

## **BILL ANALYSIS**

Senate Research Center

S.B. 41  
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Health & Human Services  
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Enrolled

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

In December 2008, the United States Department of Justice (DOJ) found fault with the liberal use, type, and purpose of restraints used in Texas's state-run system that serves persons with intellectual disabilities. From January through September 2008, a total of 10,143 restraints were applied to 751 consumers. The use of restraints actually increased in some facilities, despite a report released in December 2006 that documented similar deficiencies. More than 250 incidents of abuse and mistreatment in residential treatment centers have been confirmed during the past two years.

Mechanical restraints are regarded as the most restrictive type of restraints and have been forbidden increasingly by a growing number of providers. In Texas's state school and residential treatment facility system, mechanical restraints account for a high percentage of all restraints used. Consumers of state school services have suffered broken bones, black eyes, and even death as a result of poor restraint policies. The most recent death caused by restraint occurred on November 5, 2010, at a Department of Family and Protective Services (DFPS) facility in Houston, DayStar Residential Inc. There is a causal relationship between the system's failure to coordinate communication services with behavioral supports and the high use of restraints.

This bill would codify the DOJ recommendations that all facilities cease immediately the use of prone holds and straitjackets, eliminate "as needed" or "standing orders" for restrictive controls, limit the use of mechanical restraints to emergencies only, use only the least restrictive restraint techniques, and conduct an administrative review after all restraints. The bill requires the Department of Aging and Disability Services and DFPS to report to the executive commissioner of the Health and Human Services Commission each incident in which a physical or mechanical restraint is administered to a resident of a state supported living center.

S.B. 41 amends current law relating to the use of restraints in state supported living centers.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Sections 592.102 and 592.105, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

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

#### **SUBCHAPTER E. USE OF RESTRAINTS IN STATE SUPPORTED LIVING CENTERS**

Sec. 592.101. DEFINITION. Defines "executive commissioner."

Sec. 592.102. USE OF RESTRAINTS. (a) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt rules to ensure that:

(1) a mechanical or physical restraint is not administered to a resident of a state supported living center unless the restraint is necessary to prevent imminent physical injury to the resident or another and is the least restrictive restraint effective to prevent imminent physical injury;

(2) the administration of a mechanical or physical restraint to a resident of a state supported living center ends immediately once the imminent risk of physical injury abates; and

(3) a mechanical or physical restraint is not administered to a resident of a state supported living center as punishment or as part of a behavior plan.

(b) Requires the executive commissioner to adopt rules to prohibit the use of prone and supine holds on a resident of a state supported living center except as transitional holds.

Sec. 592.103. **STANDING ORDERS FOR RESTRAINTS PROHIBITED.** (a) Prohibits a person from issuing a standing order to administer on an as-needed basis mechanical or physical restraints to a resident of a state supported living center.

(b) Prohibits a person from administering mechanical or physical restraints to a resident of a state supported living center pursuant to a standing order to administer restraints on an as-needed basis.

Sec. 592.104. **STRAITJACKETS PROHIBITED.** Prohibits a person from using a straitjacket to restrain a resident of a state supported living center.

Sec. 592.105. **DUTY TO REPORT.** Requires a state supported living center to report to the executive commissioner each incident in which a physical or mechanical restraint is administered to a resident of a state supported living center. Requires that the report contain information and be in the form required by rules of the executive commissioner.

Sec. 592.106. **CONFLICT WITH OTHER LAW.** Provides that to the extent of a conflict between this subchapter and Chapter 322 (Use of Restraint and Seclusion in Certain Health Care Facilities), this subchapter controls.

**SECTION 2.** Requires the executive commissioner to adopt rules required under Sections 592.102 and 592.105, Health and Safety Code, as added by this Act, not later than January 1, 2012.

**SECTION 3.** Effective date: upon passage or September 1, 2011.