

## **BILL ANALYSIS**

Senate Research Center  
85R3597 MAW-D

S.B. 291  
By: Whitmire  
Criminal Justice  
3/24/2017  
As Filed

### **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 booked into the Harris County jail. In the Harris County Jail in general population she was re-victimised 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.

As proposed, S.B. 291 amends current law relating to the issuance of a writ of attachment.

### **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 (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.

SECTION 2. Amends Article 20.10, Code of Criminal Procedure, as follows:

Art. 20.10. New heading: ATTORNEY OR FOREMAN MAY ISSUE SUMMONS OR REQUEST ATTACHMENT. (a) Creates this subsection from existing text. Authorizes the attorney representing the state or the foreman, in term time or vacation, to issue a summons for any witnesses in the county in which the grand jury is sitting, rather than issue a summons or attachment for any witness in the county where they are sitting, or request that the district judge issue an attachment for any witnesses in the county in which the grand jury is sitting.

(b) Creates this subsection from existing text. Authorizes the summons or attachment to require the witness to appear before the grand jury at a time fixed, or immediately, without stating the matter under investigation. Makes nonsubstantive changes.

SECTION 3. Amends Article 20.11, Code of Criminal Procedure, by amending Section 1 and adding Section 1-a, as follows:

Sec. 1. Authorizes the foreman or the attorney representing the state, on written application to the district court stating the name and residence of the witness and that the witness's testimony is believed to be material, to cause a subpoena, rather than a subpoena or an attachment, to be issued to any county in the state for the witness, returnable to certain grand juries for the county from which the subpoena was issued, as the foreman or attorney may desire. Makes nonsubstantive changes.

Sec. 1-a. Authorizes the foreman or the attorney representing the state to, on written application to the district court stating the name and residence of the witness and that the witness's testimony is believed to be material, request that the district judge issue an attachment for the witness to any county in the state. Requires the attachment to command the sheriff or any constable of the county where the witness resides to serve the witness, and have the witness before the applicable grand jury as described by Section 1 at the time and place specified in the attachment, rather than in the writ. Makes nonsubstantive changes.

SECTION 4. Amends Article 20.12, Code of Criminal Procedure, as follows:

Art. 20.12. New heading: ATTACHMENT IN TERM TIME OR VACATION. Authorizes the attorney representing the state or the foreman to request that an attachment, rather than authorizing the attorney representing the state to cause an attachment, for a witness be issued, as provided under Article 20.11 (Out-of-County Witnesses), rather than in the preceding Article, either in term time or in vacation.

SECTION 5. Amends Article 24.11, Code of Criminal Procedure, as follows:

Art. 24.11. REQUISITES OF AN "ATTACHMENT". Redefines "attachment." Requires the attachment to be dated and signed officially by the magistrate, rather than the officer issuing it.

SECTION 6. Amends Chapter 24, Code of Criminal Procedure, by adding Article 24.111, as follows:

Art. 24.111. HEARING REQUIRED BEFORE ISSUANCE OF ATTACHMENT. (a) Authorizes a writ of attachment, notwithstanding any other law, to only be issued to compel the testimony of a witness in a criminal action or proceeding if the issuing

magistrate determines, after notice to the witness and a hearing in open court, that the witness is a material witness and issuance of the attachment is necessary to ensure the testimony of the witness. Requires, if the witness does not reside in the county in which the action or proceeding is pending, the hearing required by this article to be held in open court before a magistrate in the witness's county of residence.

(b) Requires the issuing magistrate to appoint an attorney to represent the witness at the hearing described by Subsection (a).

(c) Provides that this article does not apply to an attachment issued under Article 24.13 (Attachment for Convict Witnesses) or 49.14 (Inquest Hearing).

SECTION 7. Amends Article 24.12, Code of Criminal Procedure, as follows:

Art. 24.12. WHEN ATTACHMENT MAY ISSUE. Authorizes the state or the defendant to request that the applicable magistrate 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. Deletes existing text requiring the state or the defendant to be entitled to have an attachment issued forthwith for such witness.

SECTION 8. 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 State's counsel to request that the court issue an attachment for the witness by filing an affidavit with the clerk of the court stating that the affidavit has good reason to believe that the witness is a material witness and is about to move out of the county when a witness resides in the county of the prosecution, regardless of whether the witness has disobeyed a subpoena, either in term time or vacation. Makes nonsubstantive changes.

(b) Creates this subsection from existing text. Requires the officer executing the attachment to take the witness's personal bond, if an attachment is issued under this article, regardless of whether the case involves a felony or misdemeanor, when the witness makes oath that the witness cannot give surety. Deletes existing text requiring the clerk 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 9. Amends Article 24.15, Code of Criminal Procedure, as follows:

Art. 24.15. TO SECURE ATTENDANCE BEFORE GRAND JURY. Requires the clerk, on application of the state's attorney, at any time before the first day of any term of the district court, to issue a subpoena for any witness who resides in the county. Authorizes the district judge, rather than said clerk, if at the time the application is made, the attorney files a sworn application that the attorney has good reason to believe and does believe that the witness is about to move out of the county, to issue an attachment for the witness to be and appear before the district court on the first day of the term to testify as a witness before the grand jury. Requires any witness so summoned, or attached, who fails or refuses to obey a subpoena or attachment, to be punished by the court in a certain manner. Makes nonsubstantive changes.

SECTION 10. 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, if a witness summoned from outside the county refuses to obey a subpoena, the witness to be fined by the court or magistrate not to exceed 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 to cause to be issued at the same time 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. Makes nonsubstantive changes.

(c) Creates this subsection from existing text. Requires the fine when made final and all related costs to 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. Makes nonsubstantive changes.

(d) Creates this subsection from existing text. Sets forth the required language to be written or printed on the face of a subpoena for an out-of-county witness. Makes nonsubstantive changes.

SECTION 11. Amends Section 71.034(e), Government Code, as follows:

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

SECTION 12. Makes application of this Act prospective.

SECTION 13. Effective date: September 1, 2017.