

BILL ANALYSIS

Senate Research Center
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S.B. 1010
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, there is no requirement that any notice be given to a victim prior to the acceptance of a plea deal.

S.B. 1010 requires that judges inquire as to whether the district attorney or assistant district attorney has given notice of the plea agreement to the victim or the victim's family. There is also an express duty placed on the prosecutor requiring them to provide notice to the victim before presentation of the plea deal to the court for acceptance.

This bill will provide a greater system of notification for victims and accountability for judges and prosecutors. In the interest of justice a victim should at least be notified prior to the prosecution's acceptance of a plea agreement, especially when it results in a lesser charge or lightened punishment.

As proposed, S.B. 1010 amends current law relating to providing a victim, guardian of a victim, or close relative of a deceased victim with notice of a plea bargain agreement in certain criminal cases.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Articles 26.13(a) and (e), Code of Criminal Procedure, as follows:

(a) Requires the court, prior to accepting a plea of guilty or a plea of nolo contendere, to admonish the defendant of:

(1) the range of the punishment attached to the offense;

(2) the fact that the recommendation of the prosecuting attorney as to punishment is not binding on the court. Requires the court to inquire as to the existence of a plea bargain agreement, rather than any bargaining agreements, between the state and the defendant and, if an agreement exists, to inform the defendant whether it will follow or reject the agreement in open court and before any finding on the plea. Requires that the defendant be permitted to withdraw the defendant's plea of guilty or nolo contendere should the court reject the agreement. Makes nonsubstantive changes;

(3) Makes nonsubstantive changes; and

(4) and (5) Makes no changes to these subdivisions.

(e) Requires the court, before accepting a plea of guilty or a plea of nolo contendere, to, as applicable in the case:

(1) inquire as to whether a victim impact statement has been returned to the attorney representing the state and ask for a copy of the statement if one has been returned; and

(2) inquire as to whether the attorney representing the state has 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, as those terms are defined by Article 56.01 (Definitions).

SECTION 2. Amends Article 56.08, Code of Criminal Procedure, by amending Subsections (b) and (e) and adding Subsection (b-1), as follows:

(b) Requires the attorney representing the state, as far as reasonably practical, to give to the victim notice of any scheduled court proceedings, changes in that schedule, and the filing of a request for continuance of a trial setting if requested by the victim. Deletes existing text requiring the attorney representing the state, as far as reasonably practical, to give to the victim notice of any plea agreements to be presented to the court, if requested by the victim.

(b-1) Requires the attorney representing the state, as far as reasonably practical, to give to the victim, guardian of a victim, or close relative of a deceased victim notice of the existence and terms of any plea bargain agreement to be presented to the court.

(e) Requires that the brief general statement describing the plea bargaining stage in a criminal trial required by Subsection (a)(1) (relating to requiring the state, not later than the 10th day after the date that an indictment or information is returned against a defendant for an offense, to give to each victim of the offense a written notice containing a brief general statement of each procedural stage in the processing of a criminal case, including bail, plea bargaining, parole restitution, and appeal) include a statement that:

(1) the victim impact statement provided by the victim, guardian of a victim, or close relative of a deceased victim will be considered by the attorney representing the state in entering into the plea bargain agreement; and

(2) the judge before accepting the plea bargain agreement is required under Article, rather than Section, 26.13(e) (relating to requiring the court to inquire as to whether a victim impact statement has been returned to the attorney representing the state and to ask for a copy of the statement if one has been returned) to ask:

(A) whether a victim impact statement has been returned to the attorney;

(B) if a victim impact statement has been returned, for a copy of the statement; and

(C) whether the attorney representing the state has 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.

Makes nonsubstantive changes.

SECTION 3. (a) Provides that the change in law made by this Act applies only to a plea bargain agreement that is presented to a court on or after the effective date of this Act.

(b) Provides that a plea bargain agreement that is presented to a court before the effective date of this Act is covered by the law in effect when the agreement was presented, and the former law is continued in effect for that purpose.

SECTION 4. Effective date: September 1, 2011.