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H.B. No. 1371

A BILL TO BE ENTITLED

AN ACT

relating to the creation of an independent ombudsman for children and youth in foster care.

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

SECTION 1. Chapter 531, Government Code, is amended by adding Subchapter Y to read as follows:

SUBCHAPTER Y. OMBUDSMAN FOR CHILDREN AND YOUTH IN FOSTER CARE

Sec. 531.991. DEFINITIONS. In this subchapter:

(1) "Department" means the Department of Family and Protective Services.

(2) "Ombudsman" means the individual appointed as the ombudsman for children and youth in foster care.

Sec. 531.992. OMBUDSMAN FOR CHILDREN AND YOUTH IN FOSTER CARE. (a) The executive commissioner shall appoint an ombudsman for children and youth in foster care to serve at the will of the executive commissioner.

(b) The ombudsman is administratively attached to the office of the ombudsman for the commission.

(c) Subject to the appropriation of money for that purpose, the ombudsman may employ staff to assist the ombudsman in performing the ombudsman's duties under this subchapter.

Sec. 531.993. DUTIES OF OMBUDSMAN. (a) The ombudsman serves as a neutral party in assisting children and youth in the conservatorship of the department with complaints regarding issues

1 within the authority of the department or another health and human  
2 services agency.

3 (b) The ombudsman shall:

4 (1) develop and implement statewide procedures to:

5 (A) receive complaints from children and youth in  
6 the conservatorship of the department;

7 (B) review complaints filed with the ombudsman  
8 and take appropriate action, including:

9 (i) conducting an investigation into  
10 individual complaints that allege violations of department or  
11 agency procedure or policy or other violations; and

12 (ii) referring to department or agency  
13 management for resolution any trends or systemic issues identified  
14 in complaints;

15 (C) provide any necessary assistance to children  
16 and youth in the conservatorship of the department in making  
17 complaints and reporting allegations of abuse or neglect to the  
18 department;

19 (D) maintain the confidentiality of:

20 (i) the ombudsman's communications and  
21 records;

22 (ii) records of another person that have  
23 been provided to the ombudsman; and

24 (iii) communications of another person with  
25 the ombudsman; and

26 (E) ensure that the department and a child or  
27 youth in the conservatorship of the department who files a

1 complaint with the ombudsman are informed of the results of the  
2 ombudsman's investigation of the complaint, including whether the  
3 ombudsman was able to substantiate the child's or youth's  
4 complaint;

5 (2) collaborate with the department to develop and  
6 implement an annual outreach plan to promote awareness of the  
7 ombudsman among children and youth in the conservatorship of the  
8 department;

9 (3) issue and file with the department and any  
10 applicable health and human services agency a report that contains  
11 the ombudsman's final determination regarding a complaint and any  
12 recommended corrective actions to be taken as a result of the  
13 complaint;

14 (4) establish a secure form of communication with any  
15 individual who files a complaint with the ombudsman; and

16 (5) collaborate with the department to identify  
17 consequences for any retaliatory action related to a complaint  
18 filed with the ombudsman, in accordance with Section 40.0041(g),  
19 Human Resources Code.

20 Sec. 531.994. INVESTIGATION OF UNREPORTED COMPLAINTS. If,  
21 during the investigation of a complaint, the ombudsman discovers  
22 unreported violations of the department's or a health and human  
23 services agency's rules and policies, the ombudsman shall open a  
24 new investigation for each unreported violation.

25 Sec. 531.995. ACCESS TO INFORMATION. The department and  
26 each health and human services agency shall provide the ombudsman  
27 access to the department's or agency's records that relate to a

1 complaint the ombudsman is reviewing or investigating.

2 Sec. 531.996. COMMUNICATION AND CONFIDENTIALITY. (a) A  
3 person may communicate with the ombudsman relating to a complaint  
4 by telephone, by mail, by electronic mail, or by any other means the  
5 ombudsman determines to be feasible, secure, and accessible to  
6 children and youth.

7 (b) A communication with the ombudsman is confidential  
8 during an investigation or review of a complaint and remains  
9 confidential after the complaint is resolved.

10 (c) The records of the ombudsman are confidential and must  
11 be maintained in a manner that preserves the confidentiality of the  
12 records.

13 (d) The disclosure of confidential information to the  
14 ombudsman under this section or Section 531.995 does not constitute  
15 a waiver of confidentiality. Any information disclosed to the  
16 ombudsman under this section or Section 531.995 remains  
17 confidential and privileged following disclosure.

18 (e) The ombudsman is not prohibited from communicating with  
19 the department or another health and human services agency  
20 regarding confidential information disclosed to the ombudsman by  
21 the department or agency.

22 (f) The ombudsman may make reports relating to an  
23 investigation of a complaint public after the complaint is  
24 resolved. A report may not include information that identifies an  
25 individual complainant, client, parent, or employee or any other  
26 person involved in the complaint.

27 Sec. 531.997. RETALIATION PROHIBITED. The department or

1 another health and human services agency may not retaliate against  
2 a child or youth in the conservatorship of the department who in  
3 good faith makes a complaint to the ombudsman or against any person  
4 who cooperates with the ombudsman in an investigation.

5 Sec. 531.998. REPORT. (a) The ombudsman shall prepare an  
6 annual report that contains:

7 (1) a description of the ombudsman's work;

8 (2) any change made by the department or another  
9 health and human services agency in response to a substantiated  
10 complaint;

11 (3) a description of any trends in the nature of  
12 complaints received by the ombudsman, any recommendations related  
13 to addressing those trends, and an evaluation of the feasibility of  
14 the ombudsman's recommendations;

15 (4) a glossary of terms used in the report;

16 (5) a description of the methods used to promote  
17 awareness of the ombudsman under Section 531.993(b) and the  
18 ombudsman's promotion plan for the next year; and

19 (6) any public feedback received by the ombudsman  
20 relating to the ombudsman's previous annual reports.

21 (b) The report must be submitted to the executive  
22 commissioner and the commissioner of the department not later than  
23 December 1 of each year. On receipt of the report, the department  
24 and the commission shall make the report publicly available on the  
25 department's and the commission's Internet websites.

26 SECTION 2. Section 40.0041, Human Resources Code, is  
27 amended by adding Subsections (g) and (h) to read as follows:

1       (g) The department shall cooperate with the ombudsman for  
2 children and youth in foster care to create consequences, based on  
3 the circumstances of the complaint and the severity of the  
4 retaliation, for any person who is found to have retaliated against  
5 a child or youth in the conservatorship of the department because of  
6 a complaint made to the ombudsman.

7       (h) The executive commissioner shall adopt rules requiring  
8 all residential child-care facilities in which children and youth  
9 in the conservatorship of the department are placed to display  
10 information about the ombudsman for children and youth in foster  
11 care and the process for filing a complaint with the ombudsman in a  
12 location that is easily accessible and offers maximum privacy to  
13 the children and youth residing at the facility.

14       SECTION 3. As soon as possible after the effective date of  
15 this Act, the executive commissioner of the Health and Human  
16 Services Commission shall assign one full-time equivalent employee  
17 of the Department of Family and Protective Services to serve as the  
18 ombudsman for children and youth in foster care.

19       SECTION 4. This Act takes effect September 1, 2015.