

BILL ANALYSIS

C.S.H.B. 2685
By: Denny
Law Enforcement
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas case law requires that an officer exercise “due diligence” to execute a warrant for violation of conditions of probation, and an officer’s failure to exercise due diligence is an affirmative defense available to the probationer in court. However, current law does not define what an officer must do in order to comply with the requirement of due diligence when serving a warrant upon a probationer. As a result, Texas courts have developed varied definitions of the term “due diligence,” making it difficult for officers to ascertain the standard of diligence that they must fulfill. This can result in inadvertent non-compliance that could be used as a defense in court. In order to standardize the requirements for compliance with due diligence, C.S.H.B. 2685 defines due diligence by outlining how a supervision officer, peace officer, or other officer with the power of arrest may attempt to contact any person in violation of the terms or conditions of community 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

SECTION 1. C.S.H.B. 2685 amends Article 42.12 of the Code of Criminal Procedure by providing that the duty to comply with conditions of community supervision exists solely with the defendant.

SECTION 2. C.S.H.B. 2685 amends Article 42.12 of the Code of Criminal Procedure by adding Section 24, which outlines the procedures for satisfying due diligence. A supervision officer, peace officer, or other officer with the power of arrest under a warrant issued by a judge on the violation of a condition of community supervision satisfies a due diligence requirement if the officer contacts or attempts to contact the defendant:

- by United States mail directed to the defendant at the defendant’s last known residence address or last known employment address, as reflected by the most recently posted bond in the county jail records in the county in which the defendant was prosecuted;
- by telephone at the defendant’s last known residence telephone number, as reflected by the county jail records in the county in which the defendant was prosecuted; or
- by personal visit at the defendant’s last known residence address, as reflected by the county jail records in the county in which the defendant was prosecuted.

EFFECTIVE DATE

This Act takes effect September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 2685 makes clarifying changes to the original to conform to legislative council drafting standards.

