

BILL ANALYSIS

H.B. 975
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Under current law, prosecutors cannot preserve testimony for trial by taking a deposition. Elderly or infirm crime victims are sometimes denied their day in court because they are or become physically unable to testify in court or simply do not live long enough for the case to go to trial. Amending the law to allow the state to take depositions might help bring justice for elderly victims of financial fraud, election fraud, and victims of violent crime whose condition deteriorates before the case can be tried. H.B. 975 affords the state the same right the defendant already has to apply to take the deposition of a witness in an examining trial or in a case pending before a court.

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 975 authorizes the State to have a deposition of any witness taken by an officer authorized in this chapter during a criminal action before a magistrate, a privilege that defendants already possess. Neither the State nor the defendant is authorized to use the deposition for any purpose unless the testifying party first acknowledges that the entire evidence or statement can be used for or against the defendant. When a party desires to take a deposition of a witness, they must first file with the court clerk in which the case is pending an affidavit and give adequate reason for holding the deposition as well as an application to take the deposition. Once the application and affidavit have been filed and the opposing party is notified the court is required to hear the application and make a determination as to whether a good reason exists for taking the deposition. The court is required to base its determination and grant or deny the application based on the facts made known at the hearing.

EFFECTIVE DATE

September 1, 2005