

SUBJECT: Crime victims' rights; victim-offender mediation; training on victims' rights

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Talton, Dunnam, Farrar, Galloway, Hinojosa, Keel, Nixon,
A. Reyna

0 nays

1 absent — Place

WITNESSES: For — William “Rusty” Hubbarth, Justice For All; Laura Lyons, Texas
Association Against Sexual Assault; Nell Meyers

Against — James Laughlin, Jr., Texas Police Chiefs Association; Rick A.
Watson, representing Dallas Chief of Police; Keith S. Hampton, Texas
Criminal Defense Lawyers Association

On — Raven Kazen and Melinda Bozarth, Texas Department of Criminal
Justice; Sherri Wallace, Dallas County District Attorney's Office; Wesley
Shackelford

DIGEST: CSHB 1119 would add to the statutory list of crime victims' rights, expand
requirements for the Texas Department of Criminal Justice (TDCJ) to notify
victims about inmate escapes, require TDCJ to establish a victim-offender
mediation program, require judges and TDCJ to encourage offender
participation in the victim-offender mediation program, and require training
in victims' issues for probation, parole and law enforcement officers.

CSHB 1119 would take effect September 1, 1997.

Rights of crime victims. CSHB 1119 would add to the crime victims'
rights listed in the Code of Criminal Procedure, the right:

- if requested, to be informed by an appellate court of the court's decision,
after the decisions are entered but before they are made public;
- to request victim-offender mediation coordinated by the TDCJ's victims

services section; and

- to be informed of the uses and purpose of a victim impact statement, to complete a victims' impact statement and to have it considered by the prosecutor and the judge before sentencing or a plea bargain is accepted and by the Board of Pardons and Paroles before an inmate is released on parole.

CSHB 1119 would specify that the prosecutor would have to inform victims, if requested, of relevant court proceedings, including appellate proceedings.

CSHB 1119 would expand the current right of victims to be present at all public court proceedings relating to the offense, subject to the judge's approval, to include guardians of victims and close relatives of deceased victims.

CSHB 1119 would require the brief statement about the plea bargaining process that prosecutors are required to give to victims after an indictment or information has been returned to include a statement that (1) the victim impact statement would be considered by the prosecutor in the plea bargaining agreement and (2) the judge, before accepting a plea bargain, would be required to ask whether a victim's impact statement had been returned and for a copy of it.

The bill would require courts to remove victims' names, addresses and telephone numbers from the victim impact statements when, prior to sentencing, the statements were given to defendants and their lawyers for review and comment.

Victim-offender mediation. CSHB 1119 would require TDCJ's victim services section to:

- train volunteers to act as mediators between victims and their guardians or close relatives and offenders whose offense caused bodily injury or death to their victims; and
- provide mediation through referral of a trained volunteer, if requested by a victim or their guardian or close relative.

CSHB 1119 would require judges and TDCJ's institutional and pardons and paroles divisions, after receiving notice from TDCJ's victim services section that a crime victim or guardian or close relative desired to participate in the victim-offender mediation program, to encourage defendants and offenders to participate in the program. Judges and TDCJ would be prohibited from requiring defendants, inmates or parolees to participate in the mediation program and could not reward them for participation.

Victims or their guardians or close relatives would have the right to representation by a lawyer if subpoenaed by a parole panel. The state would not be required to provide a lawyer for the victim or their guardian or close relative.

Notification of victims. CSHB 1119 would replace the current requirement that TDCJ “make a reasonable attempt” to immediately notify victims or their guardians or close relatives if an offender escaped from a facility operated by TDCJ's institutional division with a requirement that TDCJ immediately notify a victim under these circumstances. TDCJ also would be required to notify victims and their guardians or close relatives, if requested, when an offender was transferred from the institutional division to a peace officer under a writ of attachment or a bench warrant. In this situation, TDCJ would have to give victims and their guardians or close relatives the peace officer’s name, address and telephone number and have to notify victims and their guardians or close relatives when the offender was returned to TDCJ.

The bill would move to the Government Code chapter dealing with local probation departments a section currently in the Code of Criminal Procedure requiring local probation departments to notify victims about offenders’ community supervision (probation).

Training for probation and parole officers. TDCJ would be required to provide an annual four-hour training program in crime victims' issues for community supervision and correctional department officers and parole officers. The training would have to include information about crime victims' rights under the Code of Criminal Procedure and the duty of local community supervision and correction departments and parole officers to ensure victims are afforded those rights. The TDCJ board would have to

consult with the Texas Crime Victim Clearinghouse when adopting rules for the training. TDCJ would have to develop the programs by January 1, 1998 and persons who were community supervision and corrections department officers or parole officers on September 1, 1997, would have to participate in the program by September 1, 1999.

Training for law enforcement officers. CSHB 1119 would require the curriculum for law enforcement officer training courses developed by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) to include training in crime victims rights under the Code of Criminal Procedure and the Family Code and the duty of law enforcement agencies to ensure that a victim is afforded those rights. TCLEOSE would have to require state, county, special district and municipal agencies that employ peace officers to require as part of the officers' continuing education a training course in crime victims' rights unless the officer had previously received this training. TCLEOSE would be authorized to require peace officers to receive additional training in crime victims' rights at regular intervals, as determined by the agency.

TCLEOSE would have to establish the new courses by January 1, 1998, and persons who are law enforcement officers on September 1, 1997, would have to complete the first set of courses as part of their continuing education by September 1, 1999.

Miscellaneous: The bill would make other changes, including:

- allowing the pardons and paroles division of TDCJ to waive a monthly \$10 parole supervision fee and a monthly \$8 administrative fee charged to parolees during a period in which an inmate was required to pay restitution to a victim; and
- requiring the Texas Crime Victims Clearinghouse to periodically develop and submit to TCLEOSE and TDCJ recommendations for training in crime victims' issues for law enforcement officers, community supervision and corrections department officers, and parole officers.

SUPPORTERS
SAY:

CSHB 1119 would strengthen crime victim's rights, ensure that victims are treated fairly in the criminal justice process, and ensure that persons involved in the criminal justice process are knowledgeable about and sensitive to victims issues.

CSHB 1119 would help victims to be fully informed about the criminal justice process and important events concerning their case by adding to the current list of crime victims' rights that victims know about the appeals process in their case, know about the uses of victim impact statements, and are told about TDCJ's victim-offender mediation program. CSHB 1119 would require appellate courts to keep victims informed about their decisions so that victims would not be victimized again by discovering news about their case at the same time as the public. This requirement would not overburden the courts. The bill would give victims the right to know about TDCJ's victim-offender mediation program but would not require anyone to participate in the program. This important program can help both victims and offenders deal with criminal offenses, and victims should be made aware of it. In addition, the bill would give guardians or close relatives of victims the same right as victims to be present at public court proceedings, subject to judges' approval.

It would be appropriate for judges to be aware and given an opportunity to read the victims' impact statements. This would help ensure that victims' views are considered during the plea bargaining process. The bill would help protect victims from possible retaliation by offenders by requiring that the names of victims and identifying information be removed from victim impact statements when they are given to defendants and their lawyers.

Requiring TDCJ to operate a victims-offender mediation program would codify the existence of a program that began in 1993. The bill would ensure that all parts of the criminal justice process — judges, probation and parole officers, and TDCJ — are aware of the program and that they encourage defendants to participate in the program, if initiated by the victim. The bill would prohibit offenders from being rewarded for participation so that their participation would be truly voluntary.

CSHB 1119 would ensure that victims are notified by TDCJ if an offender escaped or if an offender was being transported by a peace officer to appear

in a criminal proceeding.

It is only fair that victims who are subpoenaed to appear before parole panels be given the right to representation by a lawyer. Victims who are being compelled to testify and who may be accused of something by a parolee should be able to have an attorney with them. Parolees can be represented by an attorney at a parole revocation hearing, and victims who have been subpoenaed should have the same right.

Requiring probation and parole officers and peace officers to have training in crime victims' issues would ensure that these criminal justice officials statewide are informed and sensitive to crime victims. These issues are so important that this requirement should be in the statutes. Information on crime victims' issues could be easily integrated into current training

**OPPONENTS
SAY:**

CSHB 1119 would unwisely expand the rights of crime victims in ways that could interfere with the efficient administration of justice. Only the most important and fundamental issues should be made crime victims' "rights." CSHB 1119 could overburden appellate courts by requiring them to inform victims about their decisions. Appellate courts could lack adequate personnel or resources for this duty. Also, it would be inappropriate to give victims the "right" to participate in victim-offender mediation, especially since it is unclear what effect participation in this program could have on an offender's appeal.

Requiring judges to ask for a copy of a victims' impact statement before accepting a plea bargain could skew the current plea bargaining process. In a plea bargain, prosecutors and defendants work out an agreement, which judges approve or reject. It could be unfair to defendants and exert inappropriate influence if judges were required to examine a victims' impact statement that contained only the victims' side of a story and could have unproven allegations against a defendant. It also would be unfair to defendants and their attorneys to remove victims' names from victim impact statements because this could make it more difficult for defendants and their attorneys to find and interview victims about their allegations.

It is unnecessary to give victims who are subpoenaed by a parole panel for a parole revocation hearing the right to an attorney. Parole revocation

hearings are administrative hearings that do not involve any criminal proceedings against the victim or any procedure that could affect the liberty of the victim. CSHB 1119 is unclear about what role an attorney for the victim would play in the hearing, stating only that victims would have a right to “representation by counsel.” It is unclear whether this could mean that the attorney could speak for the victim or if the victim could only consult with the attorney. Victims are already allowed to consult with their attorneys, if they desire. Giving subpoenaed witnesses the right to an attorney would just slow down the hearing process without good reason.

CSHB 1119 should not reduce the flexibility of law enforcement training courses by mandating that their training include information on victims' rights. Peace officers are already overburdened by requirements that their training include such specific items as information about child abuse and family violence. Increasing the mandated training requirements would further reduce the flexibility of law enforcement agencies to provide peace officers with the training they deem necessary. Law enforcement agencies can give officers information on an informal basis without mandating it as part of their training.

OTHER
OPPONENTS
SAY:

CSHB 1119 includes a vague provision that would require judges and TDCJ's institutional and pardons and parole divisions to “encourage” defendants and offenders to participate in victim-offender mediation. It is unclear what these entities' responsibility would be if notified that a victim wanted to participate in the program.

By removing current language that requires TDCJ to make “a reasonable attempt” to notify victims and that defines what is considered a reasonable attempt, CSHB 119 would make unclear TDCJ's responsibilities in trying to notify victims if an offender escaped or was transferred.

It could be inappropriate to assign duties to the Texas Crime Victim Clearinghouse, which is not a statutorily created entity, but primarily a grant-funded program operated by TDCJ.

NOTES:

The committee substitute changed the original version of the bill by adding the right of crime victims to be informed about the uses of a victim impact statement; allowing the pardons and parole division to waive certain fees;

giving victims who are subpoenaed by a parole panel the right to representation by an attorney; removing a requirement that judges and prosecutors receive training on crime victims issues; removing authorization for wage garnishment for criminal defendants who do not make court-ordered restitution payments to victims; and removing authorization for the crime victims' compensation fund to be used for victim relocation expenses.