

BILL ANALYSIS

H.B. 39
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Juvenile Justice & Family Issues
Committee Report (Unamended)

BACKGROUND AND PURPOSE

There is growing concern about the number of individuals who face significant barriers in acquiring protective orders to prohibit perpetrators of family violence, human trafficking, sexual abuse, sexual assault, and stalking and other similar offenses from interacting with their victims, especially when the victim is a child. H.B. 39 seeks to reduce those barriers to the filing and enforcement of protective orders by making agreed protective orders civilly and criminally enforceable, amending the list of persons that may file an application for a protective order, and requiring that proof of service on a respondent must be filed before a hearing in which a court may issue a protective order by default due to a respondent's failure to appear.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 39 amends the Family Code to provide that all parties to a proceeding regarding a protective order applying to a person who committed family violence may agree in writing to a protective order to facilitate settlement. The bill clarifies that an agreed protective order is enforceable civilly or criminally, regardless of whether the court makes the required findings that family violence has occurred and family violence is likely to occur in the future. The bill includes among conditions that trigger a court's authority to render a default protective order binding on a respondent who does not attend the applicable hearing the condition that proof of service was filed with the court before the hearing.

H.B. 39 amends the Code of Criminal Procedure to authorize any adult, including a parent or guardian, who is acting on behalf of a victim of the offense of trafficking of persons, continuous trafficking of persons, continuous sexual abuse of young child or children, indecency with a child, sexual assault, aggravated sexual assault, stalking, or compelling prostitution, if the victim is younger than 18 years of age or an adult ward, to file an application for a protective order under provisions relating to protective orders for victims of those offenses without regard to the relationship between the applicant and the alleged offender. The bill does the following:

- raises from 17 years of age to 18 years of age the minimum age at which a victim of such an offense may file at any time an application with the court to rescind the protective order;
- includes the person who filed the application for the protective order among the persons authorized to file an application to rescind a protective order; and

- prohibits a parent or guardian from filing an application to rescind the protective order if the parent or guardian is the alleged offender subject to the protective order.

H.B. 39 entitles a victim of an aforementioned offense or a parent or guardian of the victim, if the victim is younger than 18 years of age or an adult ward, to the following rights:

- the right to be informed 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; and
- the right to be notified when the attorney representing the state files an application for a protective order under provisions relating to protective orders for victims of those offenses without regard to the relationship between the applicant and the alleged offender.

These provisions apply 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 bill's effective date, regardless of whether the criminally injurious conduct occurred before, on, or after the bill's effective date.

H.B. 39 amends the Penal Code to make conforming changes.

H.B. 39 repeals the following provisions:

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

EFFECTIVE DATE

September 1, 2021.