

SUBJECT: Crime victims to be considered with respect to a motion for continuance

COMMITTEE: Criminal Jurisprudence —favorable, without amendment

VOTE: 8 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Schaefer, Toth
0 nays
1 absent — Hughes

WITNESSES: For — (*Registered, but did not testify:* Diana Martinez, The Texas Association for the Protection of Children, TexProtects)
Against — None

BACKGROUND: Code of Criminal Procedure, art. 29.14 requires a court considering a defendant's motion for continuance, on the prosecutor's request, to consider the impact of the continuance on the victim. This requirement applies only if the case involves family violence or the victim is younger than 17 years of age and is a victim of assault or sexual assault.

Code of Criminal Procedure, art. 56.02 enumerates certain rights of a victim, guardian of a victim, or close relative of a deceased victim within the criminal justice system. One of the enumerated items is the right to consideration by the court as described by art. 29.14.

Penal Code, sec. 22.04 governs the offenses for injury to a child, elderly individual, or disabled individual.

DIGEST: HB 3671 would add a child victim of an offense under Penal Code, sec. 22.04 to the list of victims a court would be required to consider when considering a defendant's motion for continuance under Code of Criminal Procedure, art. 29.14 and art. 56.02.

The bill would add the right to a speedy trial, if requested by the attorney for the state, for a child victim of an offense under Penal Code, sec. 22.04 to the list of victim's rights enumerated under Code of Criminal Procedure, art. 56.02.

The bill would take effect September 1, 2013, and would apply only to a criminal proceeding that commenced on or after that date.

**SUPPORTERS
SAY:**

HB 3671 would protect children who were victims of violent crime. Currently, the protection afforded by law does not apply to children who are victims of abuse from someone other than a family member. Delays and continuances in trials are a leading factor of stress for child victims in these types of cases and should be minimized as often as possible. The U.S. Attorney General recommends that judges and prosecutors handling cases with child victims ensure that these cases are tried expeditiously, and 23 other states have enacted legislation similar to this bill to ensure that level of protection and expeditiousness. By ensuring that courts consider the impact a continuance would have on these victims, the bill would prioritize this expeditiousness.

The bill would protect the rights of the most vulnerable victims of heinous crimes. Children who are victims of violence suffer stress and emotional and psychological impacts of a prolonged trial and deserve special consideration during the consideration of a motion for continuance. The bill includes language to ensure that a defendant's right to a fair trial would not be negatively impacted.

**OPPONENTS
SAY:**

HB 3671 would contribute to the current trend of enumerating new victims' rights, which could erode the rights of defendants. The increasingly victim-driven justice system leads to a vigilante system of justice rather than one that seeks to do justice and that properly protects the rights of the accused. The bill could implicate a defendant's right to a fair trial if motions for continuance became less likely to prevail and defendants were pushed into trial without adequate time to prepare.