

November 3, 2017

NOTICE OF RULE DEVELOPMENT

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-601.101

RULE TITLE: Incentive Gain Time

PURPOSE AND EFFECT: The incentive gain time rule is being amended to implement the awarding of gain time for time served in jail(s) that is credited towards satisfying the court-imposed sentence.

SUBJECT AREA TO BE ADDRESSED: Discretionary Awarding of Gain Time

RULEMAKING AUTHORITY: 944.09, 944.275

LAW IMPLEMENTED: 944.275, 944.281, 944.801(3)(i)5

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: Gregory Hill, 501 South Calhoun Street, Tallahassee, Florida 32399.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

**33-601.101 Incentive Gain Time.**

(1) Ineligibility

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

1 through 6. No change.

7. For the minimum portion of a sentence imposed upon a finding that the inmate is a dangerous sexual felony offender pursuant to s.794.0115.

8. For the minimum portion of a sentence imposed for aggravated fleeing or eluding with serious bodily injury or death pursuant to s.316.1935.

(b) An inmate shall not be eligible for incentive gain time in an amount which would cause a sentence to expire prior to such inmate having served the minimum or mandatory minimum portion of a sentence imposed pursuant to:

1 through 3. No change.

4. Section 775.082(9), F.S., as a prison releasee reoffender.

(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) through (c) No change.

(d) In addition to monthly gain time awarded under section (3)(a)-(c) of this rule, sentences imposed for a judgment of

conviction entered July 1, 2017 or after will be credited incentive gain time for time served awarded pursuant to s.921.161(1); for time served between the date of arrest as a violator and the date of recommitment pursuant to s.921.0017; for time served after a sentence is imposed and until the date of delivery to Department custody; and for time served after revocation of supervision by the Commission on Offender Review and until delivery to Department custody. Awards will be based on a 30 day month. For an “overall adjustment rating” of “outstanding” on the DC6-308:

1. Inmates sentenced for crimes committed prior to July 1, 1978 will receive 8 days incentive gain time.
2. Inmates sentenced for crimes committed from June 15, 1983 to December 31, 1993 will receive 8 days incentive gain time.
3. Inmates sentenced for crimes committed from January 1, 1994 to September 30, 1995 and which fall within levels 1 through 7 of the sentencing guidelines offense severity ranking chart located in Section 921.0012, F.S., shall receive 11 days incentive gain time.
4. Inmates sentenced for crimes committed from January 1, 1994 to September 30, 1995 and which fall within levels 8 through 10 of the sentencing guidelines offense severity ranking chart located in Section 921.0012, F.S., shall receive 8 days incentive gain time.
5. Inmates sentenced for offenses committed on or after October 1, 1995 shall receive 4 days incentive gain time.
6. For “overall adjustment rating” of “above satisfactory” on the DC6-308, the award will be reduced by half, with the 11 day award under number 3 being reduced to 6 days.
7. In the absence of any rating the Department will apply gain time in accordance with numbers 1-5 above. If the DC6-308 rating is changed subsequent to the initial computation, gain time awards shall be adjusted in accordance with the last rating received by the Department. An inmate may not file a grievance under Florida Administrative Code 33-103 to contest the “overall adjustment rating” of the DC6-308.
8. The Department may use the sheriff's record of incarceration as well as its own records or those of other agencies to ensure that gain time is awarded only once for each period of pre-sentence jail time served. Duplicate gain time is not authorized regardless of the manner in which time served is credited by the court.

(4) When processed. Incentive gain time awarded pursuant to section (3)(a)-(c) of this rule is to be processed at the end of each month or upon receipt of progress reports on inmates housed by other agencies. All incentive gain time awards should be posted in the Offender Based Information System by the close of business no later than the 12th of each month following the month of the award. Awards made pursuant to section (3)(d) of this rule will be processed upon receipt of the inmate into department custody, or when additional commitments are received for an inmate already in custody.

(a) Except in the case of extenuating circumstances or gain time awards made pursuant to section (3)(d) of this rule, inmates will receive written notice of the monthly gain time award within three working days of the last scheduled posting date. In addition, the next scheduled progress report will reflect and summarize the awards of gain time made during the reporting period.

(b) through (e). No change.

(5) Disqualifications. The following conditions will disqualify an inmate for an award of incentive gain time for the period stated- ;

~~(6)~~(a) Renumbered – No change.

~~(a)~~(b) Renumbered – No change.

~~(b)~~(c) Renumbered – No change.

~~(e)~~(d) Renumbered – No change.

~~(7)~~(6) Renumbered – No change.

~~(8)~~(7) Renumbered – 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, 2-16-17\_\_\_\_\_.*