

By: Madden

H.B. No. 553

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of the office of criminal and juvenile justice ombudsman.

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

SECTION 1. Subtitle G, Title 4, Government Code, is amended by adding Chapter 502 to read as follows:

CHAPTER 502. OFFICE OF CRIMINAL AND JUVENILE JUSTICE OMBUDSMAN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 502.001. DEFINITIONS. In this chapter:

(1) "Criminal or juvenile justice agency" means:

(A) the Department of Public Safety;

(B) the Texas Department of Criminal Justice;

(C) the Board of Pardons and Paroles;

(D) a community supervision and corrections department established under Chapter 76;

(E) the Texas Youth Commission;

(F) the Texas Juvenile Probation Commission; and

(G) a local juvenile probation department receiving state aid under Subchapter E, Chapter 141, Human Resources Code.

(2) "Office" means the office of criminal and juvenile justice ombudsman created under this chapter.

(3) "Ombudsman" means the individual who has been appointed under this chapter to the office of criminal and juvenile

1 justice ombudsman.

2 Sec. 502.002. ESTABLISHMENT; PURPOSE. The office of
3 criminal and juvenile justice ombudsman is a state agency
4 established to investigate, evaluate, and secure the rights of
5 individuals arrested, detained, confined, released, or supervised
6 by or committed to a criminal or juvenile justice agency.

7 Sec. 502.003. CONSTRUCTION WITH OTHER LAW OR AGENCY
8 POLICIES, PROCEDURES, OR RULES. (a) Notwithstanding any other law
9 or any policy, procedure, or rule of a criminal or juvenile justice
10 agency, the office of the criminal and juvenile justice ombudsman
11 is the single ombudsman for each criminal or juvenile justice
12 agency.

13 (b) An ombudsman established by an individual criminal or
14 juvenile justice agency by policy, procedure, or rule is abolished.

15 Sec. 502.004. INDEPENDENCE. (a) The criminal and juvenile
16 justice ombudsman in the performance of its duties and powers under
17 this chapter acts independently of a criminal or juvenile justice
18 agency.

19 (b) Funding for the criminal and juvenile justice ombudsman
20 is appropriated separately from funding for a criminal or juvenile
21 justice agency.

22 [Sections 502.005-502.050 reserved for expansion]

23 SUBCHAPTER B. APPOINTMENT AND MANAGEMENT OF OFFICE

24 Sec. 502.051. APPOINTMENT OF OMBUDSMAN. (a) The executive
25 commissioner of the Texas Youth Commission, the executive director
26 of the Texas Department of Criminal Justice, and the public safety
27 director of the Department of Public Safety shall jointly appoint

1 the criminal and juvenile justice ombudsman for a two-year term of
2 office expiring February 1 of each odd-numbered year.

3 (b) A person appointed as criminal and juvenile justice
4 ombudsman is eligible for reappointment but may not serve more than
5 three terms in that capacity.

6 Sec. 502.052. ASSISTANTS. The criminal and juvenile
7 justice ombudsman may hire assistants to perform, under the
8 direction of the ombudsman, the same duties and exercise the same
9 powers as the ombudsman.

10 Sec. 502.053. CONFLICT OF INTEREST. (a) A person may not
11 serve as criminal and juvenile justice ombudsman or as an assistant
12 to the ombudsman if the person or the person's spouse:

13 (1) is employed by or participates in the management
14 of a business entity or other organization receiving funds from a
15 criminal or juvenile justice agency;

16 (2) owns or controls, directly or indirectly, any
17 interest in a business entity or other organization receiving funds
18 from a criminal or juvenile justice agency; or

19 (3) uses or receives any amount of tangible goods,
20 services, or funds from a criminal or juvenile justice agency.

21 (b) A person may not serve as criminal and juvenile justice
22 ombudsman or as an assistant to the ombudsman if the person or the
23 person's spouse is required to register as a lobbyist under Chapter
24 305 because of the person's activities for compensation on behalf
25 of a profession related to the operation of a criminal or juvenile
26 justice agency.

27 (c) A person may not serve as criminal and juvenile justice

1 ombudsman or as an assistant to the ombudsman if the person or the
2 person's spouse is an officer, employee, manager, or paid
3 consultant of a Texas trade association in the field of criminal or
4 juvenile justice.

5 (d) For the purposes of this section, a Texas trade
6 association is a nonprofit, cooperative, and voluntarily joined
7 association of business or professional competitors in this state
8 designed to assist its members and its industry or profession in
9 dealing with mutual business or professional problems and in
10 promoting their common interest.

11 Sec. 502.054. SUNSET PROVISION. The office is subject to
12 review under Chapter 325 (Texas Sunset Act) but is not abolished
13 under that chapter. The office shall be reviewed during the periods
14 in which state agencies reviewed or abolished in 2011 and every 12th
15 year after 2011 are reviewed.

16 Sec. 502.055. REPORT. (a) The criminal and juvenile
17 justice ombudsman shall submit on a quarterly basis to the
18 governor, the lieutenant governor, the state auditor, and each
19 member of the legislature a report that is both aggregated and
20 disaggregated by each criminal or juvenile justice agency and
21 describes:

22 (1) the work of the criminal and juvenile justice
23 ombudsman;

24 (2) the results of any review or investigation
25 undertaken by the ombudsman, including reviews or investigation of
26 services contracted by a criminal or juvenile justice agency; and

27 (3) any recommendations that the ombudsman has in

1 relation to the duties of the ombudsman.

2 (b) The criminal and juvenile justice ombudsman shall
3 immediately report to the governor, the lieutenant governor, the
4 speaker of the house of representatives, the state auditor, and the
5 executive officer of the relevant criminal or juvenile justice
6 agency any particularly serious or flagrant:

7 (1) case of abuse or injury of an individual arrested,
8 detained, confined, released, or supervised by or committed to the
9 agency;

10 (2) problem concerning the administration of an agency
11 program or operation;

12 (3) problem concerning the delivery of services in a
13 facility operated by or under contract with the agency; or

14 (4) interference by the agency with an investigation
15 conducted by the office.

16 Sec. 502.056. COMMUNICATION AND CONFIDENTIALITY. (a) A
17 criminal or juvenile justice agency shall allow any individual
18 arrested, detained, confined, released, or supervised by or
19 committed to the agency to communicate with the criminal and
20 juvenile justice ombudsman or an assistant to the ombudsman. The
21 communication:

22 (1) may be in person, by mail, or by any other means;
23 and

24 (2) is confidential and privileged.

25 (b) The records of the criminal and juvenile justice
26 ombudsman are confidential, except that the ombudsman shall:

27 (1) share with the executive officer of the relevant

1 criminal or juvenile justice agency a communication with an
2 individual that may involve the abuse or neglect of the individual;
3 and

4 (2) disclose the nonprivileged records of the office,
5 if required by a court order on a showing of good cause.

6 (c) The criminal and juvenile justice ombudsman may make
7 reports relating to an investigation public after the investigation
8 is complete but only if the names of any individual arrested,
9 detained, confined, released, or supervised by or committed to a
10 criminal or juvenile justice agency and employees of the agency are
11 redacted from the report and remain confidential.

12 (d) The name, address, or other personally identifiable
13 information of a person who files a complaint with the office,
14 information generated by the office in the course of an
15 investigation, and confidential records obtained by the office are
16 confidential and not subject to disclosure under Chapter 552,
17 except that the information and records, other than confidential
18 information and records concerning a pending law enforcement
19 investigation or criminal action, may be disclosed to the
20 appropriate person if the office determines that disclosure is:

21 (1) in the general public interest;

22 (2) necessary to enable the office to perform the
23 responsibilities provided under this section; or

24 (3) necessary to identify, prevent, or treat the abuse
25 or neglect by a criminal or juvenile justice agency of an individual
26 arrested, detained, confined, released, or supervised by or
27 committed to the agency.

1 Sec. 502.057. PROMOTION OF AWARENESS OF OFFICE. The
2 criminal and juvenile justice ombudsman shall promote awareness
3 among the public and individuals arrested, detained, confined,
4 released, or supervised by or committed to a criminal or juvenile
5 justice agency of:

- 6 (1) how the office may be contacted;
7 (2) the purpose of the office; and
8 (3) the services the office provides.

9 Sec. 502.058. RULEMAKING AUTHORITY. The office by rule
10 shall establish policies and procedures for the operations of the
11 office of criminal and juvenile justice ombudsman.

12 Sec. 502.059. AUTHORITY OF STATE AUDITOR. The office is
13 subject to audit by the state auditor in accordance with Chapter
14 321.

15 [Sections 502.060-502.100 reserved for expansion]

16 SUBCHAPTER C. DUTIES AND POWERS

17 Sec. 502.101. DUTIES AND POWERS. (a) The criminal and
18 juvenile justice ombudsman shall:

19 (1) review any procedures established by each criminal
20 or juvenile justice agency and evaluate the delivery of services to
21 individuals arrested, detained, confined, released, or supervised
22 by or committed to a criminal or juvenile justice agency to ensure
23 that the rights of those individuals are fully observed;

24 (2) review complaints filed with the ombudsman
25 concerning the actions of a criminal or juvenile justice agency and
26 investigate each complaint in which it appears that an individual
27 described by Subdivision (1) may be in need of assistance from the

1 ombudsman;

2 (3) conduct investigations of complaints, other than
3 complaints alleging criminal behavior, if the office determines
4 that:

5 (A) an individual described by Subdivision (1) or
6 the individual's family may be in need of assistance from the
7 office; or

8 (B) a systemic issue in the provision of services
9 by a criminal or juvenile justice agency is raised by a complaint;

10 (4) review or inspect periodically the facilities,
11 whether public or private, and the procedures of any criminal or
12 juvenile justice agency to ensure that the rights of individuals
13 described by Subdivision (1) are fully observed;

14 (5) provide assistance to an individual described by
15 Subdivision (1), or the individual's family, who the ombudsman
16 determines is in need of assistance, including advocating with an
17 agency, provider, or other person in the best interests of the
18 individual;

19 (6) review court orders as necessary to fulfill the
20 office's duties;

21 (7) recommend changes in any procedure relating to the
22 treatment of individuals described by Subdivision (1);

23 (8) make appropriate referrals under any of the duties
24 and powers listed in this subsection; and

25 (9) supervise assistants who are serving as advocates
26 in their representation of individuals described by Subdivision (1)
27 in internal administrative and disciplinary hearings.

1 (b) The criminal and juvenile justice ombudsman may apprise
2 a person who has legal custody, care, or control of an individual
3 described by Subsection (a)(1) of the individual's rights.

4 (c) To assess if an individual's rights have been violated,
5 the criminal and juvenile justice ombudsman may, in any matter that
6 does not involve alleged criminal behavior, contact or consult with
7 an administrator, employee, child, parent, expert, or any other
8 individual in the course of its investigation or to secure
9 information.

10 (d) Notwithstanding any other provision of this chapter,
11 the criminal and juvenile justice ombudsman may not investigate
12 alleged criminal behavior.

13 Sec. 502.102. TREATMENT OF AGENCY EMPLOYEES WHO COOPERATE
14 WITH OMBUDSMAN. A criminal or juvenile justice agency may not
15 discharge or in any manner discriminate or retaliate against an
16 employee who in good faith makes a complaint to the office of
17 criminal and juvenile justice ombudsman or cooperates with the
18 office in an investigation.

19 Sec. 502.103. TRAINING. The criminal and juvenile justice
20 ombudsman shall attend annual professional training sessions.

21 [Sections 502.104-502.150 reserved for expansion]

22 SUBCHAPTER D. ACCESS TO INFORMATION

23 Sec. 502.151. ACCESS TO INFORMATION OF GOVERNMENTAL
24 ENTITIES. (a) A criminal or juvenile justice agency shall allow
25 the criminal and juvenile justice ombudsman access to the agency's
26 records relating to an individual arrested, detained, confined,
27 released, or supervised by or committed to the agency.

1 (b) The Department of Public Safety shall allow the criminal
2 and juvenile justice ombudsman access to the juvenile justice
3 information system established under Subchapter B, Chapter 58,
4 Family Code, and the computerized criminal history system
5 established under Chapter 60, Code of Criminal Procedure.

6 (c) A local law enforcement agency shall allow the criminal
7 and juvenile justice ombudsman access to the agency's records
8 relating to any individual arrested, detained, confined, released,
9 or supervised by or committed to a criminal or juvenile justice
10 agency.

11 Sec. 502.152. ACCESS TO INFORMATION OF PRIVATE ENTITIES.
12 The criminal and juvenile justice ombudsman shall have access to
13 the records of a private entity that relate to an individual
14 arrested, detained, confined, released, or supervised by or
15 committed to a criminal or juvenile justice agency.

16 SECTION 2. Chapter 60, Code of Criminal Procedure, is
17 amended by adding Article 60.022 to read as follows:

18 Art. 60.022. ACCESS TO COMPUTERIZED CRIMINAL HISTORY SYSTEM
19 BY NONCRIMINAL JUSTICE AGENCY. The Department of Public Safety
20 shall give the office of criminal and juvenile justice ombudsman
21 established under Chapter 502, Government Code, access to the
22 computerized criminal history system.

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

25 (a) Except as otherwise provided by this section,
26 information contained in the juvenile justice information system is
27 confidential information for the use of the department and may not

1 be disseminated by the department except:

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

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

7 (3) to a juvenile justice agency;

8 (4) to the Texas Youth Commission and the Texas
9 Juvenile Probation Commission for analytical purposes; and

10 (5) to the office of criminal and juvenile justice
11 ~~[independent]~~ ombudsman established under Chapter 502, Government
12 Code [of the Texas Youth Commission].

13 SECTION 4. Section 61.0763(a), Human Resources Code, as
14 added by Section 49, Chapter 263 (S.B. 103), Acts of the 80th
15 Legislature, Regular Session, 2007, is amended to read as follows:

16 (a) The commission, in consultation with advocacy and
17 support groups such as those described in Section 61.0386(a), shall
18 develop a parent's bill of rights for distribution to the parent or
19 guardian of a child who is under 18 years of age and committed to the
20 commission. The parent's bill of rights must include:

21 (1) a description of the commission's grievance
22 policies and procedures, including contact information for the
23 office of inspector general and the office of criminal and juvenile
24 justice [the independent] ombudsman established under Chapter 502,
25 Government Code [Chapter 64];

26 (2) a list of possible incidents that require parental
27 notification;

1 (3) policies concerning visits and telephone
2 conversations with a child committed to the commission;

3 (4) a description of commission caseworker
4 responsibilities;

5 (5) a statement that the commission caseworker
6 assigned to a child may assist the child's parent or guardian in
7 obtaining information and services from the commission and other
8 resources concerning:

9 (A) counseling, including substance abuse and
10 mental health counseling;

11 (B) assistance programs, including financial and
12 travel assistance programs for visiting a child committed to the
13 commission;

14 (C) workforce preparedness programs;

15 (D) parenting programs; and

16 (E) commission seminars; and

17 (6) information concerning the indeterminate
18 sentencing structure at the commission, an explanation of reasons
19 that a child's commitment at the commission could be extended, and
20 an explanation of the review process under Sections 61.0815 and
21 61.0816 for a child committed to the commission without a
22 determinate sentence.

23 SECTION 5. Chapter 64, Human Resources Code, is repealed.

24 SECTION 6. The executive commissioner of the Texas Youth
25 Commission, the executive director of the Texas Department of
26 Criminal Justice, and the public safety director of the Department
27 of Public Safety shall jointly appoint the criminal and juvenile

1 justice ombudsman under Section 502.051, Government Code, as added
2 by this Act, as soon as practicable after the effective date of this
3 Act, and in no event later than January 1, 2010.

4 SECTION 7. This Act takes effect immediately if it receives
5 a 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, 2009.