

June 12, 2013

NOTICE OF PROPOSED RULE

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-601.104

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.

SUMMARY: The proposed rule will allow the Secretary or designee to return gain time forfeited as the result of an escapes that occur before October 1, 2013. A forfeiture of gain time can occur regarding escapes that occur on or after October 1, 2013 following a hearing.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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: Upon review of the proposed changes to these rules, 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), FS. 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, 944.275, 947.149(6) FS

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

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

RULE IS: LaDawna Fleckenstein, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

THE FULL TEXT OF THE PROPOSED RULE 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 \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Robert (Lee) Adams, Chief of Admission and Release

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Michael D. Crews, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: 6-4-13

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: 5-28-13