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**FACT SHEET 2015**

**HB 3277**

## **The Independent Ombudsman Should be Able to Talk with Youth in County Facilities and Oversee PREA Audits**

### **THE OFFICE OF THE INDEPENDENT OMBUDSMAN HAS BEEN VERY EFFECTIVE BUT DOES NOT HAVE ACCESS TO COUNTY FACILITIES**

The Office of the Independent Ombudsman (OIO) was established as part of Texas' 2007 juvenile justice reforms that arose from revelations of widespread abuse at Texas Youth Commission facilities. The Texas Legislature tasked the OIO with protecting the safety and rights of incarcerated youth at state secure juvenile facilities. Legislation in 2011 expanded the responsibilities of the OIO to include the review of data on abuse, neglect, and exploitation occurring at county facilities. However, the OIO does not have the authority to visit county juvenile facilities, or to speak with the youth in county custody, leaving a vulnerable gap in the state's protection of youth in secure facilities.

### **TEXAS MUST ENSURE THAT PREA AUDITS ARE CONDUCTED ACCORDING TO NATIONAL STANDARDS**

Congress passed the Prison Rape Elimination Act (PREA) unanimously in September 2003.<sup>1</sup> The goal of this statute is to prevent 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 audits are a critical component of the PREA standards.<sup>2</sup> As codified, these PREA audit standards require all facilities covered by PREA to be audited at least once every three years, with one-third of each facility type audited each year. These audits must be conducted by an auditor certified by the Department of Justice (DOJ). To be certified—among other requirements—the auditor must be independent of the agency or other government body that operates the facilities to be audited. However, to date, Texas has taken no action to ensure that these audits are being conducted, and conducted properly.

### **KEY FINDINGS**

- **The OIO plays a crucial role in protecting the safety and rights of youth in Texas state juvenile facilities.**
  - » The OIO made 216 facility site visits in Fiscal Year 2014, interviewing 1,354 youth.<sup>3</sup> In addition to conducting investigations, the OIO publishes quarterly oversight summaries and frequent facility-specific reports that provide invaluable information to Texas legislators and the public. These reports have alerted policy-makers to dangerous situations in juvenile facilities, allowing legislators to intervene early.<sup>4</sup>
- **State oversight of county juvenile facilities is currently inadequate.**
  - » A 2012 resolution by the Texas Juvenile Detention Association recommends that the current audit (oversight) process be revised, finding that the "current auditing process is ineffective in determining risks within facilities."<sup>5</sup>
  - » A boy died in 2011 at a Texas county facility that received little meaningful oversight, despite that facility's "history of failing to comply with routine detainee monitoring requirements."<sup>6</sup> There were 379 attempted suicides in Texas county juvenile facilities in 2013.<sup>7</sup>

- **The current lack of a coordinated approach to PREA audits puts Texas facilities at risk of financial penalties and civil litigation.**
  - » While a few facilities to date have conducted their own PREA audits, there has been no coordinated state action to ensure that every covered facility is audited, and that those audits are conducted by independent, DOJ certified auditors.<sup>8</sup>
  - » PREA standards are mandatory, and state and local facilities that do not comply with federal standards stand to lose 5% of particular federal funds.<sup>9</sup> Additionally, states and localities that are not in compliance with the standards may be vulnerable to litigation. Private civil litigants might assert noncompliance with PREA standards as evidence that facilities are not meeting their constitutional obligations.
- **The OIO is ideally positioned to oversee PREA audits and provide technical assistance at a statewide level in compliance with the PREA standards.**
  - » As an independent oversight body tasked with monitoring youth in Texas secure facilities, the OIO already possesses the necessary independence to apply for DOJ certification.<sup>10</sup> Further, the OIO has extensive experience entering and investigating secure facilities that will prove invaluable support to the PREA auditor.

#### **COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 3277 BY REPRESENTATIVE DUTTON**

- **HB 3277 would allow OIO staff to visit with youth in county secure facilities.** This will bridge the current gap in protections for youth in secure government custody. The OIO has been critically important in protecting youth in state juvenile facilities, but the majority of youth are also placed in county facilities, and it is equally important to protect them from the risk of abuse, neglect, or exploitation.
- **HB 3277 would give the OIO the ability to oversee PREA audits.** This will address a critical need—a coordinated state response to PREA audits—using an existing office. The OIO already has the relevant experience to oversee these audits. Given the expansion of the OIO’s authority to visit youth in county facilities, the OIO will already be entering the secure facilities that need to be audited under PREA. Giving the OIO this authority is a matter of efficiency and common sense.

#### **References**

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- <sup>1</sup> Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§ 15601-15609 (2003).
- <sup>2</sup> Prison Rape Elimination Act National Standards, 28 C.F.R. §§ 115.401-405 (2012).
- <sup>3</sup> Independent Ombudsman for the Texas Juvenile Justice Department, *Fourth Quarter Report FY 14*, August 31, 2014, <http://www.tjjd.texas.gov/ombudsman/reports/IO%20Fourth%20Quarter%202014.pdf>.
- <sup>4</sup> See, e.g., Independent Ombudsman for the Texas Juvenile Justice Department, *Giddings State School Site Visit Report OIO-SV-12-145*, April 13, 2012.
- <sup>5</sup> Texas Juvenile Detention Association, *Resolution concerning TAC 343 and related standards*, March 28, 2012.
- <sup>6</sup> *Fort Worth Star-Telegram*, “Cleburne boy fatally injured at Granbury detention center,” October 18, 2011.
- <sup>7</sup> Texas Juvenile Justice Department, *2013 Facility Registry*, 2013.
- <sup>8</sup> See, e.g., *PREA Audit: Auditor’s Summary, Evins Regional Justice Center*, October 23, 2014, [http://www.tjjd.texas.gov/programs/prea/Evins\\_Regional\\_Juvenile\\_Center\\_Final\\_PREA\\_Audit\\_Report.pdf](http://www.tjjd.texas.gov/programs/prea/Evins_Regional_Juvenile_Center_Final_PREA_Audit_Report.pdf).
- <sup>9</sup> The Project on Addressing Prison Rape, *Fifty State Survey: Federal PREA Support and Potential Funding Loss*, May 2014, [https://www.wcl.american.edu/endsilence/documents/50StateSurvey\\_FederalPREAGrantsPotentialFederalFundingLoss-UPDATE5-29-14DOJStateList.pdf](https://www.wcl.american.edu/endsilence/documents/50StateSurvey_FederalPREAGrantsPotentialFederalFundingLoss-UPDATE5-29-14DOJStateList.pdf).
- <sup>10</sup> TEX. HUM. RES. CODE § 261.003.