

1 AN ACT

2 relating to the protection and care of individuals with mental
3 retardation and to certain legal protections for individuals with
4 disabilities; providing criminal penalties.

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

6 SECTION 1. Article 38.072, Code of Criminal Procedure, is
7 amended to read as follows:

8 Art. 38.072. HEARSAY STATEMENT OF CERTAIN [~~CHILD~~] ABUSE
9 VICTIMS [~~VICTIM~~]

10 Sec. 1. This article applies to a proceeding in the
11 prosecution of an offense under any of the following provisions of
12 the Penal Code, if committed against a child 12 years of age or
13 younger or a person with a disability:

14 (1) Chapter 21 (Sexual Offenses) or 22 (Assaultive
15 Offenses);

16 (2) Section 25.02 (Prohibited Sexual Conduct); or

17 (3) Section 43.25 (Sexual Performance by a Child).

18 Sec. 2. (a) This article applies only to statements that
19 describe the alleged offense that:

20 (1) were made by the child or person with a disability
21 against whom the offense was allegedly committed; and

22 (2) were made to the first person, 18 years of age or
23 older, other than the defendant, to whom the child or person with a
24 disability made a statement about the offense.

1 (b) A statement that meets the requirements of Subsection
2 (a) [~~of this article~~] is not inadmissible because of the hearsay
3 rule if:

4 (1) on or before the 14th day before the date the
5 proceeding begins, the party intending to offer the statement:

6 (A) notifies the adverse party of its intention
7 to do so;

8 (B) provides the adverse party with the name of
9 the witness through whom it intends to offer the statement; and

10 (C) provides the adverse party with a written
11 summary of the statement;

12 (2) the trial court finds, in a hearing conducted
13 outside the presence of the jury, that the statement is reliable
14 based on the time, content, and circumstances of the statement; and

15 (3) the child or person with a disability testifies or
16 is available to testify at the proceeding in court or in any other
17 manner provided by law.

18 Sec. 3. In this article, "person with a disability" means a
19 person 13 years of age or older who because of age or physical or
20 mental disease, disability, or injury is substantially unable to
21 protect the person's self from harm or to provide food, shelter, or
22 medical care for the person's self.

23 SECTION 2. Chapter 29, Education Code, is amended by adding
24 Subchapter L to read as follows:

25 SUBCHAPTER L. SCHOOL DISTRICT PROGRAM FOR RESIDENTS OF FORENSIC
26 STATE SUPPORTED LIVING CENTER

27 Sec. 29.451. DEFINITIONS. In this subchapter, "alleged

1 offender resident," "interdisciplinary team," and "state supported
2 living center" have the meanings assigned by Section 555.001,
3 Health and Safety Code.

4 Sec. 29.452. APPLICABILITY. This subchapter applies only
5 to an alleged offender resident of the forensic state supported
6 living center established under Section 555.002, Health and Safety
7 Code.

8 Sec. 29.453. SCHOOL DISTRICT SERVICES. (a) A school
9 district shall provide educational services, including services
10 required under Subchapter A, to each alleged offender resident who
11 is under 22 years of age and otherwise eligible under Section 25.001
12 to attend school in the district. The district shall provide
13 educational services to each alleged offender resident who is 21
14 years of age on September 1 of the school year and otherwise
15 eligible to attend school in the district until the earlier of:

- 16 (1) the end of that school year; or
17 (2) the student's graduation from high school.

18 (b) The educational placement of an alleged offender
19 resident and the educational services to be provided by a school
20 district to the resident shall be determined by the resident's
21 admission, review, and dismissal committee consistent with federal
22 law and regulations regarding the placement of students with
23 disabilities in the least restrictive environment. The resident's
24 admission, review, and dismissal committee shall:

- 25 (1) inform the resident's interdisciplinary team of a
26 determination the committee makes in accordance with this
27 subsection; and

1 (2) consult, to the extent practicable, with the
2 resident's interdisciplinary team concerning such a determination.

3 Sec. 29.454. BEHAVIOR MANAGEMENT; BEHAVIOR SUPPORT
4 SPECIALISTS. (a) The discipline of an alleged offender resident
5 by a school district is subject to Sections 37.0021 and 37.004 and
6 to federal law governing the discipline of students with
7 disabilities.

8 (b) A school district in which alleged offender residents
9 are enrolled shall employ one or more behavior support specialists
10 to serve the residents while at school. A behavior support
11 specialist must:

12 (1) hold a baccalaureate degree;

13 (2) have training in providing to students positive
14 behavioral support and intervention, as determined by the
15 commissioner of education; and

16 (3) meet any other requirement jointly determined by
17 the commissioner of education and the commissioner of the
18 Department of Aging and Disability Services.

19 (c) A behavior support specialist shall conduct for each
20 alleged offender resident enrolled in the school district a
21 functional behavioral assessment that includes:

22 (1) data collection, through interviews with and
23 observation of the resident;

24 (2) data analysis; and

25 (3) development of an individualized school
26 behavioral intervention plan for the resident.

27 (d) Each behavior support specialist shall:

1 (1) ensure that each alleged offender resident
2 enrolled in the school district is provided behavior management
3 services under a school behavioral intervention plan based on the
4 resident's functional behavioral assessment, as described by
5 Subsection (c);

6 (2) communicate and coordinate with the resident's
7 interdisciplinary team to ensure that behavioral intervention
8 actions of the district and of the forensic state supported living
9 center do not conflict;

10 (3) in the case of a resident who regresses:

11 (A) ensure that necessary corrective action is
12 taken in the resident's individualized education program or school
13 behavioral intervention plan, as appropriate; and

14 (B) communicate with the resident's
15 interdisciplinary team concerning the regression and encourage the
16 team to aggressively address the regression;

17 (4) participate in the resident's admission, review,
18 and dismissal committee meetings in conjunction with:

19 (A) developing and implementing the resident's
20 school behavioral intervention plan; and

21 (B) determining the appropriate educational
22 placement for each resident, considering all available academic and
23 behavioral information;

24 (5) coordinate each resident's school behavioral
25 intervention plan with the resident's program of active treatment
26 provided by the forensic state supported living center to ensure
27 consistency of approach and response to the resident's identified

1 behaviors;

2 (6) provide training for school district staff and, as
3 appropriate, state supported living center staff in implementing
4 behavioral intervention plans for each resident; and

5 (7) remain involved with the resident during the
6 school day.

7 (e) Section 22.0511 applies to a behavior support
8 specialist employed under this section by a school district.

9 Sec. 29.455. MEMORANDUM OF UNDERSTANDING. (a) A school
10 district in which alleged offender residents are enrolled in school
11 and the forensic state supported living center shall enter into a
12 memorandum of understanding to:

13 (1) establish the duties and responsibilities of the
14 behavior support specialist to ensure the safety of all students
15 and teachers while educational services are provided to a resident
16 at a school in the district; and

17 (2) ensure the provision of appropriate facilities for
18 providing educational services and of necessary technological
19 equipment if a resident's admission, review, and dismissal
20 committee determines that the resident must receive educational
21 services at the forensic state supported living center.

22 (b) A memorandum of understanding under Subsection (a)
23 remains in effect until superseded by a subsequent memorandum of
24 understanding between the school district and the forensic state
25 supported living center or until otherwise rescinded.

26 Sec. 29.456. FAILURE OF SCHOOL DISTRICT AND CENTER TO
27 AGREE. (a) If a school district in which alleged offender

1 residents are enrolled in school and the forensic state supported
2 living center fail to agree on the services required for residents
3 or responsibility for those services, the district or center may
4 refer the issue in disagreement to the commissioner of education
5 and the commissioner of the Department of Aging and Disability
6 Services.

7 (b) If the commissioner of education and the commissioner of
8 the Department of Aging and Disability Services are unable to bring
9 the school district and forensic state supported living center to
10 agreement, the commissioners shall jointly submit a written request
11 to the attorney general to appoint a neutral third party
12 knowledgeable in special education and mental retardation issues to
13 resolve each issue on which the district and the center disagree.
14 The decision of the neutral third party is final and may not be
15 appealed. The district and the center shall implement the decision
16 of the neutral third party. The commissioner of education or the
17 commissioner of the Department of Aging and Disability Services
18 shall ensure that the district and the center implement the
19 decision of the neutral third party.

20 Sec. 29.457. FUNDING. (a) In addition to other funding to
21 which a school district is entitled under this code, each district
22 in which alleged offender residents attend school is entitled to an
23 annual allotment of \$5,100 for each resident in average daily
24 attendance or a different amount for any year provided by
25 appropriation.

26 (b) Not later than December 1 of each year, a school
27 district that receives an allotment under this section shall submit

1 a report accounting for the expenditure of funds received under
2 this section to the governor, the lieutenant governor, the speaker
3 of the house of representatives, the chairs of the standing
4 committees of the senate and house of representatives with primary
5 jurisdiction regarding persons with mental retardation and public
6 education, and each member of the legislature whose district
7 contains any portion of the territory included in the school.

8 Sec. 29.458. RULES. The commissioner may adopt rules as
9 necessary to administer this subchapter.

10 SECTION 3. Section 54.031, Family Code, is amended to read
11 as follows:

12 Sec. 54.031. HEARSAY STATEMENT OF CERTAIN [~~CHILD~~] ABUSE
13 VICTIMS [~~VICTIM~~]. (a) This section applies to a hearing under
14 this title in which a child is alleged to be a delinquent child on
15 the basis of a violation of any of the following provisions of the
16 Penal Code, if a child 12 years of age or younger or a person with a
17 disability is the alleged victim of the violation:

18 (1) Chapter 21 (Sexual Offenses) or 22 (Assaultive
19 Offenses);

20 (2) Section 25.02 (Prohibited Sexual Conduct); or

21 (3) Section 43.25 (Sexual Performance by a Child).

22 (b) This section applies only to statements that describe
23 the alleged violation that:

24 (1) were made by the child or person with a disability
25 who is the alleged victim of the violation; and

26 (2) were made to the first person, 18 years of age or
27 older, to whom the child or person with a disability made a

1 statement about the violation.

2 (c) A statement that meets the requirements of Subsection
3 (b) [~~of this section~~] is not inadmissible because of the hearsay
4 rule if:

5 (1) on or before the 14th day before the date the
6 hearing begins, the party intending to offer the statement:

7 (A) notifies each other party of its intention to
8 do so;

9 (B) provides each other party with the name of
10 the witness through whom it intends to offer the statement; and

11 (C) provides each other party with a written
12 summary of the statement;

13 (2) the juvenile court finds, in a hearing conducted
14 outside the presence of the jury, that the statement is reliable
15 based on the time, content, and circumstances of the statement; and

16 (3) the child or person with a disability who is the
17 alleged victim testifies or is available to testify at the hearing
18 in court or in any other manner provided by law.

19 (d) In this section, "person with a disability" means a
20 person 13 years of age or older who because of age or physical or
21 mental disease, disability, or injury is substantially unable to
22 protect the person's self from harm or to provide food, shelter, or
23 medical care for the person's self.

24 SECTION 4. Section 261.105, Family Code, is amended by
25 adding Subsection (c-1) to read as follows:

26 (c-1) Notwithstanding Subsections (b) and (c), if a report
27 under this section relates to a child with mental retardation

1 receiving services in a state supported living center as defined by
2 Section 531.002, Health and Safety Code, or the ICF-MR component of
3 the Rio Grande State Center, the department shall proceed with the
4 investigation of the report as provided by Section 261.404.

5 SECTION 5. Subsection (b), Section 261.109, Family Code, is
6 amended to read as follows:

7 (b) An offense under this section is a Class A [~~B~~]
8 misdemeanor, except that the offense is a state jail felony if it is
9 shown on the trial of the offense that the child was a person with
10 mental retardation who resided in a state supported living center,
11 the ICF-MR component of the Rio Grande State Center, or a facility
12 licensed under Chapter 252, Health and Safety Code, and the actor
13 knew that the child had suffered serious bodily injury as a result
14 of the abuse or neglect.

15 SECTION 6. Subsection (b), Section 261.401, Family Code, is
16 amended to read as follows:

17 (b) Except as provided by Section 261.404, a [A] state
18 agency that operates, licenses, certifies, or registers a facility
19 in which children are located or provides oversight of a program
20 that serves children shall make a prompt, thorough investigation of
21 a report that a child has been or may be abused, neglected, or
22 exploited in the facility or program. The primary purpose of the
23 investigation shall be the protection of the child.

24 SECTION 7. Section 261.404, Family Code, is amended to read
25 as follows:

26 Sec. 261.404. INVESTIGATIONS REGARDING CERTAIN CHILDREN
27 WITH MENTAL ILLNESS OR [~~IN FACILITIES UNDER DEPARTMENT OF MENTAL~~

1 ~~HEALTH AND~~] MENTAL RETARDATION. (a) The department shall
2 investigate a report of abuse, neglect, or exploitation of a child
3 receiving services:

4 (1) in a facility operated by the [~~Texas~~] Department
5 of Aging and Disability Services or a mental health facility
6 operated by the Department of State [~~Mental~~] Health Services [~~and~~
7 Mental Retardation];

8 (2) in or from a community center, a local mental
9 health authority, or a local mental retardation authority; [~~or~~]

10 (3) through a program providing services to that child
11 by contract with a facility operated by the [~~Texas~~] Department of
12 Aging and Disability Services, a mental health facility operated by
13 the Department of State [~~Mental~~] Health Services [~~and Mental~~
14 Retardation], a community center, a local mental health authority,
15 or a local mental retardation authority;

16 (4) from a provider of home and community-based
17 services who contracts with the Department of Aging and Disability
18 Services; or

19 (5) in a facility licensed under Chapter 252, Health
20 and Safety Code.

21 (b) The department shall investigate the report under rules
22 developed by the executive commissioner of the Health and Human
23 Services Commission with the advice and assistance of [~~jointly~~
24 between] the department, [~~and~~] the [~~Texas~~] Department of Aging and
25 Disability Services, and the Department of State [~~Mental~~] Health
26 Services [~~and Mental Retardation]~~.

27 (c) If a report under this section relates to a child with

1 mental retardation receiving services in a state supported living
2 center or the ICF-MR component of the Rio Grande State Center, the
3 department shall, within one hour of receiving the report, notify
4 the facility in which the child is receiving services of the
5 allegations in the report.

6 (d) If during the course of the department's investigation
7 of reported abuse, neglect, or exploitation a caseworker of the
8 department or the caseworker's supervisor has cause to believe that
9 a child with mental retardation described by Subsection (c) has
10 been abused, neglected, or exploited by another person in a manner
11 that constitutes a criminal offense under any law, including
12 Section 22.04, Penal Code, the caseworker shall immediately notify
13 the Health and Human Services Commission's office of inspector
14 general and promptly provide the commission's office of inspector
15 general with a copy of the department's investigation report.

16 (e) The definitions of "abuse" and "neglect" prescribed by
17 Section 261.001 do not apply to an investigation under this
18 section.

19 (f) [~~d~~] In this section:

20 (1) [~~r~~] "Community [~~community~~] center," "local mental
21 health authority," [~~and~~] "local mental retardation authority," and
22 "state supported living center" have the meanings assigned by
23 Section 531.002, Health and Safety Code.

24 (2) "Provider" has the meaning assigned by Section
25 48.351, Human Resources Code.

26 SECTION 8. Subchapter F, Chapter 411, Government Code, is
27 amended by adding Section 411.1144 to read as follows:

1 Sec. 411.1144. ACCESS TO CRIMINAL HISTORY RECORD
2 INFORMATION: AGENCIES WITH EMPLOYEES OR VOLUNTEERS AT STATE
3 SUPPORTED LIVING CENTERS. (a) The Department of State Health
4 Services and the Department of Aging and Disability Services are
5 entitled to obtain from the department criminal history record
6 information maintained by the department that relates to a person:

7 (1) who is:

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

9 (B) an employee of the agency;

10 (C) a volunteer with the agency; or

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

13 (2) who would be placed in direct contact with a
14 resident or client of a state supported living center or the ICF-MR
15 component of the Rio Grande State Center.

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

19 (1) on court order;

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

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

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

26 (c) An agency is not prohibited from releasing criminal
27 history record information obtained under Subsection (a) or (d) to

1 the person who is the subject of the criminal history record
2 information.

3 (d) Subject to Section 411.087, the Department of State
4 Health Services and the Department of Aging and Disability Services
5 are entitled to:

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

9 (2) obtain from any other criminal justice agency in
10 this state criminal history record information maintained by that
11 criminal justice agency that relates to a person described by
12 Subsection (a).

13 (e) This section does not prohibit an agency from obtaining
14 and using criminal history record information as provided by other
15 law.

16 SECTION 9. Chapter 531, Government Code, is amended by
17 adding Subchapter U to read as follows:

18 SUBCHAPTER U. MORTALITY REVIEW FOR CERTAIN INDIVIDUALS WITH
19 DEVELOPMENTAL DISABILITIES

20 Sec. 531.851. MORTALITY REVIEW. (a) The executive
21 commissioner shall establish an independent mortality review
22 system to review the death of a person with a developmental
23 disability who, at the time of the person's death:

24 (1) resided in or received services from:

25 (A) an intermediate care facility for persons
26 with mental retardation (ICF-MR) operated or licensed by the
27 Department of Aging and Disability Services or a community center;

1 or

2 (B) the ICF-MR component of the Rio Grande State
3 Center; or

4 (2) received residential assistance through a Section
5 1915(c) waiver program serving individuals who are eligible for
6 ICF-MR services in a residence in which residential assistance is
7 provided to three or more persons and in which the waiver program
8 provider has a property interest.

9 (b) A review under this subchapter must be conducted in
10 addition to any review conducted by the facility in which the person
11 resided or the facility, agency, or provider from which the person
12 received services. A review under this subchapter must be
13 conducted after any investigation of alleged or suspected abuse,
14 neglect, or exploitation is completed.

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

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

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

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

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

3 (d) The executive commissioner shall adopt rules regarding
4 the manner in which the death of a person described by Subsection
5 (a) must be reported to the patient safety organization by a
6 facility or waiver program provider described by that subsection.

7 (e) To ensure consistency across mortality review systems,
8 a review under this section must collect information consistent
9 with the information required to be collected by any other
10 independent mortality review process established specifically for
11 persons with mental retardation.

12 Sec. 531.852. ACCESS TO INFORMATION. (a) A patient safety
13 organization may request information and records regarding a
14 deceased person as necessary to carry out the patient safety
15 organization's duties. Records and information that may be
16 requested under this section include:

17 (1) medical, dental, and mental health care
18 information; and

19 (2) information and records maintained by any state or
20 local government agency, including:

21 (A) a birth certificate;

22 (B) law enforcement investigative data;

23 (C) medical examiner investigative data;

24 (D) juvenile court records;

25 (E) parole and probation information and
26 records; and

27 (F) adult or child protective services

1 information and records.

2 (b) On request of the patient safety organization, the
3 custodian of the relevant information and records relating to a
4 deceased person shall provide those records to the patient safety
5 organization at no charge.

6 Sec. 531.853. MORTALITY REVIEW REPORT. The patient safety
7 organization shall, to the extent allowed by federal law, submit:

8 (1) to the Department of Aging and Disability
9 Services, the Department of Family and Protective Services, the
10 office of independent ombudsman for state supported living centers,
11 and the commission's office of inspector general a report of the
12 findings of the mortality review; and

13 (2) semiannually to the governor, the lieutenant
14 governor, the speaker of the house of representatives, and the
15 standing committees of the senate and house of representatives with
16 primary jurisdiction over the Department of Aging and Disability
17 Services a report that contains:

18 (A) aggregate information regarding the deaths
19 for which the patient safety organization performed an independent
20 mortality review;

21 (B) trends in the causes of death identified by
22 the patient safety organization; and

23 (C) any suggestions for system-wide improvements
24 to address conditions that contributed to deaths reviewed by the
25 patient safety organization.

26 Sec. 531.854. USE AND PUBLICATION RESTRICTIONS;
27 CONFIDENTIALITY. (a) The commission may use or publish

1 information under this subchapter only to advance statewide
2 practices regarding the treatment and care of individuals with
3 developmental disabilities. A summary of the data in the patient
4 safety organization's reports or a statistical compilation of data
5 reports may be released by the commission for general publication
6 if the summary or statistical compilation does not contain any
7 information that would permit the identification of an individual
8 or that is patient safety work product.

9 (b) Information and records acquired by the patient safety
10 organization in the exercise of its duties under this subchapter
11 are confidential and exempt from disclosure under the open records
12 law, Chapter 552, and may be disclosed only as necessary to carry
13 out the patient safety organization's duties.

14 (c) The identity of a person whose death was reviewed in
15 accordance with this subchapter is confidential and may not be
16 revealed.

17 (d) The identity of a health care provider or the name of a
18 facility or agency that provided services to or was the residence of
19 a person whose death was reviewed in accordance with this
20 subchapter is confidential and may not be revealed.

21 (e) Reports, information, statements, memoranda, and other
22 information furnished under this subchapter and any findings or
23 conclusions resulting from a review by the patient safety
24 organization are privileged.

25 Sec. 531.855. LIMITATION ON LIABILITY. A health care
26 provider or other person is not civilly or criminally liable for
27 furnishing information to the patient safety organization or to the

1 commission for use by the patient safety organization in accordance
2 with this subchapter unless the person acted in bad faith or
3 knowingly provided false information to the patient safety
4 organization or the commission.

5 SECTION 10. Subchapter B, Chapter 252, Health and Safety
6 Code, is amended by adding Section 252.0311 to read as follows:

7 Sec. 252.0311. PERSON INELIGIBLE FOR LICENSE. (a) In this
8 section, "controlling person" means a person who, acting alone or
9 with others, has the ability to directly or indirectly influence,
10 direct, or cause the direction of the management, expenditure of
11 money, or policies of a facility or a person who operates a
12 facility. The term includes:

13 (1) a management company or other business entity that
14 operates or contracts with others for the operation of a facility;

15 (2) a person who is a controlling person of a
16 management company or other business entity that operates a
17 facility or that contracts with another person for the operation of
18 a facility; and

19 (3) any other individual who, because of a personal,
20 familial, or other relationship with the owner, manager, or
21 provider of a facility, is in a position of actual control or
22 authority with respect to the facility, without regard to whether
23 the individual is formally named as an owner, manager, director,
24 officer, provider, consultant, contractor, or employee of the
25 facility.

26 (b) A controlling person described by Subsection (a)(3)
27 does not include an employee, lender, secured creditor, or other

1 person who does not exercise formal or actual influence or control
2 over the operation of a facility.

3 (c) The executive commissioner of the Health and Human
4 Services Commission may adopt rules that specify the ownership
5 interests and other relationships that qualify a person as a
6 controlling person.

7 (d) A person is not eligible for a license or to renew a
8 license if the applicant, a controlling person with respect to the
9 applicant, or an administrator or chief financial officer of the
10 applicant has been convicted of an offense that would bar a person's
11 employment at a facility in accordance with Chapter 250.

12 SECTION 11. Section 252.039, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 252.039. POSTING. Each facility shall prominently and
15 conspicuously post for display in a public area of the facility that
16 is readily available to residents, employees, and visitors:

17 (1) the license issued under this chapter;

18 (2) a sign prescribed by the department that specifies
19 complaint procedures established under this chapter or rules
20 adopted under this chapter and that specifies how complaints may be
21 registered with the department;

22 (3) a notice in a form prescribed by the department
23 stating that inspection and related reports are available at the
24 facility for public inspection and providing the department's
25 toll-free telephone number that may be used to obtain information
26 concerning the facility;

27 (4) a concise summary of the most recent inspection

1 report relating to the facility; ~~and~~

2 (5) a notice providing instructions for reporting an
3 allegation of abuse, neglect, or exploitation to the Department of
4 Family and Protective Services; and

5 (6) a notice that employees, other staff, residents,
6 volunteers, and family members and guardians of residents are
7 protected from discrimination or retaliation as provided by
8 Sections 252.132 and 252.133.

9 SECTION 12. The heading to Subchapter E, Chapter 252,
10 Health and Safety Code, is amended to read as follows:

11 SUBCHAPTER E. INVESTIGATIONS ~~[REPORTS]~~ OF ABUSE,
12 ~~[AND]~~ NEGLECT, AND EXPLOITATION AND REPORTS OF RETALIATION

13 SECTION 13. Sections 252.121, 252.122, 252.125, and
14 252.126, Health and Safety Code, are amended to read as follows:

15 Sec. 252.121. AUTHORITY TO RECEIVE REPORTS AND INVESTIGATE
16 ~~[DEFINITION]~~. (a) A person, including an owner or employee of a
17 facility, who has cause to believe that ~~[In this subchapter,~~
18 ~~"designated agency" means an agency designated by a court to be~~
19 ~~responsible for the protection of]~~ a resident is being or has been
20 subjected to ~~[who is the subject of a report of]~~ abuse, ~~or~~
21 neglect, or exploitation shall report the suspected abuse, neglect,
22 or exploitation to the Department of Family and Protective
23 Services, as required by Chapter 48, Human Resources Code, or
24 Chapter 261, Family Code, as appropriate. The Department of Family
25 and Protective Services shall investigate the allegation of abuse,
26 neglect, or exploitation in the manner provided by Chapter 48,
27 Human Resources Code, or Section 261.404, Family Code, as

1 applicable.

2 (b) If the department receives a report of suspected abuse,
3 neglect, or exploitation of a resident of a facility licensed under
4 this chapter, the department shall immediately refer the report to
5 the Department of Family and Protective Services for investigation.

6 Sec. 252.122. NOTIFICATION OF DUTY TO REPORT [~~REPORTING OF~~]
7 ABUSE, [AND] NEGLIGENCE, AND EXPLOITATION. [~~(a) A person, including~~
8 ~~an owner or employee of a facility, who has cause to believe that~~
9 ~~the physical or mental health or welfare of a resident has been or~~
10 ~~may be adversely affected by abuse or neglect caused by another~~
11 ~~person shall report the abuse or neglect to the department, to a~~
12 ~~designated agency, or to both the department and the designated~~
13 ~~agency, as specified in department rules.~~

14 [~~(b)~~] Each facility shall require each employee of the
15 facility, as a condition of employment with the facility, to sign a
16 statement that the employee realizes that the employee may be
17 criminally liable for failure to report abuse, [~~or~~] neglect, or
18 exploitation.

19 [~~(c) A person shall make an oral report immediately on~~
20 ~~learning of abuse or neglect and shall make a written report to the~~
21 ~~same agency not later than the fifth day after the oral report is~~
22 ~~made.]~~

23 Sec. 252.125. IMMEDIATE REMOVAL TO PROTECT RESIDENT
24 [~~INVESTIGATION AND REPORT OF RECEIVING AGENCY].~~ [~~(a) The~~
25 ~~department or the designated agency shall make a thorough~~
26 ~~investigation promptly after receiving either the oral or written~~
27 ~~report.~~

1 ~~[(b) The primary purpose of the investigation is the~~
2 ~~protection of the resident.~~

3 ~~[(c) In the investigation, the department or the designated~~
4 ~~agency shall determine:~~

5 ~~[(1) the nature, extent, and cause of the abuse or~~
6 ~~neglect,~~

7 ~~[(2) the identity of the person responsible for the~~
8 ~~abuse or neglect,~~

9 ~~[(3) the names and conditions of the other residents,~~

10 ~~[(4) an evaluation of the persons responsible for the~~
11 ~~care of the residents,~~

12 ~~[(5) the adequacy of the facility environment, and~~

13 ~~[(6) any other information required by the department.~~

14 ~~[(d) The investigation may include a visit to the resident's~~
15 ~~facility and an interview with the resident, if considered~~
16 ~~appropriate by the department.~~

17 ~~[(e) If the department attempts to carry out an on-site~~
18 ~~investigation and it is shown that admission to the facility or any~~
19 ~~place where a resident is located cannot be obtained, a probate or~~
20 ~~county court shall order the person responsible for the care of the~~
21 ~~resident or the person in charge of a place where the resident is~~
22 ~~located to allow admission for the investigation and any interview~~
23 ~~with the resident.~~

24 ~~[(f)]~~ Before the completion of the investigation by the
25 Department of Family and Protective Services, the department shall
26 file a petition for temporary care and protection of a ~~[the]~~
27 resident if the department determines, based on information

1 provided to the department by the Department of Family and
2 Protective Services, that immediate removal is necessary to protect
3 the resident from further abuse, ~~or~~ neglect, or exploitation.

4 ~~[(g) The department or the designated agency shall make a~~
5 ~~complete written report of the investigation and submit the report~~
6 ~~and its recommendations to the district attorney and the~~
7 ~~appropriate law enforcement agency and, if necessary, to the~~
8 ~~department on the department's request.]~~

9 Sec. 252.126. CONFIDENTIALITY; DISCLOSURE OF INVESTIGATION
10 REPORT. (a) A report, record, or working paper used or developed
11 in an investigation made under this subchapter is confidential and
12 may be disclosed only as provided by Chapter 48, Human Resources
13 Code, Chapter 261, Family Code, or this section ~~[for purposes~~
14 ~~consistent with the rules adopted by the board or the designated~~
15 ~~agency].~~

16 (b) The Department of Family and Protective Services shall
17 provide a copy of a completed investigation report to the
18 department and may disclose information related to the
19 investigation at any time to the department as necessary to protect
20 a resident of a facility from abuse, neglect, or exploitation.

21 SECTION 14. Subsection (h), Section 252.132, Health and
22 Safety Code, is amended to read as follows:

23 (h) Each facility shall require each employee of the
24 facility, as a condition of employment with the facility, to sign a
25 statement that the employee understands the employee's rights under
26 this section. The statement must be part of the statement required
27 under Section 252.122 ~~[252.122(b)]~~. If a facility does not require

1 an employee to read and sign the statement, the periods prescribed
2 by Subsection (e) do not apply, and the petitioner must bring suit
3 not later than the second anniversary of the date on which the
4 person's employment is suspended or terminated.

5 SECTION 15. Subdivision (4), Section 253.001, Health and
6 Safety Code, is amended to read as follows:

7 (4) "Facility" means:

8 (A) a facility:

9 (i) licensed by the department; or

10 (ii) licensed under Chapter 252;

11 (B) an adult foster care provider that contracts
12 with the department; or

13 (C) a home and community support services agency
14 licensed by the department under Chapter 142.

15 SECTION 16. Section 253.002, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 253.002. INVESTIGATION BY DEPARTMENT. (a) If the
18 department receives a report that an employee of a facility, other
19 than a facility licensed under Chapter 252, committed reportable
20 conduct, the department shall investigate the report to determine
21 whether the employee has committed the reportable conduct.

22 (b) If the Department of Aging and Disability Services
23 receives a report that an employee of a facility licensed under
24 Chapter 252 committed reportable conduct, the department shall
25 forward that report to the Department of Family and Protective
26 Services for investigation.

27 SECTION 17. Subdivision (17), Section 531.002, Health and

1 Safety Code, is amended to read as follows:

2 (17) "State supported living center [~~school~~]" means a
3 state-supported and structured residential facility operated by
4 the Department of Aging and Disability Services [~~department~~] to
5 provide to clients with mental retardation a variety of services,
6 including medical treatment, specialized therapy, and training in
7 the acquisition of personal, social, and vocational skills.

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

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

11 (a) A reference in law to a "state school" means a state supported
12 living center.

13 (b) A reference in law to a "superintendent," to the extent
14 the term is intended to refer to the person in charge of a state
15 supported living center, means the director of a state supported
16 living center.

17 SECTION 19. Subsection (b), Section 532.001, Health and
18 Safety Code, is amended to read as follows:

19 (b) The Department of Aging and Disability Services and the
20 Department of State Health Services [~~department~~] also include
21 [~~includes~~] community services operated by those departments [~~the~~
22 ~~department~~] and the following facilities, as appropriate:

- 23 (1) the central office of each [~~the~~] department;
- 24 (2) the Austin State Hospital;
- 25 (3) the Big Spring State Hospital;
- 26 (4) the Kerrville State Hospital;
- 27 (5) the Rusk State Hospital;

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

1 SECTION 20. Section 551.022, Health and Safety Code, is
2 amended by adding Subsection (e) to read as follows:

3 (e) This section does not apply to a state supported living
4 center or the director of a state supported living center.

5 SECTION 21. Subchapter B, Chapter 551, Health and Safety
6 Code, is amended by adding Section 551.0225 to read as follows:

7 Sec. 551.0225. POWERS AND DUTIES OF STATE SUPPORTED LIVING
8 CENTER DIRECTOR. (a) The director of a state supported living
9 center is the administrative head of the center.

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

13 (c) The director of a state supported living center shall:

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

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

18 (3) ensure that the civil rights of residents and
19 clients of the center are protected;

20 (4) ensure the health, safety, and general welfare of
21 residents and clients of the center;

22 (5) supervise repairs and improvements to the center;

23 (6) ensure that center money is spent judiciously and
24 economically;

25 (7) keep an accurate and detailed account of all money
26 received and spent, stating the source of the money and on whom and
27 the purpose for which the money is spent;

1 (8) keep a full record of the center's operations;

2 (9) monitor the arrival and departure of individuals
3 to and from the center as appropriate to ensure the safety of
4 residents; and

5 (10) ensure that residents' family members and legally
6 authorized representatives are notified of serious events that may
7 indicate problems in the care or treatment of residents.

8 (d) In accordance with department rules and operating
9 procedures, the director of a state supported living center may:

10 (1) establish policy to govern the center that the
11 director considers will best promote the residents' interest and
12 welfare;

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

15 (3) dismiss a subordinate officer, teacher, or
16 employee for good cause.

17 (e) The Department of Aging and Disability Services shall,
18 with input from residents of a state supported living center, and
19 the family members and legally authorized representatives of those
20 residents, develop a policy that defines "serious event" for
21 purposes of Subsection (c)(10).

22 SECTION 22. Subtitle B, Title 7, Health and Safety Code, is
23 amended by adding Chapter 555 to read as follows:

24 CHAPTER 555. STATE SUPPORTED LIVING CENTERS

25 SUBCHAPTER A. GENERAL PROVISIONS

26 Sec. 555.001. DEFINITIONS. In this chapter:

27 (1) "Alleged offender resident" means a person with

1 mental retardation who:

2 (A) was committed to or transferred to a state
3 supported living center under Chapter 46B or 46C, Code of Criminal
4 Procedure, as a result of being charged with or convicted of a
5 criminal offense; or

6 (B) is a child committed to or transferred to a
7 state supported living center under Chapter 55, Family Code, as a
8 result of being alleged by petition or having been found to have
9 engaged in delinquent conduct constituting a criminal offense.

10 (2) "Center" means the state supported living centers
11 and the ICF-MR component of the Rio Grande State Center.

12 (3) "Center employee" means an employee of a state
13 supported living center or the ICF-MR component of the Rio Grande
14 State Center.

15 (4) "Client" means a person with mental retardation
16 who receives ICF-MR services from a state supported living center
17 or the ICF-MR component of the Rio Grande State Center.

18 (5) "Commission" means the Health and Human Services
19 Commission.

20 (6) "Complaint" means information received by the
21 office of independent ombudsman regarding a possible violation of a
22 right of a resident or client and includes information received
23 regarding a failure by a state supported living center or the ICF-MR
24 component of the Rio Grande State Center to comply with the
25 department's policies and procedures relating to the community
26 living options information process.

27 (7) "Department" means the Department of Aging and

1 Disability Services.

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

4 (9) "Executive commissioner" means the executive
5 commissioner of the Health and Human Services Commission.

6 (10) "High-risk alleged offender resident" means an
7 alleged offender resident who has been determined under Section
8 555.003 to be at risk of inflicting substantial physical harm to
9 another.

10 (11) "Independent ombudsman" means the individual who
11 has been appointed to the office of independent ombudsman for state
12 supported living centers.

13 (12) "Inspector general" means the Health and Human
14 Services Commission's office of inspector general.

15 (13) "Interdisciplinary team" has the meaning
16 assigned by Section 591.003.

17 (14) "Office" means the office of independent
18 ombudsman for state supported living centers established under
19 Subchapter C.

20 (15) "Resident" means a person with mental retardation
21 who resides in a state supported living center or the ICF-MR
22 component of the Rio Grande State Center.

23 (16) "State supported living center" has the meaning
24 assigned by Section 531.002.

25 Sec. 555.002. FORENSIC STATE SUPPORTED LIVING CENTER.

26 (a) The department shall establish a separate forensic state
27 supported living center for the care apart from other clients and

1 residents of high-risk alleged offender residents. The department
2 shall designate the Mexia State Supported Living Center for this
3 purpose.

4 (b) In establishing the forensic state supported living
5 center, the department shall:

6 (1) transfer an alleged offender resident already
7 residing in a center who is classified as a high-risk alleged
8 offender resident in accordance with Section 555.003, to the
9 forensic state supported living center;

10 (2) place high-risk alleged offender residents in
11 separate homes at the forensic state supported living center based
12 on whether an individual is:

13 (A) an adult or a person younger than 18 years of
14 age; or

15 (B) male or female;

16 (3) place alleged offender residents who are charged
17 with or convicted of a felony offense or who are alleged by petition
18 or have been found to have engaged in delinquent conduct defined as
19 a felony offense, at the time the residents are initially committed
20 to or transferred to a center, in the forensic state supported
21 living center until a determination under Section 555.003 has been
22 completed;

23 (4) transfer all residents who request a transfer,
24 other than high-risk alleged offender residents and alleged
25 offender residents described by Subdivision (3) and for whom a
26 determination has not been completed under Section 555.003, from
27 the forensic state supported living center; and

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1 (5) provide training regarding the service delivery
2 system for high-risk alleged offender residents to direct care
3 employees of the forensic state supported living center.

4 (c) An alleged offender resident committed to the forensic
5 state supported living center, for whom a determination under
6 Section 555.003 has been completed and who is not classified as a
7 high-risk alleged offender resident, may request a transfer to
8 another center in accordance with Subchapter B, Chapter 594.

9 (d) The department shall ensure that the forensic state
10 supported living center:

11 (1) complies with the requirements for ICF-MR
12 certification under the Medicaid program, as appropriate; and

13 (2) has additional center employees, including direct
14 care employees, to protect the safety of center employees,
15 residents, and the community.

16 (e) The department shall collect data regarding the
17 commitment of alleged offender residents to state supported living
18 centers, including any offense with which an alleged offender
19 resident is charged, the location of the committing court, whether
20 the alleged offender resident has previously been in the custody of
21 the Texas Youth Commission or the Department of Family and
22 Protective Services, and whether the alleged offender resident
23 receives mental health services or previously received any services
24 under a Section 1915(c) waiver program. The department shall
25 annually submit to the governor, the lieutenant governor, the
26 speaker of the house of representatives, and the standing
27 committees of the legislature with primary subject matter

1 jurisdiction over state supported living centers a report of the
2 information collected under this section. The report may not
3 contain personally identifiable information for any person in the
4 report.

5 Sec. 555.003. DETERMINATION OF HIGH-RISK ALLEGED OFFENDER
6 STATUS. (a) Not later than the 30th day after the date an alleged
7 offender resident is first committed to a state supported living
8 center and, if the resident is classified as a high-risk alleged
9 offender resident, annually on the anniversary of that date, an
10 interdisciplinary team shall determine whether the alleged
11 offender resident is at risk of inflicting substantial physical
12 harm to another and should be classified or remain classified as a
13 high-risk alleged offender resident.

14 (b) In making a determination under Subsection (a), the
15 interdisciplinary team shall document and collect evidence
16 regarding the reason the alleged offender resident is determined to
17 be at risk of inflicting substantial physical harm to another.

18 (c) The interdisciplinary team shall provide the team's
19 findings regarding whether the alleged offender resident is at risk
20 of inflicting substantial physical harm to another and the
21 documentation and evidence collected under this section to:

- 22 (1) the department;
23 (2) the director of the state supported living center;
24 (3) the independent ombudsman;
25 (4) the alleged offender resident or the alleged
26 offender resident's parent if the resident is a minor; and
27 (5) the alleged offender resident's legally authorized

1 representative.

2 (d) An alleged offender resident who is determined to be at
3 risk of inflicting substantial physical harm to another and is
4 classified as a high-risk alleged offender resident is entitled to
5 an administrative hearing with the department to contest that
6 determination and classification.

7 (e) An individual who has exhausted the administrative
8 remedies provided by Subsection (d) may bring a suit to appeal the
9 determination and classification in district court in Travis
10 County. The suit must be filed not later than the 30th day after the
11 date the final order in the administrative hearing is provided to
12 the individual. An appeal under this section is by trial de novo.

13 [Sections 555.004-555.020 reserved for expansion]

14 SUBCHAPTER B. POWERS AND DUTIES

15 Sec. 555.021. REQUIRED CRIMINAL HISTORY CHECKS FOR
16 EMPLOYEES AND VOLUNTEERS OF CENTERS. (a) The department and the
17 Department of State Health Services shall perform a state and
18 federal criminal history background check on a person:

19 (1) who is:

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

21 (B) an employee of the agency;

22 (C) a volunteer with the agency; or

23 (D) an applicant for a volunteer position with

24 the agency; and

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

27 (b) The department and the Department of State Health

1 Services shall require a person described by Subsection (a) to
2 submit fingerprints in a form and of a quality acceptable to the
3 Department of Public Safety and the Federal Bureau of Investigation
4 for use in conducting a criminal history background check.

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

7 (1) for whom the agency performs a background check
8 under Subsection (a); and

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

11 Sec. 555.022. DRUG TESTING; POLICY. (a) The executive
12 commissioner shall adopt a policy regarding random testing and
13 reasonable suspicion testing for the illegal use of drugs by a
14 center employee.

15 (b) The policy adopted under Subsection (a) must provide
16 that a center employee may be terminated solely on the basis of a
17 single positive test for illegal use of a controlled substance. The
18 policy must establish an appeals process for a center employee who
19 tests positively for illegal use of a controlled substance.

20 (c) The director of a state supported living center or the
21 superintendent of the Rio Grande State Center shall enforce the
22 policy adopted under Subsection (a) by performing necessary drug
23 testing of the center employees for the use of a controlled
24 substance as defined by Section 481.002.

25 (d) Testing under this section may be performed on a random
26 basis or on reasonable suspicion of the use of a controlled
27 substance.

1 (e) For purposes of this section, a report made under
2 Section 555.023 is considered reasonable suspicion of the use of a
3 controlled substance.

4 Sec. 555.023. REPORTS OF ILLEGAL DRUG USE; POLICY. The
5 executive commissioner shall adopt a policy requiring a center
6 employee who knows or reasonably suspects that another center
7 employee is illegally using or under the influence of a controlled
8 substance, as defined by Section 481.002, to report that knowledge
9 or reasonable suspicion to the director of the state supported
10 living center or the superintendent of the Rio Grande State Center,
11 as appropriate.

12 Sec. 555.024. CENTER EMPLOYEE TRAINING. (a) Before a
13 center employee begins to perform the employee's duties without
14 direct supervision, the department shall provide the employee with
15 competency training and a course of instruction about the general
16 duties of a center employee. The department shall ensure the basic
17 center employee competency course focuses on:

18 (1) the uniqueness of the individuals the center
19 employee serves;

20 (2) techniques for improving quality of life for and
21 promoting the health and safety of individuals with mental
22 retardation; and

23 (3) the conduct expected of center employees.

24 (b) The department shall ensure the training required by
25 Subsection (a) provides instruction and information regarding the
26 following topics:

27 (1) the general operation and layout of the center at

- 1 which the person is employed, including armed intruder lockdown
2 procedures;
- 3 (2) an introduction to mental retardation;
4 (3) an introduction to autism;
5 (4) an introduction to mental illness and dual
6 diagnosis;
- 7 (5) the rights of individuals with mental retardation
8 who receive services from the department;
- 9 (6) respecting personal choices made by residents and
10 clients;
- 11 (7) the safe and proper use of restraints;
12 (8) recognizing and reporting:
- 13 (A) evidence of abuse, neglect, and exploitation
14 of individuals with mental retardation;
- 15 (B) unusual incidents;
16 (C) reasonable suspicion of illegal drug use in
17 the workplace;
- 18 (D) workplace violence; or
19 (E) sexual harassment in the workplace;
- 20 (9) preventing and treating infection;
21 (10) first aid;
22 (11) cardiopulmonary resuscitation;
23 (12) the Health Insurance Portability and
24 Accountability Act of 1996 (Pub. L. No. 104-191); and
- 25 (13) the rights of center employees.
- 26 (c) In addition to the training required by Subsection (a)
27 and before a direct care employee begins to perform the direct care

1 employee's duties without direct supervision, the department shall
2 provide a direct care employee with training and instructional
3 information regarding implementation of the interdisciplinary
4 treatment program for each resident or client for whom the direct
5 care employee will provide direct care, including the following
6 topics:

7 (1) prevention and management of aggressive or violent
8 behavior;

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

11 (3) positive behavior support;

12 (4) emergency response;

13 (5) person-directed plans;

14 (6) self-determination;

15 (7) seizure safety;

16 (8) techniques for:

17 (A) lifting;

18 (B) positioning; and

19 (C) movement and mobility;

20 (9) working with aging residents and clients;

21 (10) assisting residents and clients:

22 (A) who have a visual impairment;

23 (B) who have a hearing deficit; or

24 (C) who require the use of adaptive devices and
25 specialized equipment;

26 (11) communicating with residents and clients who use
27 augmentative and alternative devices for communication;

- 1 (12) assisting residents and clients with personal
2 hygiene;
3 (13) recognizing appropriate food textures;
4 (14) using proper feeding techniques to assist
5 residents and clients with meals;
6 (15) physical and nutritional management plans; and
7 (16) home and community-based services, including the
8 principles of community inclusion and participation and the
9 community living options information process.

10 (d) The executive commissioner shall adopt rules that
11 require a center to provide refresher training courses to direct
12 care employees on a regular basis.

13 (e) A center may allow an employee of an intermediate care
14 facility for persons with mental retardation licensed by the
15 department, an employee of a person licensed or certified to
16 provide Section 1915(c) waiver program services, or another
17 employee or professional involved in the provision of services to
18 persons with mental retardation to receive information and training
19 under this section, as appropriate. The center may charge an
20 administrative fee in an amount not to exceed the cost of providing
21 the information or training.

22 Sec. 555.025. VIDEO SURVEILLANCE. (a) In this section,
23 "private space" means a place in a center in which a resident or
24 client has a reasonable expectation of privacy, including:

- 25 (1) a bedroom;
26 (2) a bathroom;
27 (3) a place in which a resident or client receives

1 medical or nursing services;

2 (4) a place in which a resident or client meets
3 privately with visitors; or

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

6 (b) The department shall install and operate video
7 surveillance equipment in a center for the purpose of detecting and
8 preventing the exploitation or abuse of residents and clients.

9 (c) The department may not install or operate video
10 surveillance equipment in a private space or in a location in which
11 video surveillance equipment can capture images within a private
12 space.

13 (d) The department shall ensure that the use of video
14 surveillance equipment under this section complies with federal
15 requirements for ICF-MR certification.

16 [Sections 555.026-555.050 reserved for expansion]

17 SUBCHAPTER C. OFFICE OF INDEPENDENT OMBUDSMAN FOR STATE SUPPORTED
18 LIVING CENTERS

19 Sec. 555.051. ESTABLISHMENT; PURPOSE. The office of
20 independent ombudsman is established for the purpose of
21 investigating, evaluating, and securing the rights of residents and
22 clients of state supported living centers and the ICF-MR component
23 of the Rio Grande State Center. The office is administratively
24 attached to the department. The department shall provide
25 administrative support and resources to the office as necessary for
26 the office to perform its duties.

27 Sec. 555.052. INDEPENDENCE. The independent ombudsman in

1 the performance of the ombudsman's duties and powers under this
2 subchapter acts independently of the department.

3 Sec. 555.053. APPOINTMENT OF INDEPENDENT OMBUDSMAN.

4 (a) The governor shall appoint the independent ombudsman.

5 (b) The governor may appoint as independent ombudsman only
6 an individual with at least five years of experience managing and
7 ensuring the quality of care and services provided to individuals
8 with mental retardation.

9 Sec. 555.054. ASSISTANT OMBUDSMEN. (a) The independent
10 ombudsman shall:

11 (1) hire assistant ombudsmen to perform, under the
12 direction of the independent ombudsman, the same duties and
13 exercise the same powers as the independent ombudsman; and

14 (2) station an assistant ombudsman at each center.

15 (b) The independent ombudsman may hire as assistant
16 ombudsmen only individuals with at least five years of experience
17 ensuring the quality of care and services provided to individuals
18 with mental retardation.

19 Sec. 555.055. CONFLICT OF INTEREST. A person may not serve
20 as independent ombudsman or as an assistant ombudsman if the person
21 or the person's spouse:

22 (1) is employed by or participates in the management
23 of a business entity or other organization receiving funds from the
24 department;

25 (2) owns or controls, directly or indirectly, any
26 interest in a business entity or other organization receiving funds
27 from the department; or

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

5 Sec. 555.056. REPORT. (a) The independent ombudsman shall
6 submit on a biannual basis to the governor, the lieutenant
7 governor, the speaker of the house of representatives, and the
8 chairs of the standing committees of the senate and the house of
9 representatives with primary jurisdiction over state supported
10 living centers a report that is both aggregated and disaggregated
11 by individual center and describes:

12 (1) the work of the independent ombudsman;

13 (2) the results of any review or investigation
14 undertaken by the independent ombudsman, including a review or
15 investigation of services contracted by the department;

16 (3) any recommendations that the independent
17 ombudsman has in relation to the duties of the independent
18 ombudsman; and

19 (4) any recommendations that the independent
20 ombudsman has for systemic improvements needed to decrease
21 incidents of abuse, neglect, or exploitation at an individual
22 center or at all centers.

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

26 (c) The independent ombudsman shall immediately report to
27 the governor, the lieutenant governor, the speaker of the house of

1 representatives, and the chairs of the standing committees of the
2 senate and the house of representatives having primary jurisdiction
3 over the Department of Aging and Disability Services any
4 particularly serious or flagrant:

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

7 (2) problem concerning the administration of a center
8 program or operation; or

9 (3) interference by a center, the department, or the
10 commission, other than actions by the commission's office of
11 inspector general in accordance with the office's duties, with an
12 investigation conducted by the independent ombudsman.

13 Sec. 555.057. COMMUNICATION AND CONFIDENTIALITY. (a) The
14 department shall allow any resident or client, authorized
15 representative of a resident or client, family member of a resident
16 or client, or other interested party to communicate with the
17 independent ombudsman or an assistant ombudsman. The
18 communication:

19 (1) may be in person, by mail, or by any other means;
20 and

21 (2) is confidential and privileged.

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

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

27 (2) share with the inspector general a communication

1 that may involve an alleged criminal offense;

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

5 (4) disclose the ombudsman's nonprivileged records if
6 required by a court order on a showing of good cause.

7 (c) The independent ombudsman may make reports relating to
8 an investigation by the independent ombudsman public after the
9 investigation is complete but only if the name and any other
10 personally identifiable information of a resident or client,
11 legally authorized representative of a resident or client, family
12 member of a resident or client, center, center employee, or other
13 individual are redacted from the report and remain confidential.
14 The independent ombudsman may provide an unredacted report to the
15 center involved in the investigation, the department, the
16 Department of Family and Protective Services, and the inspector
17 general.

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

25 Sec. 555.058. PROMOTION OF AWARENESS OF OFFICE. The
26 independent ombudsman shall promote awareness among the public,
27 residents, clients, and center employees of:

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

4 Sec. 555.059. DUTIES AND POWERS. (a) The independent
5 ombudsman shall:

6 (1) evaluate the process by which a center
7 investigates, reviews, and reports an injury to a resident or
8 client or an unusual incident;

9 (2) evaluate the delivery of services to residents and
10 clients to ensure that the rights of residents and clients are fully
11 observed, including ensuring that each center conducts sufficient
12 unannounced patrols;

13 (3) immediately refer a complaint alleging the abuse,
14 neglect, or exploitation of a resident or client to the Department
15 of Family and Protective Services;

16 (4) refer a complaint alleging employee misconduct
17 that does not involve abuse, neglect, or exploitation or a possible
18 violation of an ICF-MR standard or condition of participation to
19 the regulatory services division of the department;

20 (5) refer a complaint alleging a criminal offense,
21 other than an allegation of abuse, neglect, or exploitation of a
22 resident or client, to the inspector general;

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

27 (A) a resident or client or the resident's or

- 1 client's family may be in need of assistance from the office; or
2 (B) a complaint raises the possibility of a
3 systemic issue in the center's provision of services;
4 (7) conduct biennial on-site audits at each center of:
5 (A) the ratio of direct care employees to
6 residents;
7 (B) the provision and adequacy of training to:
8 (i) center employees; and
9 (ii) direct care employees; and
10 (C) if the center serves alleged offender
11 residents, the provision of specialized training to direct care
12 employees;
13 (8) conduct an annual audit of each center's policies,
14 practices, and procedures to ensure that each resident and client
15 is encouraged to exercise the resident's or client's rights,
16 including:
17 (A) the right to file a complaint; and
18 (B) the right to due process;
19 (9) prepare and deliver an annual report regarding the
20 findings of each audit to the:
21 (A) executive commissioner;
22 (B) commissioner;
23 (C) Aging and Disability Services Council;
24 (D) governor;
25 (E) lieutenant governor;
26 (F) speaker of the house of representatives;
27 (G) standing committees of the senate and house

1 of representatives with primary jurisdiction over state supported
2 living centers; and

3 (H) state auditor;

4 (10) require a center to provide access to all
5 records, data, and other information under the control of the
6 center that the independent ombudsman determines is necessary to
7 investigate a complaint or to conduct an audit under this section;

8 (11) review all final reports produced by the
9 Department of Family and Protective Services, the regulatory
10 services division of the department, and the inspector general
11 regarding a complaint referred by the independent ombudsman;

12 (12) provide assistance to a resident, client,
13 authorized representative of a resident or client, or family member
14 of a resident or client who the independent ombudsman determines is
15 in need of assistance, including advocating with an agency,
16 provider, or other person in the best interests of the resident or
17 client;

18 (13) make appropriate referrals under any of the
19 duties and powers listed in this subsection; and

20 (14) monitor and evaluate the department's actions
21 relating to any problem identified or recommendation included in a
22 report received from the Department of Family and Protective
23 Services relating to an investigation of alleged abuse, neglect, or
24 exploitation of a resident or client.

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

1 (c) To assess whether a resident's or client's rights have
2 been violated, the independent ombudsman may, in any matter that
3 does not involve an alleged criminal offense or the abuse, neglect,
4 or exploitation of a resident or client, contact or consult with an
5 administrator, employee, resident, client, family member of a
6 resident or client, expert, or other individual in the course of the
7 investigation or to secure information.

8 (d) Notwithstanding any other provision of this chapter,
9 the independent ombudsman may not investigate an alleged criminal
10 offense or the alleged abuse, neglect, or exploitation of a
11 resident or client.

12 Sec. 555.060. RETALIATION PROHIBITED. The department or a
13 center may not retaliate against a department employee, center
14 employee, or any other person who in good faith makes a complaint to
15 the office of independent ombudsman or cooperates with the office
16 in an investigation.

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

21 (b) The office shall ensure that:

22 (1) the toll-free number is prominently displayed in
23 the main administration area and other appropriate common areas of
24 a center; and

25 (2) a resident, a client, the legally authorized
26 representative of a resident or client, and a center employee have
27 confidential access to a telephone for the purpose of calling the

1 toll-free number.

2 [Sections 555.062-555.100 reserved for expansion]

3 SUBCHAPTER D. INSPECTOR GENERAL DUTIES

4 Sec. 555.101. ASSISTING LAW ENFORCEMENT AGENCIES WITH
5 CERTAIN INVESTIGATIONS. The inspector general shall employ and
6 commission peace officers for the purpose of assisting a state or
7 local law enforcement agency in the investigation of an alleged
8 criminal offense involving a resident or client of a center. A
9 peace officer employed and commissioned by the inspector general is
10 a peace officer for purposes of Article 2.12, Code of Criminal
11 Procedure.

12 Sec. 555.102. SUMMARY REPORT. (a) The inspector general
13 shall prepare a summary report for each investigation conducted
14 with the assistance of the inspector general under this subchapter.
15 The inspector general shall ensure that the report does not contain
16 personally identifiable information of an individual mentioned in
17 the report.

18 (b) The summary report must include:

19 (1) a summary of the activities performed during an
20 investigation for which the inspector general provided assistance;

21 (2) a statement regarding whether the investigation
22 resulted in a finding that an alleged criminal offense was
23 committed; and

24 (3) a description of the alleged criminal offense that
25 was committed.

26 (c) The inspector general shall deliver the summary report
27 to the:

- 1 (1) executive commissioner;
- 2 (2) commissioner of the department;
- 3 (3) commissioner of the Department of Family and
4 Protective Services;
- 5 (4) Aging and Disability Services Council;
- 6 (5) governor;
- 7 (6) lieutenant governor;
- 8 (7) speaker of the house of representatives;
- 9 (8) standing committees of the senate and house of
10 representatives with primary jurisdiction over centers;
- 11 (9) state auditor;
- 12 (10) the independent ombudsman and the assistant
13 ombudsman for the center involved in the report; and
- 14 (11) the alleged victim or the alleged victim's
15 legally authorized representative.

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

1 Sec. 555.103. ANNUAL STATUS REPORT. (a) The inspector
2 general shall prepare an annual status report of the inspector
3 general's activities under this subchapter. The annual report may
4 not contain personally identifiable information of an individual
5 mentioned in the report.

6 (b) The annual status report must include information that
7 is aggregated and disaggregated by individual center regarding:

8 (1) the number and type of investigations conducted
9 with the assistance of the inspector general;

10 (2) the number and type of investigations involving a
11 center employee;

12 (3) the relationship of an alleged victim to an
13 alleged perpetrator, if any;

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

17 (5) the number of completed investigations in which
18 commission of an alleged offense was confirmed or unsubstantiated
19 or in which the investigation was inconclusive, and a description
20 of the reason that allegations were unsubstantiated or the
21 investigation was inconclusive.

22 (c) The inspector general shall submit the annual status
23 report to the:

24 (1) executive commissioner;

25 (2) commissioner of the department;

26 (3) commissioner of the Department of Family and
27 Protective Services;

1 (4) Aging and Disability Services Council;

2 (5) Family and Protective Services Council;

3 (6) governor;

4 (7) lieutenant governor;

5 (8) speaker of the house of representatives;

6 (9) standing committees of the senate and house of
7 representatives with primary jurisdiction over centers;

8 (10) state auditor; and

9 (11) comptroller.

10 (d) An annual status report submitted under this section is
11 public information under Chapter 552, Government Code.

12 Sec. 555.104. RETALIATION PROHIBITED. The department or a
13 center may not retaliate against a department employee, a center
14 employee, or any other person who in good faith cooperates with the
15 inspector general under this subchapter.

16 SECTION 23. Section 40.001, Human Resources Code, is
17 amended by adding Subdivision (6) to read as follows:

18 (6) "State supported living center" has the meaning
19 assigned by Section 531.002, Health and Safety Code.

20 SECTION 24. Subsection (b), Section 40.0315, Human
21 Resources Code, is amended to read as follows:

22 (b) An investigator in the unit shall determine whether an
23 elderly or disabled person who is the subject of a report made under
24 Section 48.051(a) may have suffered from abuse, neglect, or
25 exploitation as a result of the criminal conduct of another
26 person. If the investigator determines that criminal conduct may
27 have occurred, the investigator shall immediately notify:

1 (1) the commission's office of inspector general if
2 the disabled person who is the subject of the report resides in a
3 state supported living center or the ICF-MR component of the Rio
4 Grande State Center; or

5 (2) the appropriate law enforcement agency.

6 SECTION 25. Subchapter A, Chapter 48, Human Resources Code,
7 is amended by adding Section 48.007 to read as follows:

8 Sec. 48.007. MEMORANDUM OF UNDERSTANDING REGARDING CERTAIN
9 ABUSE, NEGLECT, OR EXPLOITATION INVESTIGATIONS. The Health and
10 Human Services Commission, the department, the Department of Aging
11 and Disability Services, the office of independent ombudsman for
12 state supported living centers, and the Health and Human Services
13 Commission's office of inspector general shall enter into a
14 memorandum of understanding regarding investigations of alleged
15 abuse, neglect, or exploitation of residents or clients of state
16 supported living centers or the ICF-MR component of the Rio Grande
17 State Center that delineates the responsibilities of each agency
18 under this chapter, Chapter 261, Family Code, and Chapter 555,
19 Health and Safety Code, and amend the memorandum of understanding
20 as necessary to reflect changes in those responsibilities. During
21 the negotiation of the memorandum of understanding, the agencies
22 shall jointly determine whether the forensic training received by
23 relevant staff of the Department of Family and Protective Services
24 is adequate. Specifically, the agencies shall assess and, if
25 necessary, develop a plan to enhance the ability of department
26 staff to identify and report incidences that constitute a potential
27 criminal offense. The Health and Human Services Commission is the

1 final arbiter of any dispute regarding the memorandum of
2 understanding under this section.

3 SECTION 26. Subsections (a) and (b), Section 48.051, Human
4 Resources Code, are amended to read as follows:

5 (a) Except as prescribed by Subsection (b), a person having
6 cause to believe that an elderly or disabled person is in the state
7 of abuse, neglect, or exploitation, including a disabled person
8 receiving services as described by Section 48.252, shall report the
9 information required by Subsection (d) immediately to the
10 department.

11 (b) If a person has cause to believe that an elderly or
12 disabled person, other than a disabled person receiving services as
13 described by Section 48.252, has been abused, neglected, or
14 exploited in a facility operated, licensed, certified, or
15 registered by a state agency [~~other than the Texas Department of~~
16 ~~Mental Health and Mental Retardation~~], the person shall report the
17 information to the state agency that operates, licenses, certifies,
18 or registers the facility for investigation by that agency.

19 SECTION 27. Subsection (a), Section 48.052, Human Resources
20 Code, is amended to read as follows:

21 (a) A person commits an offense if the person has cause to
22 believe that an elderly or disabled person has been abused,
23 neglected, or exploited or is in the state of abuse, neglect, or
24 exploitation and knowingly fails to report in accordance with this
25 chapter. An offense under this subsection is a Class A misdemeanor,
26 except that the offense is a state jail felony if it is shown on the
27 trial of the offense that the disabled person was a person with

1 mental retardation who resided in a state supported living center,
2 the ICF-MR component of the Rio Grande State Center, or a facility
3 licensed under Chapter 252, Health and Safety Code, and the actor
4 knew that the disabled person had suffered serious bodily injury as
5 a result of the abuse, neglect, or exploitation.

6 SECTION 28. Section 48.1522, Human Resources Code, is
7 amended to read as follows:

8 Sec. 48.1522. REPORTS OF CRIMINAL CONDUCT TO LAW
9 ENFORCEMENT AGENCY. (a) Except as provided by Subsection (b), if
10 [~~IF~~] during the course of the department's or another state agency's
11 investigation of reported abuse, neglect, or exploitation a
12 caseworker of the department or other state agency, as applicable,
13 or the caseworker's supervisor has cause to believe that the
14 elderly or disabled person has been abused, neglected, or exploited
15 by another person in a manner that constitutes a criminal offense
16 under any law, including Section 22.04, Penal Code, the caseworker
17 or supervisor shall:

18 (1) immediately notify an appropriate law enforcement
19 agency; and

20 (2) provide the law enforcement agency with a copy of
21 the investigation report of the department or other state agency,
22 as applicable, in a timely manner.

23 (b) If during the course of the department's investigation
24 of reported abuse, neglect, or exploitation a caseworker of the
25 department or the caseworker's supervisor has cause to believe that
26 a disabled person who is a resident or client of a state supported
27 living center or the ICF-MR component of the Rio Grande State Center

1 has been abused, neglected, or exploited by another person in a
2 manner that constitutes a criminal offense under any law, including
3 Section 22.04, Penal Code, the caseworker shall immediately notify
4 the commission's office of inspector general and promptly provide
5 the commission's office of inspector general with a copy of the
6 department's investigation report.

7 SECTION 29. The heading to Subchapter F, Chapter 48, Human
8 Resources Code, is amended to read as follows:

9 SUBCHAPTER F. INVESTIGATIONS IN CERTAIN [~~TDMMR~~] FACILITIES,
10 COMMUNITY CENTERS, AND LOCAL MENTAL HEALTH AND MENTAL RETARDATION
11 [~~MMR~~] AUTHORITIES

12 SECTION 30. Section 48.252, Human Resources Code, is
13 amended to read as follows:

14 Sec. 48.252. INVESTIGATION OF REPORTS IN CERTAIN [~~MMR~~]
15 FACILITIES AND IN COMMUNITY CENTERS. (a) The department shall
16 receive and investigate reports of the abuse, neglect, or
17 exploitation of an individual with a disability receiving services:

18 (1) in:

19 (A) a mental health facility operated by the
20 [~~Texas~~] Department of State [~~Mental~~] Health Services [~~and Mental~~
21 ~~Retardation~~]; or

22 (B) a facility licensed under Chapter 252, Health
23 and Safety Code;

24 (2) in or from a community center, a local mental
25 health authority, or a local mental retardation authority; or

26 (3) through a program providing services to that
27 person by contract with a mental health facility operated by the

1 [~~Texas~~] Department of State [~~Mental~~] Health Services [~~and Mental~~
2 ~~Retardation~~], a community center, a local mental health authority,
3 or a local mental retardation authority.

4 (b) The department shall receive and shall investigate
5 reports of the abuse, neglect, or exploitation of an individual
6 with a disability receiving services:

7 (1) in a state supported living center or the ICF-MR
8 component of the Rio Grande State Center; or

9 (2) through a program providing services to that
10 person by contract with a state supported living center or the
11 ICF-MR component of the Rio Grande State Center.

12 (c) The department by rule shall define who is "an
13 individual with a disability receiving services."

14 (d) [~~(e)~~] In this section, "community center," "local
15 mental health authority," and "local mental retardation authority"
16 have the meanings assigned by Section 531.002, Health and Safety
17 Code.

18 SECTION 31. Section 48.254, Human Resources Code, is
19 amended to read as follows:

20 Sec. 48.254. FORWARDING OF CERTAIN REPORTS [~~COMPLETED~~
21 ~~INVESTIGATION REPORT~~]. In accordance with department rules, the
22 [The] department shall forward a copy of the initial intake report
23 and a copy of the completed investigation report relating to
24 alleged or suspected abuse, neglect, or exploitation to the
25 appropriate [a state mental health or mental retardation] facility,
26 [a] community center, [a] mental health authority, [a] mental
27 retardation authority, or [a] program providing mental health or

1 mental retardation services under contract with the [~~such a~~]
2 facility, community center, or authority[+]

3 [~~(1) a copy of any report the department receives~~
4 ~~relating to alleged or suspected abuse, neglect, or exploitation of~~
5 ~~an individual receiving services from that facility, community~~
6 ~~center, authority, or program, and~~

7 [~~(2) a copy of the department's investigation findings~~
8 ~~and report~~].

9 SECTION 32. Section 48.255, Human Resources Code, is
10 amended by amending Subsections (a), (b), (c), and (d) and adding
11 Subsection (c-1) to read as follows:

12 (a) The department, the Department of Aging and Disability
13 Services, and the [~~Texas~~] Department of State [~~Mental~~] Health
14 Services [~~and Mental Retardation~~] shall develop joint rules to
15 facilitate investigations in state mental health facilities and
16 state supported living centers [~~mental retardation facilities~~].

17 (b) The department, the Department of Aging and Disability
18 Services, and the [~~Texas~~] Department of State [~~Mental~~] Health
19 Services [~~and Mental Retardation~~] by joint rules shall establish
20 procedures for resolving disagreements between the department and
21 the [~~Texas~~] Department of Aging and Disability Services or the
22 Department of State [~~Mental~~] Health Services [~~and Mental~~
23 ~~Retardation~~] concerning the department's investigation findings.

24 (c) The department, the Department of Aging and Disability
25 Services, and the [~~Texas~~] Department of State [~~Mental~~] Health
26 Services [~~and Mental Retardation~~] shall develop joint rules to
27 facilitate investigations in community centers, mental health

1 authorities, and mental retardation authorities.

2 (c-1) The executive commissioner shall adopt rules
3 regarding investigations in a facility licensed under Chapter 252,
4 Health and Safety Code, to ensure that those investigations are as
5 consistent as practicable with other investigations conducted
6 under this subchapter.

7 (d) A confirmed investigation finding by the department may
8 not be changed by a superintendent of a state mental health [~~or~~
9 ~~mental retardation~~] facility, by a director of a state supported
10 living center, by a director of a community center, or by a mental
11 health authority or mental retardation authority.

12 SECTION 33. Section 48.256, Human Resources Code, is
13 amended to read as follows:

14 Sec. 48.256. SINGLE TRACKING SYSTEM FOR REPORTS AND
15 INVESTIGATIONS. (a) The department, [~~and~~] the [~~Texas~~] Department
16 of Aging and Disability Services, and the Department of State
17 [~~Mental~~] Health Services [~~and Mental Retardation~~] shall jointly
18 develop and implement a single system to track reports and
19 investigations under this subchapter [~~section~~].

20 (b) To facilitate implementation of the system, the
21 department, [~~and~~] the [~~Texas~~] Department of Aging and Disability
22 Services, and the Department of State [~~Mental~~] Health Services [~~and~~
23 ~~Mental Retardation~~] shall use appropriate methods of measuring the
24 number and outcome of reports and investigations under this
25 subchapter [~~section~~].

26 SECTION 34. Subsections (a) and (c), Section 48.301, Human
27 Resources Code, are amended to read as follows:

1 (a) If the department receives a report of suspected abuse,
2 neglect, or exploitation of [~~under this section relating to~~] an
3 elderly or disabled person, other than a disabled person receiving
4 services as described by Section 48.252, in a facility operated,
5 licensed, certified, or registered by a state agency [~~other than~~
6 ~~the Texas Department of Mental Health and Mental Retardation~~], the
7 department shall refer the report to that agency.

8 (c) Each state agency that may receive reports under this
9 section [~~, other than the Texas Department of Mental Health and~~
10 ~~Mental Retardation, that operates, licenses, certifies, or~~
11 ~~registers a facility in which elderly or disabled persons are~~
12 ~~located~~] shall adopt rules relating to the investigation and
13 resolution of reports received under this section.

14 SECTION 35. Subdivisions (1) and (4), Section 48.401, Human
15 Resources Code, are amended to read as follows:

16 (1) "Agency" means:
17 (A) an entity licensed under Chapter 142, Health
18 and Safety Code; [~~or~~]
19 (B) a person exempt from licensing under Section
20 142.003(a)(19), Health and Safety Code; or
21 (C) a facility licensed under Chapter 252, Health
22 and Safety Code.

23 (4) "Executive director" means the commissioner
24 [~~executive director~~] of the Department of Family and Protective
25 [~~and Regulatory~~] Services.

26 SECTION 36. Subchapter C, Chapter 161, Human Resources
27 Code, is amended by adding Section 161.0515 to read as follows:

1 Sec. 161.0515. ASSISTANT COMMISSIONER OF STATE SUPPORTED
2 LIVING CENTERS. (a) The commissioner shall employ an assistant
3 commissioner of state supported living centers. The assistant
4 commissioner must be selected based on education, training,
5 experience, and demonstrated ability.

6 (b) The assistant commissioner reports directly to the
7 commissioner.

8 (c) The assistant commissioner shall supervise the
9 operation of the state supported living centers. As part of that
10 duty, the assistant commissioner shall:

11 (1) verify that quality health and medical services
12 are being provided in state supported living centers;

13 (2) verify and certify employee qualifications for
14 employees of a state supported living center; and

15 (3) work with the commissioner to create
16 administrative guidelines for proper implementation of federal and
17 state statutory law and judicial decisions.

18 (d) The assistant commissioner shall coordinate with the
19 appropriate staff of the Department of State Health Services to
20 ensure that the ICF-MR component of the Rio Grande State Center
21 implements and enforces state law and rules that apply to the
22 operation of state supported living centers.

23 (e) The assistant commissioner shall consult with the
24 appropriate staff at the Department of State Health Services to
25 ensure that an individual with a dual diagnosis of mental illness
26 and mental retardation who is a resident of a state supported living
27 center or the ICF-MR component of the Rio Grande State Center is

1 provided with appropriate care and treatment.

2 SECTION 37. Subchapter D, Chapter 161, Human Resources
3 Code, is amended by adding Sections 161.076 and 161.077 to read as
4 follows:

5 Sec. 161.076. ON-SITE SURVEYS OF CERTAIN PROVIDERS. At
6 least every 12 months, the department shall conduct an unannounced
7 on-site survey in each group home, other than a foster home, at
8 which a Home and Community-based Services (HCS) provider provides
9 services.

10 Sec. 161.077. INVESTIGATION DATABASE. (a) The
11 department, in consultation with the Department of Family and
12 Protective Services, shall develop and maintain an electronic
13 database to collect and analyze information regarding the
14 investigation and prevention of abuse, neglect, and exploitation of
15 individuals with mental retardation who reside in a publicly or
16 privately operated intermediate care facility for persons with
17 mental retardation or in a group home, other than a foster home, at
18 which a Home and Community-based Services (HCS) provider provides
19 services and the results of regulatory investigations or surveys
20 performed by the department regarding those facilities or
21 providers.

22 (b) The information collected in the database regarding
23 investigations must be detailed, be easily retrievable, and include
24 information relating to abuse, neglect, and exploitation
25 investigations performed by either department and regulatory
26 investigations performed by the department that are capable of
27 being sorted by home, provider, and facility.

1 (c) The database must facilitate the entry of required
2 information and the sharing of information between the department
3 and the Department of Family and Protective Services. At a minimum,
4 the database must include the following information regarding
5 investigations of abuse, neglect, or exploitation:

6 (1) the number of allegations of abuse, neglect, or
7 exploitation received relating to a facility or group home, other
8 than a foster home; and

9 (2) the number of allegations relating to a facility
10 or group home, other than a foster home, substantiated through an
11 investigation.

12 (d) Each allegation involving a unique individual in a
13 facility or group home, other than a foster home, is considered a
14 separate allegation for purposes of Subsection (c).

15 (e) The department shall ensure that information related to
16 findings concerning failure to comply with regulatory standards
17 directly related to the prevention of abuse, neglect, or
18 exploitation in a facility or group home, other than a foster home,
19 is collected and stored in the database and may be disaggregated by
20 home, provider, and facility.

21 (f) The department and the Department of Family and
22 Protective Services may not release or distribute information in
23 the database in a form that contains personally identifiable
24 information related to an individual in a facility or group home or
25 to a victim of abuse, neglect, or exploitation.

26 SECTION 38. Subsection (f), Section 22.04, Penal Code, is
27 amended to read as follows:

1 (f) An offense under Subsection (a)(3) or (a-1)(3) or (4) is
2 a felony of the third degree when the conduct is committed
3 intentionally or knowingly, except that an offense under Subsection
4 (a)(3) is a felony of the second degree when the conduct is
5 committed intentionally or knowingly and the victim is a disabled
6 individual residing in a center, as defined by Section 555.001,
7 Health and Safety Code, or in a facility licensed under Chapter 252,
8 Health and Safety Code, and the actor is an employee of the center
9 or facility whose employment involved providing direct care for the
10 victim. When the conduct is engaged in recklessly, the offense is
11 a state jail felony.

12 SECTION 39. (a) Sections 252.123, 252.124, 252.127,
13 252.128, 252.129, 252.130, and 252.131, Health and Safety Code, are
14 repealed.

15 (b) Subsection (c), Section 5, Chapter 693 (S.B. 1248), Acts
16 of the 75th Legislature, Regular Session, 1997, is repealed.

17 SECTION 40. The changes in law made by Article 38.072, Code
18 of Criminal Procedure, as amended by this Act, and Section 54.031,
19 Family Code, as amended by this Act, apply only to a criminal
20 proceeding that commences on or after the effective date of this
21 Act. A criminal proceeding that commences before the effective
22 date of this Act is governed by the law in effect when the
23 proceeding commenced, and the former law is continued in effect for
24 that purpose.

25 SECTION 41. Subchapter L, Chapter 29, Education Code, as
26 added by this Act, applies beginning with the school year in which
27 the Department of Aging and Disability Services begins operating

1 the Mexia State Supported Living Center as the forensic state
2 supported living center as required by Section 555.002, Health and
3 Safety Code, as added by this Act.

4 SECTION 42. (a) Not later than December 1, 2009, the
5 Health and Human Services Commission, the Department of Family and
6 Protective Services, the Department of Aging and Disability
7 Services, the office of independent ombudsman for state supported
8 living centers, and the Health and Human Services Commission's
9 office of inspector general shall enter into a memorandum of
10 understanding as required by Section 48.007, Human Resources Code,
11 as added by this Act.

12 (b) Notwithstanding any other provision of this Act, the
13 changes in law made by this Act relating to the investigation of
14 suspected abuse, neglect, or exploitation involving a state
15 supported living center or the ICF-MR component of the Rio Grande
16 State Center apply only to a report of suspected abuse, neglect, or
17 exploitation involving a state supported living center or the
18 ICF-MR component of the Rio Grande State Center that is made on or
19 after January 1, 2010.

20 (c) Notwithstanding any other provision of this Act, the
21 changes in law made by this Act relating to the investigation of
22 suspected abuse, neglect, or exploitation involving a facility
23 licensed under Chapter 252, Health and Safety Code, apply only to a
24 report of suspected abuse, neglect, or exploitation involving a
25 facility licensed under Chapter 252, Health and Safety Code, that
26 is made on or after June 1, 2010.

27 SECTION 43. (a) The Interim Select Committee on Criminal

1 Commitments of Individuals with Mental Retardation is established
2 to study the criminal commitment process for individuals with
3 mental retardation who are found incompetent to stand trial or are
4 acquitted by reason of insanity. The committee's study must
5 include an analysis of:

6 (1) the advantages and disadvantages of the existing
7 system for criminal commitments of individuals with mental
8 retardation or individuals with a dual diagnosis of mental illness
9 and mental retardation who are found incompetent to stand trial or
10 are acquitted by reason of insanity;

11 (2) the number of individuals with mental retardation
12 who are criminally committed on an annual basis and the number of
13 individuals with mental retardation who are found to be violent or
14 dangerous through the criminal commitment process;

15 (3) whether the criminal commitment process should be
16 modified to provide for the commitment of certain individuals with
17 mental retardation who are found to be violent or dangerous to a
18 mental retardation facility instead of to a mental health facility;
19 and

20 (4) the costs associated with modifying the criminal
21 commitment process as described by Subdivision (3) of this
22 subsection.

23 (b) The committee is composed of six members as follows:

24 (1) the chairs of the following standing committees of
25 the house of representatives:

26 (A) criminal jurisprudence;

27 (B) human services; and

1 (C) public health; and

2 (2) the chairs of the following standing committees of
3 the senate:

4 (A) criminal justice;

5 (B) health and human services; and

6 (C) state affairs.

7 (c) The co-presiding officers of the committee are the chair
8 of the Senate Committee on Health and Human Services and the chair
9 of the House Committee on Human Services.

10 (d) The committee has all other powers and duties provided
11 to a special or select committee by the rules of the senate and
12 house of representatives, by Subchapter B, Chapter 301, Government
13 Code, and by policies of the senate and house committees on
14 administration.

15 (e) From the contingent expense fund of the senate and the
16 contingent expense fund of the house of representatives equally,
17 the members of the committee are entitled to reimbursement for
18 expenses incurred in carrying out this section in accordance with
19 the rules of the senate and house of representatives and the
20 policies of the senate and house committees on administration.

21 (f) Not later than December 1, 2010, the committee shall
22 report the committee's findings and recommendations resulting from
23 the study to the governor, lieutenant governor, speaker of the
24 house of representatives, and members of the legislature.

25 SECTION 44. The Department of Aging and Disability Services
26 shall evaluate and determine the types of training that an employee
27 or owner of a facility licensed by the department under Chapter 252,

1 Health and Safety Code, or an employee or owner of a provider
2 licensed or certified by the department as a Section 1915(c) waiver
3 program provider needs and whether that training is available. Not
4 later than December 1, 2010, the department shall provide a report
5 to the governor, lieutenant governor, speaker of the house of
6 representatives, and chairs of the standing committees of the
7 senate and house of representatives with primary jurisdiction
8 regarding persons with mental retardation regarding:

- 9 (1) the types of training required by federal law;
10 (2) the types of training identified as necessary by
11 the department;
12 (3) the availability of that training in this state;
13 and
14 (4) recommended legislation or actions necessary to
15 ensure the appropriate training is received by the persons
16 described by this section.

17 SECTION 45. On the effective date of this Act, an individual
18 who is an employee of the Department of Aging and Disability
19 Services and who performs duties primarily related to consumer
20 rights and services at state schools is required to reapply for an
21 employment position with the department and may apply for a
22 position as an assistant independent ombudsman.

23 SECTION 46. (a) The commissioner of the Department of
24 Aging and Disability Services shall employ an assistant
25 commissioner of state supported living centers as soon as possible
26 after the effective date of Section 161.0515, Human Resources Code,
27 as added by this Act. On the date the assistant commissioner is

1 employed, the position of section director over state schools is
2 eliminated.

3 (b) As soon as practicable after the effective date of this
4 Act, the Department of Aging and Disability Services shall develop
5 the database required by Section 161.077, Human Resources Code, as
6 added by this Act.

7 (c) Not later than December 1, 2009, the Health and Human
8 Services Commission's office of inspector general shall begin
9 employing and commissioning peace officers as required by Section
10 555.101, Health and Safety Code, as added by this Act.

11 (d) Not later than December 1, 2009, the executive
12 commissioner of the Health and Human Services Commission shall
13 contract for mortality review services as required by Subchapter U,
14 Chapter 531, Government Code, as added by this Act.

15 (e) Not later than September 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 (f) Not later than September 1, 2010, the executive
19 commissioner of the Health and Human Services Commission shall
20 require the Department of Aging and Disability Services, and any
21 facility the department licenses under Chapter 252, Health and
22 Safety Code, to conduct a criminal history check on each employee
23 and shall require the department or licensed facility to discharge
24 any person whose criminal history check reveals a conviction of an
25 offense that bars employment under Chapter 250, Health and Safety
26 Code.

27 (g) Not later than January 1, 2010, the Department of Aging

1 and Disability Services shall develop the training required by
2 Section 555.024, Health and Safety Code, as added by this Act.

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

8 (i) Not later than September 1, 2011, the Department of
9 Aging and Disability Services shall begin operating the Mexia State
10 Supported Living Center as the forensic state supported living
11 center as required by Section 555.002, Health and Safety Code, as
12 added by this Act.

13 SECTION 47. (a) Not later than September 1, 2011, the
14 Department of Aging and Disability Services shall ensure that an
15 interdisciplinary team has completed a determination in the manner
16 provided by Section 555.003, Health and Safety Code, as added by
17 this Act, for each alleged offender resident residing in a state
18 supported living center or the ICF-MR component of the Rio Grande
19 State Center on the effective date of this Act.

20 (b) An alleged offender resident for whom a determination is
21 completed in accordance with Subsection (a) of this section and who
22 is classified as a high-risk alleged offender resident is entitled
23 to:

24 (1) an administrative hearing and appeal provided by
25 Section 555.003, Health and Safety Code, as added by this Act,
26 regarding that determination and classification; and

27 (2) an administrative hearing regarding the resident's

1 proposed transfer to the forensic state supported living center as
2 provided by Section 594.014, Health and Safety Code.

3 (c) The Department of Aging and Disability Services may not
4 transfer an alleged offender resident residing in a state supported
5 living center or the ICF-MR component of the Rio Grande State Center
6 on the effective date of this Act to the forensic state supported
7 living center while the resident is pursuing the administrative
8 remedies listed in Subsection (b) of this section.

9 (d) Except as provided by Subsection (c) of this section,
10 the Department of Aging and Disability Services shall transfer an
11 alleged offender resident classified as a high-risk alleged
12 offender resident to the forensic state supported living center on
13 the date the Mexia State Supported Living Center begins operating
14 as the forensic state supported living center, or as soon as
15 possible after that date.

16 (e) This section expires September 1, 2013.

17 SECTION 48. (a) The changes in law made by this Act to
18 Section 261.109, Family Code, Section 48.052, Human Resources Code,
19 and Section 22.04, Penal Code, apply only to an offense committed on
20 or after the effective date of this Act. An offense committed
21 before the effective date of this Act is governed by the law in
22 effect when the offense was committed, and the former law is
23 continued in effect for that purpose. For purposes of this section,
24 an offense was committed before the effective date of this Act if
25 any element of the offense occurred before that date.

26 (b) Section 411.1144, Government Code, as added by this Act,
27 and Section 555.021, Health and Safety Code, as added by this Act,

1 apply only to background and criminal history checks performed on
2 or after the effective date of this Act.

3 (c) The change in law made by Subsection (e), Section
4 551.022, Health and Safety Code, as added by this Act, and the
5 change in law made by Section 551.0225, Health and Safety Code, as
6 added by this Act, apply to the dismissal of an officer, teacher, or
7 other employee of a state developmental center hired before, on, or
8 after the effective date of this Act.

9 SECTION 49. If before implementing any provision of this
10 Act a state agency determines that a waiver or authorization from a
11 federal agency is necessary for implementation of that provision,
12 the agency affected by the provision shall request the waiver or
13 authorization and may delay implementing that provision until the
14 waiver or authorization is granted.

15 SECTION 50. This Act takes effect immediately if it
16 receives a vote of two-thirds of all the members elected to each
17 house, as provided by Section 39, Article III, Texas Constitution.
18 If this Act does not receive the vote necessary for immediate
19 effect, this Act takes effect September 1, 2009.

David Dewhurst
President of the Senate

Jim Strawn
Speaker of the House

I hereby certify that S.B. No. 643 passed the Senate on March 9, 2009, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendments on May 29, 2009, by the following vote: Yeas 31, Nays 0.

Letsy Law
Secretary of the Senate

I hereby certify that S.B. No. 643 passed the House, with amendments, on May 19, 2009, by the following vote: Yeas 143, Nays 0, one present not voting.

Robert Haney
Chief Clerk of the House

Approved:

11 JUN '09

Date

RICK PERRY
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
4 PM O'CLOCK

JUN 11 2009
Boye R. ...
Secretary of State