

By: Miles

H.B. No. 3303

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the Office of the Independent Oversight
Ombudsman for the Texas Department of Criminal Justice.

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

SECTION 1. Chapter 512, Government Code, is added to read as
follows:

CHAPTER 512. OFFICE OF THE INDEPENDENT OVERSIGHT OMBUDSMAN OF THE
TEXAS DEPARTMENT OF CRIMINAL JUSTICE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 512.001. DEFINITIONS. In this chapter:

(1) "Department" means the Texas Department of
Criminal Justice.

(2) "Independent Oversight Ombudsman" means the
individual who has been appointed under this chapter to the office
of the independent oversight ombudsman.

(3) "Office" means the office of the independent
oversight ombudsman created under this chapter.

Sec. 512.002. ESTABLISHMENT; PURPOSE. The office of the
independent oversight ombudsman is a state agency established for
the purpose of investigating, evaluating, and securing the rights
of the individuals in department's custody, including an adult
released under supervision before final discharge. The office will
also be responsible for in-depth review and analysis of data,
determination of long-range-needs, identification of critical

1 issues and corresponding solutions, and assessment of the efficacy
2 of existing programs.

3 Sec. 512.003. INDEPENDENCE. (a) The independent
4 oversight ombudsman in the performance of its duties and powers
5 under this chapter acts independently of the department.

6 (b) Funding for the independent oversight ombudsman is
7 appropriated separately from funding for the department.

8 [Sections 512.004-512.050 reserved for expansion]

9 SUBCHAPTER B. APPOINTMENT AND MANAGEMENT OF OFFICE

10 Sec. 512.051. APPOINTMENT OF INDEPENDENT OVERSIGHT
11 OMBUDSMAN. (a) The governor shall appoint the independent
12 oversight ombudsman with the advice and consent of the senate for a
13 term of two years, expiring February 1 of odd-numbered years.

14 (b) A person appointed as independent oversight ombudsman
15 is eligible for reappointment but may serve more than three terms in
16 that capacity.

17 (c) The governor shall appoint the independent oversight
18 ombudsman with the advice and consent of the senate for each of the
19 independent oversight ombudsman's subsequent terms of office.

20 Sec. 512.052. ASSISTANTS. The independent oversight
21 ombudsman may hire assistants to perform, under the direction of
22 the independent oversight ombudsman, the same duties and exercise
23 the same powers as the independent oversight ombudsman.

24 Sec. 512.053. CONFLICT OF INTEREST. (a) A person may not
25 serve as independent oversight ombudsman or as an assistant to the
26 independent oversight ombudsman if the person or the person's
27 spouse:

1 (1) is employed by or participates in the management
2 of a business entity or other organization receiving funds from the
3 department;

4 (2) owns or controls, directly or indirectly, any
5 interest in a business entity or other organization receiving funds
6 from the department; or

7 (3) uses or receives any amount of tangible goods,
8 services, or funds from the department.

9 (b) A person may not serve as independent oversight
10 ombudsman or as an assistant to the independent ombudsman if the
11 person or the person's spouse is required to register as a lobbyist
12 under Chapter 305, Government Code, because of the person's
13 activities for compensation on behalf of a profession related to
14 the operation of the department.

15 (c) A person may not serve as independent oversight
16 ombudsman or as an assistant to the independent oversight ombudsman
17 if the person or the person's spouse is an officer, employee,
18 manager, or paid consultant of a Texas trade association in the
19 field of criminal or juvenile justice.

20 (d) For the purposes of this section, a Texas trade
21 association is a nonprofit, cooperative, and voluntarily joined
22 association of business or professional competitors in this state
23 designed to assist its members and its industry or profession in
24 dealing with mutual business or professional problems and in
25 promoting their common interest.

26 Sec. 512.054. REPORT. (a) The independent oversight
27 ombudsman shall submit on a quarterly basis to the governor, the

1 lieutenant governor, the state auditor, and each member of the
2 legislature a report that is both aggregated and disaggregated by
3 individual facility and describes:

4 (1) the work of the independent oversight ombudsman;
5 (2) the results of any review or investigation
6 undertaken by the independent oversight ombudsman, including
7 reviews or investigation of services contracted by the department;
8 and

9 (3) any recommendations that the independent
10 oversight ombudsman has in relation to the duties of the
11 independent oversight ombudsman.

12 (b) The independent oversight ombudsman shall immediately
13 report to the governor, the lieutenant governor, the speaker of the
14 house of representatives, the state auditor, and the office of the
15 inspector general of the commission any particularly serious or
16 flagrant:

17 (1) case of abuse or injury of individual in the
18 department's custody or supervision;

19 (2) problem concerning the administration of a
20 department program or operation;

21 (3) problem concerning the delivery of services in a
22 facility operated by or under contract with the department; or

23 (4) interference by the department with an
24 investigation conducted by the office.

25 Sec. 512.055. COMMUNICATION AND CONFIDENTIALITY. (a) The
26 department shall allow any individual in the department's custody
27 or supervision to communicate with the independent oversight

1 ombudsman or an assistant to the oversight ombudsman. The
2 communication:

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

4 and

5 (2) is confidential and privileged.

6 (b) The records of the independent oversight ombudsman are
7 confidential, except that the independent oversight ombudsman
8 shall:

9 (1) share with the office of inspector general of the
10 department a communication with an individual that may involve
11 abuse or neglect; and

12 (2) disclose its nonprivileged records if required by
13 a court order on a showing of good cause.

14 (c) The independent oversight ombudsman may make reports
15 relating to an investigation public after the investigation is
16 complete but only if the names of all individuals, family members,
17 and employees are redacted from the report and remain confidential.

18 (d) The name, address, or other personally identifiable
19 information of a person who files a complaint with the office of
20 independent oversight ombudsman, information generated by the
21 office of independent oversight ombudsman in the course of an
22 investigation, and confidential records obtained by the office of
23 independent oversight ombudsman are confidential and not subject to
24 disclosure under Chapter 552, Government Code, except that the
25 information and records, other than confidential information and
26 records concerning a pending law enforcement investigation or
27 criminal action, may be disclosed to the appropriate person if the

1 office determines that disclosure is:

2 (1) in the general public interest;

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

5 (3) necessary to identify, prevent, or treat physical
6 or sexual assault or neglect of anyone in the department's custody
7 or supervision.

8 Sec. 512.056. PROMOTION OF AWARENESS OF OFFICE. The
9 independent oversight ombudsman shall promote awareness among the
10 public and individuals in the department's custody or supervision
11 of:

12 (1) how the office may be contacted;

13 (2) the purpose of the office; and

14 (3) the services the office provides.

15 Sec. 512.057. RULEMAKING AUTHORITY. The office by rule
16 shall establish policies and procedures for the operations of the
17 office of independent oversight ombudsman.

18 Sec. 512.058. AUTHORITY OF STATE AUDITOR. The office is
19 subject to audit by the state auditor in accordance with Chapter
20 321, Government Code.

21 [Sections 512.060-512.100 reserved for expansion]

22 SUBCHAPTER C. DUTIES AND POWERS

23 Sec. 512.101. DUTIES AND POWERS. (a) The independent
24 oversight ombudsman shall:

25 (1) review the procedures established by the
26 department and evaluate the delivery of services to individuals in
27 the department's custody or supervision to ensure that the rights

1 of individuals are fully observed;

2 (2) review complaints filed with the independent
3 oversight ombudsman concerning the actions of the department and
4 investigate each complaint in which it appears that an individual
5 may be in need of assistance from the independent oversight
6 ombudsman;

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

10 (A) an individual in the department's custody or
11 supervision or the individual's family may be in need of assistance
12 from the office; or

13 (B) a systemic issue in the department's
14 provision of services is raised by a complaint;

15 (4) review or inspect periodically the facilities and
16 procedures of any institution or residence in which an individual
17 has been placed by the department, whether public or private, to
18 ensure that the rights of those in custody or supervision are fully
19 observed;

20 (5) provide assistance to an individual or family
21 member who the independent oversight ombudsman determines is in
22 need of assistance, including advocating with an agency, provider,
23 or other person in the best interests of the individual in custody
24 or supervision;

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

27 (7) recommend changes in any procedure relating to the

1 treatment of individuals in the department's custody or
2 supervision;

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

5 (9) supervise assistants who are serving as advocates
6 in their representation of individual's in the department's custody
7 or supervision in internal administrative and disciplinary
8 hearings.

9 (b) The independent oversight ombudsman may apprise persons
10 who are interested in a individual's welfare of the rights of the
11 individual.

12 (c) To assess if an individual's rights have been violated,
13 the independent oversight ombudsman may, in any matter that does
14 not involve alleged criminal behavior, contact or consult with an
15 administrator, employee, family member, expert, another individual
16 in the department's custody or supervision, or any other individual
17 in the course of its investigation or to secure information.

18 (d) Notwithstanding any other provision of this chapter,
19 the independent oversight ombudsman may not investigate alleged
20 criminal behavior.

21 Sec.512.102. TREATMENT OF DEPARTMENT EMPLOYEES WHO
22 COOPERATE WITH INDEPENDENT OVERSIGHT OMBUDSMAN. The department may
23 not discharge or in any manner discriminate or retaliate against an
24 employee who in good faith makes a complaint to the office of
25 independent oversight ombudsman or cooperates with the office in an
26 investigation.

27 Sec. 512.103. TRAINING. The independent oversight

1 ombudsman shall attend annual sessions, including the training for
2 correctional officers, and may participate in other appropriate
3 professional training.

4 [Sections 512.104-512.150 reserved for expansion]

5 SUBCHAPTER D. ACCESS TO INFORMATION

6 Sec. 512.151. ACCESS TO INFORMATION OF GOVERNMENTAL
7 ENTITIES. (a) The department shall allow the independent
8 oversight ombudsman access to its records relating to the
9 individuals in the department's custody or supervision.

10 (b) The Department of Public Safety and any local law
11 enforcement agency shall allow the independent oversight ombudsman
12 access to its records relating to any individual in the
13 department's custody or supervision.

14 Sec. 512.152. ACCESS TO INFORMATION OF PRIVATE ENTITIES.
15 The independent oversight ombudsman shall have access to the
16 records of a private entity that relate to an individual in the
17 department's custody or supervision.

18 Section 2. This Act takes effect immediately if it receives
19 a vote of two-thirds of all the members elected to each house, as
20 provided by Section 39, Article III, Texas Constitution. If this
21 Act does not receive the vote necessary for immediate effect, this
22 Act takes effect September 1, 2015.