

May 28, 2013

NOTICE OF RULE DEVELOPMENT

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-601.104 Withholding or Forfeiture of Gain Time

RULE TITLE: Withholding or Forfeiture of Gain Time

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to change the process by which gain time is forfeited when an inmate escapes. With regard to escapes that occur before October 1, 2013, forfeiture of all gain time will occur upon conviction for escape subject to full or partial mitigation at the request of the inmate at the discretion of the Secretary or designee. With regard to escapes on or after October 1, 2013, forfeiture of gain time will be determined following a hearing.

SUBJECT AREA TO BE ADDRESSED: Withholding or Forfeiture of Gain Time

RULEMAKING AUTHORITY: 944.09, 944.275, 947.149(6) FS

LAW IMPLEMENTED: 944.09, 944.275, 944.28, 947.149(5)(a), (b) 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 WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: LaDawna Fleckenstein, 501 South Calhoun Street, Tallahassee, Florida 32399.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-601.104 Withholding or Forfeiture of Gain Time.

(1) Earned Gain Time.

(a) Without Hearing – without prior notice or hearing, an inmate shall forfeit all gain time earned prior to escape or release on supervision upon:

1. Conviction for escape committed before October 1, 2013 – forfeitures assessed under this provision may be mitigated in full or in part upon request of the inmate to the inmate's classification officer at the discretion of the Secretary or designee based on factors including, but not limited to, the sophistication of the escape, whether force

was used during the escape, the length of time outside the Department's custody following the escape, and whether any criminal activity was committed while outside the Department's custody following the escape;

2. – 4. Unchanged.

(b) After Hearing – an inmate who (a) violates any penal law of this state, or any rule of the Department or institution, (b) threatens or knowingly endangers the life or physical well-being of another, (c) refuses in any way to carry out or obey lawful instructions, ~~or~~ (d) neglects to perform the work, duties and tasks assigned in a faithful, diligent, industrious, orderly and peaceful manner, or (e) escapes on or after October 1, 2013, may have all or part of the gain time earned forfeited by the Department after a hearing as provided in these rules. An acquittal or dismissal of charges in a court based upon the same acts charged in a disciplinary proceeding will not prevent the Department from forfeiting gain time after a proper hearing.

(2) Unchanged.

Specific Authority 944.09, 944.275, 947.149(6) FS. Law Implemented 944.09, 944.275, 944.28, 947.149(5)(a), (b) FS. History–New 2-26-80, Amended 1-12-83, Formerly 33-11.11, Amended 1-19-86, 1-27-87, 4-28-87, 10-12-89, 10-14-91, 7-14-94, Formerly 33-11.011, Amended \_\_\_\_\_.