

BILL ANALYSIS

S.B. 291
By: Whitmire
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties express concern that the issuance of a writ of attachment for a witness to a crime may lead to the placement of the witness in the custody of the county jail without legal representation or due process. S.B. 291 seeks to prevent this event from occurring.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 291 amends the Code of Criminal Procedure to require the clerk of a district court, statutory county court, or county court, not later than the 30th day after the date a writ of attachment is issued in the applicable court, to report to the Texas Judicial Council 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. The bill requires a request by a defendant or an attorney representing the state for the issuance of an attachment other than an attachment for a witness in the custody of the Texas Juvenile Justice Department, a juvenile secure detention facility, or a juvenile secure correctional facility, to 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. The bill restricts issuance of the following writs of attachment to issuance 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: a writ of attachment that is requested to be issued under provisions relating to subpoenas and child witnesses, if such an affidavit is required as provided under the bill's provisions, or a writ of attachment that is requested to be issued under provisions relating to when an attachment may be issued for 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, and fails to so appear, under provisions relating to an attachment for a resident witness who resides in the county of the prosecution who may be about to move out of the county, and under provisions relating to the fining of a witness summoned from outside the county who refuses to obey a subpoena. The bill requires the judge in making such a determination 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 and requires the court to appoint an attorney to represent the witness at such a hearing, including a hearing conducted outside the presence of the witness.

S.B. 291 replaces the entitlement of the state or a defendant to have an attachment issued for 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, and fails to so appear with an authorization for the attorney representing the state or the defendant to request that the court issue such an attachment. The bill requires the request to be filed with the clerk of the court and to 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. The bill revises the procedure by which an attachment may be issued for a resident witness by authorizing the defendant or the attorney representing the state to request that the court issue an attachment for a witness who resides in the county of the prosecution who may be about to move out of the county, regardless of whether the witness has disobeyed a subpoena. The bill requires such a request to be filed with the clerk of the court and to include the applicable affidavit stating that the affiant has good reason to believe, and does believe, that the witness is a material witness with an additional statement that the affiant has good reason to believe and does believe that the witness is about to move out of the county. The bill revises statutory provisions relating to the fining of, and issuance of an attachment for, a witness summoned from outside the county who refuses to obey a subpoena by changing the person whose discretion it is to require such a witness to appear from the applicable judge to the magistrate issuing the subpoena and by requiring a request for the issuance of such an attachment to include the applicable affidavit stating that the affiant has good reason to believe, and does believe, that the witness is a material witness.

S.B. 291 requires a sheriff, as soon as practicable after the sheriff takes custody of a witness pursuant to an attachment issued after the hearing required under the bill's provisions, to submit an affidavit to the issuing court stating that the sheriff has taken custody of the witness. The bill authorizes a witness who has been confined for five or more days pursuant to such an attachment to request a hearing in the issuing court regarding whether the continued confinement of the witness is necessary. The bill requires the court to grant the request and hold the hearing as soon as practicable, requires the attorney appointed for the witness under those provisions to represent the witness at such a hearing, and restricts the granting of any subsequent request for a hearing to a determination by the court that holding the hearing is in the best interest of justice.

S.B. 291 amends the Government Code to include among the information the Texas Judicial Council is required to report annually to the governor and the supreme court information reported to the council during the preceding year under the bill's provisions relating to writ of attachment reporting.

EFFECTIVE DATE

September 1, 2017.