

# Civil Commitment of Individuals with Intellectual Disabilities in Texas

## Understanding Legal Pathways, Evidentiary Standards, and TAC Implementation for SSLC Involuntary Commitment

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# Key Definitions

- Intellectual Disability: Subaverage intellectual functioning + adaptive deficits from developmental period
- Residential Care Facility: Is only SSLCs
- Least Restrictive Alternative: Least confining, least intrusive setting appropriate to the individual

# Facts

- Residential commitment hearings occur infrequently.
- Some people are familiar with involuntary commitment standards for mental health proceedings, but the standards and processes are not the same.
- Because the burden of proof applied by the court is **reasonable doubt** many people mistakenly assume all involuntary commitments relate to criminal activity. In fact, most involuntary commitments take place in civil court.

# Legal Safeguards in Commitment To Residential Care Facility Hearings

- Right to counsel
- Right to notice & hearing
- Right to jury trial
- Burden: Beyond a reasonable doubt
- Rules of Evidence apply

# Statutory Criteria for Involuntary SSLC Commitment (§ 593.052)

- To commit someone, court must find:
  1. Person has an intellectual disability and BECAUSE of the ID
  2. Poses a substantial risk of harm or cannot meet basic needs
  3. Less restrictive alternatives are not sufficient
  4. SSLC can meet their needs
- All four findings must be proven beyond a reasonable doubt

# Person Has An Intellectual Disability (§ 593.003 - 593.010 )

- Only an “authorized provider” can make this determination
  - a physician licensed to practice in this state;
  - a psychologist licensed to practice in this state;
  - a professional licensed to practice in this state and certified by the department; or
  - a provider certified by the department before September 1, 2013.
- Right to an Admin Hearing and Appeal to contest the findings

# Defining 'Substantial Risk'

## (26 TAC § 904.25(d))

➤ Risk exists if:

- ✓ IQ is 4+ SDs below mean (severe/profound ID)

- ✓ ICAP Level 1–4, or

- ✓ ICAP Level 5–6 with:

  - 180+ min/week nursing needs OR

  - Dangerous behaviors needing intensive staff support

# Application for Commitment To Court

➤ May be filed by parent, guardian, court, LIDDA, or other interested party

✓ The Application includes

- Requesting an IDT Report; and
- Recommendation that person is in need of SSLC

✓ Must be filed with the county clerk in the county in which the proposed resident resides



# Contents of the Application to Court

## ➤ Must include:

- ✓ Resident info
- ✓ Facts supporting commitment
- ✓ Statement why less restrictive alternatives are inappropriate
- ✓ A copy of the IDT Report if required and completed

# IDT Requirement – General Rule (§ 593.041(d))

➤ If the Application to the Court is filed by a court, LIDDA, or other interested party, BUT NOT parent (of a minor) or guardian :

✓ A person may not be committed to the department for SSLC placement

- Unless an IDT report recommending placement has been completed
- IDT report must be no more than 6 months old

✓ If no IDT Report, court must order the report.

# IDT Composition

§ 591.003(8)



## Who Must Participate in the IDT

- The individual
- The individual's legally authorized representative (LAR), if any
- Qualified professionals with special training and experience in ID (e.g., psychologist, psychiatrist, social worker)
- May include service providers, school reps, or others at request
  - In re A.W., 443 S.W.3d 405, 411–13 (Tex. App.—Eastland 2014, no pet.)

# What the IDT Report Must Contain

- Interview the person and the person's parent/guardian
- Review:
  - medical and social history
  - medical assessment (audiological, neurological, vision)
  - psychological and social assessment
  - adaptive behavior levels
- Determine and obtain any needed additional assessments (education, vocational)
- Identify the person's service preferences and needs
- Recommend services that meet the person's needs and consider the person's preferences
- Prepare and distribute written report of findings and recommendations, signed by all team members

# Application for Commitment to Court Without IDT Report (§ § 593.0511; 593.052(a)(2))

- ✓ Effective September 1, 2023 (SB 944)
  - Allows a court to rely on a parent (of a minor) or guardian's Petition without an IDT Report
  - The petition serves as the basis or recommendation for placement referenced in the Application to the Court.
- ✓ But SB 944 did not:
  - Change the eligibility criteria under § 593.052
  - Alter the requirement that all commitment criteria be proven beyond a reasonable doubt

# Court Commits Without IDT Recommendation

- Parent (of a minor) or guardian must notify the LIDDA and provide a copy of the commitment order to the LIDDA.
- must assist the LIDDA in compiling the information required to complete an Application packet to the SSLC

# Judicial Findings Without IDT Report

- Evidence is still required
- Court can rely on:
  - ✓ Guardian or parent provides evidence
  - ✓ Records
  - ✓ Clinical evaluations
  - ✓ Testimony
- No findings can be made in a vacuum

# Evidentiary Requirements for Commitment

- Sections 593.050 and 593.052 do not require expert medical or psychiatric testimony.
  - Therefore, expert testimony is not legally required under Chapter 593.
- However, lack of expert evidence may render findings factually insufficient and risk injustice.
  - *In re A.W.* held that, in absence of such evidence, a new trial may be warranted due to insufficiency.



# Duration and Release

- No set term limits
- Not a declaration of incompetency (Sec. 593.054)
- Release when:
  - ✓ Criteria no longer met
  - ✓ IDT recommends
  - ✓ Person/guardian seeks community transition

# Appeals and Review

- Right to appeal (Sec. 593.056)
  - Not accelerated, but may get preference setting
- Civil procedure rules apply
- Court can stay commitment during appeal