

By: Whitmire

S.B. No. 291

A BILL TO BE ENTITLED

AN ACT

relating to the issuance of a writ of attachment for certain witnesses.

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

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.212 to read as follows:

Art. 2.212. WRIT OF ATTACHMENT REPORTING. 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, the clerk of the court shall report to the Texas Judicial Council:

(1) the date the attachment was issued;

(2) whether the attachment was issued in connection with a grand jury investigation, criminal trial, or other criminal proceeding;

(3) the names of the person requesting and the judge issuing the attachment; and

(4) the statutory authority under which the attachment was issued.

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

(b-1) 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), the request must include the applicable affidavit described by

1 Article 24.12.

2 SECTION 3. Chapter 24, Code of Criminal Procedure, is
3 amended by adding Article 24.111 to read as follows:

4 Art. 24.111. HEARING REQUIRED BEFORE ISSUANCE OF CERTAIN
5 WRITS OF ATTACHMENT. (a) This article applies only to an
6 attachment that is requested to be issued under:

7 (1) Article 24.011, if an affidavit is required under
8 Article 24.011(b-1); or

9 (2) Article 24.12, 24.14, or 24.22.

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

15 (c) In making a determination under Subsection (b), the
16 judge shall consider the affidavit of the attorney representing the
17 state or the defendant, as applicable, that was submitted with the
18 request for the issuance of the attachment.

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

22 SECTION 4. Article 24.12, Code of Criminal Procedure, is
23 amended to read as follows:

24 Art. 24.12. WHEN ATTACHMENT MAY ISSUE. When a witness who
25 resides in the county of the prosecution has been duly served with a
26 subpoena to appear and testify in any criminal action or proceeding
27 fails to so appear, the attorney representing the state [~~State~~] or

1 the defendant may request that the court issue an attachment ~~[shall~~
2 ~~be entitled to have an attachment issued forthwith]~~ for the ~~[such]~~
3 witness. The request must be filed with the clerk of the court and
4 must include an affidavit of the attorney representing the state or
5 the defendant, as applicable, stating that the affiant has good
6 reason to believe, and does believe, that the witness is a material
7 witness.

8 SECTION 5. Article 24.14, Code of Criminal Procedure, is
9 amended to read as follows:

10 Art. 24.14. ATTACHMENT FOR RESIDENT WITNESS.

11 (a) Regardless of whether the witness has disobeyed a subpoena, if
12 [When] a witness who resides in the county of the prosecution may be
13 about to move out of the county, [whether he has disobeyed a
14 subpoena or not, either in term-time or vacation, upon the filing of
15 an affidavit with the clerk by] the defendant or the attorney
16 representing the state may request that the court issue an
17 attachment for the witness. The request must be filed with the
18 clerk of the court and must include the applicable affidavit
19 described by Article 24.12, except that the affidavit must
20 additionally state [State's counsel,] that the affiant [he] has
21 good reason to believe, and does believe, that the [such] witness
22 [is a material witness, and] is about to move out of the county.

23 (b) If an attachment is issued under this article in a [the
24 clerk shall forthwith issue an attachment for such witness,
25 provided, that in] misdemeanor case [cases], when the witness makes
26 oath that the witness [he] cannot give surety, the officer
27 executing the attachment shall take the witness's [his] personal

1 bond.

2 SECTION 6. Article [24.22](#), Code of Criminal Procedure, is
3 amended to read as follows:

4 Art. 24.22. WITNESS FINED AND ATTACHED. (a) If a witness
5 summoned from outside [~~without~~] the county refuses to obey a
6 subpoena, the witness [~~he~~] shall be fined by the court or magistrate
7 not exceeding five hundred dollars, which fine and judgment shall
8 be final, unless set aside after due notice to show cause why it
9 should not be final, which notice may immediately issue, requiring
10 the defaulting witness to appear at once or at the next term of the
11 [~~said~~] court, in the discretion of the magistrate issuing the
12 subpoena [~~judge~~], to answer for the [~~such~~] default.

13 (b) At the time a fine is imposed under Subsection (a), on
14 request of the defendant or the attorney representing the state,
15 the [~~The~~] court may cause to be issued [~~at the same time~~] an
16 attachment for the [~~said~~] witness, directed to the proper county,
17 commanding the officer to whom the attachment [~~said writ~~] is
18 directed to take the [~~said~~] witness into custody and have the
19 witness [~~him~~] before the [~~said~~] court at the time specified [~~named~~]
20 in the attachment [~~said writ~~]; in which case the [~~such~~] witness
21 shall receive no fees, unless it appears to the court that the
22 [~~such~~] disobedience is excusable, when the witness may receive the
23 same pay as if the witness [~~he~~] had not been attached.

24 (c) A request for the issuance of an attachment under
25 Subsection (b) must include the applicable affidavit described by
26 Article [24.12](#).

27 (d) The [~~said~~] fine when made final and all related costs

1 ~~[thereon]~~ shall be collected in the same manner as in other criminal
2 cases. The ~~[said]~~ fine and judgment may be set aside in vacation or
3 at the time or any subsequent term of the court for good cause
4 shown, after the witness testifies or has been discharged.

5 (e) The following words shall be written or printed on the
6 face of a [such] subpoena for an out-of-county witness ~~[out-county~~
7 ~~witnesses]~~: "A disobedience of this subpoena is punishable by fine
8 not exceeding five hundred dollars, to be collected as fines and
9 costs in other criminal cases."

10 SECTION 7. Chapter 24, Code of Criminal Procedure, is
11 amended by adding Articles 24.221 and 24.222 to read as follows:

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

17 Art. 24.222. HEARING DURING CONFINEMENT OF WITNESS. (a) A
18 witness who has been confined for five or more days pursuant to an
19 attachment issued as provided by Article 24.111 may request a
20 hearing in the issuing court regarding whether the continued
21 confinement of the witness is necessary. The court shall grant the
22 request and hold the hearing as soon as practicable.

23 (b) Any subsequent request for a hearing may be granted only
24 if the court determines that holding the hearing is in the best
25 interest of justice.

26 (c) The attorney appointed for the witness under Article
27 24.111 shall represent the witness at a hearing under this article.

1 SECTION 8. Section 71.034(e), Government Code, is amended
2 to read as follows:

3 (e) In addition to the information described by Subsection
4 (a), the council shall include in the report a summary of
5 information provided to the council during the preceding year under
6 Articles [Article] 2.211 and 2.212, Code of Criminal Procedure.

7 SECTION 9. The change in law made by this Act applies only
8 to a writ of attachment issued on or after the effective date of
9 this Act. A writ of attachment issued before the effective date of
10 this Act is governed by the law in effect on the date the writ was
11 issued, and the former law is continued in effect for that purpose.

12 SECTION 10. This Act takes effect September 1, 2017.