

By: Johnson of Harris, Allen, Miller, Wu,
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H.B. No. 363

Substitute the following for H.B. No. 363:

By: Allen

C.S.H.B. No. 363

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the office of independent oversight
ombudsman for the Texas Department of Criminal Justice.

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. OFFICE OF INDEPENDENT OVERSIGHT OMBUDSMAN FOR TEXAS

DEPARTMENT OF CRIMINAL JUSTICE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 512.001. DEFINITIONS. In this chapter:

(1) "Facility" means a facility operated by or under
contract with the department that is used primarily for the
confinement of offenders.

(2) "Offender" means an inmate or state jail defendant
confined in a facility.

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

(4) "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 monitoring the
conditions of confinement and treatment of offenders,
investigating, evaluating, and securing the rights of offenders,
and assisting the department in improving its operations. The

1 office is also responsible for conducting in-depth reviews and
2 analyses of data, determining long-term needs, identifying
3 critical issues facing the department and corresponding solutions
4 to those issues, investigating significant group disturbances and
5 critical incidents, and assessing the efficacy of existing
6 programs.

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

10 Sec. 512.004. ADMINISTRATIVE ATTACHMENT; SUPPORT; BUDGET.

11 (a) The office is administratively attached to the Commission on
12 Jail Standards.

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

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

24 SUBCHAPTER B. APPOINTMENT AND MANAGEMENT OF OFFICE

25 Sec. 512.051. APPOINTMENT OF OMBUDSMAN. (a) The governor
26 shall appoint, with the advice and consent of the senate, a person
27 to serve as ombudsman from a list of persons recommended by the

1 chair of each standing committee of the legislature having primary
2 jurisdiction over the department.

3 (b) The ombudsman serves a four-year term and may be removed
4 by the governor only for good cause.

5 (c) A person may not serve as ombudsman for more than two
6 terms.

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

10 Sec. 512.053. CONFLICT OF INTEREST. (a) A person may not
11 serve as ombudsman or as an assistant ombudsman if the person or the
12 person's spouse:

13 (1) is employed by or participates in the management
14 of a business entity or other organization receiving funds from the
15 department or the office or was employed by or participated in the
16 management of such an entity or organization in the five years
17 preceding the date of the person's appointment;

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

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

23 (4) is an officer, employee, manager, or paid
24 consultant of the department or was an officer, employee, manager,
25 or paid consultant of the department in the five years preceding the
26 date of the person's appointment.

27 (b) A person may not serve as ombudsman or as an assistant

1 ombudsman if the person or the person's spouse is required to
2 register as a lobbyist under Chapter 305 because of the person's
3 activities for compensation on behalf of a profession related to
4 the operation of the department or the office.

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

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

15 Sec. 512.054. REPORT. (a) The ombudsman shall prepare and
16 submit to the governor, the lieutenant governor, the state auditor,
17 and each member of the legislature:

18 (1) periodic reports that evaluate systemic issues
19 affecting the department and any current issues at individual
20 facilities; and

21 (2) an annual report that is both aggregated and
22 disaggregated by individual facility and describes:

23 (A) the work of the ombudsman and office;

24 (B) the results of any review or investigation
25 undertaken by the ombudsman, including any review or investigation
26 of services contracted by the department; and

27 (C) any recommendations that the ombudsman has

1 regarding:

2 (i) the duties of the ombudsman; or

3 (ii) the operations of the department.

4 (b) The ombudsman shall immediately report to the executive
5 director or the executive director's designee, the governor, the
6 lieutenant governor, the speaker of the house of representatives,
7 the state auditor, and the office of the inspector general of the
8 department any particularly serious or flagrant:

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

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

12 (3) problem concerning the delivery of services in a
13 facility; or

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

16 (c) In response to any recommendation made by the ombudsman
17 in a report submitted under this section, the department shall:

18 (1) develop a corrective action plan to specifically
19 address the recommendation; or

20 (2) submit to the ombudsman a written objection to the
21 recommendation that includes the reasons for the objection.

22 (d) The ombudsman shall publish on the office's Internet
23 website each:

24 (1) report submitted under this section;

25 (2) corrective action plan developed under Subsection

26 (c)(1); and

27 (3) objection submitted under Subsection (c)(2).

1 Sec. 512.055. COMMUNICATION AND CONFIDENTIALITY. (a) The
2 department shall establish procedures allowing any offender or
3 facility administrator or employee to communicate with the
4 ombudsman or an assistant ombudsman regarding a power or duty of the
5 ombudsman or office. The communication:

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

7 and

8 (2) is confidential and privileged.

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

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

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

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

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

1 appropriate person if the office determines that disclosure is:

2 (1) in the public interest;

3 (2) necessary to enable the office or ombudsman to
4 perform a duty under this chapter; or

5 (3) necessary to identify, prevent, or treat physical
6 or sexual assault or neglect of an offender.

7 Sec. 512.056. PROMOTION OF AWARENESS. The ombudsman shall
8 promote awareness among the department, the public, and offenders
9 regarding:

10 (1) how the office may be contacted;

11 (2) the purpose of the office; and

12 (3) the services the office provides.

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

16 SUBCHAPTER C. POWERS AND DUTIES

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

18 (1) review the procedures established by the
19 department and evaluate the delivery of services to offenders to
20 identify alternate procedures or services that would optimize the
21 use of state resources while ensuring that the rights of offenders
22 are fully observed;

23 (2) routinely review grievances and grievance logs to
24 address any pattern of actions of the department affecting the
25 treatment of offenders;

26 (3) conduct investigations of complaints submitted by
27 offenders, family members, and employees and review criminal

1 investigations conducted by the office of the inspector general of
2 the department if the ombudsman determines that a pattern of
3 complaints exists suggesting that an issue affects more than one
4 offender;

5 (4) review or inspect periodically the facilities and
6 procedures of any institution or residence in which an offender has
7 been placed by the department, whether public or private, to ensure
8 that the rights of offenders are fully observed;

9 (5) conduct immediate investigations of a significant
10 group disturbance or other critical incident to determine whether a
11 change in department policy or practice is necessary;

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

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

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

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

22 (10) supervise an assistant ombudsman in the
23 performance of the assistant ombudsman's duties.

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

26 (c) To determine if an offender's rights have been violated,
27 the ombudsman may, in any matter that does not involve alleged

1 criminal behavior, contact or consult with an administrator, an
2 employee, a family member, an expert, another offender, or any
3 other individual in the course of the ombudsman's investigation or
4 to secure information.

5 (d) Notwithstanding any other provision of this chapter,
6 the ombudsman may not investigate alleged criminal behavior, except
7 that the ombudsman may review, in accordance with Subsection
8 (a)(3), a criminal investigation conducted by the office of the
9 inspector general of the department to ensure that the
10 investigation was conducted in an accurate, unbiased, and thorough
11 manner.

12 (e) An inmate's complaint to the office and any
13 investigation conducted by the ombudsman under this chapter are
14 independent of the inmate grievance system developed under Section
15 501.008 and do not affect the procedures, rights, or duties
16 established under that system or constitute a grievance under that
17 system.

18 Sec. 512.102. RETALIATION PROHIBITED. The department may
19 not:

20 (1) discharge, discipline, or in any manner
21 discriminate or retaliate against an employee who makes a good
22 faith complaint to the office or cooperates with an investigation
23 under this chapter; or

24 (2) discipline or in any manner discriminate or
25 retaliate against an offender who complains to or communicates or
26 cooperates with the office in the course of the office carrying out
27 its duties.

1 Sec. 512.103. TRAINING. The ombudsman may attend training
2 sessions for correctional officers or participate in other
3 appropriate professional training.

4 SUBCHAPTER D. ACCESS TO INFORMATION, FACILITIES, AND PERSONNEL

5 Sec. 512.151. ACCESS TO INFORMATION OF CERTAIN GOVERNMENTAL
6 ENTITIES. The department shall allow the ombudsman access to the
7 department's records relating to an offender or investigation. In
8 allowing access to records under this section, the department shall
9 fully cooperate and collaborate with the office in a prompt manner
10 in order for the office to carry out its duties and improve facility
11 operations and conditions.

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

15 Sec. 512.153. ACCESS TO FACILITIES, RECORDS, AND PERSONNEL.
16 (a) The office may inspect or review without notice any part of a
17 facility or any facility operation, policy, procedure, record, or
18 log relating to:

- 19 (1) a condition of confinement;
20 (2) offender discipline and the use of force against
21 offenders;
22 (3) an incident of assault or sexual assault;
23 (4) death of or serious bodily injury to an offender;
24 (5) the provision of health care, including mental
25 health care;
26 (6) the offender grievance process;
27 (7) a telephone, mail, or visitation policy;

1 (8) a rehabilitation, reentry, or reintegration
2 program;

3 (9) employee recruitment, training, supervision, or
4 discipline; and

5 (10) staffing levels and staffing deployment.

6 (b) The ombudsman shall coordinate with the office of the
7 inspector general of the department to develop policies and
8 procedures that ensure an inspection or review under Subsection (a)
9 does not interfere with a criminal investigation being conducted by
10 the office of the inspector general.

11 (c) In conducting an investigation, the office may:

12 (1) interview offenders and facility administrators
13 or employees;

14 (2) hold public hearings; and

15 (3) issue a subpoena to compel the attendance of a
16 relevant witness or the production of relevant records or
17 documents.

18 SUBCHAPTER E. ADVISORY BOARD

19 Sec. 512.201. CREATION AND COMPOSITION OF ADVISORY BOARD.

20 (a) An advisory board is created to advise the office in carrying
21 out the office's duties under this chapter.

22 (b) The advisory board is composed of the following nine
23 members appointed by the governor:

24 (1) one family member of an offender or a former
25 offender;

26 (2) one health care professional;

27 (3) one social worker;

1 (4) one person with expertise in administrative or
2 criminal investigations;

3 (5) one person with expertise in sexual assault victim
4 advocacy;

5 (6) one person with expertise in occupational safety
6 and health;

7 (7) one person with expertise in research and data
8 analysis;

9 (8) one former offender; and

10 (9) one former correctional officer.

11 (c) The chair of each standing committee of the legislature
12 having primary jurisdiction over the department and the primary
13 author and sponsor of the legislation enacting this chapter, but
14 only if the author or sponsor continues to be a member of the
15 legislature, may provide the governor with recommendations on any
16 appointment made under Subsection (b).

17 (d) Members of the advisory board serve staggered four-year
18 terms.

19 (e) A person may not serve as a member of the advisory board
20 for more than two terms.

21 (f) Chapter 2110 does not apply to the composition or
22 duration of the advisory board.

23 SECTION 2. (a) As soon as practicable after the effective
24 date of this Act, the governor shall appoint an initial ombudsman
25 under Chapter 512, Government Code, as added by this Act, to a term
26 expiring February 1, 2023.

27 (b) Not later than December 1, 2019, the governor shall

C.S.H.B. No. 363

1 appoint the members of the advisory board under Section 512.201,
2 Government Code, as added by this Act.

3 SECTION 3. This Act takes effect September 1, 2019.