

House Bill 39
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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) the respondent received service of the application and notice of the hearing; and

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

No equivalent provision.

SENATE VERSION (IE)

SECTION 1. Same as House version.

SECTION 2. Same as House version.

Same as House version. SECTION 3. [Deleted by FA1(1)]

CONFERENCE

House Bill 39
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

No equivalent provision.

SECTION 4. Section 85.026(a), Family Code, is amended to read as follows:

(a) Each protective order issued under this subtitle, including a temporary ex parte order, must contain the following prominently displayed statements in boldfaced type, capital letters, or underlined:

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

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

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

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

House Bill 39
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

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

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

No equivalent provision.

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

(a) 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, a law enforcement agency shall 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), Government Code, into the statewide law enforcement information system maintained by the Department of Public Safety.

House Bill 39
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

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

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

(3) ~~[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);~~

~~[(4) 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); or~~

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

SECTION 4. Article 7B.001, Code of Criminal Procedure, is amended 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 is further amended to read as follows:

(a-1) Except as provided by Subsection (a-2), if an application has not yet been filed in the case under Subsection

SECTION 6. Same as House version.

SECTION 7. Same as House version.

House Bill 39
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(a), the attorney representing the state shall promptly file an application for a protective order with respect to each victim of an offense listed in Subdivision (1) of that subsection following the offender's conviction of or placement on deferred adjudication community supervision for the offense.

(a-2) The attorney representing the state may not file 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. This subsection does not apply to a victim who is younger than 18 years of age or who is an adult ward.

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

(c) 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).

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

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

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

SECTION 8. Same as House version.

SECTION 9. Same as House version.

House Bill 39
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

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

(b) The following persons may 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 [~~17~~] years of age or older;

(2) subject to Subsection (b-1), [~~or~~] 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 [~~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) A [~~(2) — a victim of an offense listed in Article 7B.001(a)(2) or a~~] parent or guardian may not file 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 [~~acting on behalf of a victim who is younger than 18 years of age~~].

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

(d) This subsection applies only to 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. A victim described by this subsection 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

SECTION 10. Same as House version.

SECTION 11. Same as House version.

House Bill 39
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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~~[, as applicable,]~~ may file an application for a protective order under Article 7B.001;

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

(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, ~~[as applicable, and subject to the Texas Disciplinary Rules of Professional Conduct,]~~ the attorney representing the state may, subject to the Texas Disciplinary Rules of Professional Conduct, file the application for a protective order on behalf of the requestor ~~[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:

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

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

(3) if the victim or the victim's parent or guardian, as applicable, is present when the defendant is convicted or

House Bill 39
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

placed on deferred adjudication community supervision, the right to:

- (A) be given by the court the information described by Subdivision (1); and
- (B) file an application for a protective order under Article 7B.001 immediately following the defendant's conviction or placement on deferred adjudication community supervision if the court has jurisdiction over the application; and
- (4) if the victim or the victim's parent or guardian, as applicable, is not present when the defendant is convicted or placed on deferred adjudication community supervision, the right to be given by the attorney representing the state the information described by Subdivision (1).

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

- (g) An offense under this section 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 [as a result of an application filed under Article 7A.01(a-1)], 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; or
 - (2) a felony of the third degree if it is shown on the trial of the offense that the defendant:
 - (A) has previously been convicted two or more times of an offense under this section or two or more times of an offense

SENATE VERSION (IE)

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

- (g) An offense under this section 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 [as a result of an application filed under Article 7A.01(a-1)], 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; or
 - (2) a felony of the third degree if it is shown on the trial of the offense that the defendant:
 - (A) has previously been convicted two or more times of an offense under this section or two or more times of an offense

CONFERENCE

House Bill 39
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

under Section 25.072, or has previously been convicted of an offense under this section and an offense under Section 25.072; or
(B) has violated the order or condition of bond by committing an assault or the offense of stalking.

SECTION 10. The following provisions are repealed:

- (1) Section 1, Chapter 1066 (H.B. 1343), Acts of the 86th Legislature, Regular Session, 2019, which amended Article 7A.01, Code of Criminal Procedure;
- (2) Section 2, Chapter 1066 (H.B. 1343), Acts of the 86th Legislature, Regular Session, 2019, which amended Article 7A.03, Code of Criminal Procedure; and
- (3) Section 3, Chapter 1066 (H.B. 1343), Acts of the 86th Legislature, Regular Session, 2019, which amended Article 7A.07, Code of Criminal Procedure.

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

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

SENATE VERSION (IE)

under Section 25.072, or has previously been convicted of an offense under this section and an offense under Section 25.072; or
(B) has violated the order or condition of bond by committing an assault or the offense of stalking.

(h) 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 is considered to be a conviction under this section or Section 25.072, as applicable.

SECTION 13. Same as House version.

SECTION 14. Same as House version.

SECTION 15. Same as House version.

CONFERENCE

House Bill 39
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

this Act.

No equivalent provision.

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

SECTION 14. 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 15. 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 16. This Act takes effect September 1, 2021.

SECTION 16. Sections 85.026 and 86.0011, Family Code, as amended by this Act, apply only to a protective order issued on or after the effective date of this Act. [FA1(2)]

SECTION 17. Same as House version.

SECTION 18. Same as House version.

SECTION 19. Same as House version.

SECTION 20. Same as House version.