

HEALTH AND SAFETY CODE CHAPTER 594. TRANSFER AND DISCHARGE

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TITLE 7. MENTAL HEALTH AND MENTAL RETARDATION

SUBTITLE D. PERSONS WITH MENTAL RETARDATION ACT

CHAPTER 594. TRANSFER AND DISCHARGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 594.001. APPLICABILITY OF CHAPTER. (a) A client may not be transferred or discharged except as provided by this chapter and department rules.

(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.

(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 is requested.

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

Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 16, eff. Sept. 1, 1993.

Sec. 594.002. LEAVE; FURLOUGH. The superintendent may grant or deny a resident a leave of absence or furlough.

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

Sec. 594.003. HABEAS CORPUS. This chapter does not alter or limit a resident's right to obtain a writ of habeas corpus.

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

SUBCHAPTER B. TRANSFER OR DISCHARGE

Sec. 594.011. SERVICE PROVIDER. A service provider shall

transfer a client, furlough a client to an alternative placement, or discharge a client if the service provider determines:

(1) that the client's placement is no longer appropriate to the person's individual needs; or

(2) that the client can be better treated and habilitated in another setting; and

(3) placement in another setting that can better treat and habilitate the client has been secured.

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

Sec. 594.012. REQUEST BY CLIENT, PARENT, OR GUARDIAN.

(a) A client, the parent of a client who is a minor, or the guardian of the person may request a transfer or discharge.

(b) The service provider shall determine the appropriateness of the requested transfer or discharge.

(c) If a request is denied, the client, parent, or guardian of the person is entitled to a hearing under Section 594.015 to contest the decision.

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

Sec. 594.013. NOTICE OF TRANSFER OR DISCHARGE; APPROVAL.

(a) A client and the parent or guardian must be notified not later than the 31st day before the date of the proposed transfer or discharge of the client.

(b) A client may not be transferred to another facility without the prior approval and knowledge of the parents or guardian of the client.

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

Sec. 594.014. RIGHT TO ADMINISTRATIVE HEARING. (a) A

client and the parent or the guardian shall be informed of the right to an administrative hearing to contest a proposed transfer or discharge.

(b) A client may not be transferred to another facility or discharged from mental retardation services unless the client is given the opportunity to request and receive an administrative hearing to contest the proposed transfer or discharge.

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

Sec. 594.015. ADMINISTRATIVE HEARING. (a) An administrative hearing to contest a transfer or discharge decision must 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.

(b) The client, the parent of a client who is a minor, the guardian of the person, and the superintendent have the right to:

(1) be present and represented at the hearing; and

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

(c) Evidence, including oral and written testimony, shall be presented.

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

Sec. 594.016. DECISION. (a) After each case, 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 an appeal is filed within that period.

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

(d) If an appeal is not filed from a final order granting a request for a transfer or discharge, the superintendent shall proceed with the transfer or discharge.

(e) If an appeal is not filed from a final order denying a request for a transfer or discharge, the client shall remain in the same program or facility at which the client is receiving services.

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

Sec. 594.017. 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 an appeal is the county court of Travis County or the county in which the 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. 594.018. NOTICE TO COMMITTING COURT. When a resident is discharged, the department shall notify the court that committed the resident to a residential care facility under Subchapter C, Chapter 593.

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

Sec. 594.019. ALTERNATIVE SERVICES. (a) The department shall provide appropriate alternative or follow-up supportive services consistent with available resources by agreement among the department, the mental retardation authority in the area in which the client will reside, and the client, parent of a client who is a minor, or guardian of the person. The services shall be consistent with the rights guaranteed in Chapter 592.

(b) Placement in a residential care facility, other than by transfer from another residential care facility, may be made only as provided by Subchapters B and C, Chapter 593.

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

SUBCHAPTER C. TRANSFER TO STATE MENTAL HOSPITAL

Sec. 594.031. TRANSFER OF VOLUNTARY RESIDENT. A voluntary resident may not be transferred to a state mental hospital without legally adequate consent to the transfer.

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

Sec. 594.032. TRANSFER OF COURT-COMMITTED RESIDENT. (a) The superintendent may transfer a resident committed to a residential care facility under Subchapter C, Chapter 593, to a state mental hospital for mental health care if an examination of the resident by a licensed physician indicates symptoms of mental illness to the extent that care, treatment, control, and

rehabilitation in a state mental hospital is in the best interest of the resident.

(b) A resident transferred from a residential care facility to a state mental hospital may not remain in the hospital for longer than 30 consecutive days unless the transfer is authorized by a court order under this subchapter.

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

Sec. 594.033. EVALUATION; COURT ORDER. The hospital administrator of the state mental hospital to which a court-committed resident is transferred shall immediately have an evaluation of the resident's condition performed.

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

Sec. 594.034. REQUEST FOR TRANSFER ORDER. (a) If the evaluation performed under Section 594.033 reveals that continued hospitalization is necessary for longer than 30 consecutive days, the hospital administrator of the state mental hospital to which a court-committed resident is transferred shall promptly request from the court that originally committed the resident to the residential care facility an order transferring the resident to the hospital.

(b) In support of the request, the hospital administrator shall send two certificates of medical examination for mental illness as described in Section 574.011, stating that the resident is:

- (1) a person with mental illness; and
- (2) requires observation or treatment in a mental

hospital.

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

Sec. 594.035. HEARING DATE. When the committing court receives the hospital administrator's request and the certificates of medical examination, the court shall set a date for the hearing on the proposed transfer.

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

Sec. 594.036. NOTICE. (a) A copy of the transfer request and notice of the transfer hearing shall be personally served on the resident not later than the eighth day before the date set for the hearing.

(b) Notice shall also be served on the parents if the resident is a minor and on the guardian for the resident's person if the resident has been declared to be incapacitated as provided by the Texas Probate Code and a guardian has been appointed.

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

Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 1, eff. Sept. 1, 1995.

Sec. 594.037. HEARING LOCATION. (a) The judge may hold a transfer hearing on the petition at any suitable place in the county.

(b) The hearing should be held in a physical setting that is not likely to have a harmful effect on the resident.

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

Sec. 594.038. HEARING BEFORE JURY. (a) The transfer hearing must be held before a jury unless a waiver of trial by jury is made in writing under oath by the resident, the parent if the resident is a minor, or the resident's guardian of the person.

(b) Notwithstanding the executed waiver, a jury shall determine the issue of the case if the resident, the parent, the guardian of the person, or the resident's legal representative demands a jury trial at any time before the hearing's determination is made.

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

Sec. 594.039. RESIDENT PRESENT AT HEARING. The resident is entitled to be present at the transfer hearing unless the court determines it is in the resident's best interest to not be present.

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

Sec. 594.040. OPENING HEARING. The transfer hearing must be open to the public unless the court:

(1) finds that it is in the best interest of the resident to close the hearing; and

(2) obtains the consent of the resident, a parent of a resident who is a minor, the resident's guardian of the person, and the resident's legal representative to close the hearing.

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

Sec. 594.041. MEDICAL EVIDENCE. (a) At least two physicians, at least one of whom must be a psychiatrist, must testify at the transfer hearing. The physicians must have examined the resident not earlier than the 15th day before the date set for the hearing.

(b) A person may not be transferred to a mental hospital except on competent medical or psychiatric testimony.

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

Sec. 594.042. HEARING DETERMINATION. The court by order shall approve the transfer of the resident to a state mental hospital if the court or jury determines that the resident:

(1) is a person with mental illness; and

(2) requires a transfer to a state mental hospital for treatment for the resident's own welfare and protection or for the protection of others.

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

Sec. 594.043. DISCHARGE OF RESIDENT. A resident who is transferred to a state mental hospital and no longer requires treatment in a state mental hospital or a residential care facility shall be discharged.

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

Sec. 594.044. TRANSFER OF RESIDENTIAL CARE FACILITY.

(a) Except as provided by Section 594.045, a resident who is transferred to a state mental hospital and no longer requires treatment in a state mental hospital but requires treatment in a residential care facility shall be returned to the residential care facility from which the resident was transferred.

(b) The hospital administrator of the state mental hospital shall notify the superintendent of the facility from which the resident was transferred that hospitalization in a state mental hospital is not necessary or appropriate for the resident. The superintendent shall immediately provide for the return of the resident to the facility.

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

Sec. 594.045. RETURN OF COURT-ORDERED TRANSFER RESIDENT.

(a) If a resident has been transferred to a state mental hospital under a court order under this subchapter, the hospital administrator of the state mental hospital shall:

(1) send a certificate to the committing court stating that the resident does not require hospitalization in a state mental hospital but requires care in a residential care facility because of mental retardation; and

(2) request that the resident be transferred to a residential care facility.

(b) The transfer may be made only if the judge of the committing court approves the transfer as provided by Section 575.013.

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