

1-1 By: Whitmire S.B. No. 291
 1-2 (In the Senate - Filed December 13, 2016; January 30, 2017,
 1-3 read first time and referred to Committee on Criminal Justice;
 1-4 March 29, 2017, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 0, 1 present not
 1-6 voting; March 29, 2017, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16				X
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 291 By: Burton

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the issuance of a writ of attachment for certain
 1-22 witnesses.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Chapter 2, Code of Criminal Procedure, is
 1-25 amended by adding Article 2.212 to read as follows:

1-26 Art. 2.212. WRIT OF ATTACHMENT REPORTING. Not later than
 1-27 the 30th day after the date a writ of attachment is issued in a
 1-28 district court, statutory county court, or county court, the clerk
 1-29 of the court shall report to the Texas Judicial Council:

1-30 (1) the date the attachment was issued;

1-31 (2) whether the attachment was issued in connection
 1-32 with a grand jury investigation, criminal trial, or other criminal
 1-33 proceeding;

1-34 (3) the names of the person requesting and the judge
 1-35 issuing the attachment; and

1-36 (4) the statutory authority under which the attachment
 1-37 was issued.

1-38 SECTION 2. Article 24.011, Code of Criminal Procedure, is
 1-39 amended by adding Subsection (b-1) to read as follows:

1-40 (b-1) If the defendant or the attorney representing the
 1-41 state requests the issuance of an attachment under this article,
 1-42 other than an attachment for a witness described by Subsection (c),
 1-43 the request must include the applicable affidavit described by
 1-44 Article 24.12.

1-45 SECTION 3. Chapter 24, Code of Criminal Procedure, is
 1-46 amended by adding Article 24.111 to read as follows:

1-47 Art. 24.111. HEARING REQUIRED BEFORE ISSUANCE OF CERTAIN
 1-48 WRITS OF ATTACHMENT. (a) This article applies only to an
 1-49 attachment that is requested to be issued under:

1-50 (1) Article 24.011, if an affidavit is required under
 1-51 Article 24.011(b-1); or

1-52 (2) Article 24.12, 24.14, or 24.22.

1-53 (b) Notwithstanding any other law, a writ of attachment to
 1-54 which this article applies may only be issued by the judge of the
 1-55 court in which the witness is to testify if the judge determines,
 1-56 after a hearing, that the issuance of the attachment is in the best
 1-57 interest of justice.

1-58 (c) In making a determination under Subsection (b), the
 1-59 judge shall consider the affidavit of the attorney representing the
 1-60 state or the defendant, as applicable, that was submitted with the

2-1 request for the issuance of the attachment.

2-2 (d) The court shall appoint an attorney to represent the
 2-3 witness at the hearing under Subsection (b), including a hearing
 2-4 conducted outside the presence of the witness.

2-5 SECTION 4. Article 24.12, Code of Criminal Procedure, is
 2-6 amended to read as follows:

2-7 Art. 24.12. WHEN ATTACHMENT MAY ISSUE. When a witness who
 2-8 resides in the county of the prosecution has been duly served with a
 2-9 subpoena to appear and testify in any criminal action or proceeding
 2-10 fails to so appear, the attorney representing the state [State] or
 2-11 the defendant may request that the court issue an attachment [~~shall~~
 2-12 ~~be entitled to have an attachment issued forthwith~~] for the [such]
 2-13 witness. The request must be filed with the clerk of the court and
 2-14 must include an affidavit of the attorney representing the state or
 2-15 the defendant, as applicable, stating that the affiant has good
 2-16 reason to believe, and does believe, that the witness is a material
 2-17 witness.

2-18 SECTION 5. Article 24.14, Code of Criminal Procedure, is
 2-19 amended to read as follows:

2-20 Art. 24.14. ATTACHMENT FOR RESIDENT WITNESS.
 2-21 (a) Regardless of whether the witness has disobeyed a subpoena, if
 2-22 [~~When~~] a witness who resides in the county of the prosecution may be
 2-23 about to move out of the county, [~~whether he has disobeyed a~~
 2-24 ~~subpoena or not, either in term time or vacation, upon the filing of~~
 2-25 ~~an affidavit with the clerk by~~] the defendant or the attorney
 2-26 representing the state may request that the court issue an
 2-27 attachment for the witness. The request must be filed with the
 2-28 clerk of the court and must include the applicable affidavit
 2-29 described by Article 24.12, except that the affidavit must
 2-30 additionally state [State's counsel,] that the affiant [he] has
 2-31 good reason to believe, and does believe, that the [such] witness
 2-32 [~~is a material witness, and~~] is about to move out of the county.

2-33 (b) If an attachment is issued under this article in a [~~the~~
 2-34 ~~clerk shall forthwith issue an attachment for such witness,~~
 2-35 ~~provided, that in~~] misdemeanor case [cases], when the witness makes
 2-36 oath that the witness [he] cannot give surety, the officer
 2-37 executing the attachment shall take the witness's [his] personal
 2-38 bond.

2-39 SECTION 6. Article 24.22, Code of Criminal Procedure, is
 2-40 amended to read as follows:

2-41 Art. 24.22. WITNESS FINED AND ATTACHED. (a) If a witness
 2-42 summoned from outside [~~without~~] the county refuses to obey a
 2-43 subpoena, the witness [he] shall be fined by the court or magistrate
 2-44 not exceeding five hundred dollars, which fine and judgment shall
 2-45 be final, unless set aside after due notice to show cause why it
 2-46 should not be final, which notice may immediately issue, requiring
 2-47 the defaulting witness to appear at once or at the next term of the
 2-48 [said] court, in the discretion of the magistrate issuing the
 2-49 subpoena [judge], to answer for the [such] default.

2-50 (b) At the time a fine is imposed under Subsection (a), on
 2-51 request of the defendant or the attorney representing the state,
 2-52 the [The] court may cause to be issued [~~at the same time~~] an
 2-53 attachment for the [said] witness, directed to the proper county,
 2-54 commanding the officer to whom the attachment [~~said writ~~] is
 2-55 directed to take the [said] witness into custody and have the
 2-56 witness [him] before the [said] court at the time specified [~~named~~]
 2-57 in the attachment [~~said writ~~]; in which case the [such] witness
 2-58 shall receive no fees, unless it appears to the court that the
 2-59 [such] disobedience is excusable, when the witness may receive the
 2-60 same pay as if the witness [he] had not been attached.

2-61 (c) A request for the issuance of an attachment under
 2-62 Subsection (b) must include the applicable affidavit described by
 2-63 Article 24.12.

2-64 (d) The [said] fine when made final and all related costs
 2-65 [~~thereon~~] shall be collected in the same manner as in other criminal
 2-66 cases. The [said] fine and judgment may be set aside in vacation or
 2-67 at the time or any subsequent term of the court for good cause
 2-68 shown, after the witness testifies or has been discharged.

2-69 (e) The following words shall be written or printed on the

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

3-5 SECTION 7. Chapter 24, Code of Criminal Procedure, is
3-6 amended by adding Articles 24.221 and 24.222 to read as follows:

3-7 Art. 24.221. AFFIDAVIT REGARDING CONFINEMENT. As soon as
3-8 practicable after the sheriff takes custody of a witness pursuant
3-9 to an attachment issued as provided by Article 24.111, the sheriff
3-10 shall submit an affidavit to the issuing court stating that the
3-11 sheriff has taken custody of the witness.

3-12 Art. 24.222. HEARING DURING CONFINEMENT OF WITNESS. (a) A
3-13 witness who has been confined for five or more days pursuant to an
3-14 attachment issued as provided by Article 24.111 may request a
3-15 hearing in the issuing court regarding whether the continued
3-16 confinement of the witness is necessary. The court shall grant the
3-17 request and hold the hearing as soon as practicable.

3-18 (b) Any subsequent request for a hearing may be granted only
3-19 if the court determines that holding the hearing is in the best
3-20 interest of justice.

3-21 (c) The attorney appointed for the witness under Article
3-22 24.111 shall represent the witness at a hearing under this article.

3-23 SECTION 8. Section 71.034(e), Government Code, is amended
3-24 to read as follows:

3-25 (e) In addition to the information described by Subsection
3-26 (a), the council shall include in the report a summary of
3-27 information provided to the council during the preceding year under
3-28 Articles [Article] 2.211 and 2.212, Code of Criminal Procedure.

3-29 SECTION 9. The change in law made by this Act applies only
3-30 to a writ of attachment issued on or after the effective date of
3-31 this Act. A writ of attachment issued before the effective date of
3-32 this Act is governed by the law in effect on the date the writ was
3-33 issued, and the former law is continued in effect for that purpose.

3-34 SECTION 10. This Act takes effect September 1, 2017.

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