

SUBJECT: Losing good time for filing frivolous lawsuits from county jails

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 7 ayes — R. Lewis, Kamel, Bonnen, Christian, Denny, Flores, G. Lewis
0 nays
2 absent — Chisum, Gutierrez

WITNESSES: None

BACKGROUND : Under the Code of Criminal Procedure, inmates in county jail may earn “good time” for being orderly, industrious, and obedient. A county sheriff may use good time to commute a portion of an inmate's sentence. Good time can be lost for sustained misconduct, such as attempted or actual escape.

DIGEST: HB 373 would make filing frivolous lawsuits a ground for county jail inmates to lose good time. The bill would allow county sheriffs to take away any or all of an inmate's earned good time upon receipt of a certified copy of a final state or federal court order dismissing as frivolous a lawsuit that the inmate brought while in the sheriff's custody.

HB 373 would take immediate effect if finally approved by a two-thirds record vote of the membership of each house, and would apply in cases where a lawsuit was filed on or after its effective date.

SUPPORTERS SAY: HB 373 would provide county jails with a protective mechanism against inmate misbehavior that is already available to state and federal prisons. The “jailhouse brief” has become a popular activity of inmates to while away the time. Assisted by in-house law library texts and other self-taught inmates familiar with the process, inmates often file multiple pleadings asking courts to reduce, overturn, or somehow eliminate their lawful sentences. These pleas also commonly charge the local sheriff or jail facility with wrongdoing, from conspiracy to violation of civil rights to general brutality. In addition, prisoners will also file actions on numerous other

subjects since there is no legal bar to their access to the federal or state courts, providing they have the required filing fee.

Although these pleadings are often found to be inaccurate and without any legal or constitutional foundation, they must be reviewed by a court and responded to by the sheriff's department if it is the named defendant in the action. This kind of review process imposes substantial costs in terms of both work hours and legal costs. Under HB 373, inmates who resort to lawsuit abuse would also have to pay a price for their irresponsible actions.

HB 373 would not require that sheriffs automatically remove good conduct time because of these lawsuit; it would leave this option as a discretionary decision to be made by those who deal with the inmates on a daily basis and can make an accurate judgment about them and the presence or absence of good faith in pursuing legal process.

OPPONENTS
SAY:

HB 373 would provide an unnecessary and overly punitive sanction for the sheriffs of Texas, who already have adequate authority to punish inmates who violate local jail rules. To allow local sheriffs to remove good conduct time simply because of an unsuccessful lawsuit would be an overreaction to a problem of limited scope and minimal impact upon jail operations.

The courts that find a lawsuit to be "frivolous" or "malicious" have direct power to impose sanctions upon plaintiffs, including payment of the defendant's attorneys fees and court costs, or even monetary damages if the other side files a counterclaim. There is no need for the local sheriffs to place an added burden upon an unsuccessful litigant, especially if the lawsuit in question involves an issue or party totally unrelated to the inmate's jail term.

HB 373 would apply to *any* lawsuit brought by the inmate that was later dismissed by a court and determined to be frivolous or malicious. The lawsuit would not have to relate to conduct of the sheriff's department or to the charges that resulted in the inmate being jailed. As a result, HB 373 would have a chilling effect upon all court actions by prisoners, since a prisoner would have to weigh the possible benefit to be gained by filing a suit against the possible loss of hard-earned good conduct time. There could also be room for abuse by sheriffs or their staff, since these individuals will

have total discretion over when this sanction is applied. Certain prisoners could be targeted because of their past willingness to take advantage of bona fide legal process, because they are seen as “troublemakers,” or as a result of some other past incidents or conflicts with the sheriff's department.