

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 Judiciary

BILL: SB 472

INTRODUCER: Senator Bracy and others

SUBJECT: Gain-time

DATE: March 8, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Ravelo | Cibula | JU | Pre-meeting |
| 2. | | | CJ | |
| 3. | | | AP | |

I. Summary:

SB 472 revises the rate of gain-time eligibility for inmates awaiting release from a term of imprisonment. Specifically, the bill increases the number of days the Department of Corrections (DOC) may reward for incentive gain-time from 10 days to 20 days per month, regardless of when the offense was committed. Incentive gain-time may be rewarded based on inmate work performance and participation in prison programs. Current law allows the monthly rewards of up to 10 days of incentive based gain-time for offenses committed on or after October 1, 1995, and up to 20 days of incentive based gain-time for offenses committed before January 1, 1994.

Under the bill, an inmate serving a sentence for a nonviolent felony must serve at least 65 percent of his or her sentence, regardless of the amount of accrued gain-time. An inmate serving a sentence for a violent felony, however, must serve at least 85 percent of a sentence as under current law.

Current law prevents an inmate from using gain-time to serve less than 85 percent of a sentence, regardless if the offense is a violent or non-violent felony.

The bill takes effect July 1, 2021.

II. Present Situation:

The Criminal Punishment Code, which applies to convictions for felony offense committed on or after October 1, 1998, contains elements of both retributive and rehabilitative justice, with a clear primary goal of punishing the offender while still declaring rehabilitation as a desired goal.¹ Absent a downward departure, the Code instructs a judge to sentence an offender based on a

¹ Specifically, “The primary purpose of sentencing is to punish the offender. Rehabilitation is a desired goal of the criminal justice system but is subordinate to the goal of punishment.” Section 921.002(1)(b), F.S.

calculation that determines the lowest and highest permissible sentence up to the statutory maximum sentence. The statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is 5 years.² Any sentence imposed reflects the length of actual time to be served, and may only be lessened by earned gain-time.³

Gain-time

Gain-time is used to encourage inmate rehabilitation and behavior by awarding deductions to a court-ordered sentence based on participation in certain activities while incarcerated. An inmate, however, must still serve at least 85 percent of his or her term of imprisonment.⁴ There are several different types of gain-time that can be awarded to an inmate:

- Incentive gain-time, based on work performance and participation in training and prison programs;⁵
- Meritorious gain-time, for performance of an outstanding deed such as saving a life;⁶ and
- Educational achievement gain-time, awarded for receiving a General Education Development (GED) diploma or a certificate of completion of a vocational program.⁷

There are certain circumstances where an inmate may not be ineligible for gain-time. The Prison Release Reoffender Punishment Act, for example, provides that an inmate must serve 100 percent of his or her new sentence if the inmate had been released from a state correctional facility operated by the Department of Corrections within the 3 years after release.⁸ Certain felonies, including sexual battery, murder, and false imprisonment, are ineligible for gain-time if the inmate was convicted on or after October 1, 2014.⁹ Likewise, those sentenced to life imprisonment are ineligible for gain-time.¹⁰

III. Effect of Proposed Changes:

The bill will increase the number of days the DOC may reward for incentive gain-time from 10 days to 20 days per month, regardless of when the offense was committed. Gain-time cannot be used if it would prevent an inmate from serving either 65 percent of his or her sentence for a

² Section 775.082(3)(b), (d), and (e), F.S.

³ Section 944.275, F.S., provides for various types of incentive and meritorious gain-time.

⁴ Section 944.275(4)(f), F.S.

⁵ Section 944.275(4)(b)3., F.S, provides that incentive gain-time is a total of up to 10 days per month that may be awarded to inmates for institutional adjustment, performing work in a diligent manner, and actively participating in training and programs. The amount an inmate can earn is stable throughout the term of imprisonment and is based upon the date an offense was committed.

⁶ Section 944.275(4)(c), F.S., provides that meritorious gain-time is awarded to an inmate who commits an outstanding deed or whose performance warrants additional credit, such as saving a life or assisting in recapturing an escaped inmate. The award may range from one day to 60 days, and the statute does not prohibit an inmate from earning meritorious gain-time on multiple occasions if warranted.

⁷ Section 944.275(4)(d), F.S., provides that educational gain-time is a one-time award of 60 days that is granted to an inmate who receives a GED diploma or a certificate for completion of a vocational program.

⁸ Section 775.082(9)(a)1., F.S.

⁹ Section 944.275(4)(e), F.S., refers to certain offenses that are ineligible for gain-time, including murder, false imprisonment, kidnapping, sexual battery, computer pornography, traveling to meet a minor for the purpose of unlawful sexual conduct, and lewd and lascivious offenses committed upon or in the presence of a minor, elderly, or disabled person.

¹⁰ Section 775.082(4)(f), F.S.

non-violent felony or 85 percent of his or her sentence based on an offense that is not a non-violent felony.¹¹

Current law makes no distinction between violent and nonviolent felonies for purposes of determining the maximum sentence reduction, and requires all felons to serve at least 85 percent of a sentence.

The bill takes effect 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:

SB 472 may impact private entities that are contracted with the DOC to provide services to those serving a term of imprisonment. Any reduction in prison capacities due to the bill

¹¹ While undefined in the bill, an offense that is not “non-violent” could seemingly include certain felony convictions based assault, battery, and certain weapons based offenses. Under the Violent Career Criminals law, for example, violent felonies include: arson, sexual battery, robbery, kidnapping, aggravated child abuse, aggravated abuse of an elderly or disabled person, aggravated assault with a deadly weapon, murder, manslaughter, aggravated manslaughter of an elderly or disabled person, aggravated manslaughter of a child, unlawful throwing, placing or discharging of a destructive device or bomb, armed burglary, aggravated battery, and aggravated stalking. Section 775.084(1)(b)(1), F.S.

by allowing early release based on gain-time may affect the amount of services that are needed by these providers.

C. Government Sector Impact:

The bill will likely reduce prison funding needs because it will likely reduce prison populations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

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.