

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 639  
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Health & Human Services  
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### **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.

As proposed, S.B. 639 establishes a State Residential Care Facility Resident Bill of Rights to protect the safety and civil rights of state residential care facility residents.

[**Note:** While the statutory reference in this bill is to the Texas 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) 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 RESIDENTIAL CARE FACILITIES**

Sec. 592.071. DEFINITIONS. Defines "state residential care facility" and "state residential care facility 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 residential care facility 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 residential care facilities 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 residential care facility resident bill of rights is to ensure the freedoms and rights of persons with intellectual or

developmental disabilities living in state residential care facilities, to promote choice and self-determination, and to protect the civil and constitutional rights of residents in state residential care facilities consistent with federal and state laws and in accordance with acceptable standards of professional practice.

Sec. 592.075. STATE RESIDENTIAL CARE FACILITY RESIDENT BILL OF RIGHTS. Provides that it is the policy of the state that each person residing in a state residential care facility has the following rights:

- (1) to make decisions that impact the person's rights and freedoms, or, if appropriate, to have a legal guardian or, if the person is a minor, a parent make those decisions;
- (2) to be free from abuse, neglect, and exploitation, including physical restraints, unless necessary to protect the health or safety of the person or others and the use of the restraint is not prohibited by other law, mechanical restraints, including a papoose board or straightjacket; medical restraint, including administration of psychotropic medication, unless the medication is administered in accordance with other law and there is a proven need for that medication for the health and safety of the person or of others with certain requirements, isolation from others, unless necessary to protect the health and safety of the person or others and the isolation is not prohibited by law, corporal or physical punishment, sexual abuse, or emotional abuse;
- (3) to seek immediate prosecution of a perpetrator of abuse, neglect, or exploitation;
- (4) to report incidents of abuse, neglect, or exploitation in confidence using a private telephone or computer;
- (5) to have the facility notify the person's legal guardian or, if the person is a minor, the person's parent of an allegation of abuse, neglect, or exploitation not more than 24 hours after the allegation is made;
- (6) to have the results of any investigation regarding an allegation of abuse, neglect, or exploitation be explained in a clear and timely fashion by a Texas Department of Mental Health and Mental Retardation (MHMR) representative on completion of the investigation;
- (7) to report complaints about the state residential care facility, other than complaints about abuse, neglect, or exploitation, and have timely and appropriate resolution to those complaints;
- (8) to live in the least restrictive setting appropriate to the person's individual needs and abilities and the most integrated setting possible, including certain conditions relating to community placement, and community activity;
- (9) to engage in age-appropriate, healthy interpersonal relationships with other persons based on mutual consent;
- (10) to receive high 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;
- (11) to a quality and productive life, including certain opportunities, freedoms, and privacy;
- (12) to have access to appropriate health care, including a well-balanced diet, regular access to physical activity with certain conditions, preventative and emergency medical care, and behavioral interventions;

(13) to reside in a community-based alternative with supports and services if the person desires, if this is possible considering the individual's disability;

(14) to have the person's legal guardian or, if the person is a minor, the person's parent notified of any significant medical, behavioral, or social event that occurs in the person's life; and

(15) 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.

Sec. 592.076. PROVISION OF BILL OF RIGHTS TO RESIDENTS. (a) Requires MHMR to provide a written copy of the state residential care facility resident bill of rights in English and Spanish to each person living in a state residential care facility and, if applicable, to the person's legal guardian or, if the person is a minor, the person's parent.

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

(c) Requires the executive commissioner of the Health and Human Services Commission (HHSC) to adopt rules relating to the form of the state residential care facility resident bill of rights.

Sec. 592.077. PROHIBITED PLACEMENT. Prohibits a person who is younger than 22 years of age who is admitted to a state residential care facility on a temporary basis from residing in the facility for more than 60 days. Requires MHMR, as soon as practicable after the temporary placement, to place the person in a family setting with the necessary supports and services.

SECTION 2. (a) Requires the executive commissioner of HHSC to adopt the rules required by Section 592.076, Health and Safety 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 residential care facility resident bill of rights under Subchapter E, Chapter 592, Health and Safety Code, as added by this Act, before February 1, 2010.

SECTION 3. Effective date: September 1, 2009.