

How 65% Retroactive Gain-Time in Florida Would Both Improve Correctional Officers' Safety and Quickly Shrink the Prison Population by up to 27,000 Prisoners.

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SUMMARY

- **65% Gain-Time Is Much Better Than 85% Gain-Time for the Safety of FDOC Correctional Officers, as 65% Gain-Time is a Much Better Incentive for Prisoners to Follow the Rules and to Behave Well.**
- **All Non-Life Sentenced Prisoners Should be Able to Earn 65% Gain-Time.**
- **65% Gain-Time Could Reduce the Prison Population by as Many as 27,000 Prisoners and so Save Hundreds of Millions of Dollars in Prison Costs -- Within the First Year.**
- **The Retroactive Change to 65% Gain-Time Will Not Require any Added Court Labor; the Changes in the Release Dates Will be Calculated by the Florida Department of Corrections.**
- **85% Gain-Time 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.**

Introduction

Florida's current gain-time law, s. 944.275(4)(f), Florida Statutes (2019), now requires that all prisoners (other than those with life sentences, who cannot earn gain-time, or those with some non-life sentences for crimes that are now ineligible for any gain-time) serve a minimum of 85% of the length of the sentence imposed upon them in court. (This is commonly called "85% gain-time.") It is now time to end that 85% gain-time failed experiment by simply amending s. 944.275 (4)(f) in three places by changing "85" percent to "65" percent so that all prisoners must serve at least 65% of their sentence. (And note also that to make 65% gain-time workable, prisoners must be able to earn 20-days a month of incentive gain-time, so s. 944.275 (4)(b)(3) must also be amended to increase the incentive gain-time earnable from the current 10-days per month to 20-days per month.) By making the 65% gain-time retroactive to all current non-life prisoners, as Amendment 11 now allows this Florida Legislature to do, Florida's current prison population of about 96,000 prisoners would be reduced by about 12,000 to 27,000 prisoners – within one year.

65% Gain-Time Is Much Better Than 85% Gain-Time for the Safety of FDOC Correctional Officers, as 65% Gain-Time is a Much Better Incentive for Prisoners to Follow the Rules and to Behave Well

The foremost reason for ending 85% gain-time and allowing 65% gain-time for well-behaved prisoners who follow the Florida Department of Corrections (FDOC) rules and obey the orders of

Correctional Officers is for the safety of Correctional Officers in the prison dorms and cell-blocks. FDOC front-line Correctional 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 lockable cells.) The best “weapon” a Correctional Officer can carry with him or her to control prisoner behavior is having the ability to threaten to or to actually take away earned incentive gain-time to the extent it actually increases the time that the prisoner will have to serve. At 85% gain-time, prisoners can and do laugh at a loss of gain-time for bad behavior because they know that they can easily earn it all back and still leave at 85% of their sentence. But at 65% gain-time, almost every month of gain-time lost for bad behavior will lengthen the time actually served in prison on a day-for-day basis.

At the current 85% cap under the current 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, run wild, the rest of the way while earning zero gain-time and still exit at 85% of their sentence. (Or more likely, they could run wild for the first 40% of their sentence earning no gain-time at all, then tighten up and act right and still get out at 85% of their sentence.) But at 65% gain-time with 20-days/month of earnable gain-time, prisoners do not max out usable gain-time until 53% of their sentence length, so close to the new 65% cap that they just cannot afford to lose much gain-time for bad behavior if they really want to get out at 65% of their sentence. (See APPENDIX A for a spreadsheet showing these gain-time calculations.)

Note that the correct term here is “incentive” gain-time, not “basic” gain-time, and so it must be earned by each prisoner each month, as stated in the gain-time statute: “For each month in which an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities, the department may grant incentive gain-time in accordance with this paragraph,” s. 944.275(4)(b).

Moreover, if a new 65% gain-time law excludes those prisoners with violent crime convictions who can earn gain-time by keeping them at 85% gain-time (but now with 20-days/month of earnable gain-time), they would max out their usable gain-time at only the first 23% of their sentence, leaving them able to run wild the next 62% of their sentence and still get out at 85% of their sentence. Such a situation would be worse than the current situation as far as Correctional Officers’ safety and motivating these prisoners to follow the rules of FDOC.

All Non-Life Sentenced Prisoners Should be Able to Earn 65% Gain-Time

Some 10-15% of Florida’s non-life sentenced prisoners currently can earn no incentive gain-time at all because of provisions in laws such as 10-20-Life (s. 775.087(2)) and the Prison Releasee Reoffender (PRR) (s. 775.082(9)), Florida Statutes (2019). This inability to earn incentive gain-time like most other prisoners directly increases the danger to the front-line FDOC Correctional Officers that must interact constantly with these prisoners. A prisoner who cannot earn any incentive gain-time has zero motivation to follow the rules and behave well. Why should he respect the FDOC Correctional Officers and follow the rules if his or her served time is fixed at 100% of his sentence? The worst that can happen is he or she will go to the Box for a month of confinement, something some prisoners prefer to living in an open dorm.

It is a simple Correctional 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 twenty years ago to enact laws denying earnable gain-time for certain crimes, but it is a very foolish policy once in prison and directly endangers the safety of Correctional Officers

And of course, to maximize the safety of Correctional Officers by motivating good behavior by prisoners, it is exactly those prisoners with violent crime convictions who most need a chance to earn 65% gain-time (and so would also require the Legislature to amend that part of 10-20-Life, PRR, and a few other laws that now forbid earning any gain-time through current language such as “. . . and the defendant is not eligible for statutory gain-time under s. 944.275”), so that all non-lifers are equally motivated to behave well in prison so they can go home as soon as possible.

It makes no sense at all as far as the safety of Correctional Officers is concerned to have prisoners with violent crime convictions earning less incentive gain-time than non-violent crime prisoners: Which group of prisoners is potentially more of a danger to Correctional Officers?

Neither does it make much sense to somehow simply believe that it is a better policy choice for non-lifer prisoners with convictions for violent crimes to have to serve a longer percentage of their prison sentence than those convicted of non-violent crimes, because convictions for violent crimes usually have longer sentences than convictions for non-violent crimes. So if one prisoner has a five year sentence for a non-violent crime, and another prisoner has a ten year sentence, twice as long, for a violent crime, and both get 65% gain-time, the prisoner with a violent crime conviction will still actually serve twice as much prison time (6.5 years) as the prisoner with the non-violent crime (3.25 years).

In order to help successfully pass a law in the upcoming 2020 Legislative Session to require 65% retroactive gain-time for all non-life sentenced prisoners, FDOC Correctional Officers need to start telling the Florida Legislators that they need 65% gain-time for the safety of Correctional Officers to encourage good behavior by most prisoners. While the Florida Sheriffs Association and the Florida Police Benevolent Association both said at Senate Hearings during the 2019 Session that they are opposed to 65% gain-time, no unarmed sheriff’s deputy or police officer has ever done what FDOC Correctional Officers must do every day, walking unarmed through dorms of uncaged prisoners who have all been convicted of felonies and sentenced to prison.

Whatever the crime or the sentence, once someone is in prison, it is the FDOC Correctional Officers, not deputies or police officers or prosecutors or Legislators, who must deal with and control the prisoners’ behavior on a daily basis. The Correctional Officers need all non-life prisoners, whether convicted of non-violent or violent crimes, to be equally and fully motivated to maintain good behavior in order to leave prison as soon as possible – and 65% gain-time is that Great Motivator.

65% Gain-Time Could Reduce the Prison Population by as Many as 27,000 Prisoners and so Save Hundreds of Millions of Dollars in Prison Costs -- Within the First Year

By making the 65% gain-time retroactive (Amendment 11 to the Florida Constitution, effective as of January 8, 2019, now allows the Florida Legislature to apply criminal laws retroactively for the first time since 1885), Florida’s current prison population of about 96,000 prisoners would be reduced to about 70,000 to 84,000 prisoners – within one year. (See APPENDIX B explaining this estimate.) The

actual reduction in prisoners would depend on whether the 65% retroactive gain-time applies to: (1) all prisoners except lifers and de facto lifers; and/or (2) to only prisoners with non-violent convictions; and/or (3) to prisoners with violent convictions that can now earn gain-time; and/or (4) to prisoners with violent convictions that cannot now earn any gain-time (such as under a 10-20-life enhancement).

In round numbers, Florida as of January 1, 2019, had 96,000 prisoners of whom 16,000 have life sentences (or de facto life sentences) and so would not be affected by a gain-time change. Of the remaining 80,000 prisoners, about 36,000 (45%) have non-violent convictions and earn gain-time (see APPENDIX C); 34,000 have violent convictions and also earn gain-time; and about 10,000 have violent convictions but cannot now by law earn any gain-time (such as under the 10-20-Life or PRR laws). So if 65% gain-time was applied retroactively to all current prisoners that have valid release dates, the reduction in the FDOC current total prison population would be up to about 27,000 prisoners within the first year of the effective date of the change to 65% gain-time. If 65% gain-time is limited to only prisoners with non-violent crimes, the prison population would only drop by about 12,000 prisoners.

Another way to consider the benefits of retroactive 65% gain-time for all non-lifers is to look at how much it would improve the important measurement of the ratio of prisoners per Correctional Officer. The current ratio of prisoners to C.O.s (excluding sergeants and up) is 8 to 1, or 8 prisoners per C.O (now about 12,000 C.O.s to about 96,000 prisoners). FDOC has said that they need 3,000 more C.O.s, which with the current 96,000 prisoners, would bring that ratio down to 6 to 1. But you could also get to that better 6 to 1 ratio by using 65% retroactive gain-time to get the prison population down to as low as 70,000 prisoners, without the added expense of hiring 3,000 new C.O.s at a cost of about \$150 million/year (including benefits).

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). (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 about 60 months, so it would be 39 months (65% of 60 months) into the future before true prison population reductions and cost savings begin.)

As to the prison cost savings due to this reduction in the prison population because of 65% gain-time, it's a complicated calculation and so it is difficult to estimate an exact amount. If one simply multiplies the current publicized overall average prisoner cost of \$21,743/year in FY 2017-2018 (i.e., the FDOC budget divided by the total number of prisoners) by the 12,000 to 27,000 fewer prisoners because of 65% retroactive gain-time, it would indicate a prison cost savings of some \$300 million to \$700 million dollars per year, depending on which categories of non-lifers would get 65% retroactive gain-time. However, using this average cost per prisoner per year to calculate prison cost savings resulting from a 65% gain-time law is unrealistic, as the incremental cost savings from one fewer prisoner is substantially less than \$21,743. However, if the prison population is reduced by tens of thousands of prisoners, as 65% retroactive gain time for all non-lifers would quickly accomplish, the prison cost savings per prisoner per year would be much closer to the current average of \$21,743.

But rather than focusing the positive impact of 65% retroactive gain-time on estimated total prison cost savings, the emphasis at first should be on the benefits of quickly reducing Florida's prison

population by as many as 12,000 to 27,000 prisoners. Whatever the exact prison cost savings would be as a result of this decrease in the prison population, the cost savings would be substantial, in the range of many hundreds of millions of dollars per year.

The Retroactive Change to 65% Gain-Time Will Not Require any Added Court Labor; the Change in the Release Date Will be Calculated by the Florida Department of Corrections.

Furthermore, the retroactive application of 65% gain-time to current non-life prisoners would not require any added court labor or resentencing. The actual sentence length remains the same and the recalculation of the time-served release date at 65% gain-time will be done by the Florida Department of Corrections using their current data processing systems.

While a 65% retroactive gain-time law would result in an additional 12,000 to 27,000 additional prisoners released as of the effective date of a 65% gain-time retroactive law (as their release dates are recalculated to a date which would be prior to the effective date of the new 65% gain-time retroactive law), this would be but a one-time occurrence to correct the too-long time-served sentences caused by the failed 85% gain-time experiment. The net result will be that Florida's prison population will drop to as few as about 70,000 prisoners within the first year of a retroactive 65% gain-time law. Due to the FDOC logistic challenges of dealing with both recalculating some 80,000 prisoners' release dates and setting up much increased levels of re-entry programs for the large number of prisoners who would be released as of the effective date of a 65% gain-time retroactive law, January 1, 2021 would probably be the earliest realistic effective date of a new law on 65% gain-time retroactively.

85% Gain-Time 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

Florida began the 85% gain-time experiment in 1995, in large part because the Federal Truth in Sentencing Act gave monetary grants to states adopting an 85% gain-time law. Those grants ended in 2001, but the 85% gain-time 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% gain-time 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% incentive gain-time.

That 85% gain-time 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 mathematical proof that it increased sentence served time by 30% and so prison costs by 30%.

**And That's How 65% Gain-Time in Florida Would Both Improve Correctional Officers' Safety
and Quickly Shrink the Prison Population by up to 25%.**

Gain-time accrued at 20 days month of earnable gain-time -2

This spreadsheet compares the effects of an 85% Gain-time law versus a 65% gain-time law and compares both at either 10 days/month or 20 days/month of earnable gain-time. (The 85% or 65% is the minimum amount of the sentence length that must be served.)

In order to make 65% gain-time work, prisoners must be able to earn 20 days/month of incentive gain-time, up from the current 10/days/month. This spreadsheet uses a 100-month sentence as an easy-to-follow-the-math example, but the same percentages of any length sentence have the same results shown here. At an 85% gain-time cap on a 100-month sentence, the maximum usable gain-time earned is 15 months, or 15%. At 65% gain-time, the maximum usable gain-time is 35 months, 35% of a 100-month sentence.

At an 85% cap with 10 days/month earnable gain-time, the current situation, prisoners hit the cap at 45% of their sentence, and so have little motivation to behave well for the next 40% of their sentence. (Or put another way, they could run wild for the first 40% of their sentence earning zero gain-time, then behave for the next 45% and still exit at 85%.) But at an 85% cap with 20 days/month earnable gain-time, prisoners hit the max at only 23% of the sentence, so have 62% left in their sentence with little incentive for good behavior.

However, at 65% gain-time cap, prisoners can reach their maximum usable gain-time at 53% of their sentence, very close to the 65% at which they can exit prison if they have behaved well, so are much more motivated to follow FDOC rules or risk extending their time in prison. (Note: 65% is not possible without the 20/days of earnable gain-time.)

Month sequence of 100-month sentence (or percentage of any sentence)	Accumulated gain-time in days at 10 days/month	Accumulated gain-time in months, at 10/days/month	x	Accumulated gain-time in days at 20 days/month	Accumulated gain-time in months, at 20 days/month	NOTES:
1	10	0.3	x	20	0.7	
2	20	0.7	x	40	1.3	
3	30	1.0	x	60	2.0	
4	40	1.3	x	80	2.6	
5	50	1.7	x	100	3.3	
6	60	2.0	x	120	4.0	
7	70	2.3	x	140	4.6	
8	80	2.6	x	160	5.3	
9	90	3.0	x	180	5.9	
10	100	3.3	x	200	6.6	
11	110	3.6	x	220	7.3	
12	120	4.0	x	240	7.9	
13	130	4.3	x	260	8.6	
14	140	4.6	x	280	9.2	
15	150	5.0	x	300	9.9	
16	160	5.3	x	320	10.6	
17	170	5.6	x	340	11.2	
18	180	5.9	x	360	11.9	
19	190	6.3	x	380	12.5	
20	200	6.6	x	400	13.2	
21	210	6.9	x	420	13.9	
22	220	7.3	x	440	14.5	
23	230	7.6	x	460	15.2	85% gain-time at 20 days/month would max out usable gain time at just 23% of sentence length.
24	240	7.9	x	480	15.8	
25	250	8.3	x	500	16.5	
26	260	8.6	x	520	17.2	
27	270	8.9	x	540	17.8	
28	280	9.2	x	560	18.5	
29	290	9.6	x	580	19.1	
30	300	9.9	x	600	19.8	
31	310	10.2	x	620	20.5	
32	320	10.6	x	640	21.1	
33	330	10.9	x	660	21.8	
34	340	11.2	x	680	22.4	
35	350	11.6	x	700	23.1	
36	360	11.9	x	720	23.8	
37	370	12.2	x	740	24.4	
38	380	12.5	x	760	25.1	
39	390	12.9	x	780	25.7	
40	400	13.2	x	800	26.4	
41	410	13.5	x	820	27.1	
42	420	13.9	x	840	27.7	
43	430	14.2	x	860	28.4	
44	440	14.5	x	880	29.0	
45	450	14.9	x	900	29.7	85% gain-time at 10 days/month maxes out usable gain time at 45% of sentence.
46	460	15.2	x	920	30.4	

Gain-time accrued at 20 days month of earnable gain-time -2

Month sequence of 100-month sentence (or percentage of any sentence)	Accumulated gain-time in days at 10 days/month	Accumulated gain-time in months, at 10/days/month		Accumulated gain-time in days at 20 days/month	Accumulated gain-time in months, at 20 days/month	NOTES:
47	470	15.5	x	940	31.0	
48	480	15.8	x	960	31.7	
49	490	16.2	x	980	32.3	
50	500	16.5	x	1000	33.0	
51	510	16.8	x	1020	33.7	
52	520	17.2	x	1040	34.3	
53	530	17.5	x	1060	35.0	65% gain-time at 20 days/month maxes out usable gain-time at 53% of sentence.
54	540	17.8	x	1080	35.6	
55	550	18.2	x	1100	36.3	
56	560	18.5	x	1120	37.0	
57	570	18.8	x	1140	37.6	
58	580	19.1	x	1160	38.3	
59	590	19.5	x	1180	38.9	
60	600	19.8	x	1200	39.6	
61	610	20.1	x	1220	40.3	
62	620	20.5	x	1240	40.9	
63	630	20.8	x	1260	41.6	
64	640	21.1	x	1280	42.2	
65	650	21.5	x	1300	42.9	Release at 65% of Sentence
66	660	21.8	x	1320	43.6	
67	670	22.1	x	1340	44.2	
68	680	22.4	x	1360	44.9	
69	690	22.8	x	1380	45.5	
70	700	23.1	x	1400	46.2	
71	710	23.4	x	1420	46.9	
72	720	23.8	x	1440	47.5	
73	730	24.1	x	1460	48.2	
74	740	24.4	x	1480	48.8	
75	750	24.8	x	1500	49.5	
76	760	25.1	x	1520	50.2	10 days/month of gain-time would max out at 76% of sentence
77	770	25.4	x	1540	50.8	
78	780	25.7	x	1560	51.5	
79	790	26.1	x	1580	52.1	
80	800	26.4	x	1600	52.8	
81	810	26.7	x	1620	53.5	
82	820	27.1	x	1640	54.1	
83	830	27.4	x	1660	54.8	
84	840	27.7	x	1680	55.4	
85	850	28.1	x	1700	56.1	Release at 85% of Sentence
86	860	28.4	x	1720	56.8	
87	870	28.7	x	1740	57.4	
88	880	29.0	x	1760	58.1	
89	890	29.4	x	1780	58.7	
90	900	29.7	x	1800	59.4	
91	910	30.0	x	1820	60.1	
92	920	30.4	x	1840	60.7	
93	930	30.7	x	1860	61.4	
94	940	31.0	x	1880	62.0	
95	950	31.4	x	1900	62.7	
96	960	31.7	x	1920	63.4	
97	970	32.0	x	1940	64.0	
98	980	32.3	x	1960	64.7	
99	990	32.7	x	1980	65.3	
100	1000	33.0	x	2000	66.0	

Explanation of the APPENDIX B spreadsheet showing prison cost savings at 65% Gain-time

My spreadsheet analysis indicates that the **Florida prison population could be reduced by up to 27,000 prisoners within the first year** of the effective date of a new law changing the current 85% gain-time law to 65% and applying it retroactively to all non-life sentenced prisoners. The prison cost savings could be up to \$700 million the first year if calculated at the average \$21,743/ prisoner. (However, the actual cost savings would be less and is complicated to calculate, involving incremental cost savings per prisoner released rather than the average annual cost per prisoner.)

This spreadsheet is a snapshot of the 80,000 prisoners (out of the total of 96,730 prisoners, see below) with valid release dates within the next 30 years in the January 2, 2019 FDOC OBIS data and so excludes those with Life sentences, death sentences, to be set, pending release dates, and those 1,803 prisoners who would not be released within 30 years even at 65% minimum sentence served.

It compares FDOC's release dates under 85% to my calculated release dates at 65% which applies 65% retroactively to all non-lifers, even to prisoners with sentences that now do not earn any gain-time at all such as under the 10-20-Life or the PRR laws (such laws would also have to be amended to allow 65% gain-time to maximize the reduction in the prison population and prison costs).

I estimate that 45% of these 80,000 prisoners were convicted of "non-violent" crimes (defined as crimes not listed in s. 776.08 as "forcible felonies"); see APPENDIX C. **If 65% gain-time applies only to prisoners with non-violent crime convictions, the reduction in the prison population and costs would be reduced by about 55%, by 12,000 rather than by 27,000 prisoners.**

As a snapshot on Jan. 2, 2019, this chart does not consider new admits to prison, some 30,000/year, but does show prison cost savings per year as the current 80,000 prisoners are released earlier at 65% instead of 85%. **It also does not include the significant future cost savings as the actual length of the time spent in prison for the new admits would be 20% less at 65% gain-time.**

This chart assumed new sentencing laws that apply 65% gaintime retroactively for all would have begun on January 1, 2019, and so would have caused a bump in 2019 releases as it includes those who at 65% would have been released before 2019. **More realistically, due to the logistics of a larger than usual number of prisoners being released, is a January 1, 2021 effective date to apply 65%** to all non-lifer prisoners. However, the cost savings will be similar whenever the starting date of applying 65%.

Prison cost used is \$21,743 for a full year (for the number of prisoners at the end of year) plus half of \$21,743 for those prisoners released during that year, to reflect that the prison cost for a January releasee is less than that for a December releasee. \$21,743 is FDOC's full operating cost per inmate per year in the FDOC 2017-2018 Annual Report. While the Office of Economic and Demographic Research of the Florida Legislature breaks down FDOC's full operating cost per inmate into Dorm/Work Camp Operating costs (about 65% of the total) and Variable Operating costs, they note that Full Operating Costs apply for every 1,500 prison beds. Because this analysis shows a reduction of prisoners/beds of much more than 1,500 prisoners, the full operating costs of \$21,743/prisoner/year is appropriate to use here as a starting point, keeping in mind that the actual total cost savings will be less. FDOC would have to close down about 15 prison camps and transfer prisoners and FDOC employees to the remaining prisons to maximize the prison cost savings of a 65% retroactive gain-time law.

(This spreadsheet by J.J. Daiak; jj@toughenoughoncrime.com)

(As of January 2, 2019, there were 96,730 prisoners in FDOC. Of these, 79,879 had Valid release dates; 13,667 had life sentences; 1,803 had long de facto life sentences; 272 had death sentences; and 1,109 had pending or to be set sentences.)

