

1-1 By: Neave, et al. (Senate Sponsor - Zaffirini) H.B. No. 39
1-2 (In the Senate - Received from the House April 12, 2021;
1-3 April 13, 2021, read first time and referred to Committee on
1-4 Criminal Justice; May 17, 2021, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 May 17, 2021, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Whitmire	X		
1-10	Huffman	X		
1-11	Bettencourt	X		
1-12	Birdwell	X		
1-13	Hinojosa	X		
1-14	Miles	X		
1-15	Nichols	X		

1-16 COMMITTEE SUBSTITUTE FOR H.B. No. 39 By: Whitmire

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to protective orders; making conforming changes.
1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-21 SECTION 1. Sections 85.005(a) and (b), Family Code, are
1-22 amended to read as follows:
1-23 (a) To facilitate settlement, the parties to a proceeding
1-24 may agree in writing to ~~[the terms of]~~ a protective order as
1-25 provided by Sections ~~[Section]~~ 85.021 and 85.022. An agreement
1-26 under this subsection is subject to the approval of the court. The
1-27 court may not approve an agreement that requires the applicant for
1-28 the protective order to do or refrain from doing an act under
1-29 Section 85.022.
1-30 ~~(b) An [To facilitate settlement, a respondent may agree in~~
1-31 ~~writing to the terms of a protective order as provided by Section~~
1-32 ~~85.022, subject to the approval of the court. The court may not~~
1-33 ~~approve an agreement that requires the applicant to do or refrain~~
1-34 ~~from doing an act under Section 85.022. The] agreed protective~~
1-35 order is enforceable civilly or criminally, regardless of whether
1-36 the court makes the findings required by Section 85.001.
1-37 SECTION 2. Section 85.006(a), Family Code, is amended to
1-38 read as follows:
1-39 (a) Notwithstanding Rule 107, Texas Rules of Civil
1-40 Procedure, a [A] court may render a protective order that is binding
1-41 on a respondent who does not attend a hearing if:
1-42 (1) the respondent received service of the application
1-43 and notice of the hearing; and
1-44 (2) proof of service was filed with the court before
1-45 the hearing.
1-46 SECTION 3. Section 85.025, Family Code, is amended by
1-47 adding Subsection (d) to read as follows:
1-48 (d) If the duration of a protective order is subject to an
1-49 automatic extension under Subsection (c), the Department of Public
1-50 Safety shall, based on the duration of the sentence of the person
1-51 subject to the protective order, enter the projected expiration
1-52 date of the order in the statewide law enforcement information
1-53 system maintained by the department. On release of the person, the
1-54 department shall update the information in the statewide law
1-55 enforcement system to reflect the date the order will expire
1-56 following the person's release.
1-57 SECTION 4. Section 85.026(a), Family Code, is amended to
1-58 read as follows:
1-59 (a) Each protective order issued under this subtitle,
1-60 including a temporary ex parte order, must contain the following

2-1 prominently displayed statements in boldfaced type, capital
2-2 letters, or underlined:

2-3 "A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR
2-4 CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN
2-5 JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."

2-6 "NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS
2-7 ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY
2-8 PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS
2-9 VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT
2-10 UNLESS A COURT CHANGES THE ORDER."

2-11 "IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS
2-12 DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT
2-13 AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL
2-14 SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A
2-15 FIREARM OR AMMUNITION."

2-16 "IF A PERSON SUBJECT TO A PROTECTIVE ORDER IS RELEASED FROM
2-17 CONFINEMENT OR IMPRISONMENT FOLLOWING THE DATE THE ORDER WOULD HAVE
2-18 EXPIRED, OR IF THE ORDER WOULD HAVE EXPIRED NOT LATER THAN THE FIRST
2-19 ANNIVERSARY OF THE DATE THE PERSON IS RELEASED FROM CONFINEMENT OR
2-20 IMPRISONMENT, THE ORDER IS AUTOMATICALLY EXTENDED TO EXPIRE ON:

2-21 "(1) THE FIRST ANNIVERSARY OF THE DATE THE PERSON IS
2-22 RELEASED, IF THE PERSON WAS SENTENCED TO CONFINEMENT OR
2-23 IMPRISONMENT FOR A TERM OF MORE THAN FIVE YEARS; OR

2-24 "(2) THE SECOND ANNIVERSARY OF THE DATE THE PERSON IS
2-25 RELEASED, IF THE PERSON WAS SENTENCED TO CONFINEMENT OR
2-26 IMPRISONMENT FOR A TERM OF FIVE YEARS OR LESS."

2-27 "A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED
2-28 BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY
2-29 CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT
2-30 RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE
2-31 MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A
2-32 SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON
2-33 FOR AT LEAST TWO YEARS."

2-34 SECTION 5. Section 86.0011(a), Family Code, is amended to
2-35 read as follows:

2-36 (a) On receipt of an original or modified protective order
2-37 from the clerk of the issuing court, or on receipt of information
2-38 pertaining to the date of confinement or imprisonment or date of
2-39 release of a person subject to the protective order, a law
2-40 enforcement agency shall immediately, but not later than the third
2-41 business day after the date the order or information is received,
2-42 enter the information required by Section 411.042(b)(6),
2-43 Government Code, into the statewide law enforcement information
2-44 system maintained by the Department of Public Safety.

2-45 SECTION 6. Article 7B.001(a), Code of Criminal Procedure,
2-46 is amended to read as follows:

2-47 (a) The following persons may file an application for a
2-48 protective order under this subchapter without regard to the
2-49 relationship between the applicant and the alleged offender:

2-50 (1) a person who is the victim of an offense under
2-51 Section 20A.02, 20A.03, 21.02, 21.11, 22.011, 22.021, [~~or~~] 42.072,
2-52 or 43.05, Penal Code;

2-53 (2) any adult, including a parent or guardian, who is
2-54 acting on behalf of a victim described by Subdivision (1), if the
2-55 victim is younger than 18 years of age or an adult ward [a person who
2-56 is the victim of an offense under Section 20A.02, 20A.03, or 43.05,
2-57 Penal Code]; or

2-58 (3) ~~[a parent or guardian acting on behalf of a person~~
2-59 ~~younger than 17 years of age who is the victim of an offense listed~~
2-60 ~~in Subdivision (1);~~

2-61 ~~[(4) a parent or guardian acting on behalf of a person~~
2-62 ~~younger than 18 years of age who is the victim of an offense listed~~
2-63 ~~in Subdivision (2); or~~

2-64 ~~[(5) a prosecuting attorney acting on behalf of a~~
2-65 ~~person described by Subdivision (1) or [7] (2) [7, (3), or (4)].~~

2-66 SECTION 7. Article 7B.001, Code of Criminal Procedure, is
2-67 amended to conform to Chapter 1066 (H.B. 1343), Acts of the 86th
2-68 Legislature, Regular Session, 2019, by adding Subsections (a-1) and
2-69 (a-2) and is further amended to read as follows:

3-1 (a-1) Except as provided by Subsection (a-2), if an
 3-2 application has not yet been filed in the case under Subsection (a),
 3-3 the attorney representing the state shall promptly file an
 3-4 application for a protective order with respect to each victim of an
 3-5 offense listed in Subdivision (1) of that subsection following the
 3-6 offender's conviction of or placement on deferred adjudication
 3-7 community supervision for the offense.

3-8 (a-2) The attorney representing the state may not file an
 3-9 application under Subsection (a-1) with respect to a victim if the
 3-10 victim requests that the attorney representing the state not file
 3-11 the application. This subsection does not apply to a victim who is
 3-12 younger than 18 years of age or who is an adult ward.

3-13 SECTION 8. Article 7B.003, Code of Criminal Procedure, is
 3-14 amended to conform to Chapter 1066 (H.B. 1343), Acts of the 86th
 3-15 Legislature, Regular Session, 2019, by adding Subsection (c) and is
 3-16 further amended to read as follows:

3-17 (c) An offender's conviction of or placement on deferred
 3-18 adjudication community supervision for an offense listed in Article
 3-19 7B.001(a)(1) constitutes reasonable grounds under Subsection (a).

3-20 SECTION 9. Article 7B.007, Code of Criminal Procedure, is
 3-21 amended to conform to Chapter 1066 (H.B. 1343), Acts of the 86th
 3-22 Legislature, Regular Session, 2019, by adding Subsection (a-1) and
 3-23 is further amended to read as follows:

3-24 (a-1) The court shall issue a protective order effective for
 3-25 the duration of the lives of the offender and victim if the offender
 3-26 is:

3-27 (1) convicted of or placed on deferred adjudication
 3-28 community supervision for an offense listed in Article
 3-29 7B.001(a)(1); and

3-30 (2) required under Chapter 62 to register for life as a
 3-31 sex offender.

3-32 SECTION 10. Article 7B.007, Code of Criminal Procedure, is
 3-33 amended by amending Subsection (b) and adding Subsection (b-1) to
 3-34 read as follows:

3-35 (b) The following persons may file at any time an
 3-36 application with the court to rescind the protective order:

3-37 (1) a victim of an offense listed in Article
 3-38 7B.001(a)(1) who is 18 [17] years of age or older;

3-39 (2) subject to Subsection (b-1), ~~or~~ a parent or
 3-40 guardian acting on behalf of a victim of an offense listed in
 3-41 Article 7B.001(a)(1) who is younger than 18 [17] years of age or an
 3-42 adult ward; or

3-43 (3) a person not otherwise described by Subdivision
 3-44 (1) or (2) who filed the application for the protective order.

3-45 (b-1) ~~A [(2) a victim of an offense listed in Article~~
 3-46 ~~7B.001(a)(2) or a]~~ parent or guardian may not file an application to
 3-47 rescind the protective order under Subsection (b)(2) if the parent
 3-48 or guardian is the alleged offender subject to the protective order
 3-49 ~~[acting on behalf of a victim who is younger than 18 years of age].~~

3-50 SECTION 11. Article 56A.052(d), Code of Criminal Procedure,
 3-51 is amended to read as follows:

3-52 (d) This subsection applies only to a victim of an offense
 3-53 under Section 20A.02, 20A.03, 21.02, 21.11, 22.011, 22.021, 42.072,
 3-54 or 43.05, Penal Code. A victim described by this subsection or a
 3-55 parent or guardian of the victim, if the victim is younger than 18
 3-56 years of age or an adult ward, is entitled to the following rights
 3-57 within the criminal justice system:

3-58 (1) the right to be informed:
 3-59 (A) that the victim or, if the victim is younger
 3-60 than 18 years of age or an adult ward, the victim's parent or
 3-61 guardian or another adult acting on the victim's behalf ~~[, as~~
 3-62 ~~applicable,]~~ may file an application for a protective order under
 3-63 Article 7B.001;

3-64 (B) of the court in which the application for a
 3-65 protective order may be filed; ~~and]~~

3-66 (C) that, on request of the victim or, if the
 3-67 victim is younger than 18 years of age or an adult ward, on request
 3-68 of the victim's parent or guardian or another adult acting on the
 3-69 victim's behalf, ~~[as applicable, and subject to the Texas~~

4-1 ~~Disciplinary Rules of Professional Conduct,~~ the attorney
4-2 representing the state may, subject to the Texas Disciplinary Rules
4-3 of Professional Conduct, file the application for a protective
4-4 order on behalf of the requestor [victim]; and

4-5 (D) that, subject to the Texas Disciplinary Rules
4-6 of Professional Conduct, the attorney representing the state
4-7 generally is required to file the application for a protective
4-8 order with respect to the victim if the defendant is convicted of or
4-9 placed on deferred adjudication community supervision for the
4-10 offense;

4-11 (2) the right to:
4-12 (A) request that the attorney representing the
4-13 state, subject to the Texas Disciplinary Rules of Professional
4-14 Conduct, file an application for a protective order described by
4-15 Subdivision (1); and

4-16 (B) be notified when the attorney representing
4-17 the state files an application for a protective order under Article
4-18 7B.001;

4-19 (3) if the victim or the victim's parent or guardian,
4-20 as applicable, is present when the defendant is convicted or placed
4-21 on deferred adjudication community supervision, the right to:

4-22 (A) be given by the court the information
4-23 described by Subdivision (1); and

4-24 (B) file an application for a protective order
4-25 under Article 7B.001 immediately following the defendant's
4-26 conviction or placement on deferred adjudication community
4-27 supervision if the court has jurisdiction over the application; and

4-28 (4) if the victim or the victim's parent or guardian,
4-29 as applicable, is not present when the defendant is convicted or
4-30 placed on deferred adjudication community supervision, the right to
4-31 be given by the attorney representing the state the information
4-32 described by Subdivision (1).

4-33 SECTION 12. Section 25.07, Penal Code, is amended by
4-34 amending Subsection (g) and adding Subsection (h) to read as
4-35 follows:

4-36 (g) An offense under this section is a Class A misdemeanor,
4-37 except the offense is:

4-38 (1) subject to Subdivision (2), a state jail felony if
4-39 it is shown at the trial of the offense that the defendant violated
4-40 an order issued under Subchapter A, Chapter 7B ~~[as a result of an~~
4-41 ~~application filed under Article 7A.01(a-1)]~~, Code of Criminal
4-42 Procedure, following the defendant's conviction of or placement on
4-43 deferred adjudication community supervision for an offense, if the
4-44 order was issued with respect to a victim of that offense; or

4-45 (2) a felony of the third degree if it is shown on the
4-46 trial of the offense that the defendant:

4-47 (A) has previously been convicted two or more
4-48 times of an offense under this section or two or more times of an
4-49 offense under Section 25.072, or has previously been convicted of
4-50 an offense under this section and an offense under Section 25.072;
4-51 or

4-52 (B) has violated the order or condition of bond
4-53 by committing an assault or the offense of stalking.

4-54 (h) For purposes of Subsection (g), a conviction under the
4-55 laws of another state for an offense containing elements that are
4-56 substantially similar to the elements of an offense under this
4-57 section or Section 25.072 is considered to be a conviction under
4-58 this section or Section 25.072, as applicable.

4-59 SECTION 13. The following provisions are repealed:

4-60 (1) Section 1, Chapter 1066 (H.B. 1343), Acts of the
4-61 86th Legislature, Regular Session, 2019, which amended Article
4-62 7A.01, Code of Criminal Procedure;

4-63 (2) Section 2, Chapter 1066 (H.B. 1343), Acts of the
4-64 86th Legislature, Regular Session, 2019, which amended Article
4-65 7A.03, Code of Criminal Procedure; and

4-66 (3) Section 3, Chapter 1066 (H.B. 1343), Acts of the
4-67 86th Legislature, Regular Session, 2019, which amended Article
4-68 7A.07, Code of Criminal Procedure.

4-69 SECTION 14. Section 85.005, Family Code, as amended by this

5-1 Act, applies only to a protective order approved by the court on or
5-2 after the effective date of this Act.

5-3 SECTION 15. Section 85.006, Family Code, as amended by this
5-4 Act, applies only to a protective order for which the respondent
5-5 receives service on or after the effective date of this Act.

5-6 SECTION 16. Sections 85.025, 85.026, and 86.0011, Family
5-7 Code, as amended by this Act, apply only to a protective order
5-8 issued on or after the effective date of this Act.

5-9 SECTION 17. Subchapter A, Chapter 7B, Code of Criminal
5-10 Procedure, as amended by this Act, applies only to a protective
5-11 order for which an application is filed on or after the effective
5-12 date of this Act.

5-13 SECTION 18. Article 56A.052(d), Code of Criminal Procedure,
5-14 as amended by this Act, applies to a victim of criminally injurious
5-15 conduct for which a judgment of conviction is entered or a grant of
5-16 deferred adjudication community supervision is made on or after the
5-17 effective date of this Act, regardless of whether the criminally
5-18 injurious conduct occurred before, on, or after the effective date
5-19 of this Act.

5-20 SECTION 19. To the extent of any conflict, this Act prevails
5-21 over another Act of the 87th Legislature, Regular Session, 2021,
5-22 relating to nonsubstantive additions to and corrections in enacted
5-23 codes.

5-24 SECTION 20. This Act takes effect September 1, 2021.

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