

June 13, 2023

Notice of Proposed Rule

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-601.105 Restoration of Forfeited Gain Time

PURPOSE AND EFFECT: Rule 33-601.105, Florida Administrative Code, authorizes the restoration of gain time that was forfeited due to a disciplinary infraction. Currently, the Assistant Deputy Secretary of Institutions (or designee) is the final reviewing authority for the restoration of forfeited gain time, unless the forfeiture was for a particularly serious violation designated in the rule. For the enumerated serious infractions, restoration requires approval of the Secretary. The proposed amendment allows the Secretary to delegate approval to restore gain time forfeited for these serious infractions to the Assistant Deputy Secretary of Institutions, thereby creating a more streamlined, efficient process with a single reviewer for all infractions.

SUMMARY: The proposed rule allows the Secretary to delegate to the Assistant Deputy Secretary of Institutions the authority to restore gain time forfeited for certain serious infractions enumerated in the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. 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 cost associated with this rule that exceeds the criteria. Upon review of the proposed changes to the rule, the Department has determined that the amendments will not exceed any one of the economic analysis criteria in a SERC as set forth in s. 120.541(2)(a), F.S.

Any person who wishes to provide information regarding a statement of estimated regulatory costs or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 944.09, 944.275, F.S.

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

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Lauren Sanchez, Paralegal Specialist, 501 S. Calhoun Street, Tallahassee, FL 32399 (850)717-3610, lauren.sanchez@fdc.myflorida.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Office of the General Counsel, Attn. FDC Rule Correspondence, 501 South Calhoun Street, Tallahassee, Florida 32399, FDCRuleCorrespondence@fdc.myflorida.com.

THE FULL TEXT OF THE PROPOSED RULE IS:

33-601.105 Restoration of Forfeited Gain Time.

(1) No change.

(2) No change.

(3) Eligibility.

(a) Restoration of gain time that is forfeited due to disciplinary action may be considered only when the following criteria are satisfied:

1. through 4. No change.

5. If an inmate is found guilty of one or more of the following disciplinary infractions that occurred during the inmate's current commitment, he or she shall be eligible for consideration of restoration of the gain time forfeited

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for those specific disciplinary infractions only upon the approval of the Secretary or Secretary's designee ~~Secretary's approval~~:

- 1-1 Assault or battery or attempted assault or battery with a deadly weapon;
 - 1-2 Unarmed assault, where a physical attack was made against Department staff;
 - 1-5 Sexual battery or attempted sexual 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, 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 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.
6. through 7. No change.
(b) No change.
(4) 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, 2-16-17, 10-21-21, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Hope Gartman, Assistant Deputy Secretary of Institutions

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Ricky D. Dixon, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 30, 2023

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DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: 10/13/2022