

SENATE AMENDMENTS

2nd Printing

By: Allen

H.B. No. 1546

A BILL TO BE ENTITLED

AN ACT

relating to the award of diligent participation credit to defendants confined in a state jail felony facility.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 15(h)(5) and (6), Article 42.12, Code of Criminal Procedure, are amended to read as follows:

(5) For a defendant who has participated in an educational, vocational, treatment, or work program while confined in a state jail felony facility, not later than the 30th day before the date on which the defendant will have served 80 percent of the defendant's sentence, the Texas Department of Criminal Justice shall report to the sentencing court the number of days during which the defendant diligently participated in any educational, vocational, treatment, or work program. ~~[The contents of a report submitted under this subdivision are not subject to challenge by a defendant.]~~

(6) A judge, based on the report received under Subdivision (5), may credit against any time a defendant is required to serve in a state jail felony facility additional time for each day the defendant actually served in the facility while diligently participating in an educational, vocational, treatment, or work program. If the judge does not take action under this subdivision on or before the 30th day after the date the judge receives the report, the department shall credit against any time a

1 defendant is required to serve in a state jail felony facility
2 additional time for each day the defendant actually served in the
3 facility while diligently participating in an educational,
4 vocational, treatment, or work program. A time credit under this
5 subdivision may not exceed one-fifth of the defendant's original
6 sentence [~~amount of time the defendant is originally required to~~
7 ~~serve in the facility~~]. A defendant may not be awarded a credit
8 under this subdivision for any period during which the defendant is
9 subject to disciplinary status [~~action~~]. A time credit under this
10 subdivision is a privilege and not a right.

11 SECTION 2. The change in law made by this Act applies only
12 to a person confined in a state jail felony facility for an offense
13 committed on or after the effective date of this Act. A person
14 confined in a state jail felony facility for an offense committed
15 before the effective date of this Act is covered by the law in
16 effect when the offense was committed, and the former law is
17 continued in effect for that purpose. For purposes of this section,
18 an offense was committed before the effective date of this Act if
19 any element of the offense occurred before that date.

20 SECTION 3. This Act takes effect September 1, 2015.

ADOPTED

MAY 15 2015

Atty. Gen.
Secretary of the Senate

By: *Jose Rodriguez*

H.B. No. 1546

Substitute the following for H.B. No. 1546:

By: *Whitice*

C.S. H.B. No. 1546

A BILL TO BE ENTITLED

AN ACT

1 relating to the award of diligent participation credit to
2 defendants confined in a state jail felony facility.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Chapter 42, Code of Criminal Procedure, is
5 amended by adding Article 42.0199 to read as follows:

6 Art. 42.0199. FINDING REGARDING DILIGENT PARTICIPATION
7 CREDIT. If a person is convicted of a state jail felony, the judge
8 shall make a finding and enter the finding in the judgment of the
9 case regarding whether the person is presumptively entitled to
10 diligent participation credit in accordance with Section 15(h),
11 Article 42.12.

12 SECTION 2. Section 15(h), Article 42.12, Code of Criminal
13 Procedure, is amended by amending Subdivisions (1), (5), and (6)
14 and adding Subdivisions (7) and (8) to read as follows:

15 (1) A defendant confined in a state jail felony
16 facility does not earn good conduct time for time served in the
17 facility but may be awarded diligent participation credit in
18 accordance with Subdivision (6) or (7).

19 (5) For a defendant who has participated in an
20 educational, vocational, treatment, or work program while confined
21 in a state jail felony facility, [~~not later than the 30th day before~~
22 ~~the date on which the defendant will have served 80 percent of the~~
23 ~~defendant's sentence,~~] the Texas Department of Criminal Justice
24

1 shall record [~~report to the sentencing court~~] the number of days
2 during which the defendant diligently participated in any
3 educational, vocational, treatment, or work program. [~~The contents~~
4 ~~of a report submitted under this subdivision are not subject to~~
5 ~~challenge by a defendant.~~]

6 (6) For a defendant with a judgment that contains a
7 finding under Article 42.0199 that the defendant is presumptively
8 entitled to diligent participation credit and who has not been the
9 subject of disciplinary action while confined in the state jail
10 felony facility, the department shall [~~A judge, based on the report~~
11 ~~received under Subdivision (5), may] credit against any time the
12 [a] defendant is required to serve in a state jail felony facility
13 additional time for each day the defendant actually served in the
14 facility while diligently participating in an educational,
15 vocational, treatment, or work program.~~

16 (7) For a defendant with a judgment that contains a
17 finding under Article 42.0199 that the defendant is not
18 presumptively entitled to diligent participation credit or who has
19 been the subject of disciplinary action while confined in the state
20 jail felony facility, the department shall, not later than the 30th
21 day before the date on which the defendant will have served 80
22 percent of the defendant's sentence, report to the sentencing court
23 the record of the number of days under Subdivision (5). The contents
24 of a report submitted under this subdivision are not subject to
25 challenge by a defendant. A judge, based on the report, may credit
26 against any time a defendant is required to serve in a state jail
27 felony facility additional time for each day the defendant actually

1 served in the facility while diligently participating in an
2 educational, vocational, treatment, or work program.

3 (8) A time credit under Subdivision (6) or (7) [~~this~~
4 ~~subdivision~~] may not exceed one-fifth of the amount of time the
5 defendant is originally required to serve in the facility. A
6 defendant may not be awarded a credit under Subdivision (6) or (7)
7 [~~this subdivision~~] for any period during which the defendant is
8 subject to disciplinary status [~~action~~]. A time credit under
9 Subdivision (6) or (7) [~~this subdivision~~] is a privilege and not a
10 right.

11 SECTION 3. The change in law made by this Act applies only
12 to a person confined in a state jail felony facility for an offense
13 committed on or after the effective date of this Act. A person
14 confined in a state jail felony facility for an offense committed
15 before the effective date of this Act is covered by the law in
16 effect when the offense was committed, and the former law is
17 continued in effect for that purpose. For purposes of this section,
18 an offense was committed before the effective date of this Act if
19 any element of the offense occurred before that date.

20 SECTION 4. This Act takes effect September 1, 2015.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 15, 2015

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1546 by Allen (Relating to the award of diligent participation credit to defendants confined in a state jail felony facility.), **As Passed 2nd House**

<p>No significant fiscal implication to the State is anticipated.</p>
--

The bill would amend the Code of Criminal Procedure as it relates to the awarding of diligent participation credit to defendants confined in a state jail facility. Judges would be required to provide a finding of presumptive diligent participation credit eligibility for offenders convicted of state jail felonies. For offenders who received the presumptive finding, the Texas Department of Criminal Justice (TDCJ) would be required to credit up to one-fifth of the sentence against any time a state jail inmate was required to serve for diligent participation in certain programs. For offenders who did not receive the presumptive finding, TDCJ would continue to provide judicial notification of diligent participation credit eligibility and judges would maintain discretion in awarding diligent participation credit.

Statewide data are not available to indicate how often judges may grant an affirmative presumptive finding regarding diligent participation credit, which would require TDCJ to award diligent participation credits. However, this analysis assumes the provisions of the bill would not result in a significant impact on state correctional agencies.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: UP, SD, KJo, LM, ESi

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 9, 2015

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1546 by Allen (relating to the award of diligent participation credit to defendants confined in a state jail felony facility.), **Committee Report 2nd House, Substituted**

<p>No significant fiscal implication to the State is anticipated.</p>
--

The bill would amend the Code of Criminal Procedure as it relates to the awarding of diligent participation credit to defendants confined in a state jail facility. Judges would be required to provide a finding of presumptive diligent participation credit eligibility for offenders convicted of state jail felonies. For offenders who received the presumptive finding, the Texas Department of Criminal Justice (TDCJ) would be required to credit up to one-fifth of the sentence against any time a state jail inmate was required to serve for diligent participation in certain programs. For offenders who did not receive the presumptive finding, TDCJ would continue to provide judicial notification of diligent participation credit eligibility and judges would maintain discretion in awarding diligent participation credit.

Statewide data are not available to indicate how often judges may grant an affirmative presumptive finding regarding diligent participation credit, which would require TDCJ to award diligent participation credits. However, this analysis assumes the provisions of the bill would not result in a significant impact on state correctional agencies.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: UP, KJo, LM, ESi

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 5, 2015

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1546 by Allen (Relating to the award of diligent participation credit to defendants confined in a state jail felony facility.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1546, As Engrossed: a positive impact of \$30,923,142 through the biennium ending August 31, 2017.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2016	\$11,650,841
2017	\$19,272,301
2018	\$18,910,676
2019	\$18,531,817
2020	\$18,170,254

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1
2016	\$11,650,841
2017	\$19,272,301
2018	\$18,910,676
2019	\$18,531,817
2020	\$18,170,254

Fiscal Analysis

The bill would amend the Code of Criminal Procedure as it relates to the awarding of diligent participation credit to defendants confined in a state jail facility. Allowing for time served in a state jail facility to be decreased through diligent participation credit is expected to result in a positive fiscal impact. The bill would take effect on September 1, 2015 and apply only to a person

confined in a state jail felony facility for an offense committed on or after that date.

Methodology

Under the provisions of the bill, if a judge does not take action within 30 days of notification of an inmate's eligibility for diligent participation credits, the Texas Department of Criminal Justice (TDCJ) would be required to credit up to one-fifth of the sentence against any time a state jail inmate was required to serve for diligent participation in certain programs. A state jail inmate would not be eligible to receive diligent participation credit for any period of time during which the inmate was subject to disciplinary status.

The awarding of diligent participation credit is expected to result in decreased demands upon the correctional resources of the state due to shorter terms of confinement in state jails. During the first six months of fiscal year 2015, TDCJ provided diligent participation credit eligibility notices for 8,328 offenders. Of the 8,328 notices, 3,165 received no action from the judge (approximately 38.0 percent). Offenders who receive no judicial action currently serve their full sentence. Under the provisions of the bill, TDCJ would be required to credit these offenders diligent participation time against their sentence.

The average sentence length for fiscal year 2014 state jail admissions was approximately 10 months. Based on the average sentence length of 10 months, the average maximum diligent participation credit would be approximately two months. This analysis assumes eligible inmates would earn the average maximum diligent participation credit of approximately two months. In order to estimate the future impact, the maximum credit length of two months is subtracted from the estimated average sentence length of 10 months from the estimated percentage of offenders whose diligent participation credit notice receive no judicial action. This estimated percentage is also adjusted for the projected number of yearly state jail admissions, as determined in the February 2015 Adult and Juvenile Correctional Population Projections Report . Savings of incarceration costs by TDCJ are estimated on the basis of \$47.30 per inmate per day for state jail facilities, as reported in the February 2015 Criminal and Juvenile Justice Uniform Cost Report. The estimated incarceration savings for fiscal year 2016 is \$11,650,841 (673 offenders *47.30 per day *366 days). For fiscal year 2016, the estimated incarceration savings are based on six months of savings, to allow time for the bill's provisions to fully take effect.

This analysis assumes sentencing patterns and release policies not addressed in this bill remain constant.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: UP, KJo, LM, ESi

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

March 20, 2015

TO: Honorable Jim Murphy, Chair, House Committee on Corrections

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1546 by Allen (Relating to the award of diligent participation credit to defendants confined in a state jail felony facility.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1546, As Introduced: a positive impact of \$81,345,273 through the biennium ending August 31, 2017.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2016	\$30,641,886
2017	\$50,703,387
2018	\$49,743,752
2019	\$48,784,196
2020	\$47,824,723

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings from <i>General Revenue Fund</i> 1
2016	\$30,641,886
2017	\$50,703,387
2018	\$49,743,752
2019	\$48,784,196
2020	\$47,824,723

Fiscal Analysis

The bill would amend the Code of Criminal Procedure as it relates to the awarding of diligent participation credit to defendants confined in a state jail facility. Allowing for time served in a state jail facility to be decreased through diligent participation credit is expected to result in a positive fiscal impact. The bill would take effect on September 1, 2015 and apply only to a person confined in a state jail felony facility for an offense committed on or after the effective date of the Act.

Methodology

Under the provisions of the bill, the Texas Department of Criminal Justice (TDCJ) would be required to credit up to one-fifth of the sentence against any time a state jail inmate was required to serve for diligent participation in certain programs. A state jail inmate would not be eligible to receive diligent participation credit for any period of time during which the inmate was subject to disciplinary status.

The awarding of diligent participation credit is expected to result in decreased demands upon the correctional resources of the state due to shorter terms of confinement in state jails. In fiscal year 2014, there were 22,272 admissions to state jail and the average sentence length for these admissions was approximately 10 months. Based on the average sentence length of 10 months, the average maximum diligent participation credit would be approximately two months.

This analysis assumes eligible inmates would earn the average maximum diligent participation credit of approximately two months. In order to estimate the future impact, the maximum credit length of two months is subtracted from the estimated average sentence length of 10 months from the projected number of yearly state jail admissions, as determined in the February 2015 *Adult and Juvenile Correctional Population Projections Report*. Savings of incarceration costs by TDCJ are estimated on the basis of \$47.30 per inmate per day for state jail facilities, as reported in the February 2015 *Criminal and Juvenile Justice Uniform Cost Report*. The estimated incarceration savings for fiscal year 2016 is \$30,641,886 (1,770 offenders *47.30 per day *366 days). For fiscal year 2016, the estimated incarceration savings are based on six months of savings, to allow time for the bill's provisions to fully take effect.

This analysis assumes sentencing patterns and release policies not addressed in this bill remain constant.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 696
Department of Criminal Justice

LBB Staff: UP, KJo, LM, ESi, JN

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

84TH LEGISLATIVE REGULAR SESSION

May 9, 2015

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB1546** by Allen (relating to the award of diligent participation credit to defendants confined in a state jail felony facility.), **Committee Report 2nd House, Substituted**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Code of Criminal Procedure as it relates to the awarding of diligent participation credit to defendants confined in a state jail facility. Judges would be required to provide a finding of presumptive diligent participation credit eligibility for offenders convicted of state jail felonies. For offenders who received the presumptive finding, the Texas Department of Criminal Justice (TDCJ) would be required to credit up to one-fifth of the sentence against any time a state jail inmate was required to serve for diligent participation in certain programs. For offenders who did not receive the presumptive finding, TDCJ would continue to provide judicial notification of diligent participation credit eligibility and judges would maintain discretion in awarding diligent participation credit.

Providing another mechanism to allow state jail offenders to receive diligent participation credits could decrease the demands on state correctional resources due to shorter lengths of stay in state jail facilities. Statewide data are not available to indicate how often judges may grant an affirmative presumptive finding regarding diligent participation credit, which would require TDCJ to automatically award diligent participation credits. However, this analysis assumes the bill's provisions would not result in a significant impact on state correctional populations, programs, or workloads.

Source Agencies:

LBB Staff: UP, LM, ESi

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

84TH LEGISLATIVE REGULAR SESSION

May 5, 2015

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1546 by Allen (Relating to the award of diligent participation credit to defendants confined in a state jail felony facility.), **As Engrossed**

The provisions of the bill addressing felony sanctions are the subject of this analysis. Under the provisions of the bill, if a judge does not take action within 30 days of notification of an inmate's eligibility for diligent participation credits, the Texas Department of Criminal Justice would be required to credit up to one-fifth of the sentence against any time a state jail inmate was required to serve for diligent participation in certain programs. A state jail inmate would not be eligible to receive diligent participation credit for any period of time during which the inmate was subject to disciplinary status.

The awarding of diligent participation credit is expected to result in decreased demands upon the correctional resources of the state due to shorter terms of confinement in state jails. During the first six months of fiscal year 2015, TDCJ provided diligent participation credit eligibility notices for 8,328 offenders. Of the 8,328 notices, 3,165 received no action from the judge (approximately 38.0 percent). Offenders who receive no judicial action currently serve their full sentence. Under the provisions of the bill, TDCJ would be required to credit these offenders diligent participation time against their sentence. The average sentence length for fiscal year 2014 state jail admissions was approximately 10 months. Based on the average sentence length of 10 months, the average maximum diligent participation credit would be approximately two months. This analysis assumes eligible inmates would earn the average maximum diligent participation credit of approximately two months. Assuming sentencing patterns and release policies not addressed in this bill remain constant, the probable impact of implementing the provisions of the bill during each of the first five years following passage, in terms of daily demand upon the adult corrections agencies, is estimated as follows:

Fiscal Year	Decrease In Demand For State Jail Capacity
2016	673
2017	1,116
2018	1,095
2019	1,073
2020	1,052

Source Agencies:

LBB Staff: UP, LM, ESi

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

84TH LEGISLATIVE REGULAR SESSION

March 20, 2015

TO: Honorable Jim Murphy, Chair, House Committee on Corrections

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1546 by Allen (Relating to the award of diligent participation credit to defendants confined in a state jail felony facility.), **As Introduced**

Under the provisions of the bill, the Texas Department of Criminal Justice would be required to credit up to one-fifth of the sentence against any time a state jail inmate was required to serve for diligent participation in certain programs. A state jail inmate would not be eligible to receive diligent participation credit for any period of time during which the inmate was subject to disciplinary status.

The awarding of diligent participation credit is expected to result in decreased demands upon the correctional resources of the state due to shorter terms of confinement in state jails. In fiscal year 2014, there were 22,272 admissions to state jail and the average sentence length for these admissions was approximately 10 months. Based on the average sentence length of 10 months, the average maximum diligent participation credit would be approximately two months.

This analysis assumes eligible inmates would earn the average maximum diligent participation credit of approximately two months. Assuming sentencing patterns and release policies not addressed in this bill remain constant, the probable impact of implementing the provisions of the bill during each of the first five years following passage, in terms of daily demand upon the adult corrections agencies, is estimated as follows:

Fiscal Year	Decrease in Demand for State Jail Capacity
2016	1,770
2017	2,937
2018	2,881
2019	2,826
2020	2,770

Source Agencies:

LBB Staff: UP, LM, ESi