

SUBJECT: Procedures for protective orders in family violence, other specified cases

COMMITTEE: Juvenile Justice and Family Issues — favorable, without amendment

VOTE: 9 ayes — Neave, Swanson, Cook, Frank, Leach, Ramos, Talarico, Vasut,  
Wu

0 nays

WITNESSES: For — Marvinna Robinson, Tarrant County Criminal District Attorney's Office; Elizabeth Boyce, Texas Association Against Sexual Assault; Krista Delgallo, Texas Council on Family Violence; Bill Morris, Texas Family Law Foundation; Paige Flink, The Family Place; (*Registered, but did not testify*: Daniel Collins, County of El Paso; M. Paige Williams, for Dallas Criminal District Attorney John Creuzot; Lindy Borchardt, Tarrant County Criminal District Attorney; Stephen Lund, Tarrant County Criminal District Attorney; Rachana Chhin, Texas Catholic Conference of Bishops; Amy Bresnen and Steve Bresnen, Texas Family Law Foundation; Thomas Parkinson)

Against — (*Registered, but did not testify*: Jeffrey Morgan; David OConnor)

On — (*Registered, but did not testify*: Robert Garza)

BACKGROUND: Family Code ch. 85 governs the issuance of protective orders and family violence.

**Issuing certain protective orders.** Family Code sec. 85.021 establishes requirements for protective orders applying to any party and authorizes courts to take actions relating to various people or things, including children, property, pets, and support payments.

Family Code sec. 85.022 establishes requirements for protective orders applying to individuals found to have committed family violence. It includes a list of specific items that courts may require of persons found to

have committed family violence.

Under Family Code sec. 85.001, courts are required to make certain findings about whether family violence has occurred. If such a finding is made and the court finds that family violence is likely to occur in the future, the court must issue a protective order under sec. 85.022, applying only to the person found to have committed family violence. The court may issue a protective order under sec. 85.021 applying to both parties.

**Enforcing protective orders.** Family Code secs. 85.005 (a) and (b) authorize the parties to an order or the subject of an order provided under sec. 85.021 and 85.022 to agree to the terms of an order. Agreed orders issued under sec. 85.022 are enforceable civilly or criminally.

**Applying for, rescinding protective orders.** Code of Criminal Procedure art. 7B governs protective orders issued for specific offenses and allows victims of the following offenses to file applications for an order: continuous sexual abuse of a child, indecency with a child, sexual assault, aggravated sexual assault, stalking, human trafficking, continuous human trafficking, and compelling prostitution.

Under CCP 7B.001, victims of such offenses may request a protective order, and for some offenses, parents or guardians acting on behalf of those younger than 17 may make the request. For other offenses, parents or guardians acting on behalf of those younger than 18 may make a request. Prosecutors acting on behalf of victims also may request the orders.

Applications to rescind these orders may be filed by victims either 17 or 18 years old, depending on the offense. Parents or guardians also may make a request to rescind the protective order if the victims are younger than these ages.

**DIGEST:**

HB 39 would expand the type of protective orders that could be civilly and criminally enforceable, require proof of service before certain default protective orders could be issued, and allow default protective orders to be

rendered without meeting certain civil procedure rules. The bill also would revise who could apply for certain protective orders relating to cases of sexual assault or abuse, stalking, or trafficking and who could apply to rescind them. It also would add to the items about which victims of these offenses had a right to be informed and who could receive that information.

The bill would make changes to conform the statutes to HB 4173 by Leach, enacted by the 86th Legislature, which made nonsubstantive revisions to the Code of Criminal Procedure. The revisions included repealing Chapter 7A on protective orders for victims of sexual assault or abuse, indecent assault, stalking, and trafficking and merging its provisions with the current Subchapter A of Chapter 7B on protective orders for the specified offenses.

**Enforcing protective orders.** HB 39 would make civilly and criminally enforceable the agreed protective orders issued under Family Code sec. 85.021, which are orders that can apply to any party.

The enforcement mechanisms for these orders and those issued under Family Code sec. 85.022, which apply to those found to have committed family violence and are civilly and criminally enforceable under current law, would apply regardless of whether a court made a specific finding outlined in Family Code 85.001 that family violence had occurred and was likely to occur in the future.

These changes would apply to orders approved by courts on or after the bill's effective date.

**Issuing protective orders.** The bill would add to the current requirements that allow courts to issue protective orders binding on individuals who do not attend a court hearing but have been served with the application and notice of the hearing. HB 39 would require that in the case of these default protective orders, proof of the service be filed with the court before the hearing.

The bill would make a court's authority to issue a default protective order not subject to Rule 107 of the Texas Rules of Civil Procedure, which governs return of notice of the serving of legal documents.

HB 39 would make the changes relating to default protective orders apply to protective orders for which respondents received service on or after the bill's effective date.

**Applying for, rescinding protective orders.** CSHB 39 would expand who could file requests for protective orders for victims of specific offenses relating to sexual assault or abuse, stalking, or trafficking.

Current provisions that allow all victims to apply and parents or guardians acting on behalf of victims younger than 17 for some offenses and those younger than 18 for other offenses would be revised. Victims of all the specified offenses could continue to apply for an order, and the bill would allow requests to be made by any adult acting on behalf of victims younger than 18 years old or an adult ward.

HB 39 would revise who could file applications to rescind protective orders for specific offenses relating to sexual assault or abuse, stalking, or trafficking. Victims would have to be 18 years old or older to file to have protective orders rescinded for all the specified offenses, instead of the current 17 or older in some circumstances.

Parents or guardians could continue as under current law to file requests to rescind the protective orders, but the authority would apply to victims of the specified offenses who were younger than 18 years old, instead of being restricted to parents and guardians of victims younger than 17 years old for certain offenses. Parents and guardians of adult wards would be given authorization to request a protective order be rescinded as would any adult who filed an application acting on behalf of someone younger than 18 under the authority established by the bill. However, parents and guardians who were the alleged offender and subject of a protective order would be prohibited from requesting that an order be rescinded.

These changes would apply to protective orders for which applications were filed on or after the bill's effective date.

**Crime victims' rights.** HB 39 would add to the current type of information about which victims of offenses related to sexual assault or abuse, stalking, or trafficking had a right to be informed and would expand who could receive that information.

The bill would add other adults acting on behalf of victims younger than 18 to those who also had a right to this information, and it would include parents and guardians of adult wards among those who had a right to be given information about protective orders.

Victims, and parents or guardians in the case of victims younger than 18 years old or adult wards, would have a right to be informed that prosecutors were required to file applications for protective orders in these cases if the defendant was convicted of or placed on deferred adjudication and a right to be notified when a prosecutor filed an application for these types of protective orders.

These provisions would apply to victims for which a conviction or grant of deferred adjudication community supervision in the case was made on or after the bill's effective date, regardless of when the offense occurred.

**Other provisions.** The bill would revise when the criminal offense of violating a protective order for a victim of specified offenses related to sexual assault or abuse, stalking, or trafficking was punished as a state jail felony. Instead of being a state jail felony only when the order that was violated was issued when a prosecutor applied for it after a defendant had been convicted or placed on deferred adjudication, the bill would make it a state jail felony to violate any protective order issued under Code of Criminal Procedure, ch. 7B relating to victims of sexual assault or abuse, stalking, or trafficking.

To the extent of conflicts, HB 39 would prevail over other acts of the 87th Legislature, regular session, relating to nonsubstantive additions and

corrections in enacted codes.

The bill would take effect September 1, 2021.

**SUPPORTERS  
SAY:**

HB 39 would better protect victims of family violence and of certain offenses related to sexual assault or abuse, stalking, or trafficking by eliminating barriers to obtaining and enforcing protective orders. Increases in domestic violence incidents during the pandemic have illustrated the need to streamline and improve the processes for applying and enforcing protective orders in these cases. These orders are important for the safety of survivors, and making it easier to enforce the orders and apply for them would help protect more survivors.

**Enforcing protective orders.** Expanding the Family Code protective orders that are enforceable by both civil and criminal means would increase the options for making sure protective orders in cases of family violence, other offenses related to sexual assault or abuse, stalking, or trafficking were followed.

Enforcing protective orders civilly can be a long, time-consuming process that could be inappropriate in family violence or other cases covered by HB 39 since in many situations enforcement needs to be immediate to keep survivors safe. HB 39 would give the same protection to victims of orders issued under Family Code sec. 85.021 and sec. 85.022 by extending both civil and criminal enforcement mechanisms to both. Given the seriousness of violating protective orders in these cases, it is appropriate and necessary to enforce them criminally.

**Issuing protective orders.** HB 39 would ensure that courts in all areas of the state were operating under the same rules for issuing default protective orders by placing in the statute an exemption from Rule 107 of the Texas Rules of Civil Procedure. Excluding these proceedings from the rule would allow them to proceed in the most expedited way, which is necessary to protect survivors. Requiring that proof of service to the individual who will be subject to the order be filed with the court would make sure courts were acting with complete information.

**Applying for, rescinding protective orders.** The bill would better protect victims by expanding who could file for protective orders for victims of offenses related to sexual assault or abuse, stalking, or trafficking. The bill would allow any adult acting on behalf of a victim younger than 18 to make the application, recognizing that some victims are not close to their parents or guardians and that other adults can act on their behalf. This expansion would not lead to unnecessary protective orders because courts would evaluate requests made by other adults just as they do current requests.

The bill would harmonize who could request that protective orders be rescinded with who could request one. Recognizing that in some cases it is the parent or guardian who is harming the victim, the bill would prohibit them from requesting that a protective order relating to these offenses be rescinded.

**Crime victims' rights.** HB 39 would make sure victims, guardians, and others acting on their behalf and on the behalf of adult wards were fully informed of important information about prosecutors filing for protective orders in these cases.

**Other provisions.** The bill would ensure that all protective order violations under Code of Criminal Procedure, ch 7B that follow a conviction or deferred adjudication and are against a victim of an offense could be punished as a state jail felony. These are serious cases and all violations should carry the same punishment, regardless of who applied for the protective order.

CRITICS  
SAY:

HB 39 could open the door too wide on who could apply for protective orders by allowing any adult to do so on behalf of someone under 18.

Expanding the consequences of violating a protective order could possibly go too far in some cases, especially if the individual subject to the order did not have a lawyer and might not have fully understood the consequences of violating the order.

