

HEALTH & SAFETY CODE
CHAPTER 593. ADMISSION AND COMMITMENT TO MENTAL RETARDATION
SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 593.001. ADMISSION. A person may be admitted for mental retardation services offered by the department or a community center, admitted voluntarily to a residential care program, or committed to a residential care facility, only as provided by this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.002. CONSENT REQUIRED. (a) Except as provided by Subsection (b), the department or a community center may not provide mental retardation services to a client without the client's legally adequate consent.

(b) The department or community center may provide nonresidential mental retardation services, including a determination of mental retardation, to a client without the client's legally adequate consent if the department or community center has made all reasonable efforts to obtain consent.

(c) The board by rule shall prescribe the efforts to obtain consent that are reasonable and the documentation for those efforts.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 5, eff. Sept. 1, 1993.

Sec. 593.003. REQUIREMENT OF DETERMINATION OF MENTAL RETARDATION. (a) Except as provided by Sections 593.027, 593.0275, and 593.028, a person is not eligible to receive mental retardation services unless the person first is determined to have mental retardation.

(b) This section does not apply to an eligible child with a developmental disability receiving services under Subchapter A, Chapter 535.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 6, eff. Sept. 1, 1993.

Sec. 593.004. APPLICATION FOR DETERMINATION OF MENTAL RETARDATION. A person believed to be a person with mental retardation, the parent if the person is a minor, or the guardian of the person may make written application to the department, a community center, a physician, or a psychologist licensed to practice in this state or certified by the department for a determination of mental retardation using forms provided by the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 6, eff. Sept. 1, 1993.

Sec. 593.005. DETERMINATION OF MENTAL RETARDATION. (a) A physician or psychologist licensed to practice in this state or certified by the department shall perform the determination of mental retardation. The department may charge a reasonable fee for certifying a psychologist.

(b) The physician or psychologist shall base the determination on an interview with the person and on a professional assessment that, at a minimum, includes:

(1) a measure of the person's intellectual functioning;

(2) a determination of the person's adaptive behavior level; and

(3) evidence of origination during the person's developmental period.

(c) The physician or psychologist may use a previous assessment, social history, or relevant record from a school district, public or private agency, or another physician or psychologist if the physician or psychologist determines that the assessment, social history, or record is valid.

(d) If the person is indigent, the determination of mental retardation shall be performed at the department's expense by a physician or psychologist licensed in this state or certified by the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 6, eff. Sept. 1, 1993.

Sec. 593.006. REPORT. A person who files an application for a determination of mental retardation under Section 593.004 shall be promptly notified in writing of the findings.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 6, eff. Sept. 1, 1993.

Sec. 593.007. NOTIFICATION OF CERTAIN RIGHTS. The

department shall inform the person who filed an application for a determination of mental retardation of the person's right to:

(1) an independent determination of mental retardation under Section 592.020; and

(2) an administrative hearing under Section 593.008 by the agency that conducted the determination of mental retardation to contest the findings.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 6, eff. Sept. 1, 1993.

Sec. 593.008. ADMINISTRATIVE HEARING. (a) The proposed client and contestant by right may:

(1) have a public hearing unless the proposed client or contestant requests a closed hearing;

(2) be present at the hearing; and

(3) be represented at the hearing by a person of their choosing, including legal counsel.

(b) The proposed client, contestant, and their respective representative by right may:

(1) have reasonable access at a reasonable time before the hearing to any records concerning the proposed client relevant to the proposed action;

(2) present oral or written testimony and evidence, including the results of an independent determination of mental retardation; and

(3) examine witnesses.

(c) The hearing shall be held:

(1) as soon as possible, but not later than the 30th day after the date of the request;

(2) in a convenient location; and

(3) after reasonable notice.

(d) Any interested person may appear and give oral or written testimony.

(e) The board by rule shall implement the hearing procedures.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 7, eff. Sept. 1, 1993.

Sec. 593.009. HEARING REPORT; FINAL DECISION. (a) After each hearing, the hearing officer shall promptly report to the parties in writing the officer's decision, findings of fact, and the reasons for those findings.

(b) The hearing officer's decision is final on the 31st day after the date on which the decision is reported unless a party files an appeal within that period.

(c) The filing of an appeal suspends the hearing officer's decision, and a party may not take action on the decision.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.010. APPEAL. (a) A party to a hearing may appeal the hearing officer's decision without filing a motion for rehearing with the hearing officer.

(b) Venue for the appeal is in the county court of Travis County or the county in which the proposed client resides.

(c) The appeal is by trial de novo.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.011. FEES FOR SERVICES. (a) The department shall charge reasonable fees to cover the costs of services provided to nonindigent persons.

(b) The department shall provide services free of charge to indigent persons.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.012. ABSENT WITHOUT AUTHORITY. (a) The superintendent of a residential care facility to which a client has been admitted for court-ordered care and treatment may have a client who is absent without authority taken into custody, detained, and returned to the facility by issuing a certificate to a law enforcement agency of the municipality or county in which the facility is located or by obtaining a court order issued by a magistrate in the manner prescribed by Section 574.083.

(b) The client shall be returned to the residential care facility in accordance with the procedures prescribed by Section 574.083.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 1016, Sec. 2, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1187, Sec. 20, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1006, Sec. 2, eff. Sept. 1, 2001.

Sec. 593.013. REQUIREMENT OF INTERDISCIPLINARY TEAM

RECOMMENDATION. (a) A person may not be admitted or committed to a residential care facility unless an interdisciplinary team recommends that placement.

(b) An interdisciplinary team shall:

(1) interview the person with mental retardation, the person's parent if the person is a minor, and the person's guardian;

(2) review the person's:

(A) social and medical history;

(B) medical assessment, which shall include an audiological, neurological, and vision screening;

(C) psychological and social assessment; and

(D) determination of adaptive behavior level;

(3) determine the person's need for additional assessments, including educational and vocational assessments;

(4) obtain any additional assessment necessary to plan services;

(5) identify the person's habilitation and service preferences and needs; and

(6) recommend services to address the person's needs that consider the person's preferences.

(c) The interdisciplinary team shall give the person, the person's parent if the person is a minor, and the person's guardian an opportunity to participate in team meetings.

(d) The interdisciplinary team may use a previous assessment, social history, or other relevant record from a school district, public or private agency, or appropriate professional if the interdisciplinary team determines that the assessment, social history, or record is valid.

(e) The interdisciplinary team shall prepare a written report of its findings and recommendations that is signed by each team member and shall promptly send a copy of the report and recommendations to the person, the person's parent if the person is a minor, and the person's guardian.

(f) If the court has ordered the interdisciplinary team report and recommendations under Section 593.041, the team shall promptly send a copy of the report and recommendations to the court, the person with mental retardation or the person's legal representative, the person's parent if the person is a minor, and the person's guardian.

Added by Acts 1993, 73rd Leg., ch. 60, Sec. 8, eff. Sept. 1, 1993.

SUBCHAPTER B. APPLICATION AND ADMISSION TO VOLUNTARY MENTAL RETARDATION SERVICES

Sec. 593.021. APPLICATION FOR VOLUNTARY SERVICES. (a) The proposed client or the parent if the proposed client is a minor may apply for voluntary mental retardation services under Section 593.022, 593.026, 593.027, 593.0275, or 593.028.

(b) The guardian of the proposed client may apply for services under this subchapter under Section 593.022, 593.027, 593.0275, or 593.028.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 9, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 809, Sec. 1, eff. Sept. 1, 1997.

Sec. 593.022. ADMISSION TO VOLUNTARY MENTAL RETARDATION SERVICES. (a) An eligible person who applies for mental retardation services may be admitted as soon as appropriate services are available.

(b) The department facility or community center shall develop a plan for appropriate programs or placement in programs or facilities approved or operated by the department.

(c) The programs or placement must be suited to the needs of the proposed client and consistent with the rights guaranteed by Chapter 592.

(d) The proposed client, the parent if the client is a minor, and the client's guardian shall be encouraged and permitted to participate in the development of the planned programs or placement.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.023. RULES RELATING TO PLANNING OF SERVICES OR TREATMENT. (a) The board by rule shall develop and adopt procedures permitting a client, a parent if the client is a minor, or a guardian of the person to participate in planning the client's treatment and habilitation, including a decision to recommend or place a client in an alternative setting.

(b) The procedures must inform clients, parents, and guardians of the due process provisions of Sections

594.015-594.017, including the right to an administrative hearing and judicial review in county court of a proposed transfer or discharge.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.024. APPLICATION FOR VOLUNTARY RESIDENTIAL CARE SERVICES. (a) An application for voluntary admission to a residential care facility must be made according to department rules and contain a statement of the reasons for which placement is requested.

(b) Voluntary admission includes regular voluntary admission, emergency admission, and respite care.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.025. PLACEMENT PREFERENCE. Preference for requested, voluntary placement in a residential care facility shall be given to the facility located nearest the residence of the proposed resident, unless there is a compelling reason for placement elsewhere.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.026. REGULAR VOLUNTARY ADMISSION. A regular voluntary admission is permitted if:

(1) space is available at the facility for which placement is requested; and

(2) the facility superintendent determines that the facility provides services that meet the needs of the proposed resident.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.027. EMERGENCY ADMISSION. (a) An emergency admission to a residential care facility is permitted without a determination of mental retardation and an interdisciplinary team recommendation if:

(1) there is persuasive evidence that the proposed resident is a person with mental retardation;

(2) space is available at the facility for which placement is requested;

(3) the proposed resident has an urgent need for services that the facility superintendent determines the facility provides; and

(4) the facility can provide relief for the urgent need within a year after admission.

(b) A determination of mental retardation and an interdisciplinary team recommendation for the person admitted under this section shall be performed within 30 days after the date of admission.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 9, eff. Sept. 1, 1993.

Sec. 593.0275. EMERGENCY SERVICES. (a) A person may receive emergency services without a determination of mental retardation if:

(1) there is persuasive evidence that the person is a person with mental retardation;

(2) emergency services are available; and

(3) the person has an urgent need for emergency services.

(b) A determination of mental retardation for the person served under this section shall be performed within 30 days after the date the services begin.

Added by Acts 1993, 73rd Leg., ch. 60, Sec. 10, eff. Sept. 1, 1993.

Sec. 593.028. RESPITE CARE. (a) A person may be admitted to a residential care facility for respite care without a determination of mental retardation and interdisciplinary team recommendation if:

(1) there is persuasive evidence that the proposed resident is a person with mental retardation;

(2) space is available at the facility for which respite care is requested;

(3) the facility superintendent determines that the facility provides services that meet the needs of the proposed resident; and

(4) the proposed resident or the proposed resident's family urgently requires assistance or relief that can be provided within a period not to exceed 30 consecutive days after the date of admission.

(b) If the relief sought by the proposed resident or the proposed resident's family has not been provided within 30 days, one 30-day extension may be allowed if:

(1) the facility superintendent determines that the relief may be provided in the additional period; and

(2) the parties agreeing to the original placement consent to the extension.

(c) If an extension is not granted the resident shall be released immediately and may apply for other services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 11, eff. Sept. 1, 1993.

Sec. 593.029. TREATMENT OF MINOR WHO REACHES MAJORITY. When a facility resident who is voluntarily admitted as a minor approaches 18 years of age and continues to be in need of residential services, the superintendent shall ensure that when the resident becomes an adult:

(1) the resident's legally adequate consent for admission to the facility is obtained from the resident or the guardian of the person; or

(2) an application is filed for court commitment under Subchapter C.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.030. WITHDRAWAL FROM SERVICES. A resident voluntarily admitted to a residential care facility may not be detained more than 96 hours after the time the resident, the resident's parents if the resident is a minor, or the guardian of the resident's person requests discharge of the resident as provided by department rules, unless:

(1) the facility superintendent determines that the resident's condition or other circumstances are such that the resident cannot be discharged without endangering the safety of the resident or the general public;

(2) the superintendent files an application for judicial commitment under Section 593.041; and

(3) a court issues a protective custody order under Section 593.044 pending a final determination on the application.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

SUBCHAPTER C. COMMITMENT TO RESIDENTIAL CARE FACILITY

Sec. 593.041. APPLICATION FOR PLACEMENT; JURISDICTION. (a) A proposed resident, if an adult, a parent if the proposed resident is a minor, the guardian of the person, the court, or any other interested person, including a community center or agency that conducted a determination of mental retardation of the proposed resident, may file an application for an interdisciplinary team report and recommendation that the proposed client is in need of long-term placement in a residential care facility.

(b) Except as provided by Subsection (e), the application must be filed with the county clerk in the county in which the proposed resident resides. If the superintendent of a residential care facility files an application for judicial commitment of a voluntary resident, the county in which the facility is located is considered the resident's county of residence.

(c) The county court has original jurisdiction of all judicial proceedings for commitment of a person with mental retardation to residential care facilities.

(d) A person may not be committed to the department for placement in a residential care facility under this subchapter unless a report by an interdisciplinary team recommending the placement has been completed during the six months preceding the date of the court hearing on the application. If the report and recommendations have not been completed or revised during that period, the court shall order the report and recommendations on receiving the application.

(e) An application in which the proposed patient is a child in the custody of the Texas Youth Commission may be filed in the county in which the child's commitment to the commission was ordered.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 12, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1086, Sec. 39, eff. June 19, 1997.

Sec. 593.042. FORM OF APPLICATION. (a) An application for commitment of a person to a residential care facility must:

(1) be executed under oath; and

(2) include:

(A) the name, birth date, sex, and address of the proposed resident;

(B) the name and address of the proposed

resident's parent or guardian, if applicable;

(C) a short, plain statement of the facts demonstrating that commitment to a facility is necessary and appropriate; and

(D) a short, plain statement explaining the inappropriateness of admission to less restrictive services.

(b) If the report required under Section 593.013 is completed, a copy must be included in the application.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 13, eff. Sept. 1, 1993.

Sec. 593.043. REPRESENTATION BY COUNSEL; APPOINTMENT OF ATTORNEY. (a) The proposed resident shall be represented by an attorney who shall represent the rights and legal interests of the proposed resident without regard to who initiates the proceedings or pays the attorney's fee.

(b) If the proposed resident cannot afford counsel, the court shall appoint an attorney not later than the 11th day before the date set for the hearing.

(c) An attorney appointed under this section is entitled to a reasonable fee. The county in which the proceeding is brought shall pay the attorney's fee from the county's general fund.

(d) The parent, if the proposed resident is a minor, or the guardian of the person may be represented by legal counsel during the proceedings.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.044. ORDER FOR PROTECTIVE CUSTODY. (a) The court in which an application for a hearing is filed may order the proposed resident taken into protective custody if the court determines from certificates filed with the court that the proposed resident is:

(1) believed to be a person with mental retardation; and

(2) likely to cause injury to himself or others if not immediately restrained.

(b) The judge of the court may order a health or peace officer to take the proposed resident into custody and transport the person to:

(1) a designated residential care facility in which space is available; or

(2) a place deemed suitable by the county health authority.

(c) If the proposed resident is a voluntary resident, the court for good cause may order the resident's detention in:

(1) the facility to which the resident was voluntarily admitted; or

(2) another suitable location to which the resident may be transported under Subsection (b).

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.045. DETENTION IN PROTECTIVE CUSTODY. (a) A person under a protective custody order may be detained for not more than 20 days after the date on which custody begins pending an order of the court.

(b) A person under a protective custody order may not be detained in a nonmedical facility used to detain persons charged with or convicted of a crime, unless an extreme emergency exists and in no case for longer than 24 hours.

(c) The county health authority shall ensure that the detained person receives proper care and medical attention pending removal to a residential care facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.046. RELEASE FROM PROTECTIVE CUSTODY. (a) The administrator of a facility in which a person is held in protective custody shall discharge the person not later than the 20th day after the date on which custody begins if the court that issued the protective custody order has not issued further detention orders.

(b) A facility administrator who believes that the person is a danger to himself or others shall immediately notify the court that issued the protective custody order of this belief.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.047. SETTING ON APPLICATION. On the filing of an application the court shall immediately set the earliest practicable date for a hearing to determine the appropriateness of the proposed commitment.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.048. HEARING NOTICE. (a) Not later than the 11th day before the date set for the hearing, a copy of the application, notice of the time and place of the hearing and, if appropriate, the order for the determination of mental retardation and interdisciplinary team report and recommendations shall be served on:

(1) the proposed resident or the proposed resident's representative;

(2) the parent if the proposed resident is a minor;

(3) the guardian of the person; and

(4) the department.

(b) The notice must specify in plain and simple language:

(1) the right to an independent determination of mental retardation under Section 593.007; and

(2) the provisions of Sections 593.043, 593.047, 593.049, 593.050, and 593.053.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 14, eff. Sept. 1, 1993.

Sec. 593.049. HEARING BEFORE JURY; PROCEDURE. (a) On request of a party to the proceedings, or on the court's own motion, the hearing shall be before a jury.

(b) The Texas Rules of Civil Procedure apply to the selection of the jury, the court's charge to the jury, and all other aspects of the proceedings and trial unless the rules are inconsistent with this subchapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.050. CONDUCT OF HEARING. (a) The hearing must be open to the public unless the proposed resident or the resident's representative requests that the hearing be closed and the judge determines that there is good cause to close the hearing.

(b) The proposed resident is entitled to be present throughout the hearing. If the court determines that the presence of the proposed resident would result in harm to the proposed resident, the court may waive the requirement in writing clearly stating the reason for the decision.

(c) The proposed resident is entitled to and must be provided the opportunity to confront and cross-examine each witness.

(d) The Texas Rules of Evidence apply. The results of the determination of mental retardation and the current interdisciplinary team report and recommendations shall be presented in evidence.

(e) The party who filed the application has the burden to prove beyond a reasonable doubt that long-term placement of the proposed resident in a residential care facility is appropriate.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 15, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 1420, Sec. 10.007, eff. Sept. 1, 2001.

Sec. 593.051. DISMISSAL AFTER HEARING. If long-term placement in a residential care facility is not found to be appropriate, the court shall enter a finding to that effect, dismiss the application, and if appropriate, recommend application for admission to voluntary services under Subchapter B.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.052. ORDER FOR COMMITMENT. (a) A proposed resident may not be committed to a residential care facility unless:

(1) the proposed resident is a person with mental retardation;

(2) evidence is presented showing that because of retardation, the proposed resident:

(A) represents a substantial risk of physical impairment or injury to himself or others; or

(B) is unable to provide for and is not providing for the proposed resident's most basic personal physical needs;

(3) the proposed resident cannot be adequately and appropriately habilitated in an available, less restrictive setting; and

(4) the residential care facility provides habilitative services, care, training, and treatment appropriate to the proposed resident's needs.

(b) If it is determined that the requirements of Subsection (a) have been met and that long-term placement in a residential care facility is appropriate, the court shall commit the proposed

resident for care, treatment, and training to a community center or the department when space is available in a residential care facility.

(c) The court shall immediately send a copy of the commitment order to the department or community center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.053. DECISION. The court in each case shall promptly report in writing the decision and findings of fact.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.054. NOT A JUDGMENT OF INCOMPETENCE. An order for commitment is not an adjudication of mental incompetency.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.055. DESIGNATION OF FACILITY. If placement in a residential facility is necessary, preference shall be given to the facility nearest to the residence of the proposed resident unless:

(1) space in the facility is unavailable;

(2) the proposed resident, parent if the resident is a minor, or guardian of the person requests otherwise; or

(3) there are other compelling reasons.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.056. APPEAL. (a) A party to a commitment proceeding has the right to appeal the judgment to the appropriate court of appeals.

(b) The Texas Rules of Civil Procedure apply to an appeal under this section.

(c) An appeal under this section shall be given a preference setting.

(d) The county court may grant a stay of commitment pending appeal.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

SUBCHAPTER D. FEES

Sec. 593.071. APPLICATION OF SUBCHAPTER. This subchapter applies only to a resident admitted to a residential care facility operated by the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.072. INABILITY TO PAY. A resident may not be denied residential care because of an inability to pay for the care.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.073. DETERMINATION OF RESIDENTIAL COSTS. The board by rule may determine the cost of support, maintenance, and treatment of a resident.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.074. MAXIMUM FEES. (a) Except as provided by this section, the department may not charge for a resident total fees from all sources that exceed the cost to the state to support, maintain, and treat the resident.

(b) The department may use the projected cost of providing residential services to establish the maximum fee that may be charged to a payer.

(c) The department may establish maximum fees on one or a combination of the following:

(1) a statewide per capita;

(2) an individual facility per capita; or

(3) the type of service provided.

(d) Notwithstanding Subsection (b), the department may establish a fee in excess of the department's projected cost of providing residential services that may be charged to a payer:

(1) who is not an individual; and

(2) whose method of determining the rate of reimbursement to a provider results in the excess.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.075. SLIDING FEE SCHEDULE. (a) The board by rule shall establish a sliding fee schedule for the payment by the resident's parents of the state's total costs for the support, maintenance, and treatment of a resident younger than 18 years of age.

(b) The board shall set the fee according to the parents' net taxable income and ability to pay.

(c) The parents may elect to have their net taxable income determined by their most current financial statement or federal income tax return.

(d) In determining the portion of the costs of the resident's support, maintenance, and treatment that the parents are required to pay, the department shall adjust, when appropriate, the payment required under the fee schedule to allow for consideration

of other factors affecting the ability of the parents to pay.

(e) The department shall evaluate and, if necessary, revise the fee schedule at least once every five years.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 278, Sec. 2, eff. June 5, 1995.

Sec. 593.076. FEE SCHEDULE FOR DIVORCED PARENTS. (a) If the parents of a resident younger than 18 years of age are divorced, the fee charged each parent for the cost of the resident's support, maintenance, and treatment is determined by that parent's own income.

(b) If the divorced parents' combined fees exceed the maximum fee authorized under the fee schedule, the department shall equitably allocate the maximum fee between the parents in accordance with department rules, but a parent's fee may not exceed the individual fee determined for that parent under Subsection (a).

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.077. CHILD SUPPORT PAYMENTS FOR BENEFIT OF RESIDENT. (a) Child support payments for the benefit of a resident paid or owed by a parent under court order are considered the property and estate of the resident and the department may:

(1) be reimbursed for the costs of a resident's support, maintenance, and treatment from those amounts; and

(2) establish a fee based on the child support obligation in addition to other fees authorized by this subchapter.

(b) The department shall credit the amount of child support a parent actually pays for a resident against monthly charges for which the parent is liable, based on ability to pay.

(c) A parent who receives child support payments for a resident is liable for the monthly charges based on the amount of child support payments actually received in addition to the liability of that parent based on ability to pay.

(d) The department may file a motion to modify a court order that establishes a child support obligation for a resident to require payment of the child support directly to the residential care facility in which the resident resides for the resident's support, maintenance, and treatment if:

(1) the resident's parent fails to pay child support as required by the order; or

(2) the resident's parent who receives child support fails to pay charges based on the amount of child support payments received.

(e) In addition to modification of an order under Subsection (d), the court may order all past due child support for the benefit of a resident paid directly to the resident's residential care facility to the extent that the department is entitled to reimbursement of the resident's charges from the child support obligation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.078. PAYMENT FOR ADULT RESIDENTS. (a) A parent of a resident who is 18 years of age or older is not required to pay for the resident's support, maintenance, and treatment.

(b) Except as provided by Section 593.081, a resident and the resident's estate are liable for the costs of the resident's support, maintenance, and treatment regardless of the resident's age.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.079. PREVIOUS FEE AGREEMENTS. The unpaid portion of charges for support, maintenance, and treatment due from a parent before January 1, 1978, under agreements made before that date, remain as an obligation under previous law, but only to the extent of parental responsibility prescribed by the department fee schedule.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.080. STATE CLAIMS FOR UNPAID FEES. (a) Unpaid charges accruing after January 1, 1978, and owed by a parent for the support, maintenance, and treatment of a resident are a claim in favor of the state for the cost of support, maintenance, and treatment of the resident and constitute a lien against the parent's property and estate as provided by Section 533.004, but do not constitute a lien against any other estate or property of the resident.

(b) Except as provided by Section 593.081, costs determined under Section 593.073 constitute a claim by the state against the entire estate or property of the resident, including any share the resident may have by gift, descent, or devise in the estate of the

resident's parent or any other person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.081. TRUST EXEMPTION. (a) If the resident is the beneficiary of a trust that has an aggregate principal of \$250,000 or less, the corpus or income of the trust for the purposes of this subchapter is not considered to be the property of the resident or the resident's estate, and is not liable for the resident's support, maintenance, and treatment regardless of the resident's age.

(b) To qualify for the exemption provided by Subsection (a), the trust must be created by a written instrument, and a copy of the trust instrument must be provided to the department.

(c) A trustee of the trust shall, on the department's request, provide to the department a current financial statement that shows the value of the trust estate.

(d) The department may petition a district court to order the trustee to provide a current financial statement if the trustee does not provide the statement before the 31st day after the date on which the department makes the request. The court shall hold a hearing on the department's petition not later than the 45th day after the date on which the petition is filed. The court shall order the trustee to provide to the department a current financial statement if the court finds that the trustee has failed to provide the statement.

(e) Failure of the trustee to comply with the court's order is punishable by contempt.

(f) For the purposes of this section, the following are not considered to be trusts and are not entitled to the exemption provided by this section:

(1) a guardianship established under the Texas Probate Code;

(2) a trust established under Chapter 142, Property Code;

(3) a facility custodial account established under Section 551.003;

(4) the provisions of a divorce decree or other court order relating to child support obligations;

(5) an administration of a decedent's estate; or

(6) an arrangement in which funds are held in the registry or by the clerk of a court.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1999, 76th Leg., ch. 498, Sec. 1, eff. June 18, 1999.

SUBCHAPTER E. ADMISSION AND COMMITMENT UNDER PRIOR LAW

Sec. 593.091. ADMISSION AND COMMITMENT. A resident admitted or committed to a department residential care facility under law in force before January 1, 1978, may remain in the facility until:

(1) necessary and appropriate alternate placement is found; or

(2) the resident can be admitted or committed to a facility as provided by this chapter, if the admission or commitment is necessary to meet the due process requirements of this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.092. DISCHARGE OF PERSON VOLUNTARILY ADMITTED TO RESIDENTIAL CARE FACILITY. (a) Except as otherwise provided, a resident voluntarily admitted to a residential care facility under a law in force before January 1, 1978, shall be discharged not later than the 96th hour after the time the superintendent receives written request from the person on whose application the resident was admitted, or on the resident's own request.

(b) The superintendent may detain the resident for more than 96 hours in accordance with Section 593.030.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.093. REIMBURSEMENT TO COUNTY. (a) The state shall reimburse a county an amount not to exceed \$50 for the cost of a hearing held by the county court to commit a resident of a department facility who was committed under a law in force before January 1, 1978, and for whom the due process requirements of this subtitle require another commitment proceeding.

(b) The commissioners court of a county entitled to reimbursement under this section may file a claim for reimbursement with the comptroller.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.