

[2015 Session] Establish an Office of the Independent Ombudsman for the State Correctional System to Provide Oversight to the Grievance System and Ensure Compliance with the Prison Rape Elimination Act (PREA)

Policy Background:

The Texas Department of Criminal Justice (TDCJ) has a variety of internal accountability mechanisms, including the offender grievance process, the Ombudsman office (which handles inquiries from the public), and the Office of the Inspector General (which conducts investigations and policy monitoring). However, those mechanisms do not and cannot serve the same role or offer the same benefits as external oversight, which promotes transparency, accountability, and good government.^[1]

Texas policy-makers should hold TDCJ accountable through an Office of the Independent Ombudsman (OIO) that can provide external oversight to the various internal mechanisms that TDCJ currently has in place.

Specifically, the OIO should:

- Be modeled on the Juvenile OIO created by SB 103 of the 80th Legislative Session and described in the Texas Human Resources Code, Chapter 64.
- Examine grievances that were not resolved on unit level, appealed to the Central Grievance Coordinator, and overturned. In 2011, individuals in TDCJ submitted 174,525 Step I grievances (unit level) and 43,323 Step II grievances (Central Grievance Office level), but no data exists as to the final resolution of those grievances, and that data could provide insight as to recurring problems within units and among regions.
- Ensure that TDCJ is in compliance with the Prison Rape Elimination Act (PREA).

Key Facts:

- External oversight serves several critical functions. It protects the rights and well-being of incarcerated individuals, who have limited ways to defend their interests,[2] and who frequently suffer from mental illness or addiction. It ensures that correctional facility staff have safe and sanitary working environments. And it is a proven mechanism for identifying and addressing issues before they lead to expensive litigation, media scandals, or other human and fiscal costs.[3]
- TDCJ is massive: It employs as many paid employees as Google and spends over \$3 billion annually.[4]
- Other Texas agencies have external oversight. The Office of the Independent Ombudsman for the Texas Juvenile Justice Department was established in 2007 to investigate, evaluate, and secure the rights of children committed to the Department.[5] By contrast, the TDCJ Ombudsman is not independent, and its role fails to protect the rights of adults incarcerated in Texas prisons.
- In 1973, the *Ruiz vs. Estelle* case determined that Texas prison conditions violated inmates' constitutional rights to protection from cruel and unusual punishment. The case resulted in court oversight of TDCJ facilities that lasted until 2002, exposing many problems with Texas prison operations that had traditionally remained hidden – including prison overcrowding, excessive use of force, substandard health care, and serious safety, sanitation, and hygiene concerns.[6]
- In September 2003, the U.S. Congress unanimously passed PREA,[7] aimed at preventing sexual assault and victimization in juvenile facilities, adult prisons, jails, lockups, and other detention facilities. Over the course of 10 years, experts around the country developed what have become the PREA standards in an effort to substantially reduce the occurrences of prison rape in adult and juvenile facilities. PREA standards are mandatory, and state and local facilities that do not comply with federal standards stand to lose 5% of particular federal funds. Additionally, states and localities that are not in compliance with the standards may be vulnerable to litigation.

Relevant Bill:

- **Bill Number:** [HB 3303](#) (Miles)
Bill Caption: Relating to the creation of the Office of the Independent Oversight Ombudsman for the Texas Department of Criminal Justice.

Hearing Notice: House Corrections Committee, [Notice of Public Hearing on April 9, 2015](#)

Archived Hearing Video: House Corrections Committee, [04/09/15 Video](#) [TCJE testimony begins at 00:35:24 and 01:09:59]

Other TCJE Materials:

- **Report:** *The Case for Independent Oversight of Texas' Prison System: Pursuing Accountability, Efficiency, and Transparency* [March 2013]

[1] American Bar Association, *Resolution 104B: Prison Oversight and Monitoring of Juvenile and Adult Facilities*, 2008;
<http://www.abanet.org/crimjust/policy/am08104b.pdf>

[2] David Fathi, "The Challenge of Prison Oversight," *American Criminal Law Review* 47, 2010, pp. 1453-62.

[3] Michele Deitch, "The Need for Independent Prison Oversight in a Post-PLRA World," *Federal Sentencing Reporter* 24, no. 4, 2012, pp. 236-44.

[4] Robert Perkinson, *Texas Tough: The Rise of America's Prison Empire*, Metropolitan Books, Henry Hold and Company, 2010.

[5] Independent Ombudsman for the Texas Juvenile Justice Department;
<http://www.tjjd.texas.gov/ombudsman/index.aspx>

[6] Robert Perkinson, "Ruiz v. Estelle," *Encyclopedia of Prisons & Correctional Facilities*, 2005, pp. 864-67.

[7] Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§ 15601-15609 (2003).