

By: Rose

H.B. No. 3844

A BILL TO BE ENTITLED

AN ACT

relating to the independent ombudsman for county jails.

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

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

CHAPTER 512. INDEPENDENT OMBUDSMAN FOR COUNTY JAILS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 512.001. DEFINITIONS. In this chapter:

(1) "County jail" means a facility operated by or for a county for the confinement of persons accused or convicted of an offense.

(2) "Independent ombudsman" means the individual appointed under Chapter 261, Human Resources Code, to the office of independent ombudsman.

(3) "Office" means the office of independent ombudsman created under Chapter 261, Human Resources Code.

(4) "Prisoner" means a person confined in a county jail.

Sec. 512.002. PURPOSE. An additional purpose of the office of independent ombudsman established under Chapter 261, Human Resources Code, is investigating, evaluating, and securing the rights of prisoners.

Sec. 512.003. INDEPENDENCE. The independent ombudsman in the performance of the ombudsman's duties and powers under this

1 chapter acts independently of each county under the ombudsman's
2 oversight, including the commissioners court or sheriff of a county
3 and any division, department, or other body that is part of a
4 county.

5 SUBCHAPTER B. MANAGEMENT OF OFFICE

6 Sec. 512.051. CONFLICT OF INTEREST. (a) In addition to the
7 reasons specified by Section 261.053, Human Resources Code, a
8 person may not serve as independent ombudsman or as an assistant to
9 the independent ombudsman if the person 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 a
12 sheriff's department;

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

16 (3) uses or receives any amount of tangible goods,
17 services, or funds from a sheriff's department.

18 (b) A person may not serve as independent ombudsman or as an
19 assistant to the independent ombudsman if the person or the
20 person's spouse is required to register as a lobbyist under Chapter
21 305, Government Code, because of the person's activities for
22 compensation on behalf of a profession related to the operation of a
23 sheriff's department.

24 Sec. 512.052. REPORT. (a) The independent ombudsman shall
25 submit on a quarterly basis to the governor, the lieutenant
26 governor, each member of the legislature, and the Commission on
27 Jail Standards a report that is both aggregated and disaggregated

1 by county jail and describes:

2 (1) the work of the independent ombudsman under this
3 chapter;

4 (2) the results of any review or investigation
5 undertaken by the independent ombudsman under this chapter; and

6 (3) any recommendations that the independent
7 ombudsman has in relation to the duties of the independent
8 ombudsman under this chapter.

9 (b) The independent ombudsman shall immediately report to
10 the governor, the lieutenant governor, the speaker of the house of
11 representatives, the Commission on Jail Standards, and the
12 commissioners court of the applicable county any particularly
13 serious or flagrant:

14 (1) case of abuse or injury of a prisoner;

15 (2) problem concerning the administration of a county
16 jail program or operation;

17 (3) problem concerning the delivery of services in a
18 county jail; or

19 (4) interference by a county with an investigation
20 conducted by the office under this chapter.

21 Sec. 512.053. COMMUNICATION AND CONFIDENTIALITY. (a) The
22 sheriff of a county shall allow any prisoner to communicate with the
23 independent ombudsman or an assistant to the independent ombudsman.

24 The communication:

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

26 and

27 (2) is confidential and privileged.

1 (b) The records of the independent ombudsman under this
2 chapter are confidential, except that the independent ombudsman
3 shall:

4 (1) share a communication made by a prisoner that may
5 involve the abuse or neglect of the prisoner with the appropriate
6 prosecutor of the county in which the prisoner is confined; and

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

9 (c) The independent ombudsman may make reports relating to
10 an investigation under this chapter public after the investigation
11 is complete but only if the names of all prisoners, family members,
12 and employees are redacted from the report and remain confidential.

13 (d) The name, address, or other personally identifiable
14 information of a person who files a complaint under this chapter
15 with the office, information generated by the office in the course
16 of an investigation under this chapter, and confidential records
17 obtained by the office are confidential and not subject to
18 disclosure under Chapter 552, Government Code, except that the
19 information and records, other than confidential information and
20 records concerning a pending law enforcement investigation or
21 criminal action, may be disclosed to the appropriate person if the
22 office determines that disclosure is:

23 (1) in the public interest;

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

26 (3) necessary to identify, prevent, or treat the abuse
27 or neglect of a prisoner.

1 Sec. 512.054. PROMOTION OF AWARENESS OF OFFICE. The
2 independent ombudsman shall promote awareness among the public and
3 prisoners of:

4 (1) how the office may be contacted;

5 (2) the office's purposes under this chapter; and

6 (3) the services the office provides under this
7 chapter.

8 Sec. 512.055. RULEMAKING AUTHORITY. The office shall adopt
9 rules necessary to implement Section 512.056, including rules that
10 establish procedures for county jails to review and comment on
11 reports of the office and for county jails to expedite or eliminate
12 review of and comment on a report due to an emergency or a serious or
13 flagrant circumstance described by Section 512.052(b).

14 Sec. 512.056. REVIEW AND FORMAT OF REPORTS. (a) The office
15 shall accept, both before and after publication, comments from a
16 county jail concerning the following types of reports published by
17 the office under this chapter:

18 (1) the office's quarterly report under Section
19 512.052(a);

20 (2) reports concerning serious or flagrant
21 circumstances under Section 512.052(b); and

22 (3) any other formal reports containing findings and
23 making recommendations concerning systemic issues that affect a
24 county jail.

25 (b) A county jail or sheriff may not submit comments under
26 Subsection (a) after the 30th day after the date the report on which
27 the jail or sheriff is commenting is published.

1 (c) The office shall ensure that reports described by
2 Subsection (a) are in a format to which the county jail or sheriff
3 can easily respond.

4 (d) After receipt of comments under this section, the office
5 is not obligated to change any report or change the manner in which
6 the office performs the duties of the office under this chapter.

7 SUBCHAPTER C. DUTIES AND POWERS

8 Sec. 512.101. DUTIES AND POWERS. (a) Notwithstanding any
9 limitation imposed by Section 261.101, Human Resources Code, and in
10 addition to the independent ombudsman's duties under that section,
11 the independent ombudsman shall:

12 (1) review the procedures established by county jails
13 and evaluate the delivery of services to prisoners to ensure that
14 the rights of prisoners are fully observed;

15 (2) review complaints filed with the independent
16 ombudsman concerning the actions of a county jail and investigate
17 each complaint in which it appears that a prisoner may be in need of
18 assistance from the independent ombudsman;

19 (3) conduct investigations of complaints, other than
20 complaints alleging criminal behavior, if the office determines
21 that:

22 (A) a prisoner or a prisoner's family may be in
23 need of assistance from the office; or

24 (B) a systemic issue in a county jail's provision
25 of services is raised by a complaint;

26 (4) provide assistance to a prisoner or family member
27 who the independent ombudsman determines is in need of assistance,

1 including advocating with an agency, provider, or other person in
2 the best interests of the prisoner;

3 (5) recommend changes in any procedure relating to the
4 treatment of prisoners;

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

7 (7) supervise assistants who are serving as advocates
8 in their representation of prisoners in internal administrative and
9 disciplinary hearings; and

10 (8) immediately report substantiated findings of any
11 investigation related to the health or safety of a prisoner to the
12 sheriff and commissioners court of the county in which the prisoner
13 is confined.

14 (b) The independent ombudsman may apprise persons who are
15 interested in a prisoner's welfare of the rights of the prisoner.

16 (c) To assess if a prisoner's rights have been violated, the
17 independent ombudsman may, in any matter that does not involve
18 alleged criminal behavior:

19 (1) contact or consult with an administrator,
20 employee, family member, expert, another prisoner, or any other
21 individual in the course of the ombudsman's investigation or to
22 secure information; and

23 (2) conduct confidential interviews with persons
24 described by Subdivision (1), review official documents, files, and
25 logs maintained by a county jail, and inspect any part of a county
26 jail at any time.

27 (d) Notwithstanding any other provision of this chapter,

1 the independent ombudsman may not investigate alleged criminal
2 behavior.

3 Sec. 512.102. TREATMENT OF EMPLOYEES WHO COOPERATE WITH
4 INDEPENDENT OMBUDSMAN. (a) A county may not discharge or in any
5 manner discriminate or retaliate against an employee who in good
6 faith makes a complaint to the office or cooperates with the office
7 in an investigation under this chapter.

8 (b) The commissioners court of a county shall adopt policies
9 to protect from adverse employment action a county employee who in
10 good faith makes a complaint to the office or cooperates with the
11 office in an investigation under this chapter.

12 Sec. 512.103. MEMORANDUM OF UNDERSTANDING. The office and
13 the Commission on Jail Standards shall enter into a memorandum of
14 understanding concerning:

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

17 (2) opportunities for collaboration between the
18 office and the commission.

19 SUBCHAPTER D. ACCESS TO INFORMATION

20 Sec. 512.151. ACCESS TO INFORMATION OF GOVERNMENTAL
21 ENTITIES. (a) A county jail shall allow the independent ombudsman
22 access to the jail's records relating to prisoners.

23 (b) The Department of Public Safety and any local law
24 enforcement agency shall allow the independent ombudsman access to
25 its records relating to a prisoner.

26 Sec. 512.152. ACCESS TO INFORMATION OF PRIVATE ENTITIES.
27 The independent ombudsman shall have access to the records of a

1 private entity that relate to a prisoner.

2 SECTION 2. This Act takes effect September 1, 2017.