

HEALTH AND SAFETY CODE CHAPTER 591. GENERAL PROVISIONS

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TITLE 7. MENTAL HEALTH AND MENTAL RETARDATION

SUBTITLE D. PERSONS WITH MENTAL RETARDATION ACT

CHAPTER 591. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 591.001. SHORT TITLE. This subtitle may be cited as the Persons with Mental Retardation Act.

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

Sec. 591.002. PURPOSE. (a) It is the public policy of this state that persons with mental retardation have the opportunity to develop to the fullest extent possible their potential for becoming productive members of society.

(b) It is the purpose of this subtitle to provide and assure a continuum of quality services to meet the needs of all persons with mental retardation in this state.

(c) The state's responsibility to persons with mental retardation does not replace or impede parental rights and responsibilities or terminate the activities of persons, groups, or associations that advocate for and assist persons with mental retardation.

(d) It is desirable to preserve and promote living at home if feasible. If living at home is not possible and placement in a residential facility for persons with mental retardation is necessary, a person must be admitted in accordance with basic due process requirements, giving appropriate consideration to parental desires if possible. The person must be admitted to a facility that provides habilitative training for the person's condition, that fosters the personal development of the person, and that enhances the person's ability to cope with the environment.

(e) Because persons with mental retardation have been denied rights solely because of their retardation, the general public should be educated to the fact that persons with mental retardation who have not been adjudicated incompetent and for whom a guardian has not been appointed by a due process proceeding in a

court have the same rights and responsibilities enjoyed by all citizens of this state. All citizens are urged to assist persons with mental retardation in acquiring and maintaining rights and in participating in community life as fully as possible.

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

Sec. 591.003. DEFINITIONS. In this subtitle:

(1) "Adaptive behavior" means the effectiveness with or degree to which a person meets the standards of personal independence and social responsibility expected of the person's age and cultural group.

(2) "Board" means the Texas Board of Mental Health and Mental Retardation.

(3) "Care" means the life support and maintenance services or other aid provided to a person with mental retardation, including dental, medical, and nursing care and similar services.

(4) "Client" means a person receiving mental retardation services from the department or a community center.

(5) "Commissioner" means the commissioner of mental health and mental retardation.

(6) "Community center" means an entity organized under Subchapter A, Chapter 534, that provides mental retardation services.

(7) "Department" means the Texas Department of Mental Health and Mental Retardation.

(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.

(9) "Director" means the director of a community center.

(10) "Group home" means a residential arrangement, other than a residential care facility, operated by the department or a community center in which not more than 15 persons with mental retardation voluntarily live and under appropriate supervision may share responsibilities for operation of the living unit.

(11) "Guardian" means the person who, under court

order, is the guardian of the person of another or of the estate of another.

(12) "Habilitation" means the process, including programs of formal structured education and training, by which a person is assisted in acquiring and maintaining life skills that enable the person to cope more effectively with the person's personal and environmental demands and to raise the person's physical, mental, and social efficiency.

(13) "Mental retardation" means significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

(14) "Mental retardation services" means programs and assistance for persons with mental retardation that may include a determination of mental retardation, interdisciplinary team recommendations, 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.

(15) "Minor" means a person younger than 18 years of age who:

(A) is not and has not been married; or

(B) has not had the person's disabilities of minority removed for general purposes.

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

(17) "Resident" means a person living in and receiving services from a residential care facility.

(18) "Residential care facility" means a facility operated by the department or a community center that provides 24-hour services, including domiciliary services, directed toward enhancing the health, welfare, and development of persons with mental retardation.

(19) "Service provider" means a person who provides mental retardation services.

(20) "Subaverage general intellectual functioning" refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age-group mean for the tests used.

(21) "Superintendent" means the individual in charge of a residential care facility.

(22) "Training" means the process by which a person with mental retardation is habilitated and may include the teaching of life and work skills.

(23) "Treatment" means the process by which a service provider attempts to ameliorate the condition of a person with mental retardation.

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

Sec. 591.004. RULES. The board by rule shall ensure the implementation of this subtitle.

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

Sec. 591.005. LEAST RESTRICTIVE ALTERNATIVE. The least restrictive alternative is:

(1) the available program or facility that is the least confining for a client's condition; and

(2) the service and treatment that is provided in the least intrusive manner reasonably and humanely appropriate to the person's needs.

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

Sec. 591.006. CONSENT. (a) Consent given by a person is legally adequate if the person:

(1) is not a minor and has not been adjudicated incompetent to manage the person's personal affairs by an appropriate court of law;

(2) understands the information; and

(3) consents voluntarily, free from coercion or undue influence.

(b) The person giving the consent must be informed of and

understand:

(1) the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure;

(2) that the withdrawal or refusal of consent will not prejudice the future provision of care and services; and

(3) the method used in the proposed procedure if the person is to receive unusual or hazardous treatment procedures, experimental research, organ transplantation, or nontherapeutic surgery.

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

SUBCHAPTER B. DUTIES OF DEPARTMENT

Sec. 591.011. DEPARTMENT RESPONSIBILITIES. (a) The department shall make all reasonable efforts consistent with available resources to:

(1) assure that each identified person with mental retardation who needs mental retardation services is given while these services are needed quality care, treatment, education, training, and rehabilitation appropriate to the person's individual needs other than those services or programs explicitly delegated by law to other governmental agencies;

(2) initiate, carry out, and evaluate procedures to guarantee to persons with mental retardation the rights listed in this subtitle;

(3) carry out this subtitle, including planning, initiating, coordinating, promoting, and evaluating all programs developed;

(4) provide either directly or by cooperation, negotiation, or contract with other agencies and those persons and groups listed in Section 533.034, a continuum of services to persons with mental retardation; and

(5) provide, either directly or by contract with other agencies, a continuum of services to children, juveniles, or adults with mental retardation committed into the department's custody by the juvenile or criminal courts.

(b) The services provided by the department under Subsection (a)(4) shall include:

- (1) treatment and care;
- (2) education and training, including sheltered workshop programs;
- (3) counseling and guidance; and
- (4) development of residential and other facilities to enable persons with mental retardation to live and be habilitated in the community.

(c) The facilities provided under Subsection (b) shall include group homes, foster homes, halfway houses, and day-care facilities for persons with mental retardation to which the department has assigned persons with mental retardation.

(d) The department shall exercise periodic and continuing supervision over the quality of services provided under this section.

(e) The department shall have the right of access to all residents and records of residents who are placed with residential service providers.

(f) The department's responsibilities under this subtitle are in addition to all other responsibilities and duties of the department under other law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 13, eff. Aug. 30, 1993.

Sec. 591.012. COOPERATION WITH OTHER AGENCIES. Each agency authorized to provide education, support, related services, rehabilitation, and other services shall cooperate with the department under this subtitle to the extent cooperation is consistent with the agency's functions and authority.

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

Sec. 591.013. LONG-RANGE PLAN. (a) The department and the Texas Department of Human Services shall jointly develop a long-range plan for services to persons with developmental disabilities, including mental retardation.

(b) The commissioner of each department shall appoint the necessary staff to develop the plan through research of appropriate

topics and public hearings to obtain testimony from persons with knowledge of or interest in state services to persons with developmental disabilities, including mental retardation.

(c) In developing the plan, the department shall consider existing plans or studies made by the departments.

(d) The plan must address at least the following topics:

(1) the needs of persons with developmental disabilities, including mental retardation;

(2) how state services should be structured to meet those needs;

(3) how the ICF-MR program, the waiver program under Section 1915(c), federal Social Security Act, other programs under Title XIX, federal Social Security Act, and other federally funded programs can best be structured and financed to assist the state in delivering services to persons with developmental disabilities, including mental retardation;

(4) the statutory limits and rule or policy changes necessary to ensure the controlled growth of the programs under Title XIX, federal Social Security Act and other federally funded programs;

(5) methods for expanding services available through the ICF-MR program to persons with related conditions as defined by federal regulations relating to the medical assistance program; and

(6) the cost of implementing the plan.

(e) The departments shall, if necessary, modify their respective long-range plans and other existing plans relating to the provision of services to persons with developmental disabilities, including mental retardation, to incorporate the provisions of the joint plan.

(f) The departments shall review and revise the plan biennially. Each department shall consider the most recent revision of the plan in any modifications of that department's long-range plans and in each future budget request.

(g) This section does not affect the authority of the department and the Texas Department of Human Services to carry out their separate functions as established by state and federal law.

(h) In this section, "ICF-MR program" means the medical assistance program serving persons with mental retardation who receive care in intermediate care facilities.

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

SUBCHAPTER C. PENALTIES AND REMEDIES

Sec. 591.021. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally or knowingly causes, conspires with another to cause, or assists another to cause the unlawful continued detention in or unlawful admission or commitment of a person to a facility specified in this subtitle with the intention of harming that person.

(b) An offense under this section is a Class B misdemeanor.

(c) The district and county attorney within their respective jurisdictions shall prosecute a violation of this section.

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

Sec. 591.022. CIVIL PENALTY. (a) A person who intentionally violates the rights guaranteed by this subtitle to a person with mental retardation is liable to the person injured by the violation in an amount of not less than \$100 or more than \$5,000.

(b) A person who recklessly violates the rights guaranteed by this subtitle to a person with mental retardation is liable to the person injured by the violation in an amount of not less than \$100 or more than \$1,000.

(c) A person who intentionally releases confidential information or records of a person with mental retardation in violation of law is liable to the person injured by the unlawful disclosure for \$1,000 or three times the actual damages, whichever is greater.

(d) A cause of action under this section may be filed by:

- (1) the injured person;
- (2) the injured person's parent, if the person is a minor;
- (3) a guardian, if the person has been adjudicated

incompetent; or

(4) the injured person's next friend in accordance with Rule 44, Texas Rules of Civil Procedure.

(e) The cause of action may be filed in a district court in Travis County or in the county in which the defendant resides.

(f) This section does not supersede or abrogate other remedies existing in law.

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

Sec. 591.023. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) A district court, in an action brought in the name of the state by the state attorney general or a district or county attorney within the attorney's respective jurisdiction, may issue a temporary restraining order, a temporary injunction, or a permanent injunction to:

(1) restrain and prevent a person from violating this subtitle or a rule adopted by the department under this subtitle; or

(2) enforce compliance with this subtitle or a rule adopted by the department under this subtitle.

(b) A person who violates the terms of an injunction issued under this section shall forfeit and pay to the state a civil penalty of not more than \$5,000 for each violation, but not to exceed a total of \$20,000.

(c) In determining whether an injunction has been violated, the court shall consider the maintenance of procedures adopted to ensure compliance with the injunction.

(d) The state attorney general or the district or county attorney, acting in the name of the state, may petition the court issuing the injunction for recovery of civil penalties under this section.

(e) A civil penalty recovered under this section shall be paid to the state for use in mental retardation services.

(f) An action filed under this section may be brought in a district court in Travis County or in the county in which the defendant resides.

(g) This section does not supersede or abrogate other

remedies existing at law.

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

Sec. 591.024. CIVIL ACTION AGAINST DEPARTMENT EMPLOYEE.

(a) The state attorney general shall provide legal counsel to represent a department employee in a civil action brought against the person under this subtitle for a claim of alleged negligence or other act of the person while employed by the department. The person shall cooperate fully with the state attorney general in the defense of the claim, demand, or suit.

(b) The state shall hold harmless and indemnify the person against financial loss arising out of a claim, demand, suit, or judgment by reason of the negligence or other act by the person, if:

(1) at the time the claim arose or damages were sustained, the person was acting in the scope of the person's authorized duties; and

(2) the claim or cause of action or damages sustained did not result from an intentional and wrongful act or the person's reckless conduct.

(c) To be eligible for assistance under this section, the person must deliver to the department the original or a copy of the summons, complaint, process, notice, demand, or pleading not later than the 10th day after the date on which the person is served with the document. The state attorney general may assume control of the person's representation on delivery of the document or a copy of the document to the department.

(d) This section does not impair, limit, or modify rights and obligations existing under an insurance policy.

(e) This section applies only to a person named in this section and does not affect the rights of any other person.

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

Sec. 591.025. LIABILITY. An officer or employee of the department or a community center, acting reasonably within the scope of the person's employment and in good faith, is not civilly or criminally liable under this subtitle.

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