

1-1 By: Zaffirini S.B. No. 33  
1-2 (In the Senate - Filed November 12, 2012; January 28, 2013,  
1-3 read first time and referred to Committee on Health and Human  
1-4 Services; March 28, 2013, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;  
1-6 March 28, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Nelson	X		
1-10	Deuell	X		
1-11	Huffman	X		
1-12	Nichols	X		
1-13	Schwertner	X		
1-14	Taylor	X		
1-15	Uresti	X		
1-16	West	X		
1-17	Zaffirini	X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 33 By: Zaffirini

1-19 A BILL TO BE ENTITLED  
1-20 AN ACT

1-21 relating to the electronic monitoring of residents at state  
1-22 supported living centers; providing criminal penalties.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Subsection (c), Section 555.025, Health and  
1-25 Safety Code, is amended to read as follows:

1-26 (c) Except as provided by Subchapter E, the [The] department  
1-27 may not install or operate video surveillance equipment in a  
1-28 private space or in a location in which video surveillance  
1-29 equipment can capture images within a private space.

1-30 SECTION 2. Chapter 555, Health and Safety Code, is amended  
1-31 by adding Subchapter E to read as follows:

1-32 SUBCHAPTER E. ELECTRONIC MONITORING OF RESIDENT'S ROOM

1-33 Sec. 555.151. DEFINITIONS. In this subchapter:

1-34 (1) "Authorized electronic monitoring" means the  
1-35 placement of an electronic monitoring device in a resident's room  
1-36 and making tapes or recordings with the device after making a  
1-37 request to the center to allow electronic monitoring.

1-38 (2) "Electronic monitoring device":

1-39 (A) includes:

1-40 (i) video surveillance cameras installed in  
1-41 a resident's room; and

1-42 (ii) audio devices installed in a  
1-43 resident's room designed to acquire communications or other sounds  
1-44 occurring in the room; and

1-45 (B) does not include an electronic, mechanical,  
1-46 or other device that is specifically used for the nonconsensual  
1-47 interception of wire or electronic communications.

1-48 Sec. 555.152. CRIMINAL AND CIVIL LIABILITY. (a) It is a  
1-49 defense to prosecution under Section 16.02, Penal Code, or any  
1-50 other statute of this state under which it is an offense to  
1-51 intercept a communication or disclose or use an intercepted  
1-52 communication, that the communication was intercepted by an  
1-53 electronic monitoring device placed in a resident's room.

1-54 (b) This subchapter does not affect whether a person may be  
1-55 held to be civilly liable under other law in connection with placing  
1-56 an electronic monitoring device in a resident's room or in  
1-57 connection with using or disclosing a tape or recording made by the  
1-58 device except:

1-59 (1) as specifically provided by this subchapter; or

1-60 (2) to the extent that liability is affected by:

2-1 (A) a consent or waiver signed under this  
2-2 subchapter; or  
2-3 (B) the fact that authorized electronic  
2-4 monitoring is required to be conducted with notice to persons who  
2-5 enter a resident's room.  
2-6 (c) A communication or other sound acquired by an audio  
2-7 electronic monitoring device installed under the provisions of this  
2-8 subchapter concerning authorized electronic monitoring is not  
2-9 considered to be:  
2-10 (1) an oral communication as defined by Section 1,  
2-11 Article 18.20, Code of Criminal Procedure; or  
2-12 (2) a communication as defined by Section 123.001,  
2-13 Civil Practice and Remedies Code.  
2-14 Sec. 555.153. COVERT USE OF ELECTRONIC MONITORING DEVICE;  
2-15 LIABILITY OF DEPARTMENT OR CENTER. (a) For purposes of this  
2-16 subchapter, the placement and use of an electronic monitoring  
2-17 device in a resident's room are considered to be covert if:  
2-18 (1) the placement and use of the device are not open  
2-19 and obvious; and  
2-20 (2) the center and the department are not informed  
2-21 about the device by the resident, by a person who placed the device  
2-22 in the room, or by a person who is using the device.  
2-23 (b) The department and the center may not be held to be  
2-24 civilly liable in connection with the covert placement or use of an  
2-25 electronic monitoring device in a resident's room.  
2-26 Sec. 555.154. REQUIRED FORM ON ADMISSION. The executive  
2-27 commissioner by rule shall prescribe a form that must be completed  
2-28 and signed on a resident's admission to a center by or on behalf of  
2-29 the resident. The form must state:  
2-30 (1) that a person who places an electronic monitoring  
2-31 device in a resident's room or who uses or discloses a tape or other  
2-32 recording made by the device may be civilly liable for any unlawful  
2-33 violation of the privacy rights of another;  
2-34 (2) that a person who covertly places an electronic  
2-35 monitoring device in a resident's room or who consents to or  
2-36 acquiesces in the covert placement of the device in a resident's  
2-37 room has waived any privacy right the person may have had in  
2-38 connection with images or sounds that may be acquired by the device;  
2-39 (3) that a resident or the resident's guardian or legal  
2-40 representative is entitled to conduct authorized electronic  
2-41 monitoring under this subchapter, and that if the center refuses to  
2-42 permit the electronic monitoring or fails to make reasonable  
2-43 physical accommodations for the authorized electronic monitoring  
2-44 the person should contact the department;  
2-45 (4) the basic procedures that must be followed to  
2-46 request authorized electronic monitoring;  
2-47 (5) the manner in which this subchapter affects the  
2-48 legal requirement to report abuse, neglect, or exploitation when  
2-49 electronic monitoring is being conducted; and  
2-50 (6) any other information regarding covert or  
2-51 authorized electronic monitoring that the executive commissioner  
2-52 considers advisable to include on the form.  
2-53 Sec. 555.155. AUTHORIZED ELECTRONIC MONITORING: WHO MAY  
2-54 REQUEST. (a) If a resident has capacity to request electronic  
2-55 monitoring and has not been judicially declared to lack the  
2-56 required capacity, only the resident may request authorized  
2-57 electronic monitoring under this subchapter.  
2-58 (b) If a resident has been judicially declared to lack the  
2-59 capacity required for taking an action such as requesting  
2-60 electronic monitoring, only the guardian of the resident may  
2-61 request electronic monitoring under this subchapter.  
2-62 (c) If a resident does not have capacity to request  
2-63 electronic monitoring but has not been judicially declared to lack  
2-64 the required capacity, only the legal representative of the  
2-65 resident may request electronic monitoring under this subchapter.  
2-66 The executive commissioner by rule shall prescribe:  
2-67 (1) guidelines that will assist centers, family  
2-68 members of residents, advocates for residents, and other interested  
2-69 persons to determine when a resident lacks the required capacity;

3-1 and

3-2 (2) who may be considered to be a resident's legal  
 3-3 representative for purposes of this subchapter, including:

3-4 (A) persons who may be considered the legal  
 3-5 representative under the terms of an instrument executed by the  
 3-6 resident when the resident had capacity; and

3-7 (B) persons who may become the legal  
 3-8 representative for the limited purpose of this subchapter under a  
 3-9 procedure prescribed by the executive commissioner.

3-10 Sec. 555.156. AUTHORIZED ELECTRONIC MONITORING: FORM OF  
 3-11 REQUEST; CONSENT OF OTHER RESIDENTS IN ROOM. (a) A resident or the  
 3-12 guardian or legal representative of a resident who wishes to  
 3-13 conduct authorized electronic monitoring must make the request to  
 3-14 the center on a form prescribed by the executive commissioner.

3-15 (b) The form prescribed by the executive commissioner must  
 3-16 require the resident or the resident's guardian or legal  
 3-17 representative to:

3-18 (1) release the center from any civil liability for a  
 3-19 violation of the resident's privacy rights in connection with the  
 3-20 use of the electronic monitoring device;

3-21 (2) choose, when the electronic monitoring device is a  
 3-22 video surveillance camera, whether the camera will always be  
 3-23 unobstructed or whether the camera should be obstructed in  
 3-24 specified circumstances to protect the dignity of the resident; and

3-25 (3) obtain the consent of other residents in the room,  
 3-26 using a form prescribed for this purpose by the executive  
 3-27 commissioner, if the resident resides in a multiperson room.

3-28 (c) Consent under Subsection (b)(3) may be given only:

3-29 (1) by the other resident or residents in the room;

3-30 (2) by the guardian of a person described by  
 3-31 Subdivision (1), if the person has been judicially declared to lack  
 3-32 the required capacity; or

3-33 (3) by the legal representative who under Section  
 3-34 555.155(c) may request electronic monitoring on behalf of a person  
 3-35 described by Subdivision (1), if the person does not have capacity  
 3-36 to sign the form but has not been judicially declared to lack the  
 3-37 required capacity.

3-38 (d) The form prescribed by the executive commissioner under  
 3-39 Subsection (b)(3) must condition the consent of another resident in  
 3-40 the room on the other resident also releasing the center from any  
 3-41 civil liability for a violation of the person's privacy rights in  
 3-42 connection with the use of the electronic monitoring device.

3-43 (e) Another resident in the room may:

3-44 (1) when the proposed electronic monitoring device is  
 3-45 a video surveillance camera, condition consent on the camera being  
 3-46 pointed away from the consenting resident; and

3-47 (2) condition consent on the use of an audio  
 3-48 electronic monitoring device being limited or prohibited.

3-49 (f) If authorized electronic monitoring is being conducted  
 3-50 in a resident's room and another resident is moved into the room who  
 3-51 has not yet consented to the electronic monitoring, authorized  
 3-52 electronic monitoring must cease until the new resident has  
 3-53 consented in accordance with this section.

3-54 (g) The executive commissioner may include other  
 3-55 information that the executive commissioner considers to be  
 3-56 appropriate on either of the forms that the executive commissioner  
 3-57 is required to prescribe under this section.

3-58 (h) The executive commissioner by rule may prescribe the  
 3-59 place or places that a form signed under this section must be  
 3-60 maintained and the period for which it must be maintained.

3-61 (i) Authorized electronic monitoring:

3-62 (1) may not commence until all request and consent  
 3-63 forms required by this section have been completed and returned to  
 3-64 the center; and

3-65 (2) must be conducted in accordance with any  
 3-66 limitation placed on the monitoring as a condition of the consent  
 3-67 given by or on behalf of another resident in the room.

3-68 Sec. 555.157. AUTHORIZED ELECTRONIC MONITORING: GENERAL  
 3-69 PROVISIONS. (a) A center shall permit a resident or the

4-1 resident's guardian or legal representative to monitor the  
 4-2 resident's room through the use of electronic monitoring devices.

4-3 (b) The center shall require a resident who conducts  
 4-4 authorized electronic monitoring or the resident's guardian or  
 4-5 legal representative to post and maintain a conspicuous notice at  
 4-6 the entrance to the resident's room. The notice must state that the  
 4-7 room is being monitored by an electronic monitoring device.

4-8 (c) Authorized electronic monitoring conducted under this  
 4-9 subchapter is not compulsory and may be conducted only at the  
 4-10 request of the resident or the resident's guardian or legal  
 4-11 representative.

4-12 (d) A center may not refuse to admit an individual to  
 4-13 residency in the center and may not remove a resident from the  
 4-14 center because of a request to conduct authorized electronic  
 4-15 monitoring. A center may not remove a resident from the center  
 4-16 because covert electronic monitoring is being conducted by or on  
 4-17 behalf of a resident.

4-18 (e) A center shall make reasonable physical accommodation  
 4-19 for authorized electronic monitoring, including:

4-20 (1) providing a reasonably secure place to mount the  
 4-21 video surveillance camera or other electronic monitoring device;  
 4-22 and

4-23 (2) providing access to power sources for the video  
 4-24 surveillance camera or other electronic monitoring device.

4-25 (f) The resident or the resident's guardian or legal  
 4-26 representative must pay for all costs associated with conducting  
 4-27 electronic monitoring, other than the costs of electricity. The  
 4-28 resident or the resident's guardian or legal representative is  
 4-29 responsible for:

4-30 (1) all costs associated with installation of  
 4-31 equipment; and

4-32 (2) maintaining the equipment.

4-33 (g) A center may require an electronic monitoring device to  
 4-34 be installed in a manner that is safe for residents, employees, or  
 4-35 visitors who may be moving about the room. The executive  
 4-36 commissioner by rule may adopt guidelines regarding the safe  
 4-37 placement of an electronic monitoring device.

4-38 (h) If authorized electronic monitoring is conducted, the  
 4-39 center may require the resident or the resident's guardian or legal  
 4-40 representative to conduct the electronic monitoring in plain view.

4-41 (i) A center may but is not required to place a resident in a  
 4-42 different room to accommodate a request to conduct authorized  
 4-43 electronic monitoring.

4-44 Sec. 555.158. REPORTING ABUSE, NEGLECT, OR EXPLOITATION.

4-45 (a) A person who is conducting authorized electronic monitoring  
 4-46 under this subchapter and who has cause to believe, based on the  
 4-47 viewing of or listening to a tape or recording, that a resident is  
 4-48 in a state of abuse, neglect, or exploitation or has been abused,  
 4-49 neglected, or exploited shall:

4-50 (1) report that information to the Department of  
 4-51 Family and Protective Services as required by Section 48.051, Human  
 4-52 Resources Code; and

4-53 (2) provide the original tape or recording to the  
 4-54 Department of Family and Protective Services.

4-55 (b) If the Department of Family and Protective Services has  
 4-56 cause to believe that a resident has been abused, neglected, or  
 4-57 exploited by another person in a manner that constitutes a criminal  
 4-58 offense, the department shall immediately notify law enforcement  
 4-59 and the inspector general as provided by Section 48.1522, Human  
 4-60 Resources Code, and provide a copy of the tape or recording to law  
 4-61 enforcement or the inspector general on request.

4-62 Sec. 555.159. USE OF TAPE OR RECORDING BY AGENCY OR COURT.

4-63 (a) Subject to applicable rules of evidence and procedure and the  
 4-64 requirements of this section, a tape or recording created through  
 4-65 the use of covert or authorized electronic monitoring described by  
 4-66 this subchapter may be admitted into evidence in a civil or criminal  
 4-67 court action or administrative proceeding.

4-68 (b) A court or administrative agency may not admit into  
 4-69 evidence a tape or recording created through the use of covert or

5-1 authorized electronic monitoring or take or authorize action based  
5-2 on the tape or recording unless:

5-3 (1) if the tape or recording is a video tape or  
5-4 recording, the tape or recording shows the time and date that the  
5-5 events acquired on the tape or recording occurred;

5-6 (2) the contents of the tape or recording have not been  
5-7 edited or artificially enhanced; and

5-8 (3) if the contents of the tape or recording have been  
5-9 transferred from the original format to another technological  
5-10 format, the transfer was done by a qualified professional and the  
5-11 contents of the tape or recording were not altered.

5-12 (c) A person who sends more than one tape or recording to the  
5-13 department shall identify for the department each tape or recording  
5-14 on which the person believes that an incident of abuse or  
5-15 exploitation or evidence of neglect may be found. The executive  
5-16 commissioner by rule may encourage persons who send a tape or  
5-17 recording to the department to identify the place on the tape or  
5-18 recording where an incident of abuse or evidence of neglect may be  
5-19 found.

5-20 Sec. 555.160. NOTICE AT ENTRANCE TO CENTER. Each center  
5-21 shall post a notice at the entrance to the center stating that the  
5-22 rooms of some residents may be being monitored electronically by or  
5-23 on behalf of the residents and that the monitoring is not  
5-24 necessarily open and obvious. The executive commissioner by rule  
5-25 shall prescribe the format and the precise content of the notice.

5-26 Sec. 555.161. ENFORCEMENT. The department may impose  
5-27 appropriate sanctions under this chapter on a director of a center  
5-28 who knowingly:

5-29 (1) refuses to permit a resident or the resident's  
5-30 guardian or legal representative to conduct authorized electronic  
5-31 monitoring;

5-32 (2) refuses to admit an individual to residency or  
5-33 allows the removal of a resident from the center because of a  
5-34 request to conduct authorized electronic monitoring;

5-35 (3) allows the removal of a resident from the center  
5-36 because covert electronic monitoring is being conducted by or on  
5-37 behalf of the resident; or

5-38 (4) violates another provision of this subchapter.

5-39 Sec. 555.162. INTERFERENCE WITH DEVICE; CRIMINAL PENALTY.

5-40 (a) A person who intentionally hampers, obstructs, tampers with,  
5-41 or destroys an electronic monitoring device installed in a  
5-42 resident's room in accordance with this subchapter or a tape or  
5-43 recording made by the device commits an offense. An offense under  
5-44 this subsection is a Class B misdemeanor.

5-45 (b) It is a defense to prosecution under Subsection (a) that  
5-46 the person took the action with the effective consent of the  
5-47 resident on whose behalf the electronic monitoring device was  
5-48 installed or the resident's guardian or legal representative.

5-49 SECTION 3. The change in law made by this Act applies only  
5-50 to an offense committed on or after the effective date of this Act.  
5-51 An offense committed before the effective date of this Act is  
5-52 governed by the law in effect on the date the offense was committed,  
5-53 and the former law is continued in effect for that purpose. For  
5-54 purposes of this section, an offense was committed before the  
5-55 effective date of this Act if any element of the offense occurred  
5-56 before that date.

5-57 SECTION 4. Not later than September 1, 2013, the executive  
5-58 commissioner of the Health and Human Services Commission shall:

5-59 (1) develop the forms required by Sections 555.154 and  
5-60 555.156, Health and Safety Code, as added by this Act; and

5-61 (2) develop the guidelines required by Section  
5-62 555.155, Health and Safety Code, as added by this Act.

5-63 SECTION 5. This Act takes effect immediately if it receives  
5-64 a vote of two-thirds of all the members elected to each house, as  
5-65 provided by Section 39, Article III, Texas Constitution. If this  
5-66 Act does not receive the vote necessary for immediate effect, this  
5-67 Act takes effect September 1, 2013.