



House Bill 1546 Implementation Guide 84th Legislative Session

HB 1546 (AUTHOR: ALLEN | SPONSOR: RODRÍGUEZ): *Relating to the award of diligent participation credit to defendants confined in a state jail felony facility. – Effective September 1, 2015*

INCENTIVIZING EDUCATIONAL, VOCATIONAL, AND TREATMENT PROGRAMS SAVES TAX DOLLARS AND REDUCES RECIDIVISM

The intention of Texas' original "diligent participation credit" program was for individuals confined in state jails to earn time towards early release by receiving credit for every day they participated in educational, vocational, treatment, or work programs. The ultimate goal was to reduce the likelihood that people would re-offend by providing them with tools to live productive, law-abiding lives after release; at the same time, the state could save money through safe reductions in costly confinement.

Under the program, individuals who participated in rehabilitative programs could have their sentences reduced by no more than 20 percent, and any sentence reduction was to be at the discretion of the sentencing judge. However, this program was not effectively implemented because individuals participating in these programs were not guaranteed early release. Instead, a report detailing individuals' rehabilitative program participation had to be sent to the judge for approval, and the incarcerated individual could only receive his or her diligent participation credits if the judge had time to review the report and decide that the individual should be granted early release. Unfortunately, judges only responded to these reports at a rate of 44%.¹ As a result, the original policy did not truly incentivize participation in rehabilitative programs for individuals serving time in state jails, thus failing to provide the greatest possible taxpayer savings or public safety outcomes.

WHAT DOES HB 1546 DO?

HB 1546, codified in Chapter 42 of the Code of Criminal Procedure,² gives judges the option to streamline the process for granting diligent participation credits to individuals confined in state jails who participate in rehabilitative programs. The new law requires the judge to decide at sentencing whether the defendant is eligible to *automatically* earn credits for participating in these programs. If the judge makes an affirmative finding, the Texas Department of Criminal Justice (TDCJ) will have the authority to apply earned credits to the individual's sentence without requesting approval from the judge. Conversely, if the judge does not make an affirmative finding, TDCJ will send an electronic participation report to the judge as required under former law (30 days before 80 percent of the sentence is served), and wait for the judge's response to determine whether credit should be applied to the individual's sentence. **This bill gives judges full discretion to continue to grant diligent participation credits under the current system if they so choose; furthermore, as under previous law, the potential sentence reduction is capped at 20 percent.**

By simply streamlining the process for granting diligent participation credits, HB 1546 will truly incentivize participation in educational, vocational, treatment, or work programs for individuals confined in state jails. Accordingly, we can expect that participation in such programs will increase. And over time, HB 1546 will improve public safety by increasing the likelihood that individuals previously incarcerated in state jails will remain law-abiding; studies show that participation in educational,³ vocational,⁴ treatment,⁵ or work⁶ programs reduces the probability that individuals will re-offend. This is particularly important because recidivism rates for state jails in Texas are significantly higher than for state prisons: individuals released from state jails in Texas are more likely to be re-arrested within three years after their release than individuals released from state prisons in Texas.⁷ As such, a streamlined process for granting diligent participation credits is imperative not only for individuals incarcerated in state jails but for their communities and the public safety at large. Also importantly, HB 1546 will save taxpayer dollars through the safe, early release of individuals confined in costly state jails when they participate in these critical rehabilitative programs.

IMPLEMENTATION OF HB 1546

Judges: Under HB 1546, judges will be required to make a determination at sentencing whether a defendant is eligible to automatically earn credits for participating in educational, vocational, treatment, or work programs in state jail. To ensure that the process of granting diligent participation credits is effectively implemented, judges are encouraged to make an affirmative finding at sentencing for all defendants so such individuals can earn credits automatically for participating in rehabilitative programs. Granting every defendant eligibility to automatically earn credits will conserve judicial resources and allow the focus to be on immediate cases, rather than cases that have already been adjudicated. For those individuals not allowed to automatically earn credit for participation in programs, judges should review and respond to electronic notices of diligent participation eligibility promptly and grant diligent participation credits to all individuals who qualify for such credits in order to increase the success of the program. Effective implementation of this law will encourage participation in crucial rehabilitative programs, improve public safety outcomes, and save taxpayer dollars by reducing lengths of stay.

Defense Attorneys: Defense attorneys should ask the judge to make an affirmative finding that the sentenced individual should be presumptively entitled to earn diligent participation credits in state jail, citing any relevant evidence or argument to ensure that the individual may benefit from participation in rehabilitative programs. Most critically, program participation will provide the individual with the tools needed to prevent future criminal behavior.

Texas Department of Criminal Justice (TDCJ): Under HB 1546, TDCJ will continue to record the number of days an individual participates in educational, vocational, treatment, or work programs while confined in state jail. However, TDCJ will now have the responsibility to *automatically* apply earned credits to the individual's sentence—not to exceed 20% of the original sentence—if the judge makes an affirmative finding at sentencing that the individual is eligible to earn such credits. Conversely, if the judge does not make such a finding, TDCJ must send an electronic participation report to the judge of the sentencing court, as dictated by current law (30 days before 80 percent of the sentence is served), and wait for the judge's response to determine whether credit should be applied to the individual's sentence.

QUESTIONS OR CONCERNS?

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Citations

¹ Bryan Collier, Deputy Executive Director, Texas Department of Criminal Justice, e-mail message to Sushma Smith, Chief of Staff, Office of Senator Jose Rodriguez, March 18, 2015.

² Section 1 of HB 1546 adds Article 42.0199 to the Code of Criminal Procedure; Section 2 of HB 1546 amends Subdivisions (1), (5), and (6) of Section 15(h), Article 42.12, Code of Criminal Procedure, and adds Subdivisions (7) and (8).

³ Rand Corporation, *Education and Vocational Training in Prisons Reduces Recidivism, Improves Job Outlook*, August 22, 2013, <http://www.rand.org/news/press/2013/08/22.html>.

⁴ Ibid.

⁵ Congressional Research Service, *Offender Reentry: Correctional Statistics, Reintegration into the Community, and Recidivism*, January 12, 2015, <https://fas.org/sgp/crs/misc/RL34287.pdf>.

⁶ William G. Saylor and Gerald G. Gaes, "Training Inmates through Industrial Work Participation and Vocational and Apprenticeship Instruction," *Corrections Management Quarterly* 1, no. 2 (1997):32-43, http://bcotn.org/subcommittees/csct/training_inmates.pdf.

⁷ Legislative Budget Board, *Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates*, February 2015, http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1450_CJ_Statewide_Recidivism.pdf.