

## **BILL ANALYSIS**

C.S.H.B. 363  
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Corrections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

There are concerns that, without an entity solely tasked with the independent oversight of the conditions of confinement and treatment of offenders in facilities operated by or under contract with the Texas Department of Criminal Justice (TDCJ), violations of the rights of those incarcerated individuals could continue unabated and lead to human suffering, unnecessary costs, and expensive litigation. C.S.H.B. 363 seeks to address these issues by creating the office of independent oversight ombudsman for TDCJ.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the office of independent oversight ombudsman in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 363 amends the Government Code to establish the office of independent oversight ombudsman as a state agency, administratively attached to the Commission on Jail Standards (TCJS), for the purpose of monitoring the conditions of confinement and treatment of offenders, investigating, evaluating, and securing the rights of inmates or state jail defendants confined in a facility operated by or under contract with the Texas Department of Criminal Justice (TDCJ) that is used primarily for the confinement of such offenders, and assisting TDCJ in improving its operations. The bill requires TCJS to provide office space and administrative support services to the office as necessary to carry out the bill's purposes.

C.S.H.B. 363 makes the office responsible for conducting in-depth reviews and analyses of data, determining long-term needs, identifying critical issues facing TDCJ and corresponding solutions to those issues, investigating significant group disturbances and critical incidents, and assessing the efficacy of existing programs. The bill requires the office, in accordance with Legislative Budget Board rules, to prepare, approve, and submit a legislative appropriations request that is used to develop the office's budget structure. The bill requires the office to maintain the legislative appropriations request and budget structure separately from those of TCJS and TDCJ.

C.S.H.B. 363 requires the governor to appoint a person to serve a four-year term as ombudsman from a list of persons recommended by the chair of each standing committee of the legislature having primary jurisdiction over TDCJ with the advice and consent of the senate, prohibits a person from serving as ombudsman for more than two terms, and establishes that the governor may remove the ombudsman only for good cause. The bill requires the governor to appoint an

initial ombudsman to a term expiring February 1, 2023. The bill authorizes the ombudsman to appoint assistants to perform, under the ombudsman's direction, the same duties and exercise the same powers as the ombudsman. The bill sets out conflicts of interest that prohibit a person from serving as ombudsman or as an assistant ombudsman. The bill establishes that the ombudsman acts independently of TDCJ and the Texas Board of Criminal Justice in the performance of those powers and duties.

C.S.H.B. 363 sets out the powers and duties of the ombudsman and authorizes the ombudsman to inform persons who are interested in an offender's welfare of the rights of the offender. The bill authorizes the ombudsman, for purposes of determining if an offender's rights have been violated, to contact or consult with an administrator, an employee, a family member, an expert, another offender, or any other individual in the course of the ombudsman's investigation or to secure information in any matter that does not involve alleged criminal behavior. The bill prohibits the ombudsman from investigating alleged criminal behavior but authorizes the ombudsman to review, in accordance with the bill's provisions, a criminal investigation conducted by the office of the inspector general of TDCJ to ensure that the investigation was conducted in an accurate, unbiased, and thorough manner. The bill establishes that an inmate's complaint to the office and any investigation conducted by the office under the bill's provisions are independent of the inmate grievance system and do not affect the procedures, rights, or duties established under that system or constitute a grievance under that system.

C.S.H.B. 363 prohibits TDCJ from discharging, disciplining, or in any manner discriminating or retaliating against an employee who makes a good faith complaint to the office or cooperates with an investigation under the bill's provisions and from disciplining or in any manner discriminating or retaliating against an offender who complains to or communicates or cooperates with the office in the course of the office carrying out its duties. The bill authorizes the ombudsman to attend training sessions for correctional officers or participate in other appropriate professional training.

C.S.H.B. 363 requires TDCJ to allow the ombudsman to access TDCJ records relating to an offender or investigation and requires TDCJ to fully cooperate and collaborate with the office in a prompt manner in order for the office to carry out its duties and improve facility operations and conditions. The bill authorizes the ombudsman to subpoena the records of a private entity that relate to a complaint the ombudsman is investigating.

C.S.H.B. 363 authorizes the office to inspect or review without notice any part of a facility or any facility operation, policy, procedure, record, or log relating to certain specified facility activities. The bill requires the ombudsman to coordinate with the office of the inspector general of TDCJ to develop policies and procedures that ensure an inspection or review does not interfere with a criminal investigation being conducted by the office of the inspector general. The bill authorizes the office, in conducting an investigation, to interview offenders and facility administrators or employees, hold public hearings, and issue a subpoena to compel the attendance of a relevant witness or the production of relevant records or documents.

C.S.H.B. 363 requires TDCJ to establish procedures allowing any offender or facility administrator or employee to communicate in person, by mail, or by any other means with the ombudsman or an assistant ombudsman regarding a power or duty of the ombudsman or office and makes such communication confidential and privileged. The records of the ombudsman are confidential except that the ombudsman must share with the office of the inspector general of TDCJ a communication with an offender that may involve abuse or neglect and must disclose the ombudsman's nonprivileged records if required by a court order on a showing of good cause.

C.S.H.B. 363 authorizes the ombudsman to make public any report, with certain required redactions, relating to an investigation after the investigation is complete. The bill makes confidential and not subject to public disclosure under state public information law the name, address, or other personally identifiable information of a person who files a complaint with the

office, information generated by the office in the course of an investigation, and confidential records obtained by the office but establishes that information and records, other than confidential information and records concerning a pending law enforcement investigation or criminal action, may be disclosed to an appropriate person if the office determines that disclosure is in the public interest, is necessary to enable the office or ombudsman to perform a duty under the bill's provisions, or is necessary to identify, prevent, or treat physical or sexual assault or neglect of an offender.

C.S.H.B. 363 requires the ombudsman to promote awareness among TDCJ, the public, and offenders regarding how the office may be contacted, the purpose of the office, and the services the office provides.

C.S.H.B. 363 requires the office by rule to establish policies and procedures for the operations of the office. The bill creates an advisory board to advise the office in carrying out the office's duties and sets out the composition of the advisory board and provisions relating to member terms. The bill requires the governor to appoint the members of the advisory board not later than December 1, 2019, and authorizes certain members of the legislature to provide the governor with recommendations on any such appointment. The bill exempts the composition and duration of the advisory board from state law governing state agency advisory committees.

C.S.H.B. 363 requires the ombudsman to prepare and submit to the governor, the lieutenant governor, the state auditor, and each member of the legislature periodic reports that evaluate systemic issues affecting TDCJ and any current issues at individual facilities and an annual report that is both aggregated and disaggregated by individual facility and describes the work of the ombudsman and office, the results of any review or investigation undertaken by the ombudsman, and any recommendations that the ombudsman has regarding the duties of the ombudsman or the operations of TDCJ.

C.S.H.B. 363 requires the ombudsman to immediately report to the executive director of TDCJ or the executive director's designee, the governor, the lieutenant governor, the speaker of the house of representatives, the state auditor, and the office of the inspector general of TDCJ any particularly serious or flagrant confirmed case of abuse or injury of an offender, problem concerning the administration of a TDCJ program or operation, problem concerning the delivery of services in a facility, or interference by TDCJ with an investigation conducted by the office. The bill requires TDCJ, in response to any recommendation made by the ombudsman in such a submitted report, to develop a corrective action plan to specifically address the recommendation or submit to the ombudsman a written objection to the recommendation that includes the reasons for the objection. The bill requires the ombudsman to publish on the office's website each report submitted, corrective action plan developed, and objection submitted under the bill's provisions.

#### **EFFECTIVE DATE**

September 1, 2019.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 363 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the purposes of the office and the duties of the ombudsman and requires the person appointed as ombudsman to be from a list of persons recommended by the chair of each standing legislative committee with primary jurisdiction over TDCJ. The substitute expands the group of persons for whom a conflict of interest exists precluding service as ombudsman or as an assistant ombudsman.

The substitute includes a provision establishing the independence of an inmate's complaint to the office and an office-conducted investigation from the inmate grievance system.

The substitute includes the following with regard to the reports submitted by the ombudsman to members of the legislature and the applicable state officers and agencies:

- a requirement that the periodic report also evaluate systemic issues affecting TDCJ;
- a specification that an immediately reported case of abuse or injury of an offender is a confirmed case;
- a requirement for TDCJ to submit a written objection to a recommendation made by the ombudsman in a report; and
- a specification that the place in which the ombudsman is required to make its reports, corrective action plans, and such objections public is on the office's website.

The substitute expands the types of facility information that the office may inspect or review without notice and requires the ombudsman to coordinate with the office of the inspector general of TDCJ to develop certain policies and procedures regarding such an inspection or review.

The substitute does not include:

- a requirement for TCJS to provide budgetary and legal support services to the office as necessary to carry out the bill's purposes;
- a provision subjecting the office to an audit by the state auditor;
- an authorization for the office to contract with subject matter experts as necessary to carry out its duties; or
- a requirement for the Department of Public Safety and local law enforcement agencies to allow the ombudsman to access their records relating to any offender.

The substitute revises the composition of the advisory board, makes the governor the sole person who appoints board members, includes a deadline for that appointment, and includes an authorization for certain members of the legislature to provide the governor with recommendations on any such appointment. The substitute includes provisions relating to board member terms.