

By: Miles

S.B. No. 485

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) "Offender" means:

(A) an inmate or state jail defendant confined in
a facility operated by or under contract with the department; or

(B) a person under supervision of the department
following the person's release on parole or to mandatory
supervision.

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

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

1 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 in the performance of the
6 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 separate from the
18 legislative appropriations requests for the Commission on Jail
19 Standards and the department and that is used to develop the
20 office's budget structure. The office shall maintain the
21 legislative appropriations request and budget structure separately
22 from those of the Commission on Jail Standards and the department.

23 SUBCHAPTER B. APPOINTMENT AND MANAGEMENT OF OFFICE

24 Sec. 512.051. APPOINTMENT OF OMBUDSMAN. (a) The governor
25 shall appoint the ombudsman with the advice and consent of the
26 senate for a term of two years, expiring February 1 of each
27 odd-numbered year.

1 (b) A person appointed as ombudsman is eligible for
2 reappointment, provided that the person may not serve more than
3 three terms in that capacity.

4 Sec. 512.052. ASSISTANTS. The ombudsman may appoint
5 assistants to perform, under the direction of the ombudsman, the
6 same duties and exercise the same powers as the ombudsman.

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

10 (1) is employed by or participates in the management
11 of a business entity or other organization receiving funds from the
12 department or the office;

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

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

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

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

27 (d) In this section, "Texas trade association" means a

1 nonprofit, cooperative, and voluntarily joined association of
2 business or professional competitors in this state designed to
3 assist its members and its industry or profession in dealing with
4 mutual business or professional problems and in promoting their
5 common interest.

6 Sec. 512.054. REPORT. (a) The ombudsman shall submit a
7 quarterly report to the governor, the lieutenant governor, the
8 state auditor, and each member of the legislature that is both
9 aggregated and disaggregated by individual facility and describes:

10 (1) the work of the ombudsman and office;

11 (2) the results of any review or investigation
12 undertaken by the ombudsman, including any review or investigation
13 of services contracted by the department; and

14 (3) any recommendations that the ombudsman has
15 regarding:

16 (A) the duties of the ombudsman; or

17 (B) the operations of the department.

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

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

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

25 (3) problem concerning the delivery of services in a
26 facility operated by or under contract with the department; or

27 (4) interference by the department with an

1 investigation conducted by the office.

2 Sec. 512.055. COMMUNICATION AND CONFIDENTIALITY. (a) The
3 department shall allow any offender to communicate with the
4 ombudsman or an assistant ombudsman. The communication:

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

7 (2) is confidential and privileged.

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

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

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

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

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

1 (1) in the public interest;

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

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

6 Sec. 512.056. PROMOTION OF AWARENESS. The ombudsman shall
7 promote awareness among the public and offenders regarding:

8 (1) how the office may be contacted;

9 (2) the purpose of the office; and

10 (3) the services the office provides.

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

14 Sec. 512.058. AUTHORITY OF STATE AUDITOR. The office is
15 subject to audit by the state auditor in accordance with Chapter
16 [321](#).

17 SUBCHAPTER C. POWERS AND DUTIES

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

19 (1) review the procedures established by the
20 department and evaluate the delivery of services to offenders to
21 ensure that the rights of offenders are fully observed;

22 (2) review complaints filed with the office concerning
23 the actions of the department and investigate each complaint in
24 which it appears that an offender may be in need of assistance from
25 the ombudsman;

26 (3) conduct investigations of complaints, other than
27 complaints alleging criminal behavior, if the ombudsman determines

1 that:

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

4 (B) a systemic issue in the department's
5 provision of services is raised by a complaint;

6 (4) conduct audits to ensure compliance with the
7 Prison Rape Elimination Act of 2003 (42 U.S.C. Section 15601 et
8 seq.) and any regulation adopted under that act, including 28
9 C.F.R. Part 115;

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

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

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

20 (8) recommend changes in any procedure relating to the
21 treatment of offenders;

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

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

27 (b) The ombudsman may inform persons who are interested in

1 an offender's welfare of the rights of the offender.

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

8 (d) Notwithstanding any other provision of this chapter,
9 the ombudsman may not investigate alleged criminal behavior.

10 Sec. 512.102. RETALIATION PROHIBITED. The department may
11 not discharge or in any manner discriminate or retaliate against an
12 employee who makes a good faith complaint to the office or
13 cooperates with an investigation under this chapter.

14 Sec. 512.103. TRAINING. The ombudsman shall attend annual
15 training sessions, including any required training for
16 correctional officers, and may participate in other appropriate
17 professional training.

18 SUBCHAPTER D. ACCESS TO INFORMATION

19 Sec. 512.151. ACCESS TO INFORMATION OF CERTAIN GOVERNMENTAL
20 ENTITIES. (a) The department shall allow the ombudsman access to
21 the department's records relating to offenders.

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

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

1 SECTION 2. As soon as practicable after the appointment of
2 the ombudsman under Section 512.051, Government Code, as added by
3 this Act, the ombudsman and the Texas Department of Criminal
4 Justice shall enter into a memorandum of understanding to provide
5 for the orderly transfer of certain duties, functions, programs,
6 and activities of the department to the office of independent
7 oversight ombudsman as necessary for the office to fulfill the
8 office's duties under Chapter 512, Government Code, as added by
9 this Act. The memorandum must provide for the transfer to the
10 office of:

11 (1) any funds appropriated to the department for the
12 fiscal biennium ending August 31, 2019, specifically for a purpose,
13 function, or duty that will be transferred to or performed by the
14 office; and

15 (2) the exclusive authority to address Step 2
16 grievances, as identified under the department's Offender
17 Grievance Program as that program existed immediately before the
18 effective date of this Act.

19 SECTION 3. This Act takes effect September 1, 2017.