

**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 Criminal and Civil Justice Appropriations Committee

BILL: CS/SB 1396

INTRODUCER: Criminal and Civil Justice Appropriations Committee and Senator Crist

SUBJECT: Gain Time

DATE: March 19, 2010 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Butler	Sadberry	JA	Fav/CS
2.			WPSC	
3.			RC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill clearly authorizes the Department of Corrections to make a one-time grant of up to 60 days gain-time to an inmate whose offense was committed after October 1, 1995 and who successfully completes requirements for and is awarded a GED or vocational certificate. The award may not be granted to reduce any sentence for an offense committed on or after October 1, 1995, if the inmate is, or has previously been, convicted of a sexual offense as specified in ss. 794.011, 794.05, 796.03, 796.035, 800.04, 825.1025, 827.03, 827.071, 847.0133, 847.0135, 847.0137, 847.0138, 847.0145, 985.701(1), or a forcible felony offense that is specifically set forth in s. 776.08, F.S., except burglary under s. 810.02(4), F.S.

This bill substantially amends section 944.275 of the Florida Statutes.

## II. Present Situation:

### **Gain-time<sup>1</sup>**

Gain-time is authorized in s. 944.275, F.S., and is a means by which eligible inmates can earn a reduction in the sentence that was imposed by the court. Current forms of gain-time are based upon the department's assessment that the inmate has behaved satisfactorily and engaged in constructive activities. As such, gain-time is a tool by which the department can encourage good behavior and motivate inmates to participate in programs and work assignments. Inmates who are serving life sentences or certain minimum mandatory sentences are not eligible for gain-time during the portion of time that the mandatory sentences are in effect.

*Incentive gain-time* is awarded to inmates for institutional adjustment, work and participation in programs. The awards are made on a monthly basis as earned unless prohibited by law. The award amount varies in relation to the inmate's rated performance and adjustment, and the maximum amount awardable each month depends upon the offense date.

- An award of up to 10 days per month of incentive gain-time may be applied to the sentences imposed for an offense committed on or after October 1, 1995. This gain-time is earned until the tentative release date reaches the date equal to 85% of the sentence imposed. At that point, gain-time no longer is applied to reduce the sentence.
- An award of up to either 20 or 25 days per month of incentive gain-time may be applied to the sentences imposed for an offense committed on or after January 1, 1994 but before October 1, 1995. The maximum amount depends upon the level of the offense under the revised sentencing guidelines.<sup>2</sup>
- An award of up to 20 days per month of incentive gain-time may be applied to the sentences imposed for an offense committed prior to January 1, 1994.

*Meritorious gain-time* may be considered for an inmate who commits an outstanding deed. The maximum award is 60 days. Examples of outstanding deeds are saving a life or assisting in recapturing an escaped inmate, or in some manner performing an outstanding service.

*Educational Achievement gain-time* in the amount of 60 days may be awarded to an inmate who receives a General Education Development (GED) diploma or a certificate for completion of a vocational program. Inmates whose offense was committed on or after October 1, 1995 are not eligible for this one-time award.

*Education gain-time* may be awarded to an inmate who satisfactorily completes the Mandatory Literacy Program. This is a one-time award of six days per commitment.

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<sup>1</sup> Information in this section of the analysis is derived from "Frequently Asked Questions Regarding Gaintime", <http://www.dc.state.fl.us/oth/inmates/gaintime.html#1>, viewed on March 12, 2010. Additional information regarding the history of Florida's sentencing laws and policies can be found in "Historical Summary of Sentencing and Policy in Florida", <http://www.dc.state.fl.us/pub/history/>, viewed on March 12, 2010.

<sup>2</sup> Section 921.0012, F.S.

*Basic gain-time* is no longer in effect. It was a lump sum award of 10 days gain-time for each month of the sentence imposed for offenses that were committed on or after July 1, 1978 and before January 1, 1994.

Section 775.082(9), F.S., provides that a “prison releasee reoffender” must serve 100% of his or her sentence for a specified offense that was committed within 3 years of release from incarceration for a felony in this state or another jurisdiction. Because 100% of the sentence must be served, gain-time cannot be applied to reduce the sentence.<sup>3</sup>

### III. Effect of Proposed Changes:

The bill amends s. 944.275(4)(d), F.S., to clearly authorize the department to grant educational achievement gain-time to an inmate who is sentenced for an offense committed on or after October 1, 1995 and who successfully completes requirements for and is awarded a General Education Development certificate or a vocational certificate.

An offender who is sentenced for an offense committed on or after October 1, 1995, who is, or has previously been, convicted of a sexual offense as specified in ss. 794.011, 794.05, 796.03, 796.035, 800.04, 825.1025, 827.03, 827.071, 847.0133, 847.0135, 847.0137, 847.0138, 847.0145, or 985.701(1), F.S., is not eligible to receive the award. Additionally, an offender who is sentenced for an offense committed on or after October 1, 1995, who is, or has previously been, convicted of a forcible felony offense that is specifically set forth in s. 776.08, F.S., except burglary under s. 810.02(4), F.S., would not be eligible for this gain-time award. As defined in s. 776.08, F.S., “forcible felony” means treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

The bill continues to require that no prisoner is eligible to 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.

The bill would not affect eligibility of inmates who are sentenced for an offense committed before October 1, 1995.

The bill has an effective date of July 1, 2010.

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<sup>3</sup> The specified offenses are: treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; arson; kidnapping; 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 an occupied structure or dwelling; or any felony violation of s. 790.07, s. 800.04, s. 827.03, or s. 827.071.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. Other Constitutional Issues:

Article X, Section 9 of the Florida Constitution (the “Savings Clause”) provides: “Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.” This means that the criminal statutes in effect at the time an offense was committed apply to any prosecution or punishment for that offense. See *State v. Smiley*, 966 So.2d 330 (Fla. 2007). There are a number of decisions indicating that the Savings Clause prohibits application of a statutory change to lessen the punishment for a crime that was committed before the change. Courts have also determined in another context that incentive gain-time is related to the sentence imposed.<sup>4</sup> However, there are no reported cases that consider whether changes to a statute relating to incentive gain-time, educational achievement gain-time, or any other form of gain-time could violate Article X, Section 9. Therefore, it is not clear that a change in eligibility for educational achievement gain-time would be in violation of the Savings Clause.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

Approximately 370 inmates are eligible to receive the 60 day award for educational achievement gain time if this statutory change is implemented. Approximately \$308,136 can be saved in FY 2010-11.

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<sup>4</sup> See *Dugger v. Rodrick*, 584 So.2d 2 (Fla. 1991), *cert. den.* 502 U.S. 1037, 112 S.Ct. 886, 116 L.Ed.2d 790 (1992).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. 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 and Civil Justice Appropriations Committee on March 19, 2010:**

The bill amends s. 944.275(4)(d), F.S., to clearly authorize the department to grant educational achievement gain-time to an inmate who is sentenced for an offense committed on or after October 1, 1995 and who successfully completes requirements for and is awarded a General Education Development certificate or a vocational certificate.

An offender who is sentenced for an offense committed on or after October 1, 1995, who is, or has previously been, convicted of a sexual offense as specified in ss. 794.011, 794.05, 796.03, 796.035, 800.04, 825.1025, 827.03, 827.071, 847.0133, 847.0135, 847.0137, 847.0138, 847.0145, or 985.701(1), F.S., is not eligible to receive the award. Additionally, an offender who is sentenced for an offense committed on or after October 1, 1995, who is, or has previously been, convicted of a forcible felony offense that is specifically set forth in s. 776.08, F.S., except burglary under s. 810.02(4), F.S., would not be eligible for this gain-time award. As defined in s. 776.08, F.S., “forcible felony” means treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

The bill continues to require that no prisoner is eligible to 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.

The bill does not affect eligibility of inmates who are sentenced for an offense committed before October 1, 1995.

The bill has an effective date of July 1, 2010.

**B. Amendments:**

None.