

- SUBJECT:** Awarding diligent participation credit to state jail felons
- COMMITTEE:** Corrections — favorable, without amendment
- VOTE:** 8 ayes — White, Allen, Bowers, Dean, Morales, Neave, Sherman, Stephenson
- 0 nays
- 1 absent — Bailes
- WITNESSES:** For — Allen Place, Texas Criminal Defense Lawyers Association; Allison Franklin, Texas Criminal Justice Coalition; Marc Levin, Texas Public Policy Foundation; (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; Caitlin McClune, Austin Justice Coalition; Chris Harris, Just Liberty)
- Against — None
- On — Lorie Davis, Texas Department of Criminal Justice
- BACKGROUND:** Under Code of Criminal Procedure art. 42A.559, those confined in state jails do not earn good conduct time but may be awarded diligent participation credits. Diligent participation is defined to include active involvement in a work program; successful completion of an educational, vocational, or treatment program; and progress toward successful completion of such a program that was interrupted by illness, injury, or another circumstance outside the control of the defendant.
- Under Code of Criminal Procedure art. 42.0199, judges are required to make a finding on whether the person was presumptively entitled to diligent participation credits. For defendants with such findings and who have not been subject to disciplinary action while in the state jail, the Texas Department of Criminal Justice (TDCJ) is required to credit them for each day they diligently participate in an educational, vocational, treatment, or work program. The time credited cannot exceed one-fifth of

an inmate's original state jail sentence and cannot be awarded during any time a defendant is subject to disciplinary status.

Code of Criminal Procedure art. 42A.559(g) establishes procedures relating to those who did not have a finding that they were presumptively entitled to diligent participation credit or had been the subject of disciplinary action while in the state jail. By the 30th day before these defendants have served 80 percent of their sentences, 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.

Interested parties have noted that TDCJ has authority to award credits to all those in prisons, but not to all state jail felons. Some have suggested that giving the agency such authority would make the system more fair and encourage participation in rehabilitative programs.

DIGEST:

HB 4566 would require that TDCJ award diligent participation credits to all state jail inmates who meet the criteria in current law for diligent participation and disciplinary status, instead of only those with a judicial finding that they were presumptively entitled to the credits.

The bill would repeal references to the judicial finding on whether an inmate was presumptively entitled to the credits and to the procedure used for those who have a finding that they were not presumptively entitled to the credits.

The bill would take effect September 1, 2019, and would apply to individuals confined in a state jail for an offense committed on or after that date.

NOTES:

According to the Legislative Budget Board, the bill would have a positive impact of \$63.8 million to general revenue related funds in fiscal 2020-21.