

By: Neave, Cook

H.B. No. 39

A BILL TO BE ENTITLED

AN ACT

relating to protective orders; making conforming changes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 85.005(a) and (b), Family Code, are amended to read as follows:

(a) To facilitate settlement, the parties to a proceeding may agree in writing to ~~[the terms of]~~ a protective order as provided by Sections ~~[Section]~~ 85.021 and 85.022. An agreement under this subsection is subject to the approval of the court. The court may not approve an agreement that requires the applicant for the protective order to do or refrain from doing an act under Section 85.022.

(b) An ~~[To facilitate settlement, a respondent may agree in writing to the terms of a protective order as provided by Section 85.022, subject to the approval of the court. The court may not approve an agreement that requires the applicant to do or refrain from doing an act under Section 85.022. The]~~ agreed protective order is enforceable civilly or criminally, regardless of whether the court makes the findings required by Section 85.001.

SECTION 2. Section 85.006(a), Family Code, is amended to read as follows:

(a) Notwithstanding Rule 107, Texas Rules of Civil Procedure, a [A] court may render a protective order that is binding on a respondent who does not attend a hearing if:

1           (1) the respondent received service of the application  
2 and notice of the hearing; and

3           (2) proof of service was filed with the court before  
4 the hearing.

5           SECTION 3. Article 7B.001(a), Code of Criminal Procedure,  
6 is amended to read as follows:

7           (a) The following persons may file an application for a  
8 protective order under this subchapter without regard to the  
9 relationship between the applicant and the alleged offender:

10           (1) a person who is the victim of an offense under  
11 Section 20A.02, 20A.03, 21.02, 21.11, 22.011, 22.021, [ex] 42.072,  
12 or 43.05, Penal Code;

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

18           (3) [~~a parent or guardian acting on behalf of a person~~  
19 ~~younger than 17 years of age who is the victim of an offense listed~~  
20 ~~in Subdivision (1),~~

21           [~~(4) a parent or guardian acting on behalf of a person~~  
22 ~~younger than 18 years of age who is the victim of an offense listed~~  
23 ~~in Subdivision (2), or~~

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

26           SECTION 4. Article 7B.001, Code of Criminal Procedure, is  
27 amended to conform to Chapter 1066 (H.B. 1343), Acts of the 86th

1 Legislature, Regular Session, 2019, by adding Subsections (a-1) and  
2 (a-2) and is further amended to read as follows:

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

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

15 SECTION 5. Article [7B.003](#), Code of Criminal Procedure, is  
16 amended to conform to Chapter 1066 (H.B. 1343), Acts of the 86th  
17 Legislature, Regular Session, 2019, by adding Subsection (c) and is  
18 further amended to read as follows:

19 (c) An offender's conviction of or placement on deferred  
20 adjudication community supervision for an offense listed in Article  
21 [7B.001](#)(a)(1) constitutes reasonable grounds under Subsection (a).

22 SECTION 6. Article [7B.007](#), Code of Criminal Procedure, is  
23 amended to conform to Chapter 1066 (H.B. 1343), Acts of the 86th  
24 Legislature, Regular Session, 2019, by adding Subsection (a-1) and  
25 is further amended to read as follows:

26 (a-1) The court shall issue a protective order effective for  
27 the duration of the lives of the offender and victim if the offender

1 is:

2 (1) convicted of or placed on deferred adjudication  
3 community supervision for an offense listed in Article  
4 7B.001(a)(1); and

5 (2) required under Chapter 62 to register for life as a  
6 sex offender.

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

10 (b) The following persons may file at any time an  
11 application with the court to rescind the protective order:

12 (1) a victim of an offense listed in Article  
13 7B.001(a)(1) who is 18 [~~17~~] years of age or older;

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

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

20 (b-1) A [~~(2) a victim of an offense listed in Article~~  
21 ~~7B.001(a)(2) or a~~] parent or guardian may not file an application to  
22 rescind the protective order under Subsection (b)(2) if the parent  
23 or guardian is the alleged offender subject to the protective order  
24 [~~acting on behalf of a victim who is younger than 18 years of age~~].

25 SECTION 8. Article 56A.052(d), Code of Criminal Procedure,  
26 is amended to read as follows:

27 (d) This subsection applies only to a victim of an offense

1 under Section 20A.02, 20A.03, 21.02, 21.11, 22.011, 22.021, 42.072,  
2 or 43.05, Penal Code. A victim described by this subsection or a  
3 parent or guardian of the victim, if the victim is younger than 18  
4 years of age or an adult ward, is entitled to the following rights  
5 within the criminal justice system:

6 (1) the right to be informed:

7 (A) that the victim or, if the victim is younger  
8 than 18 years of age or an adult ward, the victim's parent or  
9 guardian or another adult acting on the victim's behalf [~~as~~  
10 ~~applicable,~~] may file an application for a protective order under  
11 Article 7B.001;

12 (B) of the court in which the application for a  
13 protective order may be filed; [~~and~~]

14 (C) that, on request of the victim or, if the  
15 victim is younger than 18 years of age or an adult ward, on request  
16 of the victim's parent or guardian or another adult acting on the  
17 victim's behalf, [~~as applicable, and subject to the Texas~~  
18 ~~Disciplinary Rules of Professional Conduct,~~] the attorney  
19 representing the state may, subject to the Texas Disciplinary Rules  
20 of Professional Conduct, file the application for a protective  
21 order on behalf of the requestor [~~victim~~]; and

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

1 (2) the right to:

2 (A) request that the attorney representing the  
3 state, subject to the Texas Disciplinary Rules of Professional  
4 Conduct, file an application for a protective order described by  
5 Subdivision (1); and

6 (B) be notified when the attorney representing  
7 the state files an application for a protective order under Article  
8 7B.001;

9 (3) if the victim or the victim's parent or guardian,  
10 as applicable, is present when the defendant is convicted or placed  
11 on deferred adjudication community supervision, the right to:

12 (A) be given by the court the information  
13 described by Subdivision (1); and

14 (B) file an application for a protective order  
15 under Article 7B.001 immediately following the defendant's  
16 conviction or placement on deferred adjudication community  
17 supervision if the court has jurisdiction over the application; and

18 (4) if the victim or the victim's parent or guardian,  
19 as applicable, is not present when the defendant is convicted or  
20 placed on deferred adjudication community supervision, the right to  
21 be given by the attorney representing the state the information  
22 described by Subdivision (1).

23 SECTION 9. Section 25.07(g), Penal Code, is amended to read  
24 as follows:

25 (g) An offense under this section is a Class A misdemeanor,  
26 except the offense is:

27 (1) subject to Subdivision (2), a state jail felony if

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

7 (2) a felony of the third degree if it is shown on the  
8 trial of the offense that the defendant:

9 (A) has previously been convicted two or more  
10 times of an offense under this section or two or more times of an  
11 offense under Section 25.072, or has previously been convicted of  
12 an offense under this section and an offense under Section 25.072;  
13 or

14 (B) has violated the order or condition of bond  
15 by committing an assault or the offense of stalking.

16 SECTION 10. The following provisions are repealed:

17 (1) Section 1, Chapter 1066 (H.B. 1343), Acts of the  
18 86th Legislature, Regular Session, 2019, which amended Article  
19 7A.01, Code of Criminal Procedure;

20 (2) Section 2, Chapter 1066 (H.B. 1343), Acts of the  
21 86th Legislature, Regular Session, 2019, which amended Article  
22 7A.03, Code of Criminal Procedure; and

23 (3) Section 3, Chapter 1066 (H.B. 1343), Acts of the  
24 86th Legislature, Regular Session, 2019, which amended Article  
25 7A.07, Code of Criminal Procedure.

26 SECTION 11. Section 85.005, Family Code, as amended by this  
27 Act, applies only to a protective order approved by the court on or

1 after the effective date of this Act.

2 SECTION 12. Section 85.006, Family Code, as amended by this  
3 Act, applies only to a protective order for which the respondent  
4 receives service on or after the effective date of this Act.

5 SECTION 13. Subchapter A, Chapter 7B, Code of Criminal  
6 Procedure, as amended by this Act, applies only to a protective  
7 order for which an application is filed on or after the effective  
8 date of this Act.

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

16 SECTION 15. To the extent of any conflict, this Act prevails  
17 over another Act of the 87th Legislature, Regular Session, 2021,  
18 relating to nonsubstantive additions to and corrections in enacted  
19 codes.

20 SECTION 16. This Act takes effect September 1, 2021.