

July 26, 2017

NOTICE OF PROPOSED RULE

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-302.116

RULE TITLE: Community Control

PURPOSE AND EFFECT: The purpose and effect of this rule is to create a new merit-based program to promote and reward positive offender behavior, encourage and motivate offenders to comply and succeed on community control.

SUMMARY: The rule creates a new merit-based program for qualified offenders by providing incentives towards positive behavior, encourage and motivate offenders to comply and succeed on community control. The merit-based program rewards offenders who take responsibility or initiating positive change and allows for offenders to participate in authorized family and community activities.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE

RATIFICATION: The agency has determined that this rule will not have an adverse impact on small business and is not expected to directly or indirectly increase regulatory costs more than \$200,000 within a year of taking effect. 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 costs associated with this rule that exceeds the criteria set forth in s.120.541(2)(a), F.S. Any person who wishes to provide information regarding the statement of estimated regulatory costs or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 944.09, 948.10, 945.091. F.S.

LAW IMPLEMENTED: 948.10, 945.091. F.S.

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

RULE IS: Gregory Hill, Assistant General Counsel, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

THE FULL TEXT OF THE PROPOSED RULE IS:

33-302.116 Community Control

(1) Purpose. This rule sets forth guidelines for the utilization of a merit-based activity program for approved Community Control offenders.

(2) Definitions.

(a) Merit-Based Activity Program – The program that allows eligible supervised community control offenders to earn a privilege to attend pre-approved family and community activities for specified purposes and under certain conditions described herein.

(b) Supervising Officer- The correctional probation officer who is charged with the responsibility of the daily supervision and schedule approval of their assigned community control cases.

(c) Approving Authority – For purposes of this rule, the term “approving authority” refers to the office or unit supervisor in an office.

(d) Merit-Based Activity – any family or community activity that is consistent with or advances the objectives of the merit-based activity program as set forth in this rule. Examples of qualified family or community events can include, but are not limited to, charitable functions, family reunions, graduation of family members, educational programs, or religious or faith-based functions.

(3) Policy Statement.

(a) Except as limited in this rule, the limits of community control for offenders participating in the merit-based activity program will be relaxed in area and in time to the degree necessary to allow the offender to travel to the pre-approved activity destination, accomplish the purpose for which the approval was authorized, and return to their residence. The limits will be specified in writing and the offender will be advised of the limits prior to the allowance of an activity.

(b) The department shall have the authority to remove an offender from the merit-based activity program when the department determines that removal is in the best interest of the security and safety of the public, the department, or the offender.

(c) The decision as to which offenders shall be allowed to participate in the merit-based activity program shall be based upon criteria set forth in subsection (5) of this rule.

(d) Offender participation in the merit-based activity program shall be voluntary.

(e) Offenders who participate in the merit-based activity program shall at all times be considered supervised on community control by the department.

(4) Requirements and General Considerations.

(a) Participation in the merit-based activity program is not a right, but a privilege that must be earned by the offender.

(b) Community control offenders within the supervision of the department shall be eligible for consideration for merit-based activity privileges.

(c) The objectives of the merit-based activity program is to contribute to the total rehabilitation of the offender by any of the following means:

1. Encouraging and motivating the offender to comply with his/her orders of supervision.

2. Encouraging the offender to accept responsibility for change.

3. Helping determine the offender's readiness for possible sentence modification.

4. Motivating the offender towards self-improvement and exposing the offender to beneficial programs.

5. Strengthening or preserving family and community ties of the offender.

6. Rewarding and supporting positive behavior for offenders.

(d) General conditions applicable to participation in the merit-based activity program are as follows:

1. An offender who is participating in the program will still provide verification of all approved merit-based activities.

2. Offenders considered for merit-based activity participation shall be subject to drug testing as a condition of their participation or consideration for the activity.

(e) Upon request of the offender, eligible community control offenders will be considered for merit-based activity providing:

1. The objectives and goals specified in this rule will be met;

2. The purpose for the merit-based activity is legitimate and within a recognized reason for granting the activity, as specified in this rule;

3. The interests of the safety and security of the community and department will be served;

4. Any additional requirements or conditions imposed for the particular type of activity requested are met; and

5. There is cause to believe that the offender will honor the trust bestowed upon him or her. All merit-based activities shall be verified by the approving authority for the legitimacy and authenticity of the activity requested.

(5) Merit-Based Activity eligibility.

(a) Merit-Based Activities will be considered for Community Control cases in which the offender:

1. Is not on supervision for a sex offense or a sexually motivated offense;

2. Has been on supervision for a minimum of ninety (90) days;

3. Is in compliance with all special conditions;

4. Is successfully participating in any treatment ordered by the sentencing or releasing authority;

5. Is without any violations of supervision including Technical Violation Notifications and Alternative Sanctions for at least ninety (90) days from the disposition date of the last violation;

6. Is gainfully employed, providing proof of weekly job searches, or has a source of income; and

7. Has verified participation and completion of one or more of the following:

a. department Re-Entry initiatives (T4C, Succeeding on Community Control, Life Skills),

b. programs to improve employability skills,

c. completion of high school diploma, GED, certificate programs, or college courses,

d. other self-improvement programs as approved by the approving authority.

(b) Offenders must agree to any time or distance limitations placed on them and the imposition of special conditions as determined by the supervising officer. The offender will be advised of these conditions and must abide by these conditions.

(6) Merit-Based Activity Approval. The merit-based activity recommendation shall be forwarded to the appropriate approving authority who shall ensure that the criteria, requirements, and considerations outlined in this rule are met, and who shall issue a final determination.

(7) Removal from the Merit-Based Activity Program.

(a) Any violation of the conditions of the supervision shall be reported to the sentencing authority.

(b) The supervising officer is authorized to terminate the merit-based activity any time during the activity period for noncompliance with the conditions of the supervision.

(c) The supervising officer shall remove an offender from the merit-based activity program if:

1. The supervising officer receives any information concerning the offender that would adversely impact the safety and security of the community;

2. The offender engages in any conduct that causes the supervising officer to believe that the offender will not honor the trust bestowed upon him or her; or

3. The approving officer determines that it is not in the best interest of the safety and security of the community, the department or the offender to continue the offender in the merit-based activity program.

(d) If an offender is removed from the merit-based activity program, the reasons for such removal shall be documented in the offender's file and case notes.

Rulemaking Authority 944.09, 948.10, 945.091 FS. Law Implemented 948.10, 945.091 FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE: Beth Atchison, Chief of Probation and Parole Field Services.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Julie Jones, Secretary of Corrections

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 11, 2017

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: May 26, 2017