

BILL ANALYSIS

Senate Research Center

S.B. 291
By: Whitmire
Criminal Justice
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently the Code of Criminal Procedure allows a grand jury foreman or a district attorney to request from the court that impaneled the grand jury or the court where a criminal case is pending to issue a writ of attachment for a witness to a crime, which can lead to them being ordered into custody of the county jail, without any legal representation or public due process.

This happened in Harris County, where a sexual assault victim witness was the subject to a writ of attachment, issued in the judge's chambers, and ordered into the custody of the county jail. After breaking down during her testimony and leaving the court room, she was hospitalized in the county psychiatric hospital for 10 days. Upon discharge from that hospital she was detained by the Harris County District Attorney's Office and booked into the Harris County jail. In the Harris County Jail in general population she was re-victimized and her mental state rapidly diminished. This event occurred during the Christmas holidays, in which she remained jailed until into January.

S.B. 291 is designed to prevent this horrific event from occurring in this state again. It does so by:

- A court upon receiving a motion for a writ of attachment on a crime witness must appoint an attorney to represent the witness.
- A hearing on the motion for a writ of attachment must be conducted in open court.
- If the witness is not a county resident, as in the example case, the hearing must be conducted by a magistrate in the county for which the witness resides.
- If the writ of attachment is granted, a bond must be offered. If the witness by sworn affidavit states they cannot post the bond, a personal bond must be issued.

This bill is crafted to only impact crime witnesses and does not apply to other types of material witnesses such as state prison inmates. Citizens in Harris County were shocked by these events and resulting media coverage, calling for a proper action to remedy such an event ever happening again and the county judge joined them in asking for corrective action. (Original Author's / Sponsor's Statement of Intent)

S.B. 291 amends current law relating to the issuance of a writ of attachment for certain witnesses.

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 Chapter 2, Code of Criminal Procedure, by adding Article 2.212, as follows:

Art. 2.212. WRIT OF ATTACHMENT REPORTING. Requires the clerk of the court, not later than the 30th day after the date a writ of attachment is issued in a district court, statutory county court, or county court, to report to the Texas Judicial Council (TJC) the date the attachment was issued; whether the attachment was issued in connection with a grand jury investigation, criminal trial, or other criminal proceeding; the names of the person requesting and the judge issuing the attachment; and the statutory authority under which the attachment was issued.

SECTION 2. Amends Article 24.011, Code of Criminal Procedure, by adding Subsection (b-1), as follows:

(b-1) Requires that the request, if the defendant or the attorney representing the state requests the issuance of an attachment under this article, other than an attachment for a witness described by Subsection (c) (relating to the authority of the court if the witness is in custody in certain facilities for juveniles), include the applicable affidavit described by Article 24.12.

SECTION 3. Amends Chapter 24, Code of Criminal Procedure, by adding Article 24.111, as follows:

Art. 24.111. HEARING REQUIRED BEFORE ISSUANCE OF CERTAIN WRITS OF ATTACHMENT. (a) Provides that this article applies only to an attachment that is requested to be issued under Article 24.011 (Subpoenas; Child Witnesses), if an affidavit is required under Article 24.011(b-1), or requested to be issued under Article 24.12, 24.14, or 24.22.

(b) Provides that a writ of attachment to which this article applies, notwithstanding any other law, may only be issued by the judge of the court in which the witness is to testify if the judge determines, after a hearing, that the issuance of the attachment is in the best interest of justice.

(c) Requires the judge, in making a determination under Subsection (b), to consider the affidavit of the attorney representing the state or the defendant, as applicable, that was submitted with the request for the issuance of the attachment.

(d) Requires the court to appoint an attorney to represent the witness at the hearing under Subsection (b), including a hearing conducted outside the presence of the witness.

SECTION 4. Amends Article 24.12, Code of Criminal Procedure, as follows:

Art. 24.12. WHEN ATTACHMENT MAY ISSUE. Authorizes the attorney representing the state or the defendant to request that the court issue an attachment for the witness, when a witness who resides in the county of the prosecution has been duly served with a subpoena to appear and testify in any criminal action or proceeding fails to so appear. Requires that the request be filed with the clerk of the court and include an affidavit of the attorney representing the state or the defendant, as applicable, stating that the affiant has good reason to believe, and does believe, that the witness is a material witness. Deletes existing text entitling the State or the defendant to have an attachment issued forthwith for such witness.

SECTION 5. Amends Article 24.14, Code of Criminal Procedure, as follows:

Art. 24.14. ATTACHMENT FOR RESIDENT WITNESS. (a) Creates this subsection from existing text. Authorizes the defendant or the attorney representing the state, if a witness who resides in the county of the prosecution may be about to move out of the county, regardless of whether the witness has disobeyed a subpoena, to request that the court issue an attachment for the witness. Requires that the request be filed with the clerk of the court and include the applicable affidavit described by Article 24.12, except that

the affidavit is required to additionally state that the affiant has good reason to believe, and does believe, that the witness is about to move out of the county.

(b) Creates this subsection from existing text. Requires the officer executing the attachment, if an attachment is issued under this article in a misdemeanor case, to take the witness's personal bond when the witness makes oath that the witness cannot give surety.

Deletes existing text requiring the clerk, when a witness resides in the county of the prosecution, whether he has disobeyed a subpoena or not, either in term-time or vacation, upon the filing of an affidavit with the clerk by the defendant or State's counsel, that he has good reason to believe, and does believe, that such witness is a material witness, and is about to move out of the county, to forthwith issue an attachment for such witness; provided, that in misdemeanor cases, when the witness makes oath that he cannot give surety, the officer executing the attachment is required to take his personal bond.

SECTION 6. Amends Article 24.22, Code of Criminal Procedure, as follows:

Art. 24.22. WITNESS FINED AND ATTACHED. (a) Creates this subsection from existing text. Requires the witness, if a witness summoned from outside the county refuses to obey a subpoena, to be fined by the court or magistrate not exceeding five hundred dollars, which fine and judgment shall be final, unless set aside after due notice to show cause why it should not be final, which notice may immediately issue, requiring the defaulting witness to appear at once or at the next term of the court, in the discretion of the magistrate issuing the subpoena, rather than at the discretion of the judge, to answer for the default. Makes nonsubstantive changes.

(b) Creates this subsection from existing text. Authorizes the court, at the time a fine is imposed under Subsection (a), on request of the defendant or the attorney representing the state, to cause to be issued an attachment for the witness, directed to the proper county, commanding the officer to whom the attachment is directed to take the witness into custody and have the witness before the court at the time specified in the attachment; in which case the witness is required to receive no fees, unless it appears to the court that the disobedience is excusable, when the witness is authorized to receive the same pay as if the witness had not been attached.

(c) Requires that a request for the issuance of an attachment under Subsection (b) include the applicable affidavit described by Article 24.12.

(d) Creates this subsection from existing text. Requires that the fine when made final and all related costs be collected in the same manner as in other criminal cases. Authorizes the fine and judgment to be set aside in vacation or at the time or any subsequent term of the court for good cause shown, after the witness testifies or has been discharged.

(e) Sets forth the required language to be written or printed on the face of a subpoena for an out-of-county witness.

Deletes existing text requiring a witness summoned from without the county who refuses to obey a subpoena to be fined by the court or magistrate not exceeding five hundred dollars, which fine and judgment are required to be final, unless set aside after due notice to show cause why it should not be final, which notice may immediately issue, requiring the defaulting witness to appear at once or at the next term of said court, in the discretion of the judge, to answer for such default; authorizing the court to cause to be issued at the same time an attachment for said witness, directed to the proper county, commanding the officer to whom said writ is directed to take said witness into custody and have him before said court at the time named in said writ; in which case such witness shall receive no fees, unless it appears to the court that such disobedience is excusable, when the witness is authorized to receive the same pay as if he has not been attached; requiring

said fine when made final and all costs thereon are required to be collected as in other criminal cases; authorizing said fine and judgment to be set aside in vacation or at the time or any subsequent term of the court for good cause shown, after the witness testifies or has been discharged; and requiring certain words to be written or printed on the face of such subpoena for out-county witnesses.

SECTION 7. Amends Chapter 24, Code of Criminal Procedure, by adding Articles 24.221 and 24.222, as follows:

Art. 24.221. AFFIDAVIT REGARDING CONFINEMENT. Requires the sheriff, as soon as practicable after the sheriff takes custody of a witness pursuant to an attachment issued as provided by Article 24.111, to submit an affidavit to the issuing court stating that the sheriff has taken custody of the witness.

Art. 24.222. HEARING DURING CONFINEMENT OF WITNESS. (a) Authorizes a witness who has been confined for at least 24 hours pursuant to an attachment issued as provided by Article 24.111 to request a hearing in the issuing court regarding whether the continued confinement of the witness is necessary. Requires the court to grant the request and hold the hearing as soon as practicable.

(b) Authorizes any subsequent request for a hearing to be granted only if the court determines that holding the hearing is in the best interest of justice.

(c) Requires the attorney appointed for the witness under Article 24.111 to represent the witness at a hearing under this article.

SECTION 8. Amends Section 71.034(e), Government Code, as follows:

(e) Requires TJC, in addition to the information described by Subsection (a) (relating to the requirement that TJC file a report containing certain information each year), to include in the report a summary of information provided to TJC during the preceding year under Articles 2.211 (Hate Crime Reporting) and 2.212, Code of Criminal Procedure. Makes a nonsubstantive change.

SECTION 9. Makes application of this Act prospective.

SECTION 10. Effective date: September 1, 2017.