

By: Nelson

S.B. No. 643

A BILL TO BE ENTITLED

AN ACT

relating to the protection and care of individuals with mental retardation who reside in certain state-operated facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 261.404, Family Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) If an investigation under this section reveals evidence of abuse, neglect, or exploitation of a resident or client of a state developmental center as defined by Section 531.002, Health and Safety Code, or the ICF-MR component of the Rio Grande State Center, and a caseworker of the department or a supervisor of a caseworker believes that the abuse, neglect, or exploitation is a criminal offense, the caseworker or supervisor shall immediately notify the Health and Human Services Commission's office of inspector general and promptly provide the Health and Human Services Commission's office of inspector general with a copy of the department's investigation report.

SECTION 2. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.1144 to read as follows:

Sec. 411.1144. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: AGENCIES WITH EMPLOYEES OR VOLUNTEERS AT STATE DEVELOPMENTAL CENTERS. (a) The Department of State Health Services and the Department of Aging and Disability Services are entitled to obtain from the department criminal history record information

1 maintained by the department that relates to a person:

2 (1) who is:

3 (A) an applicant for employment with the agency;

4 (B) an employee of the agency;

5 (C) a volunteer with the agency; or

6 (D) an applicant for a volunteer position with
7 the agency; and

8 (2) who would be placed in direct contact with a
9 resident or client of a state developmental center or the ICF-MR
10 component of the Rio Grande State Center.

11 (b) Criminal history record information obtained by an
12 agency under Subsection (a) may not be released or disclosed to any
13 person except:

14 (1) on court order;

15 (2) with the consent of the person who is the subject
16 of the criminal history record information;

17 (3) for purposes of an administrative hearing held by
18 the agency concerning the person who is the subject of the criminal
19 history record information; or

20 (4) as provided by Subsection (c).

21 (c) An agency is not prohibited from releasing criminal
22 history record information obtained under Subsection (a) or (d) to
23 the person who is the subject of the criminal history record
24 information.

25 (d) Subject to Section 411.087, the Department of State
26 Health Services and the Department of Aging and Disability Services
27 are entitled to:

1 (1) obtain through the Federal Bureau of Investigation
2 criminal history record information maintained or indexed by that
3 bureau that pertains to a person described by Subsection (a); and

4 (2) obtain from any other criminal justice agency in
5 this state criminal history record information maintained by that
6 criminal justice agency that relates to a person described by
7 Subsection (a).

8 SECTION 3. Subchapter C, Chapter 531, Government Code, is
9 amended by adding Section 531.1022 to read as follows:

10 Sec. 531.1022. ASSISTING CERTAIN INVESTIGATIONS BY LAW
11 ENFORCEMENT. (a) The office of inspector general shall employ
12 commissioned peace officers for the sole purpose of assisting a
13 state or local law enforcement agency in the investigation of an
14 alleged criminal offense involving a resident or client of a state
15 developmental center as defined by Section 531.002, Health and
16 Safety Code, or the ICF-MR component of the Rio Grande State Center.

17 (b) The office of inspector general shall prepare a final
18 report for each investigation conducted under this section. The
19 office shall ensure that the report does not contain identifying
20 information of an individual mentioned in the report. The final
21 report must include:

22 (1) a summary of the activities performed by the
23 office of inspector general in conducting the investigation;

24 (2) a statement regarding whether the investigation
25 resulted in a finding that an alleged criminal offense was
26 committed; and

27 (3) a description of the alleged criminal offense that

1 was committed.

2 (c) The office of inspector general shall deliver the final
3 report to the:

4 (1) executive commissioner;

5 (2) commissioner of the Department of Aging and
6 Disability Services;

7 (3) commissioner of the Department of Family and
8 Protective Services;

9 (4) Aging and Disability Services Council;

10 (5) governor;

11 (6) lieutenant governor;

12 (7) speaker of the house of representatives;

13 (8) standing committees of the senate and house of
14 representatives with primary jurisdiction over state developmental
15 centers; and

16 (9) state auditor.

17 (d) A final report regarding an investigation is subject to
18 required disclosure under Chapter 552. All information and
19 materials compiled by the office of inspector general in connection
20 with an investigation are confidential, and not subject to
21 disclosure under Chapter 552, and not subject to disclosure,
22 discovery, subpoena, or other means of legal compulsion for their
23 release to anyone other than the office or its employees or agents
24 involved in the investigation conducted by the office, except that
25 this information may be disclosed to the office of the attorney
26 general, the state auditor's office, and law enforcement agencies.

27 (e) The office of inspector general shall prepare an annual

1 status report of its activities under this section. The annual
2 report may not contain identifying information of an individual
3 mentioned in the report. The annual status report must include
4 information that is aggregated and disaggregated by individual
5 state developmental center or the ICF-MR component of the Rio
6 Grande State Center regarding:

7 (1) the number and type of alleged offenses
8 investigated by the office;

9 (2) the number and type of alleged offenses involving
10 an employee of a state developmental center or the ICF-MR component
11 of the Rio Grande State Center;

12 (3) the relationship of an alleged victim to an
13 alleged perpetrator; and

14 (4) the number of investigations conducted that
15 involve the suicide, death, or hospitalization of an alleged
16 victim.

17 (f) The office of inspector general shall submit the annual
18 status report to the:

19 (1) executive commissioner;

20 (2) commissioner of the Department of Aging and
21 Disability Services;

22 (3) commissioner of the Department of Family and
23 Protective Services;

24 (4) Aging and Disability Services Council;

25 (5) Family and Protective Services Council;

26 (6) governor;

27 (7) lieutenant governor;

1 (8) speaker of the house of representatives;

2 (9) standing committees of the senate and house of
3 representatives with primary jurisdiction over state developmental
4 centers;

5 (10) state auditor; and

6 (11) comptroller.

7 (g) An annual status report submitted under this section is
8 public information under Chapter 552.

9 SECTION 4. Section 531.002(17), Health and Safety Code, is
10 amended to read as follows:

11 (17) "State developmental center [~~school~~]" means a
12 state-supported and structured residential facility operated by
13 the Department of Aging and Disability Services [~~department~~] to
14 provide to clients with mental retardation a variety of services,
15 including medical treatment, specialized therapy, and training in
16 the acquisition of personal, social, and vocational skills.

17 SECTION 5. Chapter 531, Health and Safety Code, is amended
18 by adding Section 531.0021 to read as follows:

19 Sec. 531.0021. REFERENCE TO STATE SCHOOL OR SUPERINTENDENT.

20 (a) A reference in law to a "state school" means a state
21 developmental center.

22 (b) A reference in law to a "superintendent," to the extent
23 the term is intended to refer to the person in charge of a state
24 developmental center, means the director of a state developmental
25 center.

26 SECTION 6. Section 532.001(b), Health and Safety Code, is
27 amended to read as follows:

1 (b) The department also includes community services
2 operated by the department and the following facilities:

- 3 (1) the central office of the department;
- 4 (2) the Austin State Hospital;
- 5 (3) the Big Spring State Hospital;
- 6 (4) the Kerrville State Hospital;
- 7 (5) the Rusk State Hospital;
- 8 (6) the San Antonio State Hospital;
- 9 (7) the Terrell State Hospital;
- 10 (8) the North Texas State Hospital;
- 11 (9) the Abilene State Developmental Center [~~School~~];
- 12 (10) the Austin State Developmental Center [~~School~~];
- 13 (11) the Brenham State Developmental Center [~~School~~];
- 14 (12) the Corpus Christi State Developmental Center
15 [~~School~~];
- 16 (13) the Denton State Developmental Center [~~School~~];
- 17 (14) the Lubbock State Developmental Center [~~School~~];
- 18 (15) the Lufkin State Developmental Center [~~School~~];
- 19 (16) the Mexia State Developmental Center [~~School~~];
- 20 (17) the Richmond State Developmental Center
21 [~~School~~];
- 22 (18) the San Angelo State Developmental Center
23 [~~School~~];
- 24 (19) the San Antonio State Developmental Center
25 [~~School~~];
- 26 (20) the El Paso State Developmental Center;
- 27 (21) the Rio Grande State Center; and

1 (22) the Waco Center for Youth.

2 SECTION 7. Section 551.022, Health and Safety Code, is
3 amended by adding Subsection (e) to read as follows:

4 (e) This section does not apply to a state developmental
5 center or the director of a state developmental center.

6 SECTION 8. Subchapter B, Chapter 551, Health and Safety
7 Code, is amended by adding Section 551.0225 to read as follows:

8 Sec. 551.0225. POWERS AND DUTIES OF STATE DEVELOPMENTAL
9 CENTER DIRECTOR. (a) The director of a state developmental center
10 is the administrative head of the center.

11 (b) The director of a state developmental center has the
12 custody of and responsibility to care for the buildings, grounds,
13 furniture, and other property relating to the center.

14 (c) The director of a state developmental center shall:

15 (1) oversee the admission and discharge of residents
16 and clients;

17 (2) keep a register of all residents and clients
18 admitted to or discharged from the center;

19 (3) supervise repairs and improvements to the center;

20 (4) ensure that center money is spent judiciously and
21 economically;

22 (5) keep an accurate and detailed account of all money
23 received and spent, stating the source of the money and on whom and
24 the purpose for which the money is spent; and

25 (6) keep a full record of the center's operations.

26 (d) In accordance with departmental rules and operating
27 procedures, the director of a state developmental center may:

1 (1) establish policy to govern the state developmental
2 center that the director considers will best promote the residents'
3 interest and welfare;

4 (2) hire subordinate officers, teachers, and other
5 employees and set their salaries, in the absence of other law; and

6 (3) dismiss a subordinate officer, teacher, or
7 employee.

8 SECTION 9. Subtitle B, Title 7, Health and Safety Code, is
9 amended by adding Chapter 555 to read as follows:

10 CHAPTER 555. STATE DEVELOPMENTAL CENTERS

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 555.001. DEFINITIONS. In this chapter:

13 (1) "Alleged offender resident" means a person with
14 mental retardation who has been committed to or transferred to a
15 state developmental center under Chapter 55, Family Code, or
16 Chapter 46B or 46C, Code of Criminal Procedure.

17 (2) "Client" means a person with mental retardation
18 who receives ICF-MR services from a state developmental center or
19 the ICF-MR component of the Rio Grande State Center.

20 (3) "Commission" means the Health and Human Services
21 Commission.

22 (4) "Complaint" means information received by the
23 department's office of independent ombudsman regarding a possible
24 violation of a right of a resident or client of a state
25 developmental center and includes information received regarding a
26 failure by a state developmental center to comply with the
27 department's policies and procedures relating to the community

1 living options information process.

2 (5) "Department" means the Department of Aging and
3 Disability Services.

4 (6) "Developmental center employee" means an employee
5 of a state developmental center or the ICF-MR component of the Rio
6 Grande State Center.

7 (7) "Direct care employee" means a developmental
8 center employee who provides direct delivery of services to a
9 resident or client.

10 (8) "Executive commissioner" means the executive
11 commissioner of the Health and Human Services Commission.

12 (9) "Independent ombudsman" means the individual who
13 has been appointed to the office of independent ombudsman.

14 (10) "Office" means the office of independent
15 ombudsman established under Subchapter C.

16 (11) "Resident" means a person with mental retardation
17 who resides in a state developmental center or the ICF-MR component
18 of the Rio Grande State Center.

19 (12) "State developmental center" has the meaning
20 assigned by Section 531.002.

21 Sec. 555.002. STATE DEVELOPMENTAL CENTER FOR ALLEGED
22 OFFENDER RESIDENTS. (a) The department shall establish a separate
23 state developmental center for the care of alleged offender
24 residents apart from other clients and residents. The department
25 shall designate an existing state developmental center for this
26 purpose.

27 (b) In establishing a state developmental center designated

1 for alleged offender residents, the department shall:

2 (1) transfer an alleged offender resident already
3 residing in a state developmental center to the designated state
4 developmental center;

5 (2) place alleged offender residents in separate homes
6 at the designated state developmental center based on whether the
7 alleged offender resident is:

8 (A) an adult or a person younger than 18 years of
9 age; or

10 (B) male or female;

11 (3) place all alleged offender residents committed to
12 or transferred to a state developmental center in the designated
13 state developmental center;

14 (4) divert future admissions of residents who are not
15 alleged offenders from the designated state developmental center;
16 and

17 (5) provide training regarding the service delivery
18 system for alleged offender residents to direct care employees of
19 the designated state developmental center.

20 (c) Notwithstanding Section 594.014, an alleged offender
21 resident who is transferred to the designated state developmental
22 center is not entitled to an administrative hearing regarding a
23 transfer of the resident.

24 (d) The department shall ensure that the designated state
25 developmental center complies with the requirements for ICF-MR
26 certification under the Medicaid program as appropriate.

27 [Sections 555.003-555.020 reserved for expansion]

1 SUBCHAPTER B. POWERS AND DUTIES

2 Sec. 555.021. REQUIRED CRIMINAL HISTORY CHECKS FOR
3 EMPLOYEES AND VOLUNTEERS. (a) The department and the Department of
4 State Health Services shall perform a state and federal criminal
5 history background check on a person:

6 (1) who is:

7 (A) an applicant for employment with the agency;

8 (B) an employee of the agency;

9 (C) a volunteer with the agency; or

10 (D) an applicant for a volunteer position with
11 the agency; and

12 (2) who would be placed in direct contact with a
13 resident or client.

14 (b) The executive commissioner shall adopt rules requiring
15 a person described by Subsection (a) to submit fingerprints in a
16 form and of a quality acceptable to the Department of Public Safety
17 and the Federal Bureau of Investigation for use in conducting a
18 criminal history background check.

19 (c) Each agency shall obtain electronic updates from the
20 Department of Public Safety of arrests and convictions of a person:

21 (1) for whom the agency performs a background check
22 under Subsection (a); and

23 (2) who remains an employee or volunteer of the agency
24 and continues to have direct contact with a resident or client.

25 Sec. 555.022. DRUG TESTING; POLICY. (a) The executive
26 commissioner by rule shall adopt a policy regarding random testing
27 and reasonable suspicion testing for the illegal use of drugs by an

1 employee of a state developmental center.

2 (b) The director of a state developmental center shall
3 enforce the policy adopted under Subsection (a) by performing
4 necessary drug testing of employees of the state developmental
5 center for the use of a controlled substance as defined by Section
6 481.002.

7 (c) Testing under this section may be performed on a random
8 basis or on reasonable suspicion of the use of a controlled
9 substance.

10 (d) For purposes of this section, a report made under
11 Section 555.023 is considered reasonable suspicion of the use of a
12 controlled substance.

13 Sec. 555.023. REPORTS OF ILLEGAL DRUG USE; POLICY. The
14 executive commissioner by rule shall adopt a policy requiring an
15 employee of a state developmental center who knows or reasonably
16 suspects that another employee of the state developmental center is
17 illegally using or under the influence of a controlled substance,
18 as defined by Section 481.002, to report that knowledge or
19 reasonable suspicion to the director of the state developmental
20 center.

21 Sec. 555.024. DEVELOPMENTAL CENTER EMPLOYEE TRAINING. (a)
22 Before a developmental center employee begins to perform the
23 employee's duties without direct supervision, the department shall
24 provide the employee with competency training and a course of
25 instruction about the general duties of a developmental center
26 employee. The department shall ensure the basic developmental
27 center employee competency course focuses on:

1 (1) the uniqueness of the individuals the
2 developmental center employee serves;

3 (2) techniques for improving quality of life for and
4 promoting the health and safety of individuals with mental
5 retardation; and

6 (3) the conduct expected of developmental center
7 employees.

8 (b) The department shall ensure the training required by
9 Subsection (a) provides instruction and information regarding the
10 following topics:

11 (1) the general operation and layout of the state
12 developmental center, including armed intruder lockdown
13 procedures;

14 (2) an introduction to mental retardation;

15 (3) an introduction to mental illness and dual
16 diagnosis;

17 (4) the rights of individuals with mental retardation
18 who receive services from the department;

19 (5) respecting personal choices made by residents and
20 clients;

21 (6) the safe and proper use of restraints;

22 (7) recognizing and reporting:

23 (A) abuse, neglect, and exploitation of
24 individuals with mental retardation;

25 (B) unusual incidents;

26 (C) reasonable suspicion of illegal drug use in
27 the workplace;

1 (D) workplace violence; or

2 (E) sexual harassment in the workplace;

3 (8) preventing and treating infection;

4 (9) first aid;

5 (10) cardiopulmonary resuscitation;

6 (11) the Health Insurance Portability and
7 Accountability Act of 1996 (29 U.S.C. Section 1181 et seq.); and

8 (12) civil rights of developmental center employees.

9 (c) In addition to the training required by Subsection (a)
10 and before a direct care employee begins to perform the direct care
11 employee's duties without direct supervision, the department shall
12 provide a direct care employee with training and instructional
13 information regarding the following topics:

14 (1) prevention and management of aggressive behavior;

15 (2) observing and reporting changes in behavior,
16 appearance, or health of residents and clients;

17 (3) positive behavior support;

18 (4) emergency response;

19 (5) person-directed plans;

20 (6) seizure safety;

21 (7) techniques for:

22 (A) lifting;

23 (B) positioning; and

24 (C) movement and mobility;

25 (8) working with aging residents and clients;

26 (9) assisting residents and clients:

27 (A) who have a visual impairment;

1 (B) who have a hearing deficit; or

2 (C) who require the use of adaptive devices and
3 specialized equipment;

4 (10) communicating with residents and clients who use
5 augmentative and alternative devices for communication;

6 (11) assisting residents and clients with personal
7 hygiene;

8 (12) recognizing appropriate food textures;

9 (13) using proper feeding techniques to assist
10 residents and clients with meals; and

11 (14) physical and nutritional management plans.

12 Sec. 555.025. VIDEO SURVEILLANCE. (a) In this section,
13 "private space" means a place in a state developmental center or the
14 ICF-MR component of the Rio Grande State Center in which a resident
15 or client has a reasonable expectation of privacy, including:

16 (1) a bedroom;

17 (2) a bathroom;

18 (3) a place in which a resident or client receives
19 medical or nursing services;

20 (4) a place in which a resident or client meets
21 privately with visitors; or

22 (5) a place in which a resident or client privately
23 makes phone calls.

24 (b) The department may install and operate video
25 surveillance equipment in a state developmental center or the
26 ICF-MR component of the Rio Grande State Center for the purpose of
27 detecting and preventing the exploitation or abuse of residents and

1 clients.

2 (c) The department may not install or operate video
3 surveillance equipment in a private space or in a location in which
4 video surveillance equipment can capture images within a private
5 space.

6 (d) The department shall ensure the use of video
7 surveillance equipment under this section complies with federal
8 requirements for ICF-MR certification.

9 Sec. 555.026. MORTALITY REVIEW. (a) The executive
10 commissioner shall establish an independent mortality review
11 system to review the death of a person who, at the time of the
12 person's death, was a resident or client.

13 (b) A review under this section shall be conducted in
14 addition to any review conducted by the state developmental center
15 or the Rio Grande State Center.

16 (c) The executive commissioner shall contract with a
17 patient safety organization certified in accordance with 42 C.F.R.
18 Part 3, as effective on January 20, 2009, to conduct independent
19 mortality reviews required by this section. The contract must
20 require the patient safety organization to conduct an independent
21 mortality review using a team consisting of:

22 (1) a physician with expertise regarding the medical
23 treatment of individuals with mental retardation;

24 (2) a registered nurse with expertise regarding the
25 medical treatment of individuals with mental retardation;

26 (3) a clinician or other professional with expertise
27 in the delivery of services and supports for individuals with

1 mental retardation; and

2 (4) any other appropriate person as provided by the
3 executive commissioner.

4 (d) A patient safety organization that performs an
5 independent mortality review shall submit to the department, the
6 office of independent ombudsman, and the commission's office of
7 inspector general a report of the findings of the mortality review.

8 (e) The department may use information from a mortality
9 review report only to advance statewide practices regarding the
10 treatment and care of individuals with mental retardation or other
11 disabilities.

12 (f) The department may release a summary or a statistical
13 compilation of data drawn from reports submitted under this section
14 only if the summary or statistical compilation does not contain
15 information that would permit the identification of an individual.

16 [Sections 555.027-555.050 reserved for expansion]

17 SUBCHAPTER C. OFFICE OF INDEPENDENT OMBUDSMAN FOR STATE

18 DEVELOPMENTAL CENTERS

19 Sec. 555.051. ESTABLISHMENT; PURPOSE. The office of
20 independent ombudsman is administratively attached to the
21 department for the purpose of investigating, evaluating, and
22 securing the rights of the residents and clients of state
23 developmental centers.

24 Sec. 555.052. INDEPENDENCE. The independent ombudsman in
25 the performance of the ombudsman's duties and powers under this
26 subchapter acts independently of the department.

27 Sec. 555.053. APPOINTMENT OF INDEPENDENT OMBUDSMAN. The

1 governor shall appoint the independent ombudsman.

2 Sec. 555.054. ASSISTANT OMBUDSMEN. The independent
3 ombudsman shall:

4 (1) hire assistant ombudsmen to perform, under the
5 direction of the independent ombudsman, the same duties and
6 exercise the same powers as the independent ombudsman; and

7 (2) station an assistant ombudsman at each state
8 developmental center.

9 Sec. 555.055. CONFLICT OF INTEREST. A person may not serve
10 as independent ombudsman or as an assistant ombudsman if the person
11 or the person's spouse:

12 (1) is employed by or participates in the management
13 of a business entity or other organization receiving funds from the
14 department;

15 (2) owns or controls, directly or indirectly, any
16 interest in a business entity or other organization receiving funds
17 from the department; or

18 (3) is required to register as a lobbyist under
19 Chapter 305, Government Code, because of the person's activities or
20 compensation on behalf of a profession related to the operation of
21 the department.

22 Sec. 555.056. REPORT. (a) The independent ombudsman shall
23 submit on a biannual basis to the governor, the lieutenant
24 governor, and the speaker of the house of representatives a report
25 that is both aggregated and disaggregated by individual state
26 developmental center and describes:

27 (1) the work of the independent ombudsman;

1 (2) the results of any review or investigation
2 undertaken by the independent ombudsman, including reviews or
3 investigation of services contracted by the department; and

4 (3) any recommendations that the independent
5 ombudsman has in relation to the duties of the independent
6 ombudsman.

7 (b) The independent ombudsman shall ensure that information
8 submitted in a report under Subsection (a) does not permit the
9 identification of an individual.

10 (c) The independent ombudsman shall immediately report to
11 the governor, lieutenant governor, and speaker of the house of
12 representatives any particularly serious or flagrant:

13 (1) case of abuse or injury of a resident or client
14 about which the independent ombudsman is made aware;

15 (2) problem concerning the administration of a state
16 developmental center program or operation; or

17 (3) interference by a state developmental center, the
18 department, or the commission with an investigation conducted by
19 the independent ombudsman.

20 Sec. 555.057. COMMUNICATION AND CONFIDENTIALITY. (a) The
21 department shall allow any resident or client, authorized
22 representative of a resident or client, family member of a resident
23 or client, or other interested party to communicate with the
24 independent ombudsman or an assistant ombudsman. The
25 communication:

26 (1) may be in person, by mail, or by any other means;

27 and

1 (2) is confidential and privileged.

2 (b) The records of the independent ombudsman are
3 confidential, except that the independent ombudsman shall:

4 (1) share with the Department of Family and Protective
5 Services a communication that may involve the abuse, neglect, or
6 exploitation of a resident or client;

7 (2) share with the regulatory services division of the
8 department a communication that may involve a violation of an
9 ICF-MR standard or condition of participation; and

10 (3) disclose the ombudsman's nonprivileged records if
11 required by a court order on a showing of good cause.

12 (c) The independent ombudsman may make reports relating to
13 an investigation public after the investigation is complete but
14 only if the name and any other personally identifiable information
15 of a resident or client, authorized representative of a resident or
16 client, family member of a resident or client, state developmental
17 center, and employee of a state developmental center are redacted
18 from the report and remain confidential.

19 (d) The name, address, or other personally identifiable
20 information of a person who files a complaint with the office of
21 independent ombudsman, information generated by the office of
22 independent ombudsman in the course of an investigation, and
23 confidential records obtained by the office of independent
24 ombudsman are confidential and not subject to disclosure under
25 Chapter 552, Government Code, except as provided by this section.

26 Sec. 555.058. PROMOTION OF AWARENESS OF OFFICE. The
27 independent ombudsman shall promote awareness among the public,

1 residents, clients, and employees of state developmental centers
2 of:

- 3 (1) how the office may be contacted;
- 4 (2) the purpose of the office; and
- 5 (3) the services the office provides.

6 Sec. 555.059. DUTIES AND POWERS. (a) The independent
7 ombudsman shall:

8 (1) evaluate the delivery of services to residents and
9 clients to ensure that the rights of residents and clients are fully
10 observed;

11 (2) refer a complaint alleging the abuse, neglect, or
12 exploitation of a resident or client to the Department of Family and
13 Protective Services for investigation;

14 (3) refer a complaint alleging a possible violation of
15 an ICF-MR standard or condition of participation to the regulatory
16 services division of the department;

17 (4) refer a complaint alleging a criminal offense,
18 other than an allegation of abuse, neglect, or exploitation of a
19 resident or client, to the commission's office of inspector
20 general;

21 (5) conduct investigations of complaints, other than
22 complaints alleging criminal offenses or the abuse, neglect, or
23 exploitation of a resident or client, if the office determines
24 that:

25 (A) a resident or client or the resident's or
26 client's family may be in need of assistance from the office; or

27 (B) a complaint raises the possibility of a

1 systemic issue in the state developmental center's provision of
2 services;

3 (6) conduct an annual audit of each state
4 developmental center's policies, practices, and procedures to
5 ensure that each resident and client is encouraged to exercise the
6 resident's or client's rights, including:

7 (A) the right to file a complaint; and

8 (B) the right to due process;

9 (7) prepare and deliver an annual report regarding the
10 findings of each audit to the:

11 (A) executive commissioner;

12 (B) commissioner;

13 (C) Aging and Disability Services Council;

14 (D) governor;

15 (E) lieutenant governor;

16 (F) speaker of the house of representatives;

17 (G) standing committees of the senate and house
18 of representatives with primary jurisdiction over state
19 developmental centers; and

20 (H) state auditor;

21 (8) require a state developmental center to provide
22 access to all records, data, and other information under the
23 control of the center that the independent ombudsman determines is
24 necessary to investigate a complaint or to conduct an audit under
25 this section;

26 (9) review all final reports produced by the
27 Department of Family and Protective Services and the regulatory

1 services division of the department regarding a complaint referred
2 by the independent ombudsman;

3 (10) provide assistance to a resident, client,
4 authorized representative of a resident or client, or family member
5 of a resident or client who the independent ombudsman determines is
6 in need of assistance, including advocating with an agency,
7 provider, or other person in the best interests of the resident or
8 client; and

9 (11) make appropriate referrals under any of the
10 duties and powers listed in this subsection.

11 (b) The independent ombudsman may apprise a person who is
12 interested in a resident's or client's welfare of the rights of the
13 resident or client.

14 (c) To assess whether a resident's or client's rights have
15 been violated, the independent ombudsman may, in any matter that
16 does not involve an alleged criminal offense or the abuse, neglect,
17 or exploitation of a resident or client, contact or consult with an
18 administrator, employee, resident, client, family member of a
19 resident or client, expert, or other individual in the course of the
20 investigation or to secure information.

21 (d) Notwithstanding any other provision of this chapter,
22 the independent ombudsman may not investigate an alleged criminal
23 offense or the alleged abuse, neglect, or exploitation of a
24 resident or client. The independent ombudsman shall refer an
25 allegation of abuse, neglect, or exploitation of a resident or
26 client to the Department of Family and Protective Services.

27 Sec. 555.060. RETALIATION PROHIBITED. The department or a

1 state developmental center may not retaliate against a department
2 employee or employee of a state developmental center who in good
3 faith makes a complaint to the office of independent ombudsman or
4 cooperates with the office in an investigation.

5 Sec. 555.061. TOLL-FREE NUMBER. (a) The office shall
6 establish a permanent, toll-free number for the purpose of
7 receiving any information concerning the violation of a right of a
8 resident or client.

9 (b) The office shall ensure that:

10 (1) the toll-free number is prominently displayed in
11 the main administration area of a state developmental center and in
12 each room in which a resident lives or a client receives services;
13 and

14 (2) a resident, a client, the authorized
15 representative of a resident, and an employee of a state
16 developmental center have confidential access to a telephone for
17 the purpose of calling the toll-free number.

18 SECTION 10. Section 591.003, Health and Safety Code, is
19 amended by adding Subdivision (19-a) to read as follows:

20 (19-a) "State developmental center" has the meaning
21 provided by Section 531.002.

22 SECTION 11. Section 593.042, Health and Safety Code, is
23 amended by adding Subsection (c) to read as follows:

24 (c) An application for commitment of a person to a
25 residential care facility that is a state developmental center must
26 include a statement demonstrating that the proposed resident meets
27 the requirements for commitment to a state developmental center

1 under Section 593.052(a-1).

2 SECTION 12. Section 593.052, Health and Safety Code, is
3 amended by amending Subsections (a) and (b) and adding Subsections
4 (a-1) and (b-1) to read as follows:

5 (a) A proposed resident may not be committed to a
6 residential care facility unless:

7 (1) the proposed resident is a person with mental
8 retardation;

9 (2) evidence is presented showing that because of
10 retardation, the proposed resident:

11 (A) represents a substantial risk of physical
12 impairment or injury to himself or others; or

13 (B) is unable to provide for and is not providing
14 for the proposed resident's most basic personal physical needs;

15 (3) the proposed resident cannot be adequately and
16 appropriately habilitated in an available, less restrictive
17 setting; and

18 (4) the residential care facility:

19 (A) provides habilitative services, care,
20 training, and treatment appropriate to the proposed resident's
21 needs; and

22 (B) is not a state developmental center.

23 (a-1) A proposed resident may not be committed to a
24 residential care facility that is a state developmental center
25 unless:

26 (1) the proposed resident is a person with:

27 (A) severe or profound mental retardation; or

1 (B) mild or moderate mental retardation who:

2 (i) has extraordinary medical needs; or

3 (ii) exhibits dangerous behavior that
4 represents a substantial risk of physical impairment or injury to
5 self or others;

6 (2) evidence is presented showing that the proposed
7 resident:

8 (A) represents a substantial risk of physical
9 impairment or injury to self or others; or

10 (B) is unable to provide for and is not providing
11 for the proposed resident's most basic personal physical needs;

12 (3) the proposed resident cannot be adequately and
13 appropriately habilitated in an available, less restrictive
14 setting; and

15 (4) the residential care facility is a state
16 developmental center that provides habilitative services, care,
17 training, and treatment appropriate to the proposed resident's
18 needs.

19 (b) If it is determined that the requirements of Subsection
20 (a) have been met and that long-term placement in a residential care
21 facility, other than a state developmental center, is appropriate,
22 the court shall commit the proposed resident for care, treatment,
23 and training to a community center or the Department of Aging and
24 Disability Services [~~department~~] when space is available in a
25 residential care facility, other than a state developmental center.

26 (b-1) If it is determined that the requirements of
27 Subsection (a-1) have been met and that long-term placement in a

1 residential care facility that is a state developmental center is
2 appropriate, the court shall commit the proposed resident for care,
3 treatment, and training to the Department of Aging and Disability
4 Services when space is available in a state developmental center.

5 SECTION 13. Section 48.252, Human Resources Code, is
6 amended by adding Subsection (d) to read as follows:

7 (d) If an investigation under this section reveals evidence
8 of the abuse, neglect, or exploitation of a resident or client of a
9 state developmental center as defined by Section 531.002, Health
10 and Safety Code, or the ICF-MR component of the Rio Grande State
11 Center, and a caseworker of the department or a supervisor of a
12 caseworker believes that the abuse, neglect, or exploitation is a
13 criminal offense, the caseworker or supervisor shall immediately
14 notify the Health and Human Services Commission's office of
15 inspector general and promptly provide the Health and Human
16 Services Commission's office of inspector general with a copy of
17 the department's investigation report.

18 SECTION 14. (a) Not later than December 1, 2009, the Health
19 and Human Services Commission's office of inspector general shall
20 begin employing peace officers as required by Section 531.1022,
21 Government Code, as added by this Act.

22 (b) Not later than September 1, 2014, the Department of
23 Aging and Disability Services shall designate a state developmental
24 center for alleged offender residents as required by Section
25 555.002, Health and Safety Code, as added by this Act.

26 (c) Not later than January 1, 2010, the Department of Aging
27 and Disability Services shall develop the training required by

1 Section 555.024, Health and Safety Code, as added by this Act.

2 (d) The Department of Aging and Disability Services shall
3 ensure that all developmental center employees and direct care
4 employees receive the training required by Section 555.024, Health
5 and Safety Code, as added by this Act, regardless of when the
6 employee was hired, not later than September 1, 2010.

7 (e) Not later than December 1, 2009, the executive
8 commissioner of the Health and Human Services Commission shall
9 adopt rules as required by Section 555.022, Health and Safety Code,
10 as added by this Act.

11 (f) Not later than December 1, 2009, the executive
12 commissioner shall contract for mortality review services as
13 required by Section 555.026, Health and Safety Code, as added by
14 this Act.

15 (g) Not later than December 1, 2009, the governor shall
16 appoint the independent ombudsman as required by Section 555.053,
17 Health and Safety Code, as added by this Act.

18 SECTION 15. (a) Section 411.1144, Government Code, as
19 added by this Act, and Section 555.021, Health and Safety Code, as
20 added by this Act, apply only to background and criminal history
21 checks performed on or after the effective date of this Act.

22 (b) Not later than September 1, 2009, the executive
23 commissioner of the Health and Human Services Commission shall
24 adopt rules as required by Section 555.021, Health and Safety Code,
25 as added by this Act.

26 SECTION 16. (a) The change in law made by Section
27 551.022(e), Health and Safety Code, as added by this Act, and the

1 change in law made by Section 551.0225, Health and Safety Code, as
2 added by this Act, apply to the dismissal of an officer, teacher, or
3 other employee of a state developmental center hired on or after the
4 effective date of this Act.

5 (b) The dismissal of an officer, teacher, or other employee
6 of a state developmental center hired before the effective date of
7 this Act is governed by the law in effect when the officer, teacher,
8 or other employee was hired, and the former law is continued in
9 effect for that purpose.

10 SECTION 17. (a) Sections 593.042 and 593.052, Health and
11 Safety Code, as amended by this Act, apply only to an order for
12 commitment to a residential care facility based on an application
13 filed on or after the effective date of this Act.

14 (b) An order for commitment to a residential care facility
15 based on an application filed before the effective date of this Act
16 is governed by the law in effect at the time the application was
17 filed, and the former law is continued in effect for that purpose.

18 SECTION 18. This Act takes effect immediately if it
19 receives a vote of two-thirds of all the members elected to each
20 house, as provided by Section 39, Article III, Texas Constitution.
21 If this Act does not receive the vote necessary for immediate
22 effect, this Act takes effect September 1, 2009.