

By: Rodriguez of Bexar

H.B. No. 3678

A BILL TO BE ENTITLED

AN ACT

relating to the office of independent ombudsman for the Department of Family and Protective Services.

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

SECTION 1. Subtitle D, Title 2, Human Resources Code, is amended by adding Chapter 45 to read as follows:

CHAPTER 45. OFFICE OF INDEPENDENT OMBUDSMAN FOR DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 45.001. DEFINITIONS. In this chapter:

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

(2) "Independent ombudsman" means the individual appointed under this chapter as ombudsman for the office.

(3) "Office" means the office of independent ombudsman for the department.

Sec. 45.002. INDEPENDENCE. The independent ombudsman in the performance of the ombudsman's duties and powers under this chapter acts independently of the department.

Sec. 45.003. SUNSET PROVISION. The office is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2027.

SUBCHAPTER B. APPOINTMENT AND MANAGEMENT OF OFFICE

1       Sec. 45.051. APPOINTMENT. The governor shall appoint the  
2 independent ombudsman to serve at the will of the governor.

3       Sec. 45.052. ASSISTANTS. The independent ombudsman may  
4 appoint assistants to perform, under the direction of the  
5 independent ombudsman, the same duties and exercise the same powers  
6 as the independent ombudsman.

7       Sec. 45.053. CONFLICT OF INTEREST. A person may not serve  
8 as independent ombudsman or as an assistant ombudsman if the person  
9 or the person's spouse:

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

13           (2) owns or controls, directly or indirectly, any  
14 interest in a business entity or other organization receiving funds  
15 from the department; or

16           (3) is required to register as a lobbyist under  
17 Chapter 305, Government Code, because of the person's activities  
18 for compensation on behalf of a profession related to the operation  
19 of the department.

20       Sec. 45.054. REPORT. On or before January 1 of each year,  
21 the independent ombudsman shall submit to the governor, the  
22 lieutenant governor, and each member of the legislature a report  
23 that describes, for the one-year period preceding the report:

24           (1) the work of the ombudsman, including a summary of  
25 each complaint the ombudsman investigated, the ombudsman's  
26 recommendation on the complaint, and whether the complaint was  
27 resolved or required further action;

1           (2) the ombudsman's recommendations relating to the  
2 ombudsman's duties; and

3           (3) the ombudsman's recommendations for improving the  
4 operation of the department.

5           Sec. 45.055. COMMUNICATION AND CONFIDENTIALITY. (a) The  
6 department shall allow any department employee, any party in an  
7 initial investigation, and any child in the conservatorship of the  
8 department to communicate with the independent ombudsman. The  
9 communication:

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

12           (2) is confidential and privileged.

13           (b) All information related to a complaint under  
14 investigation by the office, including the names of persons who  
15 receive services from the department, complainants, and  
16 individuals who provide information to the office in the course of  
17 an investigation, is confidential, unless the independent  
18 ombudsman considers the disclosure of the information is necessary  
19 to:

20           (1) allow the independent ombudsman to conduct the  
21 duties of the office; or

22           (2) support any recommendation made by the independent  
23 ombudsman resulting from an investigation conducted by the office.

24           (c) The independent ombudsman may not disclose or  
25 disseminate any information received by the office that is  
26 considered by law to be confidential or privileged.

27           Sec. 45.056. PROMOTION OF OFFICE. The independent

1 ombudsman shall promote awareness among the public, children in the  
2 conservatorship of the department, family members and caretakers of  
3 those children, and facilities licensed by the department of:

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

7 SUBCHAPTER C. DUTIES AND POWERS

8 Sec. 45.101. DUTIES AND POWERS. (a) The independent  
9 ombudsman serves as a neutral party in assisting persons with a  
10 complaint against the department regarding case-specific  
11 activities of the programs of the department, including adult  
12 protective services, child protective services, child-care  
13 licensing, and statewide intake. The independent ombudsman shall:

14 (1) review complaints filed with the ombudsman  
15 concerning the actions of the department and investigate each  
16 complaint;

17 (2) require the department to provide access to all  
18 records, data, and other information under the control of the  
19 department that the ombudsman determines are necessary to  
20 investigate a complaint;

21 (3) review any reports produced by the department  
22 regarding a complaint referred by the ombudsman;

23 (4) issue a final report with the ombudsman's final  
24 determination of a complaint's merit; and

25 (5) monitor and evaluate the department's actions  
26 relating to the ombudsman's recommendations under Subsection (b).

27 (b) The independent ombudsman's final determination in a

1 report described by Subsection (a)(4) must include a determination  
2 of whether there was wrongdoing or negligence by the department or  
3 an agent of the department or whether the complaint was frivolous  
4 and without merit. If the independent ombudsman determines there  
5 was wrongdoing or negligence, the independent ombudsman shall  
6 recommend corrective actions to be taken by the department.

7 (c) The independent ombudsman may attend any judicial  
8 proceeding related to a complaint filed with the office.

9 Sec. 45.102. ACCESS TO INFORMATION. (a) The department  
10 shall allow the independent ombudsman access to the department's  
11 records that relate to a complaint the ombudsman is investigating.

12 (b) The independent ombudsman may subpoena the records of a  
13 private entity that relate to a complaint the ombudsman is  
14 investigating.

15 Sec. 45.103. RETALIATION PROHIBITED. The department may  
16 not retaliate against a department employee or any other person who  
17 in good faith makes a complaint to the office or cooperates with the  
18 office in an investigation.

19 SUBCHAPTER D. DISPUTES REGARDING FOSTER CHILDREN

20 Sec. 45.151. COMPLAINT FILED WITH INDEPENDENT OMBUDSMAN.

21 (a) A child-placing agency responsible for a foster child may refer  
22 a dispute regarding the child's placement or the permanency plan  
23 for the child to the independent ombudsman by filing a complaint  
24 with the ombudsman.

25 (b) The complaint filed with the independent ombudsman must  
26 include a clear explanation of the dispute and the requested  
27 remedy.

1        Sec. 45.152. NOTIFICATION OF COURT OF INVESTIGATION. The  
2 independent ombudsman shall notify the court with jurisdiction over  
3 the child's case of any investigation of a complaint filed under  
4 this subchapter.

5        SECTION 2. This Act takes effect September 1, 2015.