

By: Guillen

H.B. No. 3648

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of the office of independent
ombudsman for the Texas Juvenile Justice Department.

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

SECTION 1. Section 261.001, Human Resources Code, is
amended by amending Subdivision (1) and adding Subdivisions (1-a)
and (1-b) to read as follows:

(1) "Child" means an individual who is:

(A) 10 years of age or older and younger than 19
years of age; and

(B) placed in or committed to a facility by an
order issued by a juvenile court.

(1-a) "Facility" means a post-adjudication secure or
nonsecure correctional or detention facility or a
post-adjudication residential facility that serves children and
that is operated by:

(A) the department, a juvenile board, a juvenile
probation department, or other governmental entity; or

(B) a private entity under a contract with a
governmental entity.

(1-b) "Independent ombudsman" means the individual
who has been appointed under this chapter to the office of
independent ombudsman.

SECTION 2. Section 261.002, Human Resources Code, is

1 amended to read as follows:

2 Sec. 261.002. ESTABLISHMENT; PURPOSE. The office of
3 independent ombudsman is a state agency established for the purpose
4 of investigating, evaluating, and securing the rights of the
5 children placed in or committed to a facility [~~the department~~],
6 including a child released under supervision before final
7 discharge.

8 SECTION 3. Section 261.055(b), Human Resources Code, is
9 amended to read as follows:

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

15 (1) case of abuse or injury of a child placed in or
16 committed to a facility [~~the department~~];

17 (2) problem concerning the administration of a
18 facility [~~department~~] program or operation;

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

21 (4) interference by an operator of a facility [~~the~~
22 ~~department~~] with an investigation conducted by the office.

23 SECTION 4. Section 261.056(a), Human Resources Code, is
24 amended to read as follows:

25 (a) The operator of a facility [~~department~~] shall allow any
26 child placed in or committed to the facility [~~the department~~] to
27 communicate with the independent ombudsman or an assistant to the

1 ombudsman. The communication:

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

3 and

4 (2) is confidential and privileged.

5 SECTION 5. Section 261.057, Human Resources Code, is
6 amended to read as follows:

7 Sec. 261.057. PROMOTION OF AWARENESS OF OFFICE. The
8 independent ombudsman shall promote awareness among the public and
9 the children placed in or committed to a facility [~~the department~~]
10 of:

11 (1) how the office may be contacted;

12 (2) the purpose of the office; and

13 (3) the services the office provides.

14 SECTION 6. Section 261.058(b), Human Resources Code, is
15 amended to read as follows:

16 (b) The office and the board shall adopt rules necessary to
17 implement Section 261.060, including rules that establish
18 procedures for an operator of a facility [~~the department~~] to review
19 and comment on reports of the office and for the operator
20 [~~department~~] to expedite or eliminate review of and comment on a
21 report due to an emergency or a serious or flagrant circumstance
22 described by Section 261.055(b).

23 SECTION 7. Section 261.060(a), Human Resources Code, is
24 amended to read as follows:

25 (a) The office shall accept, both before and after
26 publication, comments from the board or the operator of a facility,
27 as applicable, concerning the following types of reports published

1 by the office under this chapter:

2 (1) the office's quarterly report under Section
3 261.055(a);

4 (2) reports concerning serious or flagrant
5 circumstances under Section 261.055(b); and

6 (3) any other formal reports containing findings and
7 making recommendations concerning systemic issues that affect an
8 operator of a facility [~~the department~~].

9 SECTION 8. Section 261.101(a), Human Resources Code, is
10 amended to read as follows:

11 (a) The independent ombudsman shall:

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

15 (2) review complaints filed with the independent
16 ombudsman concerning the actions of an operator of a facility [~~the~~
17 ~~department~~] and investigate each complaint in which it appears that
18 a child may be in need of 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 child placed in or committed to a facility
23 [~~the department~~] or the child's family may be in need of assistance
24 from the office; or

25 (B) a systemic issue in the [~~department's~~]
26 provision of services by an operator of a facility is raised by a
27 complaint;

1 (4) review or inspect periodically each facility [~~the~~
2 ~~facilities~~] and the procedures of each facility [~~any institution or~~
3 ~~residence in which a child has been placed by the department,~~
4 ~~whether public or private,~~] to ensure that the rights of children
5 are fully observed;

6 (5) provide assistance to a child or family who the
7 independent ombudsman determines is in need of assistance,
8 including advocating with an agency, provider, or other person in
9 the best interests of the child;

10 (6) review court orders as necessary to fulfill its
11 duties;

12 (7) recommend changes in any procedure relating to the
13 treatment of children placed in or committed to a facility [~~the~~
14 ~~department~~];

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

17 (9) supervise assistants who are serving as advocates
18 in their representation of children placed in or committed to a
19 facility [~~the department~~] in internal administrative and
20 disciplinary hearings;

21 (10) review reports received by the department
22 relating to complaints regarding juvenile probation programs,
23 services, or facilities and analyze the data contained in the
24 reports to identify trends in complaints;

25 (11) report a possible standards violation by a local
26 juvenile probation department to the appropriate division of the
27 department; and

1 (12) immediately report the findings of any
2 investigation related to the operation of a [~~post-adjudication~~
3 ~~correctional~~] facility in a county to the chief juvenile probation
4 officer and the juvenile board of the county.

5 SECTION 9. Section 261.102, Human Resources Code, is
6 amended to read as follows:

7 Sec. 261.102. TREATMENT OF [~~DEPARTMENT~~] EMPLOYEES WHO
8 COOPERATE WITH INDEPENDENT OMBUDSMAN. The operator of a facility
9 [~~department~~] may not discharge or in any manner discriminate or
10 retaliate against an employee who in good faith makes a complaint to
11 the office of independent ombudsman or cooperates with the office
12 in an investigation.

13 SECTION 10. Section 261.104, Human Resources Code, is
14 amended to read as follows:

15 Sec. 261.104. MEMORANDUM OF UNDERSTANDING. (a) The office
16 and an operator of a facility [~~the department~~] shall enter into a
17 memorandum of understanding concerning:

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

20 (2) the procedures for handling overlapping
21 monitoring duties and activities performed by the office and the
22 department or a county.

23 (b) The memorandum of understanding entered into under
24 Subsection (a), at a minimum, must:

25 (1) address the interaction of the office with that
26 portion of the department that conducts an internal audit under
27 Section 203.013;

1 (2) address communication between the office and the
2 operator of a facility [~~department~~] concerning individual
3 situations involving children placed in or committed to the
4 facility [~~department~~] and how those situations will be documented
5 and handled;

6 (3) contain guidelines on the office's role in
7 relevant working groups and policy development decisions at the
8 department or with the county;

9 (4) ensure opportunities for sharing information
10 between the office and the department or county for the purposes of
11 assuring quality and improving programming within the facility
12 [~~department~~]; and

13 (5) preserve the independence of the office by
14 authorizing the office to withhold information concerning matters
15 under active investigation by the office from the operator of a
16 facility [~~department~~] and the [~~department~~] staff of the facility
17 and to report the information to the board and the governor.

18 SECTION 11. Sections 261.151(a) and (c), Human Resources
19 Code, are amended to read as follows:

20 (a) The independent ombudsman has access to the
21 [~~department's~~] records of the operator of a facility relating to
22 the children placed in or committed to the facility [~~department~~].

23 (c) A local law enforcement agency shall allow the
24 independent ombudsman access to its records relating to any child
25 in the care or custody of an operator of a facility [~~the~~
26 ~~department~~].

27 SECTION 12. Section 261.152, Human Resources Code, is

1 amended to read as follows:

2 Sec. 261.152. ACCESS TO INFORMATION OF PRIVATE ENTITIES.
3 The independent ombudsman shall have access to the records of a
4 private entity that relate to a child placed in or committed to a
5 facility [~~the department~~].

6 SECTION 13. The following provisions of the Human Resources
7 Code are repealed:

8 (1) Section 261.101(e), as added by Section 11(b),
9 Chapter 854 (S.B. 1149), Acts of the 84th Legislature, Regular
10 Session, 2015; and

11 (2) Section 261.101(e), as amended by Chapter 962
12 (S.B. 1630), Acts of the 84th Legislature, Regular Session, 2015.

13 SECTION 14. This Act takes effect September 1, 2019.