

BILL ANALYSIS

Senate Research Center

S.B. 643
By: Nelson et al.
Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas has been working to improve conditions in its state developmental centers (centers) since 2005, when reports of widespread abuse and neglect in centers surfaced. This legislation is intended to improve centers and addresses several federal governmental concerns.

S.B. 643 amends current law relating to the protection and care of individuals with mental retardation and to certain legal protections for individuals with disabilities; and provides criminal penalties.

[**Note:** While the statutory references in this bill are to the Texas Department of Mental Health and Mental Retardation (TXMHMR) and the Texas Department of Human Services (TDHS), the following amendments affect the Texas Department of Aging and Disability Services, as the successor agency.]

[**Note:** While the statutory references in this bill are to the Texas Department of Protective and Regulatory Services (DPRS); the following amendments affect the Texas Department of Family and Protective Services, as the successor agency to DPRS.]

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Department of Mental Health and Mental Retardation (TXMHMR) and the Texas Department of Family and Protective Services (DFPS) is transferred to the executive commissioner of the Health and Human Services Commission (executive commissioner) in SECTION 7 (Section 261.404, Family Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of education in SECTION 2 (Section 29.458, Education Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner in SECTION 9 (Section 531.851, Government Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner in SECTION 10 (Section 252.0311, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner in SECTION 22 (Section 555.024, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Protective and Regulatory Services and TXMHMR is transferred to DFPS, the Texas Department of Aging and Disability Services, and the Texas Department of State Health Services in SECTION 32 (Section 48.255, Human Resources Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner in SECTION 32 (Section 48.255, Human Resources Code) of this bill.

Rulemaking authority is expressly granted to each state agency that may receive reports under SECTION 34 (Section 48.301, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 38.072, Code of Criminal Procedure, as follows:

Art. 38.072. New heading: HEARSAY STATEMENT OF CERTAIN ABUSE VICTIMS

Sec. 1. Provides that this article applies to a proceeding in the prosecution of an offense under any of certain provisions of the Penal Code, if committed against a child 12 years of age or younger or a person with a disability.

Sec. 2. (a) Makes conforming changes.

(b) Provides that a statement that meets the requirements of Subsection (a), rather than Subsection (a) of this article, is not inadmissible because of the hearsay rule if certain conditions are met, including that the child or person with a disability testifies or is available to testify at the proceeding in court or in any other manner provided by law.

Sec. 3. Defines "person with a disability" in this article.

SECTION 2. Amends Chapter 29, Education Code, by adding Subchapter L, as follows:

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

Sec. 29.451. DEFINITIONS. Defines "alleged offender resident," "interdisciplinary team," and "state supported living center."

Sec. 29.452. APPLICABILITY. Provides that this subchapter applies only to an alleged offender resident of the forensic state supported living center established under Section 555.002, Health and Safety Code.

Sec. 29.453. SCHOOL DISTRICT SERVICES. (a) Requires a school district (district) to provide educational services, including services required under Subchapter A (Special Education Program) to each alleged offender resident who is under 22 years of age and otherwise eligible under Section 25.001 (Admission) to attend school in the district. Requires the district to provide educational services to each alleged offender resident who is 21 years of age on September 1 of the school year and otherwise eligible to attend school in the district until the earlier of the end of that school year or the student's graduation from high school.

(b) Requires that the educational placement of an alleged offender resident and the educational services to be provided by a district to the resident be determined by the resident's admission, review, and dismissal committee (committee) consistent with federal law and regulations regarding the placement of students with disabilities in the least restrictive environment. Requires the committee to inform the resident's interdisciplinary team of a determination the committee makes in accordance with this subsection and consult, to the extent practicable, with the resident's interdisciplinary team concerning such a determination.

Sec. 29.454. BEHAVIOR MANAGEMENT; BEHAVIOR SUPPORT SPECIALISTS. (a) Provides that the discipline of an alleged offender resident by a district is subject to Sections 37.0021 (Use of Confinement, Restraint, Seclusion, and Time-Out) and 37.004 (Placement of Students with Disabilities) and to federal law governing the discipline of students with disabilities.

(b) Requires a district in which alleged offender residents are enrolled to employ one or more behavior support specialists to serve the residents while at school. Requires a behavior support specialist to meet certain criteria.

(c) Requires a behavior support specialist to conduct for each alleged offender resident enrolled in the district a functional behavioral assessment that includes certain activities and information.

(d) Requires each behavior support specialist to take certain actions and perform certain tasks.

(e) Provides that Section 22.0511 (Immunity From Liability) applies to a behavior support specialist employed under this section by a district.

Sec. 29.455. MEMORANDUM OF UNDERSTANDING. (a) Requires a district in which alleged offender residents are enrolled in school and the forensic state support living center to enter into a memorandum of understanding to establish the duties and responsibilities of the behavior support specialist to ensure the safety of all students and teachers while educational services are provided to a resident at a school in the district and ensure the provision of appropriate facilities for providing educational services and of necessary technological equipment if a resident's committee determines that the resident is required to receive educational services at the forensic state supported living center.

(b) Provides that a memorandum of understanding under Subsection (a) remains in effect until superseded by a subsequent memorandum of understanding between the district and the forensic state supported living center or until otherwise rescinded.

Sec. 29.456. FAILURE OF SCHOOL DISTRICT AND CENTER TO AGREE. (a) Authorizes the district or center, if a school district in which the alleged offender residents are enrolled in school and the forensic state supported living center fail to agree on the services required for residents or responsibility for those services, to refer the issue in disagreement to the commissioner of education and the commissioner of the Department of Aging and Disability Services (DADS).

(b) Requires the commissioners, if the commissioner of education and the commissioner of DADS are unable to bring the school district and forensic state supported living center to agreement, to jointly submit a written request to the attorney general to appoint a neutral third party knowledgeable in special education and mental retardation issues to resolve each issue on which the district and the center disagree. Provides that the decision of the neutral third party is final and prohibits the decision from being appealed. Requires the district and the center to implement the decision of the neutral third party. Requires the commissioner of education or the commissioner of DADS to ensure that the district and the center implement the decision of the neutral third party.

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

(b) Requires a district that receives an allotment under this section, not later than December 1 of each year, to submit a report accounting for the expenditure of funds received under this section to the governor, the lieutenant governor, the speaker of the house of representatives, the chairs of the standing committees of the senate and house of representatives with primary jurisdiction regarding persons with mental retardation and public education, and each member of the legislature whose district contains any portion of the territory included in the school.

Sec. 29.458. RULES. Authorizes the commissioner of education to adopt rules as necessary to administer this subchapter.

SECTION 3. Amends Section 54.031, Family Code, as follows:

Sec. 54.031. New heading: HEARSAY STATEMENT OF CERTAIN ABUSE VICTIMS. (a) Provides that this section applies to a hearing under this title in which a child is alleged to be a delinquent child on the basis of a violation of certain provisions of the Penal Code, if a child 12 years of age or younger or a person with a disability is the alleged victim of the violation.

- (b) Makes conforming changes.
- (c) Makes conforming and nonsubstantive changes.
- (d) Defines "person with a disability" in this section.

SECTION 4. Amends Section 261.105, Family Code, by adding Subsection (c-1), as follows:

(c-1) Requires the Department of Family and Protective Services (DFPS), notwithstanding Subsections (b) (relating to requiring certain persons to notify certain persons of any report they receive that concerns the suspected abuse or neglect of a child or the death of a child from abuse or neglect) and (c) (relating to requiring certain persons to refer the report to a law enforcement agency for investigation), if a report under this section relates to a child with mental retardation receiving services in a state supported living center as defined by Section 531.002 (Definitions), Health and Safety Code, or the intermediate care facility for the mentally retarded (ICF-MR) component of the Rio Grande State Center, to proceed with the investigation of the report as provided by Section 261.404.

SECTION 5. Amends Section 261.109(b), Family Code, to provide that an offense under this section is a Class A, rather than B, misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the child was a person with mental retardation who resided in a state supported living center, the ICF-MF component of the Rio Grande State Center, or a facility licensed under Chapter 252 (Intermediate Care Facilities for the Mentally Retarded), Health and Safety Code, and the actor knew that the child had suffered serious bodily injury as a result of the abuse or neglect.

SECTION 6. Amends Section 261.401(b), Family Code, to require that, except as provided by Section 261.404, a state agency that operates, licenses, certifies, or registers a facility in which children are located or provides oversight of a program that serves children make a prompt, thorough investigation of a report that a child has been or may be abused, neglected, or exploited in the facility or program.

SECTION 7. Amends Section 261.404, Family Code, as follows:

Sec. 261.404. New heading: INVESTIGATIONS REGARDING CERTAIN CHILDREN WITH MENTAL ILLNESS OR MENTAL RETARDATION. (a) Requires the Department of Family and Protective Services (DFPS) to investigate a report of abuse, neglect, or exploitation of a child receiving certain services, including in a facility operated by DADS or a mental health facility operated by the Department of State Health Services (DSHS), rather than a facility operated by the Texas Department of Mental Health and Mental Retardation (TXMHMR); from a provider of home and community-based services who contracts with DADS; or in a facility licensed under Chapter 252, Health and Safety Code. Makes conforming changes.

(b) Requires DFPS to investigate the report under rules developed by the executive commissioner of the Health and Human Services Commission (executive commissioner) with the advice and assistance of DFPS, DADS, and DSHS. Deletes existing text requiring DFPS to investigate the report under rules developed jointly between DFPS and TXMHMR.

(c) Requires DFPS, if a report under this section relates to a child with mental retardation receiving services in a state supported living center or the ICF-MR component of the Rio Grande State Center, to, within one hour of receiving the

report, notify the facility in which the child is receiving the services of the allegations in the report.

(d) Requires the caseworker, if during the course of DFPS' investigation of reported abuse, neglect, or exploitation a caseworker of DFPS or the caseworker's supervisor has cause to believe that a child with mental retardation described by Subsection (c) has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense under any law, including Section 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual), Penal Code, to immediately notify the Health and Human Services Commission's (HHSC) office of inspector general (OIG) and promptly provide HHSC's OIG with a copy of DFPS' investigation report.

(e) Creates this subsection from existing text. Makes no further changes to this subsection.

(f) Redesignates Subsection (d) as Subsection (f). Defines "state supported living center" and "provider." Makes nonsubstantive changes.

SECTION 8. Amends Subchapter F, Chapter 411, Government Code, by adding Section 411.1144, as follows:

Sec. 411.1144. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: AGENCIES WITH EMPLOYEES OR VOLUNTEERS AT STATE SUPPORTED LIVING CENTERS. (a) Entitles DSHS and DADS to obtain from the Department of Public Safety of the State of Texas (DPS) criminal history record information maintained by DPS that relates to a person:

(1) who is an applicant for employment with the agency, an employee of the agency, a volunteer with the agency, or an applicant for a volunteer position with the agency; and

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

(b) Prohibits criminal history record information obtained by an agency under Subsection (a) from being released or disclosed to any person except on court order, with the consent of the person who is the subject of the criminal history record information, for purposes of an administrative hearing held by the agency concerning the person who is the subject of the criminal history record information, or as provided by Subsection (c).

(c) Provides that an agency is not prohibited from releasing criminal history record information obtained under Subsection (a) or (d) to the person who is the subject of the criminal history record information.

(d) Entitles DSHS and DADS, subject to Section 411.087 (Access to Criminal History Record Information Maintained by Federal Bureau of Investigation or Local Criminal Justice Agency), to obtain through the Federal Bureau of Investigation (FBI) criminal history record information maintained or indexed by the FBI that pertains to a person described by Subsection (a) and obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to a person described by Subsection (a).

(e) Provides that this section does not prohibit an agency from obtaining and using criminal history record information as provided by other law.

SECTION 9. Amends Chapter 531, Government Code, by adding Subchapter U, as follows:

SUBCHAPTER U. MORTALITY REVIEW FOR CERTAIN INDIVIDUALS WITH
DEVELOPMENTAL DISABILITIES

Sec. 531.851. MORTALITY REVIEW. (a) Requires the executive commissioner to establish an independent mortality review system to review the death of a person with a developmental disability who, at the time of the person's death, resided in or received services from an ICF-MR operated or licensed by DADS or a community center or the ICR-MR component of the Rio Grade State Center or received residential assistance through a Section 1915(c) waiver program serving individuals who are eligible for ICF-MR services in a residence in which residential assistance is provided to three or more persons and in which the waiver program provider has a property interest.

(b) Requires that a review under this subchapter be conducted in addition to any review conducted by the facility in which the person resided or the facility, agency, or provider from which the person received services. Requires that a review under this subchapter be conducted after any investigation of alleged or suspected abuse, neglect, or exploitation is completed.

(c) Requires the executive commissioner to contract with a patient safety organization certified in accordance with 42 C.F.R. Part 3, as effective on January 19, 2009, to conduct independent mortality reviews required by this subchapter. Requires that the contract require the patient safety organization to conduct an independent mortality review using a team consisting of certain persons.

(d) Requires the executive commissioner to adopt rules regarding the manner in which the death a person described by Subsection (a) is required to be reported to the patient safety organization by a facility or waiver program provider described by that subsection.

(e) Requires that a review under this section, to ensure consistency across mortality review systems, collect information consistent with the information required to be collected by any other independent mortality review process established specifically for persons with mental retardation.

Sec. 531.852. ACCESS TO INFORMATION. (a) Authorizes a patient safety organization to request information and records regarding a deceased person as necessary to carry out the patient safety organization's duties. Sets forth the records and information that are authorized to be requested under this section.

(b) Requires the custodian of the relevant information and records relating to a deceased person, on request of the patient safety organization, to provide those records to the patient safety organization at no charge.

Sec. 531.853. MORTALITY REVIEW REPORT. Requires the patient safety organization, to the extent allowed by federal law, to submit certain information to certain persons.

Sec. 531.854. USE AND PUBLICATION RESTRICTIONS; CONFIDENTIALITY. (a) Authorizes HHSC to use or publish information under this subchapter only to advance statewide practices regarding the treatment and care of individuals with developmental disabilities. Authorizes that a summary of the data in the patient safety organization's reports or a statistical compilation of data reports be released by HHSC for general publication if the summary or statistical compilation does not contain any information that would permit the identification of an individual or that is patient safety work product.

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

(c) Provides that the identify of a person whose death was reviewed in accordance with this subchapter is confidential and prohibits the identity from being revealed.

(d) Provides that the identity of a health care provider or the name of a facility or agency that provided services to or was the residence of a person whose death was reviewed in accordance with this subchapter is confidential and is prohibited from being revealed.

(e) Provides that reports, information, statements, memoranda, and other information furnished under this subchapter and any findings or conclusions resulting from a review by the patient safety organization are privileged.

Sec. 531.855. **LIMITATION ON LIABILITY.** Provides that a health care provider or other person is not civilly or criminally liable for furnishing information to the patient safety organization or to HHSC for use by the patient safety organization in accordance with this subchapter unless the person acted in bad faith or knowingly provided false information to the patient safety organization or HHSC.

SECTION 10. Amends Subchapter B, Chapter 252, Health and Safety Code, by adding Section 252.0311, as follows:

Sec. 252.0311. **PERSON INELIGIBLE FOR LICENSE.** (a) Defines "controlling person."

(b) Provides that a controlling person described by Subsection (a)(3) (relating to the definition of "controlling person") does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of a facility.

(c) Authorizes the executive commissioner to adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person.

(d) Provides that a person is not eligible for a license or to renew a license if the applicant, a controlling person with respect to the applicant, or an administrator or chief financial officer of the applicant has been convicted of an offense that would bar a person's employment at a facility in accordance with Chapter 250 (Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities).

SECTION 11. Amends Section 252.039, Health and Safety Code, as follows:

Sec. 252.039. **POSTING.** Requires each facility to prominently and conspicuously post for display in a public area of the facility that is readily available to residents, employees, and visitors certain information, including a notice providing instructions for reporting an allegation of abuse, neglect, or exploitation to DFPS. Makes nonsubstantive changes.

SECTION 12. Amends the heading the Subchapter E, Chapter 252, Health and Safety Code, to read as follows:

**SUBCHAPTER E. INVESTIGATIONS OF ABUSE,
NEGLECT, AND EXPLOITATION AND REPORTS OF RETALIATION**

SECTION 13. Amends Sections 252.121, 252.122, 252.125, and 252.126, Health and Safety Code, as follows:

Sec. 252.121. New heading: **AUTHORITY TO RECEIVE REPORTS AND INVESTIGATE.** (a) Requires a person, including an owner or employee of a facility, who has cause to believe that a resident is being or has been subjected to abuse, neglect,

or exploitation to report the suspected abuse, neglect, or exploitation to DFPS, as required by Chapter 48 (Investigations and Protective Services for Elderly and Disabled Persons), Human Resources Code, or Chapter 261 (Investigation of Report of Child Abuse or Neglect), Family Code, as appropriate. Requires DFPS to investigate the allegation of abuse, neglect, or exploitation in the manner provided by Chapter 48, Human Resources Code, or Section 261.404, Family Code, as applicable. Deletes existing text defining "designated agency."

(b) Requires the Texas Department of Human Services (TDHS) receives a report of suspected abuse, neglect, or exploitation of a resident of a facility licensed under this chapter, to immediately refer the report to DFPS for investigation.

Sec. 252.122. New heading: NOTIFICATION OF DUTY TO REPORT ABUSE, NEGLECT, AND EXPLOITATION. Requires that each facility require each employee of the facility, as a condition of employment with the facility, to sign a statement that the employee realizes that the employee may be criminally liable for failure to report abuse, neglect, or exploitation, rather than abuse or neglect. Deletes existing Subsections (a) (relating to the requirement of certain persons to report abuse or neglect to TDHS) and (c) (relating to requiring a person to make certain reports of abuse or neglect by a certain time) and all existing text. Deletes designation of Subsection (b).

Sec. 252.125. New heading: IMMEDIATE REMOVAL TO PROTECT RESIDENT. Requires TDHS, before the completion of the investigation by DFPS, to file a petition for temporary care and protection of a, rather than the, resident if TDHS determines, based on information provided to TDHS by DFPS, that immediate removal is necessary to protect the resident from further abuse, neglect, or exploitation, rather than abuse or neglect. Deletes existing Subsections (a) (relating to requiring TDHS or a designated agency to take certain actions after receiving certain reports), (b) (relating to the primary purpose of the investigation), (c) (relating to the requirements of TDHS to determine certain information in the investigation), (d) (relating to authorizing the investigation to include certain visits if considered appropriate by TDHS), (e) (relating to requiring certain courts to order certain persons to allow admission for the investigation an any interview with the resident) and (g) (relating to requiring TDHS or the designated agency to make a written report of the investigation and submit the report to certain persons) and all existing text.

Sec. 252.126. New heading: CONFIDENTIALITY; DISCLOSURE OF INVESTIGATION REPORT. (a) Creates this subsection from existing text. Provides that a report, record, or working paper used or developed in an investigation made under this subchapter is confidential and is authorized to be disclosed only as provided by Chapter 48, Human Resources Code, Chapter 261, Family Code, or this section, rather than for purposes consistent with the rules adopted by the Texas Board of Human Services or the designated agency.

(b) Requires DFPS to provide a copy of a completed investigation report to TDHS and is authorized to disclose information related to the investigation at any time to TDHS as necessary to protect a resident of a facility from abuse, neglect, or exploitation.

SECTION 14. Amends Section 252.132(h), Health and Safety Code, to require that the statement be part of the statement required under Section 252.122, rather than Section 252.122(b).

SECTION 15. Amends Section 253.001(4), Health and Safety Code, to redefine "facility."

SECTION 16. Amends Section 253.002, Health and Safety Code, as follows:

Sec. 253.002. INVESTIGATION BY DEPARTMENT. (a) Creates this subsection from existing text. Requires DADS, if DADS receives a report that an employee or facility, other than a facility licensed under Chapter 252, committed reportable conduct, to

investigate the report to determine whether the employee has committed the reportable conduct.

(b) Requires DADS, if DADS receives a report that an employee of a facility licensed under Chapter 252 committed reportable conduct, to forward that report to DFPS for investigation.

SECTION 17. Amends Section 531.002(17), Health and Safety Code, to redefine "state supported living center."

SECTION 18. Amends Chapter 531, Health and Safety Code, by adding Section 531.0021, as follows:

Sec. 531.0021. REFERENCE TO STATE SCHOOL OR SUPERINTENDENT. (a) Defines "state school."

(b) Defines "superintendent."

SECTION 19. Amends Section 532.001(b), Health and Safety Code, to provide that DADS and DSHS, rather than the department, also include, rather than includes, community services operated by those departments, rather than the department, and certain facilities, as appropriate, including the central office of each department and certain state supported living centers, rather than certain state schools.

SECTION 20. Amends Section 551.022, Health and Safety Code, by adding Subsection (e), to provide that this section does not apply to a state supported living center or the director of a state supported living center.

SECTION 21. Amends Subchapter B, Chapter 551, Health and Safety Code, by adding Section 551.0225, as follows:

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

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

(c) Requires the director of a state supported living center to perform certain duties.

(d) Authorizes the director of a state supported living center, in accordance with DADS rules and operating procedures, to establish policy to govern the center that the director considers will best promote the residents' interest and welfare; hire subordinate officers, teachers, and other employees and set their salaries, in absence of other law; and dismiss a subordinate officer, teacher, or employee for good cause.

(e) Requires DADS, with input from residents of a state supported living center, and the family members and legally authorized representatives of those residents, to develop a policy that defines "serious event" for purposes of Subsection (c)(10) (relating to requiring the director of a state supported living center to ensure that certain persons are notified of serious events that may indicate problems in the care or treatment of residents).

SECTION 22. Amends Subtitle B, Title 7, Health and Safety Code, by adding Chapter 555, as follows:

CHAPTER 555. STATE SUPPORTED LIVING CENTERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 555.001. DEFINITIONS. Defines "alleged offender resident," "center," "center employee," "client," "commission," "complaint," "department," "direct care employee," "executive commissioner," "high-risk alleged offender resident," "independent ombudsman," "inspector general," "interdisciplinary team," "office," "resident," and "state supported living center."

Sec. 555.002. FORENSIC STATE SUPPORTED LIVING CENTER. Requires DADS to establish a separate forensic state supported living center for the care apart from other clients and residents of high-risk alleged offender residents. Requires DADS to designate the Mexia State Supported Living Center for this purpose.

(b) Requires DADS, in establishing the forensic state supported living center, to take certain actions.

(c) Authorizes an alleged offender resident committed to the forensic state supported living center, for whom a determination under Section 555.003 has been completed and who is not classified as a high-risk alleged offender resident, to request a transfer to another center in accordance with Subchapter B (Transfer or Discharge), Chapter 594 (Transfer and Discharge).

(d) Requires DADS to ensure that the forensic state supported living center complies with the requirements for ICF-MR certification under the Medicaid program, as appropriate, and has additional center employees, including direct care employees, to protect the safety of center employees, residents, and the community.

(e) Requires DADS to collect data regarding the commitment of alleged offender residents to state supported living centers, including any offense with which an alleged offender resident is charged, the location of the committing court, whether the alleged offender resident has previously been in the custody of the Texas Youth Commission or DFPS, and whether the alleged offender resident receives mental health services or previously received any services under a Section 1915(c) waiver program. Requires DADS to annually submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees of the legislature with primary subject matter jurisdiction over state supported living centers a report of the information collected under this section. Prohibits the report from containing personally identifiable information for any person in the report.

Sec. 555.003. DETERMINATION OF HIGH-RISK ALLEGED OFFENDER STATUS.

(a) Requires an interdisciplinary team, not later than the 30th day after the date an alleged offender resident is first committed to a state supported living center and, if the resident is classified as a high-risk alleged offender resident, annually on the anniversary of the date, to determine whether the alleged offender resident is at risk of inflicting substantial physical harm to another and should be classified or remain classified as a high-risk alleged offender resident.

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

(c) Requires the interdisciplinary team to provide the team's findings regarding whether the alleged offender resident is at risk of inflicting substantial physical harm to another and the documentation and evidence collected under this section to certain persons.

(d) Entitles an alleged offender resident who is determined to be at risk of inflicting substantial physical harm to another and is classified as a high-risk

alleged offender resident to an administrative hearing with DADS to contest that determination and classification.

(e) Authorizes an individual who has exhausted the administrative remedies provided by Subsection (d) to bring a suit to appeal the determination and classification in district court in Travis County. Requires that the suit be filed not later than the 30th day after the date the final order in the administrative hearing is provided to the individual. Provides that an appeal under this section is by trial de novo.

[Reserves Sections 555.004-555.020 for expansion.]

SUBCHAPTER B. POWERS AND DUTIES

Sec. 555.021. **REQUIRED CRIMINAL HISTORY CHECKS FOR EMPLOYEES AND VOLUNTEERS OF CENTERS.** (a) Requires DADS and DSHS to perform a state and federal criminal history background check on a person who is an applicant for employment with the agency, an employee of the agency, a volunteer with the agency, or an applicant for a volunteer position with the agency and who would be placed in direct contact with a resident or client.

(b) Requires DADS and DSHS to require a person described by Subsection (a) to submit fingerprints in a form and of a quality acceptable to DPS and the FBI for use in conducting a criminal history background check.

(c) Requires each agency to obtain electronic updates from DPS of arrests and convictions of a person for whom the agency performs a background check under Subsection (a) and who remains an employee or volunteer of the agency and continues to have direct contact with a resident or client.

Sec. 555.022. **DRUG TESTING; POLICY.** (a) Requires the executive commissioner to adopt a policy regarding random testing and reasonable suspicion testing for the illegal use of drugs by a center employee.

(b) Requires that the policy adopted under Subsection (a) provide that a center employee is authorized to be terminated solely on the basis of a single positive test for illegal use of a controlled substance. Requires that the policy establish an appeals process for a center employee who tests positively for illegal use of a controlled substance.

(c) Requires the director of a state supported living center or the superintendent of the Rio Grande State Center to enforce the policy adopted under Subsection (a) by performing necessary drug testing of the center employees for the use of a controlled substance as defined by Section 481.002 (Definitions).

(d) Authorizes testing under this section to be performed on a random basis or on reasonable suspicion of the use of a controlled substance.

(e) Provides that a report, for purposes of this section, made under Section 555.023 is considered reasonable suspicion of the use of a controlled substance.

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

Sec. 555.024. **CENTER EMPLOYEE TRAINING.** (a) Requires DADS, before a center employee begins to perform the employee's duties without direct supervision, to provide the employee with competency training and a course of instruction about the general

duties of a center employee. Requires DADS to ensure the basic center employee competency course focuses on the uniqueness of the individuals the center employee serves, techniques for improving quality of life for and promoting the health and safety of individuals with mental retardation, and the conduct expected of center employees.

(b) Requires DADS to ensure the training required by Subsection (a) provides instruction and information regarding certain topics.

(c) Requires DADS, in addition to the training required by Subsection (a) and before a direct care employee begins to perform the direct care employee's duties without direct supervision, to provide a direct care employee with training and instructional information regarding implementation of the interdisciplinary treatment program for each resident or client for whom the direct care employee will provide direct care, including certain topics.

(d) Requires the executive commissioner to adopt rules that require a center to provide refresher training courses to direct care employees on a regular basis.

(e) Authorizes a center to allow an employee of an intermediate care facility for persons with mental retardation licensed by DADS, an employee of a person licensed or certified to provide Section 1915(c) waiver program services, or another employee or professional involved in the provision of services to persons with mental retardation to receive information and training under this section, as appropriate. Authorizes the center to charge an administrative fee in an amount not to exceed the cost of providing the information or training.

Sec. 555.025. VIDEO SURVEILLANCE. (a) Defines "private space."

(b) Requires DADS to install and operate video surveillance equipment in a center for the purpose of detecting and preventing the exploitation or abuse of residents and clients.

(c) Prohibits DADS from installing or operating video surveillance equipment in a private space or in a location in which video surveillance equipment can capture images within a private space.

(d) Requires DADS to ensure that the use of video surveillance equipment under this section complies with federal requirements for ICF-MR certification.

[Reserves Section 555.026-555.050 for expansion.]

SUBCHAPTER C. OFFICE OF INDEPENDENT OMBUDSMAN FOR SUPPORTED LIVING CENTERS

Sec. 555.051. ESTABLISHMENT; PURPOSE. Provides that the office of independent ombudsman (office) is established for the purpose of investigating, evaluating, and securing the rights of residents and clients of state supported living centers and the ICF-MR component of the Rio Grande State Center. Provides that the office is administratively attached to DADS. Requires DADS to provide administrative support and resources to the office as necessary for the office to perform its duties.

Sec. 555.052. INDEPENDENCE. Provides that the independent ombudsman in the performance of the ombudsman's duties and powers under this subchapter acts independently of DADS.

Sec. 555.053. APPOINTMENT OF INDEPENDENT OMBUDSMAN. (a) Requires the governor to appoint the independent ombudsman.

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

Sec. 555.054. ASSISTANT OMBUDSMEN. (a) Requires the independent ombudsman to hire assistant ombudsmen to perform, under the direction of the independent ombudsman, the same duties and exercise the same powers as the independent ombudsman and to station an assistant ombudsman at each center.

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

Sec. 555.055. CONFLICT OF INTEREST. Prohibits a person from serving as an independent ombudsman or as an assistant ombudsman if the person or the person's spouse is employed by or participates in the management of a business entity or other organization receiving funds from DADS; owns or controls, directly or indirectly, any interest in a business entity or other organization receiving funds from DADS; or is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the person's activities or compensation on behalf of a profession related to the operation of DADS.

Sec. 555.056. REPORT. (a) Requires the independent ombudsman to submit on a biannual basis to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the standing committees of the senate and the house of representatives with primary jurisdiction over state supported living centers a report that is both aggregated and disaggregated by individual center and describes the work of the independent ombudsman; the results of any review or investigation undertaken by the independent ombudsman, including a review or investigation of services contracted by DADS; any recommendations that the independent ombudsman has in relation to the duties of the independent ombudsman; and any recommendations that the independent ombudsman has for systemic improvements needed to decrease incidents of abuse, neglect, or exploitation at an individual center or at all centers.

(b) Requires the independent ombudsman to ensure that information submitted in a report under Subsection (a) does not permit the identification of an individual.

(c) Requires the independent ombudsman to immediately report to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the standing committees of the senate and the house of representatives with primary jurisdiction over DADS any particularly serious or flagrant case of abuse or injury of a resident or client about which the independent ombudsman is made aware; problem concerning the administration of a center program or operation; interference by a center, DADS, or HHSC, other than actions by HHSC's OIG in accordance with the office's duties, with an investigation conducted by the independent ombudsman.

Sec. 555.057. COMMUNICATION AND CONFIDENTIALITY. (a) Requires DADS to allow any resident or client, authorized representative of a resident or client, family member of a resident or client, or other interested party to communicate with the independent ombudsman or an assistant ombudsman. Provides that the communication is authorized to be in person, by mail, or by any other means and is confidential and privileged.

(b) Provides that the records of the independent ombudsman are confidential, except that the independent ombudsman is required to share with DFPS a communication that may involve the abuse, neglect, or exploitation of a resident or client; share with the inspector general a communication that may involve an alleged criminal offense; share with the regulatory services division of DADS a communication that may involve a violation of an ICF-MR standard or condition of participation; and disclose the ombudsman's nonprivileged records if required by a court order on a showing of good cause.

(c) Authorizes the independent ombudsman to make reports relating to an investigation by the independent ombudsman public after the investigation is complete but only if the name and any other personally identifiable information of a resident or client, legally authorized representative of a resident or client, family member of a resident or client, center, center employee, or other individual are redacted from the report and remain confidential. Authorizes the independent ombudsman to provide an unredacted report to the center involved in the investigation, DADS, DFPS, and the inspector general.

(d) Provides that the name, address, or other personally identifiable information of a person who files a complaint with the office, information generated by the office in the course of an investigation, and confidential records obtained by the office are confidential and not subject to disclosure under Chapter 552, Government Code, except as provided by this section.

Sec. 555.058. PROMOTION OF AWARENESS OF OFFICE. Requires the independent ombudsman to promote awareness among the public, residents, clients, and center employees of how the office is authorized to be contacted, the purpose of the office, and the services the office provides.

Sec. 555.059. DUTIES AND POWERS. (a) Requires the independent ombudsman to:

- (1) evaluate the process by which a center investigates, reviews, and reports an injury to a resident or client or an unusual incident;
- (2) evaluate the delivery of services to residents and clients to ensure that the rights of residents and clients are fully observed, including ensuring that each center conducts sufficient unannounced patrols;
- (3) immediately refer a complaint alleging the abuse, neglect, or exploitation of a resident or client to DFPS;
- (4) refer a complaint alleging employee misconduct that does not involve abuse, neglect, or exploitation or a possible violation of an ICF-MR standard or condition of participation to the regulatory services division of DADS;
- (5) refer a complaint alleging a criminal offense, other than an allegation of abuse, neglect, or exploitation of a resident or client, to the inspector general;
- (6) conduct investigations of complaints, other than complaints alleging criminal offenses or the abuse, neglect, or exploitation of a resident or client, if the office determines that a resident or client or the resident's or client's family may be in need of assistance from the office, or a complaint raises the possibility of a systemic issue in the center's provision of services;
- (7) conduct biennial on-site audits, at certain centers;
- (8) conduct an annual audit of each center's policies, practices, and procedures to ensure that each resident and client is encouraged to exercise the resident's or client's rights, including the right to file a complaint and the right to due process;
- (9) prepare and deliver an annual report regarding the findings of each audit to certain persons, entities, and legislative committees;
- (10) require a center to provide access to all records, data, and other information under the control of the center that the independent

ombudsman determines is necessary to investigate a complaint or to conduct an audit under this section;

(11) review all final reports produced by DFPS, the regulatory services division of DADS, and the inspector general regarding a complaint referred by the independent ombudsman;

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

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

(14) monitor and evaluate DADS' actions relating to any problem identified or recommendation included in a report received from DFPS relating to an investigation of alleged abuse, neglect, or exploitation of a resident or client.

(b) Authorizes the independent ombudsman to apprise a person who is interested in a resident's or client's welfare of the rights of the resident or client.

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

(d) Prohibits the independent ombudsman, notwithstanding any other provision of this chapter, from investigating an alleged criminal offense or the alleged abuse, neglect, or exploitation of a resident or client.

Sec. 555.060. RETALIATION PROHIBITED. Prohibits DADS or a center from retaliating against a DADS employee, center employee, or any other person who in good faith makes a complaint to the office or cooperates with the office in the investigation.

Sec. 555.061. TOLL-FREE NUMBER. (a) Requires the office to establish a permanent, toll-free number for the purpose of receiving any information concerning the violation of a right of a resident or client.

(b) Requires the office to ensure that the toll-free number is prominently displayed in the main administration area and other appropriate common areas of a center; and a resident, a client, the legally authorized representative of a resident or client, and a center employee have confidential access to a telephone for the purpose of calling the toll-free number.

[Reserves Sections 555.062-555.100 for expansion.]

SUBCHAPTER D. INSPECTOR GENERAL DUTIES

Sec. 555.101. ASSISTING LAW ENFORCEMENT AGENCIES WITH CERTAIN INVESTIGATIONS. Requires the inspector general to employ and commission peace officers for the purpose of assisting a state or local law enforcement agency in the investigation of an alleged criminal offense involving a resident or client of a center. Provides that a peace officer employed and commissioned by the inspector general is a peace officer for purposes of Article 2.12 (Who are Peace Officers), Code of Criminal Procedure.

Sec. 555.102. SUMMARY REPORT. (a) Requires the inspector general to prepare a summary report for each investigation conducted with the assistance of the inspector general under this subchapter. Requires the inspector general to ensure that the report does not contain personally identifiable information of an individual mentioned in the report.

(b) Requires that the summary report include certain information.

(c) Requires the inspector general to delivery the summary report to certain persons.

(d) Provides that a summary report regarding an investigation is subject to required disclosure under Chapter 552, Government Code. Provides that all information and materials compiled by the inspector general in connection with an investigation are confidential, and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the inspector general or the inspector general's employees or agents involved in the investigation, except that this information is authorized to be disclosed to the DFPS, the office of the attorney general, the state auditor's office, and law enforcement agencies.

Sec. 555.103. ANNUAL STATUS REPORT. (a) Requires the inspector general to prepare an annual status report of the inspector general's activities under this subchapter. Prohibits the annual report from containing personally identifiable information of an individual mentioned in the report.

(b) Requires that the annual status report include information that is aggregated and disaggregated by individual center regarding certain information.

(c) Requires the inspector general to submit the annual status report to certain persons.

(d) Provides that an annual status report submitted under this section is public information under Chapter 552, Government code.

Sec. 555.104. RETALIATION PROHIBITED. Prohibits DADS or a center from retaliating against a DADS employee, a center employee, or any other person who in good faith cooperates with the inspector general under this subchapter.

SECTION 23. Amends Section 40.001, Human Resources Code, by adding Subdivision (6) to define "state supported living center."

SECTION 24. Amends Section 40.0315(b), Human Resources Code, as follows:

(b) Requires the investigator in the unit, if the investigator determines that criminal conduct may have occurred, to immediately notify HHSC's OIG if the disabled person who is the subject of the report resides in a state supported living center of the ICF-MR component of the Rio Grande State Center. Makes a nonsubstantive change.

SECTION 25. Amends Subchapter A, Chapter 48, Human Resources Code, by adding Section 48.007, as follows:

Sec. 48.007. MEMORANDUM OF UNDERSTANDING REGARDING CERTAIN ABUSE, NEGLECT, OR EXPLOITATION INVESTIGATIONS. Requires HHSC, DFPS, DADS, the office of independent ombudsman for state supported living centers, and HHSC's OIG to enter into a memorandum of understanding regarding investigations of alleged abuse, neglect, or exploitation of residents or clients of state supported living centers or the ICF-MR component of the Rio Grande State Center that delineates the responsibilities of each agency under this chapter, Chapter 261, Family Code, and Chapter 555, Health and Safety Code, and amend the memorandum of understanding as

necessary to reflect changes in those responsibilities. Requires the agencies, during the negotiation of the memorandum of understanding, to jointly determine whether the forensic training received by relevant staff of DFPS is adequate. Requires the agencies, specifically, to assess and, if necessary, develop a plan to enhance the ability of department staff to identify and report incidences that constitute a potential criminal offense. Provides that HHSC is the final arbiter of any dispute regarding the memorandum of understanding under this section.

SECTION 26. Amends Sections 48.051(a) and (b), Human Resources Code, as follows:

(a) Requires a person having cause to believe that an elderly or disabled person is in the state of abuse, neglect, or exploitation, including a disabled person receiving services as described by Section 48.252, except as prescribed by Subsection (b), to report the information required by Subsection (d) (relating to authorizing the report to be made orally or in writing and to requiring the report to include certain information) immediately to DFPS.

(b) Deletes existing text requiring a person, if a person has cause to believe that an elderly or disabled person has been abused, neglected, or exploited in a facility operated, licensed, certified, or registered by a state agency other than TXMHMR, to report the information to the state agency that operates, licenses, certifies, or registers the facility for investigation by that agency. Makes a conforming change.

SECTION 27. Amends Section 48.052(a), Human Resources Code, as follows:

(a) Provides that an offense under this subsection is a Class A misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the disabled person was a person with mental retardation who resided in a state supported living center, the ICF-MR component of the Rio Grande State Center, or a facility licensed under Chapter 252, Health and Safety Code, and the actor knew that the disabled person had suffered serious bodily injury as a result of the abuse, neglect, or exploitation.

SECTION 28. Amends Section 48.1522, Human Resources Code, as follows:

Sec. 48.1522. REPORTS OF CRIMINAL CONDUCT TO LAW ENFORCEMENT AGENCY. (a) Creates an exception under Subsection (b).

(b) Requires the caseworker, if during the course of DFPS' investigation of reported abuse, neglect, or exploitation a caseworker of DFPS or the caseworker's supervisor has cause to believe that a disabled person who is a resident or client of a state supported living center or the ICF-MR component of the Rio Grande State Center has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense under any law, including Section 22.04, Penal code, to immediately notify HHSC's office of inspector general and promptly provide HHSC's office of inspector general with a copy of DFPS' investigation report.

SECTION 29. Amends the heading to Subchapter F, Chapter 48, Human Resources Code, to read as follows:

SUBCHAPTER F. INVESTIGATIONS IN CERTAIN FACILITIES,
COMMUNITY CENTERS, AND LOCAL MENTAL HEALTH AND MENTAL
RETARDATION AUTHORITIES

SECTION 30. Amends Section 48.252, Human Resources Code, as follows:

Sec. 48.252. New heading: INVESTIGATION OF REPORTS IN CERTAIN FACILITIES AND COMMUNITY CENTERS. (a) Requires DFPS to receive and investigate reports of the abuse, neglect, or exploitation of an individual with a disability receiving services:

- (1) in a mental health facility operated by DSHS, rather than a facility operated by TXMHMR, or a facility licensed under Chapter 252, Health and Safety Code;
- (2) in or from a community center, a local mental health authority, or a local mental retardation authority; or
- (3) through a program providing services to that person by contract with a mental health facility operated by DSHS, a community center, a local mental health authority, or a local mental retardation authority. Makes a conforming change.

(b) Requires DFPS to receive and to investigate reports of the abuse, neglect, or exploitation of an individual with a disability receiving certain services.

(c) Creates this subsection from existing text. Makes no further changes to this subsection.

(d) Redesignates Subsection (c) as Subsection (d). Makes no further changes to this Subsection.

SECTION 31. Amends Section 48.254, Human Resources Code, as follows:

Sec. 48.254. New heading: FORWARDING OF CERTAIN REPORTS. Requires DFPS, in accordance with DFPS rules, to forward a copy of the initial intake report and a copy of the completed investigation report relating to alleged or suspected abuse, neglect, or exploitation to the appropriate facility, community center, mental health authority, mental retardation authority, or program providing mental health or mental retardation services under contract with the facility, community center, or authority. Deletes existing text requiring DFPS to forward a state mental health or mental retardation facility, a community center, a mental health authority, a mental retardation authority, or a program providing mental health or mental retardation services under contract with such a facility, community center, or authority a copy of any report DFPS receives relating to alleged or suspected abuse, neglect, or exploitation of an individual receiving services from that facility, community center, authority, or program and a copy of DFPS' investigation findings and report.

SECTION 32. Amends Section 48.255, Human Resources Code, by amending Subsections (a), (b), (c), and (d) and adding Subsection (c-1), as follows:

(a) Requires DFPS, DADS, and DSHS, rather than DPRS and TXMHMR, to develop joint rules to facilitate investigations in state mental health facilities and state supported living centers, rather than mental retardation facilities.

(b) Requires DFPS, DADS, and DSHS, rather than DPRS and TXMHMR, by joint rules to establish procedures for resolving disagreements between DFPS and DADS or DSHS concerning DFPS's investigation findings.

(c) Requires DFPS, DADS, and DSHS, rather than DPRS and TXMHMR, to develop joint rules to facilitate investigations in community centers, mental health authorities, and mental retardation authorities.

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

(d) Prohibits a confirmed investigation finding by DFPS from being changed by a superintendent of a state mental health facility, rather than a state mental health or mental retardation facility, by a director of a state supported living center, by a director of a community center, or by a mental health authority or mental retardation authority.

SECTION 33. Amends Section 48.256, Human Resources Code, as follows:

Sec. 48.256. SINGLE TRACKING SYSTEM FOR REPORTS AND INVESTIGATIONS. (a) Creates this subsection from existing text. Requires DFPS, DADS, and DSHS, rather than DPRS and TXMHMR, to jointly develop and implement a single system to track reports and investigations under this subchapter, rather than section.

(b) Creates this subsection from existing text. Requires DFPS, DADS, and DSHS, to facilitate implementation of the system, to use appropriate methods of measuring the number and outcome of reports and investigations under this subchapter. Makes conforming changes.

SECTION 34. Amends Sections 48.301(a) and (c), Human Resources Code, as follows:

(a) Requires DPRS, if DPRS receives a report of suspected abuse, neglect, or exploitation of an elderly or disabled person, other than a disabled person receiving services as described by Section 48.252, in a facility operated, licensed, certified, or registered by a state agency, to refer the report to that agency. Deletes existing text requiring DPRS, if DPRS receives a report under this section relating to an elderly or disabled person, in a facility operated, licensed, certified, or registered by a state agency other than TXMHMR, to refer the report to that agency.

(c) Requires each state agency that may receive reports under this section, rather than each state agency other than TXMHMR, that operates, licenses, certifies, or registers a facility in which elderly or disabled persons are located, to adopt rules relating to the investigation and resolution of reports received under this section.

SECTION 35. Amends Sections 48.401(1) and (4), Human Resources Code, to redefine "agency" and "executive director."

SECTION 36. Amends Subchapter C, Chapter 161, Human Resources Code, by adding Section 161.0515, as follows:

Sec. 161.0515. ASSISTANT COMMISSIONER OF STATE SUPPORTED LIVING CENTERS. (a) Requires the commissioner of aging and disability services to employ an assistant commissioner of state supported living centers. Requires the assistant commissioner to be selected based on education, training, experience, and demonstrated ability.

(b) Provides that the assistant commissioner reports directly to the commissioner of aging and disability services.

(c) Requires the assistant commissioner to supervise the operation of the state supported living centers. Requires the assistant commissioner, as part of that duty, to meet certain requirements.

(d) Requires the assistant commissioner to coordinate with the appropriate staff of DSHS to ensure that the ICF-MR component of the Rio Grande State Center implements and enforces state law and rules that apply to the operation of state supported living centers.

(e) Requires the assistant commissioner to consult with the appropriate staff at DSHS to ensure that an individual with a dual diagnosis of mental illness and mental retardation who is a resident of a state supported living center or the IDF-MR component of the Rio Grande State Center is provided with appropriate care and treatment.

SECTION 37. Amends Subchapter D, Chapter 161, Human Resources Code, by adding Sections 161.076 and 161.077, as follows:

Sec. 161.076. ON-SITE SURVEYS OF CERTAIN PROVIDERS. Requires DADS, at least every 12 months, to conduct an unannounced on-site survey in each group home, other than a foster home, at which a Home and Community-based Services (HCS) provider provides services.

Sec. 161.077. INVESTIGATION DATABASE. (a) Requires DADS, in consultation with DFPS, to develop and maintain an electronic database to collect and analyze information regarding the investigation and prevention of abuse, neglect, and exploitation of individuals with mental retardation who reside in a publicly or privately operated intermediate care facility for persons with mental retardation or in a group home, other than a foster home, at which an HCS provider provides services and the results of regulatory investigations or surveys performed by DADS regarding those facilities or providers.

(b) Requires that the information collected in the database regarding investigations be detailed, be easily retrievable, and include information relating to abuse, neglect, and exploitation investigations performed by either department and regulatory investigations performed by DADS that are capable of being sorted by home, provider, and facility.

(c) Requires that the database facilitate the entry of required information and the sharing of information between DADS and DFPS. Requires the database, at a minimum, to include certain information regarding investigations of abuse, neglect, or exploitation.

(d) Provides that each allegation involving a unique individual in a facility or group home, other than a foster home, is considered a separate allegation for purposes of Subsection (c).

(e) Requires DADS to ensure that information related to findings concerning failure to comply with regulatory standards directly related to the prevention of abuse, neglect, or exploitation in a facility or group home, other than a foster home, is collected and stored in the database and may be disaggregated by home, provider, and facility.

(f) Prohibits DADS and DFPS from releasing or distributing information in the database in a form that contains personally identifiable information related to an individual in a facility or group home or to a victim of abuse, neglect, or exploitation.

SECTION 38. Amends Section 22.04(f), Penal Code, as follows:

(f) Provides that an offense under subsection (a)(3) (relating to a person committing an offense if the person causes bodily injury to a child, elderly individual, or disabled individual) or (a-1)(3) or (4) (relating to a person committing an offense if a certain person causes bodily injury or exploitation to a child, elderly individual, or disabled individual who is a resident of a group home or facility) is a felony of the third degree when the conduct is committed intentionally or knowingly, except that an offense under Subsection (a)(3) (relating to bodily injury) is a felony of the second degree when the conduct is committed intentionally or knowingly and the victim is a disabled individual residing in a center, as defined by Section 555.001, Health and Safety Code, or in a facility licensed under Chapter 252, Health and Safety Code, and the actor is an employee of the center or facility whose employment involved providing direct care for the victim.

SECTION 39. (a) Repealers: Sections 252.123(Contents of Report), 252.124 (Anonymous Reports of Abuse or Neglect), 252.127 (Immunity), 252.128 (Privileged Communications), 252.129 (Central Registry), 252.130 (Failure to Report: Criminal Penalty), and 252.131 (Bad Faith, Malicious, or Reckless Reporting; Criminal Penalty), Health and Safety Code.

(b) Repealers: Section 5 (c) (relating to a facility licensed under Chapter 252, Health and Safety code not being subject to Chapter 48, Human Resources Code), Chapter 693 (S.B. 1248), Acts of the 75th Legislature, Regular Session, 1997.

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

SECTION 41. Provides that Subchapter L, Chapter 29, Education Code, as added by this Act, applies beginning with the school year in which DADS begins operating the Mexia State Supported Living Center as the forensic state supported living center as required by Section 555.002, Health and Safety Code, as added by this Act.

SECTION 42. (a) Requires HHSC, DFPS, DADS, the office of independent ombudsman for state supported living centers, and HHSC's office of inspector general, not later than December 1, 2009, to enter into a memorandum of understanding as required by Section 48.007, Human Resources Code, as added by this Act.

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

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

SECTION 43. (a) Establishes the Interim Select Committee on Criminal Commitments of Individuals with Mental Retardation (committee) to study the criminal commitment process for individuals with mental retardation who are found incompetent to stand trial or are acquitted by reason of insanity. Requires the committee's study to include an analysis of certain information.

(b) Sets forth the composition of the committee.

(c) Provides that the co-presiding officers of the committee are the chair of the Senate Committee on Health and Human Services and the chair of the House Committee on Human Services.

(d) Provides that the committee has all other powers and duties provided to a special or select committee by the rules of the senate and house of representatives, by Subchapter B (Legislative Reorganization Act), Chapter 301 (Legislative Organization), Government Code, and by policies of the senate and house committees on administration.

(e) Entitles the members of the committee, from the contingent expense fund of the senate and the contingent expense fund of the house of representatives equally, to reimbursement for expenses incurred in carrying out this section in accordance with the rules of the senate and house of representatives and the policies of the senate and house committees on administration.

(f) Requires the committee, not later than December 1, 2010, to report the committee's findings and recommendations resulting from the study to the governor, lieutenant governor, speaker of the house of representatives, and members of the legislature.

SECTION 44. Requires DADS to evaluate and determine the types of training that an employee or owner of a facility licensed by DADS under Chapter 252, Health and Safety Code, or an employee or owner of a provider licensed or certified by the department as a Section 1915(c) waiver program provider needs and whether that training is available. Requires DADS, not later than December 1, 2010, to provide a report to the governor, lieutenant governor, speaker of the house of representatives, and chairs of the standing committees of the senate and house of representatives with primary jurisdiction regarding persons with mental retardation regarding certain information.

SECTION 45. Provides that on the effective date of this Act, an individual who is an employee of DADS and who performs duties primarily related to consumer rights and services at state schools is required to reapply for an employment position with DADS and may apply for a position as an assistant independent ombudsman.

SECTION 46. (a) Requires the commissioner of DADS to employ an assistant commissioner of state supported living centers as soon as possible after the effective date of Section 161.0515, Human Resources Code, as added by this Act. Provides that on the date the assistant commissioner is employed, the position of section director over state schools is eliminated.

(b) Requires DADS, as soon as practicable after the effective date of this Act, to develop the database required by Section 161.077, Human Resources Code, as added by this Act.

(c) Requires HHSC's office of inspector general, not later than December 1, 2009, to begin employing and commissioning peace officers as required by Section 555.101, Health and Safety Code, as added by this Act.

(d) Requires the executive commissioner of HHSC, not later than December 1, 2009, to contract for mortality review services as required by Subchapter U, Chapter 531, Government Code, as added by this Act.

(e) Requires the governor, not later than September 1, 2009, to appoint the independent ombudsman as required by Section 555.053, Health and Safety Code, as added by this Act.

(f) Requires the executive commissioner of HHSC, not later than September 1, 2010, to require DADS, and any facility DADS licenses under Chapter 252, Health and Safety Code, to conduct a criminal history check on each employee and requires the executive commissioner of HHSC to require DADS or licensed facility to discharge any person whose criminal history check reveals a conviction of an offense that bars employment under Chapter 250, Health and Safety Code.

(g) Requires DADS, not later than January 1, 2010, to develop the training required by Section 555.024, Health and Safety Code, as added by this Act.

(h) Requires DADS to ensure that each center employee and direct care employee receives the training required by Section 555.024, Health and Safety Code, as added by this Act, regardless of when the employee was hired, not later than September 1, 2010.

(i) Requires DADS, not later than September 1, 2011, to begin operating the Mexia State Supported Living Center as the forensic state supported living center as required by Section 555.002, Health and Safety Code, as added by this Act.

SECTION 47. (a) Requires DADS, not later than September 1, 2011, to ensure that an interdisciplinary team has completed a determination in the manner provided by Section 555.003, Health and Safety Code, as added by this Act, for each alleged offender resident residing in a state supported living center or the ICF-MR component of the Rio Grande State Center on the effective date of this Act.

(b) Entitles an alleged offender resident for whom a determination is completed in accordance with Subsection (a) of this section and who is classified as a high-risk alleged offender resident is entitled to certain administrative hearings.

(c) Prohibits DADS from transferring an alleged offender resident residing in a state supported living center or the ICF-MR component of the Rio Grande State Center on the effective date of this Act to the forensic state supported living center while the resident is pursuing the administrative remedies listed in Subsection (b) of this section.

(d) Requires DADS, except as provided by Subsection (c) of this section, to transfer an alleged offender resident classified as a high-risk alleged offender resident to the forensic state supported living center on the date the Mexia State Supported Living Center begins operating as the forensic state supported living center, or as soon as possible after that date.

(e) Provides that this section expires September 1, 2013.

SECTION 48. (a) Provides that the changes in law made by this Act to Section 261.109, Family Code, Section 48.052, Human Resources Code, and Section 22.04, Penal Code, apply only to an offense committed on or after the effective date of this Act.

(b) Provides that Section 411.1144, Government Code, as added by this Act, and Section 555.021, Health and Safety Code, as added by this Act, apply only to background and criminal history checks performed on or after the effective date of this Act.

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

SECTION 49. Requires an agency affected by provisions of this Act to request any necessary waiver or authorization from a federal agency, and authorizes delay of implementation until such waivers or authorizations are granted.

SECTION 50. Effective date: upon passage or September 1, 2009.