

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 639  
By: Lucio et al.  
Health & Human Services  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In December 2008, the United States Department of Justice (DOJ) released findings from its investigation of Texas state schools. DOJ cited numerous chronic safety and civil rights violations, including 53 preventable deaths and thousands of acts of abuse and neglect occurring in all 13 state schools and centers.

C.S.S.B. 639 establishes a State School Resident Bill of Rights to protect the safety and civil rights of state school residents. The bill requires the executive commissioner of the Health and Human Services Commission to develop protocols to divert individuals under 22 years of age with intellectual or developmental disabilities from commitment to a state school

[Note: While the statutory reference in this bill is to the Department of Mental Health and Mental Retardation (MHMR), the following amendments affect the Department of Assistive and Rehabilitative Services and the Department of Aging and Disability Services, as the successor agencies to MHMR.]

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 592.076, Health and Safety Code) and SECTION 2 (Section 531.02446, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 592, Health and Safety Code, by adding Subchapter E, as follows:

#### **SUBCHAPTER E. RIGHTS OF PERSONS RESIDING IN STATE SCHOOLS**

Sec. 592.071. DEFINITIONS. Defines "state school" and "state school resident bill of rights."

Sec. 592.072. RIGHTS GUARANTEED. (a) Provides that the rights specifically listed in this subchapter are in addition to all other rights that persons with intellectual or developmental disabilities have and are not exclusive or intended to limit the rights guaranteed by the constitution and laws of the United States and this state.

(b) Prohibits this subchapter from being construed to authorize a state school to take any action that would impair the health or safety of any resident of that facility.

Sec. 592.073. LEGISLATIVE FINDINGS. Provides that the legislature recognizes that all persons with intellectual or developmental disabilities living in this state are entitled to the same rights and privileges as any other person living in this state. Provides that it is the policy of the state that all persons, regardless of disability, be treated with dignity and respect. Provides that the legislature recognizes that persons residing in state schools have the right to determine and pursue their personal goals, dreams, and aspirations to be contributing members of their communities.

Sec. 592.074. PURPOSE. Provides that the purpose of the state school resident bill of rights is to ensure the freedoms and rights of persons with intellectual or developmental disabilities living in state schools, to promote choice and self-determination, to protect the civil and constitutional rights of residents in state schools consistent with federal and state laws, and to ensure that residents receive adequate medical treatment in accordance with acceptable standards of professional practice.

Sec. 592.075. STATE SCHOOL RESIDENT BILL OF RIGHTS. Provides that it is the policy of the state that each person residing in a state school has the following rights:

- (1) to make decisions that impact the person's rights and freedoms, or, if appropriate, to have a legally authorized representative make those decisions;
- (2) to be free from physical or mechanical restraints, unless necessary to prevent imminent physical injury to the person or others and the use of the restraint is not prohibited by other law; restraint by a papoose board or straightjacket; medical restraint unless the medical restraint is administered only when necessary and as a therapeutic treatment prescribed by a physician for the protection of the person's health, during the performance of a specific medical, surgical, or dental procedure, or for client protection during a medication-related emergency, as defined by Section 574.101 (Definitions); the administration of unnecessary or excessive psychoactive medication, as defined by Section 574.101; and temporary separation from others, unless necessary to protect the health and safety of the person or others and the use of the temporary separation is not prohibited by other law;
- (3) to be free from abuse, neglect, or exploitation, including corporal or physical punishment, sexual abuse, or emotional abuse;
- (4) to refer all cases of confirmed abuse, neglect, or exploitation to the appropriate prosecuting attorney for prosecution of the perpetrator;
- (5) to report incidents of abuse, neglect, or exploitation in confidence using a private telephone or computer;
- (6) to have a representative of the director of a state school notify the person's legally authorized representative of an allegation of abuse, neglect, or exploitation not more than 24 hours after the allegation is made;
- (7) to have the results of any investigation regarding an allegation of abuse, neglect, or exploitation be explained on completion of the investigation to the person in a language and format understandable to the person and, if applicable, to the person's legally authorized representative by a representative of the director of the state school;
- (8) to report complaints about the state school, other than complaints about abuse, neglect, or exploitation, and have timely and appropriate resolution to those complaints;
- (9) to live in the most integrated setting allowed by law and based on the person's preferences, including certain conditions relating to community placement and community activity.
- (10) to continue receiving services in a state school if the person's legally authorized representative indicates a preference for the person continuing to receive services in the state school, and the state school is not required to transfer, furlough to an alternative placement, or discharge the person under Section 594.011 (Service Provider);
- (11) to form healthy social relationship with other persons;

(12) to receive quality assistive technology assessments, equipment, and training, and for staff to have the relevant training, necessary to ensure the person's successful inclusion in major life activities, to the greatest extent possible, including communication, mobility, employment, and education;

(13) to a quality and productive life, including certain opportunities, freedoms, and privacy;

(14) to have access to appropriate health and dental care, including a well-balanced diet, regular access to physical activity with certain conditions, and preventative and emergency medical care;

(15) to have the person's legally authorized representative notified of any significant medical, behavioral, or social event that occurs in the person's life; and

(16) to be provided with a written copy of this bill of rights in English and Spanish, and to have the opportunity to review this document with an advocate or individual of the person's choosing, and to have the bill of rights explained to the person in simple, nontechnical language in the person's primary language, if possible.

Sec. 592.076. PROVISION OF BILL OF RIGHTS TO RESIDENTS. (a) Requires the Department of Mental Health and Mental Retardation to provide a written copy of the state school resident bill of rights in English and Spanish and the person's primary language, if possible, to each person living in a state school and, if applicable, to the person's legally authorized representative.

(b) Requires a state school to ensure that, not later than the 24th hour after the hour the person is admitted to the state school, the rights specified in the state school resident bill of rights are explained to the person and, if applicable, the person's legally authorized representative. Requires the facility's representative to explain the state school resident bill of rights to the person orally, in simple, nontechnical terms, in the person's primary language, if possible, or in another manner reasonably calculated to communicate with the person.

(c) Requires a state school to prominently and conspicuously display a copy of the state school resident bill of rights in English and Spanish in a public area of the facility that is readily accessible by the residents.

(d) Requires the executive commissioner of the Health and Human Services Commission (HHSC) to adopt rules relating to the form of the state school resident bill of rights.

SECTION 2. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.02446, as follows:

Sec. 531.02446. DIVERSION PROTOCOLS TO PREVENT COMMITMENT OF CHILDREN TO STATE SCHOOLS. (a) Requires the executive commissioner of HHSC by rule to develop protocols to divert individuals under 22 years of age with intellectual or developmental disabilities from commitment to a state school.

(b) Requires the executive commissioner to ensure that the diversion protocols are designed to eliminate the commitment to state schools of individuals younger than 22 years of age, and requires a state school state that individuals under 22 years of age admitted to a state school be placed there on a temporary basis.

(c) Requires the executive commissioner, as part of the diversion protocols, to establish policies ensuring that individuals younger than 22 years of age are adequately informed of and offered community-based alternatives before admission to a state school and subject to the availability of funds appropriated for that purpose, contract for the provision of temporary, emergency living

arrangements for individuals younger than 22 years of age at immediate risk of commitment to a state school.

(d) Requires an entity awarded a contract under this section to provide temporary, emergency living arrangements at homes, with no more than six individuals placed in the home.

SECTION 3. (a) Requires the executive commissioner of HHSC to adopt the rules required by Section 592.076, Health and Safety Code, and Section 531.02446, Government Code, as added by this Act, not later than January 1, 2010.

(b) Provides that a state school is not required to provide or display the state school resident bill of rights under Subchapter E, Chapter 592, Health and Safety Code, as added by this Act, before February 1, 2010.

SECTION 4. Effective date: September 1, 2009.