

- SUBJECT:** Consideration of impact on child-victim of defendant's continuance motion
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Gallego, Fletcher, Hodge, Kent, Miklos, Moody, Pierson, Vaught, Vo
- 0 nays
- 2 absent — Christian, Riddle
- WITNESSES:** For — Patricia Hogue, Madeline McClure, TexProtects; Dan Powers, Children's Advocacy Centers of Texas, Collin County Children's Advocacy Center; Amanda Vanhoozer, Children's Advocacy Centers of Texas; (*Registered, but did not testify:* Torie Camp, Texas Association Against Sexual Assault; Joy Rauls, Children's Advocacy Centers of Texas, Incorporated)
- Against — Allen Place, Texas Criminal Defense Lawyers Association
- BACKGROUND:** Code of Criminal Procedure, art. 56.02(a) provides the rights of a victim, victim's guardian, or close relative of a deceased victim within the criminal justice system.
- Code of Criminal Procedure, ch. 29 provides the procedures through which a state attorney or defendant in a criminal trial may seek a continuance.
- DIGEST:** CSHB 2584 would amend Code of Criminal Procedure, art. 56.02(a) and ch. 29 by granting to a victim of assault or sexual assault younger than 17 years of age, on request of the state attorney, the right to a speedy trial consistent with the defendant's right to a fair trial, including the right to have a court consider the impact on that victim of a continuance requested by the defendant. The victim also would have the right to have the court state on the record the reason for granting the continuance, if requested by the state attorney or victim.
- CSHB 2584 would take effect September 1, 2009, and would apply only to criminal proceedings that took place on or after this date.

SUPPORTERS
SAY:

By requiring the court to consider the impact of a continuance on a child victim in certain cases, CSHB 2584 would alleviate some of the emotional toll that trial delays take on young victims. Continuances prevent victims from closure, as they must think about the attack and the attacker each time a trial date is set. The anticipation of seeing the attacker again can cause victims severe anxiety. The bill would allow victims to achieve closure, and prevent the continuance process from being used to harass or intimidate the victim.

CSHB 2584 would lessen the negative impact that repeated continuances have on criminal cases. Over time, a victim's memory, especially a young victim, can deteriorate. This is particularly damaging when the victim's testimony is the crux of the case. Continued delays may discourage victims, and make victims or other witnesses reluctant or unwilling to stay involved in the case.

Requiring the court to give a reason for granting a continuance would recognize the rights of victims, and promote transparency in the proceedings.

OPPONENTS
SAY:

CSHB 2584 is not entirely necessary. A court already is able to consider victims when determining whether to grant a continuance. Nothing prohibits a court from considering the effects on a victim in the circumstances laid out in the bill, or in any other case.

The victim should be considered without becoming a party to the proceedings. The right to have the court state on the record the reasons for granting a continuance should be on request of the state attorney.

A victim's rights should not be promoted at the expense of the defendant's. If the court can be required to state on the record the reasons for granting a continuance, it should also be required to state on the record the reasons for denying a continuance.

NOTES:

The companion bill, SB 1380 by Shapiro, has been referred to the Senate Criminal Justice Committee.