

SUBJECT: Allow time credits for completion of conditions of community supervision

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Gallego, Aliseda, Burkett, Christian, Rodriguez, Zedler

0 nays

1 present not voting — Carter

2 absent — Hartnett, Y. Davis

WITNESSES: For — Tonie Barfield; William Halloran; Todd Jermstad; Adam Nguyen; Dorothy Patterson; Emmett Solomon, Restorative Justice Ministries Network; Ana Yáñez-Correa, Texas Criminal Justice Coalition; (*Registered, but did not testify*: Stefanie Collins, ACLU of Texas; David Gonzalez, Texas Criminal Defense Lawyers Association; Tina Guerin; Thomas Guevara, Bexar County Commissioners Court; Travis Leete; Sandra Martinez; Jennifer Pinkley, Austin/Travis County Reentry Roundtable; Andrew Rivas

Against — Doug Lowe, Anderson County District Attorney

On — Marc Levin, Texas Public Policy Foundation Center for Effective Justice

BACKGROUND: Under Code of Criminal Procedure, art. 42.12, after a criminal defendant has been convicted or pleaded guilty or *nolo contendere*, a judge may suspend the imposition of the sentence and place the defendant on community supervision, also called probation.

Under Code of Criminal Procedure, art. 42.12, sec. 20, judges can reduce or terminate probation terms after defendants have completed one-third of their original terms or two years, whichever is less. On completion of one-half of the original community supervision period or two years of community supervision, whichever is more, the judge must review the defendant's record and consider whether to reduce or terminate the period of community supervision, unless the defendant is delinquent in paying

required restitution, fines, costs, or fees that he or she has the ability to pay or the defendant has not completed court-ordered counseling or treatment.

DIGEST:

CSHB 1205 would allow for time credits for completion of certain conditions of community supervision.

CSHB 1205 would specify that before reducing or terminating a period of community supervision or conducting a review, the judge would be required to notify the defendant's attorney, if the defendant had an attorney.

Defendants eligible for time credits would be those granted community supervision, including deferred adjudication community supervision, for an offense punishable as a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) or a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000). Defendants could not be delinquent in paying required fines, costs, or fees, and would have to have paid full restitution. Defendants would not be eligible if the offense was an intoxication offense, a family violence offense, or an offense requiring the defendant to register as a sex offender.

An eligible defendant would be entitled to receive the following time credits toward the completion of his or her period of community supervision for court-ordered earning of:

- a high school diploma or high school equivalency certificate: 90 days; and
- an associate's degree: 120 days.

An eligible defendant would be entitled to receive the following time credits toward the completion of his or her period of community supervision for court-ordered full payment of:

- court costs: 15 days;
- fines: 30 days;
- attorney's fees: 30 days; and
- restitution: 60 days.

An eligible defendant would be entitled to receive the following time credits toward the completion of his or her period of community supervision for court-ordered successful completion of:

- alcohol or substance abuse counseling or treatment: 90 days;
- vocational, technical, or career education or training program: 60 days;
- parenting class or parental responsibility program: 30 days;
- anger management programs: 30 days; and
- life skills training program: 30 days.

The defendant's supervision officer would be required to notify the court if calculation of the time credits and the community supervision period allowed or required the court to review the defendant's eligibility for reduced or terminated community supervision.

The court would be allowed to order the forfeiture of some or all of the credit to which the defendant was entitled if, before the expiration of the original period or reduced period of community supervision, the court found that a defendant violated one or more condition of community supervision and modified, continued, or revoked the defendant's period of community supervision.

The bill would take effect September 1, 2011, and would apply only to defendants granted supervision for an offense committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 1205 would encourage a defendant's successful rehabilitation and responsible future and would reduce costly recidivism. Incarceration costs \$50.79 a day and probation costs \$1.74 a day, so this bill makes sense for the state and the defendant. Education, substance abuse treatment, and anger management and parenting classes should be encouraged because they address the root causes of criminal behavior. If these are the lessons for defendants to learn during their rehabilitation time, then giving credit for successfully learning those lessons would make sense. And if they have learned the lessons and been rehabilitated, then the community supervision no longer would be necessary or should be reduced. Providing an incentive for the payment of court costs, fines, and restitution also would result in increased payment rates, which would help pay for the justice system. In sum, positive behavior reinforcements that targeted the root causes of antisocial behavior would be more effective than the threat of more jail time.

Time credits could be awarded only with judicial approval, and the judge could order forfeiture of credits if the defendant violated one or more

condition of community supervision. Defendants on community supervision for intoxication offenses, family violence offenses, offenses requiring sex offender registration, and any offenses punishable as first- or second-degree felonies would not be eligible for time credits.

**OPPONENTS
SAY:**

Requiring time credits under CSHB 1205 would undermine the process of determining the appropriate time period for community supervision, which is deliberated extensively and is tailored to meet an individual defendant's rehabilitative needs.

CSHB 1205 also could infringe on judicial discretion by requiring judges to give credit to defendants. Judges should be able to evaluate individually whether a treatment program, for example, had the rehabilitative effect sought, rather than automatically give credit for its completion. Judges should be given the authority to make credit decisions on a case-by-case basis.

NOTES:

The companion bill, SB 1077 by Ellis, was referred to Senate Criminal Justice on March 16.