

By: Miles

S.B. No. 1386

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. (a) 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 (b) Funding for the office is appropriated separately from
11 funding for the department.

12 SUBCHAPTER B. ADMINISTRATION OF OFFICE

13 Sec. 512.051. APPOINTMENT OF OMBUDSMAN. (a) The governor
14 shall appoint, with the advice and consent of the senate, a person
15 to serve as ombudsman from a list of persons recommended by the
16 chair of each standing committee of the legislature having primary
17 jurisdiction over the department.

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

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

22 Sec. 512.052. ASSISTANTS. The ombudsman may appoint
23 assistants to perform, under the direction of the ombudsman, the
24 same duties and to exercise the same powers as the ombudsman.

25 Sec. 512.053. CONFLICT OF INTEREST. (a) In this section,
26 "Texas trade association" means a cooperative and voluntarily
27 joined association of business or professional competitors in this

1 state designed to assist its members and its industry or profession
2 in dealing with mutual business or professional problems and in
3 promoting their common interest.

4 (b) A person may not serve as ombudsman or as an assistant
5 ombudsman if the person or the person's spouse:

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

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

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

16 (4) is an officer, employee, manager, or paid
17 consultant of the department or was an officer, employee, manager,
18 or paid consultant of the department in the five years preceding the
19 date of the person's appointment;

20 (5) is required to register as a lobbyist under
21 Chapter 305 because of the person's activities for compensation on
22 behalf of a profession related to the operation of the department or
23 the office; or

24 (6) is an officer, employee, manager, or paid
25 consultant of a Texas trade association in the field of criminal or
26 juvenile justice.

27 Sec. 512.054. REPORT. (a) The ombudsman shall prepare and

1 submit to the governor, the lieutenant governor, the state auditor,
2 and each member of the legislature:

3 (1) periodic reports that evaluate systemic issues
4 affecting the department and any current issues at individual
5 facilities; and

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

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

9 (B) the results of any review or investigation
10 undertaken by the ombudsman, including any review or investigation
11 of services contracted by the department; and

12 (C) any recommendations that the ombudsman has
13 regarding:

14 (i) the duties of the ombudsman; or

15 (ii) the operations of the department.

16 (b) The ombudsman shall immediately report to the executive
17 director, or the executive director's designee, and to the
18 governor, the lieutenant governor, the speaker of the house of
19 representatives, the state auditor, and the office of the inspector
20 general of the department any particularly serious or flagrant:

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

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

24 (3) problem concerning the delivery of services in a
25 facility;

26 (4) interference by the department with an
27 investigation conducted by the office; or

1 (5) confirmed outbreak of a communicable disease as
2 defined by Section 81.003, Health and Safety Code.

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

5 (1) develop a corrective action plan to specifically
6 address the recommendation; or

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

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

11 (1) report submitted under this section;

12 (2) corrective action plan developed under Subsection
13 (c)(1); and

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

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

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

22 (2) is confidential and privileged.

23 (b) The records of the ombudsman are confidential, except
24 that the ombudsman shall:

25 (1) share with the office of the inspector general of
26 the department a communication with an offender that may involve
27 abuse or neglect; and

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

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

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

16 (1) in the public interest;

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

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

21 Sec. 512.056. PROMOTION OF AWARENESS. The ombudsman shall
22 promote awareness among the department, the public, and offenders
23 regarding:

24 (1) how the office may be contacted;

25 (2) the purpose of the office; and

26 (3) the services the office provides.

27 Sec. 512.057. RULEMAKING AUTHORITY. The office by rule

1 shall establish policies and procedures for the operations of the
2 office.

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) routinely review grievances and grievance logs to
11 address any pattern of actions of the department affecting the
12 treatment of offenders;

13 (3) conduct investigations of complaints submitted by
14 offenders, family members, and employees and review criminal
15 investigations conducted by the office of the inspector general of
16 the department if the ombudsman determines that a pattern of
17 complaints exists suggesting that an issue affects more than one
18 offender;

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

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

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 performance of the assistant ombudsman's duties.

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

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

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

26 (e) An inmate's complaint to the office and any
27 investigation conducted by the ombudsman under this chapter are

1 independent of the inmate grievance system developed under Section
2 501.008 and do not affect the procedures, rights, or duties
3 established under that system or constitute a grievance under that
4 system.

5 Sec. 512.102. RETALIATION PROHIBITED. The department may
6 not:

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

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

15 Sec. 512.103. TRAINING. The ombudsman may attend training
16 sessions for correctional officers or participate in other
17 appropriate professional training.

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

19 Sec. 512.151. ACCESS TO INFORMATION OF CERTAIN GOVERNMENTAL
20 ENTITIES. The department shall allow the ombudsman access to the
21 department's records relating to an offender or investigation. In
22 allowing access to records under this section, the department shall
23 fully cooperate and collaborate with the office in a prompt manner
24 in order for the office to carry out its duties and improve facility
25 operations and conditions.

26 Sec. 512.152. ACCESS TO INFORMATION OF PRIVATE ENTITIES.
27 The ombudsman may subpoena the records of a private entity that

1 relate to a complaint the ombudsman is investigating.

2 Sec. 512.153. ACCESS TO FACILITIES, RECORDS, AND PERSONNEL.

3 (a) The office may inspect or review without notice any part of a
4 facility or any facility operation, policy, procedure, record, or
5 log relating to:

6 (1) a condition of confinement;

7 (2) offender discipline and the use of force against
8 an offender;

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

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

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

13 (6) the offender grievance process;

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

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

17 (9) employee recruitment, training, supervision, or
18 discipline; and

19 (10) staffing levels and staffing deployment.

20 (b) The ombudsman shall coordinate with the office of the
21 inspector general of the department to develop policies and
22 procedures that ensure an inspection or review under Subsection (a)
23 does not interfere with a criminal investigation being conducted by
24 the office of the inspector general.

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

26 (1) interview offenders and facility administrators
27 or employees;

1 (2) hold public hearings; and

2 (3) issue a subpoena to compel the attendance of a
3 relevant witness or the production of relevant records or
4 documents.

5 SUBCHAPTER E. ADVISORY BOARD

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

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

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

11 (1) one family member of an offender or former
12 offender;

13 (2) one health care professional;

14 (3) one social worker;

15 (4) one person with expertise in administrative or
16 criminal investigations;

17 (5) one person with expertise in sexual assault victim
18 advocacy;

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

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

23 (8) one former offender; and

24 (9) one former correctional officer.

25 (c) The chair of each standing committee of the legislature
26 having primary jurisdiction over the department and the primary
27 author and sponsor of the legislation enacting this chapter, but

1 only if the author or sponsor continues to be a member of the
2 legislature, may provide the governor with recommendations on any
3 appointment made under Subsection (b).

4 (d) Members of the advisory board serve staggered four-year
5 terms.

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

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

10 SECTION 2. (a) As soon as practicable after the effective
11 date of this Act, the governor shall appoint an initial ombudsman
12 under Chapter 512, Government Code, as added by this Act, to a term
13 expiring February 1, 2027.

14 (b) Not later than December 1, 2023, the governor shall
15 appoint the members of the advisory board under Section 512.201,
16 Government Code, as added by this Act.

17 SECTION 3. This Act takes effect September 1, 2023.