

1-1 By: Averitt S.B. No. 2340
1-2 (In the Senate - Filed March 13, 2009; March 31, 2009, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 April 29, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 29, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 2340 By: Seliger

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to electronic monitoring and other alternative means for
1-11 certain defendants to discharge a fine or costs or satisfy a term of
1-12 confinement in county jail.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Article 42.035, Code of Criminal Procedure, is
1-15 amended by amending Subsections (a) and (d) and adding Subsection
1-16 (e) to read as follows:

1-17 (a) A court ~~[in a county served by a community supervision~~
1-18 ~~and corrections department that has an electronic monitoring~~
1-19 ~~program approved by the community justice assistance division of~~
1-20 ~~the Texas Department of Criminal Justice]~~ may require a defendant
1-21 to serve all or part of a sentence of confinement in county jail by
1-22 participating in an [submitting to] electronic monitoring program
1-23 rather than being confined in the county jail, if the program:

1-24 (1) is operated by a community supervision and
1-25 corrections department that serves the county in which the court is
1-26 located and has been approved by the community justice assistance
1-27 division of the Texas Department of Criminal Justice; or

1-28 (2) is operated by the commissioners court of the
1-29 county, or by a private vendor under contract with the
1-30 commissioners court, under Section 351.904, Local Government Code,
1-31 if the defendant has not been placed on community supervision.

1-32 (d) A defendant who submits to electronic monitoring or
1-33 participates in the house arrest program under this article
1-34 ~~[section]~~ discharges a sentence of confinement in the same manner
1-35 as if the defendant were confined in county jail [without
1-36 deductions, good conduct time credits, or commutations].

1-37 (e) A court may revoke a defendant's participation in an
1-38 electronic monitoring program and require the defendant to serve
1-39 the remainder of the defendant's sentence of confinement in county
1-40 jail if the defendant violates a condition imposed by a court under
1-41 this article, including a condition requiring the defendant to pay
1-42 for participating in the program under Subsection (c).

1-43 SECTION 2. Subsection (e), Article 43.09, Code of Criminal
1-44 Procedure, is amended to read as follows:

1-45 (e) A court in a county that operates an electronic
1-46 monitoring program or contracts with a private vendor to operate an
1-47 electronic monitoring program under Section 351.904, Local
1-48 Government Code, or that is served by a community supervision and
1-49 corrections department that operates [has] an electronic
1-50 monitoring program approved by the community justice assistance
1-51 division of the Texas Department of Criminal Justice, may require a
1-52 defendant who is unable to pay a fine or costs to discharge all or
1-53 part of the fine or costs by participating in the program
1-54 [submitting to electronic monitoring]. A defendant who
1-55 participates in an [that submits to] electronic monitoring program
1-56 under this subsection discharges fines and costs in the same manner
1-57 as if the defendant were confined in county jail.

1-58 SECTION 3. Article 43.10, Code of Criminal Procedure, is
1-59 amended to read as follows:

1-60 Art. 43.10. MANUAL LABOR. Where the punishment assessed in
1-61 a conviction for a misdemeanor is confinement in jail for more than
1-62 one day~~[,]~~ or ~~[where in such conviction the punishment]~~ is
1-63 ~~[assessed]~~ only ~~[at]~~ a pecuniary fine and the defendant ~~[party se~~

2-1 ~~convicted~~] is unable to pay the fine and costs adjudged against the
2-2 defendant [him], or where the defendant [party] is sentenced to
2-3 jail for a felony or is confined in jail after conviction of a
2-4 felony, the defendant [party convicted] shall be required to work
2-5 in the county jail industries program or shall be required to do
2-6 manual labor in accordance with ~~[the provisions of this article~~
2-7 ~~under]~~ the following rules and regulations:

2-8 1. Each commissioners court may provide for the
2-9 erection of a workhouse and the establishment of a county farm in
2-10 connection therewith for the purpose of utilizing the labor of
2-11 defendants under this article [said parties so convicted];

2-12 2. Such farms and workhouses shall be under the
2-13 control and management of the sheriff, and the sheriff may adopt
2-14 such rules and regulations not inconsistent with the rules and
2-15 regulations of the Commission on Jail Standards and with the laws as
2-16 the sheriff deems necessary;

2-17 3. Such overseers and guards may be employed by the
2-18 sheriff under the authority of the commissioners court as may be
2-19 necessary to prevent escapes and to enforce such labor, and they
2-20 shall be paid out of the county treasury such compensation as the
2-21 commissioners court may prescribe;

2-22 4. They shall be put to labor upon public works and
2-23 maintenance projects, including public works and maintenance
2-24 projects for a political subdivision located in whole or in part in
2-25 the county. They may be put to labor upon maintenance projects for
2-26 a cemetery that the commissioners court uses public funds, county
2-27 employees, or county equipment to maintain under Section 713.028,
2-28 Health and Safety Code. They may also be put to labor providing
2-29 maintenance and related services to a nonprofit organization that
2-30 qualifies for a tax exemption under Section 501(a), Internal
2-31 Revenue Code of 1986, as an organization described by Section
2-32 501(c)(3) of that code, and is organized as a nonprofit corporation
2-33 under the Texas Non-Profit Corporation Act (Article 1396-1.01 et
2-34 seq., Vernon's Texas Civil Statutes), provided that, at the
2-35 sheriff's request, the commissioners court determines that the
2-36 nonprofit organization provides a public service to the county or
2-37 to a political subdivision located in whole or in part in the
2-38 county;

2-39 5. A defendant [One] who from age, disease, or other
2-40 physical or mental disability is unable to do manual labor shall not
2-41 be required to work. The defendant's [His] inability to do manual
2-42 labor may be determined by a physician appointed for that purpose by
2-43 the county judge or the commissioners court, who shall be paid for
2-44 such service such compensation as said court may allow; and

2-45 6. For each day of manual labor, in addition to any
2-46 other credits allowed by law, a defendant is entitled to have one
2-47 day deducted from each sentence the defendant [he] is serving. ~~[The~~
2-48 ~~deduction authorized by this article, when combined with the~~
2-49 ~~deduction required by Article 42.10 of this code, may not exceed~~
2-50 ~~two-thirds (2/3) of the sentence.]~~

2-51 SECTION 4. Article 43.101, Code of Criminal Procedure, is
2-52 amended by amending Subsections (a) and (b) and adding Subsection
2-53 (d) to read as follows:

2-54 (a) A defendant who is confined in county jail before
2-55 [awaiting] trial, after conviction of a misdemeanor, or [a
2-56 ~~defendant confined in county jail]~~ after conviction of a felony or
2-57 revocation of community supervision, parole, or mandatory
2-58 supervision and awaiting transfer to the ~~[institutional division of~~
2-59 ~~the]~~ Texas Department of Criminal Justice may volunteer to
2-60 participate in any work program operated by the sheriff that uses
2-61 the labor of convicted defendants.

2-62 (b) The sheriff may accept a defendant as a volunteer under
2-63 Subsection (a) ~~[of this section]~~ if the defendant is not awaiting
2-64 trial for an offense involving violence or is not awaiting transfer
2-65 to the ~~[institutional division of the]~~ Texas Department of Criminal
2-66 Justice after conviction of a felony involving violence, and if the
2-67 sheriff determines that the inmate has not engaged previously in
2-68 violent conduct and does not pose a security risk to the general
2-69 public if allowed to participate in the work program.

3-1 (d) For each day of volunteer work, in addition to any other
3-2 credits allowed by law, the court or sheriff may deduct one day from
3-3 each sentence imposed on the defendant in relation to the offense or
3-4 violation of the terms of release for which the defendant was
3-5 confined in county jail.

3-6 SECTION 5. Subsection (b), Article 44.041, Code of Criminal
3-7 Procedure, is amended to read as follows:

3-8 (b) A court that releases a defendant under this article
3-9 must require the defendant to participate in a program under
3-10 Article 42.033, 42.034, 42.035, or 42.036 [~~of this code~~] during the
3-11 pendency of the appeal. A [The] defendant required to participate
3-12 in a program may [not] receive credit toward completion of the
3-13 defendant's sentence while participating in the [a] program in the
3-14 same manner and to the same extent provided by Article 42.033,
3-15 42.034, 42.035, or 42.036, as applicable [~~required by this~~
3-16 ~~subsection~~].

3-17 SECTION 6. Subchapter Z, Chapter 351, Local Government
3-18 Code, is amended by adding Section 351.904 to read as follows:

3-19 Sec. 351.904. ELECTRONIC MONITORING PROGRAM. (a) A
3-20 commissioners court of a county may establish and operate an
3-21 electronic monitoring program for the purpose of monitoring
3-22 defendants required by a court of the county to participate in an
3-23 electronic monitoring program under:

3-24 (1) Article 43.09, Code of Criminal Procedure, to
3-25 discharge a fine or costs; or

3-26 (2) Article 42.035, Code of Criminal Procedure, as an
3-27 alternative to serving all or part of a sentence of confinement in
3-28 county jail.

3-29 (b) The commissioners court shall provide for the sheriff or
3-30 the community supervision and corrections department serving the
3-31 county, under an agreement with the commissioners court, to oversee
3-32 and operate, or, if the program is operated by a private vendor
3-33 under Subsection (c), oversee the operation of, an electronic
3-34 monitoring program established under this section.

3-35 (c) A commissioners court may contract with a private vendor
3-36 to operate an electronic monitoring program under this section,
3-37 including by enrolling and tracking participants in the program and
3-38 performing periodic reviews with participants regarding compliance
3-39 with the program.

3-40 (d) A commissioners court may use money that a defendant is
3-41 ordered to pay to a county under Article 42.035(c), Code of Criminal
3-42 Procedure, to pay for the services of a private vendor that operates
3-43 an electronic monitoring program under Subsection (c).

3-44 (e) A commissioners court may subsidize all or part of the
3-45 cost of a defendant's participation in an electronic monitoring
3-46 program under this section if the defendant is indigent.

3-47 SECTION 7. Section 6, Article 42.032, Code of Criminal
3-48 Procedure, is repealed.

3-49 SECTION 8. Subsection (e), Article 42.035, Code of Criminal
3-50 Procedure, as added by this Act, applies only to a defendant who is
3-51 sentenced to a term of confinement in county jail for an offense
3-52 committed on or after September 1, 2009. A defendant who is
3-53 sentenced to a term of confinement in county jail for an offense
3-54 committed before September 1, 2009, is governed by the law in effect
3-55 when the offense was committed, and the former law is continued in
3-56 effect for that purpose. For purposes of this section, an offense
3-57 was committed before September 1, 2009, if any element of the
3-58 offense occurred before that date.

3-59 SECTION 9. The changes in law made by this Act in amending
3-60 Article 43.10 and Subsection (b), Article 44.041, Code of Criminal
3-61 Procedure, and in repealing Section 6, Article 42.032, Code of
3-62 Criminal Procedure, apply only to credit that is earned by a
3-63 defendant as a result of participation in a program or work
3-64 performed on or after the effective date of this Act. The accrual
3-65 of credit by a defendant as a result of participation in a program
3-66 or work performed before the effective date of this Act is governed
3-67 by the law in effect when the participation occurred or work was
3-68 performed, and the former law remains in effect for that purpose.

3-69 SECTION 10. This Act takes effect immediately if it

4-1 receives a vote of two-thirds of all the members elected to each
4-2 house, as provided by Section 39, Article III, Texas Constitution.
4-3 If this Act does not receive the vote necessary for immediate
4-4 effect, this Act takes effect September 1, 2009.

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