

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 Committee on Criminal Justice

BILL: SB 1032

INTRODUCER: Senator Perry

SUBJECT: Gain-time

DATE: March 1, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Jones	CJ	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 1032 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 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 gain-time, good behavior time, and rehabilitation credits.

The bill authorizes the DOC to award outstanding deed gain-time 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 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, vocational certificate, drug treatment program, mental health treatment program, life skills program, behavioral modification program, reentry program, or equivalent rehabilitative program. 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 outstanding deed gain-time or good behavior time in an amount that would cause them to serve less than 85 percent of the sentence imposed. 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 further revises the Criminal Punishment Code to prohibit a prisoner from earning outstanding deed gain-time, good behavior time, 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 good behavior time that has not been vested. The bill provides that good behavior time is vested two years after it is granted.

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 fiscal impact on the DOC, as well as a prison bed impact. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code¹ (Code) as Florida's "primary sentencing policy."² The primary purpose of the Code is to punish the offender and though rehabilitation is desired, it is a subordinate goal.³

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.⁴

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

² See chs. 97-194 and 98-204, L.O.F.

³ Section 921.002(1)(b), F.S.

⁴ Section 921.002(1)(e), F.S.

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.⁵

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
- 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.⁶

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, 1994.⁷

The DOC may not grant basic gain-time to prisoners who are convicted of committing a sexual battery on or after October 1, 1992.⁸

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:

⁵ Persons sentenced for offenses committed prior to October 1, 1995, are not subject to the 85 percent requirement. *See Frequently Asked Questions Regarding Gaintime*, 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).

⁶ Section 944.275(4)(a), F.S.

⁷ Section 944.275(6), F.S.

⁸ Section 794.011(7), F.S.

- 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.⁹ 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.¹⁰

The DOC may not grant incentive gain-time 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.¹¹

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.¹²

⁹ Section 944.275(4)(d), F.S.

¹⁰ Section 944.801(3)(i), F.S. “Active participation” means at a minimum, that the inmate is attentive, responsive, cooperative, and completes assigned work.

¹¹ Section 944.275(4)(e), F.S.

¹² Section 944.275(4)(c), F.S.

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.¹³ 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.¹⁴

State prisoners sentenced to life imprisonment must be incarcerated for the rest of their natural lives, unless granted pardon or clemency.¹⁵ 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.¹⁶
- Certain prisoners convicted of offenses involving the fleeing or attempting to elude a law enforcement officer are ineligible for statutory gain-time.¹⁷
- Prisoners convicted of committing or attempting to commit certain felonies while possessing or using a firearm or destructive device.¹⁸
- 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.¹⁹
- 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.²⁰
- Prisoners convicted under the dangerous sexual felony offender statute.²¹

¹³ Section 944.275(4)(f), F.S.

¹⁴ Sections 944.275(5) and 944.28, F.S.

¹⁵ *Id.*

¹⁶ 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 device 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 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.

¹⁷ Section 316.1935(6), F.S.

¹⁸ Section 775.087(2), F.S.

¹⁹ Section 775.087(3), F.S.

²⁰ Section 784.07(3), F.S.

²¹ Section 794.0115, F.S.

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.²² 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,²³ conditional release,²⁴ control release,²⁵ or clemency;²⁶
- Revocation of conditional medical release,²⁷ if the revocation was for any reason other than improvement in medical condition; or
- Revocation of provisional release supervision,²⁸ or the revocation of probation²⁹ or community control³⁰ if such supervision was imposed for a crime committed on or after October 1, 1989.³¹

To declare a forfeiture, a written charge must be prepared, which specifies each instance of misconduct and the approximate date of each instance.³² The prisoner must be given a copy of

²² Section 944.275(5), F.S.

²³ 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).

²⁴ 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).

²⁵ 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.

²⁶ 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).

²⁷ 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.

²⁸ Under the former s. 944.277, F.S., which was repealed by ch. 93-406, s. 32, Laws of Fla., 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.

²⁹ 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.

³⁰ 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.

³¹ Rule 33-601.104, F.A.C.

³² Section 944.28(2)(c), F.S.

the charge, along with a notice of hearing before a disciplinary committee. The prisoner must be present at the hearing.³³ 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.³⁴

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.³⁵

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, 2013.³⁶

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 that the prisoner will continue to perform positively without further violation of the DOC’s rules or state laws.³⁷

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.³⁸

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

³³ 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.

³⁴ Rule 33-601.307(1)(c)-(f), F.A.C.

³⁵ Rule 33-601.307(g), F.A.C.

³⁶ *Supra* note 31.

³⁷ Rule 33-601.105, F.A.C.

³⁸ Section 944.275(2), F.S.

established by deducting basic gain-time from the maximum sentence expiration date.³⁹ 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.⁴⁰

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.⁴¹

III. Effect of Proposed Changes:

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 gain-time, good behavior time, and 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, as described below.

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.

³⁹ 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.

⁴⁰ Section 944.275(3), F.S.

⁴¹ 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.

The bill also authorizes the DOC to award 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.⁴² These two 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 for the successful completion of each of the following by a prisoner:

- A high school equivalency diploma;
- A vocational certificate;
- A drug treatment program;
- A mental health treatment program;
- A life skills program;
- A behavioral modification program;
- A reentry program; or
- An equivalent rehabilitative program.

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.

⁴² 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).

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 Gain-Time

The bill authorizes the DOC to grant from 30 days to 60 days of outstanding deed gain-time, 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.

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

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

The bill also does not specifically prohibit a prisoner from continuing to earn good behavior time or outstanding deed gain-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. However, under the bill, a prisoner may receive rehabilitation credits in an amount that would result in the prisoner's release after 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 good behavior time that has not been vested, the prisoner must be afforded due process. For purposes of forfeiture, good behavior time vests two years after being granted. Therefore, if good behavior time is granted in a lump sum up front, any good behavior time not forfeited will become vested two years after the prisoner enters prison, and not subject to forfeiture. The bill only authorizes the forfeiture of good behavior time to make the tentative release date later.

Sentence Expiration and Release Dates

The bill requires the DOC to establish an initial tentative release date for each prisoner by deducting the outstanding deed gain-time, good behavior time, and rehabilitation credits from the maximum sentence expiration date, even though the prisoner has not yet earned any outstanding deed gain-time or rehabilitation credits at the time he or she enters the DOC's custody. The bill also requires that outstanding deed gain-time, good behavior time, and rehabilitation credits 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 gain-time, 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:

An *ex post facto* law is one which criminalizes or punishes more severely, conduct which occurred before the existence of the law. *See*, Article I, Section 10 of the Florida Constitution; and Article I, Section 9 of the United States Constitution. Both of these clauses specifically prohibit the **passage** of ex post facto laws. The Florida Supreme Court and the United States Supreme Court both use a two prong test to determine if there is an ex post facto violation, whether the law:

- Is retrospective in its effect; and
- Alters the definition of criminal conduct or increases the penalty by which a crime is punishable.⁴³

A court could find that for a prisoner who is serving a sentence for an offense committed before October 1, 1995, the prohibition against earning good behavior time and outstanding deed gain-time in an amount that would cause the prisoner to serve less than 85 percent of his or her sentence violates the prohibition against *ex post facto* laws since under current law, these prisoners are not subject to this limitation on the ability to earn basic gain-time, which is replaced by good behavior time.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

⁴³ *See*, *Gwong v. Singletary*, 683 So. 2d 112 (Fla. 1996); and *California Dep't of Corrections v. Morales*, 514 U.S. 499, (1995).

C. Government Sector Impact:

The DOC indicates that overall impact of the bill is indeterminate.⁴⁴ However, based on the projected number of releases associated with allowing rehabilitation credits to reduce the minimum service requirement from 85 percent to 65 percent, and retroactive application of two days of good behavior time to reduce to the minimum service requirement of 85 percent, the DOC estimates the following savings are possible:

Fiscal Year	ADP Reduction	Population for Per Diems			Prison Impact*			
		Inmate Variable Pop	Dorm Per Diem Pop	Full Per Diem Pop	Inmate Variable	Dorm Per Diem	Full Per Diem	Total
Allowing rehabilitation credits to reduce 85% minimum service to 65%								
Year 1	1,486		1,486			(21,017,613)		(21,017,613)
Year 2	4,414		1,141	3,000		(16,138,019)	(69,959,550)	(86,097,569)
Year 3	6,084	84		6,000	(683,411)		(139,919,100)	(140,602,511)
Year 4	7,379		1,379	6,000		(19,504,231)	(139,919,100)	(159,423,331)
Year 5	8,244		744	7,500		(10,522,950)	(174,898,875)	(185,421,825)
Year 6	8,874		1,374	7,500		(19,433,513)	(174,898,875)	(194,332,388)
								(786,895,237)

Retroactive application of 2 days of good behavior time to reduce the 85% minimum service								
Year 1	141	141				(1,147,155)		(1,147,155)
Year 2	294	294				(2,391,940)		(2,391,940)
Year 3	346	346				(2,815,004)		(2,815,004)
Year 4	337	337				(2,741,781)		(2,741,781)
Year 5	329	329				(2,676,695)		(2,676,695)
Year 6	325	325				(2,644,151)		(2,644,151)
								(14,416,726)

*Prison Per Diems Legend
 Full Per Diem \$63.89 exceeds 1,499 inmates
 Dorm Per Diem \$38.75 500 - 1,499 inmates
 Inmate Variable \$22.29 Less than 500 inmates

Additionally, the DOC anticipates that there will be an increase in the number of officers needed for community supervision, but the need is indeterminate in respect to the impact to staffing since it is unknown how many inmates will be subject to supervision as a result of gain-time release. However, the Department’s FY 19-20 average per diem for community supervision was \$6.01.⁴⁵

The DOC also estimates that its Office of Information Technology will need \$130,500 for programming needs.⁴⁶

⁴⁴ The DOC, *2021 Agency Bill Analysis for SB 1032*, February 26, 2021, pp. 12-14 (on file with the Senate Committee on Criminal Justice).

⁴⁵ *Id.* at p. 13.

⁴⁶ *Id.* at p. 14.

VI. Technical Deficiencies:

The bill fails to amend s. 944.28, F.S., which addresses the forfeiture of gain-time. Since the bill addresses the forfeiture of good behavior time in s. 944.275, F.S., it should make corresponding changes to s. 944.28, F.S., for consistency within the statute. Throughout statute, where the subject of gain-time is addressed, amendment may be needed to incorporate the new terminology as the bill appears to maintain only one type of gain-time, outstanding deed gain-time. It is unclear if the general term “gain-time” used in several provisions of statute refers to only outstanding deed gain-time, as created by the bill, or if it is meant to refer to outstanding gain-time, good behavior time, and rehabilitation credits, collectively.

VII. Related Issues:

The DOC may be unable to establish an initial tentative release date under the bill’s provisions.⁴⁷ Currently, the DOC establishes the initial tentative release date by subtracting basic gain-time, which is awarded in a lump sum at the beginning of the sentence, from the maximum release date. Currently, only prisoners serving sentences imposed or for offenses committed on or after July 1, 1978, and before January 1, 1994, receive basic-gain-time and have the initial tentative release date calculated in this manner. However, the bill requires the initial tentative release date to be determined based on good behavior time, outstanding deed gain-time, and rehabilitation credits. Assuming that good behavior time is awarded in a lump sum as basic gain-time is currently awarded, any outstanding deed gain-time or rehabilitation credits may not be factored into the initial tentative release date, as it has not yet been earned when the prisoner begins his or her sentence.

The DOC indicates that with the grant of good behavior time as a lump sum at the beginning of the sentence, as is currently done with basic gain-time, an inmate’s sentence may be reduced in an amount that would cause the inmate to meet the 85 percent minimum service requirement at the time of incarceration.⁴⁸ The bill provides that good behavior time, and not outstanding deed gain-time or rehabilitation credits, may be forfeited if a prisoner is found to have violated state law or the DOC rules. After two years, the good behavior time is vested and is no longer subject to forfeiture, which may defeat the stated purpose of the good behavior time.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 921.002, 944.275, and 794.011.

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

⁴⁷ *Id.* at p. 15.

⁴⁸ *Id.* at p. 6.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
