

HUMAN RESOURCES CODE

TITLE 12. JUVENILE JUSTICE SERVICES AND FACILITIES

SUBTITLE D. INDEPENDENT OMBUDSMAN

CHAPTER 261. INDEPENDENT OMBUDSMAN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 261.001. DEFINITIONS. In this chapter:

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

(2) "Office" means the office of independent ombudsman created under this chapter.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.002. ESTABLISHMENT; PURPOSE. The office of independent ombudsman is a state agency established for the purpose of investigating, evaluating, and securing the rights of the children committed to the department, including a child released under supervision before final discharge.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.003. INDEPENDENCE. (a) The independent ombudsman in the performance of its duties and powers under this chapter acts independently of the department.

(b) Funding for the independent ombudsman is appropriated separately from funding for the department.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

SUBCHAPTER B. APPOINTMENT AND MANAGEMENT OF OFFICE

Sec. 261.051. APPOINTMENT OF INDEPENDENT OMBUDSMAN.

(a) The governor shall appoint the independent ombudsman with the advice and consent of the senate for a term of two years, expiring February 1 of odd-numbered years.

(b) A person appointed as independent ombudsman is eligible for reappointment.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1033 (H.B. 2733), Sec. 9, eff. September 1, 2013.

Sec. 261.052. ASSISTANTS. The independent ombudsman may hire assistants to perform, under the direction of the independent ombudsman, the same duties and exercise the same powers as the independent ombudsman.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.053. CONFLICT OF INTEREST. (a) A person may not serve as independent ombudsman or as an assistant to the independent ombudsman if the person or the person's spouse:

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

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

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

(b) A person may not serve as independent ombudsman or as an assistant to the independent ombudsman if the person or the person's spouse is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of

the department.

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

(d) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.054. SUNSET PROVISION. The office is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The office shall be reviewed during the periods in which the Texas Juvenile Justice Department or its successor agency is reviewed.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.055. REPORT. (a) The independent ombudsman shall submit on a quarterly basis to the board, the governor, the lieutenant governor, the state auditor, and each member of the legislature a report that is both aggregated and disaggregated by individual facility and describes:

(1) the work of the independent ombudsman;

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

(3) any recommendations that the independent ombudsman has in relation to the duties of the independent ombudsman.

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

(1) case of abuse or injury of a child committed to the department;

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

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

(4) interference by the department with an investigation conducted by the office.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.056. COMMUNICATION AND CONFIDENTIALITY. (a) The department shall allow any child committed to the department to communicate with the independent ombudsman or an assistant to the ombudsman. The communication:

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

(2) is confidential and privileged.

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

(1) share with the office of inspector general of the department a communication with a child that may involve the abuse or neglect of the child; and

(2) disclose its nonprivileged records if required by a court order on a showing of good cause.

(c) The independent ombudsman may make reports relating to an investigation public after the investigation is complete but only if the names of all children, parents, and employees are redacted from the report and remain confidential.

(d) The name, address, or other personally identifiable information of a person who files a complaint with the office of

independent ombudsman, information generated by the office of independent ombudsman in the course of an investigation, and confidential records obtained by the office of independent ombudsman are confidential and not subject to disclosure under Chapter 552, Government Code, except that the information and records, other than confidential information and records concerning a pending law enforcement investigation or criminal action, may be disclosed to the appropriate person if the office determines that disclosure is:

- (1) in the general public interest;
- (2) necessary to enable the office to perform the responsibilities provided under this section; or
- (3) necessary to identify, prevent, or treat the abuse or neglect of a child.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.057. PROMOTION OF AWARENESS OF OFFICE. The independent ombudsman shall promote awareness among the public and the children committed to the department of:

- (1) how the office may be contacted;
- (2) the purpose of the office; and
- (3) the services the office provides.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.058. RULEMAKING AUTHORITY. (a) The office by rule shall establish policies and procedures for the operations of the office of independent ombudsman.

(b) The office and the board shall adopt rules necessary to implement Section 261.060, including rules that establish procedures for the department to review and comment on reports of the office and for the department to expedite or eliminate review of and comment on a report due to an emergency or a serious or flagrant circumstance described by Section 261.055(b).

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.059. AUTHORITY OF STATE AUDITOR. The office is subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.060. REVIEW AND FORMAT OF REPORTS. (a) The office shall accept, both before and after publication, comments from the board concerning the following types of reports published by the office under this chapter:

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

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

(3) any other formal reports containing findings and making recommendations concerning systemic issues that affect the department.

(b) The board may not submit comments under Subsection (a) after the 30th day after the date the report on which the board is commenting is published.

(c) The office shall ensure that reports described by Subsection (a) are in a format to which the board can easily respond.

(d) After receipt of comments under this section, the office is not obligated to change any report or change the manner in which the office performs the duties of the office.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.061. COMPLAINTS. (a) The office shall maintain a system to promptly and efficiently act on complaints filed with the

office that relate to the operations or staff of the office. The office shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and the disposition of the complaint.

(b) The office shall make information available describing its procedures for complaint investigation and resolution.

(c) The office shall periodically notify the complaint parties of the status of the complaint until final disposition.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

SUBCHAPTER C. DUTIES AND POWERS

Sec. 261.101. DUTIES AND POWERS. (a) The independent ombudsman shall:

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

(2) review complaints filed with the independent ombudsman concerning the actions of the department and investigate each complaint in which it appears that a child may be in need of assistance from the independent ombudsman;

(3) conduct investigations of complaints, other than complaints alleging criminal behavior, if the office determines that:

(A) a child committed to the department or the child's family may be in need of assistance from the office; or

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

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

(5) provide assistance to a child or family who the independent ombudsman determines is in need of assistance,

including advocating with an agency, provider, or other person in the best interests of the child;

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

(7) recommend changes in any procedure relating to the treatment of children committed to the department;

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

(9) supervise assistants who are serving as advocates in their representation of children committed to the department in internal administrative and disciplinary hearings;

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

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

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

(b) The independent ombudsman may apprise persons who are interested in a child's welfare of the rights of the child.

(c) To assess if a child's rights have been violated, the independent ombudsman may, in any matter that does not involve alleged criminal behavior, contact or consult with an administrator, employee, child, parent, expert, or any other individual in the course of its investigation or to secure information.

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

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 646 (S.B. [1702](#)), Sec. 2, eff. September 1, 2019.

(f) Notwithstanding any other provision of this chapter, the powers of the office include:

(1) the inspection of:

(A) a facility operated by the department under Subtitle C;

(B) a post-adjudication secure correctional facility under Section 51.125, Family Code;

(C) a nonsecure correctional facility under Section 51.126, Family Code; and

(D) any other residential facility in which a child adjudicated as having engaged in conduct indicating a need for supervision or delinquent conduct is placed by court order; and

(2) the investigation of complaints alleging a violation of the rights of the children committed to or placed in a facility described by this subsection.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 854 (S.B. 1149), Sec. 11(a), eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 854 (S.B. 1149), Sec. 11(b), eff. January 1, 2019.

Acts 2015, 84th Leg., R.S., Ch. 962 (S.B. 1630), Sec. 7, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 646 (S.B. 1702), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 646 (S.B. 1702), Sec. 2, eff. September 1, 2019.

Sec. 261.102. TREATMENT OF DEPARTMENT EMPLOYEES WHO COOPERATE WITH INDEPENDENT OMBUDSMAN. The department may not discharge or in any manner discriminate or retaliate against an employee who in good faith makes a complaint to the office of independent ombudsman or cooperates with the office in an investigation.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.103. TRAINING. The independent ombudsman shall attend annual sessions, including the training curriculum for juvenile correctional officers required under Section 242.009, and may participate in other appropriate professional training.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.104. MEMORANDUM OF UNDERSTANDING. (a) The office and the department shall enter into a memorandum of understanding concerning:

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

(2) the procedures for handling overlapping monitoring duties and activities performed by the office and the department.

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

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

(2) address communication between the office and the department concerning individual situations involving children committed to the department and how those situations will be documented and handled;

(3) contain guidelines on the office's role in relevant working groups and policy development decisions at the department;

(4) ensure opportunities for sharing information between the office and the department for the purposes of assuring quality and improving programming within the department; and

(5) preserve the independence of the office by authorizing the office to withhold information concerning matters under active investigation by the office from the department and department staff and to report the information to the board and the governor.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

SUBCHAPTER D. ACCESS TO INFORMATION

Sec. 261.151. ACCESS TO INFORMATION OF GOVERNMENTAL ENTITIES. (a) The independent ombudsman has access to the department's records relating to the children committed to the department.

(b) The Department of Public Safety shall allow the independent ombudsman access to the juvenile justice information system established under Subchapter B, Chapter 58, Family Code.

(c) A local law enforcement agency shall allow the independent ombudsman access to its records relating to any child in the care or custody of the department.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.152. ACCESS TO INFORMATION OF PRIVATE ENTITIES. The independent ombudsman shall have access to the records of a private entity that relate to a child committed to the department.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.