ES, GG, SDO

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

80TH LEGISLATIVE REGULAR SESSION

May 17, 2007

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1944 by Coleman (Relating to the elimination of sexual assault against inmates confined in a facility operated by or under contract with the Texas Department of Criminal Justice.),
Committee Report 2nd House, Substituted

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

Source Agencies:

LBB Staff: JOB, GG

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

80TH LEGISLATIVE REGULAR SESSION

May 11, 2007

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1944 by Coleman (Relating to the elimination of sexual assault against inmates confined in a facility operated by or under contract with the Texas Department of Criminal Justice.),
As Engrossed

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

Source Agencies:

LBB Staff: JOB, GG

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

80TH LEGISLATIVE REGULAR SESSION

March 11, 2007

TO: Honorable Jerry Madden, Chair, House Committee on Corrections

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1944 by Coleman (Relating to the elimination of sexual assault against inmates confined in a facility operated by or under contract with the Texas Department of Criminal Justice.),
As Introduced

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

Source Agencies:

LBB Staff: JOB, GG