

CHAPTER 60

H.B. No. 771

AN ACT

relating to treatment and care of persons with mental retardation and to the certification of special officers for mental health assignment.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Sections 591.003(8), (14), and (16), Health and Safety Code, are amended to read as follows:

(8) *"Interdisciplinary team" means a group of mental retardation professionals and paraprofessionals who assess the treatment, training, and habilitation needs of a person with mental retardation and make recommendations for services for that person* [~~"Diagnosis and evaluation team" means a group of persons with special training and experience in the diagnosis, management, and needs of persons with mental retardation and that performs a comprehensive diagnosis and evaluation.~~].

(14) *"Mental retardation services" means programs and assistance for persons with mental retardation that may include a determination of mental retardation, interdisciplinary team recommendations* [~~diagnosis and evaluation~~], education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling, but does not include those services or programs that have been explicitly delegated by law to other state agencies.

(16) *"Person with mental retardation" means a person determined by a physician or psychologist licensed in this state or certified by the department* [~~comprehensive diagnosis and evaluation~~] to have subaverage general intellectual functioning with deficits in adaptive behavior.

SECTION 2. Sections 592.018, 592.019, and 592.020, Health and Safety Code, are amended to read as follows:

Sec. 592.018. *DETERMINATION OF MENTAL RETARDATION [DIAGNOSIS AND EVALUATION]*. A person thought to be a person with mental retardation has the right promptly to receive a *determination of mental retardation using diagnostic techniques that are [comprehensive diagnosis and evaluation]* adapted to that person's cultural background, language, and ethnic origin to determine if the person is in need of mental retardation services as provided by Subchapter A, Chapter 593.

Sec. 592.019. ADMINISTRATIVE HEARING. A person who files an application for a *determination of mental retardation [comprehensive diagnosis and evaluation]* has the right to request and promptly receive an administrative hearing under Subchapter A, Chapter 593, to contest the findings of the *determination of mental retardation [diagnosis and evaluation team and to determine eligibility for mental retardation services]*.

Sec. 592.020. INDEPENDENT *DETERMINATION OF MENTAL RETARDATION [DIAGNOSIS AND EVALUATION]*. A person for [on] whom a *determination of mental retardation [comprehensive diagnosis and evaluation]* is performed or a person who files an application for a *determination of mental retardation [diagnosis and evaluation]* under Section 593.004 and who questions the validity or results of the *determination of mental retardation [comprehensive diagnosis and evaluation]*, has the right to an additional, independent *determination of mental retardation [diagnosis and evaluation]* performed at the person's own expense.

SECTION 3. Section 592.033(a), Health and Safety Code, is amended to read as follows:

(a) Each client has the right to a written, individualized habilitation plan developed by appropriate specialists [~~and based on the relevant results of the comprehensive diagnosis and evaluation~~].

SECTION 4. Section 592.034(c), Health and Safety Code, is amended to read as follows:

(c) Each client has the right to a periodic *reassessment [comprehensive rediagnosis and reevaluation]*.

SECTION 5. Section 593.002(b), Health and Safety Code, is amended to read as follows:

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

SECTION 6. Sections 593.003–593.007, Health and Safety Code, are amended to read as follows:

Sec. 593.003. *REQUIREMENT OF DETERMINATION OF MENTAL RETARDATION [DIAGNOSIS AND EVALUATION]*. (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 [receives a comprehensive diagnosis and evaluation to determine the person's need and eligibility for services]*.

(b) [~~Except as provided by Sections 593.027 and 593.028, a person is not eligible for voluntary admission for mental retardation services under Subchapter B unless a comprehensive diagnosis and evaluation has been performed or revised during the three months preceding the date of initial admission for services.~~]

[~~(c) A person may not be committed to a residential care facility under Subchapter C unless a comprehensive diagnosis and evaluation has been performed or revised during the six months preceding the date of the court hearing on the application. If a comprehensive diagnosis and evaluation has not been completed or revised during that period, the court shall order one on receiving the application.~~]

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

Sec. 593.004. APPLICATION FOR *DETERMINATION OF MENTAL RETARDATION [DIAGNOSIS AND EVALUATION]*. 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 [~~for a comprehensive diagnosis and evaluation~~] using forms provided by the department.

Sec. 593.005. ~~DETERMINATION OF MENTAL RETARDATION [COMPREHENSIVE DIAGNOSIS AND EVALUATION].~~ (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 [A comprehensive diagnosis and evaluation is a study of a person believed to be a person with mental retardation that:~~

~~[(1) is conducted by a diagnosis and evaluation team; and~~

~~[(2) leads to conclusions and recommendations formulated jointly, with dissenting opinions if any, by the diagnosis and evaluation team].~~

(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 [The study must include:~~

~~[(1) a social and medical history;~~

~~[(2) a sequence of medical, neurological, audiological, visual, educational, appropriate psychological, and sociological examinations and observations; and~~

~~[(3) an examination of the person's adaptive behavior level].~~

(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 [A diagnosis and evaluation team may include only individuals who are:~~

~~[(1) certified under standards adopted by the department; and~~

~~[(2) qualified professionally in the fields necessary to perform the comprehensive diagnosis and evaluation].~~

(d) ~~[Except as provided by Subsection (e), the evaluation shall be performed at a facility that is:~~

~~[(1) approved by the department to conduct comprehensive diagnoses and evaluations; and~~

~~[(2) nearest to the home of the person being evaluated.~~

~~[(e) If the person is indigent, the determination of mental retardation [comprehensive diagnosis and evaluation] shall be performed at the department's expense by a physician or psychologist licensed in this state or certified [at a facility designated] by the department.~~

Sec. 593.006. REPORT. (a) ~~The diagnosis and evaluation team shall prepare a written report of a proposed client's comprehensive diagnosis and evaluation that:~~

~~[(1) includes:~~

~~[(A) a summary of the team's findings;~~

~~[(B) recommendations for mental retardation services needed by the proposed client, if any; and~~

~~[(C) recommendations of desirable or appropriate programs or placement consistent with the needs of the proposed client; and~~

~~[(2) is signed by each team member.~~

~~[(b) If a court has ordered the comprehensive diagnosis and evaluation under Section 593.003, the department shall promptly send a copy of the report to the court and to the proposed client or the proposed client's legal representative.~~

[~~(e)~~] A person who files an application for a *determination of mental retardation* [~~comprehensive diagnosis and evaluation~~] under Section 593.004 shall be promptly notified *in writing* of the [~~team's~~] findings [~~and recommendations~~].

Sec. 593.007. NOTIFICATION OF CERTAIN RIGHTS. The department shall inform the person who filed an application for a *determination of mental retardation* [~~comprehensive diagnosis and evaluation~~] of the person's right to:

- (1) an independent *determination of mental retardation* [~~diagnosis and evaluation~~] under Section 592.020; and
- (2) an administrative hearing under Section 593.008 by the agency that conducted the *determination of mental retardation* [~~diagnosis and evaluation~~] to contest the [~~team's~~] findings [~~or recommendations~~].

SECTION 7. Section 593.008(b), Health and Safety Code, is amended to read as follows:

- (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* [~~diagnosis and evaluation~~]; and
 - (3) examine witnesses.

SECTION 8. Subchapter A, Chapter 593, Health and Safety Code, is amended by adding Section 593.013 to read as follows:

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.*

SECTION 9. Sections 593.021 and 593.027, Health and Safety Code, are amended to read as follows:

Sec. 593.021. APPLICATION FOR VOLUNTARY SERVICES. ~~The [If the diagnosis and evaluation team recommends services, the]~~ proposed client, the parent if the proposed client is a minor, or the guardian of the person may apply for voluntary mental retardation services under Section 593.022 or 593.024.

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* [~~comprehensive diagnosis and evaluation~~] 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* [~~comprehensive diagnosis and evaluation of~~] the person admitted under this section shall be performed within 30 days after the date of admission.

SECTION 10. Subchapter B, Chapter 593, Health and Safety Code, is amended by adding Section 593.0275 to read as follows:

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.*

SECTION 11. Section 593.028(a), Health and Safety Code, is amended to read as follows:

(a) A person may be admitted to a residential care facility for respite care without a *determination of mental retardation and interdisciplinary team recommendation* [~~comprehensive diagnosis and evaluation~~] 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.

SECTION 12. Section 593.041, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(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* [~~diagnosis and evaluation~~] of the proposed resident, may file an application for an *interdisciplinary team report and recommendation* [~~a determination~~] that the proposed client is in need of long-term placement in a residential care facility.

(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.

SECTION 13. Section 593.042(b), Health and Safety Code, is amended to read as follows:

(b) If the [~~diagnosis and evaluation~~] report required under Section 593.013 [593.006] is completed, a copy must be included in the application.

SECTION 14. Section 593.048, Health and Safety Code, is amended to read as follows:

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* [~~comprehensive diagnosis and evaluation~~] 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* [~~diagnosis and evaluation~~] under Section 593.007; and
- (2) the provisions of Sections 593.043, 593.047, 593.049, 593.050, and 593.053.

SECTION 15. Section 593.050(d), Health and Safety Code, is amended to read as follows:

(d) The Texas Rules of Civil Evidence apply. The results of the *determination of mental retardation and the current interdisciplinary team report and recommendations* [~~diagnosis and evaluation~~] shall be presented in evidence.

SECTION 16. Sections 594.001(b) and (c), Health and Safety Code, are amended to read as follows:

(b) This chapter does not apply to the:

- (1) transfer of a client for emergency medical, dental, or psychiatric care for not more than 30 consecutive days;
- (2) voluntary withdrawal of a client from mental retardation services; or
- (3) discharge of a client by a superintendent or director because the person is not a person with mental retardation according to the results of the *determination of mental retardation* [~~comprehensive diagnosis and evaluation~~].

(c) A discharge under Subsection (b)(3) is without further hearings, unless an administrative hearing under Subchapter A, Chapter 593, to contest the *determination of mental retardation* [~~comprehensive diagnosis and evaluation~~] is requested.

SECTION 17. Section 613.005(b), Health and Safety Code, is amended to read as follows:

(b) If the court considers it necessary, the court may order the performance of a *determination of mental retardation* [~~comprehensive diagnosis and evaluation~~], as provided by Section 593.005, to help the court evaluate the ward's capacity to agree to the donation.

SECTION 18. Subchapter B, Chapter 415, Government Code, is amended by adding Section 415.037 to read as follows:

Sec. 415.037. CERTIFICATION OF SPECIAL OFFICERS FOR MENTAL HEALTH ASSIGNMENT. (a) The commission may certify a sheriff, sheriff's deputy, justice of the peace, constable, or municipal police officer as a special officer for mental health assignment if the peace officer has:

- (1) successfully completed a training course in emergency first aid and lifesaving techniques approved by the commission;
- (2) successfully completed a training course in mental health issues administered by the commission; and
- (3) passed an examination administered by the commission that is designed to test the officer's:

(A) *knowledge and recognition of the symptoms of mental illness and mental disabilities; and*

(B) *knowledge of mental health crisis intervention strategies.*

(b) *The commission may issue a professional achievement or proficiency certificate to an officer who meets the requirements provided by Subsection (a).*

(c) *The commission by rule may establish minimum requirements for the training, testing, and certification of special officers for mental health assignment.*

SECTION 19. Section 531.001, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g) *It is the goal of this state to establish at least one special officer for mental health assignment in each county. To achieve this goal, the department shall assist a local law enforcement agency that desires to have an officer certified under Section 415.037, Government Code.*

SECTION 20. Section 574.045, Health and Safety Code, is amended by amending Subsection (a) and by adding Subsections (e), (f), and (g) to read as follows:

(a) The court may authorize the transportation of a committed patient to the designated mental health facility by:

(1) a relative or other responsible person who has a proper interest in the patient's welfare and who receives no remuneration, except for actual and necessary expenses;

(2) the facility administrator of the designated mental health facility, if the administrator notifies the court that facility personnel are available to transport the patient; ~~or~~

(3) *a special officer for mental health assignment certified under Section 415.037, Government Code; or*

(4) the sheriff or constable, if no person is available under Subdivision (1), ~~or~~ (2), or (3).

(e) *The patient may not be transported with a state prisoner.*

(f) *The patient may not be physically restrained unless necessary to protect the health and safety of the patient or of a person traveling with the patient. If the treating physician or the person transporting a patient determines that physical restraint of the patient is necessary, that person shall document the reasons for that determination and the duration for which the restraints are needed. The person transporting the patient shall deliver the document to the facility at the time the patient is delivered. The facility shall include the document in the patient's clinical record.*

(g) *The person transporting the patient shall give the patient reasonable opportunities to get food and water and to use a bathroom.*

SECTION 21. This Act takes effect September 1, 1993, and applies to a proceeding relating to a person with mental retardation that begins on or after that date. A proceeding that begins before the effective date of this Act is governed by the law in existence on the date the proceeding began, and that law is continued in effect for that purpose.

SECTION 22. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on March 18, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 771 on April 19, 1993, by a non-record vote; passed by the Senate, with amendments, on April 15, 1993, by a viva-voce vote.

Approved April 29, 1993.

Effective Sept. 1, 1993.