

August 23, 2021

Notice of Proposed Rule

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-601.105 Restoration of Forfeited Gain Time

PURPOSE AND EFFECT: Rulemaking is necessary to allow for the restoration of forfeited gain time under certain enumerated circumstances, subject to the Secretary's approval. Additionally, the proposed amendments will remove all references to "parole" since, pursuant to § 947.23(7), F.S., the Department lacks statutory authority to restore gain time that is forfeited when a parolee's parole is revoked.

SUMMARY: The proposed rule allows for the restoration of forfeited gain time under certain enumerated circumstances, subject to the Secretary's approval. Additionally, the proposed amendments remove all references to "parole" since, pursuant to § 947.23(7), F.S., the Department lacks statutory authority to restore gain time that is forfeited when a parolee's parole is revoked.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The Department used an itemized checklist to conduct an economic analysis and determine if there is an adverse impact or regulatory cost associated with this rule that exceeds the criteria. Upon review of the proposed changes to the rule, the Department has determined that the amendments will not exceed any one of the economic analysis criteria in a SERC as set forth in s. 120.541(2)(a), F.S.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 944.09, 944.275, F.S.

LAW IMPLEMENTED: 944.09, 944.275, 944.28, F.S.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Lauren Sanchez, Paralegal Specialist, 501 S. Calhoun Street, Tallahassee, FL 32399 (850)717-3610, lauren.sanchez@fdc.myflorida.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Office of the General Counsel, Attn. FDC Rule Correspondence, 501 South Calhoun Street, Tallahassee, Florida 32399, FDCRuleCorrespondence@fdc.myflorida.com.

THE FULL TEXT OF THE PROPOSED RULE IS:

33-601.105 Restoration of Forfeited Gain Time.

(1) For purposes of this rule, positive overall institutional adjustment means the inmate has adhered to the behavioral objectives referenced in Rules 33-601.101 and 33-601.210, Florida Administrative Code (F.A.C.), and has not received an internal security threat transfer during the review period. The review period for the initial eligibility determination by the classification officer is the preceding 12 months. The review period for the decision of the final approving authority is the entire term of the inmate's current commitment.

(2)(1) Restoration of gain time as a positive management tool. All or any portion of gain Gain time that has been forfeited during an inmate's under the current commitment as a result of disciplinary action or revocation of parole, probation, community control, provisional release, supervised community release, conditional medical release, control release, or conditional release is eligible for shall be subject to restoration only when the restoration will would produce the same or greater benefits as those derived from the forfeiture in the first place. Only those

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~~inmates who have established positive overall institutional adjustment during the review period whose adjustment and performance since their last disciplinary report or revocation of probation, community control, parole, provisional release, supervised community release, conditional medical release, control release, or conditional release has exceeded that which is required to comply with all the behavioral objectives are eligible for consideration of having their gain time restored. Restoration will only~~ The restoration shall only be considered when the inmate has clearly performed positively over a period of time and it appears the inmate will continue this positive adjustment without further violating the rules of the department or the laws of the state and the inmate is serving the that portion of his or her the sentence that which, but for the forfeiture of gain time, would have been completed.

~~(3)~~(2) Eligibility.

(a) Restoration of gain time that is forfeited due to loss by disciplinary action may be considered only when the following criteria are satisfied:

1. A minimum of one year has elapsed ~~There must be an elapsed time of at least one year since the inmate was found guilty of a disciplinary infraction last disciplinary action occurred.~~

2. The inmate ~~is must be~~ serving the that portion of his or her the sentence that which, but for the forfeiture of gain time, would have been completed.

3. The inmate has established positive overall inmate's institutional adjustment during the review period, and performance exceed that which is required to comply with all the behavioral objectives and the inmate must have completed or be participating in all available programs recommended by the classification team.

4. An inmate will ~~The following groups of inmates shall~~ not be eligible for restoration of forfeited gain time if the inmate received a felony conviction for an offense that occurred during the inmates current commitment:

a. ~~Inmates who have a felony conviction for an offense that occurred during the inmate's current commitment;~~
or

b. ~~Inmates who have been found guilty of one of the following disciplinary offenses during their current commitment:~~

5. If an inmate is found guilty of one or more of the following disciplinary infractions that occurred during the inmate's current commitment, he or she shall be eligible for consideration of restoration of the gain time forfeited for those specific disciplinary infractions only upon the Secretary's approval:

1-1 Assault or battery or attempted assault or battery with a deadly weapon;

1-2 Unarmed ~~assault~~ ~~Assault~~, where a physical attack was made against ~~Department~~ ~~department~~ staff;

1-5 Sexual ~~battery or attempted sexual battery~~ ~~Battery~~;

1-6 Lewd or lascivious exhibition by intentionally masturbating, intentionally exposing genitals in a lewd or lascivious manner, or intentionally committing any other sexual act in the presence of a staff member, contracted staff member or visitor;

1-7 Aggravated battery or attempted aggravated battery on a correctional officer;

1-8 Aggravated battery or attempted aggravated battery on staff other than correctional officer;

1-9 Aggravated battery or attempted aggravated battery on someone other than staff or inmates (vendor, etc.);

1-10 Aggravated battery or attempted aggravated battery on an inmate;

1-11 Aggravated assault or attempted aggravated assault on a correctional officer;

1-12 Aggravated assault or attempted aggravated assault on staff other than correctional officer;

1-13 Aggravated assault or attempted aggravated assault on someone other than staff or inmates (vendor, etc.);

1-14 Aggravated assault or attempted aggravated assault on an inmate;

1-15 Battery or attempted battery on a correctional officer;

1-16 Battery or attempted battery on staff other than correctional officer;

1-17 Battery or attempted battery on someone other than staff or inmates (vendor, etc.);

1-18 Battery or attempted battery on an inmate;

1-19 Assault or attempted assault on a correctional officer;

1-20 Assault or attempted assault on staff other than correctional officer;

1-21 Assault or attempted assault on someone other than staff or inmates (vendor, etc.);

1-22 Assault or attempted assault on an inmate;

2-1 Participating in riots, strikes, mutinous acts, aets or disturbances;

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2-2 Inciting or attempting to incite riots, strikes, mutinous acts, or disturbances – conveying any inflammatory, riotous or mutinous communication by word of mouth, in writing or by sign, symbol or gesture;

3-1 Possession of or manufacture of weapons, ammunition, or explosives;

3-3 Possession of narcotics, unauthorized drugs and drug paraphernalia

3-4 Trafficking in drugs Drugs or unauthorized beverages;

3-7 Possession of aromatic stimulants or depressants, such as paint thinner, glue, toluene, etc.;

3-14 Unauthorized possession or use of a cellular telephone or any other type of wireless communication device, or any components or peripherals to such devices, including but not limited to SIM cards, Bluetooth items, batteries, and charging devices; any other technology that is found to be in furtherance of possessing or using a communication device prohibited under Section 944.47(1)(a)6, F.S.;

4-1 Escape or attempted escape.

7-6 Arson or attempted arson;

9-22 Robbery or attempted robbery;

9-36 Gang related activities, including recruitment; organizing; display of symbols, groups or group photos; promotion or participation.

~~65.~~ Once an inmate has gain time restored, a subsequent forfeiture losses of gain time due to a disciplinary infraction during the inmate's current commitment action will make the inmate ineligible for further restoration.

~~76.~~ Gain time that is forfeited lost prior to an inmate receiving an additional commitment for an offense committed while in custody of the Department department will not be considered for restoration.

(b) An inmate is eligible for restoration Restoration of gain time forfeited due to by revocation of probation (offenses committed prior to 1/1/94 only), community control (offenses committed prior to 1/1/94 only), provisional release, supervised community release, conditional medical release (violations prior to 5/30/97 only), control release (violations prior to 5/30/97 only), or conditional release (violations prior to 5/30/97 only) may be considered only when the inmate was not convicted of a new felony offense for acts there have been no new convictions for offenses that occurred during the period of release. The following criteria must also be satisfied before an inmate is eligible for restoration:

1. A There must be a minimum of one year has elapsed since from the effective date of the revocation of parole revocation, probation revocation, community control, revocation, or violation of the conditions of provisional release, supervised community release, conditional medical release, control release, or conditional release;

2. The inmate has not received any disciplinary infractions must be discipline free (formal reports) since return as a parole, probation, community control, provisional release, supervised community release, conditional medical release, control release, or conditional release violator;

3. The inmate has established a positive overall institutional inmate's adjustment and performance must exceed that which is required to comply with all behavioral objectives since return as a parole, probation, community control, provisional release, supervised community release, conditional medical release, control release, or conditional release violator;

4. The inmate has must have completed, is or be participating in, has requested or has been placed on the waiting list(s) for a program where it has been determined that the inmate is in need of the program pursuant to Rule 33-601.210, (F.A.C.), all available programs recommended; An inmate's need for programs, recommendations and priority ranking are determined by the Department's needs assessment systems and records in the OBIS.

5. Any inmate who receives restoration of gain time forfeited due to a parole, probation, community control, provisional release, supervised community release, conditional medical release, control release, or conditional release violation will not be eligible for restoration of gain time forfeited due to on any subsequent parole, probation, community control, provisional release, supervised community release, conditional medical release, control release, or conditional release violation while serving the community supervision portion of the sentence for the same offense;

6. The inmate is must be serving the portion of his or her the sentence that which, but for the forfeiture of gain time, would have been completed.

~~(4)(3)~~ Processing restoration of forfeited gain time. How processed.

(a) Restoration of gain time will be considered only when an the inmate has met the criteria specified in subsections (2) and (3) (1) and (2) of this rule.

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(b) There is no entitlement for consideration based upon an inmate's request.

(c) If an inmate believes that he or she is eligible for restoration of forfeited gain time, the inmate must make a request for restoration on Form DC6-236, Inmate Request, and submit the request to his or her classification officer. Requests submitted to other ~~Department~~ department staff will not be processed. Form DC6-236 is incorporated by reference in Rule 33-103.005, F.A.C.

(d) If ~~an~~ the inmate meets the criteria in ~~subsections~~ subsection (2) and (3), the classification officer ~~will~~ shall forward the request to the institutional classification team (ICT) with a recommendation either for or against restoration. If the inmate does not meet the criteria in ~~subsections~~ subsection (2) and (3), the classification officer shall return the request to the inmate, indicating in writing which criteria is not met.

(e) The ICT ~~will~~ shall consider the request based upon the criteria in subsections (2) and (3) and make a recommendation either for or against restoration to the final approving authority for final action if the inmate meets all eligibility criteria. (1) and (2). ~~If the ICT recommends restoration of forfeited gain time, the recommendation shall be forwarded to the final approving authority for final action. If the ICT does not make a recommendation for restoration to the final approving authority, the request shall be returned to the inmate along with the basis for the denial.~~

(f) ~~Unless otherwise stated herein, the~~ The final approving authority for a request for restoration of forfeited gain time ~~is~~ will be the Assistant Deputy Secretary of Institutions or his or her designee. Upon receipt of the recommendation from the ICT, the final approving authority ~~will~~ shall approve or deny the request ~~recommendation~~ based upon the criteria in subsections (2) and (3) (1) and (2).

(g) The institution as defined in Section 944.02(8), Florida Statutes, where the requesting inmate is assigned will be notified via electronic mail from the Bureau of Classification Management, and classification staff at the institution ~~the facility~~ staff will notify the inmate via institutional mail of the decision and the basis for the decision.
Rulemaking Authority 944.09, 944.275 FS. Law Implemented 944.09, 944.275, 944.28 FS. History--New 11-27-84, Formerly 33-11.15, Amended 10-12-89, 8-29-91, 10-13-93, Formerly 33-11.015, Amended 8-30-01, 4-30-02, 4-10-08, 7-15-09, 12-24-09, 2-16-17, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Richard Comerford, Assistant Deputy Secretary of Institutions

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Mark S. Inch, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 11, 2021

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: July 23, 2021