

THE OFFICE OF

THE CRIMINAL DISTRICT ATTORNEY

RECEIVED

McLENNAN COUNTY, TEXAS

MAY 23 2008

219 NORTH 6TH STREET, SUITE 200

WACO, TEXAS 76701

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OPINION COMMITTEE

FILE # ML-45707-08

I.D. # 45707

May 22, 2008

JOHN W. SEGREST

CRIMINAL DISTRICT ATTORNEY

Mr. Greg Abbott  
Attorney General of Texas  
Office of the Attorney General  
Attn: Opinions Committee  
P.O. Box 12548  
Austin, TX 78711-2548

Via CMRRR # 7006 2150 0005 2049 0092

RQ-0718-GA

Re: **Opinion Request:** Supervision of House Arrest and Electronic Monitoring

To the Honorable Greg Abbott:

This request is being made pursuant to **TEX. GOV'T CODE § 402.043.**

**STATEMENT OF THE RELEVANT FACTS**

The Commissioners of McLennan County are seeking ways to relieve jail overcrowding. One method they are exploring is to increase utilization of house arrest and electronic monitoring under Art. 42.035<sup>1</sup>. The County worked with *Sentinel Offender Services, L.L.C.* (hereinafter "SOS") and devised a program with the following major aspects ("the program"). The particulars of the agreement between the County and SOS ("the agreement") and the program are set forth in the "Memorandum of Agreement" attached to the letter dated February 22, 2008 written by Michael W. Dixon, the attorney which advises the County, which is attached hereto.

1. The Commissioners desired a program which was self-supporting. Under the agreement SOS would be paid for electronic monitoring services solely by the participating defendant inmate under electronic monitoring supervision.
2. An inmate's participation in the program is entirely voluntary.
3. The McLennan County Courts would set the qualifications for participation in the program.
4. Those sentenced to jail who wish to be considered for the program will first be screened

<sup>1</sup> Statutory references are to the TEXAS CODE OF CRIMINAL PROCEDURE, unless otherwise stated.

by an employee of the McLennan County Sheriff, called the "EM Coordinator." The Commissioners have authorized this position in the Sheriff's Department, but the position remains vacant.

5. The findings of this screening will be forwarded to the convicting court, who will approve or reject further consideration for participation in the program.
6. If approved by the Court, SOS would interview and assess the inmate. If SOS finds the inmate acceptable SOS and the inmate would enter into a written contract for electronic monitoring.
7. The written contract would set out terms and conditions of electronic monitoring, including the money or fees which would be paid by the inmate to SOS for services.
8. The amount to be paid by the inmate to SOS would be determined on a sliding scale based upon the inmate's income and the level of supervision, so that those with higher incomes pay more than those with more limited incomes.
9. A violation of house arrest, electronic monitoring, or the written contract, including failure to pay, could be reported by SOS to the Sheriff's EM Coordinator, who would then report the violation to the convicting court.

#### **QUESTIONS PRESENTED**

Art. 42.035 provides for house arrest and electronic monitoring for convicted inmates sentenced to county jail time. Parts of that article seem to indicate that such electronic monitoring programs must be under the control of local Community Supervision and Corrections Department (herein "CSCD".) However, subsection (b) can be read in a way which avoids that requirement.

If Art. 42.035 requires a CSCD electronic monitoring program then this non-governmental for-profit program which bypasses CSCD involvement would not be authorized. If CSCD oversight is not required, then other aspects of the proposed program come into question, such as fees based on inmate's ability to pay, use of criminal sanctions to enforce a private contract, and the like.

#### **REQUESTOR'S VIEWPOINT and CONCLUSIONS**

Attached hereto are the following:

- My letter to Matt Johnson, Judge of the 54<sup>th</sup> District Court of McLennan County. This letter expresses my opinion that:

"a criminal defendant sentenced to house arrest or electronic monitoring by a court under Art. 42.035 must be supervised by or under the authority of the CSCD serving the Court imposing that sanction. The CSCD may contract with a private vendor to provide

electronic monitoring services for the CSCD, and thus for the Court.”

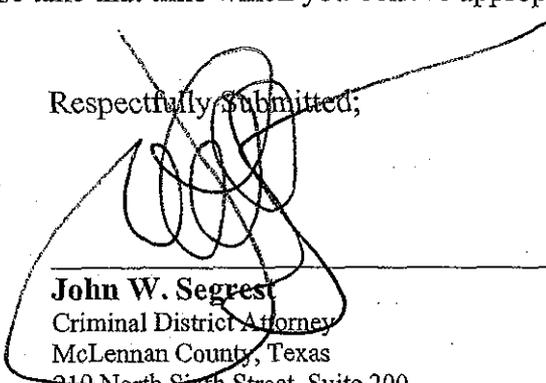
This letter should also serve as the required brief. **TEX. GOV'T CODE § 402.043.**

- A letter to me from Judge Johnson dated April 7, 2008, which is included for reference.
- A letter to me from Judge Johnson dated May 19, 2008, which presents the questions answered in my letter first mentioned.
- A letter dated February 22, 2008 by Michael W. Dixon, whose firm, Haley & Olson, represents McLennan County. Mr. Dixon briefs the matter with a point of view upon which the program and its elements could be lawfully justified.
- Attached to Mr. Dixon's letter brief are some draft “Conditions of Court-Ordered House Arrest and Electronic Monitoring,” a “Description of Duties of EM Coordinator,” and the “Memorandum of Agreement between McLennan County and Sentinel Offender Services.” These documents set out the agreement and the program in more detail.

It is my opinion that if a court orders supervision of a criminal defendant under its jurisdiction that supervision must be provided by the court's agent for supervision, the CSCD. This is true regardless of the form that supervision takes, or whether supervision is ordered pre-trial, pre-conviction, as a part of probation, or, as here, post-conviction in lieu of incarceration. In other words, it is not the nature of the supervision that controls but the fact that the supervision is court-ordered against a criminal defendant as part of a criminal sanction.

Please advise if anything more is required. The program is currently “on hold” until such time as we receive your assessment. Please take that time which you believe appropriate under these circumstances.

Respectfully Submitted;



---

**John W. Segrest**  
Criminal District Attorney  
McLennan County, Texas  
219 North Sixth Street, Suite 200  
Waco, Texas 76701  
Phone (254) 757-5084  
Fax (254) 757-5021  
State Bar Number 17995500

cc: Mike Dixon  
Haley & Olson, PC  
510 N. Valley Mills Drive  
Waco, TX 76710

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McLENNAN COUNTY, TEXAS**

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May 20, 2008

JOHN W. SEGREST  
CRIMINAL DISTRICT ATTORNEY

The Honorable Matt Johnson, Judge  
54<sup>th</sup> District Court  
501 Washington Avenue  
Waco, Texas 76701

Re: **Electronic Monitoring and House Arrest**

On Wednesday, February 15, 2008, an informational meeting was held with representatives of *Sentinel Offender Services* ("SOS") in which they outlined their proposed program of supervised electronic monitoring. There we learned that McLennan County is considering a non-Community Supervision and Corrections Department ("CSCD") house arrest and electronic monitoring program with the following elements:

- McLennan County Commissioners will contract with SOS to provide professional electronic monitoring services.
- Under the program SOS will be paid solely by the participating defendant inmate under the terms of a written contract between the inmate and SOS. An inmate's participation in the program would be entirely voluntary, and would be limited to inmates meeting court-set requirements for participation.
- Those sentenced to jail who wish to be considered for house arrest with electronic monitoring would be first screened by a non-CSCD County employee, namely an employee of the McLennan County Sheriff. The findings of such screening would then be forwarded by the Sheriff Department employee to the convicting court. The convicting court would approve or reject further consideration for participation in the program.
- If approved by the Court, SOS would interview and assess the inmate. If SOS found the inmate acceptable SOS and the inmate would enter into a written contract.
- The written contract would set out terms and conditions of electronic monitoring, including the money which would be paid by the inmate to SOS for services. The amount would be based upon the inmate's income and the level of supervision. Once the particulars of the contract were finalized, the contract would be executed, SOS would provide electronic monitoring equipment, and the monitoring would begin.

- A violation of house arrest, electronic monitoring, or the written contact, including failure to pay, could be reported by SOS to the Sheriff's employee who first screened the inmate. The report of the violation would be made known to the convicting court.

§

During this meeting questions were asked concerning the authority of our courts to impose or allow electronic monitoring of the nature contemplated.

On April 9, 2008 I received your letter dated April 7, 2008, a copy of which is attached for further reference. In this letter you asked several questions concerning the propriety of the program. Your letter promoted discussions and debates within the County, and led to your supplemental request dated May 19, 2008 which I received by email on May 20, 2008, a copy of which is attached.

In this latest letter you have asked for a written opinion concerning the contemplated electronic monitoring and house arrest program. In response this opinion is being presented to you under § 41.007, TEXAS GOVERNMENT CODE, which states:

*"A district or county attorney, on request, shall give to a county or precinct official of his district or county a written opinion or written advice relating to the official duties of that official."*

As such you and your staff may reasonably rely upon this written interpretation of the law in carrying on your duties.

**ISSUE PRESENTED**

In your letter of May 19, 2008, you present the following questions:

1. *If electronic monitoring is imposed as a condition of house arrest must the electronic monitoring be part of a Community Supervision and Corrections Department managed program?*

*If not, the following deal with a non-CSCD managed program like the one being considered by McLennan County.*

2. *Assuming that electronic monitoring imposed as a condition of house arrest does NOT have to be a CSCD managed program:*
  - a. *Can the County enter into a contract with a private vendor for electronic monitoring services under which the vendor reports house arrest and electronic monitoring violations to a non-CSCD County employee, who in turn submits the fact of violation to the judge for consideration?*
  - b. *Because Art. 42.035(c) allows the court to require a defendant to pay the cost of participation in house arrest and electronic monitoring, can a defendant who abides by house arrest but fails to pay in accordance with his contract with the vendor be re-*

*incarcerated by the court for that reason?*

- c. *Assuming that such contract between the County and a private vendor is permitted, can the contract provide that the private vendor will be compensated entirely from funds collected from the contractually obligated participating defendant?*

*If so, can the amount assessed and collected be dependent upon the participating defendant's income and level of supervision?*

*Can payment be made directly to the private vendor without County intervention?*

*Can the failure to pay the private vendor be ground for re-incarceration?*

§§

This opinion is limited to an interpretation of Art. 42.035<sup>1</sup>, which deals with both post-conviction house arrest and electronic monitoring. This opinion does not deal with the use of electronic monitoring in any other situation, including electronic monitoring as a condition of bond, as a condition of personal recognizance bond, as a condition of community supervision [hereinafter sometimes "probation"], as a condition of intensive supervision probation, in juvenile matters, in civil matters, in matters of parole, as a condition of bond pending appeal, and the like.

#### **ARTICLE 42.035**

Current Article 42.035 reads as follows:

#### **Art. 42.035. Electronic Monitoring; House Arrest**

*(a) A court in a county served by a community supervision and corrections department that has an electronic monitoring program approved by the community justice assistance division of the Texas Department of Criminal Justice may require a defendant to serve all or part of a sentence of confinement in county jail by submitting to electronic monitoring rather than being confined in the county jail.*

*(b) A judge, at the time of the pronouncement of a sentence of confinement or at any time while the defendant is serving the sentence, on the judge's own motion or on the written motion of the defendant, may permit the defendant to serve the sentence under house arrest, including electronic monitoring and any other conditions the court chooses to impose, during the person's off-work hours. The judge may require bail of the defendant to ensure the faithful performance of the sentence.*

*(c) The court may require the defendant to pay to the community supervision and corrections department or the county any reasonable cost incurred because of the defendant's participation in the house arrest program, including the cost of electronic monitoring.*

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<sup>1</sup> Statutory references are to the TEXAS CODE OF CRIMINAL PROCEDURE, unless otherwise stated.

*(d) A defendant who submits to electronic monitoring or participates in the house arrest program under this section discharges a sentence of confinement without deductions, good conduct time credits, or commutations.*

Article 42.035 clearly gives a court and a judge of a court the authority to grant house arrest, electronic monitoring, or both, to convicted persons assessed a sentence in the county jail. A common sense reading of the statute indicates that such is limited to persons serving county jail time, and would not apply to persons sentenced to terms in the Texas Department of Criminal Justice - Institutional Division.

Therefore, a judge of a district court or county court-at-law has the jurisdiction and authority, post-conviction and without probating the sentence, to direct that a sentence be served under house arrest, or under electronically monitoring, or under house arrest with electronic monitoring, instead of serving such sentence in the county jail.

The length of house arrest or period of electronic monitoring that a judge may impose is the same time as could be imposed for confinement in the county jail for the offense.

Because the judge has the statutory authority to order house arrest and electronic monitoring the judge has judicial immunity for the exercise of this authority.

#### ***THE 71<sup>ST</sup> LEGISLATURE - 1989***

In reviewing the history of Art. 42.035 I have found that electronic monitoring in criminal matters probably began around 1987, during a time of extensive prison overcrowding and the adoption of creative measures to redirect individuals away from prison. The 70<sup>th</sup> Legislature enacted laws encouraging "intensive probation," or what became known as "ISP" (Intensive Supervision Probation). Art. 42.12, §6f, Acts 1987, 70<sup>th</sup> Leg., ch. 1, §5. Further, Art. 42.121, §3.11 provided (**emphasis added**):

*"In order to divert defendants from confinement in the Texas Department of Corrections under Section 6f... and to provide intensive probation to other probationers with special needs, the [Texas Adult Probation] commission may develop and fund [probation] department managed programs to provide for the intensive probation of those probationers. Programs developed and funded under this section include programs that utilize probation officers with intensive supervision caseloads, utilize probation officers with specialized caseloads, provide surveillance probation, and utilize home confinement and electronic monitoring probation supervision."*

Placement in ISP was a condition of probation authorized by Art. 42.12, §6(a)(15), and was "at the direction of the court or the probation officer."

Art. 42.12, §6g (a) allowed a probation-eligible defendant in any felony case to be placed on electronic monitoring as a condition of probation, so long as the probation department had an electronic monitoring program "approved the Texas Adult Probation Commission." That Commission, known then as TAPC, was created in 1977.

In 1989 the Texas Legislature changed the TAPC to the Community Justice Assistance Division of TDCJ (or TDCJ-CJAD). At the same time the Legislature created the Texas Department of Criminal

Justice (TDCJ) and the Texas Department of Corrections (TDC) became Institutional Division (TDCJ-ID). In addition probation became “community supervision”, and a probation department became a **Community Supervision and Corrections Department (CSCD)**. Since 1989 these agencies (or at least these acronyms) have remained more or less constant.

It was in 1989 that Art. 42.035 was first enacted. The markings in the following statutes are explained in footnote two <sup>2</sup>.

#### Art. 42.035. **Electronic Monitoring**

*(a) A court in a county served by a district probation office that has an electronic monitoring program approved by the Texas Adult Probation Commission may require a defendant to serve all or part of a sentence of confinement in county jail by submitting to electronic monitoring rather than being confined in the county jail.<sup>3</sup>*

*(b) A defendant who submits to electronic monitoring ~~under Subsection (a) of~~ [or participates in the house arrest program under] this section discharges a sentence of confinement without deductions, good conduct time credits, or commutations.<sup>4</sup>*

Note that these two sections directly correspond to sections (a) and (d) of the current Art. 42.035. At that same time the legislature enacted Art. 42.03, §7(a), Acts 1989, 71<sup>st</sup> Leg., Ch. 848, §1, which read:

#### Art. 42.03. **Pronouncing Sentence; Time; Credit for Time Spent in Jail Between arrest and Sentence or Pending Appeal**

*Sec. 7. (a) ~~If jail time is awarded to a person sentence for an offense under Section 25.05, Penal Code, the~~ <sup>5</sup> [A] judge, at the time of the pronouncement of the sentence or at any time while the person is serving the sentence, on the judge's own motion or on the written motion of the defendant, may permit the defendant to serve the sentence under house arrest, including electronic monitoring and any other conditions the court chooses to impose, during the person's off-work hours. The judge may require bail of the defendant to ensure the faithful performance of the sentence.<sup>6</sup>*

*(b) ~~The court shall require as a condition to permitting the defendant to serve the jail time assessed under house arrest a requirement that the defendant perform community service work specified by the court for a specified number of hours.~~*

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<sup>2</sup> The statutory language that appears in both former and current statutes is left “as is” without markings. Any language added in 1993 is in brackets [and is underlined]. Language that did not make the transition is stricken.

<sup>3</sup> This section is currently Art. 42.035, § (a).

<sup>4</sup> This section is currently Art. 42.035, § (d).

<sup>5</sup> This crime is **Criminal Non-Support**.

<sup>6</sup> This section is currently Art. 42.035, § (b).

*(c) A court may require the defendant to pay to [the community supervision and corrections department or] the county any reasonable cost to the county incurred by the county because of the defendant's participation in the house arrest program, including the cost to the county for the defendant's participation in community service work and the cost of electronic monitoring.<sup>7</sup>*

Later in that same legislative session, the Legislature passed another Sec. 7, without expressly repealing the first section 7, adding back the language that an electronic monitoring program is one run by the probation office. The second section 7 read:

*Sec. 7. A court in a county served by a district probation office that has an electronic monitoring program approved by the Texas Adult Probation Commission may require a defendant to serve all or part of a sentence of confinement in county jail by submitting to electronic monitoring rather than being confined in the county jail.*

This second §7 uses the identical wording of the 1989 version of Art. 42.035, § (a), which became the current Art. 42.035, § (a).

These 1989 statutes were re-enacted in 1993 and the Legislature combined the articles and sections above into the one under the heading of: **Art. 42.035. Electronic monitoring; house arrest.** The old agency and department designations were also updated.

There is nothing to indicate that the Legislature intended an entirely new framework for electronic monitoring if electronic monitoring is part of house arrest under Art. 42.035, §(b).

### **COMMUNITY SUPERVISION AND CORRECTIONS**

Today, Art. 42.035 outlines only one of the many sentencing options available to criminal courts. A court using Art. 42.035 as an alternative to incarceration must not only have the lawful authority to utilize or impose house arrest and electronic monitoring, but must have the ability to monitor compliance and respond appropriately to program violations. The authority to impose or permit includes the power to deal with failures to comply. Otherwise, such a sanction would be mere amnesty on the honor system. Compliance must be monitored and violations must be reported to the court, so that the court may respond appropriately.

Checking compliance with and reporting violations of court-ordered sanctions is the duty of a CSCD, and this is reflected in the current version of Art. 42.035. This duty does not depend on the nature of the sanction imposed (house arrest or electronic monitoring), but upon the nature of the person being sanctioned (the criminal defendant) and the authority which imposes the alternative to incarceration (the court.)

The change from "Adult Probation" to "Community Supervision and Corrections" was more than just a name-change. Today CSCDs supervise probationers and others persons sanctioned by a court. Intermediate sanctions imposed in lieu of incarceration and other sentencing alternatives means that other programs, including house arrest and electronic monitoring, now fall within the scope of CSCD duties.

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<sup>7</sup> This section is currently Art. 42.035, § (c).

In TDCJ-CJAD's "Texas Intermediate Sanctions Bench Manual"<sup>8</sup>, CSCDs are now involved in many forms of non-probationary services, including pre-trial diversion, drug courts, and batterer intervention/prevention programs. Among the specific CSCD managed programs in the manual is "ELECTRONIC MONITORING/HOUSE ARREST" carried out under the named authority of:

"TCCP Art. 42.035; TCCP Art. 42.12, §11(a)(17); also TCCP Article 17.43 & 44 (electronic monitoring and home curfew as conditions of personal recognizance bond imposed by magistrate); TCCP Article 43.09 (e) to discharge fines and costs." *See manual page 37.*

TDCJ-CJAD no longer funds or approves specific electronic monitoring programs around the state, so the language in current Art. 42.035 is outdated. Today, each CSCD may include electronic monitoring as part of their compendium of services. CJAD funds the program as a part of the CSCD's overall budget at a level deemed appropriate to the particular CSCD. Jurisdictions which find house arrest and electronic monitoring important fund house arrest and electronic monitoring programs, while those which place greater emphasis elsewhere fund house arrest and electronic monitoring to a lesser extent, or not at all.

The McLennan County CSCD has an electronic monitoring program, and has contracted with a private vendor to supply electronic tracking services for them, and thus for our Courts. Their vendor was selected from the list of State approved providers under the competitive bidding laws. As with all CSCDs, the McLennan County CSCD has designed its electronic monitoring program based on local desires, needs, and priorities. Local judges, CSCDs and Criminal Justice Counsels who want to use and expand their house arrest and electronic monitoring programs do so.

### **ASSESSMENT**

It is my opinion that the Legislature joined two separate programs, house arrest and electronic monitoring, into one alternative sanction program with options. The legislature did not create three distinct programs, namely: (1) house arrest alone, (2) electronic monitoring alone, and (3) house arrest with electronic monitoring and any other conditions the court chooses.

It is my opinion that the Legislature intended that non-incarceration alternative sanctions imposed by a criminal court upon a convicted criminal defendant be monitored and supervised by the local CSCD. The CSCD may contract with private vendors to provide electronic tracking services.

As previously stated, I believe that the nature of such a program depends upon the nature of the person being sanctioned and the authority which imposes the alternative to incarceration. So long as the sanctioning authority is a court, and the person sanctioned is a criminal defendant, the monitoring of compliance with the sanction is the responsibility of the lawful supervisory agent of that Court, which currently is the local CSCD.

### **CONCLUSION**

In answer to your first question it is my belief that a criminal defendant sentenced to house arrest or electronic monitoring by a court under Art. 42.035 must be supervised by or under the authority of the

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<sup>8</sup> <http://www.tdcj.state.tx.us/cjad>

CSCD serving the Court imposing that sanction. The CSCD may contract with a private vendor to provide electronic monitoring services for the CSCD, and thus for the Court.

This opinion renders the need to respond to the remainder of your questions unnecessary.

At the suggestion of several officials in the County I will be seeking an Attorney General Opinion concerning this proposed program.

Respectfully Submitted;

**John W. Segrest**  
Criminal District Attorney  
McLennan County, Texas  
219 North Sixth Street, Suite 200  
Waco, Texas 76701  
*Phone (254) 757-5084*  
*Fax (254) 757-5021*

**COPY**

---

**John W. Segrest**  
Criminal District Attorney  
*State Bar Number 17995500*

cc: Mike Dixon  
Haley & Olson, PC  
510 N. Valley Mills Drive  
Waco, TX 76710

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**MATT JOHNSON**  
Judge



McLennan County Courthouse  
501 Washington, Ste. 306  
Waco, Texas 76701

PH: 254-757-5051  
FAX: 254-757-5002

**FIFTY-FOURTH  
DISTRICT COURT**

April 7, 2008

**Official Court Reporters**  
Heather Weiser  
Rebecca Rivera

**Court Administrator**  
Cathy Edwards

**Assistant Court Administrators**  
Penny Savage  
Stephanie Hendrick

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APR - 9 2008

JOHN W. SEGREST  
CRIMINAL DISTRICT ATTORNEY

The Honorable John Segrest  
Criminal District Attorney  
McLennan County, Texas  
219 North 6<sup>th</sup> Street  
Waco, Texas 76701

RE: Opinion relating to Electronic Monitoring

Dear Mr. Segrest:

Please accept this letter as a formal request for your opinion, in your capacity as Criminal District Attorney, of the following issues:

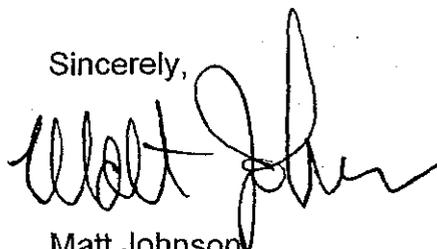
1. Does a judge of a district court or county court-at-law have jurisdiction and/or authority post-conviction without probating the sentence of a defendant to sentence a defendant to house arrest for a number of days instead of incarceration in the county jail for a number of days?
2. Does a judge of a district court or county court-at-law have jurisdiction and/or authority post-conviction without probating the sentence of a defendant to sentence a defendant to house arrest for a number of days instead of incarceration in the county jail for a number of days and order that the defendant's house arrest be electronically monitored?
3. Does a judge of a district court or county court-at-law have authority to require a defendant to pay the county any reasonable cost incurred because of a defendant's sentence to house arrest?
4. Does a judge of a district court or county court-at-law have authority to require a defendant to pay the county any reasonable cost

incurred because of a defendant's sentence to house arrest, including the cost of electronic monitoring?

5. Does the county have the authority to establish a standard fee schedule to be paid by defendants placed on house arrest and order payment of the standard fee by a defendant?
6. Does a judge of a district court or county court-at-law have authority to establish a standard fee schedule to be paid by defendants placed on house arrest and order payment of the standard fee by a defendant?
7. May the fee schedule establish by either the county, the judges of district courts and the county courts-at-law or both contain graduated fees based upon a defendant's income?
8. Does a judge of a district court or county court at law have full judicial immunity for the judicial act of sentencing a defendant to house arrest?

Thank you for your consideration of these issues and I look forward to your opinion.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Johnson". The signature is fluid and cursive, with a large, prominent "M" and "J".

Matt Johnson  
Judge, 54<sup>th</sup> District Court

cc:

Hon. Alan Mayfield  
Hon. Ralph Strother  
Hon. Jim Meyer  
Hon. Vicki Menard  
Hon. Mike Freeman  
Hon. Mike Gassaway  
Hon. Jim Lewis

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**MATT JOHNSON**  
Judge

McLennan County Courthouse  
501 Washington, Ste. 306  
Waco, Texas 76701

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**FIFTY-FOURTH  
DISTRICT COURT**

May 19, 2008

**Official Court Reporters**  
Heather Weiser  
Rebecca Rivera

**Court Administrator**  
Cathy Edwards

**Assistant Court Administrators**  
Penny Savage  
Stephanie Hendrick

The Honorable John Segrest  
Criminal District Attorney  
McLennan County, Texas  
219 North 6<sup>th</sup> Street  
Waco, Texas 76701

**RECEIVED**

**MAY 20 2008**

**JOHN W. SEGREST  
CRIMINAL DISTRICT ATTORNEY**

RE: Opinion relating to Electronic Monitoring

Dear Mr. Segrest:

Earlier this year I dispatched a letter you requesting your opinion on the issue of house arrest and electronic monitoring. The following are follow-up questions that I am submitting to you at the request of Mike Dixon an attorney for the county. These questions relate to operation of a house arrest program by the county. Please accept this supplemental letter as a formal request for your opinion, in your capacity as Criminal District Attorney, of the following issues:

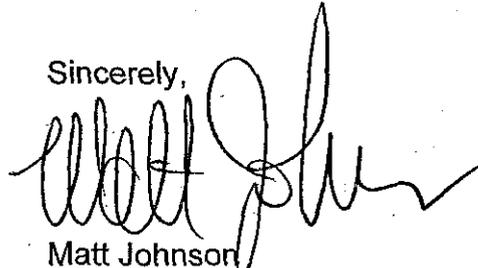
1. If electronic monitoring is imposed as a condition of house arrest must the electronic monitoring be part of a Community Supervisions and Corrections Department managed program? If not, the following deal with the a non-CSCD managed program like the one being considered by McLennan County.
2. Assuming that electronic monitoring imposed as a condition of house arrest does NOT have to be a CSCD managed program:
  - a. Can the County enter into a contract with a private vendor for electronic monitoring services under which the vendor reports house arrest and electronic monitoring violations to a non-CSCD County employee, who in turn submits the fact of violation to the judge for consideration?

b. Because Art. 42.035 ( c) allows the court to require a defendant to pay the cost of participation in house arrest and electronic monitoring, can a defendant who abides by house arrest but fails to pay in accordance with his contract with the vendor be re-incarcerated by the court for that reason?

c. Assuming that such a contract between the County and a private vendor is permitted, can the contract provide that the private vendor will be compensated entirely from funds collected from the contractually obligated participating defendant? If so, can the amount assessed and collected be dependent upon the participating defendant's income and level of supervision? Can payment be made directly to the private vendor without County intervention? Can the failure to pay the private vendor be ground for re-incarceration?

Thank you for your consideration of these issues and I look forward to your opinion.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Johnson". The signature is fluid and cursive, with a large initial "M" and "J".

Matt Johnson  
Judge, 54<sup>th</sup> District Court

cc:

Hon. Alan Mayfield  
Hon. Ralph Strother  
Hon. Jim Meyer  
Hon. Vicki Menard  
Hon. Mike Freeman  
Hon. Mike Gassaway  
Hon. Jim Lewis

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Brandon R. Oates  
Joshua J. White

W.C. Haley  
(1912-1996)

Lyndon L. Olson, Sr.  
(1925-2005)

February 22, 2008

The Honorable John Segrest  
Criminal District Attorney  
McLennan County, Texas  
219 N. 6<sup>th</sup> Street  
Waco, Texas 76701

Re: Electronic monitoring as part of a house arrest program

Dear John:

As you know, the County, and the Judges of the District and County Courts at Law of McLennan County, are interested in establishing a house arrest/electronic monitoring program to provide an alternative to incarceration in the County Jail for certain defendants. This program, similar to programs in use in some other Texas counties, would be aimed at non-probation defendants as part of direct sentencing, offering judges an alternative to the incarceration of certain defendants, such as work-release defendants. Application of the program to pre-adjudicated defendants and child support contempt defendants is also being considered. The program would be administered by a private vendor. Fees for the program would be charged to the participants based on a sliding scale according to their income. The mechanics of the proposed program are more specifically described in the materials attached hereto. However, several issues have arisen regarding the legality of such a program. It is my understanding that you have been asked about these issues. Although I have shared many of the same concerns that you have expressed, I would request that you consider some of the alternative interpretations and arguments that have been raised.

#### *Jurisdiction/Authority of the Courts*

A question has arisen regarding the jurisdiction/authority of a judge to impose house arrest and electronic monitoring in lieu of incarceration. The two articles of the Code of Criminal Procedure relating to post-adjudication electronic monitoring not imposed as a condition of probation are as follows:

*Art. 42.035. Electronic Monitoring; House Arrest*

(a) A court in a county served by a community supervision and corrections department that has an electronic monitoring program approved by the community justice assistance division of the Texas Department of Criminal Justice may require a defendant to serve all or part of a sentence of confinement in county jail by submitting to electronic monitoring rather than being confined in the county jail.

(b) A judge, at the time of the pronouncement of a sentence of confinement or at any time while the defendant is serving the sentence, on the judge's own motion or on the written motion of the defendant, may permit the defendant to serve the sentence under house arrest, including electronic monitoring and any other conditions the court chooses to impose, during the person's off-work hours. The judge may require bail of the defendant to ensure the faithful performance of the sentence.

(c) The court may require the defendant to pay to the community supervision and corrections department or the county any reasonable cost incurred because of the defendant's participation in the house arrest program, including the cost of electronic monitoring.

(d) A defendant who submits to electronic monitoring or participates in the house arrest program under this section discharges a sentence of confinement without deductions, good conduct time credits, or commutations.

*Art. 43.09. Fine Discharged*

(e) A court in a county served by a community supervision and corrections department that has an electronic monitoring program approved by the community justice assistance division of the Texas Department of Criminal Justice may require a defendant who is unable to pay a fine or costs to discharge all or part of the fine or costs by submitting to electronic monitoring. A defendant that submits to electronic monitoring under this subsection discharges fines and costs in the same manner as if the defendant were confined

As you have noted, the language of article 42.035 (a) seems to tie the imposition of electronic monitoring to counties having a CSCD with an electronic monitoring program approved by CJAD.<sup>1</sup> However, section (b) of article 42.035 addresses house arrest, which can include electronic monitoring, and other conditions, according to its language, but is not required to do so. Your position is that the EM referred to in section (b) is the same EM referred to in section (a), and, therefore, a court could only impose EM in conjunction with house arrest if the County has a CSCD with an EM program approved by CJAD. In other words, your position is that unless the program would be

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<sup>1</sup> As an aside, in checking with CJAD, they do not even approve such EM programs anymore, and this language is left over from a time during which CJAD was providing grant funding for such programs, which it no longer provides.

administered by the CSCD, and was approved by CJAD, the courts could not impose electronic monitoring.

Playing devil's advocate, I'd ask you to consider the following:

- The heading of the article refers to electronic monitoring and house arrest as if they are separate programs/alternatives;
- Section (b) makes no reference to section (a) in its discussion of EM;
- Section (a) provides for EM as the sole alternative, and it would make sense that, where EM was the only condition imposed, the CSCD should administer it; whereas section (b) imposes house arrest, with EM as an additional potential condition;
- Section (b) envisions EM as a condition of house arrest when it says "including electronic monitoring and any other conditions the court chooses to impose". EM is intended to be a condition to assure compliance with house arrest. If the court has authority to impose any condition it chooses, why would the condition of EM be limited to EM provided by a CSCD pursuant to an EM program approved by CJAD?;
- Section (c) provides that the court may require the defendant to pay the cost of EM to the CSCD *or the County*. The CSCD and the County are separate financial entities. If a county EM program cannot be provided under section (b), why would this language even be in the statute?; and
- Section (d) reinforces that the house arrest and electronic monitoring programs are separate programs ("who submits to electronic monitoring *or* participates in the house arrest program...").

Going back to the issue of a court's authority to impose whatever conditions it chooses for house arrest, assuming that section (a) was not in place and that section (b) did not refer to EM, wouldn't a court still have the authority to impose EM as a condition of house arrest? If the answer is "yes", why would the reference to CSCD programs in section (a), which involves a punishment of only EM, have any bearing on what a court could impose as a condition of house arrest? And is it possible that a court would have inherent authority to impose EM as a condition of house arrest? *See Smith v. State* 829 S.W. 2d 885, 887 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1992, pet. ref'd) (inherent authority to impose reasonable bond conditions).

In addition, article 42.12(11)(a)(17) of the *Code of Criminal Procedure* already authorizes a court to impose EM as a condition of probation, so isn't it arguable that EM as a condition of house arrest is totally separate from any probation department supervision?

I would also ask you to consider that this program is being used in other Texas counties. We know that Brazos County depends on the same statute for the authority of its courts to impose post-adjudication EM. Obviously, that doesn't make it right, however, it may be worthwhile to talk to the District/County Attorney in Brazos County to see what research Brazos County has compiled on this issue.

### *Fee Schedule*

You have expressed concern about the fee schedule by which it is determined what daily fee a defendant will pay for electronic monitoring. As touched on above, the fee schedule operates on a sliding scale, according to income. A copy of the proposed schedule created by the vendor is in the attached materials.

I must admit that I originally had significant concern over this arrangement, and I am not sure that these concerns have been fully put to rest. Article 42.035(c) of the *Code of Criminal Procedure* provides that the court may order the defendant to pay "any reasonable cost incurred in the house arrest program, including the cost of electronic monitoring." In some other situations where agencies have attempted to establish sliding-scale or graduated fees based on income where the subject statute did not expressly provide for it, the Attorney General has opined that the agencies have exceeded their statutory authority. See Tex. Att'y. Gen. Op. No. JM-249 (1984) (commissioners court not authorized to adopt graduated fee schedule based on income of persons seeking to utilize the services of domestic relations office); Tex. Att'y Gen. L.O. No. 94-097(1994) (clerk could not collect fees based on a sliding-scale according to income). This was the primary source of my concern. I really don't see an Equal Protection issue because participation in the program is voluntary, and the participant is made aware of the applicable fee before starting in the program. Conversely, if an indigent was excluded from the opportunity to participate in the program by virtue of not being able to pay the fee, an Equal Protection issue could exist. However, it is my understanding that this is one of the purposes of the sliding scale-to spread the cost based on ability to pay. My other concern is the statute's reference to "reasonable" costs, and at what point does the fee based on level of income become unreasonable.

In trying to figure out these issues, I researched state and federal cases and legal articles. As you would guess, there is very little written on this issue. What I did find was a law review article referring to various EM programs where a sliding scale is used, and somewhat championing the idea. See "GPS Monitoring: Available Alternative to the Incarceration of Nonviolent Criminal in the State of Ohio", *54 Clev. St. L. Rev.* 637 (2006). I did not find any cases addressing the legality of such a sliding scale fee for EM.

Again, playing devil's advocate, wouldn't the fact that the program is voluntary resolve any concerns as to the fee schedule? And does the statute actually mean the actual cost per individual or can it be read to refer to the cost of the program to be spread across the participants? Also, since this is a voluntary program that is defendant-funded, is there anything wrong with spreading the cost based on the ability to pay? Taxes are based on income, and so are various public programs such as indigent medical care, welfare, etc. Although I expressed my concerns to those involved, I could not unequivocally opine that such an arrangement is unlawful.

As with the jurisdiction/authority issue, this is apparently how the fee is handled in Brazos County. Therefore, it may be helpful to check and see if they have ever addressed the issue.

Thank you for your kind consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael W. Dixon", with a long horizontal flourish extending to the right.

Michael W. Dixon

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## CONDITIONS OF COURT-ORDERED HOUSE ARREST AND ELECTRONIC MONITORING

### General Information

The McLennan County House Arrest and Electronic Monitoring Program allows you to serve your County Jail sentence day for day at your home. The program is administered and monitored by Sentinel Offender Services under the general supervision of the McLennan County Sheriff and/or his designee. You are responsible for paying an enrollment fee for enrollment in the program. Thereafter, you will be responsible for paying a monitoring fee on a schedule and in an amount set by your Electronic Monitoring Program Administrator (hereinafter "EM Program Administrator"). The amount of the fee will be determined pursuant to a fee schedule based on family income. The sliding fee schedule has been approved by the District Courts and County Courts-at-Law of McLennan County.

Your work schedule must be coordinated with your EM Program Administrator, and this schedule will be strictly enforced. Medical appointments must be reported to the EM Program Administrator in advance, and verification provided. You must consent to your medical care provider releasing information to confirm your appointment and to confirm that you attended your appointment, including the appointment time, and the end-time for the appointment. You must also consent to your employer providing information as to your work hours and work attendance. You must provide any documentation of your compliance with these conditions reasonably requested by your EM Program Administrator. ANY variations in your schedule must be pre-approved by your EM Program Administrator, and must be documented in writing. You will be required to execute a participant contract with Sentinel Offender Services regarding your monitoring. This contract generally follows these conditions with more specificity as to your particular restrictions. Violation(s) of the terms of that contract will result in your house arrest/work release being revoked, and you will be remanded to serve the remainder of your sentence in the County Jail.

### IMPORTANT:

- You will not receive good time credit while serving your sentence under the House Arrest and Electronic Monitoring Program; and
- If your release on the program is revoked, the Court may not allow you credit against your sentence for the days served on electronic monitoring.

### Additional Conditions

In addition to the conditions set forth above, the following conditions apply:

1. **YOU MUST HAVE A JOB OR ACTIVELY SEEK EMPLOYMENT.** Proof of employment must be provided at the time of enrollment. All work hours must be verified in writing by someone in a supervisory position and pay stubs and time

cards must be submitted to Sentinel as further verification of employment. All overtime must be approved in advance by your EM Program Administrator.

If you do not have a job, you must actively seek employment based on a schedule set by your EM Program Administrator. You will be allowed to leave your home for certain period to seek employment or attend employment interviews. However, you will be required to provide proof of your efforts to your EM Program Administrator. If you have not obtained employment within two weeks of starting the Program, your participation in the Program may be reconsidered by the court.

2. YOU MUST HAVE A WORKING LANDLINE TELEPHONE IN YOUR RESIDENCE. The telephone cannot have call waiting, call forwarding, answering machines, a cordless telephone, or any other electronic device attached to your telephone during the time of your sentence. If you have any of these features or devices, you must have them removed within 2 business days of enrollment with Sentinel. AT ENROLLMENT, YOU MUST PROVIDE A COPY OF YOUR MOST RECENT TELEPHONE BILL.
3. YOU MUST HAVE ELECTRICITY IN YOUR HOME. Generators or battery powered devices are not acceptable and may be grounds for termination from the program.
4. YOU MUST MAKE TIMELY PAYMENTS. At your first visit, you are required to pay a \$25.00 enrollment fee. You will also be required to make timely payments of monitoring fees on the schedule established by your EM Program Administrator.
5. YOU MUST ANSWER ALL TELEPHONE CALLS REGARDLESS OF THE TIME OF DAY OR NIGHT.
6. YOU MUST KEEP THE ELECTRONIC MONITOR PROPERLY CONNECTED AT ALL TIMES.
7. YOU MUST NOT TAMPER WITH THE EQUIPMENT.
8. YOU MUST REPORT, IN PERSON, TO YOUR EM PROGRAM ADMINISTRATOR AS DIRECTED.
9. YOU MUST REMAIN WITHIN THE WALLS OF YOUR RESIDENCE UNLESS OUTSIDE ACTIVITIES HAVE BEEN AUTHORIZED AND SCHEDULED BY YOUR EM PROGRAM ADMINISTRATOR.
10. YOU MUST NOT BE ARRESTED FOR ANY NEW OFFENSE.

11. YOU CANNOT USE, POSSESS, OR CONSUME ANY DRUGS OR ALCOHOL DURING THE TERM OF YOUR ELECTRONIC MONITORING.
12. YOU MUST COMPLY WITH ALL TERMS OF YOUR SENTINEL PARTICIPANT CONTRACT.
13. YOU MUST REMAIN CURRENT ON ALL PAYMENTS FOR COURT COSTS, FINES AND RESTITUTION DUE AND PAYABLE UNDER ANY ORDER OR JUDGMENT OF THE COURT IN YOUR CASE.

Permitted Activities (Properly Documented by Participant)

1. Traveling to and from your place of employment or school. Please note, a maximum of forty-five (45) minutes is allowed for travel to and from your place of employment or school unless pre-approved by the Court.
2. Reporting to court, probation, drug and alcohol treatment, counseling, and community service.
3. Transporting children, living in your household, to and from school during normal school hours.
4. Obtaining medical or dental treatment. Please note, if you go the hospital ER, you may not be excused if the reason for your visit was not an actual emergency that could not be handled by making an office visit to your physician.
5. Purchasing groceries and other household necessities. Please note, a maximum of 1 ½ hours per week is allowed for this activity.
6. Attending required meetings with your EM Program Administrator.

Revocation

WORK RELEASE IS A PRIVILEGE, NOT AN ENTITLEMENT, THEREFORE, FAILURE TO COMPLY WITH ANY OF THESE CONDITIONS OR THOSE SET FORTH IN YOUR SENTINEL PARTICIPANT CONTRACT WILL RESULT IN YOUR WORK RELEASE BEING REVOKED AND STRAIGHT JAIL TIME BEING ORDERED.

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## Description of Duties of EM Coordinator

### Daily

1. Review jail population daily to determine eligible candidates for EM.
2. Background check on candidates, and, if necessary, interviews with candidates [Note: As part of this process the EM Coordinator must create an application form for candidates to sign by which they apply for EM, and which provides information as to the candidate's: home address, work address, employer, telephone numbers, e-mail address, family contacts, and other information that will assist the EM Coordinator, and the courts, in assessing the propriety of EM].
3. Submit candidate(s) to the applicable court with jurisdiction over the candidate(s)' cases for consideration of EM. The submission to the court will include:
  - A. Defendant name, case style, case number, and offense;
  - B. Defendant contact information;
  - C. A copy of the defendant's application for EM;
  - D. A brief background report; and
  - E. A copy of a proposed order placing the defendant on EM.
4. If a defendant is placed on EM, the EM Coordinator is responsible for providing a copy of the court's order to the Jail, coordinating the release of the defendant with the Jail. Defendant will immediately report to Sentinel Offender Services (hereinafter "Sentinel") for EM enrollment prior to leaving the jail facility.
5. If a defendant is placed on EM, the EM Coordinator will provide a copy of the order placing the defendant on EM, and contact information for the defendant, to Sentinel promptly. [Note: In some circumstances, such as child support contempt and some work release orders, the order for EM may be entered by a court at adjudication, and not upon the submission of the EM Coordinator. The EM Coordinator is also responsible for coordinating with the courts to promptly obtain these orders when issued. The EM Coordinator shall be responsible to perform the same duties as set forth in Item 4 above, and in this Item 5, with regard to such orders].
6. Receiving, reviewing and submitting to the courts with jurisdiction EM violations reported to the EM Coordinator by Sentinel. The submission to the applicable court shall include:
  - A. a cover sheet entitled "Report of Violation of Conditions of Electronic Monitoring", and identifying the defendant, case style and case number;
  - B. the report from Sentinel and supporting documentation received from Sentinel;

- C. a brief narrative of the violation;
- D. a copy of the proposed *capias* in a form approved by the courts; and
- E. other information that the courts may require to be provided.

7. Monitoring submitted violations, obtaining a copy of revocation orders, and promptly reporting revocations to Sentinel.

#### Periodic

1. review periodic reports by Sentinel regarding *all* EM Program participants to assure that violations are being properly reported, analyze trends, and prepare statistical information for reports to the courts and the County Commissioner's Court;
2. periodic review of Sentinel' monitoring to determine whether monitoring is being adequately performed, and that Sentinel is properly incorporating the conditions imposed by court orders into the monitoring process;
3. periodic review of the fees charged to and collected from defendants by Sentinel to determine whether the schedule of fees or fee determination procedure approved by the courts is being properly applied and followed;
4. general review of the performance of Sentinel and EM Program effectiveness; and
5. other projects and tasks as assigned.

#### Supervision

The EM Coordinator will be supervised by **the McLennan County Sheriff and/or his designee/s**. The supervisor will periodically review and evaluate the EM Coordinator's performance, and will review all Sentinel violation reports as a check and balance to assure that violations are being properly submitted to the courts.

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**MEMORANDUM OF AGREEMENT**  
between the  
**McLENNAN COUNTY**  
and  
**SENTINEL OFFENDER SERVICES**

McLennan County, Texas (the County) and Sentinel Offender Services (the Company) have entered into an agreement to conduct a test program to determine the feasibility of requiring offenders to engage the Company to provide, at their own expense, necessary electronic monitoring services. Sentinel Offender Services is a vendor possessing competence, expertise, and personnel necessary to provide electronic monitoring services to offenders. Therefore, the County desires to participate in a test program with Sentinel Offender Services for a period of one year.

Management of this program will be guided by the general guidelines found herein.

- 1) The test program shall run for a period of one year from the later of March 1, 2008 or the date that the County Sheriff certifies that the Electronic Monitoring Coordinator is trained and ready to implement the program. The Program shall be conducted in the County of McLennan, State of Texas.
- 2) Electronic Monitoring services shall be provided to all offenders referred by the courts of the County having criminal jurisdiction (other than justice courts) unless otherwise agreed upon in writing and shall incorporate a minimum test population of (50) active participants.
- 3) Offenders participating in this program shall pay the Company at a rate derived from a sliding scale fee assessment of gross household income.
- 4) The courts assigning defendants to the program and the County shall approve the fee assessment scale used by the Company.
- 5) A mutually agreed upon reporting schedule for the notification of violations shall be developed and implemented.
- 6) All employees of the Company shall be of good character and professionally competent.
- 7) The supervision of all offenders shall remain exclusively within the purview of the County.
- 8) To the extent allowable by law, the Company agrees to hold harmless the County and its employees and agents for all acts and omissions related to this agreement.

- 9) To the extent allowable by law, the County agrees to hold harmless the Company and its employees and agents for all acts and omissions related to this agreement.
- 10) This agreement may without cause be terminated upon 30 days written notice by either party.
- 11) The Company shall be solely responsible for securing and maintaining adequate levels of health and liability insurance for its employees and agents.
- 12) The Company's point of contact for all matters relevant to this agreement shall be the EM Coordinator of the McLennan County Sheriff's Department ~~Community Supervision and Corrections Department~~ ("MCSCD").
- 13) The selection of offenders to participate in this program shall be determined by the court and compatible with the welfare of society and shall not be governed by the ability of the offender to pay for services provided by the Company.
- 14) The County desires to supervise a certain portion of their offenders in an Electronic Monitoring (EM) program consisting of one or more of the following technologies; Global Positioning Satellite (GPS), Radio Frequency (RF), Remote Alcohol Testing. When using the technology, the customer shall be responsible for all supervision and tracking, including without limitation, in the case of GPS services, monitoring the offender through one of the (3) three different levels of monitoring provided by the company.
- 15) Once ability to pay for services has been assessed, offenders will be subject to revocation for willful non-payment of services if payments become 10 days late.
- 16) The Company will monitor conditions of compliance with County order via scheduled meetings with each participant, and report all issues of non-compliance to the supervising officer for resolution.
- 17) Company will maintain individual case files on all participants for review by the supervising officer and in order to provide documentation for the use in enforcement or revocation matters.
- 18) Should the Company be required to provide additional electronic monitoring hardware by another manufacturer, the County shall be responsible for all lost/damaged replacement cost. The Company reserves the right to submit Lost/Damage Replacement Fee Schedule at a later time once the hardware manufacturer and model number is identified. Furthermore, in the event the Company is required to provide hardware or software that is not owned and operated by the Company, the Company shall not be responsible for

performance related to use of outside products and services and in no way guarantees the functionality or reliability of said product.

19) Limitation of Liability

Disclaimer. Customer acknowledges that it is solely responsible for the decision to use the Services and all decisions regarding the selection of third parties that will have access to or contact with the Services, including, without limitation, probationers, juveniles and Customer's employees. Sentinel disclaims any and all responsibility or liability for customer's decisions described in this section.

Service Availability. The Customer acknowledges that Sentinel's ability to provide the Services effectively is dependent on factors outside of its control, including without limitation, prompt reporting by Customer of observed defects or deficiencies in any equipment assigned to or retrieved from participant offenders, proper maintenance of equipment by Customer, extended power outages, disconnection or other loss/interruption of telephone lines, operation of wire line and wireless networks, internet connectivity, and scrambling, interruption, suspension, or other interference in the transmission of radio signals or signals to or from global positioning satellites. Accordingly, Customer acknowledges that Sentinel is making no representation or warranty that the provision of Services will be made available without interruption or will operate error-free. Sentinel does not warrant that the services will be available on a specified date or time or that the services will function on an error-free basis. At any given time, the equipment or software used in connection with this agreement may malfunction and failures in the services may occur from time to time. To the extent outside of Sentinel's control, Customer agrees that sentinel will not be liable for any damages or harms, including, without limitation, property damage, personal injury, bodily injury, illness or death, that customer or customer's employees, agents or other affiliates may incur arising out of sentinel's operations or its provision of or failure to provide the services.

Limitation of damages. Except for breach of any confidentiality or privacy obligations, neither party, nor any of its officers, directors, shareholders, employees, agents, independent contractors, representatives, or affiliates shall be liable to the other party or any of its officers, directors, shareholders, employees, agents, independent contractors, representatives, or affiliates for punitive, special, consequential, incidental, or indirect damages including, without limitation, lost profits, arising in connection with the services, even if such party has been advised of the possibility of such damages. The liability of the Company for any breach of its obligations under this agreement shall not exceed (3) months of fees earned hereunder.

20) The Program will be supervised by the County Sheriff or his designee. MCSGD.

21)

"McLennan County agrees to allow Sentinel access to the Internet through McLennan County's LAN/WAN network for the purpose of Sentinel accessing their Company's websites/email in order to administer a monitoring program for McLennan County only. Sentinel agrees to adhere to all aspects of McLennan County's Technology Policy.

Both parties agree that if Sentinel fails to abide by any portion of the Technology Policy, McLennan County has the option of denying Sentinel access without notice. "

22) The following attachments are incorporated herein:

- A. Conditions of Electronic Monitoring;
- B. Description of Duties of EM Coordinator;
- C. Additional Terms and Conditions of Memorandum of Agreement.

APPROVED

**COPY**

\_\_\_\_\_  
JIM LEWIS  
McLennan County Judge

\_\_\_\_\_  
Date

\_\_\_\_\_  
Robert Contestabile, President  
Sentinel Offender Services, LLC

\_\_\_\_\_  
Date

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## Additional Terms and Conditions of Memorandum of Agreement

1. Company shall coordinate with and assist the County and the **County Sheriff and/or his designee** in developing forms, reports and orders for the program, and shall provide any required training regarding the EM System;
2. Company shall coordinate and cooperate with the **County Sheriff and/or his designee** and the EM Coordinator in establishing and operating the program;
3. The form of violation reports and supporting information provided by the Company shall be arrived at through consultation between the Company and the **County Sheriff and/or his designee / EM Coordinator**. At a minimum such reports must:
  - a) clearly identify the defendant, case style and case number,
  - b) identify the conditions of his/her order/judgment that were violated,
  - c) contain a narrative the factual basis for the report of violation,
  - d) provide documentation from the EM system that supports the violation, and
  - e) provide any other information required by the courts to determine whether to revoke house arrest and electronic monitoring
4. The Company shall allow the **County Sheriff and/or his designee**, EM Coordinator or the County access to its records relating to the program upon reasonable request.
5. Office space is only being provided to the Company by the County during the ramp-up phase of the program. If the Company's operations outgrow this space, or in any case, after the program has 75 active participants, the Company will procure its own offices at its sole cost and expense.

**COPY****SENTINEL OFFENDER SERVICES, LLC**

Offender Funded Electronic Monitoring Program

Sliding Scale Fee Chart

| MONTHLY INCOME FROM | MONTHLY INCOME TO | DAILY FEE ASSESSMENT (RF) | DAILY FEE ASSESSMENT (RF/GPS1) "Passive" | DAILY FEE ASSESSMENT (RF/GPS2) "Active" OR RF w/Alcohol Monitoring | DAILY FEE ASSESSMENT (RF/GPS3) "Active w/Zones" |
|---------------------|-------------------|---------------------------|--|--|---|
| \$0.00              | \$258.27          | \$1.00                    | \$2.00                                   | \$4.00   | \$6.00  |
| \$260.00            | \$431.60          | \$2.00                    | \$3.00                                   | \$5.00   | \$7.00  |
| \$433.33            | \$604.93          | \$3.00                    | \$4.00                                   | \$6.00   | \$8.00  |
| \$606.67            | \$778.27          | \$4.00                    | \$5.00                                   | \$7.00   | \$9.00  |
| \$780.00            | \$951.60          | \$5.00                    | \$6.00                                   | \$8.00   | \$10.00   |
| \$953.33            | \$1,124.93        | \$6.00                    | \$7.00                                   | \$9.00   | \$11.00   |
| \$1,126.67          | \$1,298.27        | \$7.00                    | \$8.00                                   | \$10.00  | \$12.00   |
| \$1,300.00          | \$1,471.60        | \$8.00                    | \$9.00                                   | \$11.00  | \$13.00   |
| \$1,473.33          | \$1,644.93        | \$9.00                    | \$10.00                                  | \$12.00  | \$14.00   |
| \$1,646.67          | \$1,818.27        | \$10.00                   | \$11.00                                  | \$13.00  | \$15.00   |
| \$1,820.00          | \$1,991.60        | \$11.00                   | \$12.00                                  | \$14.00  | \$16.00   |
| \$1,993.33          | \$2,164.93        | \$12.00                   | \$13.00                                  | \$15.00  | \$17.00   |
| \$2,166.67          | \$2,338.27        | \$13.00                   | \$14.00                                  | \$16.00  | \$18.00   |
| \$2,340.00          | \$2,511.60        | \$14.00                   | \$15.00                                  | \$17.00  | \$19.00   |
| \$2,513.33          | \$2,684.93        | \$15.00                   | \$16.00                                  | \$18.00  | \$20.00   |
| \$2,686.67          | \$2,858.27        | \$16.00                   | \$17.00                                  | \$19.00  | \$21.00   |
| \$2,860.00          | \$3,031.60        | \$17.00                   | \$18.00                                  | \$20.00  | \$22.00   |
| \$3,033.33          | \$3,204.93        | \$18.00                   | \$19.00                                  | \$21.00  | \$23.00   |
| \$3,206.67          | \$3,378.27        | \$19.00                   | \$20.00                                  | \$22.00  | \$24.00   |
| \$3,380.00          | \$3,551.60        | \$20.00                   | \$21.00                                  | \$23.00  | \$25.00   |

# **SENTINEL OFFENDER SERVICES, LLC**

## Offender Funded Electronic Monitoring Program Sliding Scale Fee Chart

| <b>MONTHLY INCOME FROM</b> | <b>MONTHLY INCOME TO</b> | <b>DAILY FEE ASSESSMENT (RF)</b> | <b>DAILY FEE ASSESSMENT (RF/GPS1) "Passive"</b> | <b>DAILY FEE ASSESSMENT (RF/GPS2) "Active" OR RF w/Alcohol Monitoring</b> | <b>DAILY FEE ASSESSMENT (RF/GPS3) "Active w/Zones"</b> |
|----------------------------|--------------------------|----------------------------------|---|---|--|
| \$3,553.33                 | \$3,724.93               | \$21.00                          | \$22.00   | \$24.00   | \$26.00  |
| \$3,726.67                 | \$3,898.27               | \$22.00                          | \$23.00   | \$25.00   | \$27.00  |
| \$3,900.00                 | \$4,071.60               | \$23.00                          | \$24.00   | \$26.00   | \$28.00  |
| \$4,073.33                 | \$4,244.93               | \$24.00                          | \$25.00   | \$27.00   | \$29.00  |
| \$4,246.67                 | \$4,418.27               | \$25.00                          | \$26.00   | \$28.00   | \$30.00  |
| \$4,420.00                 | \$4,591.60               | \$26.00                          | \$27.00   | \$29.00   | \$31.00  |
| \$4,593.33                 | \$4,764.93               | \$27.00                          | \$28.00   | \$30.00   | \$32.00  |
| \$4,766.67                 | \$4,938.27               | \$28.00                          | \$29.00   | \$31.00   | \$33.00  |
| \$4,940.00                 | \$5,111.60               | \$29.00                          | \$30.00   | \$32.00   | \$34.00  |
| \$5,113.33                 | \$5,284.93               | \$30.00                          | \$31.00   | \$33.00   | \$35.00  |
| \$5,286.67                 | \$5,458.27               | \$31.00                          | \$32.00   | \$34.00   | \$36.00  |
| \$5,460.00                 | \$5,631.60               | \$32.00                          | \$33.00   | \$35.00   | \$37.00  |
| \$5,633.33                 | \$5,804.93               | \$33.00                          | \$34.00   | \$36.00   | \$38.00  |
| \$5,806.67                 | \$5,978.27               | \$34.00                          | \$35.00   | \$37.00   | \$39.00  |
| \$5,980.00                 | \$6,151.60               | \$35.00                          | \$36.00   | \$38.00   | \$40.00  |
| \$6,153.33                 | \$6,324.93               | \$36.00                          | \$37.00   | \$39.00   | \$41.00  |
| \$6,326.67                 | \$6,498.27               | \$37.00                          | \$38.00   | \$40.00   | \$42.00  |
| \$6,500.00                 | \$6,671.60               | \$38.00                          | \$39.00   | \$41.00   | \$43.00  |
| \$6,673.33                 | \$6,844.93               | \$39.00                          | \$40.00   | \$42.00   | \$44.00  |
| \$6,846.67                 | \$7,018.27               | \$40.00                          | \$41.00   | \$43.00   | \$45.00  |

## SENTINEL OFFENDER SERVICES, LLC

Offender Funded Electronic Monitoring Program  
Sliding Scale Fee Chart

| MONTHLY INCOME FROM | MONTHLY INCOME TO | DAILY FEE ASSESSMENT (RF) | DAILY FEE ASSESSMENT (RF/GPS1) "Passive" | DAILY FEE ASSESSMENT (RF/GPS2) "Active" OR RF w/Alcohol Monitoring | DAILY FEE ASSESSMENT (RF/GPS3) "Active w/Zones" |
|---------------------|-------------------|---------------------------|--|--|---|
| \$7,020.00          | \$7,191.60        | \$41.00                   | \$42.00                                  | \$44.00  | \$46.00   |
| \$7,193.33          | \$7,364.93        | \$42.00                   | \$43.00                                  | \$45.00  | \$47.00   |
| \$7,366.67          | \$7,538.27        | \$43.00                   | \$44.00                                  | \$46.00  | \$48.00   |
| \$7,540.00          | \$7,711.60        | \$44.00                   | \$45.00                                  | \$47.00  | \$49.00   |
| \$7,713.33          | \$7,884.93        | \$45.00                   | \$46.00                                  | \$48.00  | \$50.00   |
| \$7,886.67          | \$8,058.27        | \$46.00                   | \$47.00                                  | \$49.00  | \$51.00   |
| \$8,060.00          | \$8,231.60        | \$47.00                   | \$48.00                                  | \$50.00  | \$52.00   |
| \$8,233.33          | \$8,404.93        | \$48.00                   | \$49.00                                  | \$51.00  | \$53.00   |
| \$8,406.67          | \$8,578.27        | \$49.00                   | \$50.00                                  | \$52.00  | \$54.00   |
| \$8,580.00          | \$8,751.60        | \$50.00                   | \$51.00                                  | \$53.00  | \$55.00   |
| \$8,753.33          | \$8,924.93        | \$51.00                   | \$52.00                                  | \$54.00  | \$56.00   |
| \$8,926.67          | \$9,098.27        | \$52.00                   | \$53.00                                  | \$55.00  | \$57.00   |
| \$9,100.00          | \$9,271.60        | \$53.00                   | \$54.00                                  | \$56.00  | \$58.00   |
| \$9,273.33          | \$9,444.93        | \$54.00                   | \$55.00                                  | \$57.00  | \$59.00   |
| \$9,446.67          | \$9,618.27        | \$55.00                   | \$56.00                                  | \$58.00  | \$60.00   |
| \$9,620.00          | \$9,791.60        | \$56.00                   | \$57.00                                  | \$59.00  | \$61.00   |
| \$9,793.33          | \$9,964.93        | \$57.00                   | \$58.00                                  | \$60.00  | \$62.00   |
| \$9,966.67          | \$10,138.27       | \$58.00                   | \$59.00                                  | \$61.00  | \$63.00   |
| \$10,140.00         | \$10,311.60       | \$59.00                   | \$60.00                                  | \$62.00  | \$64.00   |
| \$10,313.33         | \$10,484.93       | \$60.00                   | \$61.00                                  | \$63.00  | \$65.00   |