

September 26, 2019

NOTICE OF RULE DEVELOPMENT

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-601.105

RULE TITLE: Restoration of Forfeited Gain Time

PURPOSE AND EFFECT: Rulemaking is necessary to 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. Rulemaking is also necessary to clarify that inmates who are convicted of a felony for an offense that occurs during the inmates' current commitment and inmates found guilty of certain disciplinary offenses are not eligible for restoration of forfeited gain time.

SUBJECT AREA TO BE ADDRESSED: Restoration of forfeited gain time

RULEMAKING AUTHORITY: 944.09, 944.275 F.S.

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

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: Paul Vazquez, 501 South Calhoun Street, Tallahassee, Florida 32399.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-601.105 Restoration of Forfeited Gain Time.

(1) ~~Restoration of gain time as a positive management tool.~~ 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 inmates whose adjustment and performance since their last disciplinary report or revocation of ~~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 set forth in Rule 33-601.101, F.A.C., are eligible to have their gain time restored for consideration. Restoration will ~~The restoration shall~~ only be considered when an ~~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 ~~department~~ or the laws of the state, ~~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.

(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 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's overall institutional adjustment as evidenced by the inmate's risk management record in OBIS is rated as "above satisfactory." ~~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:

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

b. The forfeiture is based on one or more of the following disciplinary infractions that occurred during the inmate's current commitment. Although the inmate is not eligible for restoration of forfeited gain time associated with the infractions listed below, the inmate is not disqualified from being considered for restoration of forfeited gain time for disciplinary infractions that are not listed. ~~Inmates who have been found guilty of one of the following disciplinary offenses during their current commitment:~~

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;

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.

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

6. 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 ~~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 received no disciplinary action ~~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's adjustment and performance exceeds ~~must exceed~~ that which is required to comply with all behavioral objectives set forth in Rule 33-601.101, F.A.C., 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 or ~~is be~~ participating in all available programs recommended during his or her initial classification screening;

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.

(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 (1) and (2) ~~of this rule~~.

(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 ~~another 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 subsection (2), 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 subsection (2), the classification officer will shall return the request to the inmate, indicating in writing which criteria are is not met.

(e) The ICT will shall consider the request based upon the criteria in subsections (1) and (2) and make a recommendation either for or against restoration to the final approving authority. Regardless of the recommendation made by the ICT, if the ICT recommends restoration of forfeited gain time, the recommendation will shall be forwarded to the final approving authority for final action if the inmate meets all eligibility criteria set for the in subsection (2). 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) The final approving authority for a request for restoration of forfeited gain time ~~is will be~~ the Assistant 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 (1) and (2).

(g) The institution or facility where the requesting inmate is assigned will be notified, and classification staff at the institution or facility ~~staff~~ will notify the inmate 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,_____.