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33-601.101 Incentive Gain Time.

(1) Definitions.

(a) Pending Delivery Status - where used herein, refers to the status of a prisoner who has been sentenced to a state penitentiary but is currently housed at a county or municipal facility while waiting for the sheriff or chief correctional officer to relinquish physical custody to the Department. Prisoners who are “Pending Delivery” have not been physically delivered to a reception center and received into the custody of the Department. “Pending Delivery” also applies when the Department has received a prisoner’s paperwork but has not yet received physical custody of the prisoner. Prisoners with a “Pending Delivery” status are ineligible to receive incentive gain time (excluding prisoners in the physical custody of another agency while actively serving a Florida sentence in accordance with the Interstate Corrections Compact or designated pursuant to section 921.16(2), F.S.)

(b) Out-To-Court Status - where used herein, refers to the status of a state prisoner whose presence is required in court for any reason. To be categorized as “Out-To-Court,” a prisoner’s physical presence and custody must have first been transported by the sheriff or chief correctional officer to the Department for post-sentence intake processing at a reception center. If a prisoner is needed in court after the prisoner is in physical custody of the Department, the court shall issue an order for the sheriff or chief correctional officer to assume temporary custody and transport the prisoner to the county jail pending the court appearance. Gain time awards for inmates in an “Out-To-Court” status shall be in accordance with this rule. The receipt of the prisoner’s paperwork without the prisoner having being received into the Department’s physical custody does not qualify as “Out-To-Court.”

(2)(4) Ineligibility.

(a) No inmate shall receive or accumulate incentive gain time:

1. For the minimum portion of a sentence imposed pursuant to section 775.087(2), F.S., for an offense committed on or after October 1, 1976₂ involving use or possession of a firearm, machine gun, or destructive device as defined in section 775.087, F.S.;

2. For the minimum portion of a sentence imposed pursuant to section 893.13(1)(e), F.S., (1989), for a specified drug-related offense committed on or after June 27, 1989₂ but before January 1, 1994, in, on, or within 1,000 feet of a school;

3. If sentenced under section 893.13(1)(i)1., F.S., for a specified drug-related offense committed prior to January 1, 1994₂ in, on, or within 200 feet of real properties described in section 893.13, F.S.;

4. No change.

5. If convicted of offenses committed on or after October 1, 1995₂ and has 85% or less of the sentence remaining to be served.

6. No change.

7. If serving a sentence for a capital offense committed on or after January 1, 1994, and before October 1, 1995.

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(b) An inmate shall not be eligible for incentive gain time in an amount which would cause a sentence to expire prior to such inmate having served the minimum or mandatory minimum portion of a sentence imposed pursuant to:

1. Section 775.0823, F.S., for specified crimes committed against a law enforcement officer, state attorney, or assistant state attorney on or after January 1, 1990, but prior to January 1, 1994, or against a judge or justice of a court described in Article V of the State Constitution on or after October 1, 1990, but prior to January 1, 1994;

2. through 3. No change.

(c) No change.

~~(3)(2)~~ Eligibility. All other inmates not excluded in subsection ~~(2)~~ ~~(4)~~ or ~~(6)~~ ~~(5)~~ of this ~~rule section~~, including those in the custody of another agency while actively serving a Florida sentence in accordance with the Interstate Corrections Compact or designated pursuant to section 921.16(2), F.S., may be awarded incentive gain time pursuant to subsection ~~(4) of this rule.~~ ~~33-601.101(3), F.A.C.~~

~~(4)(3)~~ How credited. For inmates eligible to receive consideration under this section, the following procedures shall be used.

(a) Each inmate eligible for consideration for the award of incentive gain time shall receive gain time evaluations based upon their ~~his~~ institutional adjustment as reflected in evaluations from security, work, and program components, if assigned. If it becomes necessary to make corrections to the inmate's monthly security, work, or program evaluations after the evaluations have ~~already~~ been submitted, the request for correction along with the reasons for the correction shall be submitted in writing to the department head for approval. The approved corrections shall be submitted to the classification officer or their ~~his~~ designee, who shall make the necessary changes.

1. The security evaluation is the rating of an inmate's institutional adjustment that includes evaluation of all areas of daily institutional routine, with the exception of the inmate's work and program assignments. The security rating for the month shall be determined by reviewing through the review of the four security behavioral objectives, while considering the inmate's capabilities. The security rating is to be determined by observations of the evaluator, ~~notations on the inmate's Housing Officer Contact Card,~~ and information from other staff sources, and any written notations regarding the inmate's behavior, including notations on the inmate's Form DC6-256, Housing Officer Contact Card. Form DC6-256 is incorporated by reference in Rule 33-601.313, F.A.C. Observable behavior by the evaluator, information from other staff sources, and any security behavioral objectives not met due to negative or unsatisfactory reasons must be documented in writing and made available upon request. ~~The employee completing the security evaluation shall not complete the inmate's performance evaluation for the same month. The following security behavioral objectives shall be considered when completing the monthly security rating:~~

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a. The employee completing the security evaluation shall not complete the inmate's performance evaluation for the same month.

b. The following security behavioral objectives shall be considered when completing the monthly security rating:

(I)~~a.~~ Hygiene: grooming and personal cleanliness.

(II)~~b.~~ Appearance: care of issued clothing and compliance with uniform regulations.

(III)~~c.~~ Conduct: adherence to rules, regulations, procedures, and orders and respect for others.

(IV)~~d.~~ Maintenance of living quarters: appearance and cleanliness of assigned living area.

2. The performance evaluation is the rating of the inmate's performance in work and program assignments. The ~~monthly~~ performance rating for the month shall be determined by reviewing ~~through the review of~~ the five performance behavioral objectives; while considering the inmate's capabilities. The performance rating is to be determined by observations of the evaluator, information from other staff sources, and any written notations regarding the inmate's performance behavior objectives, including notations on the inmate's form DC6-256, Housing Officer Contact Card. Behavior observable by the evaluator, information from other staff sources, and any performance behavior objectives not met due to negative or unsatisfactory reasons must be documented in writing and made available upon request.

a. The employee completing the performance evaluation shall not complete the inmate's security evaluation for the same month.

b. The following performance behavioral objectives shall be considered when completing the monthly performance rating:

(I) Interaction with others: the degree to which the inmate works and participates with others to accomplish required tasks;

(II) Motivation for personal development and improvement: the degree of interest displayed in improving skills and increasing capabilities;

(III) Work and study habits: willingness to accomplish tasks without being prompted; and

(IV) Constructive use of time: promptness in reporting to assigned area and effective used of time.

~~c.~~ In a month in which an inmate has:

(I) more than one full time assignment, the assignment of the longest duration shall be utilized for determining the inmate's monthly performance evaluation.

(II)~~b.~~ In a month in which the full or half time assignments are of equal duration, the assignment closest to the end of the month shall be utilized to determine the inmate's monthly performance evaluation.

(III)~~c.~~ In a month in which an inmate has any half time assignments, both half time evaluations shall be completed. The half time assignment of the longest duration in both a.m. time period and the p.m. time period shall be utilized for determining the inmate's performance evaluation. In determining the work and program performance evaluation for the half time assignments, the

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work and program rating reflects the same rating as the two half time assignments if the ratings are the same. If the two half time ratings are different, the overall work and program evaluation shall reflect the lesser of the two ratings.

d. In a month in which the inmate's status is inmate:

(I) ~~Is designated a medical~~ health classification work grade (W-5); ~~;~~ or

(II) ~~Is in~~ medical staging at a reception center; ~~;~~ or

(III) ~~Is~~ housed in the Corrections Mental Health Institution, Crisis Stabilization Unit, Transitional Care Unit, Hospital or Infirmary; ~~;~~ and

(IV) The status as described in (I) ~~1~~, (II) ~~2~~ or (III) ~~3~~ is of a longer duration than any work or program assignment during the month, ~~then~~ the inmate's performance evaluation shall be derived from a rating submitted by the health care provider who has the primary health care responsibility for the inmate. The health care provider shall evaluate the inmate on the following behavioral objectives:

(A) through (C) No change.

~~e. The employee completing the work or program performance evaluation shall not be the same employee completing the security evaluation.~~

~~f. The following behavioral objectives shall be considered when evaluating the monthly work and program rating:~~

~~(I) Conduct in program and work assignment: adherence to rules, regulations, procedures, and orders and demonstration of respect for others.~~

~~(II) Interaction with others: degree to which inmate works and participates with others to accomplish required tasks.~~

~~(III) Motivation for personal development and improvement: degree of interest displayed in improving skills and increasing capabilities.~~

~~(IV) Work and study habits: willingness to accomplish tasks without being prompted.~~

~~(V) Constructive use of time: promptness in reporting to assigned area and effective use of time.~~

3. The security and performance evaluation provides the preliminary base gain time recommendation for the inmate in the following amounts. These amounts are contingent on the performance evaluations derived from work and programs and the security evaluation unless modified in accordance with paragraph (4)(b) of this rule. ~~33-601.101(3)(b), F.A.C.~~

a. through d. No change.

Preliminary Incentive Gain Time Base Recommendations With Performance and Security Evaluations;

~~for inmate convicted of an~~ Offense committed prior to 10-1-95

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PERFORMANCE				
S E C U R I T Y		Above Satisfactory	Satisfactory	Unsatisfactory
	Above	16/22	12	0
	Satisfactory	12	8	0
	Unsatisfactory	0	0	0

**~~Preliminary Incentive Gain Time Base Recommendations With Performance and Security Evaluations~~
for inmate convicted of an Qoffense committed on or after 10-1-95**

PERFORMANCE				
S E C U R I T Y		Above Satisfactory	Satisfactory	Unsatisfactory
	Above	8	<u>6</u> 8	0
	Satisfactory	6	4	0
	Unsatisfactory	0	0	0

4. If an inmate has no work or program evaluation for the month the inmate shall be evaluated for the preliminary base gain time recommendation based upon the security evaluation in the following amounts unless modified in accordance with paragraph (4)(b) ~~(3)(b)~~ of this rule:

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a. through c. No change.

Preliminary Incentive Gain Time Base Recommendations Security Evaluation Only:

Offenses committed prior to 10/1/95

S E C U R I T Y	Above Satisfactory	8/11
	Satisfactory	4
	Unsatisfactory	0

Offenses committed on or after 10/1/95:

Above Satisfactory	4
Satisfactory	<u>2</u> 4
Unsatisfactory	0

(b) The classification officer or designee shall evaluate the security and performance ratings which reflect the inmate's institutional adjustment for the month. The final determination of an award of incentive gain time shall be determined by the classification officer or designee and shall be based on the inmate's overall monthly activities. When the classification officer or designee concurs with the preliminary base gain time recommendation being applied no modification is required. The preliminary base gain time recommendation may be modified by the classification officer or designee as reflected by the inmates overall institutional adjustment and level of work and program participation for the month. The classification officer or designee may modify the preliminary base gain time recommendation upward or downward from 1 to 4 days not to exceed the maximum eligible award. Any time the classification officer or designee modifies the preliminary base gain time recommendation, the reason for the modification shall be noted. These modifications will be applied to the preliminary base gain time recommendation reflective of the

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overall rating derived from the security and performance evaluation or security evaluation alone. Reasons for modification of the preliminary base gain time recommendation include:

1. Modification upward of 1-4 days excluding those inmates identified in sub-subparagraph (4)(a)2.d. of this rule ~~(3)(a)2.d., F.A.C.:~~

- a. through b. No change.
- c. Work or ~~p~~Program stability;
- d. No change.

2. Modification ~~d~~Downward of 1-4 days excluding those inmates identified in sub-subparagraph (4)(a)2.d. of this rule ~~33-601.101(3)(a)2.d., F.A.C.:~~

- a. No change.
- b. Work, ~~p~~Program, or ~~t~~Treatment instability;
- c. Not adhering to classification management plans ~~recommendations~~;
- d. Assigned to work or program 14 days or less during the month, excluding those inmates identified in sub-subparagraph (4)(a)2.d. of this rule ~~33-601.101(3)(a)2.d., F.A.C.~~

3. For those inmates identified in sub-subparagraph (4)(a)2.d. of this rule ~~33-601.101(3)(a)2.d., F.A.C.~~

- a. through c. No change.

~~(5)(4)~~ When processed. Incentive gain time is to be processed at the end of each month or upon receipt of progress reports on inmates housed by other agencies. All incentive gain time awards should be posted in the Offender Based Information System by the close of business no later than the 12th of each month following the month of the award.

- (a) through (b) No change.

(c) A grievance concerning gain time filed by an inmate whose complaint is that the work or program evaluation failed to consider the inmate's capabilities requires that the respondent consult with the Chief Health Officer or designee for information on the inmate's capabilities.

- (d) through (e) No change.

~~(6)(5)~~ Disqualifications. The following conditions will disqualify an inmate for an award of incentive gain time for the period stated:

(a) Inmates in disciplinary confinement status are not eligible for a work/program evaluation or rating award ~~even if assigned to work or programs while in disciplinary confinement~~. Inmates in disciplinary confinement are eligible for a security rating award

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which can be modified by the classification officer in accordance with paragraph ~~(4)(b) of this rule 33-601.101(3)(b)~~, F.A.C.

(b) No change.

(c) Inmates who are out of the department's custody during the month on escape, ~~out-to-court out-to-court~~ status, or on furlough shall not be eligible to receive incentive gain time for that period of the month, except inmates in ~~out-to-court out-to-court~~ status for a full month shall be eligible to receive incentive gain time as noted below unless otherwise ineligible:

1. Inmates sentenced for offenses committed on or between April 17, 1994₂ and September 30, 1995₂ and which fall within levels 1 through 7 of the sentencing guidelines offense severity ranking chart located in section 921.0012, F.S., shall receive 11 days incentive gain time for each month in out to court status.

2. Inmates sentenced for offenses committed on or between April 17, 1994₂ and September 30, 1995₂ and which fall within levels 8 through 10 of the sentencing guidelines offense severity ranking chart located in section 921.0012, F.S., shall receive 8 days incentive gain time for each month in out to court status.

3. Inmates sentenced for offenses committed on or after October 1, 1995₂ shall receive 4 days incentive gain time for each month in out to court status.

(d) Pending delivery status. An inmate is not eligible to receive incentive gain time for the period the inmate is pending delivery to the Department's custody pursuant to subsection (1)(a) of this rule.

~~(c)(d)~~ Death or Life sentences. Death or Life sentences cannot be reduced by gain time. However, any inmate serving a Ddeath or Life sentence will be considered for incentive gain time and the gain time will be posted so that in the event the Ddeath or Life sentence is commuted to a number of years, the accumulated incentive gain time will be applied to the inmate's sentence.

~~(7)(6)~~ Educational achievement incentive gain time. Upon notification by the ~~lead educator~~ education supervisor or regional education program administrator of a recommendation by the Bureau of ~~Re-Entry Programs and Education~~, the department shall apply a one-time ~~one-time~~ award of 60 additional days of incentive gain time to an inmate who is otherwise eligible and who has successfully completed requirements for and is awarded a general education development certificate or vocational certificate. ~~In order~~ To be eligible for the gain time award, the general education development certificate or vocational certificate must be issued by the Florida Department of Education or the program issuing the certificate must be approved by the Bureau of ~~Re-Entry Programs and Education~~ in advance of the inmate's enrollment. Inmates assigned to community facilities who earn a general education development certificate or vocational certificate in an on-site ~~on-site~~ educational program operated by an outside vendor or provider (state community college, vocational technical center, or private institution) who is approved in advance by the Bureau of ~~Re-Entry Programs and Education~~ shall be recommended by the regional educational program administrator for incentive gain time

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for educational achievement. Under no circumstances may an inmate receive more than 60 days gain time for educational attainment pursuant to this section.

~~(8)(7)~~ Educational gain time. Upon notification by the education supervisor or regional education program administrator, the department shall grant a one-time ~~one-time~~ award of up to 6 days of additional incentive gain time to all inmates who are otherwise eligible and who have attended and satisfactorily participated in 150 hours of functional literacy instruction, in accordance with section 944.801(3)(i), F.S. The functional literacy instruction must be provided by the Bureau of ~~Re-Entry Programs and~~ Education teachers, approved staff, or volunteers.

Rulemaking Authority 944.09, 944.275, 944.281 FS. Law Implemented 944.09, 944.275, 944.281, 944.801(3)(i)5. FS. History—New 2-26-80, Amended 1-12-83, 1-31-85, 10-7-85, Formerly 33-11.065, Amended 4-28-87, 7-12-89, 7-17-90, 10-16-90, 10-14-91, 2-17-93, 4-17-94, 7-17-94, 4-21-96, 6-1-97, 10-7-97, 3-11-98, 5-12-98, 7-9-98, 9-17-98, Formerly 33-11.0065, Amended 7-15-09, 4-19-10, 2-6-12, 5-27-12, 2-16-17,

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