

BILL ANALYSIS

S.B. 830
By: Kolkhorst
Juvenile Justice & Family Issues
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties assert that some allegations involving a violation of a child's rights while in foster care, including abuse or neglect the child may have suffered while in a foster home, group home, or residential treatment facility, are not made until after a youth has aged out of foster care. The parties cite a variety of reasons why these situations are not reported at the time of the incident, including distrust of the staff who placed the child in a home where the child was mistreated, perception that nothing will be done based on previous concerns that were not addressed, and fear of retaliation or vulnerability in the child's placement. The parties further claim that the authority and function of the current ombudsman office for the Department of Family and Protective Services, which is responsible for taking complaints and providing an independent investigation to ensure that policy and procedure are being followed, need to be strengthened in order to ensure that youth in state custody are aware of the protections the office is intended to provide. S.B. 830 seeks to address this issue.

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 executive commissioner of the Health and Human Services Commission in SECTION 2 of this bill.

ANALYSIS

S.B. 830 amends the Government Code to require the executive commissioner of the Health and Human Services Commission (HHSC) to appoint an ombudsman for children and youth in foster care who serves at the will of the executive commissioner and is administratively attached to the office of the ombudsman for HHSC. The bill authorizes the ombudsman, subject to the appropriation of money for the purpose, to employ staff to assist the ombudsman in performing the ombudsman's duties. The bill requires the executive commissioner, as soon as possible after the bill's effective date, to assign one full-time equivalent employee of the Department of Family and Protective Services (DFPS) to serve as the ombudsman. The bill specifies that the ombudsman serves as a neutral party in assisting children and youth in DFPS conservatorship with complaints regarding issues within the authority of DFPS or another health and human services agency.

S.B. 830 requires the ombudsman to develop and implement statewide procedures to receive complaints from children and youth in DFPS conservatorship, to review complaints filed with the ombudsman and take appropriate action, to provide any necessary assistance to children and youth in DFPS conservatorship in making complaints and reporting allegations of abuse or neglect to DFPS, to maintain the confidentiality of certain specified communications and

records, and to ensure that DFPS and a child or youth in DFPS conservatorship who files a complaint with the ombudsman are informed of the results of the ombudsman's investigation of the complaint. The bill requires the ombudsman to 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, to establish a secure form of communication with any individual who files a complaint with the ombudsman, to collaborate with DFPS to identify consequences for any retaliatory action related to a complaint filed with the ombudsman in accordance with the bill's provisions, and to collaborate with DFPS to develop and implement an annual outreach plan to promote awareness of the ombudsman among children and youth in DFPS conservatorship.

S.B. 830 requires the ombudsman, if during the investigation of a complaint the ombudsman discovers unreported violations of DFPS's or a health and human services agency's rules and policies, to open a new investigation for each unreported violation. The bill requires DFPS and each health and human services agency to provide the ombudsman access to DFPS or agency records that relate to a complaint the ombudsman is reviewing or investigating.

S.B. 830 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 and specifies that a communication with the ombudsman is confidential during an investigation or review of a complaint and remains confidential after the complaint is resolved. The bill establishes that the records of the ombudsman are confidential and requires the records to be maintained in a manner that preserves the confidentiality of the records, that the disclosure of confidential information to the ombudsman under the bill's provisions does not constitute a waiver of confidentiality, and that any information so disclosed to the ombudsman remains confidential and privileged following disclosure. The bill expressly does not prohibit the ombudsman from communicating with DFPS or another health and human services agency regarding confidential information disclosed to the ombudsman by DFPS or the agency. The bill authorizes the ombudsman to make reports relating to an investigation of a complaint public after the complaint is resolved but prohibits a report from including information that identifies an individual complainant, client, parent, or employee or any other person involved in the complaint.

S.B. 830 prohibits DFPS or another health and human services agency from retaliating against a child or youth in DFPS conservatorship who in good faith makes a complaint to the ombudsman or against any person who cooperates with the ombudsman in an investigation. The bill requires the ombudsman to prepare an annual report to be submitted to the executive commissioner of HHSC and the commissioner of DFPS not later than December 1 of each year and sets out the required contents of the report. The bill requires DFPS and HHSC, on receipt of the report, to make the report publically available on the DFPS and HHSC websites.

S.B. 830 amends the Human Resources Code to require 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 DFPS conservatorship because of a complaint made to the ombudsman. The bill requires the executive commissioner of HHSC to adopt rules requiring all residential child-care facilities in which children and youth in DFPS conservatorship 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.

EFFECTIVE DATE

September 1, 2015.