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TESTIMONY 2015

CSHB 1546

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of CSHB 1546, which will improve the system for awarding diligent participation credits in state jails and conserve judicial resources.

**DILIGENT PARTICIPATION CREDITS ARE NOT GRANTED IN A UNIFORM MANNER, LIMITING THE INCENTIVE TO PARTICIPATE IN REHABILITATIVE PROGRAMS AND LEAVING MANY TO SERVE LONGER SENTENCES**

Individuals serving time in state jails do not have the opportunity to earn “good time” credit like the general prison population, nor have they historically had an opportunity for early release or parole. Instead, they are required to serve every day of their sentence behind bars. However, Texas’ 82nd Legislature (2011) provided a unique opportunity for individuals in state jails to earn time towards early release, allowing them to receive diligent participation credit for every day they participate in educational, vocational, treatment, or work programs; ultimately, participants may reduce their sentences by no more than 20%.<sup>1</sup>

Under that 2011 legislation, the Texas Department of Criminal Justice (TDCJ) records participation, sends a report to the judge of the sentencing court, and waits for the judge to issue an order for early release. **The effectiveness this program has been limited at best**, as the responsibilities split between TDCJ and judges are confusing and inefficient, and because judges are not currently required to grant diligent participation credits or order early release for individuals who qualify.

In order to truly incentivize the participation of individuals serving time in state jails, and to save taxpayer dollars by allowing the early release of those who participate in beneficial programs, the process to grant diligent participation credit in state jails should be streamlined. **CSHB 1546 will, in specific circumstances, give authority to grant diligent participation credits to TDCJ, rather than consume state and judicial resources by reporting to the sentencing court and waiting for judges to order early release.** CSHB 1546 will also allow TDCJ to grant credit at any time prior to the termination of the original sentence rather than waiting until 30 days before the date on which the individual would have served 80% of the sentence.

**KEY FINDINGS**

- **The average cost per day per person in a state jail facility is approximately \$47.**<sup>2</sup> The Texas Department of Criminal Justice (TDCJ) reported in FY 2014 that there were nearly 11,000 individuals on hand in a state jail facility and over 22,000 new individuals entering facilities throughout the year.<sup>3</sup> *However, the High Value Data Set available on TDCJ’s website indicates otherwise, showing that in May 2014, 23,386 individuals were held in 19 state jail facilities, 47% of whom were serving sentences longer than 2 years*<sup>4</sup> (the maximum sentence for state jail felonies is two years). The High Value Data Set does not distinguish individuals serving state jail sentences and individuals serving prison sentences while housed in state jails.
- Since the beginning of the diligent participation program in 2011, **judges who were sent electronic notices of diligent participation eligibility responded at a rate of 44%**. Of those judges who responded, 73% awarded some level of diligent participation credit. On average, sentences were reduced by 38 days for those individuals who were awarded diligent participation credit by a judge.<sup>5</sup>

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- Based on a one-year sentence, the maximum diligent participation credit that may be earned is 73 days. At \$47 per person per day, the state could save up to \$3,431 for each individual serving time in a state jail. In fact, **the Legislative Budget Board estimates cost savings over \$81 million for the 2016-17 biennium.**<sup>6</sup>
- The Legislative Budget Board reports that, as of August 31, 2012, 99% of people in state jails (11,729 men and women) were incarcerated for a **nonviolent, non-sexually based offense.**<sup>7</sup> In Fiscal Year 2012, over 80% of those sent to state jail were sentenced to one year or less of incarceration; 37% of these were admitted for a drug- or alcohol-related offense, while another 25% were admitted for a larceny offense.<sup>8</sup>

### **COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT CSHB 1546 BY REPRESENTATIVE ALLEN**

- **CSHB 1546 will give judges the option to streamline the process involved in awarding diligent participation credits to those participating in educational, vocational, treatment, or work programs in state jails.** CSHB 1546 will allow the judge to make an affirmative finding at sentencing that the defendant is eligible to earn credits in real time for participating in programs; if the judge does so, TDCJ will be authorized to automatically apply earned credits to the individual's sentence. If the judge makes no such finding, TDCJ will send an electronic participation report to the judge, as under current law (30 days before 80 percent of the sentence is served), and await the judge's response to determine if credit should be applied.
- **CSHB 1546 will encourage greater participation in state jail rehabilitative and self-improvement programs for those whom judges allow to earn program credits in real time, and will allow judges to continue to deny credits for any defendant they believe should serve their sentence day-for-day.** CSHB 1546 will allow TDCJ to grant credit for program participation at any point prior to the end of the original sentence to those defendants permitted by judges to earn credits in such a manner. Alternatively, judges will have the authority to continue to grant credits under the current system if they choose to do so.

### **Citations**

<sup>1</sup> House Research Organization, Bill Analysis, Tex. H.B. 2649, 82nd Leg., R.S. (2011).

<sup>2</sup> Legislative Budget Board, Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2013 and 2014, Submitted to the 84th Legislature, February 2015, p. 4;

[http://www.lbb.state.tx.us/Documents/Publications/Policy\\_Report/1440\\_Criminal\\_Juvenile\\_Justice\\_Uniform\\_Cost\\_Report.pdf](http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1440_Criminal_Juvenile_Justice_Uniform_Cost_Report.pdf). State-operated state jail facilities spent \$47.30 per day in FY 2014 to house individuals, while privately operated state jail facilities spent \$30.99 per day in 2014. There are 15 state-operated and 4 privately operated state jail facilities. The numbers above reflect the cost for state-operated facilities.

<sup>3</sup> Texas Department of Criminal Justice (TDCJ), Statistical Report: Fiscal Year (FY) 2014, p. 1, 2; [http://www.tdcj.state.tx.us/documents/Statistical\\_Report\\_FY2014.pdf](http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2014.pdf).

<sup>4</sup> Texas Department of Criminal Justice (TDCJ), Public Resources, "High Value Data Set," accessed October 1, 2014, available at [http://www.tdcj.state.tx.us/documents/High\\_Value\\_Data\\_Sets.xls](http://www.tdcj.state.tx.us/documents/High_Value_Data_Sets.xls).

<sup>5</sup> 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.

<sup>6</sup> Legislative Budget Board, Fiscal Note, 84th Legislative Regular Session, In Re HB 1546 by Allen (Relating to the award of diligent participation credit to defendants confined in a state jail facility.), As Introduced, March 20, 2015, p. 1; <http://www.legis.state.tx.us/tlodocs/84R/fiscalnotes/pdf/HB01546I.pdf#navpanes=0>.

<sup>7</sup> LBB, "Who Is In State Jail? Select Data for Those On-Hand as of August 31, 2012," (February 2013): 1, accessed January 23, 2015, available at [http://www.lbb.state.tx.us/Documents/Publications/Issue\\_Briefs/541\\_Who\\_is\\_in\\_StateJail12.pdf](http://www.lbb.state.tx.us/Documents/Publications/Issue_Briefs/541_Who_is_in_StateJail12.pdf)

<sup>8</sup> LBB, "Who Entered State Jail? Select Data for Fiscal Year 2012 Admissions," (February 2013): 1,2, accessed January 23, 2015, available at [http://www.lbb.state.tx.us/Documents/Publications/Issue\\_Briefs/540\\_Admissions\\_StateJail12.pdf](http://www.lbb.state.tx.us/Documents/Publications/Issue_Briefs/540_Admissions_StateJail12.pdf).