

## **BILL ANALYSIS**

C.S.H.B. 418  
By: Wu  
Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, emergency possession of a child is authorized without a court order in certain limited situations, including situations involving an immediate danger to the physical health and safety of a child, the sexual abuse of a child, or a danger to a child because the child's parent is under the influence of illegal drugs. Concerned parties assert that this authority does not include a situation involving a child who is a victim of human trafficking. Noting that child victims of human trafficking or sex trafficking are frequently conditioned by their handlers to run away from police officers or child protective services workers, if given the opportunity, concerned parties assert that there is a need for police officers and child protective services workers to have the authority to act quickly in a situation involving a child who is a victim of human trafficking in order to provide the child with a safe refuge and specialized services. C.S.H.B. 418 seeks to better protect the health and safety of child victims of human trafficking.

### **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. 418 amends the Human Resources Code to authorize the commissioners court of a county or governing body of a municipality to contract with a child-placing agency to verify a secure agency foster home or secure agency foster group home to provide a safe and therapeutic environment tailored to the needs of children who are victims of trafficking. The bill prohibits a child-placing agency from verifying a secure agency foster home or secure agency foster group home to provide services unless the child-placing agency holds an appropriate child-care services license that authorizes the agency to provide services to victims of trafficking in accordance with Department of Family and Protective Services (DFPS) standards for child-placing agencies.

C.S.H.B. 418 requires a verified secure agency foster home or secure agency foster group home to provide the following services: mental health and other services specifically designed to assist children who are victims of trafficking or of a continuous trafficking offense, including victim and family counseling, behavioral health care, treatment and intervention for sexual assault, education tailored to the child's needs, life skills training, mentoring, and substance abuse screening and treatment as needed; individualized services based on the trauma endured by a child, as determined through comprehensive assessments of the service needs of the child; 24-hour services; and appropriate security through facility design, hardware, technology, and

staffing.

C.S.H.B. 418 amends the Family Code to authorize a court in an emergency, initial, or full adversary hearing conducted in a child protection suit to order that the child who is the subject of the hearing be placed in a verified secure agency foster home or secure agency foster group home if the court finds that the placement is in the best interest of the child and that the child's physical health or safety is in danger because the child has been recruited, harbored, transported, provided, or obtained for forced labor or commercial sexual activity, including any child subjected to an act that constitutes a trafficking or continuous trafficking offense. The bill expands the conditions under which an authorized representative of DFPS, a law enforcement officer, or a juvenile probation officer may take possession of a child without a court order to include personal knowledge of facts, or information furnished by another that has been corroborated by personal knowledge of facts, that would lead a person of ordinary prudence and caution to believe that the child has been the victim of trafficking or of a continuous trafficking offense.

C.S.H.B. 418 excepts a court from the requirement to order the return of the child at the initial hearing regarding a child taken in possession without a court order by a governmental entity if, among other conditions, the court is satisfied that the evidence shows that the child has been the victim of trafficking or of a continuous trafficking offense and that there is a substantial risk that the child will be the victim of trafficking in the future. The bill excepts a court from the requirement to order the return of the child to the appropriate person entitled to possession of the child at the conclusion of a full adversary hearing if, among other conditions, the court finds evidence sufficient to satisfy a person of ordinary prudence and caution that there was a danger that the child would be a victim of trafficking or of a continuous trafficking offense which was caused by an act or failure to act of the person entitled to possession. The bill requires, not later than May 1, 2016, the executive commissioner of the Health and Human Services Commission to adopt any standards and DFPS to establish the verification procedures necessary to implement the changes in law made by the bill.

#### **EFFECTIVE DATE**

September 1, 2015.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 418 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**

SECTION 1. Subchapter A, Chapter 262, Family Code, is amended by adding Section 262.011 to read as follows:

Sec. 262.011. PLACEMENT IN SECURE FOSTER HOME OR SECURE AGENCY FOSTER GROUP HOME.

A court in an emergency, initial, or full adversary hearing conducted under this chapter may order that the child who is the subject of the hearing be placed in a secure foster home or secure agency foster group home established under Section 42.0531,

##### **HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Subchapter A, Chapter 262, Family Code, is amended by adding Section 262.011 to read as follows:

Sec. 262.011. PLACEMENT IN SECURE AGENCY FOSTER HOME OR SECURE AGENCY FOSTER GROUP HOME.

A court in an emergency, initial, or full adversary hearing conducted under this chapter may order that the child who is the subject of the hearing be placed in a secure agency foster home or secure agency foster group home verified in accordance with

Human Resources Code, if the court finds that the placement is in the best interest of the child and the child's physical health or safety is in danger because the child has been a victim of trafficking under Section 20A.02, Penal Code.

SECTION 2. Section 262.104(a), Family Code, is amended to read as follows:

(a) If there is no time to obtain a temporary restraining order or attachment before taking possession of a child consistent with the health and safety of that child, an authorized representative of the Department of Family and Protective Services, a law enforcement officer, or a juvenile probation officer may take possession of a child without a court order under the following conditions, only:

(1) on personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;

(2) on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;

(3) on personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under Section 20A.02, Penal Code;

(4) on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under Section 20A.02, Penal Code; or

(5) on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the

Section 42.0531, Human Resources Code, if the court finds that:

(1) the placement is in the best interest of the child; and

(2) the child's physical health or safety is in danger because the child has been recruited, harbored, transported, provided, or obtained for forced labor or commercial sexual activity, including any child subjected to an act specified in Section 20A.02 or 20A.03, Penal Code.

SECTION 2. Section 262.104(a), Family Code, is amended to read as follows:

(a) If there is no time to obtain a temporary restraining order or attachment before taking possession of a child consistent with the health and safety of that child, an authorized representative of the Department of Family and Protective Services, a law enforcement officer, or a juvenile probation officer may take possession of a child without a court order under the following conditions, only:

(1) on personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;

(2) on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;

(3) on personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under Section 20A.02 or 20A.03, Penal Code;

(4) on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under Section 20A.02 or 20A.03, Penal Code; or

(5) on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the

parent or person who has possession of the child is currently using a controlled substance as defined by Chapter 481, Health and Safety Code, and the use constitutes an immediate danger to the physical health or safety of the child.

SECTION 3. Section 262.107(a), Family Code, is amended to read as follows:

(a) The court shall order the return of the child at the initial hearing regarding a child taken in possession without a court order by a governmental entity unless the court is satisfied that:

(1) there is a continuing danger to the physical health or safety of the child if the child is returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child or the evidence shows that the child has been the victim of sexual abuse or of trafficking under Section 20A.02, Penal Code, on one or more occasions and that there is a substantial risk that the child will be the victim of sexual abuse or of trafficking in the future;

(2) continuation of the child in the home would be contrary to the child's welfare; and

(3) reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child.

SECTION 4. Section 262.201(b), Family Code, is amended to read as follows:

(b) At the conclusion of the full adversary hearing, the court shall order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

(1) there was a danger to the physical health or safety of the child, including a danger that the child would be a victim of trafficking under Section 20A.02, Penal Code, which was caused by an act or failure to act of the person entitled to possession and for the child to remain in the home is contrary to the welfare of the child;

(2) the urgent need for protection required

parent or person who has possession of the child is currently using a controlled substance as defined by Chapter 481, Health and Safety Code, and the use constitutes an immediate danger to the physical health or safety of the child.

SECTION 3. Section 262.107(a), Family Code, is amended to read as follows:

(a) The court shall order the return of the child at the initial hearing regarding a child taken in possession without a court order by a governmental entity unless the court is satisfied that:

(1) there is a continuing danger to the physical health or safety of the child if the child is returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child or the evidence shows that the child has been the victim of sexual abuse or of trafficking under Section 20A.02 or 20A.03, Penal Code, on one or more occasions and that there is a substantial risk that the child will be the victim of sexual abuse or of trafficking in the future;

(2) continuation of the child in the home would be contrary to the child's welfare; and

(3) reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child.

SECTION 4. Section 262.201(b), Family Code, is amended to read as follows:

(b) At the conclusion of the full adversary hearing, the court shall order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

(1) there was a danger to the physical health or safety of the child, including a danger that the child would be a victim of trafficking under Section 20A.02 or 20A.03, Penal Code, which was caused by an act or failure to act of the person entitled to possession and for the child to remain in the home is contrary to the welfare of the child;

(2) the urgent need for protection required the immediate removal of the child and

the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal; and

(3) reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home.

SECTION 5. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0531 to read as follows:

Sec. 42.0531. SECURE FOSTER HOMES AND SECURE AGENCY FOSTER GROUP HOMES.

(a) The commissioners court of a county or governing body of a municipality may establish or contract with another person for the establishment of a secure foster home or secure agency foster group home to provide a safe, separate, and therapeutic environment tailored to the needs of children who are found by a court in a hearing conducted under Chapter 262, Family Code, to be victims of trafficking under Section 20A.02, Penal Code, and who are placed in the managing conservatorship of the department.

(b) A secure foster home or secure agency foster group home may not provide secure foster services under this section unless it holds a license issued under this chapter, complies with all applicable department rules and standards adopted under this chapter, and holds a certificate of authority issued by the department to provide secure foster services under this section.

(c) The executive commissioner shall adopt the rules and establish the license qualifications and the department shall establish the application procedures necessary to implement this section to protect the health and safety of child victims of trafficking.

(d) A secure foster home or secure agency foster group home established under this section must provide:

(1) mental health and other services specifically designed to assist children who are victims of trafficking under Section 20A.02, Penal Code, including:

reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal; and

(3) reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home.

SECTION 5. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0531 to read as follows:

Sec. 42.0531. SECURE AGENCY FOSTER HOMES AND SECURE AGENCY FOSTER GROUP HOMES.

(a) The commissioners court of a county or governing body of a municipality may contract with a child-placing agency to verify a secure agency foster home or secure agency foster group home to provide a safe and therapeutic environment tailored to the needs of children who are victims of trafficking.

(b) A child-placing agency may not verify a secure agency foster home or secure agency foster group home to provide services under this section unless the child-placing agency holds a license issued under this chapter that authorizes the agency to provide services to victims of trafficking in accordance with department standards adopted under this chapter for child-placing agencies.

(c) A secure agency foster home or secure agency foster group home verified under this section must provide:

(1) mental health and other services specifically designed to assist children who are victims of trafficking under Section 20A.02 or 20A.03, Penal Code, including:

(A) victim and family counseling;  
(B) behavioral health care;  
(C) treatment and intervention for sexual assault;  
(D) education tailored to the child's needs;  
(E) life skills training;  
(F) mentoring; and  
(G) substance abuse screening and treatment as needed;  
(2) individualized services based on the trauma endured by a child, as determined through comprehensive assessments of the service needs of the child;  
(3) 24-hour services; and  
(4) appropriate security through facility design, hardware, technology, and staffing.

SECTION 6. Not later than **December 1, 2015**, the executive commissioner of the Health and Human Services Commission shall adopt **the rules and license qualifications** and the Department of Family and Protective Services shall establish the **application** procedures necessary to implement the changes in law made by this Act.

SECTION 7. This Act takes effect September 1, 2015.

(A) victim and family counseling;  
(B) behavioral health care;  
(C) treatment and intervention for sexual assault;  
(D) education tailored to the child's needs;  
(E) life skills training;  
(F) mentoring; and  
(G) substance abuse screening and treatment as needed;  
(2) individualized services based on the trauma endured by a child, as determined through comprehensive assessments of the service needs of the child;  
(3) 24-hour services; and  
(4) appropriate security through facility design, hardware, technology, and staffing.

SECTION 6. Not later than **May 1, 2016**, the executive commissioner of the Health and Human Services Commission shall adopt **any standards** and the Department of Family and Protective Services shall establish the **verification** procedures necessary to implement the changes in law made by this Act.

SECTION 7. Same as introduced version.