

By: Dutton

H.B. No. 3277

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the authority of the office of independent ombudsman  
3 with the Texas Juvenile Justice Department in regard to juveniles  
4 in custody in certain facilities not operated solely for children  
5 committed to the department.

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

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

10 (1) "Child" means an individual who is:  
11 (A) 10 years of age or older and younger than 19  
12 years of age; and  
13 (B) placed in or committed to a facility for  
14 conduct violating a penal law that occurred or an offense committed  
15 before the individual's 17th birthday.

16 (1-a) "Facility" means a juvenile justice facility  
17 operated wholly or partly by the juvenile board, by another  
18 governmental unit, or by a private vendor under a contract with the  
19 juvenile board, county, or other governmental unit that serves  
20 juveniles under juvenile court jurisdiction. The term includes:

21 (A) a public or private juvenile  
22 pre-adjudication secure detention facility, including a holdover  
23 facility;

24 (B) a public or private juvenile

1 post-adjudication secure correctional facility; and  
2 (C) a public or private non-secure juvenile  
3 post-adjudication residential treatment facility that is not  
4 licensed by the Department of Family and Protective Services or the  
5 Department of State Health Services.

6 (1-b) "Independent ombudsman" means the individual  
7 who has been appointed under this chapter to the office of  
8 independent ombudsman.

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

11 Sec. 261.002. ESTABLISHMENT; PURPOSE. The office of  
12 independent ombudsman is a state agency established for the purpose  
13 of investigating, evaluating, and securing the rights of the  
14 children placed in or committed to a facility [~~the department~~],  
15 including a child released under supervision before final  
16 discharge.

17 SECTION 3. Section 261.055(b), Human Resources Code, is  
18 amended to read as follows:

19 (b) The independent ombudsman shall immediately report to  
20 the board, the governor, the lieutenant governor, the speaker of  
21 the house of representatives, the state auditor, and the office of  
22 the inspector general of the department any particularly serious or  
23 flagrant:

24 (1) case of abuse or injury of a child placed in or  
25 committed to a facility [~~the department~~];

26 (2) problem concerning the administration of a  
27 facility [~~department~~] program or operation;

1 (3) problem concerning the delivery of services in a  
2 facility [~~operated by or under contract with the department~~]; or

3 (4) interference by an operator of a facility [~~the~~  
4 ~~department~~] with an investigation conducted by the office.

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

7 (a) The operator of a facility [~~department~~] shall allow any  
8 child placed in or committed to the facility [~~the department~~] to  
9 communicate with the independent ombudsman or an assistant to the  
10 ombudsman. The communication:

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

13 (2) is confidential and privileged.

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

16 Sec. 261.057. PROMOTION OF AWARENESS OF OFFICE. The  
17 independent ombudsman shall promote awareness among the public and  
18 the children placed in or committed to a facility [~~the department~~]  
19 of:

20 (1) how the office may be contacted;

21 (2) the purpose of the office; and

22 (3) the services the office provides.

23 SECTION 6. Section 261.058(b), Human Resources Code, is  
24 amended to read as follows:

25 (b) The office and the board shall adopt rules necessary to  
26 implement Section 261.060, including rules that establish  
27 procedures for an operator of a facility [~~the department~~] to review

1 and comment on reports of the office and for the operator  
2 [~~department~~] to expedite or eliminate review of and comment on a  
3 report due to an emergency or a serious or flagrant circumstance  
4 described by Section 261.055(b).

5 SECTION 7. Section 261.060(a), Human Resources Code, is  
6 amended to read as follows:

7 (a) The office shall accept, both before and after  
8 publication, comments from the board or the operator of a facility,  
9 as applicable, concerning the following types of reports published  
10 by the office under this chapter:

11 (1) the office's quarterly report under Section  
12 261.055(a);

13 (2) reports concerning serious or flagrant  
14 circumstances under Section 261.055(b); and

15 (3) any other formal reports containing findings and  
16 making recommendations concerning systemic issues that affect an  
17 operator of a facility [~~the department~~].

18 SECTION 8. Sections 261.101(a) and (b), Human Resources  
19 Code, are amended to read as follows:

20 (a) The independent ombudsman shall:

21 (1) review the procedures established by the board and  
22 evaluate the delivery of services to children to ensure that the  
23 rights of children are fully observed;

24 (2) review complaints filed with the independent  
25 ombudsman concerning the actions of an operator of a facility [~~the~~  
26 ~~department~~] and investigate each complaint in which it appears that  
27 a child may be in need of assistance from the independent ombudsman;

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

4 (A) a child placed in or committed to a facility  
5 [~~the department~~] or the child's family may be in need of assistance  
6 from the office; or

7 (B) a systemic issue in [~~the department's~~]  
8 provision of services by an operator of a facility is raised by a  
9 complaint;

10 (4) review or inspect periodically the facilities and  
11 procedures of any institution or residence in which a child has been  
12 placed by the department, a juvenile probation department, or a  
13 county, whether public or private, to ensure that the rights of  
14 children are fully observed;

15 (5) provide assistance to a child or family who the  
16 independent ombudsman determines is in need of assistance,  
17 including advocating with an agency, provider, or other person in  
18 the best interests of the child;

19 (6) review court orders as necessary to fulfill its  
20 duties;

21 (7) recommend changes in any procedure relating to the  
22 treatment of children placed in or committed to a facility [~~the~~  
23 ~~department~~];

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

26 (9) supervise assistants who are serving as advocates  
27 in their representation of children placed in or committed to a

1 facility [~~the department~~] in internal administrative and  
2 disciplinary hearings;

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

7 (11) report a possible standards violation by a local  
8 juvenile probation department to the appropriate division of the  
9 department.

10 (b) The independent ombudsman may:

11 (1) apprise persons who are interested in a child's  
12 welfare of the rights of the child; and

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

17 SECTION 9. Section [261.102](#), Human Resources Code, is  
18 amended to read as follows:

19 Sec. 261.102. TREATMENT OF [~~DEPARTMENT~~] EMPLOYEES WHO  
20 COOPERATE WITH INDEPENDENT OMBUDSMAN. The operator of a facility  
21 [~~department~~] may not discharge or in any manner discriminate or  
22 retaliate against an employee who in good faith makes a complaint to  
23 the office of independent ombudsman or cooperates with the office  
24 in an investigation.

25 SECTION 10. Section [261.104](#), Human Resources Code, is  
26 amended to read as follows:

27 Sec. 261.104. MEMORANDUM OF UNDERSTANDING. (a) The office

1 and an operator of a facility [~~the department~~] shall enter into a  
2 memorandum of understanding concerning:

3 (1) the most efficient manner in which to share  
4 information with one another; and

5 (2) the procedures for handling overlapping  
6 monitoring duties and activities performed by the office and the  
7 department or a county.

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

10 (1) address the interaction of the office with that  
11 portion of the department that conducts an internal audit under  
12 Section 203.013 and with the internal audit procedures of a county;

13 (2) address communication between the office and the  
14 operator of a facility [~~department~~] concerning individual  
15 situations involving children placed in or committed to the  
16 facility [~~department~~] and how those situations will be documented  
17 and handled;

18 (3) contain guidelines on the office's role in  
19 relevant working groups and policy development decisions at the  
20 department or with the county;

21 (4) ensure opportunities for sharing information  
22 between the office and the department or county for the purposes of  
23 assuring quality and improving programming within the facility  
24 [~~department~~]; and

25 (5) preserve the independence of the office by  
26 authorizing the office to withhold information concerning matters  
27 under active investigation by the office from the operator of a

1 facility [~~department~~] and the [~~department~~] staff of the facility  
2 and to report the information to the board and the governor.

3 SECTION 11. Sections 261.151(a) and (c), Human Resources  
4 Code, are amended to read as follows:

5 (a) The independent ombudsman has access to the  
6 [~~department's~~] records of the operator of a facility relating to  
7 the children placed in or committed to the facility [~~department~~].

8 (c) A local law enforcement agency shall allow the  
9 independent ombudsman access to its records relating to any child  
10 in the care or custody of an operator of a facility [~~the~~  
11 ~~department~~].

12 SECTION 12. Section 261.152, Human Resources Code, is  
13 amended to read as follows:

14 Sec. 261.152. ACCESS TO INFORMATION OF PRIVATE ENTITIES.  
15 The independent ombudsman shall have access to the records of a  
16 private entity that relate to a child placed in or committed to a  
17 facility [~~the department~~].

18 SECTION 13. This Act takes effect September 1, 2015.