

BILL ANALYSIS

H.B. 1000
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Under current law, prosecutors may have difficulty effectively prosecuting those who prey upon the elderly or infirm because they may not be physically able to testify in court or they may not live long enough for the case to go to trial. Although seldom used, depositions have been available to defendants for many years. This change would make depositions available to prosecutors as well.

The principal objective of House Bill 1000 is preservation of evidence for use at trial, not to provide a method of pretrial discovery.

The kinds of cases that this change in the law would help are financial fraud against the elderly, election fraud cases involving elderly voters receiving mail ballots, and victims of violent crime whose condition deteriorates before the case can come to trial. H.B. 1000 should also help preserve the testimony of soldiers who may be assigned to overseas duty and who are not available for trial because of their service to their country.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

House Bill 1000 amends a provision in the Code of Criminal Procedure relating to depositions. As it is currently written, Code of Criminal Procedure Section 39.02 is explicitly limited for use only by defendants. H.B. 1000 would make Section 39.02 available to the state, as well. The published appellate opinions interpreting Section 39.02 make it very clear that applications for depositions have been denied far more than they have been granted and that the trial courts have broad discretion in ruling on applications for depositions.

It is not anticipated that depositions would be utilized frequently by prosecutors because they will be required to meet the same burdens imposed on defendants by Section 39.02. Like defendants, prosecutors will have to state in an affidavit filed with the court facts necessary to constitute a good reason for taking the deposition and then argue for the deposition in a hearing where the defendant may state his or her objections.

This change in the law would only affect cases where the indictment or information was presented to the court on or after the effective date of this bill.

EFFECTIVE DATE

September 1, 2003.

