

BILL ANALYSIS

C.S.H.B. 3994
By: Morrison
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that a parent, managing conservator, or guardian must be notified and give consent before a physician may perform an abortion on a minor, unless the minor obtains a judicial bypass by which a minor may obtain a court order authorizing the physician to perform an abortion without the notification to and consent of a parent, managing conservator, or guardian if the judge makes certain findings. The parties contend that the judicial bypass procedure needs to be reformed in several important ways. C.S.H.B. 3994 seeks to implement these reforms.

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. 3994 amends the Family Code to require a physician, for purposes of parental notice and consent of an abortion performed on a minor, to presume that a pregnant woman is a minor unless the woman presents a valid governmental record of identification showing that she has reached the age of majority. The bill prohibits a physician from performing an abortion in violation of Occupations Code provisions making it a prohibited practice for a physician to perform an abortion on an unemancipated minor without the written consent of the child's parent, managing conservator, or legal guardian or without a court order authorizing the minor to consent to the abortion, except under certain circumstances.

C.S.H.B. 3994 specifies that the authorization for a pregnant minor who wishes to have an abortion without notification to a minor's parent, managing conservator, or guardian to file an application for a court order authorizing the minor to consent to the performance of an abortion without such notification applies to a minor who wishes to have an abortion without consent of a parent, managing conservator, or guardian. The bill changes the location of the county court at law, court having probate jurisdiction, or district court, including a family district court, in which such an application may be filed from any such court in Texas to a court in the minor's county of residence or in a neighboring county if the minor's county of residence has a population of less than 10,000 or in the county in which the facility at which the minor intends to obtain an abortion is located. The bill specifies that a court-appointed guardian ad litem for the minor is required to represent the best interest of the minor. The bill prohibits the guardian ad litem from simultaneously serving as the minor's attorney and removes a provision authorizing the court to appoint the guardian ad litem to serve as the minor's attorney if the guardian ad litem is an attorney admitted to the practice of law in Texas.

C.S.H.B. 3994 removes a provision requiring the court to enter judgment on the application immediately after the hearing is concluded. The bill requires the pregnant minor to appear before the court in person and prohibits appearance using videoconferencing, telephone conferencing, or other remote electronic means. The bill extends the date and time by which a court is required to rule on an application and by which an appellate court is required to rule on an appeal of the original court's ruling regarding the application from not later than 5 p.m. on the second business day to not later than 5 p.m. on the fifth business day after the date the application or appeal is filed with the court or, if an extension is requested, after the date the minor states she is ready to proceed to hearing, as applicable. The bill requires the clerk of the court, if the court fails to rule on the application or appeal and issue written findings of fact and conclusions of law within the specified period, to issue to the physician a certificate showing that the court failed to rule on the application and authorizes the physician to perform the abortion on receipt of the certificate. The bill clarifies that the requirement for such proceedings to be given precedence over other pending matters applies regardless of whether the minor is granted an extension. The bill authorizes the appellate court to publish an opinion relating to its ruling in such a case if the opinion is written in a way to preserve the confidentiality of the identity of the pregnant minor.

C.S.H.B. 3994 replaces a requirement that the court determine by a preponderance of evidence that the minor is mature and sufficiently well informed to make the abortion decision without notification, whether notification would not be in the best interest of the minor, or whether notification may lead to physical, sexual, or emotional abuse of the minor with the requirement that the court determine by clear and convincing evidence that notifying and requesting consent from a parent, managing conservator, or guardian is in the minor's best interest. The bill requires the court, in making such a determination, to consider whether the minor is mature and sufficiently well informed to make the abortion decision without notification to or consent of a parent, managing conservator, or guardian; whether the abortion would be in the best interest of the minor; and whether notification or the attempt to obtain consent may lead to physical, sexual, or emotional abuse as that term is defined in the Family Code.

C.S.H.B. 3994 requires the court, in determining whether the minor is mature and sufficiently well informed to make the decision to have an abortion performed without parental notification and consent, to consider the experience, perspective, and judgment of the minor. The bill authorizes the court to consider all relevant factors including the minor's age; the minor's life experiences, such as working, traveling independently, or managing her own financial affairs; steps taken by the minor to explore her options and the consequences of those options; and the minor's decision not to notify and obtain consent from a parent, managing conservator, or guardian. The bill authorizes the court, in determining whether the abortion is in the best interest of the minor, to inquire as to the minor's reasons for seeking an abortion, consider the degree to which the minor is informed about the relevant state-published informational materials, and to require the minor to be evaluated by a licensed mental health counselor, who is required to return the evaluation to the court for review within three business days.

C.S.H.B. 3994 authorizes the disclosure to a minor of confidential records pertaining to the minor relating to a court proceeding regarding an application for an order authorizing the performance of an abortion on the minor without parental notification and consent. The bill requires the clerk of the court, at intervals prescribed by the Office of Court Administration of the Texas Judicial System, to submit a report to the office that includes, for each case filed, the case number and style, the applicant's county of residence, the court in which the proceeding occurred, the date of filing, the date of disposition, and the disposition of the case. The bill requires the Office of Court Administration to annually compile and publish a report aggregating certain of that received data, but establishes that the Office of Court Administration is not required to publish the initial report before January 1, 2017. The bill requires such a report to protect the anonymity of all minors that are the subject of the report.

C.S.H.B. 3994 requires the clerk of the court to retain the records for each case regarding the performance of an abortion on a minor without required parental notice and consent before the

court in accordance with rules for civil cases and to grant access to the records to the minor who is the subject of the proceeding.

C.S.H.B. 3994 removes from the requirement that a physician who has reason to believe that a minor has been or may be physically or sexually abused immediately report the suspected abuse to the Department of Family and Protective Services (DFPS) the condition that a person responsible for the minor's care, custody, or welfare is the person who may have been or may be responsible for the abuse. The bill establishes that a minor's claim that she is being physically or sexually abused constitutes a reason to believe that abuse has occurred and requires a report of suspected abuse made to DFPS to be investigated as provided by statutory provisions relevant to investigations of reports of child abuse or neglect.

C.S.H.B. 3994 establishes that every provision in the bill and every application of the provisions in the bill are severable from each other. The bill establishes that if any application of any provision in the bill to any person or group of persons or circumstances is found by a court to be invalid, the remainder of the bill and the application of the bill's provisions to all other persons and circumstances may not be affected. The bill requires all constitutionally valid applications of the bill to be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. The bill establishes even if a reviewing court finds a provision of the bill invalid in a large or substantial fraction of relevant cases, the remaining valid applications are required to be severed and allowed to remain in force.

EFFECTIVE DATE

January 1, 2016.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3994 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. The heading to Chapter 33, Family Code, is amended to read as follows:

CHAPTER 33. NOTICE OF AND CONSENT TO ABORTION

SECTION 2. Section 33.002(h), Family Code, is amended to read as follows:

(h) A physician shall presume that a pregnant woman is a minor unless the woman presents a valid government record of identification showing that she has reached the age of majority. It is a defense to prosecution under this section that the minor falsely represented her age or identity to the physician to be at least 18 years of age by displaying an apparently valid governmental record of identification such that a reasonable person under similar circumstances would have relied on the representation. The defense does not apply if the physician is shown to

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Section 33.002(h), Family Code, is amended to read as follows:

(h) A physician shall presume that a pregnant woman is a minor unless the woman presents a valid governmental record of identification showing that she has reached the age of majority. It is a defense to prosecution under this section that the minor falsely represented her age or identity to the physician to be at least 18 years of age by displaying an apparently valid governmental record of identification such that a reasonable person under similar circumstances would have relied on the representation. The defense does not apply

have had independent knowledge of the minor's actual age or identity or failed to use due diligence in determining the minor's age or identity. In this subsection, "defense" has the meaning and application assigned by Section 2.03, Penal Code.

SECTION 3. Chapter 33, Family Code, is amended.

SECTION 4. Section 33.003, Family Code, is amended.

SECTION 5. Section 33.004, Family Code, is amended.

SECTION 6. Chapter 33, Family Code, is amended.

SECTION 7. Section 33.007, Family Code, is amended to read as follows:

Sec. 33.007. COSTS NOT PAID BY STATE. ~~[(a)]~~ A court acting under Section 33.003 or 33.004 may not require ~~[issue an order requiring]~~ the state to pay any costs associated with the proceeding under this chapter, including:

- (1) the cost of any attorney ad litem and any guardian ad litem appointed for the minor;
 - (2) ~~[notwithstanding Sections 33.003(n) and 33.004(e),]~~ the costs of court associated with the application or appeal; or [and]
 - (3) any court reporter's fees incurred.
- ~~[(b) An order issued under Subsection (a) must be directed to the comptroller, who shall pay the amount ordered from funds appropriated to the Texas Department of Health.]~~

SECTION 8. Section 33.008, Family Code, is amended.

SECTION 9.

if the physician is shown to have had independent knowledge of the minor's actual age or identity or failed to use due diligence in determining the minor's age or identity. In this subsection, "defense" has the meaning and application assigned by Section 2.03, Penal Code.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

No equivalent provision.

SECTION 7. Same as introduced version.

SECTION 8. (a) Section 33.002, Family Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the

(a) Sections 33.003 and 33.004, Family Code, as amended by this Act, apply only to a petition filed on or after the effective date of this Act. A petition filed before the effective date of this Act is governed by the law in effect on the date the petition was filed, and the former law is continued in effect for that purpose.

(b) The Office of Court Administration of the Texas Judicial System is not required to publish the initial report under Section 33.003(1-2), Family Code, as added by this Act, before January 1, 2017.

SECTION 10. Every provision in this Act and every application of the provisions in this Act are severable from each other. If any application of any provision in this Act to any person or group of persons or circumstances is found by a court to be invalid, the remainder of this Act and the application of the Act's provisions to all other persons and circumstances may not be affected. All constitutionally valid applications of this Act shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this Act invalid in a large or substantial fraction of relevant cases, the remaining valid applications shall be severed and allowed to remain in force.

SECTION 11. This Act takes effect January 1, 2016.

date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

(b) Sections 33.003 and 33.004, Family Code, as amended by this Act, apply only to a petition filed on or after the effective date of this Act. A petition filed before the effective date of this Act is governed by the law in effect on the date the petition was filed, and the former law is continued in effect for that purpose.

(c) The Office of Court Administration of the Texas Judicial System is not required to publish the initial report under Section 33.003(1-2), Family Code, as added by this Act, before January 1, 2017.

SECTION 9. Same as introduced version.

SECTION 10. Same as introduced version.