

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 39
By: Neave et al. (Zaffirini)
Criminal Justice
5/13/2021
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Civil protective orders (PO), which prohibit batterers and assailants from interacting with their victims, are essential tools in securing the safety of sexual assault and family violence survivors. Current law, however, is unclear regarding when a violation of an agreed order is enforceable as a criminal offense and the type notice required for a judge to issue a default judgement. What's more, standing to apply for a PO on behalf of a child or an adult under guardianship should be expanded to better protect survivors.

H.B. 39 would clarify that an agreed PO is criminally enforceable even if, in order to facilitate a settlement, the court omitted a finding that family violence occurred or is likely to occur in the future. This would ensure any violation of a PO has serious consequences.

H.B. 39 also would clarify that judges may render a default judgment for a PO as long as the respondent was served 48 hours in advance and proof of service is on file with the court, which would ensure that such orders are issued timely in dangerous situations.

Finally, H.B. 39 would allow any adult to apply for a sexual assault, stalking, or human trafficking PO on behalf of a child or person under guardianship, which is especially important when the abuser is a parent or guardian.

(Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 39 amends current law relating to protective orders and makes conforming changes.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 85.005(a) and (b), Family Code, as follows:

(a) Authorizes the parties to a proceeding relating to the issuance of a protective order, to facilitate settlement, to agree in writing to a protective order, rather than to agree in writing to the terms of a protective order, as provided by Section 85.022 (Requirements of Order Applying to Person Who Committed Family Violence), in addition to Section 85.021 (Requirements of Order Applying to Any Party). Prohibits the court from approving an agreement that requires the applicant for the protective order to do or refrain from doing an act under Section 85.022. Makes a nonsubstantive change.

(b) Provides that an agreed protective order is enforceable civilly or criminally, regardless of whether the court makes the findings required by Section 85.001 (Required Findings and Orders). Deletes existing text authorizing a respondent, to facilitate settlement, to agree to a protective order under Section 85.022, subject to court approval, and prohibiting the court from approving an agreement that requires the applicant to do or refrain from doing an act under Section 85.022. Makes a nonsubstantive change.

SECTION 2. Amends Section 85.006(a), Family Code, to authorize a court, notwithstanding Rule 107, Texas Rules of Civil Procedure, to render a protective order that is binding on a respondent who does not attend a hearing if the respondent received service of the application and notice of the hearing and if proof of service was filed with the court before the hearing. Makes nonsubstantive changes.

SECTION 3. Amends Section 85.025, Family Code, by adding Subsection (d), as follows:

(d) Requires the Department of Public Safety of the State of Texas (DPS), if the duration of a protective order is subject to an automatic extension under Subsection (c) (relating to the expiration dates of certain protection orders), based on the duration of the sentence of the person subject to the protective order, to enter the projected expiration date of the order in the statewide law enforcement information system maintained by DPS. Requires DPS, on release of the person, to update the information in the statewide law enforcement system to reflect the date the order will expire following the person's release.

SECTION 4. Amends Section 85.026(a), Family Code, as follows:

(a) Requires that each protective order issued under Subtitle (B) (Protective Orders) including a temporary ex parte order, contain certain statements. Sets forth the language required to be included in the protective order.

SECTION 5. Amends Section 86.0011(a), Family Code, as follows:

(a) Requires a law enforcement agency, on receipt of an original or modified protective order from the clerk of the issuing court, or on receipt of information pertaining to the date of confinement or imprisonment or date of release of a person subject to the protective order, to immediately, but not later than the third business day after the date the order or information is received, enter the information required by Section 411.042(b)(6) (relating to requiring the bureau of identification and records to collect certain information regarding protective orders), Government Code, into the statewide law enforcement information system maintained by DPS.

SECTION 6. Amends Article 7B.001(a), Code of Criminal Procedure, as follows:

(a) Authorizes the following persons to file an application for a protective order under Subchapter A (Protective Order for Victims of Sexual Assault or Abuse, Stalking, or Trafficking) without regard to the relationship between the applicant and the alleged offender:

(1) a person who is the victim of an offense under certain sections, including Section 20A.02 (Trafficking of Persons) or 43.05 (Compelling Prostitution), Penal Code;

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

(3) a prosecuting attorney acting on behalf of a person described by Subdivision (1) or (2).

Deletes existing text authorizing a parent or guardian acting on behalf of a person younger than 17 years of age who is the victim of an offense listed in Subdivision (1) or a parent or guardian acting on behalf of a person younger than 18 years of age who is the victim of an offense listed in Subdivision (2) to file an application for a protective order under Subchapter A without regard to the relationship between the applicant and the alleged offender. Makes nonsubstantive changes.

SECTION 7. Amends Article 7B.001, Code of Criminal Procedure, to conform to Chapter 1066 (H.B. 1343), Acts of the 86th Legislature, Regular Session, 2019, by adding Subsections (a-1) and (a-2), and further amends it, as follows:

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

(a-2) Prohibits the attorney representing the state from filing an application under Subsection (a-1) with respect to a victim if the victim requests that the attorney representing the state not file the application. Provides that this subsection does not apply to a victim who is younger than 18 years of age or who is an adult ward.

SECTION 8. Amends Article 7B.003, Code of Criminal Procedure, to conform to Chapter 1066 (H.B. 1343), Acts of the 86th Legislature, Regular Session, 2019, by adding Subsection (c), and further amends it, as follows:

(c) Provides that an offender's conviction of or placement on deferred adjudication community supervision for an offense listed in Article 7B.001(a)(1) constitutes reasonable grounds under Subsection (a) (relating to findings regarding whether the applicant is the victim of certain offenses).

SECTION 9. Amends Article 7B.007, Code of Criminal Procedure, to conform to Chapter 1066 (H.B. 1343), Acts of the 86th Legislature, Regular Session, 2019, by adding Subsection (a-1), and further amends it, as follows:

(a-1) Requires the court to issue a protective order effective for the duration of the lives of the offender and victim if the offender is convicted of or placed on deferred adjudication community supervision for an offense listed in Article 7B.001(a)(1), and if the offender is required under Chapter 62 (Sex Offender Registration Program) to register for life as a sex offender.

SECTION 10. Amends Article 7B.007, Code of Criminal Procedure, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Authorizes the following persons to file at any time an application with the court to rescind the protective order:

(1) a victim of an offense listed in Article 7B.001(a)(1) who is 18, rather than 17, years of age or older;

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

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

(b-1) Creates this subsection from existing text. Prohibits a parent or guardian from filing an application to rescind the protective order under Subsection (b)(2) if the parent or guardian is the alleged offender subject to the protective order. Makes conforming changes.

SECTION 11. Amends Article 56A.052(d), Code of Criminal Procedure, as follows:

(d) Provides that a victim of an offense under Section 20A.02, 20A.03, 21.02, 21.11, 22.011, 22.021, 42.072, or 43.05, Penal Code, or a parent or guardian of the victim, if the

victim is younger than 18 years of age or an adult ward, is entitled to the following rights within the criminal justice system:

(1) the right to be informed:

(A) that the victim or, if the victim is younger than 18 years of age or an adult ward, the victim's parent or guardian or another adult acting on the victim's behalf is authorized to file an application for a protective order under Article 7B.001 (Application for Protective Order);

(B) makes a nonsubstantive change to this paragraph;

(C) that, on request of the victim or, if the victim is younger than 18 years of age or an adult ward, on request of the victim's parent or guardian or another adult acting on the victim's behalf, the attorney representing the state is authorized to, subject to the Texas Disciplinary Rules of Professional Conduct, file the application for a protective order on behalf of the requestor, rather than on behalf of the victim; and

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

(2) the right to be notified when the attorney representing the state files an application for a protective order under Article 7B.001;

(3) and (4) makes no changes to these subdivisions.

Makes nonsubstantive changes.

SECTION 12. Amends Section 25.07, Penal Code, by amending Subsection (g) and adding Subsection (h), as follows:

(g) Provides that an offense under Section 25.07 (Violation of Certain Court Orders or Conditions of Bond in a Family Violence, Child Abuse or Neglect, Sexual Assault or Abuse, Indecent Assault, Stalking, or Trafficking Case) is a Class A misdemeanor, except the offense is:

(1) subject to Subdivision (2), a state jail felony if it is shown at the trial of the offense that the defendant violated an order issued under Subchapter A, Chapter 7B, Code of Criminal Procedure, following the defendant's conviction of or placement on deferred adjudication community supervision for an offense, if the order was issued with respect to a victim of that offense, rather than a state jail felony if it is shown at the trial of the offense that the defendant violated an order issued as a result of an application filed under Article 7A.01(a-1) (relating to an application filed by the attorney representing the state), Code of Criminal Procedure; or

(2) makes no changes to this subdivision.

(h) Provides that, for purposes of Subsection (g), a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense under this section or Section 25.072 (Repeated Violation of Certain Court Orders or Conditions of Bond in Family Violence, Child Abuse or Neglect, Sexual Assault or Abuse, Indecent Assault, Stalking, or Trafficking Case) is considered to be a conviction under this section or Section 25.072, as applicable.

SECTION 13. Repealer: Section 1, Chapter 1066 (H.B. 1343), Acts of the 86th Legislature, Regular Session, 2019, which amended Article 7A.01 (Application for Protective Order), Code of Criminal Procedure.

Repealer: Section 2, Chapter 1066 (H.B. 1343), Acts of the 86th Legislature, Regular Session, 2019, which amended Article 7A.03 (Required Findings; Issuance of Protective Order), Code of Criminal Procedure.

Repealer: Section 3, Chapter 1066 (H.B. 1343), Acts of the 86th Legislature, Regular Session, 2019, which amended Article 7A.07 (Duration of Protective Order), Code of Criminal Procedure.

SECTION 14. Makes application of Section 85.005, Family Code, as amended by this Act, prospective.

SECTION 15. Makes application of Section 85.006, Family Code, as amended by this Act, prospective.

SECTION 16. Makes application of Sections 85.025, 85.026, and 86.0011, Family Code, as amended by this Act, prospective.

SECTION 17. Makes application of Subchapter A, Chapter 7B, Code of Criminal Procedure, as amended by this Act, prospective.

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

SECTION 19. Provides that, to the extent of any conflict, this Act prevails over another Act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 20. Effective date: September 1, 2021.