

By: Johnson of Harris

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 and
investigating, evaluating, and securing the rights of offenders.
The office is also responsible for in-depth review and analysis of

1 data, determination of long-term needs, identification of critical
2 issues and corresponding solutions, and assessment of the efficacy
3 of existing programs.

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

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

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

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

21 SUBCHAPTER B. APPOINTMENT AND MANAGEMENT OF OFFICE

22 Sec. 512.051. APPOINTMENT OF OMBUDSMAN. (a) The governor
23 shall appoint the ombudsman with the advice and consent of the
24 senate for a term of four years. The ombudsman may be removed by the
25 governor only for good cause.

26 (b) A person may not serve as ombudsman for more than two
27 terms.

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

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

7 (1) is employed by or participates in the management
8 of a business entity or other organization receiving funds from the
9 department or the office or was employed by or participated in the
10 management of such an entity or organization in the five years
11 preceding the date of the person's appointment;

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

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

17 (4) is an officer, employee, manager, or paid
18 consultant of the department.

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

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

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

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

10 (1) periodic reports that evaluate any current issues
11 at individual facilities; and

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

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

15 (B) the results of any review or investigation
16 undertaken by the ombudsman, including any review or investigation
17 of services contracted by the department; and

18 (C) any recommendations that the ombudsman has
19 regarding:

20 (i) the duties of the ombudsman; or

21 (ii) the operations of the department.

22 (b) The ombudsman shall immediately report to the executive
23 director or the executive director's designee, the governor, the
24 lieutenant governor, the speaker of the house of representatives,
25 the state auditor, and the office of the inspector general of the
26 department any particularly serious or flagrant:

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

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

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

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

7 (c) The department shall develop a corrective action plan to
8 specifically address any recommendation made by the ombudsman in a
9 report submitted under this section.

10 (d) The ombudsman shall make public each report submitted
11 and corrective action plan developed under this section.

12 Sec. 512.055. COMMUNICATION AND CONFIDENTIALITY. (a) The
13 department shall establish procedures allowing any offender or
14 facility administrator or employee to communicate with the
15 ombudsman or an assistant ombudsman regarding a power or duty of the
16 ombudsman or office. The communication:

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

19 (2) is confidential and privileged.

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

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

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

27 (c) The ombudsman may make public any report relating to an

1 investigation after the investigation is complete, except that the
2 names of all offenders, family members, and employees remain
3 confidential and must be redacted before the report is made public.

4 (d) The name, address, and other personally identifiable
5 information of a person who files a complaint with the office,
6 information generated by the office in the course of an
7 investigation, and confidential records obtained by the office are
8 confidential and not subject to disclosure under Chapter 552,
9 except that the information and records, other than confidential
10 information and records concerning a pending law enforcement
11 investigation or criminal action, may be disclosed to an
12 appropriate person if the office determines that disclosure is:

13 (1) in the public interest;

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

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

18 Sec. 512.056. PROMOTION OF AWARENESS. The ombudsman shall
19 promote awareness among the department, the public, and offenders
20 regarding:

21 (1) how the office may be contacted;

22 (2) the purpose of the office; and

23 (3) the services the office provides.

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

27 Sec. 512.058. AUTHORITY OF STATE AUDITOR. The office is

1 subject to audit by the state auditor in accordance with Chapter
2 321.

3 SUBCHAPTER C. POWERS AND DUTIES

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

5 (1) review the procedures established by the
6 department and evaluate the delivery of services to offenders to
7 identify alternate procedures or services that would optimize the
8 use of state resources while ensuring that the rights of offenders
9 are fully observed;

10 (2) review complaints concerning actions of the
11 department;

12 (3) conduct investigations of complaints and review
13 criminal investigations conducted by the office of the inspector
14 general of the department if the ombudsman determines that:

15 (A) an offender or an offender's family may be in
16 need of assistance from the ombudsman; or

17 (B) a pattern of complaints exists suggesting
18 that an issue affects more than one offender;

19 (4) conduct audits to ensure compliance with the
20 Prison Rape Elimination Act of 2003 (34 U.S.C. Section 30301 et
21 seq.) and any regulation adopted under that act;

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

26 (6) provide assistance to an offender or family member
27 who the ombudsman determines is in need of assistance, including

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

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

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

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

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

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

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

20 (d) Notwithstanding any other provision of this chapter,
21 the ombudsman may not investigate alleged criminal behavior, except
22 that the ombudsman may review, in accordance with Subsection
23 (a)(3), a criminal investigation conducted by the office of the
24 inspector general of the department to ensure that the
25 investigation was conducted in an accurate, unbiased, and thorough
26 manner.

27 (e) The office may contract with subject matter experts as

1 necessary to carry out a duty under this chapter.

2 Sec. 512.102. RETALIATION PROHIBITED. The department may
3 not:

4 (1) discharge, discipline, or in any manner
5 discriminate or retaliate against an employee who makes a good
6 faith complaint to the office or cooperates with an investigation
7 under this chapter; or

8 (2) discipline or in any manner discriminate or
9 retaliate against an offender who complains to or communicates or
10 cooperates with the office in the course of the office carrying out
11 its duties.

12 Sec. 512.103. TRAINING. The ombudsman may attend training
13 sessions for correctional officers or participate in other
14 appropriate professional training.

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

16 Sec. 512.151. ACCESS TO INFORMATION OF CERTAIN GOVERNMENTAL
17 ENTITIES. (a) The department shall allow the ombudsman access to
18 the department's records relating to an offender or investigation.

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

22 (c) In allowing access to records under this section, the
23 department, the Department of Public Safety, or a local law
24 enforcement agency shall fully cooperate and collaborate with the
25 office in a prompt manner in order for the office to carry out its
26 duties and improve facility operations and conditions.

27 Sec. 512.152. ACCESS TO INFORMATION OF PRIVATE ENTITIES.

1 The ombudsman may subpoena the records of a private entity that
2 relate to a complaint the ombudsman is investigating.

3 Sec. 512.153. ACCESS TO FACILITIES AND PERSONNEL. (a) The
4 office may inspect or review without notice any part of a facility
5 or any facility operation, policy, or procedure, including any
6 operation, policy, or procedure relating to:

7 (1) a condition of confinement;

8 (2) offender discipline and the use of force against
9 offenders;

10 (3) an incident of assault or sexual assault;

11 (4) death of or serious bodily injury to an offender;

12 (5) the provision of health care, including mental
13 health care;

14 (6) the offender grievance process;

15 (7) a telephone, mail, or visitation policy;

16 (8) a rehabilitation, reentry, or reintegration
17 program; and

18 (9) employee recruitment, training, supervision, or
19 discipline.

20 (b) In conducting an investigation, the office may:

21 (1) interview offenders and facility administrators
22 or employees;

23 (2) hold public hearings; and

24 (3) issue a subpoena to compel the attendance of a
25 relevant witness or the production of relevant records or
26 documents.

SUBCHAPTER E. ADVISORY BOARD

Sec. 512.201. CREATION AND COMPOSITION OF ADVISORY BOARD.

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

(b) The advisory board is composed of the following members:

(1) three members appointed by the governor;

(2) three members appointed by the chair of the standing committee of the house of representatives having primary jurisdiction over the department;

(3) three members appointed by the chair of the standing committee of the senate having primary jurisdiction over the department;

(4) one member appointed by the primary author of the legislation enacting this chapter, but only if the author continues to be a member of the legislature; and

(5) one member appointed by the primary sponsor of the legislation enacting this chapter, but only if the sponsor continues to be a member of the legislature.

(c) The members appointed under Subsection (b) must include:

(1) one member who is a family member of an offender or a former offender;

(2) one member who is a health care professional;

(3) one member who is a social worker;

(4) one member with expertise in administrative or criminal investigations;

(5) one member with expertise in sexual assault victim

1 advocacy;

2 (6) one member with expertise in occupational safety
3 and health; and

4 (7) one member with expertise in research and data
5 analysis.

6 (d) Chapter 2110 does not apply to the composition or
7 duration of the advisory board.

8 SECTION 2. As soon as practicable after the effective date
9 of this Act, the governor shall appoint an initial ombudsman under
10 Chapter 512, Government Code, as added by this Act, to a term
11 expiring February 1, 2023.

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