

BILL ANALYSIS

C.S.S.B. 643
By: Nelson
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

As of January 31, 2009, over 4,500 individuals with intellectual or developmental disabilities were receiving services in 13 state-owned and operated residential institutions known as state schools. Additionally, over 6,300 individuals with intellectual or developmental disabilities were receiving care in intermediate care facilities for persons with mental retardation operated by private or public entities, the majority of whom reside in small, 6-bed facilities.

The state also provides services in the community. The largest program is the home- and community based services Medicaid waiver program that serves more than 15,000 individuals.

In 2005, the U.S. Department of Justice (DOJ) began an investigation of the Lubbock State School and subsequently engaged in an expanded assessment involving the other state schools in Texas. In December 2008, the DOJ informed Governor Rick Perry by letter that numerous conditions and practices at the facilities violate the constitutional and federal statutory rights of their residents. The DOJ letter included the findings that the facilities failed to provide their residents with adequate protection from harm and training and associated behavioral and mental health services.

Additional concerns have been raised regarding the care and protection of individuals with intellectual or developmental disabilities who receive services outside of state schools, for example in group homes and other facilities.

C.S.S.B. 643 is intended to improve the care and protection of individuals with intellectual and developmental disabilities.

C.S.S.B. 643 renames as "state supported living centers" facilities now called "state schools," and establishes additional powers and duties of the center directors, training requirements for center employees, and investigation procedures for reports of abuse, neglect and exploitation that includes the involvement of the Health and Human Services Commission (HHSC) office of inspector general (OIG). The bill also creates the office of an independent ombudsman and assistant ombudsmen for each center, and establishes qualifications and powers and duties of the ombudsman. The bill sets out provisions relating to criminal background checks of center employees and volunteers, an independent mortality review system, and the appointment of an assistant commissioner of state supported living centers. The bill also requires the Department of Aging and Disability Services (DADS) to establish and administer a separate forensic state supported living center for the care of high-risk alleged offender residents and designates the Mexia State Supported Living Center for this purpose. The bill sets forth provisions regarding the determination of "high risk," appeals processes regarding the determination of high risk, the transfer and placement of alleged offender residents to the forensic state supported living center, and other center requirements. The bill transfers to the Department of Family and Protective Services (DFPS) responsibilities regarding investigating reports of resident abuse, neglect, or exploitation in a licensed intermediate care facility for the mentally retarded. The bill establishes a database of reports of abuse, neglect or exploitation of clients in publicly or privately operated intermediate care facilities and in certain group homes. The bill establishes the Interim Select Committee on Criminal Commitments of Individuals with Mental Retardation to study the criminal commitment process for individuals with mental retardation who are found incompetent to stand trial or are acquitted by reason of insanity. The bill raises penalties for failure to report abuse, neglect, or exploitation under certain circumstances and for intentionally causing bodily

injury to a disabled person residing in an ICF-MR or state supported living center while employed to care for that person.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTIONS 6, 7, 19, and 29 of this bill.

ANALYSIS

Section 531.0055, Government Code, as amended by Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, expressly grants to the executive commissioner of the HHSC all rulemaking authority for the operation of and provision of services by the health and human services agencies. Similarly, Sections 1.16-1.29, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, provide for the transfer of a power, duty, function, program, or activity from a health and human services agency abolished by that act to the corresponding legacy agency. To the extent practicable, this bill analysis is written to reflect any transfer of rulemaking authority and to update references as necessary to an agency's authority with respect to a particular health and human services program.

C.S.S.B. 643 amends the Health and Safety Code to require DADS to establish a separate forensic state supported living center for the care of high-risk alleged offender residents apart from other clients and residents and to designate the Mexia State Supported Living Center for that purpose. The bill requires DADS to begin operating the Mexia State Supported Living Center as the forensic state supported living center not later than September 1, 2011. The bill sets forth provisions regarding high-risk alleged offender residents transfer to and placement in the forensic state supported living center. The bill authorizes transfers for residents who are not determined to be high-risk alleged offenders upon request of the resident. The bill requires DADS to ensure that the forensic state supported living center complies with intermediate care facility for the mentally retarded (ICF-MR) certification requirements under the Medicaid program. The bill requires the forensic center to have additional center employees to protect the safety of center employees, residents, and the community and to provide training to direct care employees regarding the service delivery system.

C.S.S.B. 643 requires DADS to collect data regarding the commitment of alleged offender residents to the forensic state supported living center, including information about any offense with which the resident is charged, the location of the committing court, whether the alleged offender resident has previously been in the custody of the Texas Youth Commission or the Department of Family and Protective Services (DFPS), and whether the alleged offender resident receives or has received mental health services or services under a home- and community-based waiver program. The bill requires DADS to annually submit this information in a report to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees of the legislature with primary subject matter jurisdiction over state supported living centers and prohibits the report from containing personally identifiable information for any person in the report.

C.S.S.B. 643 requires an interdisciplinary team to determine whether an alleged offender resident is at risk of inflicting substantial physical harm to another and should be classified as a high-risk alleged offender not later than the 30th day after the date the alleged offender resident is first committed to the forensic state supported living center and, if the resident is classified as a high-risk alleged offender resident, annually on the anniversary of that date. The bill sets forth requirements for the documentation and collection of evidence regarding the determination and entitles an alleged offender resident, after such determination and classification, to an administrative hearing to contest the determination and classification. The bill authorizes such an individual who has exhausted the administrative remedies to bring a suit to appeal the determination and classification in district court in Travis County.

C.S.S.B. 643 includes a temporary provision, set to expire September 1, 2013, requiring DADS to ensure that the interdisciplinary team has completed a determination of high-risk alleged

offender status for each alleged offender resident residing in a state supported living center or the ICF-MR component of the Rio Grande State Center on the date the bill takes effect, not later than September 1, 2011. The bill entitles an alleged offender resident for whom a determination is completed and who is classified as a high-risk alleged offender resident to an administrative hearing and appeal regarding that determination and classification and an administrative hearing regarding the resident's proposed transfer to the forensic state supported living center. The bill prohibits DADS from transferring an alleged offender resident residing in a center on the effective date of the bill to the forensic state supported living center while the resident is pursuing those administrative remedies. The bill requires DADS to transfer an alleged offender resident classified as a high-risk alleged offender resident to the forensic state supported living center on the date the Mexia State Supported Living Center begins operating as the forensic state supported living center or as soon as possible after that date.

C.S.S.B. 643 establishes procedures for state and federal criminal history background checks on certain applicants, employees, and volunteers with the agency who would be placed in direct contact with a resident or client. The bill entitles Department of State Health Services (DSHS) and DADS to obtain criminal history record information maintained by Department of Public Safety (DPS), the Federal Bureau of Investigation (FBI), or any other criminal justice agency in the state. The bill prohibits the criminal history record information obtained by an agency from being released or disclosed to any person except on court order, with the consent of the person who is the subject of the information, or for the purpose of an administrative hearing held by the agency concerning the person who is the subject of the information. The bill establishes that an agency is not prohibited from releasing information to the person who is the subject of the information. The bill establishes that these provisions do not prohibit an agency from obtaining and using criminal history record information as provided by other law.

C.S.S.B. 643 directs DADS and DSHS to require a person subject to a background check to submit fingerprints in a form and of a quality acceptable to DPS and the FBI for use in conducting the background check. The bill requires each agency to obtain electronic updates from DPS relating to arrests and convictions of persons subject to a background check and certain agency employees. The bill requires the executive commissioner of HHSC not later than September 1, 2010, to require DADS and any licensed ICF-MR to conduct a criminal history check on each employee and requires DADS or the licensed ICF-MR to discharge any person whose criminal history check reveals a conviction of an offense that bars employment.

C.S.S.B. 643 requires the executive commissioner of the HHSC to adopt, and the director of a state supported living center or the superintendent of the Rio Grande State Center to enforce, a policy for the testing and reporting of suspected illegal use of drugs by a center employee. The bill requires the policy to provide that a center employee may be terminated solely on the basis of a single positive test for illegal use of a controlled substance and to establish an appeals process for a center employee who tests positively. The bill sets out procedures for the reporting of suspected illegal drug use and establishes that a report is considered reasonable suspicion for purposes of conducting a test.

C.S.S.B. 643 requires DADS to provide to a center employee, before the employee begins to perform duties without direct supervision, competency training, information related to individuals with mental retardation, mental illness and autism, and specified information concerning other duties of a center employee. The bill requires DADS to provide additional training to a direct care employee before the employee performs the employee's duties without direct supervision, and specifies the required training topics. The bill requires the executive commissioner to adopt rules that require a center to provide refresher training courses to direct care employees on a regular basis. The bill authorizes a center to allow an employee of an ICF-MR, an employee of a person licensed or certified to provide home- and community-based waiver program services, or another employee or professional involved in the provision of services to persons with mental retardation to receive information and training as appropriate. The bill authorizes the center to charge an administrative fee for training non-center employees in an amount not to exceed the cost of providing the information or training. The bill requires DADS to develop the training by January 1, 2010, and to ensure that each center employee and direct care employee receives the training not later than September 1, 2010.

C.S.S.B. 643 requires DADS to install and operate video surveillance equipment in a center for the purpose of detecting and preventing the exploitation or abuse of residents and clients, except in private spaces or in a location in which video surveillance equipment can capture images within such a space. The bill requires DADS to ensure that the use of video surveillance equipment complies with federal requirements for ICF-MR certification. The bill defines "private space."

C.S.S.B. 643 establishes the office of independent ombudsman for the purpose of investigating, evaluating, and securing the rights of the residents and clients of state supported living centers and the ICF-MR component of the Rio Grande State Center. The bill provides for the administrative support and independence of the office. The bill requires the governor to appoint the ombudsman and sets forth provisions for the hiring of assistant ombudsmen and provisions relating to conflicts of interest that prohibit a person from serving in either capacity. The bill requires the governor to appoint the independent ombudsman not later than September 1, 2009, and for the ombudsman to hire assistant ombudsmen. The bill requires the ombudsman to submit a biannual report to the governor, the lieutenant governor, the speaker of the house of representatives and the chairs of the Senate Health and Human Services Committee and House Human Services Committee that describes the ombudsman's work, the results of any review or investigation, and any recommendations relating to the duties of the independent ombudsman and systemic improvements needed to decrease incidents of abuse, neglect, or exploitation at an individual center or all centers. The bill requires the independent ombudsman to ensure that information submitted in a report does not identify an individual. The bill requires the independent ombudsman to immediately report to the governor, the lieutenant governor, and the speaker of the house of representatives any particularly serious or flagrant case of abuse or injury of a resident or client, problems concerning the administration of a state supported living center program or operation, or interference with an investigation conducted by the ombudsman.

C.S.S.B. 643 authorizes confidential communication between a resident or client, authorized representative of a resident or client, family member of a resident or client, or other interested party and the ombudsman or assistant ombudsman. The bill provides for the confidentiality and disclosure of records and reports of the ombudsman and information contained in those records and reports. The bill authorizes the independent ombudsman to provide an unredacted report to the center involved in an investigation, DADS, DFPS, and the inspector general of HHSC.

C.S.S.B. 643 requires the independent ombudsman to promote awareness of the office among the public, residents, clients, and center employees. The bill sets forth the duties and powers of the ombudsman including: evaluating the process by which a center investigates, reviews, and reports an unusual incident or injury to a resident or client; evaluating the delivery of services; referring complaints alleging abuse, neglect, or exploitation of a resident or client, violations of department standards, and unusual incidents; conducting investigations of complaints other than those required to be referred; conducting an annual audit of each center's policies, practices, and procedures; preparing and delivering a report regarding the findings of each audit; requiring a center to provide access to all records, data, and other information; reviewing reports relating to complaints referred; providing assistance to a resident or client; making appropriate referrals; and monitoring and evaluating DADS actions relating to any problem identified or recommendation included in an inspector general or DFPS investigation report. The bill authorizes the ombudsman to apprise a person of the rights of a resident or client and in certain cases to contact or consult with an administrator, employee, resident, client, family member of a resident or client, expert, or other individual to assess whether a resident's or client's rights have been violated. The bill prohibits the ombudsman from investigating an alleged criminal offense or the alleged abuse, neglect, or exploitation of a resident or client and requires the ombudsman to refer an allegation of abuse, neglect, or exploitation of a resident or client to DFPS. The bill prohibits DADS or a state developmental center from retaliating against a DADS employee or a center employee for a complaint to the ombudsman or for cooperating with the office in an investigation.

C.S.S.B. 643 requires the office of the ombudsman to establish a permanent, toll-free number for the purposes of receiving any information concerning the violation of a right of a resident or client and to ensure prominent display of the number and confidential access to a telephone for the purpose of calling the number.

C.S.S.B. 643 requires the HHSC OIG to employ and commission peace officers for the purpose of conducting criminal investigations relating to a center and assisting a state or local law enforcement agency in the investigation of an alleged criminal offense relating to a center. The bill specifies that a peace officer employed and commissioned by the office is a peace officer under the Code of Criminal Procedure. The bill requires the OIG to begin employing and commissioning peace officers not later than December 1, 2009. The bill requires the inspector general to immediately initiate a prompt and thorough evaluation to determine whether there is a possible criminal offense related to a report submitted by DFPS regarding an allegation of abuse, neglect, or exploitation of a resident or client or the independent ombudsman relating to an unusual incident relating to a center. The bill requires the inspector general to provide notice of a determination that there is not a reason to investigate a possible criminal offense related to such a report to the appropriate entity not later than 24 hours after receiving the report.

C.S.S.B. 643 requires the OIG to conduct or assist a law enforcement agency in conducting an investigation of the report if the inspector general determines that there is a reason to investigate a possible criminal offense related to the report or if, not later than 24 hours after receiving the report, the inspector general cannot determine whether there is cause to investigate a possible criminal offense. The bill sets forth requirements and timelines for required action for the inspector general in conducting and reporting investigations. The bill authorizes the attorney general, if requested to do so by a local prosecuting attorney, to assist the local prosecuting attorney in the prosecution of an offense involving a center. The bill requires the inspector general to ensure that a completed investigation report conforms to the requirements of the DFPS single tracking system. The bill requires the inspector general to analyze each report received, regardless of whether the report is investigated, in order to detect patterns indicating abuse, neglect, or exploitation at a center. The bill authorizes the inspector general to investigate patterns that indicate possible criminal offenses and to recommend additional action or investigation, as appropriate.

C.S.S.B. 643 requires the OIG to prepare a summary report for each investigation of an alleged criminal offense and an annual status report of the office's activities. The bill requires the office to ensure that the reports do not contain personally identifying information of an individual mentioned in the reports and specifies the information required to be included in the reports and the state officials and entities to whom the reports are required to be delivered. The bill provides for the disclosure of a summary report under open records provisions and for the confidentiality of information and materials compiled in connection with an investigation. The bill provides that the annual status report is public information and specifies reporting aggregated and disaggregated information for each center. The bill prohibits DADS or a center from retaliating against a DADS employee, a center employee, or any other person who in good faith cooperates with the inspector general.

C.S.S.B. 643 establishes that a person is not eligible for a license or to renew a license to establish, conduct, or maintain a licensed ICF-MR if the applicant, a controlling person with respect to the applicant, or an administrator or chief financial officer of the applicant has been convicted of an offense that would bar a person's employment at a facility. The bill authorizes the executive commissioner to adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person. The bill defines "controlling person," and specifies the individuals and entities included and excluded within the term.

For licensed ICF-MR facilities, C.S.S.B. 643 requires owners and employees to report suspected cases of abuse, neglect, or exploitation to DFPS and for DFPS to investigate those reports. The bill requires facilities to post a notice prominently and conspicuously for display to residents, employees, and visitors providing instructions for reporting to DFPS an allegation of abuse, neglect, or exploitation. The bill requires DADS to immediately refer a report of suspected abuse, neglect, or exploitation of a resident of a licensed ICF-MR to DFPS for investigation. The bill removes provisions relating to the reports of abuse or neglect to an agency designated by the court and oral reports of abuse or neglect, and other conforming changes. The bill requires the executive commissioner of HHSC to adopt rules regarding investigations in an ICF-MR to ensure that those investigations are as consistent as practicable with other investigations conducted by DFPS.

C.S.S.B. 643 requires DFPS to provide a copy of a completed investigation report to DADS and authorizes DFPS to disclose information related to the investigation at any time to DADS as necessary to protect a resident of a facility from abuse, neglect, or exploitation. The bill includes a licensed ICF-MR in the definition of "facility" for the purposes of the health facility employee misconduct registry. The bill requires DADS to forward a report that an employee of an ICF-MR committed reportable conduct to DFPS for investigation.

C.S.S.B. 643 provides that a reference in law to "state school" means a "state supported living center" and a reference to "superintendent," to the extent the term is intended to refer to the person in charge of a state supported living center, means the director of a state supported living center. The bill makes technical corrections and conforming changes to the definition of "state supported living center" and to provisions related to state hospitals and state schools.

C.S.S.B. 643 sets out the powers and duties of a state supported living center director relating to administration of the center, custody of the center's property, admissions and discharges, civil rights and health and safety of residents, registry of residents, repairs and improvements, spending, accounting, record keeping, monitoring arrivals and departures to and from the center, notification of certain serious events regarding resident care and treatment, hiring and dismissing personnel, and establishing center policy.

C.S.S.B. 643 amends the Family Code to include investigating a report of abuse, neglect, or exploitation of a child receiving services from a provider of home- and community-based services or a licensed ICF-MR and amends the Human Resources Code to include investigations of abuse, neglect or exploitation of adults in licensed ICFs-MR. The bill requires DFPS, if a report of abuse or neglect relates to a child or adult receiving services in a state supported living center or the ICF-MR component of the Rio Grande State Center, within one hour of receiving the report to notify the facility in which the child or adult is receiving services of the allegations in the report, forward a copy of the initial intake report to the OIG for evaluation and inspection, and place the DFPS investigation of the report on hold. The bill requires DFPS to proceed with and complete an investigation of such a report only if, not more than 24 hours after DFPS forwards the report to the OIG, the office notifies DFPS that the office does not have cause to investigate a possible criminal offense related to the report. The bill authorizes DFPS to provide assistance, including assistance in conducting interviews, to the OIG when the office conducts an investigation of a report of abuse, neglect, or exploitation at the state supported living center or the ICF-MR component of the Rio Grande State Center.

C.S.S.B. 643 requires DFPS, if during the course of an investigation of reported abuse, neglect, or exploitation has cause to believe that a child or adult with mental retardation receiving services in a state supported living center or the ICF-MR component of the Rio Grande State Center has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense under any law, to immediately notify the OIG, provide the office with the evidence collected by DFPS during the investigation in a timely manner, and place the DFPS investigation on hold.

C.S.S.B. 643 increases the penalty from a Class B to a Class A misdemeanor for a knowing failure to report abuse or neglect of a child if a person had cause to believe that the child's physical or mental health or welfare has been or may be adversely affected by the abuse or neglect. The bill enhances the penalty to a state jail felony for such an offense if it is shown on the trial of the offense that the child was a person with mental retardation who resided in a state supported living center, the ICF-MR component of the Rio Grande State Center, or other licensed ICF-MR, and the actor knew that the child had suffered serious bodily injury as a result of the abuse or neglect.

C.S.S.B. 643 enhances the penalty for an offense of failure to report abuse, neglect, or exploitation of an elderly or disabled person from a Class A misdemeanor to a state jail felony if it is shown on the trial of the offense that the disabled person was a person with mental retardation who resided in a state supported living center, the ICF-MR component of the Rio Grande State Center, or other licensed ICF-MR, and the actor knew that the disabled person had suffered serious bodily injury as a result of the abuse, neglect, or exploitation.

C.S.S.B. 643 requires DFPS to inform the OIG of the methods used to measure the number and outcomes of reports and investigations under the single tracking system developed by DFPS, DADS, and DSHS. The bill requires the OIG to ensure that the same methods are used for investigations performed by the office regarding a report of abuse, neglect, or exploitation of an elderly person or disabled individual and investigations regarding abuse and neglect of a child. The bill includes a licensed ICF-MR in the definition of "agency" for the purposes of the employee misconduct registry.

C.S.S.B. 643 requires the executive commissioner of HHSC to establish an independent mortality review system to review the death of a person with a developmental disability who, at the time of the person's death, resided in or received services from an ICF-MR operated or licensed by DADS or a community center or the ICF-MR component of the Rio Grande State Center, or received residential assistance through a home- and community-based services waiver program in certain group homes. The bill provides that the mortality review is in addition to any review conducted by the facility in which the person resided or from which the person received services and requires the review to be conducted after any investigation of alleged or suspected abuse, neglect, or exploitation is complete. The bill requires the executive commissioner to contract with a federally certified patient safety organization to conduct the review and sets out requirements for members of the mortality review team under the contract. The bill requires the executive commissioner to adopt rules regarding the manner in which the death of a person must be reported to the patient safety organization by a facility or waiver program provider. The bill requires the review to collect information consistent with the information required to be collected by any other independent mortality review process established specifically for persons with mental retardation. The bill requires the executive commissioner to contract for mortality review services not later than December 1, 2009.

C.S.S.B. 643 establishes procedures for access to information by a patient safety organization for purposes of a mortality review, submission of mortality review general findings and a semiannual report, restrictions on the use and publication of information compiled for the report, confidentiality of the information compiled, and a limitation on liability related to furnishing information to a patient safety organization.

C.S.S.B. 643 requires HHSC, DFPS, DADS, the office of the independent ombudsman for state supported living centers, and the OIG to enter into a memorandum of understanding not later than December 1, 2009, regarding investigations of alleged abuse, neglect, or exploitation of residents or clients of state supported living centers or the ICF-MR component of the Rio Grande State Center that delineates the responsibilities of each agency. The bill requires the agencies to amend the memorandum of understanding as necessary to reflect changes in those responsibilities and establishes HHSC as the final arbiter of any dispute regarding the memorandum of understanding.

C.S.S.B. 643 requires the commissioner of DADS to employ an assistant commissioner of state supported living centers to report directly to the commissioner, selected on education, training, experience, and demonstrated ability. The bill requires the assistant commissioner to supervise the operation of the state supported living centers and, as part of that duty, to verify that quality health and medical services are being provided in the centers; verify and certify employee qualifications for employees of a center; and work with the commissioner to create administrative guidelines for proper implementation of federal and statutory law and judicial decisions. The bill requires the assistant commissioner to coordinate and consult with the appropriate staff of DSHS to ensure that the ICF-MR component of the Rio Grande State Center implements and enforces state law and rules that apply to the operation of state supported living centers and to ensure that an individual with a dual diagnosis of mental illness and mental retardation who is a resident of a state supported living center or the ICF-MR component of the Rio Grande State Center is provided with appropriate care and treatment. The bill requires the commissioner of DADS to employ an assistant commissioner as soon as possible after the effective date of the bill and provides that, on the date the assistant commissioner is employed, the position of section director over state schools is eliminated.

C.S.S.B. 643 requires DADS to conduct an unannounced on-site survey at least every 12 months in each group home, other than a foster home, at which a home- and community-based services provider provides services. The bill requires DADS, in consultation with DFPS and the OIG, to

develop and maintain an electronic database to collect and analyze information regarding the investigation and prevention of abuse, neglect, and exploitation of individuals with mental retardation who reside in a publicly or privately operated ICF-MR or in a group home, other than a foster home, at which a home- and community-based services provider provides services and the results of regulatory investigations or surveys performed by DADS regarding those facilities or providers. The bill sets forth requirements regarding the collection, entry, storage, retrieval, disaggregation, and release of information in the database and provides for the minimum information required to be included in the database. The bill requires DADS to develop the database as soon as practicable after the effective date of the bill.

C.S.S.B. 643 amends the Penal Code to enhance the penalty from a felony of the third degree to a felony of the second degree for an offense involving the bodily injury to a child, elderly individual, or disabled individual when the conduct is committed intentionally or knowingly and the victim is a disabled individual residing in a state supported living center or in a licensed ICF-MR and the actor is an employee of the center or facility whose employment involved providing direct care for the victim.

C.S.S.B. 643 establishes the Interim Select Committee on Criminal Commitments of Individuals with Mental Retardation to study the criminal commitment process for individuals with mental retardation who are found incompetent to stand trial or are acquitted by reason of insanity. The bill sets out the requirements for the committee's study and membership. The bill provides that the co-presiding officers of the committee are the chair of the Senate Health and Human Services Committee and the chair of the House Committee on Human Services. The bill establishes that the committee has the powers and duties provided to a special or select committee by the rules of the senate and house of representatives and provides for the reimbursement of expenses incurred by committee members. The bill requires the committee to report the committee's findings and recommendations resulting from the study to the governor, lieutenant governor, speaker of the house of representatives, and members of the legislature not later than December 1, 2010.

C.S.S.B. 643 requires DADS to evaluate and determine the types of training that are needed by owners and employees of intermediate care facilities for the mentally retarded and home- and community-based services waiver program providers and whether that training is available. The bill requires DADS to provide a report relating to the types and availability of such training, not later than December 1, 2010, to the governor, lieutenant governor, speaker of the house of representatives, and chairs of the standing committees of the senate and house of representatives with primary jurisdiction regarding persons with mental retardation.

C.S.S.B. 643 requires an individual who is an employee of DADS and who performs duties primarily related to consumer rights and services at state schools, on the effective date of the bill, to reapply for an employment position with DADS and authorizes the individual to apply for a position as an assistant independent ombudsman.

C.S.S.B. 643 makes its provisions relating to the investigation of suspected abuse, neglect, or exploitation involving a state supported living center or the ICF-MR component of the Rio Grande State Center applicable to a report of suspected abuse, neglect, or exploitation made on or after January 1, 2010. The bill makes its provisions relating to the investigation of suspected abuse, neglect, or exploitation involving a licensed ICF-MR applicable to a report of suspected abuse, neglect, or exploitation made on or after June 1, 2010. The bill makes its provisions regarding the dismissal of employees applicable to the dismissal of an officer, teacher, or other employee of a center hired before, on, or after the effective date of the bill.

C.S.S.B. 643 requires a state agency that is affected by a provision of the bill to request a federal waiver or authorization if the agency determines that a waiver or authorization is necessary for the implementation of the provision, and it authorizes the agency to delay implementation until the federal waiver or authorization is obtained.

C.S.S.B. 643 defines "alleged offender resident," "center," "center employee," "client," "commission," "complaint," "controlling person," "department," "direct care employee," "executive commissioner," "high-risk alleged offender resident," "independent ombudsman," "inspector general," "interdisciplinary team," "office," "resident," and "state supported living center."

C.S.S.B. 643 repeals provisions relating to the reporting of abuse, neglect or exploitation in licensed ICFs-MR, specifically: Section 5(c), Chapter 693 (S.B. 1248), Acts of the 75th Legislature, Regular Session, 1997, and the following provisions of the Health and Safety Code:

- Section 252.123
- Section 252.124
- Section 252.127
- Section 252.128
- Section 252.129
- Section 252.130
- Section 252.131

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The original renames "state schools" as "state developmental centers," whereas C.S.S.B. 643 renames "state schools" as "state supported living centers." C.S.S.B. 643 adds to state supported living center director duties the following: ensuring the protection of resident civil rights and health and safety, monitoring the arrival and departure of individuals to and from the center and ensuring family members are notified of serious events that may indicate problems in the care and treatment of residents.

C.S.S.B 643 omits provisions included in the original regarding the commitment of an individual with mental retardation to a residential care facility operated by the Department of Aging and Disability Services (DADS) under certain circumstances.

The substitute contains provisions not in the original specifying the role of the inspector general in reviewing reports of abuse, neglect or exploitation in state supported living centers and assuming responsibility for investigations that may involved criminal offenses or for cases in which the determination of possible criminal offense can not be made within 24 hours. The substitute also contains a provision requiring the inspector general to review unusual incident reports referred by the ombudsman. The substitute names as a "summary report" what the original named as a "final report," by the inspector general, and adds the assistant ombudsman to the list of people receiving a copy of the summary report. C.S.S.B. 643 adds a provision prohibiting retaliation against an employee who cooperates with the inspector general's investigation.

C.S.S.B. 643 includes a provision not in the original by adding the conduct of criminal investigations relating to a state supported living center among the purposes for which the HHSC inspector general is required to employ and commission peace officers and providing that a such a peace officer is a peace officer for the purposes of the Code of Criminal Procedure. The substitute includes provisions not in original authorizing the attorney general to, if requested, assist the local prosecuting attorney in the prosecution of an offense involving a center and requiring the inspector general to ensure that an investigation report conforms to the requirements of the DFPS single tracking system for reports and investigations. The substitute includes a provision not in the original requiring the inspector general to analyze each report received, regardless of whether the report is investigated, in order to detect patterns indicating abuse, neglect, or exploitation at a state center and to investigate based on those patterns as appropriate.

C.S.S.B. 643 differs from the original by designating the Mexia State Supported Living Center as the separate forensic state supported living center for high-risk alleged offender residents, whereas the original requires DADS to designate an existing center for residents who present a high risk of dangerous or violent behavior. The substitute omits provisions included in the original specifying the conditions and offenses under which a resident is considered or may be considered to be a high-risk resident and instead requires the determination of high risk to be performed by an interdisciplinary team. The original provides an opportunity for an C.S.S.B. 643 81(R)

administrative hearing for high-risk residents who are transferred to the high risk center, while C.S.S.B. 643 provides opportunities for administrative appeal of a determination of high risk prior to transfer to the forensic facility and opportunities to appeal the administrative decision to a district court in Travis County. The substitute adds provisions not in the original requiring, on request of the resident, the transfer of residents not determined to be high-risk alleged offenders from the forensic state supported living center. The substitute differs from the original by requiring DADS to collect data regarding the commitment of alleged offender residents to the forensic state supported living center, whereas the original requires the director of a center to collect and document evidence regarding the conduct of a resident who meets the criteria for a high-risk resident. The substitute includes a provision not in the original requiring DADS to submit an annual report of the information collected to make determinations of alleged offender resident status.

The substitute includes the following center employee training topics not in the original: an introduction to autism and self-determination. The substitute also adds provisions requiring the HHSC executive director to adopt rules pertaining to refresher courses and provisions allowing employees of ICFs-MR or other community programs for persons with mental retardation to receive training at cost.

The substitute differs from the original by expanding the application of provisions establishing an independent mortality review to include the review of the death of a person residing in or receiving services from a licensed or community ICF-MR or who received residential assistance in certain group homes. The substitute differs from the original by requiring the executive commissioner to contract with a patient safety organization certified in accordance with federal regulations as effective January 19, 2009, whereas the original refers to the date those regulations were effective as of January 20, 2009. The substitute includes provisions not in the original requiring the executive commissioner to adopt rules regarding the manner in which a death must be reported to the patient safety organization and relating to consistent collection of information across mortality review processes for persons with mental retardation. The substitute includes provisions not in the original relating to access to information by the patient safety organization, disclosure, and confidentiality of information collected for the review, and limitations on liability for providing information for the review.

The substitute adds qualifications for the independent ombudsman and assistant ombudsman not included in the original. The substitute adds specified House and Senate committees to the list of persons who must receive the biannual ombudsman report, and adds to the report content recommendations for systemic improvements to reduce incidents of abuse, neglect and exploitation. The substitute also requires the ombudsman to report to the inspector general communications that involve an unusual incident. The substitute allows the ombudsman to share unredacted information to DADS, DFPS, the center and the inspector general. The substitute additionally tasks the ombudsman to evaluate the delivery of service to ensure the protection of civil rights, and monitor DADS actions pertaining to problems identified or recommendations included in a report from DFPS or the inspector general.

The substitute omitted provisions requiring the ombudsman to conduct semi-annual on-site audits and meetings, and instead requires an annual audit that includes an audit of procedures relating to rights to file a complaint and due process. The substitute omitted provisions requiring a biennial on-site audit of employee ratios and training.

The substitute includes a clarification not in the original that the ombudsman's duty to evaluate service delivery includes ensuring that each center conducts sufficient unannounced patrols. The substitute differs from the original by specifying that the ombudsman's duty to refer a complaint alleging abuse, neglect, or exploitation to DFPS is required to be performed immediately.

The substitute requires the toll-free number established by the ombudsman for the purpose of receiving information about a violation of a resident's or client's rights to be prominently displayed in appropriate common areas of a center, whereas the original also requires the number to be prominently displayed in each home in which a resident lives or a client receives services.

C.S.S.B. 643 adds provisions not included in the original making a person ineligible for a license or a license renewal to establish, conduct, or maintain an ICF-MR based on certain convictions and defining "controlling person" for that purpose.

C.S.S.B. 643 differs from the original by removing provisions of existing law relating to the investigation of a report received by DADS or a designated agency from a licensed ICF-MR and adding provisions not in the original relating to reporting suspected cases of abuse, neglect and exploitation in licensed ICFs-MR to DFPS, and the agency's investigation of the reports. The substitute adds a requirement not included in the original that DFPS provide DADS with a completed investigation report relating to a licensed ICF-MR, adds the authority for DFPS to disclose investigation information to DADS at any time, and makes conforming changes.

The substitute includes a licensed ICF-MR in the definition of "facility" for the purposes of the employee misconduct registry, whereas the original contains no such provision.

C.S.S.B. 643 adds definitions not in the original for "alleged offender resident," "center," "center employee," "high- risk alleged offender resident," "inspector general," "interdisciplinary team," and "state supported living center." The original includes definitions not included in the substitute "developmental center employee" and "state developmental center."

C.S.S.B. 643 adds the requirement not included in the original that a center's drug policy state that an employee may be terminated solely on the basis of a single positive drug test and that the policy establish an appeals process. The substitute provides that a report of illegal drug abuse is considered reasonable suspicion of the use of a controlled substance, whereas the original provides that such a report may be considered a factor in determining whether there is reasonable suspicion of the use of a controlled substance.

The substitute omits a provision included in the original requiring the annual status report to be published on the Internet website of the office of the inspector general.

The substitute adds a provision not included in the original regarding a memorandum of understanding between DADS, HHSC, DFPS, the ombudsman and the inspector general regarding abuse, neglect, or exploitation investigations and makes HHSC the final arbiter.

The substitute includes provisions not in the original enhancing the penalty for an offense relating to failure to report a case of abuse, neglect, or exploitation of a child from a Class B to a Class A misdemeanor. The substitute includes provisions not in the original enhancing the penalty to a state jail felony for an offense relating to failure to report a case of abuse, neglect, or exploitation of an elderly or disabled person or child with mental retardation who resided in a state center or licensed ICF-MR. The substitute adds a provision not in the original enhancing the penalty for an offense of bodily injury to certain residents of a state center or licensed ICF-MR if the actor is a direct care employee of the facility.

The substitute differs from the original by adding to the requirements for DFPS when involved in an investigation that reveals evidence of criminal offense when investigating abuse, neglect, or exploitation of a resident or client that DFPS notify the inspector general and place the department's investigation on hold and proceed with the investigation in accordance with the bill's provisions.

The substitute adds a provision not included in the original requiring the executive commissioner of HHSC to adopt rules to ensure investigations of an ICF-MR are as consistent as practicable with other investigations conducted by DFPS. The substitute adds provisions not included in the original relating to the single tracking system required by DFPS, DADS, and DSHS for reports and investigations. The substitute adds a provision not in the original including employees of a licensed ICF-MR to be added to the employee misconduct registry. C.S.S.B. 643 adds a provision not included in the original requiring the development and maintenance of an investigation database pertaining to abuse, neglect or exploitation of individuals with mental retardation who reside in publicly or privately operated ICFs-MR and certain group homes.

C.S.S.B. 643 adds provisions not included in the original relating to the employment and required duties of an assistant commissioner of state supported living centers. The substitute

differs from the original by requiring DADS to conduct an unannounced on-site survey in each group home, other than a foster home, at which a home- and community-based services provider provides services.

The substitute adds a provision not included in the original establishing the Interim Select Committee on Criminal Commitments of Individuals with Mental Retardation and the duties of the committee.

The substitute adds a provision not included in the original requiring DADS to evaluate and determine certain types of training for an employee or owner of a licensed ICF-MR or home- and community-based services provider.

The substitute differs from the original by adding the requirement that the Civil Rights Officers at the centers reapply for employment after the effective date of the bill. The substitute adds transition provisions to conform to provisions not included in the original relating to the assistant commissioner of state supported living centers, the investigation database, the memorandum of understanding, criminal history checks, and the designation of the Mexia State Supported Living Center.

The substitute includes implementation dates for that differ from the original. The original requires DADS to designate a high-risk state developmental center by 9/1/2014, whereas the substitute designates Mexia as the forensic facility and requires it to begin operating by 9/1/2011. The substitute requires the governor to appoint the independent ombudsman not later than September 1, 2009, whereas the original requires the appointment to be made not later than December 1, 2009. The original requires the

C.S.S.B. 643 adds a provision not in the original to include a temporary provision, set to expire September 1, 2013, relating to the determination of alleged offender residents by an interdisciplinary team, to authorize a resident classified as a high-risk alleged offender resident to an administrative hearing and appeal, to prohibit DADS from transferring a resident to the forensic state supported living center while the resident is pursuing administrative remedies, and to require DADS to transfer a high-risk alleged offender resident to the forensic state supported living center on the date the Mexia State Supported Living Center begins operating.

The original applies changes in law relating to dismissals to pertain to state developmental center employees hired on or after the effective date of the act. The substitute makes the change in law pertain to state supported living center employees hired before, on or after the effective date of the act. The substitute also contains a provision not in the original requiring DADS and licensed ICFs-MR to conduct criminal history checks on each employee by September 1, 2010, and to discharging an employee whose criminal history check reveals a conviction that bars employment under the Health and Safety Code.

C.S.S.B. 643 adds a provision not in the original making enhanced penalties in the Family Code, Human Resources Code and the Penal Code apply to offenses committed on or after the effective date of the Act.

The original includes provisions relating to the implementation of order for commitment, the substitute does not contain those provisions. The substitute adds provisions not in the original to repeal provisions of the Health and Safety Code pertaining to reporting abuse, neglect or exploitation in licensed ICFs-MR.

The substitute adds a provision not in the original regarding federal waivers and authorization.