

BILL ANALYSIS

H.B. 3678
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Human Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, interested parties note, the Office of Consumer Affairs within the Department of Family and Protective Services hears complaints regarding child and adult protective services. The parties suggest that persons who suspect or witness violations relating to these services have no outlet independent of the human services agencies to direct complaints and that, because these same agencies are responsible for investigating complaints, it may be difficult to receive a fair, unbiased, and impartial ruling following an investigation. H.B. 3678 seeks to ensure that all parties have an opportunity to file a complaint and have access to a fair investigation.

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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 3678 amends the Human Resources Code to establish the office of independent ombudsman for the Department of Family and Protective Services (DFPS) and to require the governor to appoint the independent ombudsman to serve at the will of the governor. The bill establishes that the ombudsman acts independently of DFPS in the performance of the ombudsman's duties and powers and subjects the office to the Texas Sunset Act. The bill authorizes the independent ombudsman to appoint assistants to perform, under the ombudsman's direction, the same duties and exercise the same powers as the ombudsman. The bill prohibits a person from serving as independent ombudsman or as an assistant ombudsman if the person or the person's spouse has certain conflicts of interest.

H.B. 3678 requires the independent ombudsman, on or before January 1 of each year, to submit to the governor, the lieutenant governor, and each member of the legislature a report that describes, for the one-year period preceding the report, the work of the ombudsman; the ombudsman's recommendations relating to the ombudsman's duties; and the ombudsman's recommendations for improving the operation of DFPS. The bill requires DFPS to allow any DFPS employee, any party in an initial investigation, and any child in the conservatorship of DFPS to communicate with the independent ombudsman in person, by mail, or by any other means and establishes the communication as confidential and privileged. The bill provides for the confidentiality and limited disclosure of all information related to a complaint under investigation by the office.

H.B. 3678 requires the independent ombudsman to promote awareness among the public,

children in the conservatorship of DFPS, family members and caretakers of those children, and facilities licensed by DFPS of how the office may be contacted, the purpose of the office, and the services the office provides.

H.B. 3678 establishes that the independent ombudsman serves as a neutral party in assisting persons with a complaint against DFPS regarding case-specific activities of DFPS programs. The bill requires the independent ombudsman to review complaints filed with the ombudsman concerning DFPS actions and investigate each complaint; to require DFPS to provide access to all information under DFPS control that the ombudsman determines is necessary to investigate a complaint; to review any reports produced by DFPS regarding a complaint referred by the ombudsman; to issue a final report with the ombudsman's final determination of a complaint's merit; and to monitor and evaluate DFPS actions relating to the ombudsman's recommendations. The bill requires the independent ombudsman's final determination in the report to include a determination of whether there was wrongdoing or negligence by DFPS or a DFPS agent or whether the complaint was frivolous and without merit. The bill requires the independent ombudsman, if the ombudsman determines there was wrongdoing or negligence, to recommend corrective actions to be taken by DFPS. The bill authorizes the independent ombudsman to attend any judicial proceeding related to a complaint filed with the office.

H.B. 3678 requires DFPS to allow the independent ombudsman access to DFPS records that relate to a complaint the ombudsman is investigating and authorizes the independent ombudsman to subpoena the records of a private entity that relate to a complaint the ombudsman is investigating. The bill prohibits DFPS from retaliating against a DFPS employee or any other person who in good faith makes a complaint to the office or cooperates with the office in an investigation. The bill authorizes a child-placing agency responsible for a foster child to refer a dispute regarding the child's placement or the permanency plan for the child to the independent ombudsman by filing a complaint with the ombudsman that includes a clear explanation of the dispute and the requested remedy. The bill requires the independent ombudsman to notify the court with jurisdiction over the child's case of any investigation of a complaint filed under these provisions.

EFFECTIVE DATE

September 1, 2015.