

BILL ANALYSIS

Senate Research Center

H.B. 2465
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Often times when a victim of a crime is disabled or elderly, prosecutors face both the uncertainty of being able to determine how good a witness the victim will be, and the fact that as time goes on, the victim's ability to testify may worsen.

This bill requires a court to order an attorney representing the state to take a deposition of an elderly or disabled person who is the alleged victim of or witness to an offense not later than the 60th day after the state files an application to take the deposition. The bill establishes procedures and a time frame for taking a deposition after an application for the deposition is submitted and allows for an extension of time for taking a deposition.

H.B. 2465 amends current law relating to taking a deposition of an elderly or disabled victim of or witness to an offense.

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 Chapter 39, Code of Criminal Procedure, by adding Article 39.025, as follows:

Art. 39.025. DEPOSITIONS OF ELDERLY OR DISABLED PERSONS. (a) Defines "disabled person" and "elderly person."

(b) Requires the court to order the attorney representing the state to take the deposition of an elderly or disabled person who is the alleged victim of or witness to an offense not later than the 60th day after the date on which the state files an application to take the deposition under Article 39.02 (Witness Depositions).

(c) Authorizes the attorney representing the state and the defendant or the defendant's attorney to, by written agreement filed with the court, extend the deadline for the taking of the deposition.

(d) Requires the court to grant any request by the attorney representing the state to extend the deadline for the taking of the deposition if a reason for the request is the unavailability, health, or well-being of the victim or witness.

(e) Provides that the Texas Rules of Civil Procedure govern the taking of the deposition, except to the extent of any conflict with this code or applicable court rules adopted for criminal proceedings, in which event this code and the rules for criminal proceedings govern. Authorizes the attorney representing the state and the defendant or defendant's attorney to agree to modify the rules applicable to the deposition by written agreement filed with the court before the taking of the deposition.

(f) Requires the court, if a defendant is unavailable to attend a deposition because the defendant is confined in a correctional facility, to issue any orders or warrants

necessary to secure the defendant's presence at the deposition. Requires the sheriff of the county in which a deposition under this subsection is to be taken to provide a secure location for the taking of the deposition and sufficient law enforcement personnel to ensure the deposition is taken safely. Provides that the state's application to take a deposition or notice of deposition is not required to include the identity of any law enforcement agents the sheriff assigns to the deposition and is prohibited from serving as a basis for the defendant to object to the taking of the deposition.

(g) Requires the defendant or defendant's attorney, if a defendant is unavailable to attend a deposition for any reason other than confinement in a correctional facility, to request a continuance from the court. Authorizes the court to grant the continuance if the defendant or defendant's attorney demonstrates good cause for the continuance and that the request is not brought for the purpose of delay or avoidance. Provides that a defendant's failure to attend a deposition or request a continuance in accordance with this subsection constitutes a waiver of the defendant's right to be present at the deposition.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2009.