

By: Whitmire

S.B. No. 291

A BILL TO BE ENTITLED

AN ACT

relating to the issuance of a writ of attachment.

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 20.10, Code of Criminal Procedure, is amended to read as follows:

Art. 20.10. ATTORNEY OR FOREMAN MAY ISSUE SUMMONS OR REQUEST ATTACHMENT [~~PROCESS~~]. (a) The attorney representing the state[~~r~~] or the foreman, in term time or vacation, may:

(1) issue a summons [~~or attachment~~] for any witness in the county in which the grand jury is [~~where they are~~] sitting; or

1 (2) request that the district judge issue an
2 attachment for any witness in the county in which the grand jury is
3 sitting.

4 (b) The [, which] summons or attachment may require the
5 witness to appear before the grand jury [them] at a time fixed, or
6 immediately [forthwith], without stating the matter under
7 investigation.

8 SECTION 3. Article 20.11, Code of Criminal Procedure, is
9 amended by amending Section 1 and adding Section 1-a to read as
10 follows:

11 Sec. 1. The foreman or the attorney representing the State
12 may, on [upon] written application to the district court stating
13 the name and residence of the witness and that the witness's [his]
14 testimony is believed to be material, cause a subpoena [~~or an~~
15 ~~attachment~~] to be issued to any county in the State for the [such]
16 witness, returnable to the grand jury then in session, or to the
17 next grand jury for the county from which the subpoena was [whence
18 ~~the same]~~ issued, as the [such] foreman or attorney may desire. The
19 subpoena may require the witness to appear and produce records and
20 documents.

21 Sec. 1-a. The foreman or the attorney representing the
22 state may, on written application to the district court stating the
23 name and residence of the witness and that the witness's testimony
24 is believed to be material, request that the district judge issue an
25 attachment for the witness to any county in the state. The [An]
26 attachment shall command the sheriff or any constable of the county
27 where the witness resides to serve the witness, and have the witness

1 ~~[him]~~ before the applicable grand jury as described by Section 1 at
2 the time and place specified in the attachment ~~[writ]~~.

3 SECTION 4. Article 20.12, Code of Criminal Procedure, is
4 amended to read as follows:

5 Art. 20.12. ATTACHMENT IN TERM TIME OR VACATION. The
6 attorney representing the state or the foreman may request that
7 ~~[cause]~~ an attachment for a witness ~~[to]~~ be issued, as provided
8 under ~~[in the preceding]~~ Article 20.11, either in term time or in
9 vacation.

10 SECTION 5. Article 24.11, Code of Criminal Procedure, is
11 amended to read as follows:

12 Art. 24.11. REQUISITES OF AN "ATTACHMENT". An "attachment"
13 is a writ issued by a ~~[clerk of a court under seal, or by any]~~
14 magistrate ~~[, or by the foreman of a grand jury,]~~ in any criminal
15 action or proceeding authorized by law, commanding a [some] peace
16 officer to take the body of a witness and bring the witness ~~[him]~~
17 before the ~~[such]~~ court in which the action or proceeding is
18 pending, immediately or ~~[, magistrate or grand jury]~~ on a day
19 specified in the attachment ~~[named, or forthwith]~~, to testify in
20 behalf of the State or of the defendant, as applicable ~~[the case may~~
21 ~~be]~~. The attachment ~~[It]~~ shall be dated and signed officially by
22 the magistrate ~~[officer issuing it]~~.

23 SECTION 6. Chapter 24, Code of Criminal Procedure, is
24 amended by adding Article 24.111 to read as follows:

25 Art. 24.111. HEARING REQUIRED BEFORE ISSUANCE OF
26 ATTACHMENT. (a) Notwithstanding any other law, a writ of
27 attachment may only be issued to compel the testimony of a witness

1 in a criminal action or proceeding if the issuing magistrate
2 determines, after notice to the witness and a hearing in open court,
3 that the witness is a material witness and issuance of the
4 attachment is necessary to ensure the testimony of the witness. If
5 the witness does not reside in the county in which the action or
6 proceeding is pending, the hearing required by this article must be
7 held in open court before a magistrate in the witness's county of
8 residence.

9 (b) The issuing magistrate shall appoint an attorney to
10 represent the witness at the hearing described by Subsection (a).

11 (c) This article does not apply to an attachment issued
12 under Article 24.13 or 49.14.

13 SECTION 7. Article 24.12, Code of Criminal Procedure, is
14 amended to read as follows:

15 Art. 24.12. WHEN ATTACHMENT MAY ISSUE. When a witness who
16 resides in the county of the prosecution has been duly served with a
17 subpoena to appear and testify in any criminal action or proceeding
18 fails to so appear, the State or the defendant may request that the
19 applicable magistrate issue an attachment [~~shall be entitled to~~
20 ~~have an attachment issued forthwith~~] for the [~~such~~] witness.

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

23 Art. 24.14. ATTACHMENT FOR RESIDENT WITNESS. (a) When a
24 witness resides in the county of the prosecution, regardless of
25 whether the witness [~~he~~] has disobeyed a subpoena [~~or not~~], either
26 in term time [~~term-time~~] or vacation, [~~upon the filing of an~~
27 ~~affidavit with the clerk by~~] the defendant or State's counsel may

1 request that the court issue an attachment for the witness by filing
2 an affidavit with the clerk of the court stating~~[7]~~ that the affiant
3 ~~[he]~~ has good reason to believe, and does believe, that the ~~[such]~~
4 witness is a material witness~~[7]~~ and is about to move out of the
5 county.

6 (b) If an attachment is issued under this article,
7 regardless of whether the case involves a felony or ~~[the clerk shall~~
8 ~~forthwith issue an attachment for such witness; provided, that in]~~
9 misdemeanor ~~[cases]~~, when the witness makes oath that the witness
10 ~~[he]~~ cannot give surety, the officer executing the attachment shall
11 take the witness's ~~[his]~~ personal bond.

12 SECTION 9. Article 24.15, Code of Criminal Procedure, is
13 amended to read as follows:

14 Art. 24.15. TO SECURE ATTENDANCE BEFORE GRAND JURY. At any
15 time before the first day of any term of the district court, the
16 clerk, on ~~[upon]~~ application of the State's attorney, shall issue a
17 subpoena for any witness who resides in the county. If at the time
18 the ~~[such]~~ application is made, the ~~[such]~~ attorney files a sworn
19 application that the attorney ~~[he]~~ has good reason to believe and
20 does believe that the ~~[such]~~ witness is about to move out of the
21 county, then the district judge may ~~[said clerk shall]~~ issue an
22 attachment for the ~~[such]~~ witness to be and appear before the ~~[said]~~
23 district court on the first day of the term ~~[thereof]~~ to testify as
24 a witness before the grand jury. Any witness so summoned, or
25 attached, who fails ~~[shall fail]~~ or refuses ~~[refuse]~~ to obey a
26 subpoena or attachment, shall be punished by the court by a fine not
27 exceeding five hundred dollars, to be collected as fines and costs

1 in other criminal cases.

2 SECTION 10. 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) The court may cause to be issued at the same time an
14 attachment for the [~~said~~] witness, directed to the proper county,
15 commanding the officer to whom the attachment [~~said writ~~] is
16 directed to take the [~~said~~] witness into custody and have the
17 witness [~~him~~] before the [~~said~~] court at the time specified [~~named~~]
18 in the attachment [~~said writ~~]; in which case the [~~such~~] witness
19 shall receive no fees, unless it appears to the court that the
20 [~~such~~] disobedience is excusable, when the witness may receive the
21 same pay as if the witness [~~he~~] had not been attached.

22 (c) The [~~said~~] fine when made final and all related costs
23 [~~thereon~~] shall be collected in the same manner as in other criminal
24 cases. The [~~said~~] fine and judgment may be set aside in vacation or
25 at the time or any subsequent term of the court for good cause
26 shown, after the witness testifies or has been discharged.

27 (d) The following words shall be written or printed on the

1 face of a [such] subpoena for an out-of-county witness [~~out-county~~
2 ~~witnesses~~]: "A disobedience of this subpoena is punishable by fine
3 not exceeding five hundred dollars, to be collected as fines and
4 costs in other criminal cases."

5 SECTION 11. Section [71.034](#)(e), Government Code, is amended
6 to read as follows:

7 (e) In addition to the information described by Subsection
8 (a), the council shall include in the report a summary of
9 information provided to the council during the preceding year under
10 Articles [~~Article~~] [2.211](#) and [2.212](#), Code of Criminal Procedure.

11 SECTION 12. The change in law made by this Act applies only
12 to a writ of attachment issued on or after the effective date of
13 this Act. A writ of attachment issued before the effective date of
14 this Act is governed by the law in effect on the date the writ was
15 issued, and the former law is continued in effect for that purpose.

16 SECTION 13. This Act takes effect September 1, 2017.