

- SUBJECT:** Allowing certain victims to make oral statements at trial pre-sentencing
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Gallego, Hartnett, Aliseda, Burkett, Carter, Christian, Y. Davis, Zedler
- 0 nays
- 1 absent — Rodriguez
- WITNESSES:** For — Christopher Kaiser, Texas Association Against Sexual Assault; Victor Rice; (*Registered, but did not testify:* Lon Craft, Texas Municipal Police Association; Chris Jones, Combined Law Enforcement Association of Texas; Vikrant Reddy, Texas Public Policy Foundation; Aaron Settle, The Texas Council on Family Violence)
- Against — None
- On — Richard Alpert, for Tarrant County District Attorney; Allen Place, Texas Criminal Defense Lawyers Association
- BACKGROUND:** Under Code of Criminal Procedure, art. 42.03, courts are required to permit victims, close relatives of deceased victims, and guardians of victims to appear in court and present to the court and the defendant a statement of their views about the offense, the defendant, and the effect of the offense on the victim. The statement must be made after punishment has been assessed, the court has announced the terms and conditions of the sentence, and the sentence has been pronounced.
- DIGEST:** CSHB 1489 would require courts to allow victims, close relatives of deceased victims, and guardians of victims to appear in court to present an oral statement about the offense and its effect on the victim. This would have to be done after a finding of guilt, but before the imposition of a sentence, and only in cases in which judges assessed punishment. Courts would have to consider the statement before sentencing a defendant.
- Defendants and their attorneys would be prohibited from cross-examining the person making the oral statement, but would be able to introduce

testimony or other information alleging a factual inaccuracy in the oral statement.

The statement and its consideration would be in addition to the consideration of written victim impact statements and would not preclude the presentation by victims of a statement after sentencing.

CSHB 1489 would apply to adjudications of guilt regardless of whether the defendant previously received a deferral of the adjudication under the state's deferred adjudication statutes.

The bill would take effect September 1, 2011, and would apply only to sentencing that commenced on or after that date.

**SUPPORTERS
SAY:**

CSHB 1489 is needed to give victims of violent crime more meaningful input into the court process. While victims of violent crime currently can give statements in court, it occurs after punishment is assessed and a sentence is pronounced. Victim impact statements are not filed in all cases and are written, not oral. This can leave victims feeling irrelevant to sentencing. Allowing victims to speak to a judge before sentencing would ensure that courts were aware of the impact of the crime on the victim. This could help victims heal and empower them. The bill would put Texas in line with the majority of states that allow oral or written victim statements at sentencing hearings.

CSHB 1489 would set parameters on the statements to ensure that a victim's role and the statement made at the trial would be appropriate. The bill would limit the oral statements to trials in which judges assess punishment because judges know what type of information can be considered when assessing a sentence, while juries might be unaware of some of these rules. The bill would protect victims by prohibiting cross examination after their oral statement, but would allow defendants to introduce testimony or other information alleging a factual inaccuracy.

**OPPONENTS
SAY:**

CSHB 1489 is unnecessary and could elevate victims to an inappropriate role in a trial in which the state is prosecuting an offense. Victims have opportunities to be heard under current law, and these are adequate. Victims of violent crime can file victim impact statements to record the impact of an offense on them, and these are forwarded to judges. If a court receives one, it is required to consider it prior to imposing a sentence.

In addition, victims are able to make statements of their views of the offense after sentencing.

NOTES:

The committee substitute added the provision prohibiting the cross examination of victims and changed the provision allowing defendants to introduce testimony alleging factual inaccuracy from occurring at the court's discretion to allowing it in all cases.