

By: Carter

H.B. No. 3517

A BILL TO BE ENTITLED

AN ACT

relating to requiring a jury to consider a victim impact statement before assessing punishment in a criminal case.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 56.02(a), Code of Criminal Procedure, is amended to read as follows:

(a) A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:

(1) the right to receive from law enforcement agencies adequate protection from harm and threats of harm arising from cooperation with prosecution efforts;

(2) the right to have the magistrate take the safety of the victim or his family into consideration as an element in fixing the amount of bail for the accused;

(3) the right, if requested, to be informed:

(A) by the attorney representing the state of relevant court proceedings, including appellate proceedings, and to be informed if those proceedings have been canceled or rescheduled prior to the event; and

(B) by an appellate court of decisions of the court, after the decisions are entered but before the decisions are made public;

(4) the right to be informed, when requested, by a

1 peace officer concerning the defendant's right to bail and the  
2 procedures in criminal investigations and by the district  
3 attorney's office concerning the general procedures in the criminal  
4 justice system, including general procedures in guilty plea  
5 negotiations and arrangements, restitution, and the appeals and  
6 parole process;

7           (5) the right to provide pertinent information to a  
8 probation department conducting a presentencing investigation  
9 concerning the impact of the offense on the victim and his family by  
10 testimony, written statement, or any other manner prior to any  
11 sentencing of the offender;

12           (6) the right to receive information regarding  
13 compensation to victims of crime as provided by Subchapter B,  
14 including information related to the costs that may be compensated  
15 under that subchapter and the amount of compensation, eligibility  
16 for compensation, and procedures for application for compensation  
17 under that subchapter, the payment for a medical examination under  
18 Article 56.06 for a victim of a sexual assault, and when requested,  
19 to referral to available social service agencies that may offer  
20 additional assistance;

21           (7) the right to be informed, upon request, of parole  
22 procedures, to participate in the parole process, to be notified,  
23 if requested, of parole proceedings concerning a defendant in the  
24 victim's case, to provide to the Board of Pardons and Paroles for  
25 inclusion in the defendant's file information to be considered by  
26 the board prior to the parole of any defendant convicted of any  
27 crime subject to this subchapter, and to be notified, if requested,

1 of the defendant's release;

2 (8) the right to be provided with a waiting area,  
3 separate or secure from other witnesses, including the offender and  
4 relatives of the offender, before testifying in any proceeding  
5 concerning the offender; if a separate waiting area is not  
6 available, other safeguards should be taken to minimize the  
7 victim's contact with the offender and the offender's relatives and  
8 witnesses, before and during court proceedings;

9 (9) the right to prompt return of any property of the  
10 victim that is held by a law enforcement agency or the attorney for  
11 the state as evidence when the property is no longer required for  
12 that purpose;

13 (10) the right to have the attorney for the state  
14 notify the employer of the victim, if requested, of the necessity of  
15 the victim's cooperation and testimony in a proceeding that may  
16 necessitate the absence of the victim from work for good cause;

17 (11) the right to counseling, on request, regarding  
18 acquired immune deficiency syndrome (AIDS) and human  
19 immunodeficiency virus (HIV) infection and testing for acquired  
20 immune deficiency syndrome (AIDS), human immunodeficiency virus  
21 (HIV) infection, antibodies to HIV, or infection with any other  
22 probable causative agent of AIDS, if the offense is an offense under  
23 Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code;

24 (12) the right to request victim-offender mediation  
25 coordinated by the victim services division of the Texas Department  
26 of Criminal Justice;

27 (13) the right to be informed of the uses of a victim

1 impact statement and the statement's purpose in the criminal  
2 justice system, to complete the victim impact statement, and to  
3 have the victim impact statement considered:

4 (A) by the attorney representing the state and  
5 the judge or jury before sentencing or before a plea bargain  
6 agreement is accepted; and

7 (B) by the Board of Pardons and Paroles before an  
8 inmate is released on parole;

9 (14) to the extent provided by Articles 56.06 and  
10 56.065, for a victim of a sexual assault, the right to a forensic  
11 medical examination if, within 96 hours of the sexual assault, the  
12 assault is reported to a law enforcement agency or a forensic  
13 medical examination is otherwise conducted at a health care  
14 facility; and

15 (15) for a victim of an assault or sexual assault who  
16 is younger than 17 years of age or whose case involves family  
17 violence, as defined by Section 71.004, Family Code, the right to  
18 have the court consider the impact on the victim of a continuance  
19 requested by the defendant; if requested by the attorney  
20 representing the state or by counsel for the defendant, the court  
21 shall state on the record the reason for granting or denying the  
22 continuance.

23 SECTION 2. Article 56.03, Code of Criminal Procedure, is  
24 amended by amending Subsections (e) and (f) and adding Subsection  
25 (e-1) to read as follows:

26 (e) If a judge assesses punishment in a criminal case,  
27 before assessing punishment and imposing [~~Prior to the imposition~~

1 ~~of~~] a sentence [~~by the court in a criminal case,~~] the judge shall  
2 [~~court~~], if [~~it has received~~] a victim impact statement has been  
3 received in the case, [~~shall~~] consider the information provided in  
4 the statement. The judge shall have the statement read aloud to the  
5 jury if the jury assesses punishment in the case, and the jury shall  
6 consider the information in assessing the punishment.

7 (e-1) Before punishment is assessed in a criminal case in  
8 which a victim impact statement has been received [~~sentencing the~~  
9 ~~defendant~~], the judge [~~court~~] shall permit the defendant or the  
10 defendant's [~~his~~] counsel a reasonable time to read the statement,  
11 excluding the victim's name, address, and telephone number, comment  
12 on the statement, and, with the approval of the judge [~~court~~],  
13 introduce testimony or other information alleging a factual  
14 inaccuracy in the statement. If the judge [~~court~~] sentences the  
15 defendant to a term of community supervision, the judge [~~court~~]  
16 shall forward any victim [~~victim's~~] impact statement received in  
17 the case to the community supervision and corrections department  
18 supervising the defendant, along with the papers in the case.

19 (f) The judge or a jury [~~court~~] may not inspect or receive  
20 information from a victim impact statement until after a finding of  
21 guilt or until deferred adjudication is ordered and the contents of  
22 the statement may not be disclosed to any person unless:

23 (1) the defendant pleads guilty or nolo contendere or  
24 is convicted of the offense; or

25 (2) the defendant in writing authorizes the judge or  
26 jury [~~court~~] to inspect or receive information from the statement.

27 SECTION 3. The change in law made by this Act applies only

1 to an offense committed on or after the effective date of this Act.  
2 An offense committed before the effective date of this Act is  
3 governed by the law in effect on the date the offense was committed,  
4 and the former law is continued in effect for that purpose. For  
5 purposes of this section, an offense was committed before the  
6 effective date of this Act if any element of the offense occurred  
7 before that date.

8 SECTION 4. This Act takes effect September 1, 2013.