

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 830  
By: Kolkhorst  
Health & Human Services  
5/5/2015  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Office of Consumer Affairs (OCA), the ombudsman office for the Department of Family and Protective Services (DFPS), is responsible for taking complaints and providing an independent investigation to ensure that policy and procedure is being followed. However, the office is not independent in terms of budget, policy or personnel, needs its authority and function strengthened, and must ensure that youth in state custody are aware of the protections the office is intended to provide.

S.B. 830 creates the office of consumer affairs for children in foster care under the purview of the Health and Human Services Commission. An ombudsman's office is responsible for protecting the rights of consumers and must be independent of the agency over which it has oversight in order to ensure that it can most effectively serve the children and adults who depend on its protections. The changes proposed in S.B. 830 are intended to meet this goal.

According to a survey by CASA of 40 students who exited foster care within the last 10 years, 62 percent were abused or neglected and 53 percent were unable to report it. Those young adults who indicated that they were unable to report the maltreatment they experienced primarily said that they did not know who to tell or that they were threatened so they would not tell. Those who were able to report indicated that they did not know what was done about their concern or that they believed it had been ignored. The majority of young adults surveyed did not know that there was an office where they could report their concerns.

The committee substitute for S.B. 830:

- Clarifies that this is a transfer of the Office of Consumer Affairs (OCA) in its entirety from the Department of Family and Protective Services (DFPS) to the Health and Human Services Commission (HHSC);
- Refers to OCA for DFPS, rather than "OCA for children in foster care";
- States that all FTEs and funds shall be transferred from DFPS to HHSC;
- Removes the requirement for the executive commissioner of HHSC to employee staff since this is a transfer of OCA from DFPS to HHSC;
- Generalizes certain sections of the bill to apply to all clients of DFPS, rather than only children in the conservatorship of the department, to ensure that all clients are afforded the protections of the office; and
- Requires OCA to collaborate not only with Child Care Licensing, but with Adult Protective Services and Child Protective Services to develop consequences for retaliation

C.S.S.B. 830 amends current law relating to the creation of an independent ombudsman for children and youth in foster care.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 40.0041, Human Resources Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 531, Government Code, by adding Subchapter Y, as follows:

SUBCHAPTER Y. OMBUDSMAN FOR CHILDREN AND YOUTH IN FOSTER CARE

Sec. 531.991. DEFINITIONS. Defines "department" and "ombudsman."

Sec. 531.992. OMBUDSMAN FOR CHILDREN AND YOUTH IN FOSTER CARE. (a) Requires the executive commissioner of HHSC (executive commissioner) to appoint an ombudsman for children and youth in foster care to serve at the will of the executive commissioner.

(b) Provides that the ombudsman is administratively attached to the office of the ombudsman for the Health and Human Services Commission (HHSC).

(c) Authorizes the ombudsman to employ staff to assist the ombudsman in performing the ombudsman's duties under this subchapter, subject to the appropriation of money for that purpose.

Sec. 531.993. DUTIES OF OMBUDSMAN. (a) Provides that the ombudsman serves as a neutral party in assisting children and youth in the conservatorship of the Department of Family and Protective Services (DFPS) with complaints regarding issues with the authority of DFPS or another health and human services agency.

(b) Requires the ombudsman to:

(1) develop and implement statewide procedures to:

(A) receive complaints from children and youth in the conservatorship of DFPS;

(B) review complaints filed with the ombudsman and take appropriate action, including:

(i) conducting an investigation into individual complaints that allege violations of DFPS or agency procedure or policy or other violations; and

(ii) referring to DFPS or agency management for resolution any trends or systemic issues identified in complaints;

(C) provide any necessary assistance to children and youth in the conservatorship of DFPS in making complaints and reporting allegations of abuse or neglect to DFPS;

(D) maintain the confidentiality of:

(i) the ombudsman's communications and records;

(ii) records of another person that have been provided to the ombudsman; and

(iii) communications of another person with the ombudsman; and

(E) ensure that DFPS and a child or youth in the conservatorship of DFPS who files a complaint with the ombudsman are informed of the results of the ombudsman's investigation of the complaint, including whether the ombudsman was able to substantiate the child's or youth's complaint;

(2) collaborate with DFPS to develop and implement an annual outreach plan to promote awareness of the ombudsman among children and youth in the conservatorship of DFPS;

(3) issue and file with DFPS and any applicable health and human services agency a report that contains the ombudsman's final determination regarding a complaint and any recommended corrective actions to be taken as a result of the complaint;

(4) establish a secure form of communication with any individual who files a complaint with the ombudsman; and

(5) collaborate with DFPS to identify consequences for any retaliatory action related to a complaint filed with the ombudsman, in accordance with Section 40.0041 (g), Human Resources Code.

Sec. 531.994. INVESTIGATION OF UNREPORTED COMPLAINTS. Requires the ombudsman to open a new investigation for each unreported violation if during the investigation of a complaint, the ombudsman discovers unreported violations of rules and policies of DFPS or a health and human services agency.

Sec. 531.995. ACCESS TO INFORMATION. Requires DFPS and each health and human services agency to provide the ombudsman access to the records of DFPS or an agency that relate to a complaint the office is investigating.

Sec. 531.996. COMMUNICATION AND CONFIDENTIALITY. (a) Authorizes a person to communicate with the ombudsman relating to a complaint by telephone, by mail, by electronic mail, or by any other means the ombudsman determines to be feasible, secure, and accessible to children and youth.

(b) Provides that a communication with the ombudsman is confidential during an investigation or review of a complaint and remains confidential after the complaint is resolved.

(c) Provides that the records of the ombudsman are confidential and requires that the records be maintained in a manner that preserves the confidentiality of the records.

(d) Provides that the disclosure of confidential information to the ombudsman under this section or Section 531.995 does not constitute a waiver of confidentiality. Provides that any information disclosed to the ombudsman under this section or Section 531.995 remains confidential and privileged following disclosure.

(e) Provides that the ombudsman is not prohibited from communicating with DFPS or another health and human services agency regarding confidential information disclosed to the ombudsman by DFPS or the agency.

(f) Authorizes the ombudsman to make reports relating to the investigation of a complaint public after a complaint is resolved. Prohibits a report from including information that identifies an individual complainant, client, parent, or employee or any other person involved in the complaint.

Sec. 531.997. RETALIATION PROHIBITED. (a) Prohibits DFPS or another health and human services agency from retaliating against a child or youth in the conservatorship of DFPS who in good faith makes a complaint to the ombudsman or against any person who cooperates with the ombudsman in an investigation.

Sec. 531.998. REPORT. (a) Requires the ombudsman to prepare an annual report that contains:

- (1) a description of the ombudsman's work;
- (2) any change made by DFPS or another health and human services agency in response to a substantiated complaint;
- (3) a description of any trends in the nature of complaints received by the ombudsman, any recommendations related to addressing those trends, and an evaluation of the feasibility of the ombudsman's recommendations;
- (4) a glossary of terms used in the report;
- (5) a description of the methods used to promote awareness of the ombudsman under Section 531.993 (b) and the ombudsman's promotion plan for the next year; and
- (6) any public feedback received by the ombudsman relating to the ombudsman's previous annual reports.

(b) Requires that the report be submitted to the executive commissioner of HHSC and the commissioner of DFPS not later than December 1 of each year. Requires DFPS and HHSC to make the report publicly available on the DFPS and HHSC Internet websites.

SECTION 2. Amends Section 40.0041, Human Resources Code, by adding Subsection (g) and (h), as follows:

(g) Requires DFPS to cooperate with the ombudsman for children and youth in foster care to create consequences, based on the circumstances of the complaint and the severity of the retaliation, for any person who is found to have retaliated against a child or youth in the conservatorship of DFPS because of a complain made to the ombudsman.

(h) Requires the executive commissioner to adopt rules requiring all residential child-care facilities in which children and youth in the conservatorship of DFPS are placed to display information about the ombudsman for children and youth in foster care and the process for filing a complaint with the ombudsman in a location that is easily accessible and offers maximum privacy to the children and youth residing at the facility

SECTION 3. Requires the executive commissioner of HHSC to assign one full-time equivalent employee of DFPS to serve as the ombudsman for children and youth in foster care as soon as possible after the effective date of this Act.

SECTION 4. Effective date: September 1, 2015.