

## **BILL ANALYSIS**

C.S.H.B. 2465  
By: Chavez  
Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Current Texas law does not provide for the taking of a deposition of an elderly or disabled victim of or witness to an offense.

C.S.H.B. 2465 requires a court to order an 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 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 the deposition.

### **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**

C.S.H.B. 2465 amends the Code of Criminal Procedure to require a 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. The bill authorizes the attorney representing the state and the defendant or the defendant's attorney, by written agreement filed with the court, to extend the deadline for the taking of the deposition, and requires the court to grant any request by the attorney representing the state to extend the deadline if a reason for the request is the unavailability, health, or well-being of the victim or witness.

C.S.H.B. 2465 specifies that the Texas Rules of Civil Procedure govern the taking of the deposition except where such rules conflict with the Code of Criminal Procedure or applicable court rules adopted for criminal proceedings, in which case Texas law and the rules for criminal proceedings govern. The bill authorizes the attorney representing the state and the defendant or the 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.

C.S.H.B. 2465 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. The bill requires the sheriff of the county in which the deposition is to be taken to provide a secure location for the taking of the deposition and sufficient law enforcement personnel at the location to ensure the deposition is taken safely. The bill 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 prohibits the application or notice from serving as a basis for the defendant to object to the taking of the deposition. The bill requires the defendant or the defendant's attorney to request a continuance from the court if the defendant is unavailable to attend a deposition for any reason other than confinement in a correctional facility. The bill 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. The bill provides that a defendant's failure to attend a deposition or request a continuance in accordance with the bill's provisions constitutes a waiver of the defendant's rights to be present at the deposition. The bill defines "disabled person" and "elderly person."

**EFFECTIVE DATE**

September 1, 2009.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 2465 differs from the original by applying its provisions to an elderly or disabled person who is the alleged victim of or witness to an offense, whereas the original applies its provisions only to such a person who is the alleged victim of an offense. The substitute differs from the original by requiring a court to order the attorney representing the state to take the deposition of an elderly or disabled victim or witness within a certain time frame, whereas the original requires the deposition to be taken by the state or its attorney within that time frame and does not include the court order requirement. The substitute removes a provision in the original requiring the court in which the application is filed to grant the application. The substitute differs in the original by specifying that the Texas Rules of Civil Procedure govern the taking of the deposition, except to the extent of any conflict with the Code of Criminal Procedure or applicable court rules adopted for criminal proceedings, rather than to the extent of any conflict with the Texas Rules of Criminal Procedure as in the original. The substitute differs from the original by requiring the court to issue orders or warrants necessary to secure the attendance at a deposition of an individual who is confined in a correctional facility, rather than incarcerated as in the original. The substitute adds a provision not in the original authorizing the court to grant a continuance if the defendant or defendant's attorney demonstrates good cause for the continuance.