

## **BILL ANALYSIS**

Senate Research Center  
85R2457 MK-D

S.B. 213  
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Health & Human Services  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 213 seeks to create an Office of Independent Ombudsman for the Department of Family and Protective Services (DFPS). This office will serve as a neutral party to assist individuals with complaints within DFPS.

Families and children deserve an impartial investigation when disputing cases with DFPS. Eleven states currently have a children's ombudsman office. These states include Colorado, Connecticut, Georgia, Indiana, Maine, Massachusetts, Michigan, Missouri, Rhode Island, Tennessee, and Washington. It is important that an independent ombudsman investigate claims to protect both the citizen and DFPS to prevent any abuse.

As proposed, S.B. 213 amends current law relating to the office of independent ombudsman for the Department of Family and Protective Services.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle D, Title 2, Human Resources Code, by adding Chapter 45, as follows:

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

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 45.001. DEFINITIONS. Defines "department," "independent ombudsman," and "office."

Sec. 45.002. INDEPENDENCE. Provides that the independent ombudsman in the performance of the ombudsman's duties and powers under this chapter acts independently of the Department of Family and Protective Services (DFPS).

Sec. 45.003. SUNSET PROVISION. Provides that the office of independent ombudsman for DFPS (office) is subject to Chapter 325 (Sunset Law), Government Code (Texas Sunset Act). Provides that, unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2029.

##### **SUBCHAPTER B. APPOINTMENT AND MANAGEMENT OF OFFICE**

Sec. 45.051. APPOINTMENT. Requires the governor to appoint the independent ombudsman to serve at the will of the governor.

Sec. 45.052. ASSISTANTS. Authorizes the independent ombudsman to appoint assistants to perform, under the direction of the independent ombudsman, the same duties and exercise the same powers as the independent ombudsman.

Sec. 45.053. CONFLICT OF INTEREST. Prohibits a person from serving as independent 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 DFPS;
- (2) owns or controls, directly or indirectly, any interest in a business entity or other organization receiving funds from DFPS; or
- (3) is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of DFPS.

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

- (1) the work of the ombudsman, including a summary of each complaint the ombudsman investigated, the ombudsman's recommendation on the complaint, and whether the complaint was resolved or required further action;
- (2) the ombudsman's recommendations relating to the ombudsman's duties; and
- (3) the ombudsman's recommendations for improving the operation of DFPS.

Sec. 45.055. COMMUNICATION AND CONFIDENTIALITY. (a) Requires DFPS to allow any DFPS employee, any party in an initial investigation, and any child in the conservatorship of DFPS to communicate with the independent ombudsman. Provides that the communication may be in person, by mail, or by any other means and is confidential and privileged.

(b) Provides that all information related to a complaint under investigation by the office, including the names of persons who receive services from DFPS, complainants, and individuals who provide information to the office in the course of an investigation, is confidential, unless the independent ombudsman considers the disclosure of the information is necessary to allow the independent ombudsman to conduct the duties of the office or to support any recommendation made by the independent ombudsman resulting from an investigation conducted by the office.

(c) Prohibits the independent ombudsman from disclosing or disseminating any information received by the office that is considered by law to be confidential or privileged.

Sec. 45.056. PROMOTION OF OFFICE. Requires the independent ombudsman to promote awareness among the public, children in the conservatorship of DFPS, family members and caretakers of those children, and facilities licensed by DFPS of how the office may be contacted, the office's purpose, and the services the office provides.

#### SUBCHAPTER C. DUTIES AND POWERS

Sec. 45.101. DUTIES AND POWERS. (a) Provides that the independent ombudsman serves as a neutral party in assisting persons with a complaint against DFPS regarding case-specific activities of DFPS programs, including adult protective services, child

protective services, child-care licensing, and statewide intake. Requires the independent ombudsman to:

- (1) review complaints filed with the ombudsman concerning the actions of DFPS and investigate each complaint;
- (2) require DFPS to provide access to all records, data, and other information under the control of DFPS that the ombudsman determines are necessary to investigate a complaint;
- (3) review any reports produced by DFPS regarding a complaint referred by the ombudsman;
- (4) issue a final report with the ombudsman's final determination of a complaint's merit; and
- (5) monitor and evaluate DFPS's actions relating to the ombudsman's recommendations under Subsection (b).

(b) Requires that the independent ombudsman's final determination in a report described by Subsection (a)(4) include a determination of whether there was wrongdoing or negligence by DFPS or a DFPS agent or whether the complaint was frivolous and without merit. Requires that the independent ombudsman, if the independent ombudsman determines there was wrongdoing or negligence, to recommend corrective actions to be taken by DFPS.

(c) Authorizes the independent ombudsman to attend any judicial proceeding related to a complaint filed with the office.

Sec. 45.102. ACCESS TO INFORMATION. (a) Requires DFPS to allow the independent ombudsman access to DFPS's records that relate to a complaint the ombudsman is investigating.

(b) Authorizes the independent ombudsman to subpoena the records of a private entity that relate to a complaint the ombudsman is investigating.

Sec. 45.103. RETALIATION PROHIBITED. Prohibits DFPS from retaliating against a DFPS employee or any other person who in good faith makes a complaint to the office or cooperates with the office in an investigation.

#### SUBCHAPTER D. DISPUTES REGARDING FOSTER CHILDREN

Sec. 45.151. COMPLAINT FILED WITH INDEPENDENT OMBUDSMAN. (a) Authorizes a child-placing agency responsible for a foster child to refer a dispute regarding the child's placement or the permanency plan for the child to the independent ombudsman by filing a complaint with the ombudsman.

(b) Requires that the complaint filed with the independent ombudsman include a clear explanation of the dispute and the requested remedy.

Sec. 45.152. NOTIFICATION OF COURT OF INVESTIGATION. Requires the independent ombudsman to notify the court with jurisdiction over the child's case of any investigation of a complaint filed under this subchapter.

SECTION 2. Effective date: September 1, 2017.