Community Service

The law dealing with community service has changed over the years. While the requirement that a probationer could be ordered to perform community service as a condition of supervision had been previously inferred, it was not until the 1980's that statutory language was created to expressly authorize a judge to impose this particular condition.
See Fogle v. State, 667 S. W. 2d 296 (Tex. App. - Dallas, 1984)

Initially, community service was mentioned in Article 42.12, Section 11 as one of the reasonable conditions of community supervision that a court could impose on a probationer.

Section 11 (a) (10) provided that:

"Terms and conditions of probation may include, but shall not be limited to, the conditions that the probationer shall:

(10) Participate, for a time specified by the court in any community-based program, including a community-service work program designated by the court."

Then, in 1989 the Legislature expanded the meaning of community service.
Originally, community service was divided into two categories -- work probation and community service.
Article 42.12, Section 16, Code of Criminal Procedure (1990), stated that a court granting probation to a defendant convicted of a felony had to require as a condition of probation that the defendant work in a supervision work program, unless the court determined that the defendant was physically or mentally incapable of participating in the work program or that participating in the work program would work a hardship on the defendant or the defendant's dependents.
The amount of work hours authorized under this section could not be less than 24 hours and could not be more than 1,000 hours.
In addition, the court could not require the defendant to work more than eight hours during any week.
Although work probation was not defined under this section, it was contemplated that a probation department would enter into contracts with state agencies or political subdivisions or nonprofit organizations that served the public good by providing assistance to the poor, assisting the elderly, or performing other projects that benefits the community for the utilization of probationer labor.

Article 42.12, Section 17, Code of Criminal Procedure, (1990), provided that if the court placed a defendant on probation, the court could require, as a condition of the probation, that the defendant work a specified number of hours at a specified community service project for an organization named in the court's order.

The amount of community service specified under this section:
1) could not exceed 1,000 hours and could not be less than 320 hours for an offense classified as a first degree felony;

2) could not exceed 800 hours and could not be less than 240 hours for an offense classified as a second degree felony;
3) could not exceed 600 hours and could not be less than 160 hours for an offense classified as a third degree felony;
4) could not exceed 200 hours and could not be less than 80 hours for an offense classified as a Class A misdemeanor or for any other misdemeanor for which the maximum permissible imprisonment, if any, exceeded six months or the maximum permissible fine, if any, exceeded $1,000.00; and
5) could not exceed 100 hours and could not be less than 24 hours for an offense classified as a Class B misdemeanor or for any other misdemeanor for which the maximum permissible imprisonment, if any, did not exceed six months and the maximum permissible fine, if any, did not exceed $1,000.00.

In 1991, the Legislature retained the work probation statute but instead of making work probation mandatory, the law stated that a court granting probation to a defendant convicted of a felony could require as a condition of probation that the defendant work a specified number of hours under Section 17 of Article 42.12, or work a specified number of hours in a supervision work program authorized under this section.

In 1993 the Legislature made substantial changes to the provisions in Article 42.12, Code of Criminal Procedure, authorizing community service.

First, the Legislature eliminated in its entirety the section dealing with work probation. In its place, the Legislature retained Article 42.12, Section 16, authorizing community service.

This section now *required* a judge to impose, as a condition of community supervision, a requirement that the defendant perform a specified number of hours of community service.

Moreover, this requirement was applicable to both felony and misdemeanor cases.

The number of hours that the court must imposed was also modified to provide as follows:

1) not to exceed 1,000 hours and not to be less than 320 hours for an offense classified as a first degree felony;
2) not to exceed 800 hours and not to be less than 240 hours for an offense classifed as a second degree felony;
3) not to exceed 600 hours and not to be less than 160 hours for an offense classified as a third degree felony;
4) not to exceed 400 hours and not to be less than 120 hours for an offense classified as a state jail felony;
5) not to exceed 200 hours and not to be less than 80 hours for an offense classified as a Class A misdemeanor or for any other misdemeanor for which the maximum permissible confinement, if any, exceeded six months or the maximum permissible fine, if any, exceeded $4,000; and
6) not to exceed 100 hours and not to be less than 24 hours for an offense classified as a Class B misdemeanor or for any other misdemeanor for which the maximum permissible confinement, if any, did not exceed six months and the maximum permissible fine, if any, did not exceed $4,000.

The only way that a defendant could avoid the imposition of community service was if the judge determined and noted on the court's order that:
1) the defendant is physically or mentally incapable of participating in the project;
2) participating in the project will work a hardship on the defendant or the defendant's dependents;
3) the defendant is to be confined in a substance abuse punishment facility as a condition of community supervision; or
4) there is other good cause.

In addition, this provision now stated that the judge must order that the defendant "work a specified number of hours at a community service project or projects for an organization or organizations approved by the judge and designated by the department . . ."

The above change was made in response to the Texas Court of Criminal Appeals' decision in Lemon v. State, 861 S. W. 2d 249 (Tex. Cr. App. - 1993) in which the court ordered a defendant, placed on community supervision for the offense of misapplication of fiduciary property valued over $10,000 but less than $100,000, "at such times and places as may be directed by the adult probation officer, perform the following number of hours of community service: 1000." The defendant appealed the imposition of this particular condition of community supervision.

The Court of Criminal Appeals observed that the authority for a trial court to require community service as a condition of probation is found in two sections of Article 42.12 of the Code of Criminal Procedure. Section 17 (a) stated that:

"If the court places a defendant on probation, the court may require, as a condition of the probation, that the defendant work a specified number of hours at a community service project or projects for an organization or organizations named in the court's order . . . "

The Court also noted that Article 42.12, Section 11, Code of Criminal Procedure, authorized the imposition of community service as a condition of community supervision.

The Court of Criminal Appeals held that nothing in the law allowed a trial court ordering community service as a condition of probation to forego naming a community service project or organization in its original order defining the terms and conditions of the probation. As such the Court reversed the judgment of the Court of Appeals and remanded the cause to the trial court.

Note also: The language cited by the Court under Article 42.12, Section 11 (a) (10) can still be found in the Code of Criminal Procedure.

Note further: With the change in the statutory language made by the Seventy-Third Legislature in 1993, it is uncertain whether the Court of Criminal Appeals would make the same ruling today. The changes to this provision were made in order that the trial court would not have to specifically name in the court's order every project or organization for which a defendant was required to perform community service. Instead the changes were intended to give the trial court the flexibility to approve a list of organizations participating in the community service program

and to permit the community supervision and corrections department to designate the projects for which the defendant was to perform his court ordered community service.

Nevertheless it is recommended that a defendant ordered to perform community service be provided a copy of the approved list of organizations prior to performing his community service obligation. Also, as a precautionary measure, a trial court may wish to attach a copy of the approved list to the conditions of community supervision and incorporate the attachments by reference in the condition requiring community supervision. These recommendations are applicable for all cases probated for offenses occurring on or after September 1, 1993.

See Cotten v. State, 893 S. W. 2d 200 (Tex. App. - Fort Worth, 1995) in which the Fort Worth Court of Appeals noted that while the following condition "complete 200 hours of community service as assigned by the Denton County Adult Probation Department" might be valid in accordance with the Legislative changes made in 1993, for offenses occuring prior to September 1, 1993, the Lemon holding would have to be applied.

Moreover, this section exempted probationers performing community service from the provisions of the Worker's Compensation Act. Subsection (d) of this Section provided that a defendant required to perform community service under this section was not a state employee for the purposes of Article 8309g or 8309h, Revised Statutes.

This measure does not specify that a probationer performing community service would not be considered an employee of a political subdivision, only an employee of the state. Potentially, a probationer performing community service for a quid pro quo could be deemed an employee of the CSCD or organization for workers compensation purposes if he were injured in the performance of community service.
See Scroggins v. Twin City Fire Insurance Company, 656 S. W. 2d 213 (Tex. App. - El Paso, 1983).

Thus it should be made clear that a probationer performing community service is doing so in order to fulfill an obligation of the court and that he receives no benefits other than satisfying his court ordered obligations.

Further, this section added a certain number of hours of community service to be performed by a probationer convicted of a hate crime.
This section stated that if the court makes an affirmative finding under Article 42.014, Code of Criminal Procedure, the court could order the defendant to perform community service at a project designated by the court that primarily served the person or group who was the target of the defendant.

Moreover, if the court ordered community service under this subsection the court had to order the defendant to perform not less than:

1) 100 hours of service if the offense were a misdemeanor; or
2) 300 hours of service if the offense were a felony.

Note: In 1993, the Legislature enacted Article 42.014, Code of Criminal Procedure, to provide that in the trial of an offense under the Penal Code if the court determines that the defendant intentionally selected the victim primarily because of the defendant's bias or prejudice against a

person or a group, the court shall make an affirmative finding of that fact and enter the affirmative finding in the judgment of that case.

This provision has now been extensively modified. However the measure provided in Article 42.12, Section 16 (d), Code of Criminal Procedure, is still applicable.

In 2001 H. B. 31 amended Article 42.12, Section 16, Code of Criminal Procedure, to provide that the amount of community service work ordered by the judge:

(5) may not:
  (A) exceed 600 hours or be less than 160 hours for the offense of burglary of a vehicle; or
  (B) exceed 200 hours or be less than 80 hours for any other offense classified as a Class A misdemeanor or for any other misdemeanor for which the maximum permissible confinement, if any, exceeds six months or the maximum permissible fine, if any, exceeds $4,000.

Nevertheless in 2007 the Texas Legislature made several substantial changes to the laws dealing with community service.

H. B. 1678 made certain changes to the provision dealing with performing community service as a condition of community supervision. Under this bill no longer will a judge be required to order community service to be performed. Instead, the bill amends Article 42.12, Section 16 (a), Code of Criminal Procedure, to provide that a judge *may* (emphasis added) require as a condition of community supervision that a defendant work a specified number of hours at a community service project. Moreover, this bill states that a judge may not require that a defendant work at the community service project if the judge determines and notes on the order placing the defendant on community supervision that:

(1) the defendant is physically or mentally incapable of participating in the project;
(2) participating in the project will work a hardship on the defendant or the defendant's dependents;
(3) the defendant is to be confined in a substance abuse punishment facility as a condition of community supervision; or
(4) there is other good cause.

Finally this bill also removed the floor that specified that the judge had to order a defendant to perform at least a certain minimum number of community service hours. Now Article 42.12, Section 16 (b) is amended to provide that the amount of community service work ordered by the judge:

(1) may not exceed 1,000 hours for an offense classified as a first degree felony;
(2) may not exceed 800 hours for an offense classified as a second degree felony;
(3) may not exceed 600 hours for an offense classified as a third degree felony;
(4) may not exceed 400 hours for an offense classified as a state jail felony;
(5) may not:

(A) exceed 600 hours for an offense under Section 30.04, Penal Code, classified as a Class A misdemeanor;[1] or

(B) exceed 200 hours for any other offense classified as a Class A misdemeanor or for any other misdemeanor for which the maximum permissible confinement, if any, exceeds six months or the maximum permissible fine, if any, exceeds $4,000; and

(6) may not exceed 100 hours for an offense classified as a Class B misdemeanor or for any other misdemeanor for which the maximum permissible confinement, if any, does not exceed six months and the maximum permissible fine, if any, does not exceed $4,000.

Note: The changes in the law made to community service apply only to those defendants initially placed on community supervision on or after September 1, 2007.

Exemption for Participating in a Drug Court Program

In 2007 the Texas Legislature made certain changes to drug court programs. Included in these changes were incentives for a participant to successfully complete the drug court program. H. B. 530 states that in order to encourage participation in a drug court program established under this measure, the judge or magistrate administering the program may suspend any requirement that, as a condition of community supervision, a participant in the program work a specified number of hours at a community project or projects. Moreover this bill states that on a participant's successful completion of a drug court program, a judge or magistrate may excuse the participant from any condition requiring a defendant to perform community service.

Modification of the Number of Community Service Hours

In 1993 the Legislature also made some changes to the provision in the law allowing an increase in the number of community service hours that could be imposed as a modified condition of community supervision.

The Legislature amended Article 42.12, Section 22, Code of Criminal Procedure, (1993), to provide that if, after a hearing on a motion to revoke, a judge continues or modifies community supervision after determining that the defendant violated a condition of community supervision, the judge may impose any other conditions the judge determines are appropriate, including:
1) a requirement that the defendant perform community service for a number of hours specified by the court under Section 16 of this article, or an increase in the number of hours that the defendant has previously been required to perform under those sections in an amount not to exceed double the number of hours permitted by Section 16.

[1] Note: During this same legislative session, the Legislature enacted H. B. 1887, which authorizes, under certain circumstances, the offense of burglary of a motor vehicle to be enhanced to a state jail felony offense. Thus if a person is placed on community supervision for a misdemeanor burglary of a motor vehicle offense and the judge orders the person to perform community service the maximum number of hours that a judge can order a defendant to perform will be those hours listed in Article 42.12, Section (b) (5) (A); however, if the person is placed on community supervision for a felony burglary of a motor vehicle offense and the judge orders the person to perform community service the maximum number of hours that a judge can order a defendant to perform will those hours listed in Article 42.12, Section (b) (4).

Prior to this above change, Article 42.12, Section 25, Code of Criminal Procedure, (1991), stated that if, after a hearing . . . the court may impose one or more of the following sanctions on the probationer:
1) a requirement that the probationer perform work probation or community service for a number of hours specified by the court under Section 16 or 17 of this article, or an increase in the number of hours that the probationer has previously been required to perform under those sections.[2]

Note: Several intermediate courts of appeals' decisions indicate that short of a revocation proceeding, a probationer has very few due process rights and a trial court is free to modify the conditions of community supervision without having to afford the defendant a hearing or a right to an attorney.

See, for example, Ex parte Harrington, 883 S. W. 2d 396 (Tex. App. - Fort Worth, 1994) in which the appellate court upheld a trial court's decision to extend the terms of a defendant's community supervision without conducting a hearing.

See also, Bailey v. State, 888 S. W. 2d 600 (Tex. App. - Beaumont, 1994).

Finally, see Prevato v. State, 77 S. W. 3d 317 (Tex. App. - Houston [14th Dist.], 2002)

Other Community Service Provisions

Article 42.036, Code of Criminal Procedure, provides that:

A court may require a defendant, *other than a defendant convicted of an intoxication offense*, to serve all or part of a sentence of confinement or period of confinement required as a condition of community supervision in county jail by performing community service rather than by being confined in county jail *unless the sentence of confinement was imposed by the jury in the case*. (Emphasis added).

This article further states that:

In its order requiring a defendant to participate in community service work, the court must specify 1) the number of hours the defendant is required to work; and 2) the entity or organization for which the defendant is required to work.

Note: Prior to changes made by the Seventy-Third Legislature in 1993, Article 42.036 (b), Code of Criminal Procedure, provided that in addition to specifying in the court's order the number of

[2] Note: Neither a defendant granted deferred adjudication community supervision nor a defendant placed on "regular" community supervision can directly appeal an order modifying a condition of community supervision unless the validity of a revocation proceeding (and now adjudication proceeding) depends on the validity of the modification. See Rickles v. State, 108 S. W. 3d 902 (Tex. Cr. App. – 2003). Nevertheless a defendant can file an application for writ of habeas corpus, attacking the validity of a modified condition of community supervision. See Article 11.072, Code of Criminal Procedure. Moreover a defendant can appeal a denial of an application for writ of habeas corpus under Article 11.072, supra. See Davis v. State, 195 S. W. 3d 708 (Tex. Cr. App. – 2006), in footnote 15.

hours that a defendant is required to work and the entity or organization for which a defendant is required to work, the order had to specify the project on which the defendant was required to work and whether the district probation department or a court-related services office would perform the administrative duties required by the placement of the defendant in community service program. Under S. B. 1067, these last two elements were deleted from the provisions found in Article 42.036 (b), supra.
See Acts 1993, Seventy-Third Leg., Ch. 900, Section 5.03 pp. 3754-3755.

The court may order the defendant to perform community service work under this measure only for a governmental entity or a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community.

A governmental entity or nonprofit organization that accepts a defendant under this section to perform community service must agree to supervise the defendant in the performance of the defendant's work and report on the defendant's work to the community supervision and corrections department or court-related services office.

A court may not order a defendant who is employed to perform more than 16 hours per week of community service under this article unless the court determines that requiring the defendant to work additional hours does not work a hardship on the defendant or the defendant's dependents.

A court may not order a defendant who is unemployed to perform more than 32 hours per week of community service under this article but may direct the defendant to use the remaining hours of the week to seek employment.

A defendant is considered to have served one day in jail for each eight hours of community service performed under this article.

Note: It is my opinion that a CSCD has the legal authority to supervise defendants convicted of Class C misdemeanors and sentenced to perform community service, even if these convictions come out of courts that are not courts of record, i.e., municipal, justice, and constitutional county courts.

Fine Discharged

Article 43.09, Code of Criminal Procedure, states that when a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary fine or is confined in a jail after conviction of a felony for which a fine is imposed, if he is unable to pay the fine and costs adjudged against him, he may for such time as will satisfy the judgment be put to work in the county jail industries program, in the workhouse or on the county farm, or public improvements and maintenance projects of the county or a political subdivision located in whole or in part in the county . . . or he shall be confined in jail for a sufficient length of time to discharge the full amount of fine and costs adjudged against him; rating such confinement at $50 for each day.

A court may require a defendant who is unable to pay a fine or costs to discharge all or part of the fine or costs by performing community service.

In its order requiring a defendant to participate in community service work under this article, the court must specify:
1) the number of hours the defendant is required to work; and
2) whether the community supervision and corrections department or a court-related services office will perform the administrative duties required by the placement of the defendant in the community service program.

The court may order the defendant to perform community service work under this article only for a governmental entity or a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community.

A governmental entity or nonprofit organization that accepts a defendant under this article to perform community service must agree to supervise the defendant in the performance of the defendant's work and report on the defendant's work to the district probation department or court-related services office.

A court may not order a defendant to perform more than 16 hours per week of community service under this article unless the court determines that requiring the defendant to work additional hours does not work a hardship on the defendant or the defendant's dependents.

A defendant is considered to have discharged $100 of fines or costs for each eight hours of community service performed under this measure.

Note: The Legislature changed this final provision in 1999. Prior to that time a defendant was considered to have discharged $50 of fines or costs for each eight hours of community service performed under this measure.

Note: I had previously stated that courts could increase the credit on fines and costs for eight hours of community service performed in an amount more than the pecuniary amount statutorily provided for in Article 43.09 (f), Code of Criminal Procedure.

Rationale: The term "considered" found in Article 43.09 (f), supra, establishes a minimal credit allowable by law but does not limit the amount of credit allowable by law.

Note: The term "court costs" is not defined by law. One intermediate appellate court has held that in order for a court to impose a court cost, it must be expressly identified as a court cost in the statutes.
See Busby v. State, 951 S. W. 2d 928 (Tex. App. - Austin, 1997)

However, another intermediate appellate court has upheld a trial court's order that a probationer pay for the costs of preparing a presentence investigation report as a "court cost" even though no statutory provision allows for such.
See Tovar v. State, 777 S. W. 2d 481 (Tex. App. - Corpus Christi, 1989)

Community Service for "Racing" Offenses

In 2003 the Legislature amended the penalty dealing with the offense relating to racing of a motor vehicle on a public highway or street. The Legislature added a Section 521.350 to the Transportation Code to provide that a person whose license is suspended for the offense of racing (Transportation Code, Section 454.420) shall be required by the court in which the person was convicted to perform at least 10 hours of community service as ordered by the court. Moreover, the provision also states that if the person is a resident of this state without a driver's license to operate a motor vehicle, the court shall issue an order prohibiting the department [of public safety] from issuing the person a driver's license before the person completes the community service.

This measure further provides that if a person who is required to perform community service under this provision completes that community service before the end of the person's license suspension, the person may apply to the department [of public safety] for reinstatement of the person's license or the issuance of a new license. Finally, this provision states that the application must include proof satisfactory to the department [of public safety] that the person has performed the community service.
See Acts 2003, 78th Leg., Ch. 535.

Note: This measure applies only to an offense committed on or after September 1, 2003.

Community Service for Outdoor Burning of Household Refuse in Certain Residential Areas

In 2005 the Legislature added Section 352.082 to the Local Government Code to provide that a person commits a Class C misdemeanor offense if the person intentionally or knowingly burns household refuse outdoors on a lot that is:
(1) located in a neighborhood; or
(2) smaller than five acres.
Nevertheless this new provision only applies to the unincorporated area of a county:
(1) that is adjacent to a county with a population of 3.3 million or more; and
(2) in which a planned community is located that has 20,000 or more acres of land that was originally established under the Urban Growth and New Community Development Act of 1970 and that is subject to restrictive covenants containing ad valorem or annual variable budget based assessments on real property.

This provision further provides that on conviction, the court shall require the defendant, in addition to any fine, to perform community service as provided by Section 16 (e), Article 42.12, Code of Criminal Procedure. In addition this provision states that a defendant required to perform community service under this measure shall perform 60 hours of service and the community service must consist of picking up litter in the county in which the defendant resides or working at a recycling facility if a program for performing that type of service is available in the community in which the court is located. Finally this measure became effective on September 1, 2005.

Community Service for the Offense of Minor in Possession

Section 106.05, Alcohol Beverage Code makes it a criminal offense for a minor, except under certain circumstances, to be in possession of an alcoholic beverage.

As part of the punishment for this offense, Section 106.071, Alcohol Beverage Code, states that a the court must order a minor placed on deferred disposition for or convicted of an offense to which this section applies to perform community service for:

(A) not less than eight or more than 12 hours, if the minor has not been previously convicted of an offense to which this section applies; or

(B) not less than 20 or more than 40 hours, if the minor has been previously convicted once of an offense to which this section applies.

In addition, community service ordered under this section must be related to education about or prevention of misuse of alcohol if programs or services providing that education are available in the community in which the court is located. If programs or services providing that education are not available, the court may order community service that it considers appropriate for rehabilitative purposes.

In 2007 the Texas Legislature enacted H. B. 3692. This bill amends Article 45.049, Code of Criminal Procedure, by adding a subsection (g) and (h) to provide that a defendant charged with the offense of minor in possession can elect to perform the required community service in the county in which the defendant resides, as opposed to the county in which the court is located but only if the governmental entity or nonprofit organization agrees to:

(A) supervise the defendant in the performance of the defendant's community service work; and

(B) report to the court on the defendant's community service work.

Finally, the changes made to Article 45.049, Code of Criminal Procedure, became effective on September 1, 2007.

Note: The community service program must comply with Sections 106.071 (d) and (e) of the Alcohol Beverage Code, except that if the educational programs or services described by Section 106.071 (e) are not available in the county of the defendant's residence, then the court may order community service that it considers appropriate for rehabilitative purposes.

Community Service for the Offense of Graffiti

In 2009 the Texas Legislature enacted H. B. 1633. The bill amends Article 42.12, Section 11, Code of Criminal Procedure, by adding a subsection (k) to provide that if a court grants community supervision to a defendant convicted of graffiti, the court must require as a condition of community supervision that the defendant perform:

1) at least fifteen hours of community service if the amount of pecuniary loss resulting from the graffiti offense is $50 or more but less than $500; or
2) at least thirty hours of community service if the amount of pecuniary loss resulting from the graffiti offense is $500 or more.

In addition, this bill amends Article 42.037, Code of Criminal Procedure, by adding a section (s) provide, among other things, that if the court orders a defendant to make restitution for the offense of graffiti and the defendant is financially unable to make the restitution, the court may order the defendant to perform a specific number of hours of community service to satisfy the restitution.

Finally this bill amends Section 54.046, Family Code, to provide that (d)if a juvenile court places on probation under Section 54.04(d) a child adjudicated as having engaged in conduct in violation of Section 28.08, Penal Code, in addition to other conditions of probation, the court shall order the child to perform:

(1) at least 15 hours of community service if the amount of pecuniary loss resulting from the conduct is $50 or more but less than $500; or

(2) at least 30 hours of community service if the amount of pecuniary loss resulting from the conduct is $500 or more.

This new change becomes effective for offenses committed on or after September 1, 2009.

Community Service for the Offense of Failure to Avoid Injuring or Endangering a Visually Impaired Pedestrian

In 2009 the Texas Legislature enacted H. B. 1633. The bill amends Section 552.010 of the Transportation Code by adding a subsection (c) to provide that if it is shown on the trial of the offense of failure to avoid injuring or endangering a visually impaired pedestrian crossing a roadway in a crosswalk that as a result of the commission of the offense a collision occurred causing serious bodily injury or death to the visually impaired person, the offense will be a misdemeanor punishable by:

1) a fine of not more than $500; and
2) 30 hours of community service to an organization or agency that primarily served disabled or visually impaired persons, to be completed in not less than six months and not more than one year.

Moreover under this bill a portion of the community service required under this measure must include sensitivity training. Finally this bill becomes effective for offenses committed on or after September 1, 2009.

Immunities

Article 42.20, Code of Criminal Procedure, provides that:

1) a director or employee of a community supervision and corrections department or a community corrections facility;
2) a sheriff or employee of a sheriff's department;
3) a county judge, county commissioner, or county employee;
4) an officer or employee of a state agency; or
5) an officer or employee of a political subdivision other than a county

and the governmental entity that the individual serves as an officer or employee are

are not liable for damages arising from an act or failure to act by the individual or governmental entity in connection with a community service program or work program established under this chapter or in connection with an inmate, offender, or releasee programmatic or nonprogrammatic activity, including work, educational, and treatment activities, if the act or failure to act:

1) was performed pursuant to a court order or was otherwise performed in an official capacity; and
2) was not performed with conscious indifference for the safety of others.

In addition, this article states that Chapter 101, Civil Practice and Remedies Code, does not apply to a claim based on an act or a failure to act of an individual listed in this measure or a governmental entity the officer serves as an officer or employee if the act or failure to act is in connection with a program described in this article.

Note: In 2003 H. B. 178 added county attorneys, district judges, district attorneys, and criminal district attorneys to this list of persons who are provided immunity under this measure.

However, note further that this change did not include county court at law judges, assistant county attorneys, assistant district attorneys, or employees of the county or district attorney's office.

Note finally, H. B. 178 did not amend Article 43.131, Code of Criminal Procedure.

Article 43.131, Code of Criminal Procedure, provides the exact same immunities for community service performed under Chapter 43 of the Code of Criminal Procedure.

Furthermore, Government Code, Section 497.096 states that an employee of the Texas Department of Criminal Justice, sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, employee of a community corrections and supervision department, restitution center, or officer or employee of a political subdivision other than a county is not liable for damages arising from an act or failure to act in connection with community service performed by an inmate imprisoned in a facility operated by the department or in connection with an inmate or offender programmatic or nonprogrammatic activity, including work, community service, educational, and treatment activities, if the act or failure to act was not intentional, willfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

Immunity for Injuries arising from Community Service Programs – Yes You can be Sued

For well over fifteen years, a provision in the law has been in place affording immunity for injuries arising from a community service program or work program established under Chapter 42.12, Code of Criminal Procedure. Article 42.20 (a), Code of Criminal Procedure, states that an individual listed in Subsection (c) of this article and the governmental entity that the individual serves as an officer or employee are not liable for damages arising from an act or failure to act by the individual or governmental entity in connection with a community service program or work program established under this chapter or in connection with an inmate, offender, or releasee

programmatic or nonprogrammatic activity, including work, educational, and treatment activities, if the act or failure to act:

(1) was performed pursuant to a court order or was otherwise performed in an official capacity; and
(2) was not performed with conscious indifference for the safety of others.

Despite the fact that this statute has been in existence for well over a decade and one-half, it is only recently that an appellate court has actually rendered a decision based on a claim of immunity under this provision of the law.

In *Tarrant County et al. v. Morales*, 207 S. W. 3d 870 (Tex. App. – Fort Worth, 2006), the defendant (and plaintiff in the civil suit) was serving a jail sentence in the Tarrant County Jail's work release program. The defendant reported to a minimum security facility to obtain her work assignment. While there she went into a room where there was a row of stadium seating. She placed her hand on one of the seats and the row of chairs fell on her, knocking her to the floor and causing her to sustain serious injuries and damages.

The defendant sued the county, asserting negligence and premise defect claims. The county in turn asserted that it was immune from suit under Article 42.20, supra. In particular, the county contended that the defendant did not plead facts sufficient to bring her suit within the "conscious indifference" exception to the county's immunity protection under Article 42.20, supra, and that there was no evidence that the county had created an unreasonable risk of harm to the defendant. The trial court denied the county's plea to the jurisdiction and the county brought an interlocutory appeal concerning this ruling.

The Fort Worth Court of Appeals, in considering this matter, noted that the immunity provisions found in Article 42.20, supra, did not apply if the act or failure to act was performed with conscious indifference. Moreover, the appellate court observed that the term "conscious indifference" was not defined in Article 42.20. The Fort Worth Court of Appeals stated that the Supreme Court of Texas had held that conscious indifference was an element of gross negligence. See *State v. Shumake*, 2006 WL 1716304 (Tex. June 23, 2006).

Thus the Court had to examine the general definition of "gross negligence" as enunciated in past Court rulings. Under this definition, the Court noted that the test for "conscious indifference" focused on the actor's mental state. Moreover the appellate court observed that to establish conscious indifference, it was only necessary to show that the actor proceeded with knowledge that the harm was a "highly probable" consequence of the act or failure to act; it was not necessary to show that the actor actually intended to cause harm. See *Wal-Mart Stores, Inc. v. Alexander*, 868 S. W. 2d 322 (Tex. 1993).

In examining this matter the Court noted that in the plaintiff's petition she claimed that the court was negligent by failing to properly install the seating; failing to properly fasten the seating to the floor, failing to maintain the seating; and failing to warn her of the hazardous and dangerous condition. Moreover the plaintiff alleged that each of these acts and omissions amounted to conscious indifference to her safety and proximately caused her injuries. Finally the plaintiff alleged that the county knew that the stadium seats that fell on her were not properly fastened to the floor, but took no steps to fix the problem or to warn her of the danger.

The Fort Worth Court of Appeals found that these allegations were sufficient to demonstrate that the county performed an act or omission involving an extreme risk to others, that the county had actual awareness of the risk, and that the county proceeded with knowledge that the harm was a highly probable consequence of its alleged failure to act. Hence the Court held that the plaintiff pleaded sufficient jurisdictional facts to bring her suit within the "conscious

indifference" exception to the county's immunity from suit under Article 42.20, supra, and the trial court properly denied the county's plea to the jurisdiction.

This holding is significant for several reasons. First, even though the injuries in this suit stemmed from a county jail program and not a community service program, its holding is equally applicable to both a community service or work program established under Article 42.12, supra, and any other inmate, offender, or releasee programmatic or nonprogrammatic activity. Second, this holding interpreting the term "conscious indifference" is equally applicable to the term "conscious indifference" found in Article 43.131, Code of Criminal Procedure, and Government Code, Section 497.096.

Finally, it should be understood that this holding simply allowed the plaintiff to procedure with her suit. It did not indicate that if evidence in support of this allegation were ever present in a trial, that the fact-finding body, e.g., a jury would necessarily find that the county acted with conscious indifference. Nevertheless this holding also indicates that the bar for alleging conscious indifference and defeating a plea to the jurisdiction of the court is much lower than what I had previously thought.

What about nonprofit organizations?

The law does not specifically exempt nonprofit organizations that participate in community service programs from liability. Therefore a nonprofit organization must fall within the Charitable Immunity and Liability Act of 1987 in order to obtain relief from liability for injuries arising from community service projects.

The Charitable Immunity and Liability Act of 1987 is found at Chapter 84 of the Civil Practice and Remedies Code. The purpose of this act is "to reduce the liability exposure and insurance costs of [charitable] organizations and their employees and volunteers in order to encourage volunteer services and maximize the resources devoted to delivering these services."
A charitable organization may be either "any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational or educational organization" or one organized to promote the general welfare.

A charitable organization may also be one that is tax exempt under sections 501 (c) (3) or (4) of the Internal Revenue Code.

Note: The limitation on liability of charities under this act is applicable only to "nonhospital" charitable organizations.

This Act applies to the organization itself, to employees of the organization, and to volunteers of the organization.

This Act provides that the liability for a nonprofit organization is limited to money damages in the maximum amount of $500,000 per person, $1,000,000 per single occurrence of bodily injury or death and $100,000 per single occurrence of damage to or destruction of property.

However, in order to avail itself to the limitations provided by this Act, a nonprofit organization must obtain and maintain liability insurance for any act or omission for which the Act may

provide protection in an amount at least equal to the maximum amount of potential liability the charity may incur under the Act and the policy must apply not only to the acts or omissions of the organization but also to those of its employees and volunteers.

Under the Act, the liability of an employee of a charitable organization is limited to $500,000 per person, $1,000,000 per single occurrence of bodily injury or death and $100,000 per single occurrence of damage to or destruction of property.

Nevertheless for an employee to claim the protection of the Act, he must be employed by a nonhospital charitable organization and must be acting in the course and scope of employment. In addition, the charity must have the required liability insurance coverage before an employee can claim the limited immunity.

A volunteer of a charitable organization has absolute immunity for ordinary negligence while acting in the course and scope of his duties and functions within the organization.

If the occurrence of the injury arises from the use of a motor driven vehicle by a volunteer, then the Act does not apply to the volunteer if he does not procure motor liability insurance. Nevertheless liability attaches only to the extent of the coverage of the motor insurance.

Note: Immunity under this Act for volunteers is not contingent upon the charitable organization procuring liability insurance.

Liability Issues

42 U. S. C. Section 1983 creates a federal cause of action for a deprivation of a right secured by the United States Constitution. The state liability exemptions for community service programs do not apply to a suit under Section 1983. Section 1983 states that every person who, under color of any statute, ordinance, regulation, custom or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to be deprived of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The elements of a 1983 suit are:
1) allegation and proof of color of law;
2) causation in fact;
3) proximate cause; and
4) an entitlement to damages or declaratory and injunctive relief.

Mere negligence alone does not create a cause of action under Section 1983. There has to be an element of willfulness, recklessness, or conscience disregard.

Note: Liability is only on the individual who actually caused the injury.

Liability for Judges

It is extremely unlikely that a judge could successfully be sued for an act arising from a sentencing decision.
An act that is judicial in nature is not cognizable under state law in accordance with the Texas Tort Claims Act.
See Government Code, Section 101.053 (a)

Moreover, even under federal law a judge can assert the defense of absolute immunity for actions that are clearly judicial in nature. See Stump v. Sparkman, 98 S. Ct. 1099 (1978) in which the Supreme Court stated that a judge will not be deprived of immunity [in a section 1983 suit] because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction."

Nevertheless, judges overseeing the operation of a CSCD could incur liability in their administrative capacity under federal law.
The United States Supreme Court has held that state judges can be held liable under federal law for actions that are administrative, as opposed to judicial, in nature.
See Forrester v. White, 108 S. Ct. 538 (1988).

However, it is doubtful that any liability would be incurred by judges acting in their administrative capacity under state law.
Generally, a governing body cannot be sued under the Texas Tort Claims Act for any discretionary decision involving policy formulation.
See University of Texas at Arlington v. Akers, 607 S. W. 2d 283 (Tex. Civ. App. - 1980)

Finally, in 2005 H. B. 1326 amended Government Code, Chapter 76 to provide that both the district and county court at law judges trying criminal cases in the county or counties served by the judicial district are responsible for establishing a community supervision and corrections department. Moreover this bill further specifies that the only direct responsiblities that the judges have regarding the CSCD are to approve the department's budget and community justice plan and to appoint the director of the CSCD and its fiscal officer, if fiscal services are not otherwise provided by the county. In addition, this bill specifies that the judges responsible for establishing the CSCD have judicial immunity in a suit arising from:
(1) the performance of a duty mandated under this provision, i.e., approval of the budget and plan; and
(2) the appointment of a department director or a fiscal officer or an act or failure to act by a department employee or by a department director or fiscal officer.

Supervision of Community Service Projects

The law does not specify whether an individual, either with the CSCD or with the organization receiving the benefit of community service, must have an individual present to observe the performance of the community service program. The better practice is to have an individual present at the site location at all times that community service is being performed.

Nevertheless some courts have directed that probationers go to a site, such as a county road, and perform community service without the necessity of having a responsible person observe their performance. However, if such is the case, I would still strongly recommend that prior to sending probationers to perform their community service obligations, the CSCD give them adequate instructions for safely completing their tasks. I have also recommended that the CSCD tell them to wear proper clothing and bring sufficient water. Finally, I have recommended that probationers not be allowed to operate heavy machinery, but instead use simple tools.

This final recommendation is premised on the assumption that many of the probationers performing community service are unskilled laborers. For those that do have a skill, such as an electrician, welder, or plumber, this final recommendation may not be applicable.

Delegation of Authority

An order that designates the community service project and establishes the number of hours to be performed but leaves it to the CSCD to determine when the probationer shall complete his community service obligation is not an improper delegation of authority from the court to the community supervision officer.
In Gomez v. State, 730 S. W. 2d 144 (Tex. App. - Corpus Christi, 1987) the defendant contended that the trial court's order that he "complete 200 hours of community service restitution at Mujeres Unidas, 420 N. 21st Street, McAllen, Texas, as directed by the Adult Probation Department commencing on December 20, 1986, as ordered by the Court" constituted an unlawful delegation of authority.

The Corpus Christi Court of Appeals noted that in this case, the condition of probation stated the location of the community service, the number of hours required of the defendant, and the date on which the defendant was to begin the community service. Thus the Court held that this condition of probation was not vague and uncertain.

Moreover, the term "as directed by the Adult Probation Department" merely permitted the defendant and the probation department to arrange the community service at times which would not conflict with the defendant's work schedule. Hence, it did not impermissibly delegate authority to the probation department to set the terms of probation.

Mixing Adults with Juveniles

It is the general rule that juvenile and adult offender populations cannot be mixed at community service project sites. Both groups can be required to perform community service at the same site provided each group is separated from the other and there is a responsible individual present to supervision them.

Dual Supervision of mixed offender groups

In reviewing the various provisions in the law allowing for community service by inmates or offenders, it appears that the law contemplates the performance of community service (or some form of manual labor) under three circumstances:
1) as a part of an individual's confinement in a county jail;
2) in lieu of confinement in a county jail, or

3) as a condition of community supervision.

In the first circumstance, it appears that only the sheriff can administer a work program for a defendant.
In the second circumstance, it appears that either the sheriff or a CSCD can administer the program.
Finally, in the third circumstance, it appears that only a CSCD can administer the program.

Nevertheless it is my opinion that a CSCD could enter into an interlocal cooperation contract to administer a community service program for defendants ordered to perform community service in lieu of serving a period of confinement in a county jail.
However, I do not believe that a CSCD could enter into a contract with a sheriff's department in order to have the sheriff's department supervise probationers ordered to perform community service as a condition of community supervision.
Moreover, I do not believe that a CSCD could enter into a contract with a sheriff's department in order to administer a work program for defendants ordered confined in a county jail.

Performing Community Service at non-approved project sites

In addition to receiving the designation of community service projects by the judge(s), it is also essential to receive permission from the entity having jurisdiction over a site location before performing community service at that location.

Moreover, it is best that the property lines at the site be ascertained and the nature of the work to be perform be fully understood prior to undertaking a community service project. This will prevent performing work on property that actually belongs to someone other than the community service organization or doing work that has not been requested.

Performing Community Service for Non-Profit Organizations

The law does not specify what type of nonprofit organizations can participate in community service programs. Presumably organizations that are designated 501 (c) (3) by the Internal Revenue Service are qualified.

Moreover, the law does not specify what proof is necessary in order to verify that an organization is nonprofit. Presumably a tax exempt letter will suffice to establish the status of a non-profit organization. Nevertheless it is preferable to obtain the tax exempt number and forms from the organization.

501 (c) (3) organizations that are religious in nature are more problematic.

For example, in determining whether community service can be performed for an institution of higher education that is owned and operated by a religious organization, three matters must be determined.
First, it must be determined whether attendance at the university or college is restricted to only members of the denomination of the religious organization that owns or operates the institution

or whether any student can attend that university or college, regardless of his religious affiliation or lack thereof.
Second, it must be determined whether the faculty can only be employed at the university or college if they belong to the religious denomination of the organization that owns or operates the university or whether the employment of faculty at the university is not predicated on whether they belong to a particular religious denomination.
Finally, it must be ascertain whether the overall focus of the university or college is to provide teaching and degrees in fields of general knowledge or whether the primary purpose of the institution is to provide religious instruction and religious degrees.

Note: Even if these three tests are met, defendants should not perform community service tasks that directly benefit any seminary program or tasks that maintain or improve the building that houses the seminary program or a chapel at a university or college.

Injuries to Third Parties

Open Courts provision of Article I, Section 13 to the Texas Constitution.

Authorized Community Service Projects

A) Religious based organizations

A community service program designed to improve and maintain churches is violative of both the United States and Texas Constitution for several reasons:

1) The primary effect of such a requirement would be to promote and support a particular religious denomination or sect.

2) Such action would also foster an excessive government entanglement with religion by overtly benefiting and aiding a religious institution under the auspices of the State.

3) Finally, the expenditure of any public funds to repair, clean or refurbish churches would clearly be violative of the prohibition found in Article 1, Section 7 of the Texas Constitution.

Nevertheless, there is nothing in the law which would prevent a community service program from assisting a religious body which provides secular services to the community as a whole, such as a church organized food pantry for the poor or a clothing drive for the homeless.
Moreover, nothing in the law precludes a religious affiliated organization, such as the Salvation Army, Habitat for Humanity, or YMCA or YWCA, from sponsoring a community service program which provides non-sectarian or non-doctrinal aid in a locality.

B) Private Property

In order to determine whether a community service program that benefits private property may be utilized, one must apply a three-prong test:

1) The aim of the program must be to bestow an overall benefit to the public in general.

2) Any economic benefit bestowed on a private individual must be incidental only.

3) A public agency must be the sole authority for establishing the guidelines and directions of the program and no private person must have any control or supervision over a probationer or the CSCD in regards to the performance of the community service project.

Graffiti removal from private buildings

A community service project used to remove graffiti from a private building is permissible provided that in removing the graffiti, no other improvement is made to the property other than restoring the building to its condition prior to its defacement by a criminal act.

C) Substitution for Labor

Many, if not most, community service programs have allowed substitution of goods or money under certain situations for labor. The statutes authorizing a court to order a defendant to perform community service do not specifically mention whether a court can require or allow a defendant to pay cash in lieu of performing a certain number of hours of community supervision.

The Community Justice Assistance Division has taken the position that the preferred concept of community service is that the offender return hours of service to the community instead of money.

Nevertheless CJAD had stated that it would not question the substitution of money in lieu of labor provided that the court's order clearly stated that a defendant could substitute money for hours of service performed.

Moreover, the purpose for which these monies were to be used would not be questioned provided that the court clearly designated the account into which the monies were to be deposited and the monies were used for county or community supervision and corrections department programs.

In 2007 the Texas Legislature enacted S. B. 909. This bill added a subsection (f) to Article 42.12, Section 16, Code of Criminal Procedure, to provide that in lieu of requiring a defendant to work a specified number of hours at a community service project or projects under Subsection (a), the judge may order a defendant to make a specified donation to a nonprofit food bank or food pantry in the community in which the defendant resides. This change became effective for community service hours imposed as a condition of community supervision that all probationers had yet to complete on or after June 15, 2007.

Also, please note that on July 17, 2007 the Attorney General received a request for opinion regarding a legal analysis as to the permissibility of a fee payment in lieu of community service hours which were not performed. See RQ-0604-GA. This request is based on a letter opinion that I issued on August 14, 1996 regarding the propriety of substituting money for community service labor. In this letter opinion I acknowledged that the statutes authorizing a court to order a defendant to perform community service did not specifically mention whether a court could require or allow a defendant to pay cash in lieu of performing a certain number of hours of community service. Nevertheless I stated that CJAD would not question this method provided that the court's order clearly stated that a defendant could substitute money for hours of service

performed and that the monies were deposited and used for county or community supervision and corrections department purposes.

If the Attorney General were to opine that there was no authority for a judge to order money or an in-kind contribution such as toys for Christmas, turkeys for Thanksgiving, or schools supplies at the beginning of the school year, then this would drastically alter across the state the current practice of allowing a substitution for community service labor. It will be interesting to learn whether the Attorney General, in issuing his opinion, considered this new change in S. B. 909 as support for the current practice or as preempting any other form of substitution for community service labor. Needless to say, I will be following this matter and will inform everyone of the Attorney General's opinion when it is finally rendered.

D) Performing community service for a community supervision and corrections department

In Wilson v. State, 835 S. W. 2d 278 (Tex. App. - Beaumont, 1992) the defendant complained of the trial court's order requiring the defendant to complete a certain number of hours of community service for the CSCD. The appellate court noted that the organization designated by the court as the community service project was the CSCD. Moreover, the Court stated that the judge had discretion to order a type of community service program that was to be administered by the Adult Probation Department.

E) Performing community service at a particular site

In Todd v. State, 911 S. W. 2d 807 (Tex. App. - El Paso, 1995) the defendant was convicted of criminally negligent homicide. Upon a jury finding of guilt, the trial court assessed punishment at one year in the county jail, probated for two years. The Court also ordered, as a condition of community supervision, that the defendant perform 100 hours of community service in a place where the aftermath of auto accidents could be observed.

This defendant appealed the imposition of this particular condition. The appellate court noted that a trial court is authorized to require a defendant to perform community service as a condition of probation. See former Tex. Code Crim. Proc. Art. 42.12, Section 11 (a) (10) (1989) and current art. 42.12, section 16. Thus the appellate court concluded that while somewhat unusual, the requirement that the community service be performed in a place where the defendant would observe the effects of automobile accidents was reasonably related to the defendant's rehabilitation and thus the trial court did not abuse its discretion in ordering this condition.

Non-Community Service Activities and Tasks

A) Performance at Community Corrections Facilities

A resident of a community corrections facility can be required to perform community service at a CCF even though the court does not order community service as a condition of community supervision.

Since a CCF can develop reasonable rules and regulations that require a resident to perform useful tasks and since the performance of such tasks serves a legitimate penological interest, a resident can be required to participate in a community service project without the necessity of securing a court order.
Moreover, a CCF can develop reasonable rules and regulations which authorize a facility administrator to direct that residents participate in community service projects for an additional number of hours that exceed the number of hours required by the court. These additional hours of community service would constitute part of the tasks and chores required to be performed under the rules and regulations of the facility and would not constitute part of the court-ordered community service.
Finally, a judge may give a probationer credit toward satisfying his court-ordered community service obligation for the work he performed while confined at a CCF or require the probationer to complete his court-ordered community service obligation after his release from the CCF.

B) Performance at State Jail Felony Facilities

It remains within the discretion of the judge that ordered a confinee to perform community service as a condition of community supervision to determine whether the hours of community service performed at a state jail facility can be applied toward the fulfillment of the court-ordered community service obligation. Ordinarily confinees perform community service at a state jail facility as a component of the programs offered at a state jail facility and not in order to satisfy an order of the court.

There are two reasons that a court may wish to consider for not counting the hours of community service performed at a state jail facility toward the fulfillment of the court-ordered obligation.
First, since it is impractical for a judge in one jurisdiction to identify the available organizations in the area where the state jail facility is located, it would seem to be more advantageous for the court to allow the officials at a state jail facility to identify the appropriate community service projects near a state jail facility and assign confinees to work at these projects as a program component of the state jail and then for the court to have the confinees complete their court-ordered community service obligations in the sending jurisdiction after they have been released from the state jail facility.

The second reason is that if a confinee satisfied his court-ordered community service obligation at the state jail facility, then this would be a boon for the area where the state jail facility was located but would deprive the sending jurisdiction of any economic benefit derived from a confinee's fulfillment of his court-ordered community service obligation. Thus a judge may want to adopt a policy that the confinee be required to perform useful tasks and chores while confined at a state jail felony facility but still be required to complete his court-ordered community service for the benefit of the sending jurisdiction.

Ethical Considerations

1) Soliciting gifts

Government Code, Section 76.007, states that a CSCD may accept public funds and grants and gifts from any source for the purpose of financing programs and facilities. A municipality, county, or other political subdivision may make grants to a CSCD for those purposes.

Thus it appears that a CSCD can solicit in kind gifts from an organization that is participating in a community service program.

2) Disposition of surplus items

It is permissible for a CSCD operating a community vegetable garden to donate the surplus crops to the county jail, the county operated juvenile detention center, or a community food bank which serves low income residents.

Code of Ethics

II. D. states that a community supervision officer shall not treat any individual differently on account of personal animosities or biases; nor shall the officer discriminate against any person on the basis of religion, race, sex, creed, national origin, disability, health status, or age. Moreover, a community supervision officer shall not represent to any person that he or she can gain influence or access to anyone because of the officer's position as a community supervision officer or because of the officer's relationship with the Court.

III. B. states that a community supervision and corrections department employee shall not engage in any activity which creates an actual or apparent conflict of interest or has the appearance of a conflict of interest which affects his or her duties as a department employee.

III. C. states that a community supervision officer shall accurately and timely document all significant interactions concerning the supervision of defendants and record all significant contacts with other agencies pertaining to the defendant.

IV. B. states that a community supervision officer shall supervise defendants with fairness and competency. A community supervision officer shall treat all individuals that the officer is supervising with the dignity and respect to which all human beings are entitled. A community supervision officer shall treat all persons with whom the officer comes in contact in his or her official capacity impartially. The officer shall neither treat some individuals more favorably than others; nor shall the officer treat some individuals more adversely than others.

IV. C. states that a community supervision officer shall maintain a professional relationship with the individuals the officer is supervising. A community supervision officer shall not use his or her authority as a supervising officer or his or her position to extract any personal gain from a defendant or exert any undue duress or harassment of any defendant.

IV. D. states that a community supervision and corrections department employee shall not violate a defendant's civil and legal rights, including any right to the confidentiality of any communication or records. Moreover, a community supervision officer shall disclose no

personal information concerning a defendant other than in his or her official capacity and in accordance with any applicable law and administrative policy.

Contract Considerations

The standards of the Community Justice Assistance Division in Texas Administrative Code Section 163.31 (d) states that CSCD directors must maintain written agreements with governmental and/or nonprofit agencies and organizations to provide offenders opportunities to comply with court-ordered community service restitution according to the Texas Code of Criminal Procedure, Article 42.12, Section 16 (CSR programs and referrals).

The contract needs to specify what are the responsibilities of the CSCD and the organization participating in the community service program vis-à-vis each other.

The contract should specify that persons provided to an organization participating in the community service program shall have been ordered by a court to perform community service.

The contract should include a provision that the organization will promptly notify the CSCD of no shows within a specified period of time.

The contract should include the names and telephone numbers of contact people both with the CSCD and organization.

The contract should include a provision requiring the organization to periodically file written reports with the CSCD concerning the performance of each probationer/defendant and the number of hours of community service performed by that probationer/defendant.

The contract should specify who has the sole right and responsibility of supervising the actual performance of the community service project.

The contract should specify that neither the CSCD nor the organization are deemed an employee, agent or representative of the other party, that neither party has the authority to incur any obligation or make any representation on behalf of the other party, and that each party for all purposes is an independent contractor.

The contract should specify that any and all expenses incurred in the furtherance of and the performance of the agreement must be borne by the party that incurred them.

The contract should state that neither party is responsible or liable in whole or in part for the acts or omissions of the other party, its agents, servants or employees.

The contract should specify that neither party shall be required to indemnify the other party.

The contract should specify that if one or both parties wish to procure liability insurance then it will be that party's responsibility to do so.

The contract should include a provision that no person with the CSCD has received any personal benefit from the organization for procuring community service labor.

The contract should include a provision requiring the service provider to adopt and implement workplace guidelines concerning persons with AIDS or HIV infection and to also develop and implement guidelines regarding confidentiality of AIDS and HIV-related medical information for employees of said service provider and for clients, inmates, patients and residents served by the service provider.

The contract should contain a 30 day termination clause.

Finally, the contract should contain an addendum with an agency description of the services to be performed at the community service site.

August 10, 2009