

SUBJECT: Right of family to make statement regarding the terms of a plea agreement

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Gallego, Fletcher, Hodge, Kent, Miklos, Moody, Pierson,  
Vaught, Vo

0 nays

2 absent — Christian, Riddle

WITNESSES: (*On original version:*)  
For —Charley Wilkison, Combined Law Enforcement Associations of  
Texas; (*Registered, but did not testify:* Tom Gaylor, Texas Municipal  
Police Associations)

Against — None

DIGEST: CSHB 2145 would amend Code of Criminal Procedure, ch. 26 by adding  
art. 26.131 to allow an immediate family member of a peace officer who  
died as a result of alleged criminal conduct by a defendant to make an oral  
statement to the court regarding the terms of any plea bargain agreement  
in the case, and whether the family supported or opposed the terms. The  
immediate family would designate the member to make the statement.

The court would be required to consider such a statement before  
sentencing the defendant and permit the defendant or defendant's counsel  
to cross-examine the person making the statement, comment on the  
statement, and with the court's approval, introduce testimony or other  
information alleging a factual inaccuracy in the statement. The court  
would be required to inform the family member of these rights of the  
defendant before the family member made a statement.

In any case when a peace officer died as a result of the defendant's alleged  
criminal conduct, the state attorney would be required to notify the  
officer's immediate family members of the existence and terms of a plea  
agreement and the right of one immediate family member to make an oral  
statement to the court.

A family member's statement would be in addition to the consideration of a written victim impact statement and would not preclude the presentation of a post-sentencing statement, as provided in Code of Criminal Procedure, art. 56.03 and 42.03

"Immediate family member of a peace officer" would be defined as an individual who was related to a peace officer within the second degree by affinity or consanguinity.

"Peace officer" would be defined as a person elected, employed, or appointed as a peace officer under Code of Criminal Procedure, art. 2.12, Education Code, sec. 51.212 or 51.214, or other law.

The bill would take effect September 1, 2009, and would apply only to pleas of guilty or nolo contendere entered on or after this date.

NOTES:

The committee substitute differs from the bill as filed by eliminating the right of any immediate family member of the deceased peace officer to make a statement, adding a provision that would allow only one immediate family member to make a statement, and allowing the family to designate the one person; requiring the court to consider the statement and providing the defendant's rights in relation to the statement; specifying that the statement would not preclude a written victim impact statement or post-sentencing statement; and defining "immediate family member" and "peace officer."