

SUBJECT: Providing a victim with notice of a plea bargain in criminal cases

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Gallego, Hartnett, Aliseda, Burkett, Carter, Zedler

0 nays

3 absent — Christian, Y. Davis, Rodriguez

SENATE VOTE: On final passage, April 13 — 31-0

WITNESSES: For — Torie Camp, Texas Association Against Sexual Assault;
(*Registered, but did not testify*: Marc Levin, Texas Public Policy
Foundation Center for Effective Justice)

Against — None

BACKGROUND: Code of Criminal Procedure, art. 26.13 requires a court, before accepting a guilty or nolo contendere plea, to ask if a victim impact statement has been returned to the state attorney and if so, to ask for a copy of it.

Code of Criminal Procedure, art. 56.08 requires the state attorney to notify victims in writing of their rights within 10 days of an indictment. The written notice to a victim must include a brief general statement of each procedural stage in the processing of a criminal case, including bail, plea bargaining, parole, restitution, and appeal.

The brief general statement describing the plea bargaining stage must include a statement:

- that the victim impact statement provided by the victim, guardian of a victim, or close relative of a deceased victim will be considered by the state attorney in entering into any plea bargain agreement; and
- that the judge, before accepting any plea bargain, must ask whether a victim impact statement has been returned to the attorney and if so, for a copy of it.

If requested by the victim, the state attorney must give the victim notice of any scheduled court proceedings, changes in schedule, filing of a request for continuance of a trial setting, and any plea agreements to be presented to the court.

“Victim” means a person who is the victim of sexual assault, kidnapping, aggravated robbery, trafficking of persons, or injury to a child, elderly individual, or disabled individual, or who has suffered personal injury or death as a result of the criminal conduct of another.

DIGEST:

SB 1010 would remove the current reference to giving the victim notice of the plea agreements if requested by the victim and instead would require the state attorney to give notice, as far as reasonably practical, to the victim, guardian of a victim, or close relative of a deceased victim of the existence and terms of any plea bargain agreement that would be presented to the court.

SB 1010 would require the court, before accepting a guilty or nolo contendere plea, to ask if the state attorney had given notice of the existence and terms of any plea bargain agreement to the victim, guardian of a victim, or close relative of a deceased victim.

The brief general statement describing the plea bargaining stage in the notice to the victim would have to include a statement that the judge, before accepting the plea bargain agreement, was required to ask whether the state attorney had given the victim, guardian of a victim, or close relative of a deceased victim notice of the existence and terms of the plea bargain agreement.

The bill would take effect September 1, 2011, and would apply only to a plea bargain presented to a court on or after that date.

**SUPPORTERS
SAY:**

By requiring that victims receive notice of plea bargains, SB 1010 would provide victims with a greater sense of fairness and inclusion and would send the message that victims are an important part of the criminal justice process. Under the current system, too many victims have been heartbroken to discover after the fact that the person who harmed them received a plea bargain. Many victims, upon learning about the plea bargain after its acceptance, are shocked to learn that they will not have an opportunity to see justice served in the courtroom. Victims of these violent

crimes deserve more respect, and SB 1010 would be a step toward ensuring this.

Requiring a judge to ensure that the victim had been notified about a plea bargain agreement before accepting the plea agreement would serve the interests of justice. It would complement the current requirement that the judge ask for a copy of the victim impact statement before accepting a plea bargain agreement. Both are reasonable requirements designed to ensure that the victim's interests are considered.

Requiring a prosecutor to tell a victim about a plea bargain also would complement the current requirement that the prosecution consider the victim impact statement when entering into a plea bargain agreement. Both requirements would remind the prosecution that they need to remember the victims in order to strike a fair and just plea bargain. Placing the duty on the prosecutor to give the victim notice of the plea bargain, if reasonably practical, also would make more sense than requiring the victim to request the plea bargain information as under current law. Prosecutors are the ones who know when a plea bargain agreement has been reached, not the victims.

The requirement to give the victim notice of the plea bargain still would need to be reasonably practical, so if a victim could not be reached, then the criminal justice process would proceed with very little delay or cost to the system.

**OPPONENTS
SAY:**

SB 1010 is unnecessary because victims' interests already are represented in the criminal justice process, and requiring prosecutors to notify the victims about a plea bargain could delay the system and clog the courts. The prosecutor and the judge need to represent the state's interests, and sometimes those interests are best achieved through a plea bargain agreement.

Victims' interests already are sufficiently represented in three ways. First, the prosecutor must consider the victim impact statement when entering into the plea bargain agreement. Second, the judge already is required to receive a copy of the victim impact statement before accepting a plea agreement. These requirements already ensure that the victim's story will be part of the balancing of interests before a plea bargain agreement is accepted by the judge. Third, victims already receive notice of plea bargains, if reasonably practical and if they have requested plea bargain

information. Receiving notice of the plea bargain, if not requested, could make some victims uncomfortable.

Requiring prosecutors to tell victims about plea bargain agreements also could result in the delay of cases if victims were not readily available. Such delay could be costly if it caused a backlog of unresolved criminal cases.