

[2017 Session] Ensure Critical External Oversight of the State Correctional System

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 create an independent ombudsman to provide external oversight of the various internal mechanisms that TDCJ currently has in place, which will better prevent abuses and improve programming and practices.

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
- 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. It has shed light on various incidents of abuse, neglect, and other situations, helping inform better policies and practices.

By contrast, TDCJ's 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.⁴

- In September 2003, the U.S. Congress unanimously passed PREA,⁵ aimed at preventing sexual assault and victimization in juvenile and adult corrections facilities. Over the course of 10 years, experts around the country developed comprehensive, mandatory PREA standards; state and local facilities that do not comply with federal standards stand to lose federal funds. Additionally, states and localities that are not in compliance with the standards may be vulnerable to litigation.

Relevant Bills:

- **Bill Number:** [HB 1421](#) [Jarvis Johnson, Thierry]
Bill Caption: Relating to a report by the Texas Department of Criminal Justice regarding inmate grievances.
TCJE Materials: [Fact Sheet](#)
House Hearing Notice: [Corrections, March 16, 2017](#)
TCJE House Action: [Testimony in support](#)
- **Bill Number:** [SB 485](#) [Miles]
Bill Caption: Relating to the creation of the office of independent oversight ombudsman for the Texas Department of Criminal Justice.

Other Materials:

- TCJE 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.

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. 236-244.

⁴ Robert Perkinson, “Ruiz v. Estelle,” *Encyclopedia of Prisons & Correctional Facilities*, 2005, pp. 864-67.

⁵ Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§ 15601-15609 (2003).