

BILL ANALYSIS

C.S.H.B. 1371
By: Dutton
Juvenile Justice & Family Issues
Committee Report (Substituted)

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, in addition to adult clients of the department, are aware of the protections the office is intended to provide. C.S.H.B. 1371 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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1371 amends the Government Code to establish the office of consumer affairs within the Health and Human Services Commission (HHSC). The bill requires the office to develop statewide procedures in order to receive inquiries and complaints relating to the Department of Family and Protective Services (DFPS); to review complaints and inquiries filed with the office relating to DFPS; to investigate each such complaint; to assist a child making a complaint alleging abuse, neglect, or exploitation in reporting the allegation to DFPS and to open a case for the duration of the DFPS investigation of the allegation; to issue and file with DFPS a final report that contains the office's final determination of a complaint's merit and any recommended corrective actions to be taken by DFPS; to establish a secure form of communication with any individual who files a complaint with the office; and to ensure that a child in the conservatorship of DFPS who files a complaint with the office is informed of the results of the office's investigation of the child's complaint, including whether the office was able to substantiate the child's complaint.

C.S.H.B. 1371 requires the office, if during the investigation of a complaint the office discovers unreported violations of DFPS rules and policies, to open a new investigation for each

unreported violation and requires DFPS to provide the office access to DFPS records that relate to a complaint the office is investigating. The bill requires DFPS to allow any DFPS employee, any child in DFPS conservatorship, and any client of adult protective services to communicate with the office in person, by telephone, by mail, or by any other means and makes any such communication confidential and privileged. The bill makes the records of the office confidential but requires the office to disclose its records if required by a court order on a showing of good cause. The bill authorizes the office to make public reports relating to an investigation after the investigation is complete and requires the office to redact the names of all children, parents, clients, and employees from the report and maintain the confidentiality of that information.

C.S.H.B. 1371 prohibits DFPS from retaliating against a DFPS employee or any other person who in good faith makes an inquiry or complaint to the office or who cooperates with the office in an investigation. The bill requires the office to collaborate with the divisions of DFPS responsible for child protective services, adult protective services, and child care licensing to create consequences, based on the extent of the offense and the severity of the retaliation, for any person who is found to have engaged in retaliation against a child in DFPS conservatorship.

C.S.H.B. 1371 requires the office to annually develop and implement an outreach plan to promote awareness among the public, children in the conservatorship of DFPS, clients of adult protective services, and all operators and staff of facilities licensed by DFPS of the office's purpose, the services the office provides, and how the office may be contacted. The bill requires the office to ensure that all residential facilities in which children in DFPS conservatorship are placed display information about the office and the process for filing a complaint with the office in a location that is easily accessible to children residing at the facility and to ensure that information about the office and the complaint process is provided to guardians ad litem and court appointed special advocates for children in DFPS conservatorship and to DFPS staff members.

C.S.H.B. 1371 requires the office to prepare an annual report to be submitted to the executive commissioner of HHSC and the commissioner of DFPS not later than October 1 of each year. The bill sets out the required contents of the report, including a summary of each complaint received and investigated by the office and the manner in which each complaint was resolved, and requires DFPS, on receipt of the report, to make the report publicly available on the DFPS website.

C.S.H.B. 1371 requires the executive commissioner to transfer all personnel, funding, records, and authority currently allocated to the office of consumer affairs in DFPS to the office of consumer affairs in HHSC, as created by the bill.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1371 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 531, Government Code, is amended by adding Subchapter Y to read as follows:

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SUBCHAPTER Y. OFFICE OF

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CONSUMER AFFAIRS FOR CHILDREN
IN FOSTER CARE

Sec. 531.991. DEFINITIONS. In this subchapter:

(1) "Department" means the Department of Family and Protective Services.

(2) "Office" means the office of consumer affairs for children in foster care.

Sec. 531.992. OFFICE; STAFF. (a) The office of consumer affairs for children in foster care is an office in the commission.

(b) The executive commissioner shall employ staff as needed to carry out the duties of the office.

Sec. 531.993. DUTIES OF OFFICE. The office shall:

(1) develop statewide procedures in order to receive inquiries and complaints from children in the conservatorship of the department;

(2) review complaints and inquiries filed with the office relating to a child in the conservatorship of the department;

(3) investigate each complaint described by Subdivision (2);

(4) if a complaint filed with the office alleges the abuse, neglect, or exploitation of a child, assist the child making the complaint in reporting the allegation to the department and open a case for the duration of the department's investigation of the allegation;

(5) issue and file with the department a final report that contains the office's final determination of a complaint's merit and any recommended corrective actions to be taken by the department; and

(6) establish a secure form of communication with a child who files a complaint with the office in order to

ensure that the child is informed of the results of the office's investigation of the child's complaint, including whether the office was able to substantiate the child's complaint.

Sec. 531.994. INVESTIGATION OF UNREPORTED COMPLAINTS.

Sec. 531.995. ACCESS TO INFORMATION.

CONSUMER AFFAIRS

Sec. 531.991. DEFINITIONS. In this subchapter:

(1) "Department" means the Department of Family and Protective Services.

(2) "Office" means the office of consumer affairs in the commission.

Sec. 531.992. OFFICE. The office of consumer affairs is an office in the commission.

Sec. 531.993. DUTIES OF OFFICE. The office shall:

(1) develop statewide procedures in order to receive inquiries and complaints relating to the department;

(2) review complaints and inquiries filed with the office relating to the department;

(3) investigate each complaint described by Subdivision (2);

(4) if a complaint filed with the office alleges the abuse, neglect, or exploitation of a child, assist the child making the complaint in reporting the allegation to the department and open a case for the duration of the department's investigation of the allegation;

(5) issue and file with the department a final report that contains the office's final determination of a complaint's merit and any recommended corrective actions to be taken by the department;

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

(7) ensure that a child in the conservatorship of the department who files a complaint with the office is informed of the results of the office's investigation of the child's complaint, including whether the office was able to substantiate the child's complaint.

Sec. 531.994. INVESTIGATION OF UNREPORTED COMPLAINTS.

Sec. 531.995. ACCESS TO INFORMATION.

Sec. 531.996. COMMUNICATION AND CONFIDENTIALITY. (a) The department shall allow any department employee and any child in the conservatorship of the department to communicate with the office. The communication:

- (1) may be in person, by telephone, by mail, or by any other means; and
- (2) is confidential and privileged.
- (b) The records of the office are confidential, except that the office shall disclose the office's records if required by a court order on a showing of good cause.
- (c) The office may make public reports relating to an investigation after the investigation is complete. The office shall redact the names of all children, parents, and employees from the report and maintain the confidentiality of that information.

Sec. 531.997. RETALIATION PROHIBITED. (a) The department may not retaliate against a department employee or any other person who in good faith makes an inquiry or complaint to the office or cooperates with the office in an investigation.

- (b) The office shall collaborate with the division of the department responsible for child care licensing to create consequences, based on the extent of the offense and the severity of the retaliation, for any person who is found to have engaged in retaliation against a child in the conservatorship of the department.

Sec. 531.998. PROMOTION OF OFFICE. (a) The office shall annually develop and implement an outreach plan to promote awareness among the public, children, and all facilities licensed by the department of:

- (1) the purpose of the office;
- (2) the services the office provides; and
- (3) how the office may be contacted.
- (b) The office shall ensure that:
 - (1) all residential facilities in which children in the conservatorship of the department are placed display information about the office and the process for filing a complaint with the office in a location that is easily accessible to children residing at

Sec. 531.996. COMMUNICATION AND CONFIDENTIALITY. (a) The department shall allow any department employee, any child in the conservatorship of the department, and any client of adult protective services to communicate with the office. The communication:

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Sec. 531.998. PROMOTION OF OFFICE. (a) The office shall annually develop and implement an outreach plan to promote awareness among the public, children in the conservatorship of the department, clients of adult protective services, and all operators and staff of facilities licensed by the department of:

- (1) the purpose of the office;
- (2) the services the office provides; and
- (3) how the office may be contacted.
- (b) The office shall ensure that:
 - (1) all residential facilities in which children in the conservatorship of the department are placed display information about the office and the process for filing a complaint with the office in a location that is easily accessible to children residing at

the facility; and
(2) information about the office and the
complaint process is provided to:
(A) guardians ad litem and court appointed
special advocates for children in the
conservatorship of the department; and
(B) staff members of the department.

Sec. 531.999. REPORT.

No equivalent provision.

SECTION 2. This Act takes effect
September 1, 2015.

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(2) information about the office and the
complaint process is provided to:
(A) guardians ad litem and court appointed
special advocates for children in the
conservatorship of the department; and
(B) staff members of the department.

Sec. 531.999. REPORT.

SECTION 2. The executive commissioner of the Health and Human Services Commission shall transfer all personnel, funding, records, and authority currently allocated to the office of consumer affairs in the Department of Family and Protective Services to the office of consumer affairs in the commission, as created by this Act.

SECTION 3. Same as introduced version.