

By: Chavez

H.B. No. 2465

A BILL TO BE ENTITLED

AN ACT

relating to taking a deposition of an elderly or disabled victim of an offense.

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

SECTION 1. Chapter 39, Code of Criminal Procedure, is amended by adding Article 39.025 to read as follows:

Art. 39.025. DEPOSITIONS OF ELDERLY OR DISABLED PERSONS.

(a) In this article:

(1) "Disabled person" means a person with a disability as defined by Section 3, Americans with Disabilities Act, 42 U.S.C. 12102(1).

(2) "Elderly person" means a person 65 years of age or older.

(b) The deposition of an elderly or disabled person who is the alleged victim of an offense shall be taken by the state or its attorney not later than the 60th day after the date on which the state files an application to take the deposition under Article 39.02. The Court in which the application is filed shall grant the application. The state and the defendant or the defendant's attorney may, by written agreement filed with the Court, extend the deadline for the taking of the deposition. The Court shall grant any request by 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. The provisions of the Texas

1 Rules of Civil Procedure shall govern the taking of the deposition  
2 except where such Rules conflict with the Texas Rules of Criminal  
3 Procedure, in which case the Texas Rules of Criminal Procedure  
4 shall govern. The state and the defendant, or the defendant's  
5 attorney may agree to modify the rules, but such agreement shall be  
6 in writing and filed with the Court prior to the taking of the  
7 deposition. If a defendant is unavailable to attend a deposition  
8 because he is incarcerated, the Court shall issue any orders or  
9 warrants that may be necessary to secure his presence. The Sheriff  
10 of the county in which the deposition is to be taken shall provide a  
11 secure location and sufficient law enforcement personnel at such  
12 location and deposition such that the deposition can be safely  
13 taken. The state's application or notice of deposition need not  
14 include the identity of any law enforcement agents assigned to the  
15 deposition by the Sheriff, and shall not serve as a basis for the  
16 defendant objecting to the same. If a defendant is unavailable for  
17 any other reason, it is the obligation of the defendant or his  
18 attorney to request a continuance from the court and provide  
19 evidence and argument sufficient to satisfy the court that the  
20 request is not brought for the purpose of delay or avoidance.  
21 Failure to do so is a waiver of the defendant's rights to be present  
22 at the deposition.

23         SECTION 2. The change in law made by this Act applies only  
24 to an application to take a deposition that is filed on or after the  
25 effective date of this Act. An application to take a deposition  
26 that is filed before the effective date of this Act is covered by  
27 the law in effect when the application was filed, and the former law

1 is continued in effect for that purpose.

2 SECTION 3. This Act takes effect September 1, 2009.