

By: Madden (Senate Sponsor - Harris) H.B. No. 975
(In the Senate - Received from the House April 13, 2005;
April 14, 2005, read first time and referred to Committee on
Criminal Justice; May 19, 2005, reported favorably, as amended, by
the following vote: Yeas 5, Nays 0; May 19, 2005, sent to printer.)

COMMITTEE AMENDMENT NO. 1 By: Hinojosa

Amend H.B. No. 975 by inserting the following after the
period on page 1, line 59: "This provision is limited to the
purposes stated in Section 39.01."

A BILL TO BE ENTITLED
AN ACT

relating to a deposition taken of a witness in a criminal action.

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

SECTION 1. Articles 39.01 and 39.02, Code of Criminal
Procedure, are amended to read as follows:

Art. 39.01. IN EXAMINING TRIAL. When an examination takes
place in a criminal action before a magistrate, the State or the
defendant may have the deposition of any witness taken by any
officer authorized by this chapter ~~[or officers named in this~~
~~Chapter]~~. The State or the defendant may [shall] not use the
deposition for any purpose unless that party [he] first
acknowledges [consent] that the entire evidence or statement of the
witness may be used for or against the defendant [him by the State]
on the trial of the case, subject to all legal objections. The
deposition of a witness duly taken before an examining trial or a
jury of inquest and reduced to writing and certified according to
law where the defendant was present when that [such] testimony was
taken, and had the privilege afforded of cross-examining the
witness, or taken at any prior trial of the defendant for the same
offense, may be used by either the State or the defendant in the
trial of the ~~[such]~~ defendant's criminal case under the following
circumstances:

When oath is made by the party using the deposition [same]
that the witness resides outside the State; or that since the
witness's ~~[his]~~ testimony was taken, the witness has died, or ~~[that~~
~~he]~~ has removed beyond the limits of the State, or ~~[that he]~~ has
been prevented from attending the court through the act or agency of
the other party, or by the act or agency of any person whose object
was to deprive the State or the defendant of the benefit of the
testimony; or that by reason of age or bodily infirmity, that [such]
witness cannot attend. When the testimony is sought to be used by
the State, the oath may be made by any credible person. When sought
to be used by the defendant, the oath must [shall] be made by the
defendant [him] in person.

Art. 39.02. WITNESS DEPOSITIONS ~~[FOR — DEFENDANT]~~.
Depositions of witnesses may be taken by either the state or the
defendant. When a party [the defendant] desires to take the
deposition of a witness, the party [he] shall ~~[, by himself or~~
~~counsel,]~~ file with the clerk of the court in which the case is
pending an affidavit stating the facts necessary to constitute a
good reason for taking the witness's deposition [same] and an
application to take the deposition [same]. ~~On [Provided that upon]~~
the filing of the affidavit and [such] application, and after
notice to the opposing party [attorney for the state], the court
~~[courts]~~ shall hear the application and determine if good reason
exists for taking the deposition. The court shall base its [Such]
determination and shall grant or deny the application [be based]
on the facts made known at the hearing ~~[and the court, in its judgment,~~
~~shall grant or deny the application on such facts]~~.

SECTION 2. This Act applies only to a criminal case in which
the indictment or information is presented to the court on or after
September 1, 2005. A criminal case in which the indictment or

2-1 information is presented to the court before September 1, 2005, is
2-2 governed by the law in effect when the indictment or information is
2-3 presented, and the former law is continued in effect for that
2-4 purpose.

2-5 SECTION 3. This Act takes effect September 1, 2005.

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