

- SUBJECT:** Allowing TDCJ to award diligent participation credit to state jail felons
- COMMITTEE:** Corrections — favorable, without amendment
- VOTE:** 7 ayes — Murphy, J. White, Allen, Keough, Krause, Schubert, Tinderholt  
0 nays
- WITNESSES:** For — Lance Lowry, American Federation of State County Municipal Employees-Texas Correctional Employees-Huntsville; Sarah Pahl, Texas Criminal Justice Coalition; Derek Cohen, Texas Public Policy Foundation; Lauren Johnson; (*Registered, but did not testify*: Victor Cornell, American Civil Liberties Union of Texas; Cynthia Humphrey, Association of Substance Abuse Programs; Seth Mitchell, Bexar County Commissioners Court; Caitlin Dunklee, Grassroots Leadership; Gyl Switzer, Mental Health America of Texas; John Patrick, Texas AFL-CIO; Allen Place, Texas Criminal Defense Lawyers Association; Jennifer Erschabek, TIFA; Deece Eckstein, Travis County Commissioners Court)
- Against — None
- On — (*Registered, but did not testify*: Bill Stephens, Texas Department of Criminal Justice)
- BACKGROUND:** Under Penal Code, sec. 12.35, a person found guilty of a state-jail felony can be punished with 180 days to two years in a state jail and an optional fine of up to \$10,000. The state currently has 19 state jails housing about 9,500 state-jail offenders.
- Under Code of Criminal Procedure, art. 42.12, sec. 15(h) those confined in state jails do not earn good conduct time but may be awarded diligent participation credit.
- Diligent participation is defined to include active involvement in a work program, successful completion of an educational, vocational, or treatment program, or progress toward successful completion of such a program if

the progress was interrupted by illness, injury, or another circumstance outside of a participant's control.

By the 30th day before defendants have served 80 percent of their sentences, the Texas Department of Criminal Justice (TDCJ) is required to report to the court the number of days an inmate has diligently participated in a program. Judges are authorized to use the report to credit an inmate time for each day the inmate diligently participated in a program. The time credited cannot exceed one-fifth of an inmate's original sentence.

**DIGEST:**

HB 1586 would change the way credit is awarded to state jail inmates who diligently participate in educational, vocational, treatment, and work programs. Instead of reporting to a court the number of days an inmate diligently participated in the programs, TDCJ would be required to record the information. TDCJ would be required to credit against an inmate's sentence time for each day of diligent participation, and judges no longer would be authorized to make such credits.

The bill would take effect September 1, 2015, and would apply to those confined in a state jail for an offense committed on or after that date.

**SUPPORTERS  
SAY:**

HB 1546 would streamline the process for awarding diligent participation credits to state jail felons so that the programs would provide real incentives for inmates to participate in educational, vocational, treatment, and work programs. These programs can reduce recidivism, so the state should do all it can to encourage participation in them.

The current process for awarding diligent participation credits to those participating in programs in state jails is cumbersome, time-consuming and can burden courts. The process begins near the end of an inmate's sentence when TDCJ sends to the court a report on the inmate's participation in the programs. The court then has to receive and process the request, make a decision about awarding credit to the inmate, and return the report to TDCJ.

This process can fail to provide an incentive for inmates to participate in programs. Courts do not respond to the reports in about 56 percent of the cases, so inmates receive no credit, according to TDCJ. In others, the response comes so late into an inmate's sentence that there is no meaningful reduction of the sentence. This uncertainty can discourage inmates from participating in the programs.

The bill would address these problems by allowing TDCJ to award the diligent participation credits. TDCJ would model the process on the way it awards good time to inmates in prison so that diligent participation credit was awarded as it was earned. This would be fairer to inmates and would give them certainty about the time that would be credited on their sentences and incentives to work hard in the program. As under current law, inmates would not be awarded participation credit for time under disciplinary status, and credits would be awarded only for diligent participation. The state allows TDCJ the discretion to award good time to those in prison, and the awarding of diligent participation credit should follow this model because TDCJ is in a better position than a judge to evaluate an inmate's participation.

The state made the decision in 2011 to allow diligent participation credit for state jail inmates, and the bill would improve the implementation of this policy. Originally, state jails were established without provisions for credits for program participation because those programs were to be used in conjunction with probation. The use of state jails has changed, and they now function more like traditional correctional facilities in which good time is awarded. Encouraging diligent participation in rehabilitative programs improves the effectiveness of state jails even if the number of days served is reduced. Inmates still will serve meaningful sentences because current law limits diligent participation credits to no more than 20 percent of a sentence.

As a result of inmates serving less time in state jails, the state would save money. The bill could have a positive impact of \$81.3 million for fiscal 2016-17, according to the fiscal note.

OPPONENTS  
SAY:

The awarding of diligent participation credits in state jails should continue to be reviewed by the courts rather than awarded administratively as proposed by HB 1546. In about one-quarter of the responses to participation reports that TDCJ has received from courts, judges did not award credit to offenders, and this discretion should continue.

The state jail system was crafted to have short sentences that would be served in their entirety and would involve rehabilitative programs. The average state jail sentence in fiscal 2014 was approximately 10 months, and reducing these sentences by up to one-fifth with no judicial discretion could reduce some punishments too much. As sentences become shorter, there is the risk that the educational, vocational, treatment, and work programs will not be as effective.

NOTES:

According to the fiscal note, HB 1546 would have a positive impact of \$81.3 million for fiscal 2016-17 due to the effect it would have in reducing state-jail terms of confinement.

The companion bill, SB 589 by Rodriguez, was placed on the April 13 Senate intent calendar.