

1-1 By: Chavez, Moody, Guillen (Senate Sponsor - Davis) H.B. No. 2465
1-2 (In the Senate - Received from the House April 29, 2009;
1-3 May 4, 2009, read first time and referred to Committee on Criminal
1-4 Justice; May 20, 2009, reported favorably by the following vote:
1-5 Yeas 6, Nays 0; May 20, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to taking a deposition of an elderly or disabled victim of
1-9 or witness to an offense.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Chapter 39, Code of Criminal Procedure, is
1-12 amended by adding Article 39.025 to read as follows:

1-13 Art. 39.025. DEPOSITIONS OF ELDERLY OR DISABLED PERSONS.

1-14 (a) In this article:

1-15 (1) "Disabled person" means a person with a disability
1-16 as defined by Section 3, Americans with Disabilities Act (42 U.S.C.
1-17 12102).

1-18 (2) "Elderly person" means a person 65 years of age or
1-19 older.

1-20 (b) The court shall order the attorney representing the
1-21 state to take the deposition of an elderly or disabled person who is
1-22 the alleged victim of or witness to an offense not later than the
1-23 60th day after the date on which the state files an application to
1-24 take the deposition under Article 39.02.

1-25 (c) The attorney representing the state and the defendant or
1-26 the defendant's attorney may, by written agreement filed with the
1-27 court, extend the deadline for the taking of the deposition.

1-28 (d) The court shall grant any request by the attorney
1-29 representing the state to extend the deadline for the taking of the
1-30 deposition if a reason for the request is the unavailability,
1-31 health, or well-being of the victim or witness.

1-32 (e) The Texas Rules of Civil Procedure govern the taking of
1-33 the deposition, except to the extent of any conflict with this code
1-34 or applicable court rules adopted for criminal proceedings, in
1-35 which event this code and the rules for criminal proceedings
1-36 govern. The attorney representing the state and the defendant or
1-37 defendant's attorney may agree to modify the rules applicable to
1-38 the deposition by written agreement filed with the court before the
1-39 taking of the deposition.

1-40 (f) If a defendant is unavailable to attend a deposition
1-41 because the defendant is confined in a correctional facility, the
1-42 court shall issue any orders or warrants necessary to secure the
1-43 defendant's presence at the deposition. The sheriff of the county
1-44 in which a deposition under this subsection is to be taken shall
1-45 provide a secure location for the taking of the deposition and
1-46 sufficient law enforcement personnel to ensure the deposition is
1-47 taken safely. The state's application to take a deposition or
1-48 notice of deposition is not required to include the identity of any
1-49 law enforcement agents the sheriff assigns to the deposition and
1-50 may not serve as a basis for the defendant to object to the taking of
1-51 the deposition.

1-52 (g) If a defendant is unavailable to attend a deposition for
1-53 any reason other than confinement in a correctional facility, the
1-54 defendant or defendant's attorney shall request a continuance from
1-55 the court. The court may grant the continuance if the defendant or
1-56 defendant's attorney demonstrates good cause for the continuance
1-57 and that the request is not brought for the purpose of delay or
1-58 avoidance. A defendant's failure to attend a deposition or request
1-59 a continuance in accordance with this subsection constitutes a
1-60 waiver of the defendant's right to be present at the deposition.

1-61 SECTION 2. The change in law made by this Act applies only
1-62 to an application to take a deposition that is filed on or after the
1-63 effective date of this Act. An application to take a deposition
1-64 that is filed before the effective date of this Act is covered by

2-1 the law in effect when the application was filed, and the former law
2-2 is continued in effect for that purpose.

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

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