

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCS for HB 537 Custody and Supervision of Specified Offenders

**SPONSOR(S):** Criminal Justice Subcommittee

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Padgett	Hall

**SUMMARY ANALYSIS**

PCS for HB 537 makes several changes relating to the custody and supervision of specified offenders to align the sentencing and supervision requirements for a person who commits specified offenses with the sentencing and supervision requirements for a person who attempts, solicits, or conspires to commit the same specified offenses as follows:

- Amends s. 794.011, F.S., to prohibits FDOC from granting basic gain-time to a person who commits, or attempts, solicits, or conspires to commit a sexual battery on or after July 1, 2023.
- Amends s. 944.275, F.S., to prohibit FDOC from granting incentive gain-time to a person who commits, or attempts, solicits, or conspires to commit specified offenses on or after July 1, 2023.
- Amends s. 948.30, F.S., to require a court, for an offense committed on or after July 1, 2023, to sentence a person to certain additional conditions of probation if the person is convicted of attempting, soliciting, or conspiring to commit an enumerated offense that would otherwise require a person to be sentenced to additional conditions of probation in the same manner as if he or she committed the underlying offense.

The bill amends s. 948.05, F.S., to prohibit FDOC from awarding a reduction in the supervision term of a person who is on probation or community control after being convicted of a criminal offense that is a predicate offense for designation as a sexual predator under s. 775.21(4)(a)(1)a. or b., F.S., or a sexual offender under s. 943.0435(1)(h)1.a., F.S., or if the person is a violent felony offender of special concern under s. 948.06(8)(b), F.S.

The bill prohibits inmates who have been convicted of specified offenses, or attempting, soliciting, or conspiring to commit such specified offenses on or after July 1, 2023, from receiving certain types of gain-time. To the extent that such inmates are eligible to receive gain-time under current law and would be awarded gain-time in the future, the bill may have a positive indeterminate prison bed impact by making such inmates ineligible to receive gain-time and thus, ineligible for an earlier release date from incarceration.

The bill prohibits a reduction in the supervision term for specified probationers or offenders in community control. To the extent such probationers or offenders in community control are currently receiving a reduction in the term of supervision, there may be a positive indeterminate fiscal impact to FDOC, which would be required to continue supervising such offenders who would otherwise have their term of supervision reduced.

The bill provides an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Gain-time

##### Background

The Criminal Punishment Code (Code) applies to convictions for felony offenses, except capital felony offenses, committed on or after October 1, 1998.<sup>1</sup> Under the Code, a judge must sentence an offender based on a calculation that determines the lowest and highest permissible sentence up to the statutory maximum sentence.<sup>2</sup> Any sentence imposed under the Code reflects the length of actual time to be served and may only be decreased by earned gain-time.<sup>3</sup>

Section 944.275, F.S., authorizes the Florida Department of Corrections (FDOC) to grant deductions in an inmate's sentence, which is known as gain-time. The types of gain-time that FDOC may award to an inmate include:

- Basic gain-time;<sup>4</sup>
- Incentive gain-time;<sup>5</sup>
- Meritorious gain-time;<sup>6</sup> and
- Educational achievement gain-time.<sup>7</sup>

Some inmates are not eligible to receive specified types of gain-time. FDOC may not award basic gain-time to any inmate who was convicted of committing a sexual battery on or after October 1, 1992.<sup>8</sup> In addition, FDOC may not award incentive gain-time to an inmate who committed the following offenses on or after October 1, 2014:

- First degree murder committed by a person engaged in the perpetration of, or in the attempt to perpetrate a sexual battery in s. 782.04(1)(a)2.c., F.S.;
- Sexual battery or lewd and lascivious battery, molestation, conduct, or exhibition committed during the kidnapping or false imprisonment of a child under the age of 13 in s. 787.01(3)(a)2. or 3. and s. 787.02(3)(a)2. or 3., F.S.;
- Sexual battery in s. 794.011, F.S.;<sup>9</sup>
- Lewd or lascivious offenses committed against a person under the age of 16 or upon or in the presence of an elderly or disabled person in s. 800.04 and s. 825.1025, F.S.; and
- Offenses related to computer pornography and traveling to meet a minor for the purpose of engaging in unlawful sexual conduct in s. 847.0135(5), F.S.<sup>10</sup>

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<sup>1</sup> S. 921.002, F.S.

<sup>2</sup> *Id.* A judge may impose a sentence below the lowest permissible sentence under the Code only when circumstances or factors reasonably justify mitigation of a sentence. If a judge imposes a sentence below the lowest permissible sentence, he or she must articulate in writing the reasons justifying such mitigation. S. 921.002(1)(f), F.S.

<sup>3</sup> S. 921.002(1)(e), F.S. An inmate's sentence may not be shortened if the application of gain-time would result in such inmate serving less than 85 percent of his or her term of imprisonment imposed by the court. *Id.*

<sup>4</sup> S. 944.275(4)(a), F.S. FDOC may award an inmate up to 10 days each month if an inmate demonstrates satisfactory behavior while incarcerated. *Id.*

<sup>5</sup> S. 944.275(4)(b), F.S. For sentences imposed on or after October 1, 1995, FDOC may award up to 10 days per month of incentive gain-time to an inmate who works diligently, participates in training, uses time constructively, or otherwise engages in positive activity. S. 944.275(4)(b)3., F.S.

<sup>6</sup> S. 944.275(4)(c), F.S. FDOC may award up to 60 days of meritorious gain-time to an inmate who commits an outstanding deed or who performs an outstanding service that merits such an award. *Id.*

<sup>7</sup> S. 944.275(4)(d), F.S. FDOC may grant a one-time award of 60 days of educational achievement gain-time to an inmate who receives a high school equivalency diploma or a vocational certificate. *Id.*

<sup>8</sup> S. 794.011(7), F.S.

<sup>9</sup> Excluding s. 794.011(10), F.S.

<sup>10</sup> S. 944.275(4)(e), F.S. Other inmates, such as a prison releasee reoffender under s. 775.082(9), F.S., and inmates serving a life sentence under s. 775.082(3), F.S., are ineligible to receive gain-time.

Based on prior court decisions, FDOC considers inmates who have been convicted of *attempting* to commit a crime that is excluded from eligibility for incentive gain-time to be ineligible for incentive gain-time in the same manner as if they had been convicted of the underlying crime.

*Fla. Dep't. of Corrections v. Gould*

An inmate convicted of attempted sexual battery on a child under the age of 12 filed suit against FDOC alleging that a conviction for a criminal attempt was *not* excluded from the award of gain-time by statute because a conviction for a criminal attempt is a separate and distinct crime than the underlying offense.<sup>11</sup> The First District Court of Appeal (DCA) receded from previous decisions which held that a conviction for an attempted crime was a conviction for the underlying offense modified by the attempt statute in s. 777.04, F.S., and ruled that a conviction for an attempt was a separate and distinct offense.<sup>12</sup> Thus, a person convicted of attempting to commit a crime that would otherwise be ineligible for the award of incentive gain-time is eligible for the award of gain-time.<sup>13</sup> FDOC appealed the decision of the First DCA, which is currently pending before the Florida Supreme Court.

Effect of Proposed Changes – Gain-time

PCS for HB 537 amends s. 794.011(7), F.S., to prohibit FDOC, for sentences imposed for offenses committed on or after July 1, 2023, from granting basic gain-time to a person who is convicted of committing, or attempting, soliciting, or conspiring to commit a sexual battery in violation of s. 794.011, F.S.

The bill amends s. 944.275(4)(e), F.S., to prohibit FDOC, for sentences imposed for offenses committed on or after July 1, 2023, from granting incentive gain-time to a person who is convicted of attempting, soliciting, or conspiring to commit an offense that is otherwise currently ineligible for the award of incentive gain-time under s. 944.275(4)(e), F.S. Under the bill, FDOC would continue to be prohibited from awarding incentive gain-time to a person who is convicted of committing an offense that is currently ineligible for the award of gain-time.

**Probation and Community Control**

Background

*Probation and Community Control*

Probation is a form of community supervision requiring specified contacts with probation officers and compliance with certain terms and conditions.<sup>14</sup> Following a conviction for a criminal offense, the court determines the terms and conditions of probation.<sup>15</sup> Standard conditions of probation include:

- Reporting to the probation officer as directed.
- Permitting the probation officer to visit the probationer at his or her home.
- Working faithfully at suitable employment, when possible.
- Residing at a specified place.
- Living without violating the law.
- Paying restitution to any aggrieved party for the damage or loss caused by a probationer's offense.
- Being prohibited from possessing, carrying, or owning a firearm or weapon, without the probation officer's consent.
- Being prohibited from using intoxicants to excess or possessing any drugs or narcotics.<sup>16</sup>

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<sup>11</sup> *Fla. Dep't of Corrections v. Gould*, 344 So. 3d 496 (Fla. 1st DCA 2022).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> S. 948.01(8), F.S.

<sup>15</sup> S. 948.03(1), F.S.

<sup>16</sup> *Id.*

Community control is a form of intensive supervised custody of an offender who remains in the community, but whose freedom is restricted within the home, community, or noninstitutional residential placement and includes specific sanctions and monitoring by probation officers with restricted caseloads.<sup>17</sup> In addition to the standard conditions which apply to normal probationers, an offender on community control must:

- Maintain specified contact with his or her parole or probation officer;
- Be confined to an agreed-upon residence during any hours he or she is away from work or public service activities;
- Complete mandatory public service;
- Be supervised by FDOC by means of an electronic monitoring device or system.<sup>18</sup>

Section 948.05(2), F.S., authorizes FDOC to implement a system of graduated incentives to promote compliance with the terms of supervision. FDOC may, without leave of court, award a compliant probationer or offender in community control specified incentives, including:

- A 60 day reduction of his or her term of supervision for each educational advancement activity<sup>19</sup> completed; or
- A 30 day reduction of his or her term of supervision for each period of workforce achievement<sup>20</sup> completed.

FDOC may also recommend that the court terminate the supervision of a compliant probationer or offender in community control early, but the court must approve any such early termination.<sup>21</sup>

#### *Violent Felony Offender of Special Concern*

A “violent felony offender of special concern” (VFOSC) is a person who is on felony supervision:

- Related to a qualifying offense<sup>22</sup> committed on or after March 12, 2007.
- For any offense committed on or after March 12, 2007, and who has previously been convicted of a qualifying offense.
- For any offense committed on or after March 12, 2007, and who is found to have violated supervision by committing a qualifying offense.
- And has previously been found by a court to be a habitual violent felony offender,<sup>23</sup> three-time violent offender,<sup>24</sup> or sexual predator,<sup>25</sup> and who has committed a qualifying offense on or after March 12, 2007.<sup>26</sup>

#### Effect of Proposed Changes – Probation and Community Control

The bill amends s. 948.05, F.S., to prohibit any reduction in the term of supervision for a probationer or

<sup>17</sup> S. 948.001(3), F.S.

<sup>18</sup> S. 948.101(1), F.S.

<sup>19</sup> S. 948.05(2)(c), F.S. “Educational advancement activity” means a high school equivalency degree, an academic degree, or a vocational certificate. *Id.*

<sup>20</sup> S. 948.05(2)(d), F.S. “Workforce achievement” means continuous and verifiable full-time employment, for at least 30 hours per week for a six month period, for which the probationer or offender earns a wage. *Id.*

<sup>21</sup> S. 948.05(2)(b)5, F.S.

<sup>22</sup> Section 948.06(8)(c), F.S., defines qualifying offense to include any of the following: kidnapping or attempted kidnapping, s. 787.01, F.S.; false imprisonment of a child under the age of 13, s. 787.02(3), F.S.; luring or enticing a child, s. 787.025(2)(b) or (b), F.S.; murder or attempted murder, s. 782.04, F.S.; attempted felony murder, s. 782.051, F.S.; manslaughter, s. 782.07, F.S.; aggravated battery or attempt, s. 784.045, F.S.; sexual battery or attempt, s. 794.011(2), (3), (4), or (8)(b) or (c), F.S.; lewd and lascivious battery or attempt, s. 800.04(4); lewd and lascivious molestation, s. 800.04(5)(b) or (c), F.S.; lewd and lascivious conduct, s. 800.04(6)(b), F.S.; lewd and lascivious exhibition, s. 800.04(7)(b); lewd and lascivious exhibition on computer, s. 847.0135(5)(b); robbery or attempt, s. 812.13, F.S.; carjacking or attempt, s. 812.133, F.S.; home invasion robbery or attempt, s. 812.135, F.S.; lewd and lascivious offense upon or in the presence of an elderly person or attempt, s. 825.1025, F.S.; sexual performance by a child or attempt, s. 827.071, F.S.; computer pornography, s. 847.0135(2) or (3), F.S.; transmission of child pornography, s. 847.0137, F.S.; selling or buying of minors, s. 847.0145, F.S.; poisoning food or water, s. 859.01, F.S.; abuse of a dead human body, s. 872.06, F.S.; any burglary offense that is a first or second degree felony, s. 810.02(2) or (3), F.S.; arson or attempt, s. 806.01(1), F.S.; aggravated assault, s. 784.021, F.S.; aggravated stalking, s. 784.048(3), (4), (5), or (7), F.S.; aircraft piracy, s. 860.16, F.S.; throwing a deadly missile, s. 790.161(2), (3), or (4), F.S.; and treason, s. 876.32, F.S.

<sup>23</sup> S. 775.084(1)(b), F.S.

<sup>24</sup> S. 775.084(1)(c), F.S.

<sup>25</sup> S. 775.21, F.S.

<sup>26</sup> S. 946.06(8)(b), F.S.

offender in community control who is under supervision for committing or attempting, soliciting, or conspiring to commit the following offenses:

- Sexual misconduct with an individual with a developmental disability;<sup>27</sup>
- Sexual misconduct with a mental health patient by an employee;<sup>28</sup>
- Kidnapping or false imprisonment, where the victim is a minor and there is a sexual component to the crime;<sup>29</sup>
- Luring or enticing a child, with a prior sexual conviction;<sup>30</sup>
- Human trafficking;<sup>31</sup>
- Sexual battery;<sup>32</sup>
- Unlawful sexual activity with minors;<sup>33</sup>
- Lewd or lascivious battery, molestation, conduct, or exhibition;<sup>34</sup>
- Video voyeurism with a prior video voyeurism conviction;<sup>35</sup>
- Lewd or lascivious offense on an elderly person;<sup>36</sup>
- Sexual performance by a child;<sup>37</sup>
- Providing obscene materials to a minor;<sup>38</sup>
- Computer pornography involving minors;<sup>39</sup>
- Soliciting a minor over the Internet;<sup>40</sup>
- Traveling to meet minors;<sup>41</sup>
- Lewd or lascivious exhibition over the Internet;<sup>42</sup>
- Transmission of child pornography by electronic device or equipment;<sup>43</sup>
- Transmission of material harmful to minors;<sup>44</sup>
- Selling or buying minors to engage in sexually explicit conduct;<sup>45</sup>
- Racketeering involving at least one sexual offense;<sup>46</sup>
- Sexual misconduct with a forensic client;<sup>47</sup> and
- Sexual misconduct by an employee on a juvenile offender.<sup>48</sup>

The bill also prohibits any reduction in the term of supervision for a probationer or offender in community control who qualifies as a VFOSC.

## **Probation or Community Control for Certain Sex Offenses**

### Background

Section 948.30, F.S., requires a court to impose additional conditions of supervision on a person who is sentenced to probation or community control after being convicted of one of the following offenses:

- Sexual battery in ch. 794, F.S.;

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<sup>27</sup> S. 393.135(2), F.S.

<sup>28</sup> S. 394.4593(2), F.S.

<sup>29</sup> Ss. 787.01 and 787.02, F.S.

<sup>30</sup> S. 787.025(2), F.S.

<sup>31</sup> Ss. 787.06(3)(b), (d), (f), or (g), F.S.

<sup>32</sup> S. 794.011, excluding s. 794.011(10), F.S.

<sup>33</sup> S. 794.05, F.S.

<sup>34</sup> S. 800.04, F.S.

<sup>35</sup> S. 810.145(8), F.S.

<sup>36</sup> S. 825.1025, F.S.

<sup>37</sup> S. 827.071, F.S.

<sup>38</sup> S. 847.0133, F.S.

<sup>39</sup> S. 847.0135(2), F.S.

<sup>40</sup> S. 847.0135(3), F.S.

<sup>41</sup> S. 847.0135(4), F.S.

<sup>42</sup> S. 847.0135(5), F.S.

<sup>43</sup> S. 847.0137, F.S.

<sup>44</sup> S. 847.0138, F.S.

<sup>45</sup> S. 847.0145, F.S.

<sup>46</sup> S. 895.03, F.S.

<sup>47</sup> S. 916.1075(2), F.S.

<sup>48</sup> S. 985.701(1), F.S.

- Lewd or lascivious battery, molestation, conduct, or exhibition in s. 800.04, F.S.;
- Sexual performance by a child in s. 827.071, F.S.;
- Lewd or lascivious exhibition over the Internet in s. 847.0135(5), F.S., and
- Selling or buying minors to engage in sexually explicit conduct in s. 847.0145, F.S.

Examples of such conditions include:

- A mandatory 8-hour curfew;
- A prohibition on contact or living within 1,000 feet of a school and other places where children regularly congregate;
- A prohibition on any contact with the victim;
- Active participation in and successful completion of a sexual offender treatment program with certain specifications;
- Submit a specimen of blood or other approved biological specimen to be registered with the DNA data bank;
- Submission to a warrantless search by the community control or probation officer of the probationer's or community controllee's person, residence, or vehicle;
- Participation at least annually in polygraph examinations for specified purposes and with specified conditions;
- Maintenance of a driving log and prohibition against driving a motor vehicle alone without prior approval;
- Prohibition against obtaining or using a post office box without prior approval;
- Submission to an HIV test with specified conditions; and
- Electronic monitoring when deemed necessary and ordered by the court.<sup>49</sup>

#### Effect of Proposed Changes – Probation or Community Control for Certain Sex Offenses

The bill amends s. 948.30, F.S., to require a court, for offenses committed on or after July 1, 2023, to sentence a person to the additional conditions of probation in s. 948.30, F.S., if such person is convicted of attempting, soliciting, or conspiring to commit a violation of an enumerated offense that would otherwise require a person to be sentenced to additional conditions of probation in the same manner as if he or she committed the underlying offense.<sup>50</sup>

The bill provides an effective date of July 1, 2023.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 794.011, F.S., relating to sexual battery.

**Section 2:** Amends s. 944.275, F.S., relating to gain-time.

**Section 3:** Amends s. 948.05, F.S., relating to court to admonish or commend probationer or offender in community control; graduated incentives.

**Section 4:** Amends s. 948.30, F.S., relating to additional terms and conditions of probation or community control for certain sex offenses.

**Section 5:** Provides an effective date of July 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

<sup>49</sup> S. 948.30(1) and (2), F.S.

<sup>50</sup> For example, the bill requires a court, for an offense committed on or after July 1, 2023, to impose the additional conditions of probation in s. 948.30, F.S., if a person is sentenced to probation or community control for committing *attempted* sexual battery in the same manner that the court is currently required to sentence a person who committed the underlying offense of sexual battery to such additional conditions of probation.

2. Expenditures:  
See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:  
None.
2. Expenditures:  
None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill prohibits inmates who have been convicted of specified offenses, or attempting, soliciting, or conspiring to commit such specified offenses on or after July 1, 2023, from receiving certain types of gain-time. To the extent that such inmates are eligible to receive gain-time under current law and would be awarded gain-time in the future, the bill may have a positive indeterminate prison bed impact by making such inmates ineligible to receive gain-time and thus, ineligible for an earlier release date from incarceration.

The bill prohibits a reduction in the supervision term for specified probationers or offenders in community control. To the extent such probationers or offenders in community control are currently receiving a reduction in the term of supervision, there may be a positive indeterminate fiscal impact to FDOC, which would be required to continue supervising such offenders who would otherwise have their term of supervision reduced.

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:  
Not applicable. The bill does not appear to affect county or municipal governments.
2. Other:  
None.

**B. RULE-MAKING AUTHORITY:**

FDOC has sufficient rulemaking authority to implement the provisions of the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**