

BILL ANALYSIS

Senate Research Center

S.B. 821
By: Nelson
Health & Human Services
5/31/2019
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Children's Advocacy Centers (CACs) were codified in statute under Sections 264.401–264.411, Family Code, in 1995. At the time there were only 13 CACs in Texas, for which the Children's Advocacy Centers of Texas (CACTX) was simply an administrative board.

Nearly 25 years later, there are 71 CACs in Texas serving 208 of the state's 254 counties. Not only has the CAC model grown its geographic footprint, but it has also grown in its sophistication, service provision, and collaboration with multidisciplinary team (MDT) partners including the Department of Family and Protective Services (DFPS), law enforcement, and prosecution. Some edits and additions were made over time, but given the success and rapid growth of CAC services, these sections are in need of a holistic update.

S.B. 821 updates the Texas Family Code to more clearly align current statute with current practices, standards, services, and operations of Texas CACs in furtherance of the CACTX vision of serving every child victim of abuse in Texas with every service and every effort. (Original Author's/Sponsor's Statement of Intent)

S.B. 821 amends current law relating to children's advocacy centers.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is rescinded in SECTION 12 (Section 264.410, Family Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 264.402, Family Code, as follows:

Sec. 264.402. ESTABLISHMENT OF CHILDREN'S ADVOCACY CENTER. Authorizes a children's advocacy center, on the execution of a memorandum of understanding under Section 264.403, to be established by community members and the participating agencies, rather than entities, described by Section 264.403(a) to serve a county or two or more contiguous counties in which a center has not been established, rather than a county or two or more contiguous counties.

SECTION 2. Amends Section 264.403, Family Code, as follows:

Sec. 264.403. INTERAGENCY MEMORANDUM OF UNDERSTANDING. (a) Requires a center to enter into a memorandum of understanding regarding participation in the multidisciplinary team response under Section 264.406, rather than requiring a memorandum of understanding regarding participation in operation of the center to be executed among certain entities before a center is authorized to be established under Section 264.402. Requires the center and each of the following agencies to execute the memorandum of understanding:

(1) the department responsible for child abuse and neglect investigations [Department of Family and Protective Services (DFPS)], rather than the division of the department responsible for child abuse investigations;

(2) each county and municipal law enforcement agency with jurisdiction to investigate child abuse and neglect in the area to be served by the center, rather than representatives of county and municipal law enforcement agencies that investigate child abuse in the area to be served by the center; and

(3) each county or district attorney with jurisdiction to prosecute child abuse and neglect cases in the area to be served by the center, rather than the county or district attorney who routinely prosecutes child abuse cases in the area to be served by the center. Makes a nonsubstantive change and deletes existing Subdivision (4) relating to representatives of certain other entities.

(b) Requires a memorandum of understanding executed under this section to include the agreement of each participating agency, rather than entity, to cooperate in:

(1) minimizing the revictimization of alleged abuse and neglect victims and nonoffending family members through the investigation, assessment, intervention, and prosecution processes; and

(2) maintaining a cooperative team approach to facilitate successful outcomes in the criminal and child protection systems through shared fact-finding and strong, collaborative case development, rather than developing a cooperative, team approach to investigating child abuse. Creates this subdivision from existing text and deletes existing Subdivisions (2)–(3) (relating to reducing the number of interviews required of victims and to emphasizing the best interests of children).

(c) Requires the memorandum of understanding to be reexecuted at least every three years, on a significant change to the memorandum of understanding, or on a change of a signatory of a participating agency. Deletes text authorizing a memorandum of understanding executed under this section to include the agreement of one or more participating entities to provide office space and administrative services necessary for the center's operation.

SECTION 3. Amends Subchapter E, Chapter 264, Family Code, by adding Section 264.4031, as follows:

Sec. 264.4031. MULTIDISCIPLINARY TEAM WORKING PROTOCOL. (a) Requires a center to adopt a multidisciplinary team working protocol. Requires the working protocol to include:

(1) the center's mission statement;

(2) the role of each participating agency on the multidisciplinary team and the agency's commitment to the center;

(3) specific criteria for referral of cases for a multidisciplinary team response and specific criteria for the referral and provision of each service provided by the center;

(4) processes and general procedures for:

(A) the intake of cases, including direct referrals from participating agencies described by Section 264.403(a) and reports from DFPS

that involve the suspected abuse or neglect of a child or the death of a child from abuse or neglect;

(B) the availability outside scheduled business hours of multidisciplinary team response to cases and provision of necessary center services;

(C) information sharing to ensure the timely exchange of relevant information;

(D) forensic interviews;

(E) family and victim advocacy;

(F) medical evaluations and medical treatment;

(G) mental health evaluations and mental health treatment;

(H) multidisciplinary team case review; and

(I) case tracking; and

(5) provisions for addressing conflicts within the multidisciplinary team and for maintaining the confidentiality of information shared among members of the multidisciplinary team.

(b) Requires the working protocol to be executed by the participating agencies required to enter into the memorandum of understanding under Section 264.403.

(c) Requires the working protocol to be reexecuted:

(1) at least every three years;

(2) on a significant change to the working protocol; or

(3) on a change of a signatory of a participating agency.

SECTION 4. Amends Section 264.404, Family Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Makes nonsubstantive changes and requires the governing board of a center, in addition to any other persons appointed or elected to serve on the governing board, to include an executive officer of, or an employee with decision-making authority selected by an executive officer of:

(1) DFPS;

(2) a law enforcement agency with jurisdiction to investigate child abuse and neglect in the area served by the center. Creates this subdivision from existing text and deletes existing Subdivision (2) relating to the child protective services division of DFPS; and

(3) the county or district attorney's office with jurisdiction to prosecute child abuse and neglect cases, rather than involved in the prosecution of child abuse cases, in the area served by the center.

(c) Prohibits the governing board members required under Subsection (a) from constituting a majority of the membership of a center's governing board.

SECTION 5. Amends Section 264.405, Family Code, as follows:

Sec. 264.405. New heading: CENTER DUTIES. (a) Creates this subsection from existing text and makes nonsubstantive changes. Requires a center to:

(1) receive, review, and track DFPS reports relating to the suspected abuse or neglect of a child or the death of a child from abuse or neglect to ensure a consistent, comprehensive approach to all cases that meet the criteria outlined in the multidisciplinary team working protocol adopted under Section 264.4031;

(2) coordinate the activities of participating agencies relating to abuse and neglect investigations and delivery of services to alleged abuse and neglect victims and their families;

(3) facilitate assessment of alleged abuse or neglect victims and their families to determine their need for services relating to the investigation of abuse or neglect and provide needed services, rather than assess victims of child abuse and their families to determine the need for services relating to the investigation of child abuse and provide services determined to be needed under Subdivision (1); and

(4) comply with the standards adopted under Section 264.409(c).

(b) Creates this subsection from existing Subdivision (3). Requires a center to provide:

(1) facilitation of a multidisciplinary team response to abuse or neglect allegations;

(2) a formal process that requires the multidisciplinary team to routinely discuss and share information regarding investigations, case status, and services needed by children and families;

(3) a system to monitor the progress and track the outcome of each case;

(4) a child-focused setting that is comfortable, private, and physically and psychologically safe for diverse populations, at which a multidisciplinary team can meet to facilitate the efficient and appropriate disposition of abuse and neglect cases through the civil and criminal justice systems, rather than a facility at which a multidisciplinary team appointed under Section 264.406 can meet to facilitate the efficient and appropriate disposition of child abuse cases through the civil and criminal justice systems;

(5) culturally competent services for children and families throughout the duration of a case;

(6) victim support and advocacy services for children and families;

(7) forensic interviews that are conducted in a neutral, fact-finding manner and coordinated to avoid duplicative interviewing;

(8) access to specialized medical evaluations and treatment services for victims of alleged abuse or neglect;

(9) evidence-based, trauma-focused mental health services for children and nonoffending members of the child's family; and

(10) opportunities for community involvement through a formalized volunteer program dedicated to supporting the center.

Deletes existing Subdivision (4) relating to coordination of activities.

(c) Provides that the duties prescribed to a center under Subsection (a)(1) do not relieve DFPS or a law enforcement agency of its duty to investigate a report of abuse or neglect as required by other law.

SECTION 6. Amends Section 264.406, Family Code, as follows:

Sec. 264.406. MULTIDISCIPLINARY TEAM. (a) Requires a center's multidisciplinary team to include employees of the participating agencies described by Section 264.403(a), rather than employees of the participating agencies who are professionals involved in the investigation or prosecution of child abuse cases.

(b) Authorizes a representative of any other entity to participate in the multidisciplinary team response as provided by the multidisciplinary team working protocol adopted under Section 264.4031 if:

(1) the entity participates in or provides the following:

(A) child abuse or neglect investigations;

(B) abuse or neglect investigations involving persons with a disability;

(C) services to alleged child abuse or neglect victims; or

(D) services to alleged victims who are persons with a disability;

(2) the center and the participating agencies agree in writing to the entity's participation; and

(3) the entity signs the memorandum of understanding executed under Section 264.403 and the working protocol adopted under Section 264.4031.

(c) Creates this subsection from existing Subsections (b) and (c) and makes nonsubstantive changes. Deletes existing text authorizing a center's multidisciplinary team to include professionals involved in the delivery of services to child abuse victims and the victims' families, including medical and mental health services, and text requiring a multidisciplinary team to meet at regularly scheduled intervals to review certain cases and coordinate certain actions. Requires a multidisciplinary team to be actively involved in the following multidisciplinary team response:

(1) coordinating the actions of the participating agencies involved in the investigation and prosecution of cases and the delivery of services to alleged abuse or neglect victims and victims' families; and

(2) conducting at regularly scheduled intervals multidisciplinary review of appropriate abuse or neglect cases as provided by the working protocol adopted under Section 264.4031.

(d) Authorizes a multidisciplinary team to review an abuse or neglect case in which the alleged perpetrator is not a person responsible for a child's care, custody, or welfare, rather than to review a child abuse case in which the alleged perpetrator does not have custodial control or supervision of a child or is not responsible for the child's welfare or care.

(e) Provides that a multidisciplinary team member, rather than a multidisciplinary team member when acting in the member's official capacity, is authorized to share with and receive from other multidisciplinary team members information made confidential by Chapter 552 (Public Information), Government Code, Section 40.005 (Confidentiality of Information) or 48.101 (Confidentiality and Disclosure of Information; Agency Exchange of Information), Human Resources Code, or Section 261.201 (Confidentiality and Disclosure of Information) or 264.408 (Use of Information and Records; Confidentiality and Ownership) of this code when acting in the member's official capacity as an employee of a participating agency described by Section 264.403(a) or of another entity described by Subsection (b). Makes a nonsubstantive change.

SECTION 7. Amends Section 264.4061, Family Code, as follows:

Sec. 264.4061. MULTIDISCIPLINARY TEAM RESPONSE REQUIRED. (a) Requires DFPS to refer a case to a center and the center to initiate a response by the center's multidisciplinary team appointed under Section 264.406 when conducting an investigation of:

(1) a report of abuse or neglect, rather than of abuse, that is made by a professional as defined by Section 261.101 (Persons Required to Report; Time to Report) and that:

(A) makes no changes to this paragraph; or

(B) is a type of case handled by the center in accordance with the working protocol adopted for the center under Section 264.4031, rather than 264.411(a)(9) (relating to operating under a working protocol that includes certain statements); or

(2) makes no changes to this subdivision.

(b) Makes conforming changes to this subsection.

(c) Provides that Subsection (a) applies only to an investigation of abuse or neglect, rather than abuse, in a county served by a center that has executed an interagency memorandum of understanding under Section 264.403. Makes a nonsubstantive change.

SECTION 8. Amends Section 264.408, Family Code, as follows:

Sec. 264.408. USE OF INFORMATION AND RECORDS; CONFIDENTIALITY AND OWNERSHIP. (a) Authorizes disclosure of certain information made confidential under this section to be made to:

(1) makes no change to this subdivision; and

(2) the attorney for the alleged victim, rather than the child, who is the subject of records and a court-appointed volunteer advocate appointed for the alleged victim, rather than the child, under Section 107.031 (Volunteer Advocates).

(b) Makes a nonsubstantive change to this subsection.

(c) Requires a request for confidential information provided to the center under this section to be made to the agency that shared or provided the information.

(d) Provides that an electronic recording, rather than a video recording, of an interview with, a child or person with a disability, rather than of a child, that is made by a center is the property of the prosecuting attorney involved in the

criminal prosecution of the case involving the child or person. Provides that, if no criminal prosecution occurs, the electronic recording, rather than video recording, is the property of the attorney involved in representing DFPS in a civil action alleging abuse, neglect, or exploitation. Makes conforming changes.

(d-1) Makes conforming changes to this subsection.

(e) Requires DFPS to be allowed access to electronic recordings of interviews of children or persons with a disability, rather than access to a center's video recordings of interviews of children.

SECTION 9. Amends Section 264.409, Family Code, as follows:

Sec. 264.409. ADMINISTRATIVE CONTRACTS. (a) Requires DFPS to contract with one statewide organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code and that is composed of individuals, rather than individuals or groups of individuals, who have expertise in the establishment and operation of children's advocacy center programs. Deletes existing text requiring a statewide organization contracted with under this section to be designated as a supporting organization under Section 509(a)(3), Internal Revenue Code of 1986. Makes nonsubstantive changes.

(b) Requires the contract under this section to provide that the statewide organization is prohibited from spending annually in the performance of duties under Subsection (a) more than 12 percent of the annual amount appropriated to the DFPS for purposes of this section. Makes a nonsubstantive change.

(c) Requires the statewide organization with which DFPS contracts to develop and adopt standards for children's advocacy centers.

SECTION 10. Amends Sections 264.410(a) and (b), Family Code, as follows:

(a) Requires the statewide organization with which DFPS contracts under Section 264.409 to contract with eligible centers to establish, maintain, and enhance the services provided by the centers, rather than to contract for services with eligible centers to enhance the existing services of the programs.

(b) Prohibits the contract under this section from resulting in reducing the financial support a center, rather than a local center, receives from another source.

SECTION 11. Amends Section 264.411, Family Code, as follows:

Sec. 264.411. ELIGIBILITY FOR CONTRACTS. (a) Provides that a public entity that operated as a center under this subchapter before November 1, 1995, or a nonprofit entity is eligible for a contract under Section 264.410 (Contracts With Children's Advocacy Centers) if the entity:

(1) makes no changes to this subdivision;

(2) has a signed working protocol as provided by Section 26.4031;

(3) has, rather than operates under the authority of, a governing board as provided by Section 264.404. Creates this subdivision from existing text, redesignates existing Subdivisions (3)–(4) as Subdivisions (4)–(5), and deletes existing Subdivision (5) (relating to operation in a neutral and physically separate space);

(4) has a multidisciplinary team as provided by Section 264.406, rather than has a multidisciplinary team of persons involved in the investigation

or prosecution of a child abuse cases or the delivery of services as provided by Section 264.406;

(5) regularly convenes the multidisciplinary team as provided by Section 264.406, rather than holds regularly scheduled case reviews as provided by Section 264.406;

(6) employs an executive director who is accountable, rather than answerable, to the board of directors of the entity and who is not the exclusive salaried employee of any governmental agency, rather than any public agency partner. Creates this subdivision from existing Subdivision (8), deletes existing text of Subdivision (6) relating to statistical information gathering, and deletes existing Subdivisions (7), (9) and (10) (relating to volunteers, operation under a working protocol, and implementation of certain specified program components); and

(7) fulfills the duties required by Section 264.405.

(b) Authorizes the statewide organization described by Section 264.409 to waive the requirements specified in Subsection (a) if it determines that the waiver will not adversely affect a center's ability to carry out its duties under Section 264.405. Makes a nonsubstantive change.

SECTION 12. Repealer: Section 264.410(c) (relating to a requirement that the executive commissioner adopt rules for standards for eligible local centers if the Health and Human Services Commission enters into a contract with a statewide organization and requiring the statewide organization to assist the executive commissioner in developing the standards), Family Code.

SECTION 13. Effective date: September 1, 2019.