

By: Naishtat

H.B. No. 1740

A BILL TO BE ENTITLED

AN ACT

relating to the electronic monitoring of residents at state supported living centers; providing criminal penalties.

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

SECTION 1. Section 555.025(c), Health and Safety Code, is amended to read as follows:

(c) Except as provided by Subchapter E, the [The] department may not install or operate video surveillance equipment in a private space or in a location in which video surveillance equipment can capture images within a private space.

SECTION 2. Chapter 555, Health and Safety Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. ELECTRONIC MONITORING OF RESIDENT'S ROOM

Sec. 555.151. DEFINITIONS. In this subchapter:

(1) "Authorized electronic monitoring" means the placement of an electronic monitoring device in a resident's room and making tapes or recordings with the device after making a request to the center to allow electronic monitoring.

(2) "Electronic monitoring device":

(A) includes:

(i) video surveillance cameras installed in a resident's room; and

(ii) audio devices installed in a resident's room designed to acquire communications or other sounds

1 occurring in the room; and

2 (B) does not include an electronic, mechanical,
3 or other device that is specifically used for the nonconsensual
4 interception of wire or electronic communications.

5 Sec. 555.152. CRIMINAL AND CIVIL LIABILITY. (a) It is a
6 defense to prosecution under Section 16.02, Penal Code, or any
7 other statute of this state under which it is an offense to
8 intercept a communication or disclose or use an intercepted
9 communication, that the communication was intercepted by an
10 electronic monitoring device placed in a resident's room.

11 (b) This subchapter does not affect whether a person may be
12 held to be civilly liable under other law in connection with placing
13 an electronic monitoring device in a resident's room or in
14 connection with using or disclosing a tape or recording made by the
15 device except:

16 (1) as specifically provided by this subchapter; or

17 (2) to the extent that liability is affected by:

18 (A) a consent or waiver signed under this
19 subchapter; or

20 (B) the fact that authorized electronic
21 monitoring is required to be conducted with notice to persons who
22 enter a resident's room.

23 (c) A communication or other sound acquired by an audio
24 electronic monitoring device installed under the provisions of this
25 subchapter concerning authorized electronic monitoring is not
26 considered to be:

27 (1) an oral communication as defined by Section 1,

1 Article 18.20, Code of Criminal Procedure; or

2 (2) a communication as defined by Section 123.001,
3 Civil Practice and Remedies Code.

4 Sec. 555.153. COVERT USE OF ELECTRONIC MONITORING DEVICE;
5 LIABILITY OF DEPARTMENT OR CENTER. (a) For purposes of this
6 subchapter, the placement and use of an electronic monitoring
7 device in a resident's room are considered to be covert if:

8 (1) the placement and use of the device are not open
9 and obvious; and

10 (2) the center and the department are not informed
11 about the device by the resident, by a person who placed the device
12 in the room, or by a person who is using the device.

13 (b) The department and the center may not be held to be
14 civilly liable in connection with the covert placement or use of an
15 electronic monitoring device in a resident's room.

16 Sec. 555.154. REQUIRED FORM ON ADMISSION. The executive
17 commissioner by rule shall prescribe a form that must be completed
18 and signed on a resident's admission to a center by or on behalf of
19 the resident. The form must state:

20 (1) that a person who places an electronic monitoring
21 device in a resident's room or who uses or discloses a tape or other
22 recording made by the device may be civilly liable for any unlawful
23 violation of the privacy rights of another;

24 (2) that a person who covertly places an electronic
25 monitoring device in a resident's room or who consents to or
26 acquiesces in the covert placement of the device in a resident's
27 room has waived any privacy right the person may have had in

1 connection with images or sounds that may be acquired by the device;

2 (3) that a resident or the resident's guardian or legal
3 representative is entitled to conduct authorized electronic
4 monitoring under this subchapter, and that if the center refuses to
5 permit the electronic monitoring or fails to make reasonable
6 physical accommodations for the authorized electronic monitoring
7 the person should contact the department;

8 (4) the basic procedures that must be followed to
9 request authorized electronic monitoring;

10 (5) the manner in which this subchapter affects the
11 legal requirement to report abuse or neglect when electronic
12 monitoring is being conducted; and

13 (6) any other information regarding covert or
14 authorized electronic monitoring that the executive commissioner
15 considers advisable to include on the form.

16 Sec. 555.155. AUTHORIZED ELECTRONIC MONITORING: WHO MAY
17 REQUEST. (a) If a resident has capacity to request electronic
18 monitoring and has not been judicially declared to lack the
19 required capacity, only the resident may request authorized
20 electronic monitoring under this subchapter.

21 (b) If a resident has been judicially declared to lack the
22 capacity required for taking an action such as requesting
23 electronic monitoring, only the guardian of the resident may
24 request electronic monitoring under this subchapter.

25 (c) If a resident does not have capacity to request
26 electronic monitoring but has not been judicially declared to lack
27 the required capacity, only the legal representative of the

1 resident may request electronic monitoring under this subchapter.

2 The executive commissioner by rule shall prescribe:

3 (1) guidelines that will assist centers, family
4 members of residents, advocates for residents, and other interested
5 persons to determine when a resident lacks the required capacity;
6 and

7 (2) who may be considered to be a resident's legal
8 representative for purposes of this subchapter, including:

9 (A) persons who may be considered the legal
10 representative under the terms of an instrument executed by the
11 resident when the resident had capacity; and

12 (B) persons who may become the legal
13 representative for the limited purpose of this subchapter under a
14 procedure prescribed by the executive commissioner.

15 Sec. 555.156. AUTHORIZED ELECTRONIC MONITORING: FORM OF
16 REQUEST; CONSENT OF OTHER RESIDENTS IN ROOM. (a) A resident or the
17 guardian or legal representative of a resident who wishes to
18 conduct authorized electronic monitoring must make the request to
19 the center on a form prescribed by the executive commissioner.

20 (b) The form prescribed by the executive commissioner must
21 require the resident or the resident's guardian or legal
22 representative to:

23 (1) release the center from any civil liability for a
24 violation of the resident's privacy rights in connection with the
25 use of the electronic monitoring device;

26 (2) choose, when the electronic monitoring device is a
27 video surveillance camera, whether the camera will always be

1 unobstructed or whether the camera should be obstructed in
2 specified circumstances to protect the dignity of the resident;
3 and

4 (3) obtain the consent of other residents in the room,
5 using a form prescribed for this purpose by the executive
6 commissioner, if the resident resides in a multiperson room.

7 (c) Consent under Subsection (b)(3) may be given only:

8 (1) by the other resident or residents in the room;

9 (2) by the guardian of a person described by
10 Subdivision (1), if the person has been judicially declared to lack
11 the required capacity; or

12 (3) by the legal representative who under Section
13 555.155(c) may request electronic monitoring on behalf of a person
14 described by Subdivision (1), if the person does not have capacity
15 to sign the form but has not been judicially declared to lack the
16 required capacity.

17 (d) The form prescribed by the executive commissioner under
18 Subsection (b)(3) must condition the consent of another resident in
19 the room on the other resident also releasing the center from any
20 civil liability for a violation of the person's privacy rights in
21 connection with the use of the electronic monitoring device.

22 (e) Another resident in the room may:

23 (1) when the proposed electronic monitoring device is
24 a video surveillance camera, condition consent on the camera being
25 pointed away from the consenting resident; and

26 (2) condition consent on the use of an audio
27 electronic monitoring device being limited or prohibited.

1 (f) If authorized electronic monitoring is being conducted
2 in a resident's room and another resident is moved into the room who
3 has not yet consented to the electronic monitoring, authorized
4 electronic monitoring must cease until the new resident has
5 consented in accordance with this section.

6 (g) The executive commissioner may include other
7 information that the executive commissioner considers to be
8 appropriate on either of the forms that the executive commissioner
9 is required to prescribe under this section.

10 (h) The executive commissioner by rule may prescribe the
11 place or places that a form signed under this section must be
12 maintained and the period for which it must be maintained.

13 (i) Authorized electronic monitoring:

14 (1) may not commence until all request and consent
15 forms required by this section have been completed and returned to
16 the center; and

17 (2) must be conducted in accordance with any
18 limitation placed on the monitoring as a condition of the consent
19 given by or on behalf of another resident in the room.

20 Sec. 555.157. AUTHORIZED ELECTRONIC MONITORING: GENERAL
21 PROVISIONS. (a) A center shall permit a resident or the resident's
22 guardian or legal representative to monitor the resident's room
23 through the use of electronic monitoring devices.

24 (b) The center shall require a resident who conducts
25 authorized electronic monitoring or the resident's guardian or
26 legal representative to post and maintain a conspicuous notice at
27 the entrance to the resident's room. The notice must state that the

1 room is being monitored by an electronic monitoring device.

2 (c) Authorized electronic monitoring conducted under this
3 subchapter is not compulsory and may be conducted only at the
4 request of the resident or the resident's guardian or legal
5 representative.

6 (d) A center may not refuse to admit an individual to
7 residency in the center and may not remove a resident from the
8 center because of a request to conduct authorized electronic
9 monitoring. A center may not remove a resident from the center
10 because covert electronic monitoring is being conducted by or on
11 behalf of a resident.

12 (e) A center shall make reasonable physical accommodation
13 for authorized electronic monitoring, including:

14 (1) providing a reasonably secure place to mount the
15 video surveillance camera or other electronic monitoring device;
16 and

17 (2) providing access to power sources for the video
18 surveillance camera or other electronic monitoring device.

19 (f) The resident or the resident's guardian or legal
20 representative must pay for all costs associated with conducting
21 electronic monitoring, other than the costs of electricity. The
22 resident or the resident's guardian or legal representative is
23 responsible for:

24 (1) all costs associated with installation of
25 equipment; and

26 (2) maintaining the equipment.

27 (g) A center may require an electronic monitoring device to

1 be installed in a manner that is safe for residents, employees, or
2 visitors who may be moving about the room. The executive
3 commissioner by rule may adopt guidelines regarding the safe
4 placement of an electronic monitoring device.

5 (h) If authorized electronic monitoring is conducted, the
6 center may require the resident or the resident's guardian or legal
7 representative to conduct the electronic monitoring in plain view.

8 (i) A center may but is not required to place a resident in a
9 different room to accommodate a request to conduct authorized
10 electronic monitoring.

11 Sec. 555.158. REPORTING ABUSE OR NEGLECT. (a) A person who
12 is conducting authorized electronic monitoring under this
13 subchapter and who has cause to believe that the physical or mental
14 health or welfare of a resident has been or may be adversely
15 affected by abuse or neglect caused by another person shall report
16 the abuse or neglect to the Department of Family and Protective
17 Services as required by Chapter 48, Human Resources Code, and to the
18 inspector general.

19 (b) A person is required to report abuse based on the
20 person's viewing of or listening to a tape or recording only if the
21 incident of abuse is acquired on the tape or recording. A person is
22 required to report neglect based on the person's viewing of or
23 listening to a tape or recording only if it is clear from viewing or
24 listening to the tape or recording that neglect has occurred. If the
25 incident of abuse or neglect is acquired by a person's viewing of or
26 listening to a tape or recording, the person shall:

27 (1) report the abuse or neglect to the Department of

1 Family and Protective Services and the inspector general; and
2 (2) provide the tape or recording to the Department of
3 Family and Protective Services and the inspector general.

4 (c) If abuse or neglect of a resident is reported to the
5 center and the center requests a copy of any relevant tape or
6 recording made by an electronic monitoring device, the person who
7 possesses the tape or recording shall provide the center with a copy
8 at the center's expense.

9 Sec. 555.159. USE OF TAPE OR RECORDING BY AGENCY OR COURT.

10 (a) Subject to applicable rules of evidence and procedure and the
11 requirements of this section, a tape or recording created through
12 the use of covert or authorized electronic monitoring described by
13 this subchapter may be admitted into evidence in a civil or criminal
14 court action or administrative proceeding.

15 (b) A court or administrative agency may not admit into
16 evidence a tape or recording created through the use of covert or
17 authorized electronic monitoring or take or authorize action based
18 on the tape or recording unless:

19 (1) if the tape or recording is a video tape or
20 recording, the tape or recording shows the time and date that the
21 events acquired on the tape or recording occurred;

22 (2) the contents of the tape or recording have not been
23 edited or artificially enhanced; and

24 (3) if the contents of the tape or recording have been
25 transferred from the original format to another technological
26 format, the transfer was done by a qualified professional and the
27 contents of the tape or recording were not altered.

1 (c) A person who sends more than one tape or recording to the
2 department shall identify for the department each tape or recording
3 on which the person believes that an incident of abuse or evidence
4 of neglect may be found. The executive commissioner by rule may
5 encourage persons who send a tape or recording to the department to
6 identify the place on the tape or recording where an incident of
7 abuse or evidence of neglect may be found.

8 Sec. 555.160. NOTICE AT ENTRANCE TO CENTER. Each center
9 shall post a notice at the entrance to the center stating that the
10 rooms of some residents may be being monitored electronically by or
11 on behalf of the residents and that the monitoring is not
12 necessarily open and obvious. The executive commissioner by rule
13 shall prescribe the format and the precise content of the notice.

14 Sec. 555.161. ENFORCEMENT. The department may impose
15 appropriate sanctions under this chapter on a director of a center
16 who knowingly:

17 (1) refuses to permit a resident or the resident's
18 guardian or legal representative to conduct authorized electronic
19 monitoring;

20 (2) refuses to admit an individual to residency or
21 allows the removal of a resident from the center because of a
22 request to conduct authorized electronic monitoring;

23 (3) allows the removal of a resident from the center
24 because covert electronic monitoring is being conducted by or on
25 behalf of the resident; or

26 (4) violates another provision of this subchapter.

27 Sec. 555.162. INTERFERENCE WITH DEVICE; CRIMINAL PENALTY.

1 (a) A person who intentionally hampers, obstructs, tampers with,
2 or destroys an electronic monitoring device installed in a
3 resident's room in accordance with this subchapter or a tape or
4 recording made by the device commits an offense. An offense under
5 this subsection is a Class B misdemeanor.

6 (b) It is a defense to prosecution under Subsection (a) that
7 the person took the action with the effective consent of the
8 resident on whose behalf the electronic monitoring device was
9 installed or the resident's guardian or legal representative.

10 Sec. 555.163. FAILURE TO REPORT; CRIMINAL PENALTY. (a) A
11 person commits an offense if the person has cause to believe that a
12 resident's physical or mental health or welfare has been or may be
13 further adversely affected by abuse or neglect and knowingly fails
14 to report to the Department of Family and Protective Services and
15 the inspector general in accordance with Section 555.158(a).

16 (b) An offense under this section is a Class A misdemeanor.

17 SECTION 3. The change in law made by this Act applies only
18 to an offense committed on or after the effective date of this Act.
19 An offense committed before the effective date of this Act is
20 governed by the law in effect on the date the offense was committed,
21 and the former law is continued in effect for that purpose. For
22 purposes of this section, an offense was committed before the
23 effective date of this Act if any element of the offense occurred
24 before that date.

25 SECTION 4. Not later than September 1, 2013, the executive
26 commissioner of the Health and Human Services Commission shall:

27 (1) develop the forms required by Sections 555.154 and

1 555.156, Health and Safety Code, as added by this Act; and

2 (2) develop the guidelines required by Section
3 555.155, Health and Safety Code, as added by this Act.

4 SECTION 5. This Act takes effect immediately if it receives
5 a vote of two-thirds of all the members elected to each house, as
6 provided by Section 39, Article III, Texas Constitution. If this
7 Act does not receive the vote necessary for immediate effect, this
8 Act takes effect September 1, 2013.