

BILL ANALYSIS

C.S.H.B. 1421
By: Johnson, Jarvis
Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that there should be routine reporting to certain state officials regarding inmate grievances received by the Texas Department of Criminal Justice (TDCJ). C.S.H.B. 1421 seeks to address this issue by requiring TDCJ to submit a quarterly report regarding inmate grievances to the governor, the lieutenant governor, the state auditor, and each member of the legislature.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1421 amends the Government Code to require the Texas Department of Criminal Justice (TDCJ) to submit a quarterly report regarding inmate grievances to the governor, the lieutenant governor, the state auditor, and each member of the legislature. The bill requires the report to include the number and types of inmate grievances received by TDCJ, aggregated and disaggregated by individual facility.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1421 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subtitle G, Title 4, Government Code, is amended by adding Chapter 512 to read as follows:

**CHAPTER 512. OFFICE OF INDEPENDENT
OVERSIGHT OMBUDSMAN FOR TEXAS**

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

DEPARTMENT OF CRIMINAL JUSTICE
SUBCHAPTER A. GENERAL PROVISIONS
Sec. 512.001. DEFINITIONS. In this chapter:

(1) "Offender" means:

(A) an inmate or state jail defendant confined in a facility operated by or under contract with the department; or

(B) a person under supervision of the department following the person's release on parole or to mandatory supervision.

(2) "Office" means the office of independent oversight ombudsman.

(3) "Ombudsman" means the individual appointed under this chapter as ombudsman for the office.

Sec. 512.002. ESTABLISHMENT; PURPOSE. The office is a state agency established for the purpose of investigating, evaluating, and securing the rights of offenders. The office is also responsible for in-depth review and analysis of data, determination of long-term needs, identification of critical issues and corresponding solutions, and assessment of the efficacy of existing programs.

Sec. 512.003. INDEPENDENCE. The ombudsman acts independently of the department in the performance of the ombudsman's powers and duties under this chapter.

Sec. 512.004. ADMINISTRATIVE ATTACHMENT; SUPPORT; BUDGET. (a) The office is administratively attached to the Commission on Jail Standards.

(b) The Commission on Jail Standards shall provide office space and administrative support services, including human resources, budgetary, accounting, purchasing, payroll, information technology, and legal support services, to the office as necessary to carry out the purposes of this chapter.

(c) The office, in accordance with the rules and procedures of the Legislative Budget Board, shall prepare, approve, and submit a legislative appropriations request that is separate from the legislative appropriations requests for the Commission on Jail Standards and the department and that is used to develop the office's budget structure. The office shall maintain the legislative appropriations request and budget structure separately from those of the Commission on Jail Standards and the department.

SUBCHAPTER B. APPOINTMENT AND MANAGEMENT OF OFFICE

Sec. 512.051. APPOINTMENT OF

OMBUDSMAN. (a) The governor shall appoint the ombudsman with the advice and consent of the senate for a term of two years, expiring February 1 of each odd-numbered year.

(b) A person appointed as ombudsman is eligible for reappointment, provided that the person may not serve more than three terms in that capacity.

Sec. 512.052. ASSISTANTS. The ombudsman may appoint assistants to perform, under the direction of the ombudsman, the same duties and exercise the same powers as the ombudsman.

Sec. 512.053. CONFLICT OF INTEREST.

(a) A person may not serve as ombudsman or as an assistant ombudsman if the person or the person's spouse:

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

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

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

(b) A person may not serve as ombudsman or as an assistant ombudsman if the person or the person's spouse is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the department or the office.

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

(d) In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Sec. 512.054. REPORT. (a) The ombudsman shall submit a quarterly report to the governor, the lieutenant governor, the state auditor, and each member of the legislature that is both aggregated and disaggregated by individual

facility and describes:

(1) the work of the ombudsman and office;
(2) the results of any review or investigation undertaken by the ombudsman, including any review or investigation of services contracted by the department; and

(3) any recommendations that the ombudsman has regarding:

(A) the duties of the ombudsman; or

(B) the operations of the department.

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

(1) case of abuse or injury of an offender;

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

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

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

Sec. 512.055. COMMUNICATION AND CONFIDENTIALITY. (a) The department shall allow any offender to communicate with the ombudsman or an assistant ombudsman.

The communication:

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

(2) is confidential and privileged.

(b) The records of the ombudsman are confidential, except that the ombudsman shall:

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

(2) disclose the ombudsman's nonprivileged records if required by a court order on a showing of good cause.

(c) The ombudsman may make public any report relating to an investigation after the investigation is complete, except that the names of all offenders, family members, and employees remain confidential and must be redacted before the report is made public.

(d) The name, address, and other personally identifiable information of a person who files a complaint with the office, information generated by the office in the course of an investigation, and confidential records obtained by the office are confidential and not subject to disclosure under Chapter 552, except that the information and records, other than confidential information and records

concerning a pending law enforcement investigation or criminal action, may be disclosed to an appropriate person if the office determines that disclosure is:

- (1) in the public interest;
- (2) necessary to enable the office or ombudsman to perform a duty under this chapter; or
- (3) necessary to identify, prevent, or treat physical or sexual assault or neglect of an offender.

Sec. 512.056. PROMOTION OF AWARENESS. The ombudsman shall promote awareness among the public and offenders regarding:

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

Sec. 512.057. RULEMAKING AUTHORITY. The office by rule shall establish policies and procedures for the operations of the office.

Sec. 512.058. AUTHORITY OF STATE AUDITOR. The office is subject to audit by the state auditor in accordance with Chapter 321.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 512.101. POWERS AND DUTIES. (a) The ombudsman shall:

- (1) review the procedures established by the department and evaluate the delivery of services to offenders to ensure that the rights of offenders are fully observed;
- (2) review complaints filed with the office concerning the actions of the department and investigate each complaint in which it appears that an offender maybe in need of assistance from the ombudsman;
- (3) conduct investigations of complaints, other than complaints alleging criminal behavior, if the ombudsman determines that:
 - (A) an offender or an offender's family may be in need of assistance from the ombudsman; or
 - (B) a systemic issue in the department's provision of services is raised by a complaint;
- (4) conduct audits to ensure compliance with the Prison Rape Elimination Act of 2003 (42 U.S.C. Section 15601 et seq.) and any regulation adopted under that act, including 28 C.F.R. Part 115;
- (5) review or inspect periodically the facilities and procedures of any institution or residence in which an offender has been placed by the department, whether public or private, to ensure that the rights of offenders are fully observed;

(6) provide assistance to an offender or family member who the ombudsman determines is in need of assistance, including advocating with an agency, provider, or other person in the best interests of the offender;

(7) review court orders as necessary to fulfill the ombudsman's duties;

(8) recommend changes in any procedure relating to the treatment of offenders;

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

(10) supervise an assistant ombudsman in the assistant's representation of offenders in internal administrative and disciplinary hearings.

(b) The ombudsman may inform persons who are interested in an offender's welfare of the rights of the offender.

(c) To determine if an offender's rights have been violated, the ombudsman may, in any matter that does not involve alleged criminal behavior, contact or consult with an administrator, an employee, a family member, an expert, another offender, or any other individual in the course of the ombudsman's investigation or to secure information.

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

Sec. 512.102. RETALIATION PROHIBITED. The department may not discharge or in any manner discriminate or retaliate against an employee who makes a good faith complaint to the office or cooperates with an investigation under this chapter.

Sec. 512.103. TRAINING. The ombudsman shall attend annual training sessions, including any required training for correctional officers, and may participate in other appropriate professional training.

SUBCHAPTER D. ACCESS TO INFORMATION

Sec. 512.151. ACCESS TO INFORMATION OF CERTAIN GOVERNMENTAL ENTITIES. (a) The department shall allow the ombudsman access to the department's records relating to offenders.

(b) The Department of Public Safety and any local law enforcement agency shall allow the ombudsman access to their records relating to any offender.

Sec. 512.152. ACCESS TO INFORMATION OF PRIVATE ENTITIES. The ombudsman may subpoena the records of a private entity that relate to a complaint the ombudsman is

investigating.

No equivalent provision.

SECTION 2. As soon as practicable after the appointment of the ombudsman under Section 512.051, Government Code, as added by this Act, the ombudsman and the Texas Department of Criminal Justice shall enter into a memorandum of understanding to provide for the orderly transfer of certain duties, functions, programs, and activities of the department to the office of independent oversight ombudsman as necessary for the office to fulfill the office's duties under Chapter 512, Government Code, as added by this Act. The memorandum must provide for the transfer to the office of:

- (1) any funds appropriated to the department for the fiscal biennium ending August 31, 2019, specifically for a purpose, function, or duty that will be transferred to or performed by the office; and
- (2) the exclusive authority to address Step 2 grievances, as identified under the department's Offender Grievance Program as that program existed immediately before the effective date of this Act.

SECTION 3. This Act takes effect September 1, 2017.

SECTION 1. Section 501.008, Government Code, is amended by adding Subsection (g) to read as follows:

(g) The department shall submit a quarterly report regarding inmate grievances to the governor, the lieutenant governor, the state auditor, and each member of the legislature. The report must include the number and types of inmate grievances received by the department, aggregated and disaggregated by individual facility.

No equivalent provision.

SECTION 2. Same as introduced version.