A CASE FOR REFORM

FLORIDA’S CAP ON REHABILITATION CREDITS

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SPLC Southern Poverty Law Center
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SUMMARY

Florida’s arbitrary cap on the ability of people in prison to earn time off their sentence for good behavior — also known as “gain time” — effectively requires people to serve a minimum of 85 percent of any sentence.

This cap on rehabilitation credits toward time served on prison sentences inflates the length of time people spend incarcerated to satisfy prison sentences, but without a definite benefit to public safety and at great cost to taxpayers. Even for people convicted of minor offenses, the cap on rehabilitation credits makes it impossible to satisfy any sentence in a reasonable amount of time after rehabilitation. It not only significantly increased the average prison stay by 22 percent over the last decade, but also took away incentives for good behavior or participation in rehabilitation programs aimed at reducing recidivism.

With over 96,000 people incarcerated in state prisons, Florida has the 11th-highest incarceration rate in the nation — costing the state over $2.7 billion a year! People of color are also imprisoned at a disproportionate rate; African Americans, for example, make up 47 percent of the Florida prison population, but only 17 percent of the state population.

Reinstating the system for good behavior rehabilitation credits as it existed before 1995, and increasing incentive or education, training and program rehabilitation credits would make an immediate impact on unnecessarily long prison sentences. An analysis of 2019 Florida prison data shows the potential benefits of reforming the cap on rehabilitation credits for currently incarcerated people and for the state overall:

- Reinstating the previous good behavior credits system could produce earlier releases for over 11,000 incarcerated people in the first year, if implemented retroactively. What’s more, expanding incentive rehabilitation credits retroactively could produce earlier releases for over 18,000 incarcerated people. If retroactively implemented together, these reforms would mean a total of 24,000 people could be released in the first year of such reforms.

- Restoring good behavior credits and expanding incentive rehabilitation credits could shorten the average prison sentence by 18 months if enacted together while adjusting the cap on rehabilitation credits to require a minimum of 65 percent of an incarcerated person’s prison sentence is served. These measures would also decrease racial disparities in Florida’s prison population by 35 percent.

- Restoring good behavior credits and expanding incentive rehabilitation credits could save Florida an estimated $1.7 billion and $1.8 billion, respectively, which could be reinvested in programs addressing recidivism and rehabilitation. If implemented while eliminating the cap on rehabilitation credits, Florida could save over $2.6 billion.
As harsher sentencing policies became increasingly popular after the passage of the 1994 federal crime bill, caps on rehabilitation credits forced people to serve longer portions of their prison sentences. The federal government encouraged states to enact stricter mandatory time-served requirements in exchange for federal funding for prison construction and law enforcement. Florida responded by enacting its own cap on rehabilitation credits (also known as the “85 Percent Rule”) which requires incarcerated people to serve a mandatory minimum of 85 percent of their sentence before becoming eligible for release.

Florida’s cap on rehabilitation credits, however, goes far beyond the federal crime bill’s standard by requiring that everyone with a prison conviction – regardless of the nature and severity of the offense – serve a minimum of 85 percent of their sentence. Consequently, the state’s prison population has exploded by 65 percent since 1995 as people are forced to serve longer sentences at a rapidly growing cost to taxpayers.

Still, this commitment to incarceration offers little evidence of its positive impact on public safety. The average prison stay in Florida increased by 33 percent from 1996 to 2014, while the number of people with sentences of 10 years or more tripled since the cap on rehabilitation credits took effect. Today, chronically overworked prison personnel struggle to keep overcrowded prisons safe, a problem that would cost an estimated $90 million and require hundreds of new personnel to address.

The cap on rehabilitation credits has also produced a graying prison population. The percentage of people in prison in Florida over the age of 50 has more than quadrupled from 5.3 percent in 1995 to nearly a quarter (24.2 percent) of the state prison population in 2018. Research, however, shows little benefit from incarcerating such a large population of older people: Less than 10 percent of people over the age of 50 tend to recidivate when released, compared to almost one quarter (24.7 percent) of the overall prison population. Incarcerating an aging prison population is also more expensive due to rising health care costs. In 2018, health care expenses comprised 23.7 percent of an incarcerated person’s daily prison cost in Florida, compared to 18.6 percent in 1995.
Even with significantly declining prison admission rates over the past decade, the size of Florida’s prison population has remained fairly stagnant by comparison. This is a direct result of the cap on rehabilitation credits, which forces longer stays in prison before a sentence is satisfied. It also solidifies racial disparities in the prison population.

**GOOD BEHAVIOR AND INCENTIVE REHABILITATION CREDITS**

Before the cap on rehabilitation credits was enacted in the mid-1990s, people could shorten their sentences through both good behavior rehabilitation credits (referred to in statute as “basic gain time”) and incentive rehabilitation credits (referred to in the statute as “incentive,” “educational,” and “meritorious” gain time). The 15 percent cap on rehabilitation credits has not only significantly increased the average prison stay by 22 percent over the last decade, but also took away incentives for good behavior or participation in rehabilitation programs aimed at reducing recidivism.

Good behavior rehabilitation credits allowed people to reduce their sentence by 10 days for every month of their sentence. This time was awarded as a lump sum upon entering prison, regardless of the convicted offense, and could only be forfeited based on a person’s lack of good behavior while incarcerated. For example, a person sentenced to five years, or 60 months, in prison received a lump sum of 600 days of good behavior rehabilitation credits – enough credits to reduce their sentence by more than 1.5 years if they are not forfeited.

A person could also earn incentive rehabilitation credits for exemplary behavior, extraordinary service, and participation in various prison education and vocational training programs. Incentive rehabilitation credits could accumulate up to 20 to 25 days per month served by people convicted of crimes before Oct. 1, 1995, and up to 10 days per month served for convictions that occurred afterward.

After Oct. 1, 1995, Florida’s cap on rehabilitation credits eliminated good behavior rehabilitation credits and capped incentive rehabilitation credits to 15 percent of a person’s sentence. These changes create an arbitrary mandatory minimum length of stay that disregards a person’s ability to demonstrate rehabilitation and merit an earlier release without posing a public safety risk. In fact, a study by the Pew Center on the States estimated that 14 percent of people with nonviolent convictions (2,640 people) could have been released without any recidivism risk, ultimately saving Florida taxpayers $54 million in prison expenses.10
An estimated 34% of the entire Florida prison population would not be re-arrested at all if they were released early.
**Florida Prison Population Reduction After One Year of Credit Cap Reform**

<table>
<thead>
<tr>
<th>Option</th>
<th>Description</th>
<th>Reduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Reinstate good behavior rehabilitation credits</td>
<td>11,915</td>
</tr>
<tr>
<td>2</td>
<td>Expand incentive rehabilitation credits</td>
<td>18,423</td>
</tr>
<tr>
<td>3</td>
<td>Implement both rehabilitation credit reforms with a 65% cap on rehabilitation credits</td>
<td>18,423</td>
</tr>
<tr>
<td>4</td>
<td>Implement both rehabilitation credit reforms without any cap on rehabilitation credits</td>
<td>24,519</td>
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**Average Prison Sentence (Months)**

<table>
<thead>
<tr>
<th>Option</th>
<th>Description</th>
<th>Average Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Reinstate good behavior rehabilitation credits</td>
<td>34.4</td>
</tr>
<tr>
<td>2</td>
<td>Expand incentive rehabilitation credits</td>
<td>33.6</td>
</tr>
<tr>
<td>3</td>
<td>Implement both rehabilitation credit reforms with a 65% cap on rehabilitation credits</td>
<td>33.6</td>
</tr>
<tr>
<td>4</td>
<td>Implement both rehabilitation credit reforms without any cap on rehabilitation credits</td>
<td>26.2</td>
</tr>
</tbody>
</table>

**Racial Disparities in Length of Prison Stays (in Months)**

<table>
<thead>
<tr>
<th>disparity</th>
<th>Black — White Sentence Disparity</th>
<th>Latino — White Sentence Disparity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sentence Disparity</td>
<td>8.1</td>
<td>8.7</td>
</tr>
<tr>
<td>Sentence Disparity with Basic Gain Time Reimbursement</td>
<td>5.4</td>
<td>5.9</td>
</tr>
<tr>
<td>Sentence Disparity with Incentive Gain Time Expansion</td>
<td>5.3</td>
<td>5.6</td>
</tr>
<tr>
<td>Sentence Disparity with Both Basic and Incentive Gain Time and 65% Cap on Rehabilitation Credits</td>
<td>5.3</td>
<td>5.6</td>
</tr>
<tr>
<td>Sentence Disparity with Both Basic and Incentive Gain Time and No Cap on Rehabilitation Credits</td>
<td>4.1</td>
<td>4.5</td>
</tr>
</tbody>
</table>
Longer prison sentences are not proven to deter crime or lessen recidivism. However, they do create an aging prison population that is more expensive to oversee. In fact, longer sentences can be counterproductive to public safety as increasing prison expenses can divert money from programming and re-entry support aimed at reducing recidivism.\cite{15}

Reforming and expanding rehabilitation credit opportunities and lowering the cap also provides a particular benefit to people with longer prison sentences, which tend to be people of color. Black people incarcerated in Florida prisons average sentences 8.1 months longer than their white counterparts, while Latinos average sentences 8.7 months longer than white people.\cite{16} Reforming the ability to earn rehabilitation credits could significantly decrease those disparities.

Restoring good behavior credits and expanding incentive rehabilitation credit opportunities could save Florida between an estimated $1.7 billion and $1.8 billion, respectively, in expenses that could be reinvested in programs addressing recidivism and rehabilitation. If implemented while eliminating the cap on rehabilitation credits, Florida could save over $2.6 billion.\cite{17}

Reinstating good behavior rehabilitation credits and increasing incentive rehabilitation credit opportunities could save a considerable amount of taxpayer expense if applied to everyone in state prisons. Rehabilitation credits not only incentivize participation in programs for job training, education and treatment, but also generate savings that could be used to expand those same programs and fund re-entry services proven to reduce recidivism. By contrast, in 2018, the Florida Department of Corrections was forced to cut programming and re-entry services aimed at reducing recidivism in order to cover a $28 million budget deficit.\cite{18} From a cost-effectiveness standpoint, rehabilitation credits have the potential to release more people and conserve resources that could support their success.

**MONEY SAVED WITH REHABILITATION CREDIT EARLY RELEASES**

<table>
<thead>
<tr>
<th>Option</th>
<th>Savings</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Option 1</strong></td>
<td>$1.76 billion</td>
</tr>
<tr>
<td>Reinstall good behavior rehabilitation credits</td>
<td></td>
</tr>
<tr>
<td><strong>Option 2</strong></td>
<td>$1.83 billion</td>
</tr>
<tr>
<td>Expand incentive rehabilitation credits</td>
<td></td>
</tr>
<tr>
<td><strong>Option 3</strong></td>
<td>$1.83 billion</td>
</tr>
<tr>
<td>Implement both rehabilitation credit reforms with a 65% cap on rehabilitation credits</td>
<td></td>
</tr>
<tr>
<td><strong>Option 4</strong></td>
<td>$2.61 billion</td>
</tr>
<tr>
<td>Implement both rehabilitation credit reforms without any cap on rehabilitation credits</td>
<td></td>
</tr>
</tbody>
</table>
Overall, the country is shifting away from harsher and more punitive methods of criminal justice, preferring remedies that are more rehabilitative and appropriate for an incarcerated person’s needs. Even crime victims have voiced a need for shorter prison sentences and support for more rehabilitative programing and preventative efforts.19

By reforming and expanding rehabilitation credits and adjusting the cap on rehabilitation credits, Florida has an opportunity to make a substantial change in its approach to criminal justice. This reform is an opportunity for Florida to protect public safety, save taxpayer dollars, reduce racial disparities, rehabilitate and restore humanity to incarcerated people, and reunite families and communities.

ENDNOTES

1 Florida Policy Institute, Fiscal Year 2019-20 Budget: Summary by Issue Area, Dept. of Corrections. https://www.fpi.institute/category/state-budget-taxcoff/
7 Florida Department of Corrections, Annual Reports.
9 Florida Department of Corrections, Annual Reports.
12 Our analysis makes several assumptions based on data availability and limitations. We assume that no jail time credit goes toward release time, as we did not have information on length of jail stays before entering prison. We assume that multiple sentences run concurrently, as the data does not distinguish if sentences are concurrent or consecutive. We assume sentences do not have mandatory minimums where gain time cannot be applied, as the data did not indicate where mandatory minimums are enforced. We assume everyone earns and/or keeps all available gain time, as we are not able to predict how often people attend rehabilitative programming or exhibit bad behavior. Our cost savings estimates assume 100 percent of the daily cost to incarcerate would be saved by early release. Lastly, our analysis does not include people given life sentences or death sentences.
13 Note that we did not include individuals with death sentences or life sentences without parole in the calculation of prison sentence length averages.
16 Native Americans have a current sentence disparity of 36.3 months longer than the average sentence for white people. Restoring basic and incentive gain time decreases the disparity to 23.6 months if a 65 percent cap on rehabilitation credits is in place, and 18 months if there was no cap at all. Note that there are only 79 people labeled as Native American in the dataset. However, it is possible that some Native Americans and Latinos are labeled as white or “unknown.”
17 Basic gain time was calculated as a lump sum award of 10 days per month of an individual’s sentences. Incentive gain time was calculated as 20 days earned per month spent in prison. A scenario with both basic and incentive gain time would calculate incentive gain time based on a reduced prison sentence after the basic gain time lump sum had been applied. Cost estimates are based on an average daily expense of $59.57 per day for each person incarcerated in Florida prisons, according to the Florida Department of Corrections FY 2017-18 Annual Report.
ACKNOWLEDGMENTS

This report was written by Delvin Davis and edited by Jamie Kizzire. It was designed by Claudia Whitaker.

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