

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 1032

INTRODUCER: Criminal Justice Committee and Senator Perry

SUBJECT: Criminal Convictions

DATE: March 4, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Siples</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Forbes</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1032 revises licensing requirements for individuals with criminal convictions, revises the purpose of the Criminal Punishment Code, and modifies the current system of gain-time, which allows prisoners to reduce the term of prison sentences.

The bill prohibits the Department of Business and Professional Regulation (DBPR) from denying an application for licensure for certain professions if more than two years have passed since the applicant's conviction, with exceptions. The bill also requires the DBPR to approve educational courses offered by correctional institutions or facilities, to satisfy applicable training requirements for licensure for certain professions.

The bill revises the purpose of the Criminal Punishment Code to provide that criminal offenders are to be appropriately *punished and rehabilitated*, rather than ensuring that violent criminal offenders are incarcerated. The bill also provides that the dual purpose of sentencing in the criminal justice system are punishment and *rehabilitation* of the offender so that he or she can successfully transition back into the community. Rehabilitation is no longer a subordinate goal.

The bill authorizes the Department of Corrections (DOC) to award three types of reductions to a prisoner's sentence in the form of outstanding deed awards, good behavior time, and rehabilitation credits.

The bill authorizes the DOC to award outstanding deed awards of 30 to 60 days, per outstanding deed, to a prisoner who performs an outstanding deed, such as saving a life. The bill requires the DOC to grant 10 days each month of good behavior time to encourage satisfactory behavior and develop character traits for successful reentry into the community. The bill authorizes prisoners who are serving sentences for offenses committed on or after July 1, 1978, to be granted good behavior time. The DOC grants rehabilitation credits for each month a prisoner participates in education or training. The amount of rehabilitation credit a prisoner may earn varies by the date of the offense for which he or she is incarcerated and the offense severity level of the offense.

The bill authorizes the DOC to grant up to two additional days per month of good behavior time to prisoners serving sentences related to certain offenses involving controlled substances. The grant of these two additional days of good behavior is to be applied retroactively.

The bill authorizes prisoners to earn rehabilitation credit for completion of a high school equivalency diploma, a college degree, vocational certificate, drug treatment program, life skills program, reentry program, or other evidence-based program approved by the DOC that serves the purpose of reducing recidivism and assisting a prisoner to reintegrate into society. Prisoners may earn 60 days of rehabilitation credit for the completion of each program. Additionally, the bill authorizes prisoners to earn five days of rehabilitation credit for completion of any other DOC-approved program. The bill makes these rehabilitation credits retroactive.

The bill prohibits prisoners from earning good behavior time or outstanding deed awards in an amount that would cause them to serve less than 85 percent of the sentence imposed if the prisoner is serving a sentence for an offense committed after October 1, 1995. However, a prisoner may earn rehabilitation credits in an amount that would not cause him or her to serve less than 65 percent of the imposed sentence.

The bill also revises the Criminal Punishment Code to prohibit a prisoner from earning good behavior time or outstanding deed awards in an amount that would cause a prisoner to serve less than 85 percent of the sentence imposed if the prisoner is serving a sentence for an offense committed after October 1, 1995, and rehabilitation credits in an amount that would cause a prisoner to serve less than 65 percent of the sentence imposed.

The bill requires the DOC to provide a prisoner due process before the forfeiture of any gain-time.

The bill directs the DOC to adopt rules to implement its provisions. The bill also makes conforming changes and reenacts statutes.

The bill will likely have a negative prison bed impact, resulting in a decrease of prison beds. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Licensing Determinations and Criminal History

Section 112.011, F.S., outlines general guidelines for considering criminal convictions during licensure determinations. Generally, a person may be denied a professional license based on his or her prior conviction of a crime if the crime was a felony¹ or first-degree misdemeanor² that is directly related to the standards determined by the regulatory authority to be necessary and reasonably related to the protection of the public health, safety, and welfare for the specific profession for which the license is sought.³ Notwithstanding any law to the contrary, a state agency may not deny an application for a license based solely on the applicant's lack of civil rights.⁴

Department of Business and Professional Regulation

Licensure, Generally

The Department of Business and Professional Regulation (DBPR) has 12 divisions that are tasked with the licensure and general regulation of several professions and businesses in Florida.⁵ Fifteen boards and programs exist within the Division of Professions,⁶ two boards exist within the Division of Real Estate,⁷ and one board exists in the Division of Certified Public Accounting.⁸

¹ Section 775.08(1), F.S., defines "felony" as any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or a term of imprisonment in a state penitentiary that exceeds one year.

² Section 775.08(2), F.S., defines "misdemeanor" as any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by a term of imprisonment in a county correctional facility of less than one year. A first degree misdemeanor is punishable by a term of imprisonment not exceeding one year and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

³ Section 112.011(1)(b), F.S. *See also, e.g., State ex rel. Sbordy v. Rowlett*, 138 Fla. 330, 190 So. 59, 63 (1939), holding that "the preservation of the public health is one of the duties of sovereignty and in a conflict between the right of a citizen to follow a profession and the right of a sovereignty to guard the health and welfare, it logically follows that the rights of the citizen to pursue his profession must yield to the power of the State to prescribe such restrictions and regulations as shall fully protect the people from ignorance, incapacity, deception, and fraud."

⁴ Section 112.011(1)(c), F.S.

⁵ *See* s. 20.165, F.S., creating the divisions of Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; Service Operations; and Technology.

⁶ Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes: Board of Architecture and Interior Design, part I of ch. 481, F.S.; Florida Board of Auctioneers, part VI of ch. 468, F.S.; Barbers' Board, ch. 476, F.S.; Florida Building Code Administrators and Inspectors Board, part XII of ch. 468, F.S.; Construction Industry Licensing Board, part I of ch. 489, F.S.; Board of Cosmetology, ch. 477, F.S.; Electrical Contractors' Licensing Board, part II of ch. 489, F.S.; Board of Employee Leasing Companies, part XI of ch. 468, F.S.; Board of Landscape Architecture, part II of ch. 481, F.S.; Board of Pilot Commissioners, ch. 310, F.S.; Board of Professional Engineers, ch. 471, F.S.; Board of Professional Geologists, ch. 492, F.S.; Board of Veterinary Medicine, ch. 474, F.S.; Home Inspection Services Licensing Program, part XV of ch. 468, F.S.; and Mold-related Services Licensing Program, part XVI of ch. 468, F.S.

⁷ *See* s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.

⁸ *See* s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.

Sections 455.203 and 455.213, F.S., establish the DBPR's general licensing authority, including its authority to charge license fees and license renewal fees. Each board within the DBPR must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.⁹ When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a "permit, registration, certificate, or license" to the licensee.¹⁰

In Fiscal Year 2019-2020, there were 468,949 active licensees in the Division of Professions.¹¹

Denial of Licensure

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.¹²

The DBPR may regulate professions "only for the preservation of the health, safety, and welfare of the public under the police powers of the state."¹³ Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.¹⁴

However, "neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention," or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.¹⁵

The DBPR or a pertinent regulatory board may deny an application for licensure based on the grounds set forth in s. 455.227(1), F.S., or in the profession's practice act.¹⁶ Specifically, the DBPR or regulatory board may deny a licensure application for any person who was:

...convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.¹⁷ (Emphasis added.)

⁹ Section 455.219(1), F.S.

¹⁰ Section 455.01(4) and (5), F.S.

¹¹ See Department of Business and Professional Regulation, Division of Professions, Division of Certified Public Accounting, Division of Real Estate, and Division of Regulation, *Annual Report, Fiscal Year 2019-2020*, p. 20, available at http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY1920.pdf (last visited March 2, 2021).

¹² See ss. 455.01(6) and 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. See s. 455.221(1), F.S.

¹³ Section 455.201(2), F.S.

¹⁴ Section 455.201(2), F.S.

¹⁵ Section 455.201(4)(b), F.S.

¹⁶ Section 455.227(2), F.S.

¹⁷ Section 455.227(1)(c), F.S.

Section 455.227, F.S., does not specifically require the DBPR or the applicable regulatory board to consider the passage of time since the disqualifying criminal offense before denying or granting a license.

Licensing and Criminal Background for Certain Professions

However, in 2019, the Legislature created a new process for reviewing the criminal history of applicants for specified professions or occupations regulated by the DBPR.¹⁸ The new process applies to:

- Barbers;
- Cosmetologists and cosmetology specialists (i.e. hair braiders, hair wrappers, and body wrappers);
- Construction professionals, including:
 - Air-conditioning contractors;
 - Electrical contractors;
 - Mechanical contractors;
 - Plumbing contractors;
 - Pollutant storage systems contractors;
 - Roofing contractors;
 - Septic tank contractors;
 - Sheet metal contractors;
 - Solar contractors;
 - Swimming pool and spa contractors;
 - Underground utility and excavation contractors; and
 - Other specialty contractors; or
- Any other profession for which the DBPR issues a license, provided the profession is offered to prisoners in any correctional institution or correctional facility as a vocational training or through an industry certification program.¹⁹

Under this process, a prisoner may apply for a license before he or she is lawfully released from confinement or supervision.²⁰ The application may not be denied solely on the basis of the applicant's current confinement or supervision.

The DBPR may not deny a license for one of the above-listed occupations based on a conviction for a crime more than five years before the date of application.²¹ However, a board may deny a license if the applicant's criminal history includes a crime listed in s. 775.21(4)(a)1., F.S., relating to sexual predator crimes, or s. 776.08, F.S., relating to forcible felonies, if such criminal history relates to the practice of the applicable profession.²² A regulatory board may also consider the criminal history of an applicant if such criminal history is found to relate to good moral character.²³

¹⁸ Chapter 2019-167, L.O.F., codified at s. 455.213(3), F.S.

¹⁹ Section 455.213(3)(a), F.S.

²⁰ Section 455.213(3)(c), F.S.

²¹ Section 455.213(3)(b)1., F.S. "Conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

²² *Id.*

²³ Section 455.213(3)(b) 2., F.S.

Education for State Prisoners

Florida law establishes a Correctional Education Program (CEP) under the Department of Corrections (DOC), which must be composed of the educational facilities and services of all institutions, and facilities housing inmates operated by the DOC.²⁴ The duties of the CEP include, but are not limited to:

- Developing guidelines for collecting education-related information during the inmate reception process and for disseminating such information to the classification staff of the DOC.²⁵
- Approving educational programs of the appropriate levels and types in the correctional institutions and developing procedures for the admission of inmate students into such programs.²⁶
- Entering into agreements with public or private school districts, entities, community colleges, junior colleges, colleges, or universities as may be deemed appropriate for the purpose of carrying out the CEP duties.²⁷
- Ensuring that such local agreements require minimum performance standards and standards for measurable objectives, in accordance with established Department of Education standards.²⁸
- Developing and maintaining complete and reliable statistics on the number of high school equivalency diplomas and vocational certificates issued by each institution in each skill area, the change in inmate literacy levels, and the number of inmate admissions to and withdrawals from education courses.²⁹
- Ensuring every inmate who has two years or more on his or her sentence at the time of being received at an institution and who lacks basic and functional literacy skills as defined in s. 1004.02, F.S.,³⁰ attends not less than 150 hours of sequential instruction in a correctional adult basic education program.³¹
- Ensuring that all education staff are certified in accordance with the Department of Education standards.³²

²⁴ Section 944.801(1), F.S.

²⁵ Section 944.801(3)(a), F.S., also provides that the information collected must include the inmate's areas of educational or vocational interest, vocational skills, and level of education.

²⁶ Section 944.801(3)(d), F.S.

²⁷ Section 944.801(3)(e), F.S.

²⁸ *Id.*

²⁹ Section 944.801(3)(g), F.S.

³⁰ Section 1004.02(4), F.S., defines basic literacy to mean the demonstration of academic competence from 2.0 through 5.9 educational grade levels as measured by means approved for this purpose by the State Board of Education. Section 1004.02(15), F.S., defines functional literacy to mean the demonstration of academic competence from 6.0 through 8.9 educational grade levels as measured by means approved for this purpose by the State Board of Education.

³¹ Section 944.801(3)(i), F.S., further provides that highest priority of inmate participation must be focused on youthful offenders and those inmates nearing release from the correctional system and that an inmate is not allowed to participate in the adult basic education program if he or she is serving a life sentence or is under sentence of death, specifically exempted for security or health reasons, housed at a community correctional center, road prison, work camp, or vocational center, attains a functional literacy level after attendance in fewer than 150 hours of adult basic education instruction, or is unable to enter such instruction because of insufficient facilities, staff, or classroom capacity.

³² Section 944.801(3)(k), F.S. *See* ss. 1002.33(12)(f), 1012.54, 1012.55, and 1012.56, F.S.

The DOC provides 92 career and technical education courses in 37 district vocational trades, which are aligned to Florida's in-demand occupations.³³ The DOC has been able to expand these programs by contracting with state colleges, technical colleges, and community providers. Technical training, employability skill development, and industry-recognized credentialing are integrated into the career and technical education programs to ensure returning citizens are job-ready upon release.³⁴

Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code³⁵ (Code) as Florida's "primary sentencing policy."³⁶ The primary purpose of the Code is to punish the offender and though rehabilitation is desired, it is a subordinate goal.³⁷

The Code also provides that the sentence imposed by the sentencing judge for noncapital felony offenses committed on or after October 1, 1998, reflects the length of actual time to be served, shortened only by the application of incentive and meritorious gain-time as provided by law.³⁸ The sentence may not be shortened if the defendant would consequently serve less than 85 percent of his or her term of imprisonment as provided in s. 944.275(4)(b)3., F.S.³⁹

Gain-Time

Section 944.275, F.S., allows the DOC to grant deductions from sentences in the form of gain-time in order to encourage satisfactory prisoner behavior, to provide incentive for prisoners to participate in productive activities, and to reward prisoners who perform outstanding deeds or services. There are currently three types of gain-time prisoners may earn: basic, incentive, and meritorious. As discussed below, the types of gain-time that a prisoner may earn, as well as the amount of gain-time a prisoner may earn, varies according to the offense date. Gain-time earned by a prisoner may also be forfeited for violations of state law or department rules.

Basic Gain-Time

The DOC grants basic gain-time at the rate of 10 days for each month of each sentence imposed on a prisoner to encourage satisfactory behavior, subject to the following:

- Portions of any sentences to be served concurrently are treated as a single sentence when determining basic gain-time;
- Basic gain-time for a partial month is prorated on the basis of a 30-day month; and

³³ The DOC, *Bureau of Education*, available at <http://www.dc.state.fl.us/development/programs.html> (last visited March 2, 2021).

³⁴ *Id.*

³⁵ Sections 921.002-921.0027, F.S. The Code is effective for offenses committed on or after October 1, 1998.

³⁶ *See* chs. 97-194 and 98-204, L.O.F.

³⁷ Section 921.002(1)(b), F.S.

³⁸ Section 921.002(1)(e), F.S.

³⁹ Persons sentenced for offenses committed prior to October 1, 1995, are not subject to the 85 percent requirement. *See Frequently Asked Questions Regarding Gain time*, DOC, available at [https://www.floridasupremecourt.org/content/download/242696/file/Johnson%2013-711\(1\).pdf](https://www.floridasupremecourt.org/content/download/242696/file/Johnson%2013-711(1).pdf) (last visited on February 18, 2021).

- When a prisoner receives a new maximum sentence expiration date because of additional sentences imposed, basic gain-time is granted for the amount of time the maximum sentence expiration date was extended.⁴⁰

Basic gain-time is awarded as a lump sum upon receipt into the custody of the DOC. Basic gain-time only applies to sentences imposed or offenses committed on or after July 1, 1978, and before January 1, 1994.⁴¹

The DOC may not grant basic gain-time to prisoners who are convicted of committing a sexual battery on or after October 1, 1992.⁴²

Incentive Gain-Time

The DOC may grant incentive gain-time for each month during which a prisoner works diligently, participates in training, uses time constructively, or otherwise engages in positive activities. The rate of incentive gain-time in effect on the date the prisoner committed the offense that resulted in his or her incarceration is the prisoner's rate of eligibility to earn incentive gain-time throughout the period of incarceration and cannot be altered by a subsequent change in the severity level of the offense for which the prisoner was sentenced. Section 944.275(4)(b), F.S., specifies that:

- For sentences imposed for offenses committed prior to January 1, 1994, up to 20 days per month of incentive gain-time may be granted;
- For sentences imposed for offenses committed on or after January 1, 1994, and before October 1, 1995:
 - Up to 25 days per month of incentive gain-time may be granted for offenses ranked in offense severity levels 1 through 7;
 - Up to 20 days per month of incentive gain-time may be granted for offenses ranked in offense severity levels 8, 9, and 10; and
- For sentences imposed for offenses committed after October 1, 1995, up to 10 days per month of incentive gain-time may be granted.

The DOC may grant, upon a recommendation of the education program manager, a one-time award of 60 additional days of incentive gain-time to a prisoner who is otherwise eligible and who successfully completes requirements for and is awarded a high school equivalency diploma or vocational certificate. A prisoner may not receive more than 60 days for educational attainment.⁴³ The DOC may grant an additional six days of incentive gain-time if a prisoner attends and actively participates in 150 hours of adult basic education to attain basic and functional literacy.⁴⁴

The DOC may not grant incentive gain-time for sentences imposed for the following offenses committed on or after October 1, 2014:

⁴⁰ Section 944.275(4)(a), F.S.

⁴¹ Section 944.275(6), F.S.

⁴² Section 794.011(7), F.S.

⁴³ Section 944.275(4)(d), F.S.

⁴⁴ Section 944.801(3)(i), F.S. "Active participation" means at a minimum, that the inmate is attentive, responsive, cooperative, and completes assigned work.

- Homicide occurring in the perpetration of or attempted perpetration of a sexual battery;
- Kidnapping of a child under the age of 13, and in the course of committing the offense, commits sexual battery against the child or lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition;
- False imprisonment of a child under the age of 13, and in the course of committing the offense commits sexual battery against the child or lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition;
- Sexual battery;
- Lewd or lascivious offenses upon or in the presence of persons less than 16 years of age;
- Lewd or lascivious offenses upon or in the presence of an elderly person or disabled person; or
- Computer pornography.⁴⁵

Meritorious Gain-Time

The DOC may grant meritorious gain-time to a prisoner who performs some outstanding deed, such as saving a life or assisting in recapturing an escaped prisoner, or who in some manner performs an outstanding service that would merit the granting of additional deductions from the term of his or her sentence. The grant of meritorious gain-time may be from 1 to 60 days.⁴⁶

Limitations on Earning Gain-Time

For sentences imposed for offenses committed on or after October 1, 1995, a prisoner may not earn any type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release, prior to serving a minimum of 85 percent of the sentence imposed.⁴⁷ Credits awarded by the court for time physically incarcerated are credited toward satisfaction of 85 percent of the sentence imposed. Except as provided by s. 944.275, F.S., a prisoner may not accumulate further gain-time awards at any point when the tentative release date is the same as that date at which the prisoner will have served 85 percent of the sentence imposed. If a prisoner is found to have violated state law or department rules, gain-time may be forfeited according to law.⁴⁸

State prisoners sentenced to life imprisonment must be incarcerated for the rest of their natural lives, unless granted pardon or clemency.⁴⁹ Certain offenders are statutorily prohibited from earning gain-time:

- Prison releasee reoffenders must serve 100 percent of the court-imposed sentence and may not earn gain-time to shorten the length of incarceration.⁵⁰

⁴⁵ Section 944.275(4)(e), F.S.

⁴⁶ Section 944.275(4)(c), F.S.

⁴⁷ Section 944.275(4)(f), F.S.

⁴⁸ Sections 944.275(5) and 944.28, F.S.

⁴⁹ *Id.*

⁵⁰ Under s. 775.082(9), F.S., a defendant may be designated a "prison releasee offender" if within three years of being released from incarceration commits or attempts to commit: treason, murder, manslaughter, sexual battery, carjacking, home-invasion robbery, robbery, arson, kidnaping, aggravated assault with a deadly weapon, aggravated battery, aggravated stalking, aircraft piracy, unlawful throwing, placing, or discharging of a destructive devise or bomb, any felony that involves the use or threat of physical force or violence against an individual, armed burglary, burglary of a dwelling, or burglary of an occupied structure, or any felony violation of ss. 790.07, 800.04, 827.03, 827.071, or 847.0135(5), F.S. A "prison releasee

- Certain prisoners convicted of offenses involving the fleeing or attempting to elude a law enforcement officer are ineligible for statutory gain-time.⁵¹
- Prisoners convicted of committing or attempting to commit certain felonies while possessing or using a firearm or destructive device.⁵²
- Prisoners convicted of committing or attempting to commit certain felonies while possessing or using a semiautomatic firearm and its high-capacity box magazine or a machine gun.⁵³
- Prisoners convicted of battery on a law enforcement officer, firefighter, emergency medical providers, public transit employees or agents, or other specified officers while possessing a firearm or semiautomatic firearm and its high-capacity box magazine.⁵⁴
- Prisoners convicted under the dangerous sexual felony offender statute.⁵⁵

Forfeiture of Gain-Time

Florida law allows gain-time to be forfeited or withheld if a prisoner is found guilty of an infraction of state law or department rules.⁵⁶ A prisoner shall, without prior notice or hearing, forfeit all earned gain-time upon:

- Conviction for an escape committed before October 1, 2013;
- Revocation of parole,⁵⁷ conditional release,⁵⁸ control release,⁵⁹ or clemency;⁶⁰
- Revocation of conditional medical release,⁶¹ if the revocation was for any reason other than improvement in medical condition; or

offender” also means any defendant who commits or attempts to commit one of the aforementioned offenses while serving a prison sentence or on escape status from a correctional facility.

⁵¹ Section 316.1935(6), F.S.

⁵² Section 775.087(2), F.S.

⁵³ Section 775.087(3), F.S.

⁵⁴ Section 784.07(3), F.S.

⁵⁵ Section 794.0115, F.S.

⁵⁶ Section 944.275(5), F.S.

⁵⁷ Parole is the release of a prisoner, prior to the expiration of the prisoner’s court-imposed sentence with a period of supervision to be successfully completed by compliance with the conditions and terms of the release agreement ordered by the Florida Commission on Offender Review. Parole is only available to prisoners whose crimes were committed prior to October 1, 1983, with exceptions. *See* Florida Commission on Offender Review, *Release Types: Parole*, available at <https://www.fcor.state.fl.us/release-types.shtml> (last visited February 20, 2021).

⁵⁸ Section 947.1405, F.S., requires certain violent prisoners who have also served a prior felony commitment at a federal or state correctional institution or who are habitual offenders, violent habitual offenders, violent career criminals, or court-designated sexual offenders to be released under supervision subject to specified terms and conditions upon reaching the tentative release date or provisional release date, as established by the DOC. *See also* Florida Commission on Offender Review, *Release Types: Post Release*, available at <https://www.fcor.state.fl.us/postrelease.shtml#conditionalRelease> (last visited February 20, 2021).

⁵⁹ Control release is an administrative function to manage the state’s prison population within total capacity. The program, administered by the Florida Commission on Offender Review, through the Control Release Authority, maintains the prison population between 99 and 100 percent of its total capacity. Section 947.146, F.S.

⁶⁰ Article IV, Section 8 of the Florida Constitution authorizes a process to provide the means through which convicted individuals may be considered for relief from punishment and seek restoration of their civil rights. The clemency function is an act of mercy that absolves an individual from all, or any part, of the punishment that the law imposes. The power to grant clemency is vested in the Governor with the agreement of two cabinet members. The Governor also has the sole power to deny clemency. Florida Commission on Offender Review, *Clemency*, available at <https://www.fcor.state.fl.us/clemencyOverview.shtml> (last visited February 20, 2021).

⁶¹ Section 947.149, F.S., authorizes the Florida Commission on Offender Review to grant a conditional medical release of a prisoner if, because of an existing medical or physical condition, the prisoner is determined by the department to be permanently incapacitated or terminally ill and the prisoner does not constitute a danger to herself or himself or others.

- Revocation of provisional release supervision,⁶² or the revocation of probation⁶³ or community control⁶⁴ if such supervision was imposed for a crime committed on or after October 1, 1989.⁶⁵

To declare a forfeiture, a written charge must be prepared, which specifies each instance of misconduct and the approximate date of each instance.⁶⁶ The prisoner must be given a copy of the charge, along with a notice of hearing before a disciplinary committee. The prisoner must be present at the hearing.⁶⁷ During the hearing, the prisoner:

- Will be read the charge, asked if he or she understands the charge, and explained the range of penalties that could be imposed if there is a finding of guilt;
- Will be asked if staff assistance is required or desired for the hearing;
- For minor violations, will be advised that he or she may request the charge be referred to the disciplinary team; and
- Will be read the statement of facts and be asked to plea.⁶⁸

If the prisoner pleads guilty, no further action is needed. If the prisoner pleads not guilty, evidence, including witness statements, is to be presented. The prisoner may make only an oral closing statement concerning the infraction under consideration at the hearing. If a prisoner refuses to enter a plea, it is treated as a “not guilty” plea.⁶⁹

A prisoner may forfeit all or part of gain-time earned if after the hearing, the prisoner is found to have:

- Violated a penal law of this state, or any rule of the DOC or institution;
- Threatened or knowingly endangered the life or physical well-being of another;
- Refused in any way to carry out or obey lawful instructions;
- Neglected to perform the work, duties, and tasks assigned in a faithful, diligent, industrious, orderly, and peaceful manner; or
- Escaped on or after October 1, 2013.⁷⁰

The DOC has the discretion to restore all or part of any gain-time that was forfeited due to disciplinary action if the prisoner has performed positively over a period of time, and it appears

⁶² Under the former s. 944.277, F.S., which was repealed by ch. 93-406, s. 32, L.O.F., the Secretary of Corrections was authorized to grant certain inmates with provisional credits when the population of the correctional system reached 98 percent of lawful capacity, which advanced the release date for such inmates.

⁶³ Section 948.001(8), F.S., defines “probation” as a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S.

⁶⁴ Section 948.001(3), F.S., defines “community control” as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or non-institutional residential placement and specific sanctions are imposed and enforced.

⁶⁵ Rule 33-601.104, F.A.C.

⁶⁶ Section 944.28(2)(c), F.S.

⁶⁷ Rule 33-601.307(1)(b), F.A.C., provides instances in which the prisoner does not have to attend the hearing and procedures if the prisoner refuses to attend the hearing or is disruptive.

⁶⁸ Rule 33-601.307(1)(c)-(f), F.A.C.

⁶⁹ Rule 33-601.307(g), F.A.C.

⁷⁰ *Supra* note 65.

that the prisoner will continue to perform positively without further violation of the DOC's rules or state laws.⁷¹

Sentence Expiration and Release Dates

The DOC must establish a maximum sentence expiration date for each prisoner who is committed to the DOC to serve a term of years. The maximum sentence expiration date is the date on which the sentence(s) imposed on the prisoner will expire. The DOC must reduce the total time to be served by any time lawfully credited.⁷²

The DOC must also establish a tentative release date for each prisoner sentenced to a term of years. The tentative release date is the date on which the prisoner is projected to be released from custody based on the amount of gain-time earned or forfeited. The initial tentative release date is established by deducting basic gain-time from the maximum sentence expiration date.⁷³ Other gain-time is applied when earned or restored, to make the tentative release date earlier and forfeited gain-time is applied to make the tentative release date later.⁷⁴

A prisoner who has served his or her time, as reduced by gain-time deductions, must be released and placed under further supervision and control of the DOC.⁷⁵

III. Effect of Proposed Changes:

Occupational Licensing

The bill amends s. 455.213, F.S., to reduce the timeframe during which the DBPR may deny a license on the basis of criminal history from five years to two years from the date of criminal conviction for applicants applying for licenses as:

- Barbers;
- Cosmetologists and cosmetology specialists (i.e. hair braiders, hair wrappers, and body wrappers);
- Construction professionals, including:
 - Air-conditioning contractors;
 - Electrical contractors;
 - Mechanical contractors;
 - Plumbing contractors;
 - Pollutant storage systems contractors;
 - Roofing contractors;
 - Septic tank contractors;
 - Sheet metal contractors;
 - Solar contractors;

⁷¹ Rule 33-601.105, F.A.C.

⁷² Section 944.275(2), F.S.

⁷³ Basic gain-time only applies to prisoners serving sentences imposed or for offenses committed on or after July 1, 1978, and before January 1, 1994.

⁷⁴ Section 944.275(3), F.S.

⁷⁵ Section 944.291, F.S. Prisoners serving sentences imposed for offenses committed on or after October 1, 1995, must serve at minimum 85 percent of the imposed sentence.

- Swimming pool and spa contractors;
- Underground utility and excavation contractors; and
- Other specialty contractors; or
- Any other profession for which the DBPR issues a license, provided the profession is offered to prisoners in any correctional institution or correctional facility as a vocational training or through an industry certification program

The bill retains the authority of a regulatory board to deny a license to certain individuals required to register as sexual predators or who have convictions for forcible felonies, if it relates to the practice of the applicable profession. A regulatory board may also consider an applicant's criminal history if such criminal history is found to relate to good moral character.

The bill requires the regulatory boards for the above-listed occupations to approve educational program credits offered to prisoners in any correctional institution or facility, whether offered as vocational training or through an industry certification program, to satisfy applicable training requirements for licensure.

Criminal Punishment Code

The bill revises the purpose of the Criminal Punishment Code to provide that criminal offenders are to be appropriately *punished and rehabilitated*, rather than ensuring that violent criminal offenders are incarcerated. The bill also provides that the dual purpose of sentencing in the criminal justice system are punishment and *rehabilitation* of the offender so that he or she can successfully transition back into the community. Rehabilitation is no longer a subordinate goal.

The bill further revises the Criminal Punishment Code to prohibit a prisoner from earning outstanding deed awards or good behavior time in an amount that would cause a prisoner to serve less than 85 percent of the sentence imposed or earning rehabilitation credits in an amount that would cause a prisoner to serve less than 65 percent of the sentence imposed.

The bill revises the ways in which prisoners may earn gain-time. The bill eliminates the current gain-time categories of basic, incentive, and meritorious gain-time and creates new categories of gain-time: good behavior time, rehabilitation credits, and outstanding deed awards. The bill defines "gain-time" as good behavior time, rehabilitation credits, and outstanding deed awards, collectively, and as defined in the bill.

Good Behavior Time

The bill requires the DOC to grant good behavior time, similar to the current basic gain-time, as a means of encouraging satisfactory behavior and developing character traits necessary for successful reentry to the community. The DOC must grant good behavior time, at a rate of 10 days per month, subject to the following:

- Portions of any sentence to be served concurrently shall be treated as a single sentence when determining good behavior time;
- Good behavior time for a partial month shall be prorated on the basis of a 30-day month; and

- When a prisoner receives a new maximum sentence expiration date because of additional sentences imposed, good behavior time shall be granted for the amount of time the maximum sentence expiration date was granted.

Unlike the current basic gain-time, which is only eligible for sentences imposed or offenses committed on or after July 1, 1978, and before January 1, 1994, the bill makes prisoners who are serving sentences for offenses committed on or after July 1, 1978, eligible to receive good behavior time. The good behavior time would be applied in a lump sum at the beginning of the prisoner's sentence, as it is with the current basic gain-time.

The bill also authorizes the DOC to award up to two additional days of good behavior time per month for prisoners who are serving sentences for violations of ss. 893.13 or 893.135, F.S., relating to certain controlled substance offenses.⁷⁶ These additional days of good behavior time are retroactive.

Rehabilitation Credits

The bill authorizes the DOC to grant rehabilitation credits, similar to the current incentive gain-time, if a prisoner works diligently, participates in training or education, uses time constructively, or otherwise engages in positive activities. The rate of rehabilitation credits in effect on the date the prisoner committed the offense that resulted in his or her incarceration is the prisoner's rate of eligibility to earn rehabilitation throughout the period of incarceration:

- For sentences imposed for offenses committed before January 1, 1994, and on or after October 1, 1995, up to 20 days of rehabilitation credits may be granted; and
- For sentences imposed for offenses committed on or after January 1, 1994, and before October 1, 1995:
 - Up to 25 days per month of rehabilitation credits may be granted for offenses ranked in offense severity levels 1 through 7; and
 - Up to 20 days per month of rehabilitation credits may be granted for offenses ranked in offense severity levels 8, 9, and 10.

Therefore, prisoners who committed offenses after October 1, 1995, are eligible to receive up to 20 days of rehabilitation credits, rather than the 10 days of incentive gain-time that they now receive. The other rates of awarding rehabilitation credit remain the same.

The bill further requires the DOC to grant additional awards of 60 days of rehabilitation credits to eligible prisoners for the successful completion of each of the following:

- A high school equivalency diploma;
- A college degree;
- A vocational certificate;
- A drug treatment program;

⁷⁶ Section 893.13, F.S., makes it unlawful for a person to sell, manufacture, deliver, possess with intent to sell, manufacture, or deliver, a controlled substance, except as authorized by law; to purchase, possess, or possess with intent to purchase, a controlled substance, except as authorized by law. Section 893.135, F.S., makes it unlawful for a person to sell, purchase, manufacture, deliver, or bring into this state, or who is knowingly in actual or constructive possession of certain quantities of controlled substances (i.e. trafficking).

- A life skills program;⁷⁷
- A reentry program; or
- Other evidence-based program approved by the DOC that serves the purpose of reducing recidivism and assisting a prisoner reintegrate into society.

The bill also requires the DOC to grant five additional days of rehabilitation credits for successful completion of any other department-approved program, including prisoner-developed programs or a passing grade in each online or in-person educational course.

The bill makes the award of rehabilitation credits related to educational or treatment programs retroactive.

As with the existing incentive gain-time, the bill retains the prohibition against the award of rehabilitative credits for sentences imposed for the following offenses committed on or after October 1, 2014:

- Homicide occurring in the perpetration of or attempted perpetration of a sexual battery;
- Kidnapping of a child under the age of 13, and in the course of committing the offense, commits sexual battery against the child or lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition;
- False imprisonment of a child under the age of 13, and in the course of committing the offense commits sexual battery against the child or lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition;
- Sexual battery;
- Lewd or lascivious offenses upon or in the presence of persons less than 16 years of age;
- Lewd or lascivious offenses upon or in the presence of an elderly person or disabled person;
or
- Computer pornography.

Rehabilitation credits must be credited and applied monthly.

Outstanding Deed Awards

The bill authorizes the DOC to grant from 30 days to 60 days of outstanding deed awards, which is similar to the current meritorious gain-time, for each outstanding deed a prisoner performs, such as saving a life or assisting in the recapture of an escaped prisoner, or who performs an outstanding service that would merit the grant of additional deductions from his or her sentence. The bill increases the minimum number of days a prisoner may get for performing an outstanding deed to 30 days from the current one day.

⁷⁷ The bill defines “life skills program” as a program, approved by the DOC, which consists of at least 60 hours designed to reduce recidivism by addressing, at a minimum, education, job skills, interpersonal skills, stress and anger management, and personal development.

Limitations on Awards of Good Behavior Time, Rehabilitation Credits, and Outstanding Deed Awards

Similar to the current gain-time limitation, the bill prohibits a prisoner, serving a sentence for an offense committed on or after October 1, 1995, from receiving good behavior time or outstanding deed awards in an amount that would cause an inmate to serve less than 85 percent of his or her sentence. The bill does not apply the 85 percent sentence service requirement on prisoners who are serving sentences imposed for offenses committed before October 1, 1995, as they are not currently subject to the 85 percent service requirement.

The bill prohibits a prisoner serving a sentence imposed for an offense committed on or after October 1, 1995, from earning good behavior time once the prisoner's tentative release date is the same date as the date at which the prisoner will have served 85 percent of his or her sentence. The bill also prohibits a prisoner from receiving rehabilitation credits in an amount that would result in the prisoner's release prior to serving a minimum of 65 percent of the sentence imposed. Once a prisoner's tentative release date is equal to the date at which the prisoner will have served 65 percent of the sentence imposed, the prisoner may not accumulate any more awards.

The bill retains the current law's requirement that individuals serving a life sentence be incarcerated for the rest of their natural lives, unless granted pardon or clemency.

Forfeiture of Gain-Time

The bill requires that prior to the forfeiture of gain-time, the prisoner must be afforded due process. Prisoners are currently afforded a hearing prior to forfeiting any gain-time.

Sentence Expiration and Release Dates

The bill requires the DOC to establish an initial tentative release date for each prisoner by deducting good behavior time from the maximum sentence expiration date. The bill also requires that good behavior time, rehabilitation credits, and outstanding deed awards be applied when granted or restored to make the release date proportionately earlier and that any forfeitures of good behavior time be applied to make the tentative release date proportionately later.

Rule-making

The bill directs the DOC to adopt rules to implement the granting, forfeiture, restoration, and deletion of outstanding deed awards, good behavior time, and rehabilitation credits.

The bill makes conforming changes to several provisions of law.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) reviewed this legislation on March 11, 2021. The CJIC determined the retroactive application of two additional days of good behavior time and reducing time served to 65% of the total sentence with the application of rehabilitation credits will have the following impacts⁷⁸:

Retroactive Application of Good Behavior

July 1, 2021 Effective Date

Fiscal Year	Projected Cumulative Prison Beds Required	Funds Required Annual Operating Costs
2021-2022	(141)	(\$577,656)
2022-2023	(294)	(\$1,773,648)
2023-2024	(346)	(\$2,603,520)
2024-2025	(337)	(\$2,782,512)
2025-2026	(329)	(\$2,709,288)
Total	(329)	(\$10,446,624)

⁷⁸ Criminal Justice Impact Conference (CJIC), CS/SB 1032, *Adopted Impact*, March 11, 2021.

Changing Percent of Sentence that Must Be Served

July 1, 2021 Effective Date

Fiscal Year	Projected Cumulative Prison Beds Required	Funds Required Annual Operating Costs
2021-2022	(1,486)	(\$9,049,048)
2022-2023	(4,141)	(\$53,747,204)
2023-2024	(6,084)	(\$121,359,898)
2024-2025	(7,379)	(\$163,441,552)
2025-2026	(8,244)	(\$200,080,932)
Total	(8,244)	(\$547,678,604)

The DOC also reported an overall significant bed impact reduction as a result of the bill.⁷⁹ Additionally, the DOC anticipates an indeterminate need for additional officers for community supervision, since the number of inmates subject to supervision as a result of gain-time is unknown. However, the Department's FY 2019-20 average per diem for community supervision was \$6.01.⁸⁰ The DOC also estimates that its Office of Information Technology will need \$130,500 for programming needs; however, these costs can be absorbed within the department's current resources.⁸¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 455.213, 921.002, 944.02, 944.275, 316.027, 775.0845, 775.0847, 775.0861, 775.0862, 775.087, 775.0875, 777.03, 777.04, 794.011, 794.023, 817.568, 831.032, 843.22, 874.04, 944.281, 944.473, and 944.70.

This bill reenacts the following sections of the Florida Statutes: 775.084, 900.05, 944.28, 944.605, 944.607, 947.005, and 985.4815.

⁷⁹ The DOC, *2021 Agency Bill Analysis for SB 1032*, February 26, 2021, pp. 12-14 (on file with the Senate Committee on Criminal Justice).

⁸⁰ *Id.* at p. 13.

⁸¹ *Id.* at p. 14.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on March 2, 2021:**

The committee substitute:

- Changes the title of the bill from “Gain-time” to “criminal convictions”;
- Shortens the lookback time for crimes by the Department of Business and Professional Regulation from 5 years to 2 years for certain occupations;
- Requires that training provided in a correctional institution be accepted by the Department of Business and Professional Regulation to meet licensure requirements for certain occupations;
- Changes the term “outstanding deed gain-time” to “outstanding deed awards”;
- Defines gain-time to collectively mean outstanding deed award, good behavior time, and rehabilitation credits;
- Clarifies that the 85 percent service requirement only applies to those inmates who are serving sentences for crimes committed before October 1, 1995;
- Clarifies that the 85 percent service requirement only applies to good behavior time and outstanding award deeds and that the 65 percent service requirement only applies to rehabilitation credits;
- Restores discretion to the department to award rehabilitation credits;
- Restores the phrase “otherwise eligible” to ensure that the DOC only awards rehabilitation credits to those who are eligible to receive such credits, under the law;
- Removes mental health treatment and behavior modification programs from the list of programs for which a prisoner may receive rehabilitation credit for successful completion;
- Authorizes the DOC to award *up to* two days of additional rehabilitation credit for certain prisoners serving time for drug offenses rather than only two days (or alternatively zero days);
- Removes the provision that only vested good behavior time may be forfeited and makes all gain-time eligible for forfeiture;
- Removes the provision that vests good behavior time two years after it is earned; and
- Makes conforming changes throughout statute to update terminology.

B. Amendments:

None.