

BILL ANALYSIS

C.S.H.B. 871
By: Roberts
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have called on nonprofit organizations, including faith-based organizations, to take a more active role with the Department of Family and Protective Services (DFPS) in the process of providing services to families in crisis. C.S.H.B. 871 seeks to facilitate such increased involvement by requiring DFPS to cooperate with such organizations to provide certain information regarding services and resources available to such families and by providing for an authorization agreement to be entered into between a child's parent and any authorized adult caregiver for the caregiver to temporarily care for the child.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 871 amends the Family Code to expand the class of persons with whom a parent of a child may enter into an authorization agreement to perform certain acts in regard to the child, including for a child placed under a parental child safety agreement, from only a grandparent, adult sibling, or adult aunt or uncle of the child to any adult caregiver authorized by a parent to provide temporary care for the child under an authorization agreement. The bill establishes that an authorization agreement between a child's parent and an adult caregiver does not subject the adult caregiver to any law or rule governing the licensing or regulation of a residential child-care facility. The bill establishes that a child who is the subject of such an authorization agreement is not considered to be placed in foster care and the parties to the authorization agreement are not subject to any law or rule governing foster care providers. The bill specifies that an authorization agreement is for a term of six months from the date the parties enter into the agreement and renews automatically for six-month terms unless an earlier expiration date is stated in the authorization agreement, the authorization agreement is terminated, or a court authorizes the continuation of the agreement. The bill revises the statement by the parent that is required to be contained in the authorization agreement to reflect those authorization agreement terms.

C.S.H.B. 871 requires the Department of Family and Protective Services (DFPS) to cooperate with nonprofit organizations, including faith-based organizations, in providing information to families in crisis regarding child and family services, including respite care, voluntary guardianship, and other support services available in the child's community. The bill establishes that DFPS does not incur any obligation as a result of providing such information and exempts DFPS from liability for damages arising out of the provision of that information. The bill

prohibits DFPS from initiating an investigation of child abuse or neglect based solely on a request submitted to DFPS by a child's parent for information relating to child and family services available to families in crisis.

C.S.H.B. 871 amends the Human Resources Code to make statutory provisions relating to the prohibition against a person operating a child-care facility or child-placing agency without a license issued by DFPS inapplicable to a living arrangement in a caretaker's home involving one or more children or a sibling group in which the caretaker has a written authorization agreement with the parent of each child or sibling group to care for each child or sibling group; does not care for more than six children, excluding children who are related to the caretaker; and does not receive compensation for caring for any child or sibling group.

C.S.H.B. 871 repeals Sections 34.001 and 34.008(d), Family Code.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 871 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

No equivalent provision.

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. The heading to Chapter 34, Family Code, is amended to read as follows:
CHAPTER 34. AUTHORIZATION AGREEMENT FOR NONPARENT ADULT CAREGIVER ~~[RELATIVE]~~

SECTION 2. Section 34.0015, Family Code, is amended to read as follows:
Sec. 34.0015. DEFINITIONS ~~[DEFINITION]~~. In this chapter:
(1) "Adult caregiver" means an adult person whom a parent has authorized to provide temporary care for a child under this chapter.
(2) "Parent" ~~["parent"]~~ has the meaning assigned by Section 101.024.

SECTION 3. Sections 34.002(a) and (c), Family Code, are amended to read as follows:
(a) A parent or both parents of a child may enter into an authorization agreement with an adult caregiver ~~[a relative of the child listed in Section 34.001]~~ to authorize the adult caregiver ~~[relative]~~ to perform the following acts in regard to the child:
(1) to authorize medical, dental,

psychological, or surgical treatment and immunization of the child, including executing any consents or authorizations for the release of information as required by law relating to the treatment or immunization;

(2) to obtain and maintain health insurance coverage for the child and automobile insurance coverage for the child, if appropriate;

(3) to enroll the child in a day-care program or preschool or in a public or private elementary or secondary school;

(4) to authorize the child to participate in age-appropriate extracurricular, civic, social, or recreational activities, including athletic activities;

(5) to authorize the child to obtain a learner's permit, driver's license, or state-issued identification card;

(6) to authorize employment of the child; and

(7) to apply for and receive public benefits on behalf of the child.

(c) An authorization agreement under this chapter does not confer on an adult caregiver [~~a relative of the child listed in Section 34.001 or a relative or other person with whom the child is placed under a child safety placement agreement~~] the right to authorize the performance of an abortion on the child or the administration of emergency contraception to the child.

No equivalent provision.

SECTION 4. Section 34.0021, Family Code, is amended to read as follows:

Sec. 34.0021. AUTHORIZATION AGREEMENT BY PARENT IN CHILD PROTECTIVE SERVICES CASE. A parent may enter into an authorization agreement with an adult caregiver [~~a relative or other person~~] with whom a child is placed under a parental child safety placement agreement approved by the Department of Family and Protective Services to allow the person to perform the acts described by Section 34.002(a) with regard to the child:

(1) during an investigation of abuse or neglect; or

(2) while the department is providing services to the parent.

No equivalent provision.

SECTION 5. Chapter 34, Family Code, is amended by adding Section 34.0022 to read

as follows:

Sec. 34.0022. INAPPLICABILITY OF CERTAIN LAWS. (a) An authorization agreement executed under this chapter between a child's parent and an adult caregiver does not subject the adult caregiver to any law or rule governing the licensing or regulation of a residential child-care facility under Chapter 42, Human Resources Code.

(b) A child who is the subject of an authorization agreement executed under this chapter is not considered to be placed in foster care and the parties to the authorization agreement are not subject to any law or rule governing foster care providers.

No equivalent provision.

SECTION 6. Section 34.003, Family Code, is amended to read as follows:

Sec. 34.003. CONTENTS OF AUTHORIZATION AGREEMENT. (a)

The authorization agreement must contain:

(1) the following information from the adult caregiver [~~relative of the child to whom the parent is giving authorization~~]:

(A) the name and signature of the adult caregiver [~~relative~~];

(B) the adult caregiver's [~~relative's~~] relationship to the child; and

(C) the adult caregiver's [~~relative's~~] current physical address and telephone number or the best way to contact the adult caregiver [~~relative~~];

(2) the following information from the parent:

(A) the name and signature of the parent; and

(B) the parent's current address and telephone number or the best way to contact the parent;

(3) the information in Subdivision (2) with respect to the other parent, if applicable;

(4) a statement that the adult caregiver [~~relative~~] has been given authorization to perform the functions listed in Section 34.002(a) as a result of a voluntary action of the parent and that the adult caregiver [~~relative~~] has voluntarily assumed the responsibility of performing those functions;

(5) statements that neither the parent nor the adult caregiver [~~relative~~] has knowledge that a parent, guardian, custodian, licensed child-placing agency, or other authorized agency

asserts any claim or authority inconsistent with the authorization agreement under this chapter with regard to actual physical possession or care, custody, or control of the child;

(6) statements that:

(A) to the best of the parent's and adult caregiver's [~~relative's~~] knowledge:

(i) there is no court order or pending suit affecting the parent-child relationship concerning the child;

(ii) there is no pending litigation in any court concerning:

(a) custody, possession, or placement of the child; or

(b) access to or visitation with the child; and

(iii) the court does not have continuing jurisdiction concerning the child; or

(B) the court with continuing jurisdiction concerning the child has given written approval for the execution of the authorization agreement accompanied by the following information:

(i) the county in which the court is located;

(ii) the number of the court; and

(iii) the cause number in which the order was issued or the litigation is pending;

(7) a statement that to the best of the parent's and adult caregiver's [~~relative's~~] knowledge there is no current, valid authorization agreement regarding the child;

(8) a statement that the authorization is made in conformance with this chapter;

(9) a statement that the parent and the adult caregiver [~~relative~~] understand that each party to the authorization agreement is required by law to immediately provide to each other party information regarding any change in the party's address or contact information;

(10) a statement by the parent that:

(A) indicates the authorization agreement is for a term of:

(i) six months from the date the parties enter into the agreement, which renews automatically for six-month terms unless the agreement is terminated as provided by Section 34.008; or

(ii) the time provided in the agreement with a specific expiration date earlier than six months after the date the parties enter into the agreement; and

(B) _____ identifies [~~establishes~~] the circumstances under which the authorization

agreement may be:

(i) terminated as provided by Section 34.008 before the term of the agreement expires; or

(ii) continued beyond the term of the agreement by a court as provided by Section 34.008(b) [expires, including that the authorization agreement:

~~[(A) is valid until revoked;~~

~~[(B) continues in effect after the death or during any incapacity of the parent; or~~

~~[(C) expires on a date stated in the authorization agreement]; and~~

(11) space for the signature and seal of a notary public.

(b) The authorization agreement must contain the following warnings and disclosures:

(1) that the authorization agreement is an important legal document;

(2) that the parent and the adult caregiver [relative] must read all of the warnings and disclosures before signing the authorization agreement;

(3) that the persons signing the authorization agreement are not required to consult an attorney but are advised to do so;

(4) that the parent's rights as a parent may be adversely affected by placing or leaving the parent's child with another person;

(5) that the authorization agreement does not confer on the adult caregiver [relative] the rights of a managing or possessory conservator or legal guardian;

(6) that a parent who is a party to the authorization agreement may terminate the authorization agreement and resume custody, possession, care, and control of the child on demand and that at any time the parent may request the return of the child;

(7) that failure by the adult caregiver [relative] to return the child to the parent immediately on request may have criminal and civil consequences;

(8) that, under other applicable law, the adult caregiver [relative] may be liable for certain expenses relating to the child in the adult caregiver's [relative's] care but that the parent still retains the parental obligation to support the child;

(9) that, in certain circumstances, the authorization agreement may not be entered into without written permission of the court;

(10) that the authorization agreement may be terminated by certain court orders

affecting the child;

(11) that the authorization agreement does not supersede, invalidate, or terminate any prior authorization agreement regarding the child;

(12) that the authorization agreement is void if a prior authorization agreement regarding the child is in effect and has not expired or been terminated;

(13) that, except as provided by Section 34.005(a-1), the authorization agreement is void unless:

(A) the parties mail a copy of the authorization agreement by certified mail, return receipt requested, or international registered mail, return receipt requested, as applicable, to a parent who was not a party to the authorization agreement, if the parent is living and the parent's parental rights have not been terminated, not later than the 10th day after the date the authorization agreement is signed; and

(B) if the parties do not receive a response from the parent who is not a party to the authorization agreement before the 20th day after the date the copy of the authorization agreement is mailed under Paragraph (A), the parties mail a second copy of the authorization agreement by first class mail or international first class mail, as applicable, to the parent not later than the 45th day after the date the authorization agreement is signed; and

(14) that the authorization agreement does not confer on an adult caregiver [~~a relative of the child~~] the right to authorize the performance of an abortion on the child or the administration of emergency contraception to the child.

No equivalent provision.

SECTION 7. Section 34.004(a), Family Code, is amended to read as follows:

(a) The authorization agreement must be signed and sworn to before a notary public by the parent and the adult caregiver [~~relative~~].

No equivalent provision.

SECTION 8. Section 34.007(b), Family Code, is amended to read as follows:

(b) The authorization agreement does not affect the rights of the child's parent or legal guardian regarding the care, custody, and control of the child, and does not mean that

the adult caregiver [~~relative~~] has legal custody of the child.

No equivalent provision.

SECTION 9. Chapter 34, Family Code, is amended by adding Section 34.0075 to read as follows:

Sec. 34.0075. TERM OF AUTHORIZATION AGREEMENT. An authorization agreement executed under this chapter is for a term of six months from the date the parties enter into the agreement and renews automatically for six-month terms unless:

(1) an earlier expiration date is stated in the authorization agreement;

(2) the authorization agreement is terminated as provided by Section 34.008; or

(3) a court authorizes the continuation of the agreement as provided by Section 34.008(b).

No equivalent provision.

SECTION 10. Section 34.008(c), Family Code, is amended to read as follows:

(c) An authorization agreement under this chapter terminates on written revocation by a party to the authorization agreement if the party:

(1) gives each party written notice of the revocation;

(2) files the written revocation with the clerk of the county in which:

(A) the child resides;

(B) the child resided at the time the authorization agreement was executed; or

(C) the adult caregiver [~~relative~~] resides; and

(3) files the written revocation with the clerk of each court:

(A) that has continuing, exclusive jurisdiction over the child;

(B) in which there is a court order or pending suit affecting the parent-child relationship concerning the child;

(C) in which there is pending litigation concerning:

(i) custody, possession, or placement of the child; or

(ii) access to or visitation with the child; or

(D) that has entered an order regarding the appointment of a guardian for the child under Subchapter B, Chapter 1104, Estates [~~Section 676, Texas Probate~~] Code.

SECTION 1. Subchapter C, Chapter 264, Family Code, is amended by adding Sections 264.2042 and 264.2043 to read as follows:

Sec. 264.2042. NONPROFIT ORGANIZATIONS PROVIDING CHILD AND FAMILY SERVICES.

The department shall cooperate with nonprofit organizations, including faith-based organizations, in providing to families in crisis:

- (1) child and family services, including respite care, voluntary guardianship, and other support services; and
- (2) information on child and family services available in the child's community.

Sec. 264.2043. PROHIBITION ON ABUSE OR NEGLECT INVESTIGATION BASED SOLELY ON REQUEST FOR INFORMATION.

No equivalent provision.

SECTION 11. Subchapter C, Chapter 264, Family Code, is amended by adding Sections 264.2042 and 264.2043 to read as follows:

Sec. 264.2042. NONPROFIT ORGANIZATIONS PROVIDING CHILD AND FAMILY SERVICES.

(a) The department shall cooperate with nonprofit organizations, including faith-based organizations, in providing information to families in crisis regarding child and family services, including respite care, voluntary guardianship, and other support services, available in the child's community.

(b) The department does not incur any obligation as a result of providing information as required by Subsection (a).

(c) The department is not liable for damages arising out of the provision of information as required by Subsection (a).

Sec. 264.2043. PROHIBITION ON ABUSE OR NEGLECT INVESTIGATION BASED SOLELY ON REQUEST FOR INFORMATION.

SECTION 12. Section 42.041(b), Human Resources Code, is amended to read as follows:

- (b) This section does not apply to:
- (1) a state-operated facility;
 - (2) an agency foster home or agency foster group home;
 - (3) a facility that is operated in connection with a shopping center, business, religious organization, or establishment where children are cared for during short periods while parents or persons responsible for the children are attending religious services, shopping, or engaging in other activities, including retreats or classes for religious instruction, on or near the premises, that does not advertise as a child-care facility or day-care center, and that informs parents that it is not licensed by the state;
 - (4) a school or class for religious instruction that does not last longer than two weeks and is conducted by a religious organization during the summer months;
 - (5) a youth camp licensed by the

- Department of State Health Services;
- (6) a facility licensed, operated, certified, or registered by another state agency;
 - (7) an educational facility that is accredited by the Texas Education Agency, the Southern Association of Colleges and Schools, or an accreditation body that is a member of the Texas Private School Accreditation Commission and that operates primarily for educational purposes for prekindergarten and above, a before-school or after-school program operated directly by an accredited educational facility, or a before-school or after-school program operated by another entity under contract with the educational facility, if the Texas Education Agency, the Southern Association of Colleges and Schools, or the other accreditation body, as applicable, has approved the curriculum content of the before-school or after-school program operated under the contract;
 - (8) an educational facility that operates solely for educational purposes for prekindergarten through at least grade two, that does not provide custodial care for more than one hour during the hours before or after the customary school day, and that is a member of an organization that promulgates, publishes, and requires compliance with health, safety, fire, and sanitation standards equal to standards required by state, municipal, and county codes;
 - (9) a kindergarten or preschool educational program that is operated as part of a public school or a private school accredited by the Texas Education Agency, that offers educational programs through grade six, and that does not provide custodial care during the hours before or after the customary school day;
 - (10) a family home, whether registered or listed;
 - (11) an educational facility that is integral to and inseparable from its sponsoring religious organization or an educational facility both of which do not provide custodial care for more than two hours maximum per day, and that offers an educational program in one or more of the following: prekindergarten through at least grade three, elementary grades, or secondary grades;
 - (12) an emergency shelter facility, other

than a facility that would otherwise require a license as a child-care facility under this section, that provides shelter or care to a minor and the minor's child or children, if any, under Section 32.201, Family Code, if the facility:

(A) is currently under a contract with a state or federal agency; or

(B) meets the requirements listed under Section 51.005(b)(3);

(13) a juvenile detention facility certified under Section 51.12, Family Code, a juvenile correctional facility certified under Section 51.125, Family Code, a juvenile facility providing services solely for the Texas Juvenile Justice Department, or any other correctional facility for children operated or regulated by another state agency or by a political subdivision of the state;

(14) an elementary-age (ages 5-13) recreation program operated by a municipality provided the governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs, that such standards are provided to the parents of each program participant, and that the ordinances shall include, at a minimum, staffing ratios, minimum staff qualifications, minimum facility, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards; and further provided that parents be informed that the program is not licensed by the state and the program may not be advertised as a child-care facility;

(15) an annual youth camp held in a municipality with a population of more than 1.5 million that operates for not more than three months and that has been operated for at least 10 years by a nonprofit organization that provides care for the homeless;

(16) a food distribution program that:

(A) serves an evening meal to children two years of age or older; and

(B) is operated by a nonprofit food bank in a nonprofit, religious, or educational facility for not more than two hours a day on regular business days;

(17) a child-care facility that operates for less than three consecutive weeks and less than 40 days in a period of 12 months;

(18) a program:

(A) in which a child receives direct

instruction in a single skill, talent, ability, expertise, or proficiency;

(B) that does not provide services or offerings that are not directly related to the single talent, ability, expertise, or proficiency;

(C) that does not advertise or otherwise represent that the program is a child-care facility, day-care center, or licensed before-school or after-school program or that the program offers child-care services;

(D) that informs the parent or guardian:

(i) that the program is not licensed by the state; and

(ii) about the physical risks a child may face while participating in the program; and

(E) that conducts background checks for all program employees and volunteers who work with children in the program using information that is obtained from the Department of Public Safety;

(19) an elementary-age (ages 5-13) recreation program that:

(A) adopts standards of care, including standards relating to staff ratios, staff training, health, and safety;

(B) provides a mechanism for monitoring and enforcing the standards and receiving complaints from parents of enrolled children;

(C) does not advertise as or otherwise represent the program as a child-care facility, day-care center, or licensed before-school or after-school program or that the program offers child-care services;

(D) informs parents that the program is not licensed by the state;

(E) is organized as a nonprofit organization or is located on the premises of a participant's residence;

(F) does not accept any remuneration other than a nominal annual membership fee;

(G) does not solicit donations as compensation or payment for any good or service provided as part of the program; and

(H) conducts background checks for all program employees and volunteers who work with children in the program using information that is obtained from the Department of Public Safety;

(20) a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which the caretaker:

(A) had a prior relationship with the child or sibling group or other family members of the child or sibling group;

(B) does not care for more than one unrelated child or sibling group;

(C) does not receive compensation or solicit donations for the care of the child or sibling group; and

(D) has a written agreement with the parent to care for the child or sibling group;

(21) a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which:

(A) the department is the managing conservator of the child or sibling group;

(B) the department placed the child or sibling group in the caretaker's home; and

(C) the caretaker had a long-standing and significant relationship with the child or sibling group before the child or sibling group was placed with the caretaker;

(22) a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which the child is in the United States on a time-limited visa under the sponsorship of the caretaker or of a sponsoring organization; [ø]

(23) a facility operated by a nonprofit organization that:

(A) does not otherwise operate as a child-care facility that is required to be licensed under this section;

(B) provides emergency shelter and care for not more than 15 days to children 13 years of age or older but younger than 18 years of age who are victims of human trafficking alleged under Section 20A.02, Penal Code;

(C) is located in a municipality with a population of at least 600,000 that is in a county on an international border; and

(D) meets one of the following criteria:

(i) is licensed by, or operates under an agreement with, a state or federal agency to provide shelter and care to children; or

(ii) meets the eligibility requirements for a contract under Section 51.005(b)(3); or

(24) a living arrangement in a caretaker's home involving one or more children or a sibling group in which the caretaker:

(A) has a written authorization agreement under Chapter 34, Family Code, with the parent of each child or sibling group to care for each child or sibling group;

(B) does not care for more than six children, excluding children who are related to the caretaker; and
(C) does not receive compensation for caring for any child or sibling group.

No equivalent provision.

SECTION 13. Sections 34.001 and 34.008(d), Family Code, are repealed.

SECTION 2. This Act takes effect September 1, 2017.

SECTION 14. Same as introduced version.