

- SUBJECT:** Consideration of impact on victim of a defendant's motion for continuance
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 9 ayes — Gallego, Fletcher, Kent, Miklos, Moody, Pierson, Riddle, Vaught, Vo
- 0 nays
- 2 absent — Christian, Hodge
- WITNESSES:** (*On original version:*)  
For — Sarah Buel; Marie Olivo; Aaron Setliff, The Texas Council on Family Violence)  
  
Against — Allen Place, Texas Criminal Defense Lawyers Association
- (*On committee substitute:*)  
For — Joy Rauls, Children's Advocacy Centers of Texas, Incorporated;  
(*Registered, but did not testify:* Diana Martinez, TexProtects)  
  
Against — None
- 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 2236 would amend Code of Criminal Procedure, art. 56.02(a) and ch. 29 by requiring a court that heard a defendant's motion for continuance in a case of assault or sexual assault against a victim 17 years of age or younger, or a case of assault or sexual assault involving family violence, to consider the impact of the continuance on that victim, on request of the state attorney. The court would be required to state on the record the reason for granting or denying the continuance, if requested by the state attorney or defense counsel.

The bill would take effect September 1, 2009, and apply only to criminal proceedings that took place on or after that date.

**SUPPORTERS  
SAY:**

By requiring courts to consider the impact of a continuance on a victim in certain cases, CSHB 2236 would alleviate some of the emotional toll that trial delays take on victims. Continuances prevent victims from achieving closure, as they must think about the attack and the attacker each time a new 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.

The bill would decrease unnecessary continuances and the financial burden on victims. Each time a victim appears in court, he or she must miss work, find transportation, and possibly arrange childcare, a burden that grows with every continuance.

CSHB 2236 would help lessen the negative impact that repeated continuances have on criminal cases. Over time, a victim's memory can deteriorate, especially a young victim. This can be particularly damaging when the victim's testimony is the crux of the case. Continued delays may discourage victims and make them or other witnesses reluctant or unwilling to stay involved in the case.

Requiring the court to give a reason for granting or denying a continuance would preserve the defendant's rights while recognizing the rights of victims, and promoting transparency in the proceedings.

The committee substitute reflects language agreed upon by both prosecutors and defense attorneys.

While a court may take into account the effects on a victim when considering a motion for continuance, the bill would ensure that it happened, and add validity to its consideration.

**OPPONENTS  
SAY:**

CSHB 2236 is not entirely necessary. A court already is able to consider victims when determining whether or not 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.

NOTES:

The committee substitute differs from the bill as filed by adding provisions that would apply the right to a victim of assault or sexual assault who was 17 years of age or younger, rather than just an assault or sexual assault victim whose case involved family violence. The substitute added provisions that would require the court to state on the record the reason for granting or denying a continuance, by request of the state attorney or defense counsel, rather than allowing the request to be made by the state attorney or victim only when the continuance was granted, as in the original. Finally, the substitute removed a provision that would have given the victim a right to a speedy trial, consistent with the defendant's right to a fair trial.

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