

September 9, 2016

NOTICE OF RULE DEVELOPMENT

DEPARTMENT OF CORRECTIONS

RULE NO.:      RULE TITLE:

33-601.101      Incentive Gain Time

33-601.105      Restoration of Forfeited Gain Time

PURPOSE AND EFFECT: The purpose and effect of the amendment is to ensure that rules are consistent with case law and that they clearly set forth the Department policy intended to be set forth in the rules.

SUBJECT AREA TO BE ADDRESSED: Gain time.

RULEMAKING AUTHORITY: 944.09, 944.275, 944.281 FS

LAWS IMPLEMENTED: 944.09, 944.275, 944.28, 944.281, 944.801(3)(i)5. FS

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE REGISTER. THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND TO OBTAIN A COPY OF THE PRELIMINARY DRAFT IS: Adam Stallard, 501 South Calhoun Street, Tallahassee, Florida 32399.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AS FOLLOWS:

33-601.101 Incentive Gain Time

(1) Ineligibility.

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

1. through 5. No change

6. For sentences imposed for offenses committed on or after October 1, 2014, the department may not grant incentive gain time if the offense is a violation of sections 782.04(1)(a)2.c.; 787.01(3)(a)2. or 3.; 787.02(3)(a)2. or 3.; 794.011, excluding s. 794.011(10); 800.04; 825.1025; or 847.0135(5), Florida Statutes.

(b) through (c) No change

(2) No change

(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 award of incentive gain time shall receive gain time evaluations based upon 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 his designee who shall make the necessary changes.

1. through 2. No change

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 33-601.101(3)(b), F.A.C.

a. No change

b. When both evaluations are satisfactory, the preliminary base gain time recommendation shall be as follows:

(I) No change

(II) An inmate convicted of an offense committed on or after 10-1-95 ~~and not sentenced as a violent career criminal~~ shall receive a preliminary base gain time recommendation of 4 days.

~~(III) An inmate convicted of an offense committed on or after 10-1-95 and sentenced as a violent career criminal shall receive a preliminary base gain time recommendation of 2 days.~~

c. When one evaluation is above satisfactory and the other is satisfactory, the preliminary base gain time recommendation shall be as follows:

(I) No change

(II) An inmate convicted of an offense committed on or after 10-1-95 ~~and not sentenced as a violent career criminal~~ shall receive a preliminary base gain time recommendation of 6 days.

~~(III) An inmate convicted of an offense committed on or after 10-1-95 and sentenced as a violent career criminal shall receive a preliminary base gain time recommendation of 3 days.~~

d. When both evaluations are above satisfactory, the preliminary base gain time recommendation shall be as follows:

(I) through (III) No change

(IV) An inmate convicted of an offense committed on or after 10-1-95 ~~and not sentenced as a violent career~~

~~criminal~~ shall receive a preliminary base gain time recommendation of 8 days.

~~(V) An inmate convicted of an offense committed on or after 10-1-95 and sentenced as a violent career criminal shall receive a preliminary base gain time recommendation of 4 days.~~

**Preliminary Incentive Gain Time Base Recommendations With Performance and Security Evaluations  
for inmate convicted of an offense committed prior to 10-1-95**

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

**PERFORMANCE**

**Preliminary Incentive Gain Time Base Recommendations With Performance and Security Evaluations  
for inmate convicted of an offense committed on or after 10-1-95 and not sentenced as a**

~~violent career criminal~~

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

**PERFORMANCE**

~~Preliminary Incentive Gain Time Base Recommendations With Performance and Security Evaluations  
for inmates convicted of an offense committed on or after 10-1-95 and sentenced as a~~

**~~violent career criminal~~**

<b>S E C U R I T Y</b>		<b>Above Satisfactory</b>	<b>Satisfactory</b>	<b>Unsatisfactory</b>
	<b>Above Satisfactory</b>	<b>4</b>	<b>3</b>	<b>0</b>
	<b>Satisfactory</b>	<b>3</b>	<b>2</b>	<b>0</b>
	<b>Unsatisfactory</b>	<b>0</b>	<b>0</b>	<b>0</b>

**PERFORMANCE**

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 (3)(b) of this rule:

a. No change

b. When the security evaluation is satisfactory, the preliminary base gain time recommendation shall be as follows:

(I) No change

(II) An inmate convicted of an offense committed on or after 10-1-95 ~~and not sentenced as a violent career criminal~~ shall receive a preliminary base gain time recommendation of 2 days.

~~(III) An inmate convicted of an offense committed on or after 10-1-95 and sentenced as a violent career criminal shall receive a preliminary base gain time recommendation of 1 day.~~

c. When the security evaluation is above satisfactory, the preliminary base gain time recommendations shall be as follows:

(I) through (III) No change

(IV) An inmate convicted of an offense committed on or after 10-1-95 ~~and not sentenced as a violent career criminal~~ shall receive a preliminary base gain time recommendation of 4 days.

~~(V) An inmate convicted of an offense committed on or after 10-1-95 and sentenced as a violent career criminal shall receive a preliminary base gain time recommendation of 2 days.~~

**Preliminary Incentive Gain Time Base Recommendations Security Evaluation Only:**

**Offenses committed prior to 10/1/95**

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

**Offenses committed on or after 10/1/95 and not sentenced as a violent career criminal:**

<b>Above Satisfactory</b>	<b>4</b>
<b>Satisfactory</b>	<b>4</b>
<b>Unsatisfactory</b>	<b>0</b>

**~~Offenses committed on or after 10/1/95 and sentenced as a violent career criminal:~~**

<b>Above Satisfactory</b>	<b>2</b>
<b>Satisfactory</b>	<b>1</b>
<b>Unsatisfactory</b>	<b>0</b>

(b) through (c) No change

(4) through (8) No change

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, \_\_\_\_\_.



33-601.105 Restoration of Forfeited Gain Time.

(1) No change

(2) Eligibility.

(a) No change

(b) Restoration of gain time forfeited by revocation violation of the conditions of parole, 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 there have been no new convictions for offenses that occurred during the period of release.

1. through 6. No change

(3) No change

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,\_\_\_\_\_.