

BILL ANALYSIS

Senate Research Center

H.B. 975
By: Madden (Harris)
Criminal Justice
5/17/2005
Committee Report (Amended)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

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.

H.B. 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.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Articles 39.01 and 39.02, Code of Criminal Procedure, as follows:

Art. 39.01. IN EXAMINING TRIAL. Authorizes the state or the defendant, when an examination takes place in a criminal action before a magistrate, to have the deposition of any witness taken by any officer authorized by this chapter. Makes conforming and nonsubstantive changes.

Art. 39.02. New heading: WITNESS DEPOSITIONS. Makes conforming and nonsubstantive changes.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2005.

SUMMARY OF COMMITTEE CHANGES

COMMITTEE AMENDMENT NO. 1:

Amend H.B. 975 by inserting the following after the period on page 2, line 25:

This provision is limited to the purposes stated in Section 39.01.