

By: Averitt

S.B. No. 2340

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to electronic monitoring and other alternative means for  
3 certain defendants to discharge a fine or costs or satisfy a term of  
4 confinement in county jail.

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

6 SECTION 1. Article 42.035, Code of Criminal Procedure, is  
7 amended by amending Subsections (a) and (d) and adding Subsection  
8 (e) to read as follows:

9 (a) A court [~~in a county served by a community supervision~~  
10 ~~and corrections department that has an electronic monitoring~~  
11 ~~program approved by the community justice assistance division of~~  
12 ~~the Texas Department of Criminal Justice]~~ may require a defendant  
13 to serve all or part of a sentence of confinement in county jail by  
14 participating in an [submitting to] electronic monitoring program  
15 rather than being confined in the county jail, if the program:

16 (1) is operated by a community supervision and  
17 corrections department that serves the county in which the court is  
18 located and has been approved by the community justice assistance  
19 division of the Texas Department of Criminal Justice; or

20 (2) is operated by the commissioners court of the  
21 county, or by a private vendor under contract with the  
22 commissioners court, under Section 351.904, Local Government Code,  
23 if the defendant has not been placed on community supervision.

24 (d) A defendant who submits to electronic monitoring or

1 participates in the house arrest program under this article  
2 [~~section~~] discharges a sentence of confinement in the same manner  
3 as if the defendant were confined in county jail [~~without~~  
4 ~~deductions, good conduct time credits, or commutations~~].

5 (e) A court may revoke a defendant's participation in an  
6 electronic monitoring program and require the defendant to serve  
7 the remainder of the defendant's sentence of confinement in county  
8 jail if the defendant violates a condition imposed by a court under  
9 this article, including a condition requiring the defendant to pay  
10 for participating in the program under Subsection (c).

11 SECTION 2. Subsection (e), Article 43.09, Code of Criminal  
12 Procedure, is amended to read as follows:

13 (e) A court in a county that operates an electronic  
14 monitoring program or contracts with a private vendor to operate an  
15 electronic monitoring program under Section 351.904, Local  
16 Government Code, or that is served by a community supervision and  
17 corrections department that operates [~~has~~] an electronic  
18 monitoring program approved by the community justice assistance  
19 division of the Texas Department of Criminal Justice, may require a  
20 defendant who is unable to pay a fine or costs to discharge all or  
21 part of the fine or costs by participating in the program  
22 [~~submitting to electronic monitoring~~]. A defendant who  
23 participates in an [~~that submits to~~] electronic monitoring program  
24 under this subsection discharges fines and costs in the same manner  
25 as if the defendant were confined in county jail.

26 SECTION 3. Article 43.10, Code of Criminal Procedure, is  
27 amended to read as follows:

1           Art. 43.10. MANUAL LABOR. Where the punishment assessed in  
2 a conviction for a misdemeanor is confinement in jail for more than  
3 one day~~[,]~~ or ~~[where in such conviction the punishment]~~ is  
4 ~~[assessed]~~ only ~~[at]~~ a pecuniary fine and the defendant ~~[party so~~  
5 ~~convicted]~~ is unable to pay the fine and costs adjudged against the  
6 defendant ~~[him]~~, or where the defendant ~~[party]~~ is sentenced to  
7 jail for a felony or is confined in jail after conviction of a  
8 felony, the defendant ~~[party convicted]~~ shall be required to work  
9 in the county jail industries program or shall be required to do  
10 manual labor in accordance with ~~[the provisions of this article~~  
11 ~~under]~~ the following rules and regulations:

12           1. Each commissioners court may provide for the  
13 erection of a workhouse and the establishment of a county farm in  
14 connection therewith for the purpose of utilizing the labor of  
15 defendants under this article ~~[said parties so convicted];~~

16           2. Such farms and workhouses shall be under the  
17 control and management of the sheriff, and the sheriff may adopt  
18 such rules and regulations not inconsistent with the rules and  
19 regulations of the Commission on Jail Standards and with the laws as  
20 the sheriff deems necessary;

21           3. Such overseers and guards may be employed by the  
22 sheriff under the authority of the commissioners court as may be  
23 necessary to prevent escapes and to enforce such labor, and they  
24 shall be paid out of the county treasury such compensation as the  
25 commissioners court may prescribe;

26           4. They shall be put to labor upon public works and  
27 maintenance projects, including public works and maintenance

1 projects for a political subdivision located in whole or in part in  
2 the county. They may be put to labor upon maintenance projects for  
3 a cemetery that the commissioners court uses public funds, county  
4 employees, or county equipment to maintain under Section 713.028,  
5 Health and Safety Code. They may also be put to labor providing  
6 maintenance and related services to a nonprofit organization that  
7 qualifies for a tax exemption under Section 501(a), Internal  
8 Revenue Code of 1986, as an organization described by Section  
9 501(c)(3) of that code, and is organized as a nonprofit corporation  
10 under the Texas Non-Profit Corporation Act (Article 1396-1.01 et  
11 seq., Vernon's Texas Civil Statutes), provided that, at the  
12 sheriff's request, the commissioners court determines that the  
13 nonprofit organization provides a public service to the county or  
14 to a political subdivision located in whole or in part in the  
15 county;

16           5. A defendant [~~One~~] who from age, disease, or other  
17 physical or mental disability is unable to do manual labor shall not  
18 be required to work. The defendant's [~~His~~] inability to do manual  
19 labor may be determined by a physician appointed for that purpose by  
20 the county judge or the commissioners court, who shall be paid for  
21 such service such compensation as said court may allow; and

22           6. For each day of manual labor, in addition to any  
23 other credits allowed by law, a defendant is entitled to have one  
24 day deducted from each sentence the defendant [~~he~~] is serving. [~~The~~  
25 ~~deduction authorized by this article, when combined with the~~  
26 ~~deduction required by Article 42.10 of this code, may not exceed~~  
27 ~~two-thirds (2/3) of the sentence.~~]

1 SECTION 4. Article 43.101, Code of Criminal Procedure, is  
2 amended by amending Subsections (a) and (b) and adding Subsection  
3 (d) to read as follows:

4 (a) A defendant who is confined in county jail before  
5 [awaiting] trial, after conviction of a misdemeanor, or [a  
6 defendant confined in county jail] after conviction of a felony or  
7 revocation of community supervision, parole, or mandatory  
8 supervision and awaiting transfer to the [institutional division of  
9 the] Texas Department of Criminal Justice may volunteer to  
10 participate in any work program operated by the sheriff that uses  
11 the labor of convicted defendants.

12 (b) The sheriff may accept a defendant as a volunteer under  
13 Subsection (a) [of this section] if the defendant is not awaiting  
14 trial for an offense involving violence or is not awaiting transfer  
15 to the [institutional division of the] Texas Department of Criminal  
16 Justice after conviction of a felony involving violence, and if the  
17 sheriff determines that the inmate has not engaged previously in  
18 violent conduct and does not pose a security risk to the general  
19 public if allowed to participate in the work program.

20 (d) For each day of volunteer work, in addition to any other  
21 credits allowed by law, the court or sheriff may deduct one day from  
22 each sentence imposed on the defendant in relation to the offense or  
23 violation of the terms of release for which the defendant was  
24 confined in county jail.

25 SECTION 5. Subsection (b), Article 44.041, Code of Criminal  
26 Procedure, is amended to read as follows:

27 (b) A court that releases a defendant under this article

1 must require the defendant to participate in a program under  
2 Article 42.033, 42.034, 42.035, or 42.036 [~~of this code~~] during the  
3 pendency of the appeal. A [The] defendant required to participate  
4 in a program may [~~not~~] receive credit toward completion of the  
5 defendant's sentence while participating in the [a] program in the  
6 same manner and to the same extent provided by Article 42.033,  
7 42.034, 42.035, or 42.036, as applicable [~~required by this~~  
8 ~~subsection~~].

9 SECTION 6. Subchapter Z, Chapter 351, Local Government  
10 Code, is amended by adding Section 351.904 to read as follows:

11 Sec. 351.904. ELECTRONIC MONITORING PROGRAM. (a) A  
12 commissioners court of a county may establish and operate an  
13 electronic monitoring program for the purpose of monitoring  
14 defendants required by a court of the county to participate in an  
15 electronic monitoring program under:

16 (1) Article 43.09, Code of Criminal Procedure, to  
17 discharge a fine or costs; or

18 (2) Article 42.035, Code of Criminal Procedure, as an  
19 alternative to serving all or part of a sentence of confinement in  
20 county jail.

21 (b) The commissioners court shall provide for the sheriff or  
22 the community supervision and corrections department serving the  
23 county, under an agreement with the commissioners court, to oversee  
24 and operate, or, if the program is operated by a private vendor  
25 under Subsection (c), oversee the operation of, an electronic  
26 monitoring program established under this section.

27 (c) A commissioners court may contract with a private vendor

1 to operate an electronic monitoring program under this section,  
2 including by enrolling and tracking participants in the program and  
3 performing periodic reviews with participants regarding compliance  
4 with the program.

5 (d) A commissioners court may use money that a defendant is  
6 ordered to pay to a county under Article 42.035(c), Code of Criminal  
7 Procedure, to pay for the services of a private vendor that operates  
8 an electronic monitoring program under Subsection (c).

9 (e) A commissioners court may subsidize all or part of the  
10 cost of a defendant's participation in an electronic monitoring  
11 program under this section if the defendant is indigent.

12 (f) A commissioners court may contract for any available  
13 electronic monitoring technology, including a technology that  
14 provides continuous positional tracking of the participant, that  
15 meets the approval of the commissioners court and either the  
16 sheriff or the community supervision and corrections department, as  
17 appropriate.

18 SECTION 7. Section 6, Article 42.032, Code of Criminal  
19 Procedure, is repealed.

20 SECTION 8. Subsection (e), Article 42.035, Code of Criminal  
21 Procedure, as added by this Act, applies only to a defendant who is  
22 sentenced to a term of confinement in county jail for an offense  
23 committed on or after September 1, 2009. A defendant who is  
24 sentenced to a term of confinement in county jail for an offense  
25 committed before September 1, 2009, is governed by the law in effect  
26 when the offense was committed, and the former law is continued in  
27 effect for that purpose. For purposes of this section, an offense

1 was committed before September 1, 2009, if any element of the  
2 offense occurred before that date.

3       SECTION 9. The changes in law made by this Act in amending  
4 Article 43.10 and Subsection (b), Article 44.041, Code of Criminal  
5 Procedure, and in repealing Section 6, Article 42.032, Code of  
6 Criminal Procedure, apply only to credit that is earned by a  
7 defendant as a result of participation in a program or work  
8 performed on or after the effective date of this Act. The accrual  
9 of credit by a defendant as a result of participation in a program  
10 or work performed before the effective date of this Act is governed  
11 by the law in effect when the participation occurred or work was  
12 performed, and the former law remains in effect for that purpose.

13       SECTION 10. This Act takes effect immediately if it  
14 receives a vote of two-thirds of all the members elected to each  
15 house, as provided by Section 39, Article III, Texas Constitution.  
16 If this Act does not receive the vote necessary for immediate  
17 effect, this Act takes effect September 1, 2009.