

Chapter 678

1 AN ACT

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

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

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

7 Art. 39.025. DEPOSITIONS OF ELDERLY OR DISABLED PERSONS.

8 (a) In this article:

9 (1) "Disabled person" means a person with a disability  
10 as defined by Section 3, Americans with Disabilities Act (42 U.S.C.  
11 12102).

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

14 (b) The court shall order the attorney representing the  
15 state to take the deposition of an elderly or disabled person who is  
16 the alleged victim of or witness to an offense not later than the  
17 60th day after the date on which the state files an application to  
18 take the deposition under Article 39.02.

19 (c) The attorney representing the state and the defendant or  
20 the defendant's attorney may, by written agreement filed with the  
21 court, extend the deadline for the taking of the deposition.

22 (d) The court shall grant any request by the attorney  
23 representing the state to extend the deadline for the taking of the  
24 deposition if a reason for the request is the unavailability,

1 health, or well-being of the victim or witness.

2 (e) The Texas Rules of Civil Procedure govern the taking of  
3 the deposition, except to the extent of any conflict with this code  
4 or applicable court rules adopted for criminal proceedings, in  
5 which event this code and the rules for criminal proceedings  
6 govern. The attorney representing the state and the defendant or  
7 defendant's attorney may agree to modify the rules applicable to  
8 the deposition by written agreement filed with the court before the  
9 taking of the deposition.

10 (f) If a defendant is unavailable to attend a deposition  
11 because the defendant is confined in a correctional facility, the  
12 court shall issue any orders or warrants necessary to secure the  
13 defendant's presence at the deposition. The sheriff of the county  
14 in which a deposition under this subsection is to be taken shall  
15 provide a secure location for the taking of the deposition and  
16 sufficient law enforcement personnel to ensure the deposition is  
17 taken safely. The state's application to take a deposition or  
18 notice of deposition is not required to include the identity of any  
19 law enforcement agents the sheriff assigns to the deposition and  
20 may not serve as a basis for the defendant to object to the taking of  
21 the deposition.

22 (g) If a defendant is unavailable to attend a deposition for  
23 any reason other than confinement in a correctional facility, the  
24 defendant or defendant's attorney shall request a continuance from  
25 the court. The court may grant the continuance if the defendant or  
26 defendant's attorney demonstrates good cause for the continuance  
27 and that the request is not brought for the purpose of delay or

1 avoidance. A defendant's failure to attend a deposition or request  
2 a continuance in accordance with this subsection constitutes a  
3 waiver of the defendant's right to be present at the deposition.

4 SECTION 2. The change in law made by this Act applies only  
5 to an application to take a deposition that is filed on or after the  
6 effective date of this Act. An application to take a deposition  
7 that is filed before the effective date of this Act is covered by  
8 the law in effect when the application was filed, and the former law  
9 is continued in effect for that purpose.

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

David Newkum

President of the Senate

Jim Strawn

Speaker of the House

I certify that H.B. No. 2465 was passed by the House on April 28, 2009, by the following vote: Yeas 148, Nays 0, 1 present, not voting.

Robert Haney

Chief Clerk of the House

I certify that H.B. No. 2465 was passed by the Senate on May 26, 2009, by the following vote: Yeas 31, Nays 0.

Antony Spaw

Secretary of the Senate

APPROVED: 19 JUN '09

Date

Rick Perry

Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE

2 PM O'CLOCK

JUN 19 2009

Colby Shuter III