

Why Not 65% Gain-Time in Florida, Retroactively? Really.

- *It would save over \$500,000,000 in prison costs in the first year, by reducing the prison population by 25,000 prisoners, and save a cumulative \$2.5 billion in the first five years.*
- *65% is much better than 85% for FDOC Correctional Officers safety.*
- *65% is a much better incentive for prisoners to follow the rules and to behave well.*
- *85% was just a number enacted in 1995 to obtain some Federal grants from 1996-2001; but it increased prison time-served length and prison costs by 30% ever since.*
- *It is very bad policy to prevent any non-life prisoner from earning full incentive gain-time, as they have zero incentive to behave well and so are a threat to officer safety.*
- *The retroactive change to 65% will not require any added court labor; the change in the release date will be calculated by the Florida Department of Corrections (FDOC).*
- *Trust the Criminal Punishment Code (CPC) to be Tough Enough on Crime.*

Florida's current gain-time law, s. 944.275, Florida Statutes,¹ now requires that all prisoners (other than those with life sentences, who cannot earn gain-time) serve a minimum of 85% of the length of the sentence imposed upon them in court. It is time to end that 85% experiment, by simply amending s. 944.275 (4)(f), Florida Statutes, in three places by changing "85" percent to "65" percent so that all prisoners must serve at least 65% of their sentence.

By making the 65% retroactive to all current non-life prisoners, as Amendment 11 now allows this 2018-2020 Legislature to do, Florida's prison population would be reduced by about 27,000 prisoners and so save over \$700,000,000 in prison costs within the first year, and save a cumulative \$2.5 billion dollars within five years.²

This change will reduce actual time served for most prisoners by about 20% of their sentence; i.e., someone with the average 60-month sentence would be released 12 months earlier at 65% compared to 85% (after 39 months rather than 51 months).

Furthermore, the retroactive application of 65% gain-time to current non-life prisoners would not require any added court labor or re-sentencing. The actual sentence length remains the

¹ http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0900-0999/0944/Sections/0944.275.html

² See Spreadsheet at <https://toughenoughoncrime.com/wp-content/uploads/2019/04/Prison-Cost-Savings-if-Time-Served-is-65-Instead-of-85-1.pdf>

same and the recalculation of the time-served release date at 65% will be done by the Florida Department of Corrections (FDOC).

Naysayers may think that a 65% retroactive gain-time law will result in a flood of prisoners being released early to run wild in the streets. But even at 85% gain-time, about 30,000 prisoners are released every year, while about 30,000 new prisoners are admitted each year, keeping the Florida prison population stuck near the current 96,000 prisoners. While a 65% retroactive gain-time law would result in about 27,000 additional prisoners released at the beginning of the 65% retro law's effective date (as their release dates are recalculated to on or prior to the effective date of the new 65% retro law), this is but a one-time occurrence to correct the too-long time-served sentences caused by the 85% gain-time experiment. The net result will be that Florida's prison population will drop to about 70,000 prisoners within the first year of a retroactive 65% gain-time law.

The problem with amending the gain-time law to 65% but not making it retroactive to all current prisoners is that there will be no prison cost savings until sometime in the future, as newly admitted prisoners begin to end their sentence at 65% instead of 85%. In 2018, the average sentence length of a new admission was 60.2 months,³ so it would be 39 months (65% of 60.2 months) into the future before true prison cost savings begin.

Florida began the 85% gain-time experiment in 1995, in large part because the Federal Truth in Sentencing Act gave grants to states adopting an 85% law. Those grants ended in 2001, but the 85% law increased the sentence length served and so prison costs by 30% compared to a 65% time served law $((85-65)/65 = 30\%)$. These 30% longer sentences are a primary driver of the increase in Florida's prison population from 64,000 in 1995 to 96,000 at the end of 2018. As prisoners stayed in their prison beds 30% longer at the 85% experiment, FDOC had to keep building new prison camps to house the newly needed prison beds.

A newer, truer, Truth in Sentencing Act would state that prisoners in Florida will serve a minimum length of 65% of their prison sentence if they behave well and follow the FDOC rules, but could also serve up to 100% of their sentence if they misbehave in prison -- the choice is in the hands and behavior of each individual prisoner. That's the new Truth in Sentencing program at 65%.

That 85% experiment is a failed experiment, twenty-four years after it began. There is no proof that serving 85% of a sentence instead of 65% of a sentence has improved public safety, while there is solid proof that it increased sentence served time by 30% and so prison costs by 30%.

While the Federal prisons still have the 85% law, what is right for the Federal government is not right for Florida. The first major difference is that Federal prison costs are paid for through federal income taxes, while Florida does not have any state income tax. The second major difference is that the Federal budget is not required to be balanced annually as

³ Page 29, <http://www.edr.state.fl.us/Content/conferences/criminaljustice/trends.pdf>

Florida is required to do: it's far easier to afford the added prison cost of 85% gain-time when you can run a \$1,000 billion deficit as the Federal government does.

Florida's current gain-time law allows prisoners to earn 10 days per month of incentive gain-time, if they follow DOC rule and behave well. If not for the 85% experiment, prisoners who follow the rules could leave prison at about 65% of their sentence, a very powerful incentive for good behavior. But because of the 85% experiment, well behaving prisoners will max out their usable gain-time at 45% of their sentence and have little incentive to behave for rest of their sentence. Put another way, a prisoner could run wild for the first 40% of his sentence and earn zero gain-time, but then behave well for the next 45% of his sentence and still leave at 85%.

Because the proposed Senate Bill SB 642 (**UPDATE: SB 642 passed the full Senate, but was dropped on the next to last day of the 2019 Legislative Session**) also gives all prisoners 20 days a month of incentive gain-time, retroactively to 1995, which is double the current 10 days per month, it makes it even worse to keep violent crime prisoners at 85%. (SB 642 currently only gives the 65% cap to prisoners with non-violent crimes; click here for pages 116-118 of SB 642, dealing with new gain-time laws.)

At an 85% cap under the 10-days a month incentive gain-time law, prisoners max out their usable gain-time at 45% of their sentence length, and then can coast the rest of way with zero gain time and still exit at 85%. But with 20-days/month as in SB 642's new law, 85%-ers max out usable gain time at only the first 15% of their sentence, leaving them to run wild the next 70% of their and still get out at 85%. It makes no sense at all as far as Correctional Officer safety is concerned to have prisoners with violent crime convictions earning 30% less incentive gain-time than non-violent crime prisoners: which group of prisoners is potentially more of a danger to Correctional Officers?

But at the new 65% cap with 20-days/month gain-time, prisoners do not max out usable gain-time until 53% of their sentence length, so close to the new 65% cap they just cannot afford to lose much gain-time for bad behavior if they really want to get out at 65% (Click here for a spreadsheet showing these gain-time calculations.)

If the 85% experiment is now ended, and prisoners can leave prison at possibly 65% of their sentence, they will have a much stronger incentive to behave well compared to the 85% experiment. At 65%, almost every loss of earned incentive gain-time for bad behavior will increase the time served in prison on a day-for-day basis. A prisoner who disrespects a guard, or who won't make his bed up when told to do so, would spend an extra 30 days in prison -- a strong incentive to make his bed up on time. At the 85% experiment, a loss of 30 days of gain-time would make no difference in actual time served, as it would be earned back quickly. (In fact, a prisoner with a ten-year sentence could lose up to 400 days of gain-time for bad behavior, and still earn enough to get out of prison after 8.5 years.)

But the foremost reason for ending the 85% experiment and allowing well behaved prisoners to serve just 6% of their sentence is as a FDOC prisoner management tool and for Correctional Officers safety in the prison dorms and cell-blocks. FDOC front-line officers have a very difficult job, as they are unarmed while in constant personal contact with prisoners, usually

within an open dorm which is one big room where 60 to 150 convicted felons live and sleep. (Typically, only prisoners with life sentences are housed in two-man cells.) The best “weapon” a Correctional Officer can carry with him to control prisoner behavior is his ability to threaten to, or to actually take away earned incentive gain-time to the extent it actually increases the time the prisoner will have to serve. At 85%, prisoners just laugh at a loss of gain-time because they will earn it all back and still leave at 85%. But at 65%, almost every month of gain-time lost for bad behavior will lengthen time actually served in prison on a day-for-day basis.

All Non-Life prisoners should be able to earn 65% gain-time

Some 20% of Florida’s non-life sentence prisoners currently can earn no incentive gain-time at all because of provisions in laws such as 10-20-Life and the Prison Releasee Re-offender laws. This inability to earn incentive gain-time like most other prisoners directly increases the danger to the front line FDOC officers that must interact with these prisoners. A prisoner who cannot earn incentive gain-time has little motivation to follow the rules and behave well. Why should he respect the FDOC officers and follow the rules if his served time is fixed at 100% of his sentence? The worst that can happen is he will go to the Box for a month, something some prisoners prefer to living in an open dorm.

It is a simple officer safety requirement that all non-life prisoners must be able to earn incentive gain-time for good behavior. It may have been election-wise to enact laws denying earnable gain-time for certain crimes, but it is a foolish policy once in prison. If the Legislature really believes that certain crimes deserve longer served sentences, they can adjust the Criminal Punishment Code (CPC)⁴ for that crime to result in a longer sentence so that at 65% earned gain-time, the actual served sentence length would be the same. (Example: if a 100-month sentence actually served for a certain crime is the Legislative desire, it will be met by adjusting the CPC to get a 154-month sentence which with 65% gain-time, would be the same 100-month time served sentence, but gives that prisoner a motivation for good behavior.)

⁴ http://www.leg.state.fl.us/STATUTES/index.cfm?App_mode=Display_Statute&Search_String=&URL=0900-0999/0921/Sections/0921.002.html