

SUBJECT: Taking away good conduct time if inmates refuse to give DNA specimens

COMMITTEE: Corrections — committee substitute recommended

VOTE: 4 ayes — Madden, D. Jones, Haggerty, Noriega

0 nays

3 absent — R. Allen, Hochberg, McReynolds

WITNESSES: None

BACKGROUND: Under Government Code, sec. 411.148 prison inmates are required to provide blood samples or other specimens to the Texas Department of Criminal Justice (TDCJ) to create DNA records. TDCJ is required to obtain samples from inmates during the diagnostic process when inmates are admitted to state facilities. Under Government Code, sec. 411.148(d), inmates cannot be held past their statutory release dates for failing or refusing to provide a specimen. However, TDCJ may take lawful administrative actions against an inmate who fails or refuses to provide a sample.

Under a law in effect until August 31, 1996, some inmates are released when their calendar time served plus good conduct time equals their sentences. For example, an inmate subject to the law who received a 12-year sentence would be released if that inmate served eight years and accrued four years of good conduct time. Releases under this law are often called mandatory supervision.

In 1995, this law was changed for offenders whose offenses were committed after September 1, 1996. The Board of Pardons and Paroles was given authority to block a release on mandatory supervision if it determined that an offender's good conduct time did not accurately reflect the potential for rehabilitation and that the offender's release would endanger the public. Releases under this law are often called discretionary mandatory supervision.

DIGEST: CSHB 1681 would specify that penal institutions could use disciplinary action resulting in the loss of good conduct time if an inmate refused to provide a DNA specimen for the state DNA database.

CSHB 1681 would define statutory release date as the date on which an inmate is discharged from the inmate's controlling sentence.

The bill would take effect September 1, 2005.

SUPPORTERS SAY: HB 1681 is necessary to ensure that TDCJ can continue to use the loss of good conduct time as a disciplinary measure against inmates who refuse to give DNA samples as required by law for the DNA database.

TDCJ has been collecting DNA samples from inmates since the statewide DNA database was authorized in 1995. In 2001 the category of offenders who must submit DNA samples was broadened to include every person serving a sentence in state prison. TDCJ has interpreted its Government Code authority to "take lawful administrative action" against inmates who fail or refuse to provide a specimen as including the ability to take away good conduct time.

TDCJ also has interpreted the law to mean that it cannot keep someone past what is commonly called the discharge date even if that person refuses to provide a DNA sample. For example, the agency could not keep someone longer than 10 years if the inmate were given a 10-year prison sentence. However, the agency has taken away inmates' good conduct time, and this action can change the date on which an inmate is to be released under the mandatory supervision and discretionary mandatory supervision statutes.

Under a recent court ruling, the agency would no longer be able to do this. In January 2005, a U.S. District Court ruling, *Furman v. Dretke* (P-01-CV-027), said, in general, that TDCJ cannot hold a person past a statutory release date – a date that is not now defined in statute but the definition of which could include a mandatory release date or a discretionary mandatory release date. Under the ruling, since these release dates are functions of good conduct time, the agency cannot change them by taking away good conduct time for refusing to provide a DNA sample.

CSHB 1681 would address this problem and return the law to the interpretation applied before the court ruling. It would give the agency

specific authority to take away good conduct time for refusing to give a DNA specimen and would provide a statutory definition of "statutory release date" so that the term would not include an inmate's date for release on mandatory supervision or discretionary mandatory supervision. This would allow TDCJ to take away good conduct time as a disciplinary measure against inmates who refused to give DNA samples and to have the change in good conduct time affect inmates' release on mandatory supervision or discretionary mandatory supervision. It would continue the policy of having good conduct time decisions play no part in when inmates are discharged after serving their full, original sentences.

TDCJ needs the flexibility to use the full range of disciplinary actions with inmates who refuse to provide specimens for the DNA database. In some cases taking away good conduct time is an appropriate action for refusal to provide a sample. TDCJ has procedures to ensure that taking away good conduct time is done fairly and can be appealed.

It is in the state's interest to have as complete a database as possible. Many offenders are repeat offenders, and having their DNA records in the state database can help solve and deter crimes and can ensure that innocent persons are not accused of crimes. The laws governing the state's database have many restrictions that control its use and access, so concerns about privacy should not trump the state's interest in obtaining offender samples.

**OPPONENTS
SAY:**

CSHB 1681 would continue a policy that unfairly could penalize some inmates by changing the date they are to be released from prison. The loss of good conduct time, which could result in more time behind bars, could be too harsh a measure to impose on inmates who may object to the database on grounds that it invades their privacy or could be misused to delve into their genetic makeup or for medical insurance purposes. TDCJ should be limited to using other disciplinary tools, such as restricting recreation or commissary privileges, instead of the loss of good conduct time

NOTES:

The committee substitute added the definition of statutory release date and retained the current provision prohibiting inmates from being held past their statutory release dates, which would have been eliminated in the original bill.