

By: Dutton

H.B. No. 3277

A BILL TO BE ENTITLED

AN ACT

relating to the authority of the office of independent ombudsman with the Texas Juvenile Justice Department in regard to juveniles in custody in certain facilities.

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

SECTION 1. Section 261.001, Human Resources Code, is amended by amending Subdivision (1) and adding Subdivision (1-a) to read as follows:

(1) "Facility" means:

(A) a nonsecure correctional facility, as defined by Section 51.02, Family Code;

(B) a secure correctional facility, as defined by Section 51.02, Family Code; or

(C) any other residential facility that, pursuant to the order of a juvenile court, accepts children adjudicated for conduct indicating a need for supervision or delinquent conduct.

(1-a) "Independent ombudsman" means the individual who has been appointed under this chapter to the office of independent ombudsman.

SECTION 2. Section 261.002, Human Resources Code, is amended to read as follows:

Sec. 261.002. ESTABLISHMENT; PURPOSE. The office of independent ombudsman is a state agency established for the purpose

1 of investigating, evaluating, and securing the rights of the  
2 children committed to the department, including a child released  
3 under supervision before final discharge and a child placed in a  
4 facility pursuant to a juvenile court order.

5 SECTION 3. Section 261.055, Human Resources Code, is  
6 amended by adding Subsection (c) to read as follows:

7 (c) The independent ombudsman shall immediately report to  
8 the board, the governor, the lieutenant governor, the speaker of  
9 the house of representatives, the state auditor, the executive  
10 director of the department, and the chief juvenile probation  
11 officer and juvenile board operating or contracting for the  
12 operation of the facility that is the subject of the report any  
13 particularly serious or flagrant:

14 (1) case of abuse or injury of a child placed in the  
15 facility;

16 (2) problem concerning the administration of the  
17 facility;

18 (3) problem concerning the delivery of services in the  
19 facility; or

20 (4) interference by a person associated with the  
21 facility with an investigation conducted by the office.

22 SECTION 4. Section 261.056(a), Human Resources Code, is  
23 amended to read as follows:

24 (a) The department or other operator of a facility, as  
25 applicable, shall allow any child committed to the department or  
26 placed in the facility to communicate with the independent  
27 ombudsman or an assistant to the ombudsman. The communication:

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

2 and

3 (2) is confidential and privileged.

4 SECTION 5. Section 261.057, Human Resources Code, is  
5 amended to read as follows:

6 Sec. 261.057. PROMOTION OF AWARENESS OF OFFICE. The  
7 independent ombudsman shall promote awareness among the public and  
8 the children committed to the department or placed in a facility of:

9 (1) how the office may be contacted;

10 (2) the purpose of the office; and

11 (3) the services the office provides.

12 SECTION 6. Section 261.060(a), Human Resources Code, is  
13 amended to read as follows:

14 (a) The office shall accept, both before and after  
15 publication, comments from the board, a juvenile board, a chief  
16 juvenile probation officer, or other operator of a facility, as  
17 applicable, concerning the following types of reports published by  
18 the office under this chapter:

19 (1) the office's quarterly report under Section  
20 261.055(a);

21 (2) reports concerning serious or flagrant  
22 circumstances under Section 261.055(b) or (c); and

23 (3) any other formal reports containing findings and  
24 making recommendations concerning systemic issues that affect the  
25 department or a facility.

26 SECTION 7. Sections 261.101(a) and (b), Human Resources  
27 Code, are amended to read as follows:

1 (a) The independent ombudsman shall:

2 (1) review the procedures established by the board and  
3 evaluate the delivery of services to children to ensure that the  
4 rights of children are fully observed;

5 (2) review complaints filed with the independent  
6 ombudsman concerning the actions of the department or a facility  
7 and investigate each complaint in which it appears that a child may  
8 be in need of assistance from the independent ombudsman;

9 (3) conduct investigations of complaints, other than  
10 complaints alleging criminal behavior, if the office determines  
11 that:

12 (A) a child committed to the department or  
13 placed in a facility or the child's family may be in need of  
14 assistance from the office; or

15 (B) a systemic issue in the department's or a  
16 facility's provision of services is raised by a complaint;

17 (4) review or inspect periodically the facilities and  
18 procedures of any institution or residence in which a child has been  
19 placed by the department, a juvenile probation department, or a  
20 juvenile court, whether public or private, to ensure that the  
21 rights of children are fully observed;

22 (5) provide assistance to a child or family who the  
23 independent ombudsman determines is in need of assistance,  
24 including advocating with an agency, provider, or other person in  
25 the best interests of the child;

26 (6) review court orders as necessary to fulfill its  
27 duties;

1 (7) recommend changes in any procedure relating to the  
2 treatment of children committed to the department or placed in a  
3 facility;

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

6 (9) supervise assistants who are serving as advocates  
7 in their representation of children committed to the department or  
8 placed in a facility in internal administrative and disciplinary  
9 hearings;

10 (10) review reports received by the department  
11 relating to complaints regarding juvenile probation programs,  
12 services, or facilities and analyze the data contained in the  
13 reports to identify trends in complaints; and

14 (11) report a possible standards violation by a local  
15 juvenile probation department to the appropriate division of the  
16 department.

17 (b) The independent ombudsman may:

18 (1) apprise persons who are interested in a child's  
19 welfare of the rights of the child unless the disclosure is  
20 prohibited by law; and

21 (2) conduct, organize, and provide technical  
22 assistance for audits of facilities to ensure that the audits are  
23 conducted in compliance with the federal Prison Rape Elimination  
24 Act National Standards, 28 C.F.R. Part 115, Subpart E.

25 SECTION 8. Section 261.102, Human Resources Code, is  
26 amended to read as follows:

27 Sec. 261.102. TREATMENT OF [~~DEPARTMENT~~] EMPLOYEES WHO

1 COOPERATE WITH INDEPENDENT OMBUDSMAN. The department, a juvenile  
2 board, a juvenile probation department, or other operator of a  
3 facility, as applicable, may not discharge or in any manner  
4 discriminate or retaliate against an employee who in good faith  
5 makes a complaint to the office of independent ombudsman or  
6 cooperates with the office in an investigation.

7 SECTION 9. Section [261.104](#), Human Resources Code, is  
8 amended to read as follows:

9 Sec. 261.104. MEMORANDUM OF UNDERSTANDING. (a) The  
10 office, ~~and~~ the department, a juvenile board, a juvenile  
11 probation department, or other operator of a facility, as  
12 applicable, shall enter into a memorandum of understanding  
13 concerning:

14 (1) the most efficient manner in which to share  
15 information with one another; ~~and~~

16 (2) the procedures for handling overlapping  
17 monitoring duties and activities performed by the office and the  
18 department, juvenile board, juvenile probation department,  
19 operator of the facility, or other entity; and

20 (3) procedures for a juvenile board, a chief juvenile  
21 probation officer, or other operator of a facility, as appropriate,  
22 to comment on reports of the office related to children in a  
23 facility, including procedures to expedite or eliminate comment on  
24 a report due to an emergency or a serious or flagrant circumstance  
25 described by Section [261.055\(c\)](#).

26 (b) The memorandum of understanding entered into under  
27 Subsection (a), at a minimum, must:

1 (1) address the interaction of the office with that  
2 portion of the department that conducts an internal audit under  
3 Section 203.013 and with the internal audit procedures of a  
4 juvenile probation department or facility;

5 (2) address communication between the office and the  
6 department or other operator of a facility concerning individual  
7 situations involving children committed to the department or placed  
8 in a facility, as applicable, and how those situations will be  
9 documented and handled;

10 (3) contain guidelines on the office's role in  
11 relevant working groups and policy development decisions at the  
12 department or with a juvenile board, a juvenile probation  
13 department, or other operator of a facility, as applicable;

14 (4) ensure opportunities for sharing information  
15 between the office and the department or facility for the purposes  
16 of assuring quality and improving programming within the department  
17 or facility; and

18 (5) preserve the independence of the office by  
19 authorizing the office to withhold information concerning matters  
20 under active investigation by the office from the department and  
21 department staff or from the facility and the staff of the facility  
22 and to report the information to the board and the governor.

23 SECTION 10. Section 261.151, Human Resources Code, is  
24 amended by adding Subsection (a-1) and amending Subsection (c) to  
25 read as follows:

26 (a-1) The independent ombudsman has access to the records of  
27 the operator of a facility relating to the children placed in the

1 facility.

2 (c) A local law enforcement agency shall allow the  
3 independent ombudsman access to its records relating to any child  
4 in the care or custody of the department or other operator of a  
5 facility.

6 SECTION 11. Section 261.152, Human Resources Code, is  
7 amended to read as follows:

8 Sec. 261.152. ACCESS TO INFORMATION OF PRIVATE ENTITIES.  
9 The independent ombudsman shall have access to the records of a  
10 private entity that relate to a child committed to the department or  
11 placed in a facility.

12 SECTION 12. This Act takes effect September 1, 2015.