

By: Lucio

S.B. No. 639

A BILL TO BE ENTITLED

AN ACT

relating to the rights of persons with intellectual or developmental disabilities residing in state residential care facilities.

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

SECTION 1. Chapter 592, Health and Safety Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. RIGHTS OF PERSONS RESIDING IN STATE RESIDENTIAL CARE FACILITIES

Sec. 592.071. DEFINITIONS. In this subchapter:

(1) "State residential care facility" means a residential care facility operated by the department.

(2) "State residential care facility resident bill of rights" means the rights prescribed by this subchapter to which each resident of a state residential care facility is entitled.

Sec. 592.072. RIGHTS GUARANTEED. (a) The rights specifically listed in this subchapter are in addition to all other rights that persons with intellectual or developmental disabilities have and are not exclusive or intended to limit the rights guaranteed by the constitution and laws of the United States and this state.

(b) This subchapter may not be construed to authorize a state residential care facility to take any action that would impair the health or safety of any resident of that facility.

1 Sec. 592.073. LEGISLATIVE FINDINGS. The legislature
2 recognizes that all persons with intellectual or developmental
3 disabilities living in this state are entitled to the same rights
4 and privileges as any other person living in this state. It is the
5 policy of the state that all persons, regardless of disability, be
6 treated with dignity and respect. The legislature recognizes that
7 persons residing in state residential care facilities have the
8 right to determine and pursue their personal goals, dreams, and
9 aspirations to be contributing members of their communities.

10 Sec. 592.074. PURPOSE. The purpose of the state
11 residential care facility resident bill of rights is:

12 (1) to ensure the freedoms and rights of persons with
13 intellectual or developmental disabilities living in state
14 residential care facilities;

15 (2) to promote choice and self-determination; and

16 (3) to protect the civil and constitutional rights of
17 residents in state residential care facilities consistent with
18 federal and state laws and in accordance with acceptable standards
19 of professional practice.

20 Sec. 592.075. STATE RESIDENTIAL CARE FACILITY RESIDENT BILL
21 OF RIGHTS. It is the policy of the state that each person residing
22 in a state residential care facility has the following rights:

23 (1) to make decisions that impact the person's rights
24 and freedoms, or, if appropriate, to have a legal guardian or, if
25 the person is a minor, a parent make those decisions;

26 (2) to be free from abuse, neglect, and exploitation,
27 including:

1 (A) physical restraints, unless necessary to
2 protect the health or safety of the person or others and the use of
3 the restraint is not prohibited by other law;

4 (B) mechanical restraints, including a papoose
5 board or a straightjacket;

6 (C) medical restraint, including administration
7 of psychotropic medication, unless the medication is administered
8 in accordance with other law and there is a proven need for that
9 medication for the health and safety of the person or the health and
10 safety of others;

11 (D) isolation from others, unless necessary to
12 protect the health and safety of the person or others and the use of
13 the isolation is not prohibited by other law;

14 (E) corporal or physical punishment;

15 (F) sexual abuse; or

16 (G) emotional abuse;

17 (3) to seek immediate prosecution of a perpetrator of
18 abuse, neglect, or exploitation;

19 (4) to report incidents of abuse, neglect, or
20 exploitation in confidence using a private telephone or computer;

21 (5) to have the facility notify the person's legal
22 guardian or, if the person is a minor, the person's parent of an
23 allegation of abuse, neglect, or exploitation not more than 24
24 hours after the allegation is made;

25 (6) to have the results of any investigation regarding
26 an allegation of abuse, neglect, or exploitation be explained in a
27 clear and timely fashion by a department representative on

1 completion of the investigation;

2 (7) to report complaints about the state residential
3 care facility, other than complaints about abuse, neglect, or
4 exploitation, and have timely and appropriate resolution to those
5 complaints;

6 (8) to live in the least restrictive setting
7 appropriate to the person's individual needs and abilities and the
8 most integrated setting possible, including:

9 (A) having the opportunity to make an informed
10 choice to move into a community with the necessary services and
11 supports;

12 (B) having access to community services while
13 waiting for a determination of eligibility for those services;

14 (C) choosing to participate in, and
15 participating in, community activities;

16 (D) having regular reviews of placement, if the
17 person was placed in a state residential care facility by the
18 justice system;

19 (E) having access to well-developed, specialized
20 community programs for offenders with disabilities necessary to
21 successfully reintegrate into the community, if applicable; and

22 (F) requesting planning meetings to review
23 community placement determinations or specific community options;

24 (9) to engage in age-appropriate, healthy
25 interpersonal relationships with other persons based on mutual
26 consent;

27 (10) to receive high quality assistive technology

assessments, equipment, and training, and for staff to have the relevant training, necessary to ensure the person's successful inclusion in major life activities, to the greatest extent possible, including:

(A) communication;

(B) mobility;

(C) employment; and

(D) education;

(11) to a quality and productive life, including:

(A) the opportunity to pursue employment or education of the person's choice;

(B) freedom from unsafe living conditions at the state residential care facility in which the person resides;

(C) opportunities to participate in an organization that advocates with and on behalf of people with disabilities;

(D) opportunities to interact with individuals with shared interests who do not reside at the state residential care facility, including mentors, friends, and family, and individuals participating in clubs, classes, and social groups;

(E) access to services or meetings of a religious organization of the person's choosing, including weekly services or meetings and services or meetings on the religious holy days of that religion; and

(F) personal living space with privacy to the greatest extent possible based on the person's individual needs;

(12) to have access to appropriate health care,

1 including:

2 (A) a well-balanced diet;

3 (B) regular access to physical activity, with
4 supports as needed, in the least restrictive environment, with the
5 opportunity to go outdoors when preferred if possible;

6 (C) preventative and emergency medical care; and

7 (D) behavioral interventions;

8 (13) to reside in a community-based alternative with
9 supports and services if the person desires, if this is possible
10 considering the individual's disability;

11 (14) to have the person's legal guardian or, if the
12 person is a minor, the person's parent notified of any significant
13 medical, behavioral, or social event that occurs in the person's
14 life; and

15 (15) to be provided with a written copy of this Bill of
16 Rights in English and Spanish and to have the opportunity to review
17 this document with an advocate or individual of the person's
18 choosing.

19 Sec. 592.076. PROVISION OF BILL OF RIGHTS TO RESIDENTS. (a)
20 The department shall provide a written copy of the state
21 residential care facility resident bill of rights in English and
22 Spanish to each person living in a state residential care facility
23 and, if applicable, to the person's legal guardian or, if the person
24 is a minor, the person's parent.

25 (b) A state residential care facility shall prominently and
26 conspicuously display a copy of the state residential care facility
27 resident bill of rights in English and Spanish in a public area of

1 the facility that is readily accessible by the residents.

2 (c) The executive commissioner of the Health and Human
3 Services Commission shall adopt rules relating to the form of the
4 state residential care facility resident bill of rights.

5 Sec. 592.077. PROHIBITED PLACEMENT. A person who is
6 younger than 22 years of age who is admitted to a state residential
7 care facility on a temporary basis may not reside in the facility
8 for more than 60 days. As soon as practicable after the temporary
9 placement, the department shall place the person in a family
10 setting with the necessary supports and services.

11 SECTION 2. (a) The executive commissioner of the Health and
12 Human Services Commission shall adopt the rules required by Section
13 592.076, Health and Safety Code, as added by this Act, not later
14 than January 1, 2010.

15 (b) A state school is not required to provide or display the
16 state residential care facility resident bill of rights under
17 Subchapter E, Chapter 592, Health and Safety Code, as added by this
18 Act, before February 1, 2010.

19 SECTION 3. This Act takes effect September 1, 2009.