

- SUBJECT:** Oral statements about plea bargains by family of deceased peace officers
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 8 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Schaefer, Toth
0 nays
1 absent — Hughes
- WITNESSES:** For — Charley Wilkison, Combined Law Enforcement Associations of Texas; (*Registered, but did not testify:* Lon Craft, Texas Municipal Police Association; Daniel Earnest, San Antonio Police Officers Association; Washington Moscoso, San Antonio Police Officers Association; Morris Munoz, Bexar County Sheriff's Office; Jimmy Rodriguez, San Antonio Police Officers Association)

Against — (*Registered, but did not testify:* Rebecca Bernhardt, Texas Defender Service)

On — (*Registered, but did not testify:* Shannon Edmonds, Texas District & County Attorneys Association)
- BACKGROUND:** Code of Criminal Procedure, art. 56.08(b-1), requires the state to give crime victims, their guardians, or close relatives of a deceased victim notice of the existence and terms of any plea bargain agreement to be presented to the court, as far as reasonably practicable. Under art. 26.13(e), the court, before accepting a guilty or nolo contendere plea, must ask whether the prosecutor has given the required notice.

Code of Criminal Procedure, art. 56.03, provides for the recording and use of victim impact statements in criminal prosecutions. These statements, written on a standard form, collect from the victim, a victim's guardian, or a close relative of a deceased victim information about the impact of the offense on the victim, including economic, physical, and psychological effects. The statements are disclosed only after a finding of guilt or an order of deferred adjudication and are inspected by the court and the defense before the imposition of a sentence.

Under Code of Criminal Procedure, art. 42.03, sec. 1(b), a victim, a victim's guardian, or a close relative of a deceased victim may appear in person after a sentence is pronounced and present a statement about the offense, the defendant, and the effect of the offense on the victim.

DIGEST:

HB 281 would allow one immediate family member of a deceased peace officer who died as the result of alleged criminal conduct to make an oral statement to the court about the terms of a plea agreement, including whether the deceased officer's family supported or opposed the terms of the agreement. The court would be required to consider this statement before sentencing.

The defense would have the opportunity to:

- cross-examine the person making the statement;
- comment on the statement; and
- introduce testimony or other information alleging a factual inaccuracy in the statement, with the approval of the court.

The court would be required to inform the family member of the defendant's rights before the family member made the statement.

Prosecutors would have to give the family notice of the existence and terms of a plea agreement and notice of an immediate family member's right to make an oral statement. Under the bill "immediate family member" would mean an individual related to the peace officer within the second degree by affinity or consanguinity.

Consideration of this oral statement by the court would be in addition to victim statements under Code of Criminal Procedure, arts. 56.03 and 42.03.

The bill would take effect September 1, 2013, and would apply only to a plea of guilty or nolo contendere entered on or after that date.

**SUPPORTERS
SAY:**

HB 281 is needed to give the families of deceased peace officers a greater sense of fairness and inclusion in the criminal justice system and would send the message that these families are an important part of the criminal justice process. The killing of a peace officer is a heinous crime that shocks communities and families and warrants unique consideration in the

criminal justice process.

Under the current system, families of deceased peace officers do not have a chance to comment on a plea bargain until after it is final. Many victims, upon learning about an accepted plea bargain, are shocked to learn that they will not have an opportunity to see justice served in the courtroom. The affected families deserve more respect and a voice in the plea bargain process.

Allowing the family member of a deceased peace officer to comment on a plea agreement before it was accepted would serve the interests of justice. The death of a peace officer in the line of duty is an affront to society and impacts the entire community. Even while off duty, peace officers have responsibilities above and beyond those of lay citizens, and being off duty does not relieve them of these heightened expectations nor mitigate the dangers to which they are regularly exposed. The death of a peace officer is a loss to the community that peace officer serves.

Ensuring that these victims' voices were heard at a crucial stage in the process 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 a victim's interests are considered.

Family members could choose not to make a statement if they felt uncomfortable submitting to cross-examination. They still could submit a written victim impact statement and make a statement after sentencing. The chance to cross-examine and challenge factual inaccuracies would ensure that defendants' confrontation rights were protected and that the prosecution did not benefit unfairly from the oral statement.

Judges often accept plea agreements in the interest of judicial economy, even though they are not required to do so. This bill would give judges more complete information to consider in these special cases that affect the community, particularly in cases where a plea agreement may not serve the interests of justice.

**OPPONENTS
SAY:**

HB 281 is unnecessary because the interests of families of deceased peace officers, like those of all crime victims, already are sufficiently represented in several ways:

- the prosecutor must consider the victim impact statement when entering into the plea bargain agreement;
- the judge is required to receive a copy of the victim impact statement before accepting a plea agreement; and
- victims, their guardians, or close relatives of a deceased victim receive notice of plea bargains if reasonably practical.

Current requirements ensure that the victim's story is part of the balancing of interests before a plea bargain agreement is accepted by the judge. The statement allowed by this bill would amount to a victim opinion statement, rather than a victim impact statement. To date, victims of crime have been barred from testifying as to their opinion on a suitable sentence, and HB 281 would change that practice by inappropriately introducing victim opinion testimony into the sentencing process.

Adding the requirement to give notice regardless of whether it was reasonably practical in one specific kind of case is unnecessary and could place an unreasonable burden on the state. Requiring prosecutors to tell family members of deceased peace officers about plea bargain agreements, even if not reasonably practical, also could unnecessarily delay cases if family members were not readily available.

The prosecutor and the judge need to represent the state's interests, which sometimes are best achieved through a plea bargain agreement. Plea agreements are an important part of the legal process and often reflect the best outcome for the society affected by the crime. This bill could undermine the state's authority to negotiate and could derail carefully crafted plea agreements by putting pressure on judges. Victims of crime, including the family members of deceased peace officers, rarely are in a position to understand the legal strengths or weaknesses of a case or what an appropriate disposition for a crime would be in their jurisdiction. HB 281 would create a tool for understandably emotional family members to disrupt or prevent a plea agreement that could be in the best interests of justice.

This is particularly important in capital cases, since defendants rarely, if ever, plead to the death penalty. If the oral statements made under HB 281 were to discourage plea agreements, this would tilt the balance of these cases away from life sentences and toward the death penalty.

It also would be inappropriate to raise the voice of the family members of

deceased peace officers above those of all other crime victims. Allowing family members of deceased peace officers to make an oral statement even when the peace officer was killed while off duty inappropriately would elevate the families of peace officers above the families of other victims. Victims deserve to have their interests treated equally, and allowing the family of deceased police officers to make an extra oral statement would create an inequality.

**OTHER
OPPONENTS
SAY:**

This bill should apply to all victims, their guardians, or their families, not just the family members of deceased peace officers. All victims of crime are affected by the offenses committed against them and should have the opportunity to have their voices heard in this manner to serve the interests of justice.