

## Gain-time for good conduct

**Number:** AGO 76-190

**Date:** November 13, 1998

**Subject:**  
Gain-time for good conduct

### PRISONERS--WHEN GAIN-TIME FOR GOOD CONDUCT EARNED

To: Louie L. Wainwright, Secretary, Department of Offender Rehabilitation, Tallahassee

Prepared by: William C. Sherrill, Jr., Assistant Attorney General

#### QUESTION:

Do the provisions of s. 1, Ch. 76-273, Laws of Florida, amending s. 944.27, F. S., apply to all inmates of the Department of Offender Rehabilitation or to only those inmates who have been committed to the custody of the department for offenses occurring after the effective date of the law?

#### SUMMARY:

Section 1, Ch. 76-273, Laws of Florida, applies to all inmates of the Department of Offender Rehabilitation and not solely to those inmates committed to the custody of the department for offenses occurring after the effective date of the law.

As amended by Ch. 76-273, Laws of Florida, subsection (1) of s. 944.27, F. S., now reads:

944.27 Gain-time for good conduct; schedule of allowances; cumulative sentences to be treated as one sentence for purposes of allowing and forfeiting. –

(1) The Department of Offender Rehabilitation shall grant the following deductions for gain-time *on a monthly basis, as earned*, from the sentences of *every* prisoner who has committed no infraction of the rules of the department or of the laws of the state and who has performed in a faithful, diligent, industrious, orderly, and peaceful manner the work, duties, and tasks assigned to him, to wit:

- (a) Five days per month off the first and second years of the sentence;
- (b) Ten days per month off the third and fourth years of the sentence; and
- (c) Fifteen days per month off the fifth and all succeeding years of the sentence;

*and the prisoner shall be entitled to credit for a month as soon as the prisoner has served such time as, when added to the deduction allowable, would equal a month.*" (Emphasis supplied.)

You state that the department has followed the practice of calculating gain-time at the time the inmate begins serving his sentence rather than on a monthly basis. Your practice, however, appears to have been only one of administrative convenience. Prior to the 1976 amendments, s.

944.27, F. S., provided that a prisoner earned gain-time only after exhibiting good conduct in the service of his sentence. Subsection (1) of s. 944.27, F. S. 1975, provided:

"944.27 Gain-time *for good conduct*; schedule of allowances; cumulative sentences to be treated as one sentence for purposes of allowing and forfeiting. --

(1) The [Department of Offender Rehabilitation] *shall grant* the following deductions for gain-time from the sentences of every prisoner *who has committed no infraction* of the rules or regulations of the [department], or of the laws of the state, *and who has performed in a faithful, diligent, industrious, orderly, and peaceful manner the work, duties, and tasks assigned to him*, to wit:

- (a) Five days per month off the first and second years of his sentence;
- (b) Ten days per month off the third and fourth years of his sentence; and
- (c) Fifteen days per month off the fifth and all succeeding years of his sentence; *and he shall be entitled to credit for a month as soon as he has served such time as, when added to the deduction allowable, would equal a month.*" (Emphasis supplied.)

Thus, prior to the 1976 amendments, it is apparent that an inmate was entitled to credit only upon completion of his sentence for each month in which his credit was to be calculated. The regulations of the department were consistent with the statute. Rule 10B-20.02 of the Florida Administrative Code provided:

"Gain Time. The Director shall keep a record of the conduct of each inmate. Deduction *shall* be made from the term of an inmate's sentence *when no charge of misconduct has been sustained against the inmate* and when his institutional record has been satisfactory. Such deductions shall be deemed *earned* and the inmate shall be *entitled to credit as soon as the inmate has served such time as when added to the deductible allowance provided by statute will equal a month*. An inmate serving two or more cumulative sentences shall be allowed deductions as though the sentence were all one sentence, and such deductions shall be subject to forfeiture as though the sentences were all one sentence. Deductions from the term of an inmate's sentence shall be made pursuant to the following time schedule . . . ." (Emphasis supplied.)

The amendments of Ch. 76-273, Laws of Florida, merely made explicit that which was already the requirement of the law. Though under the prior law your department may have calculated gain-time at the beginning of an inmate's sentence as an administrative convenience, gain-time was not earned by an inmate except upon a monthly basis after satisfactory service of his or her sentence. Since s. 1 of Ch. 76-273 does not change prior law except to make explicit that which already was the requirement of the law, it is my opinion that the changes of s. 1, Ch. 76-273 apply to all inmates of the Department of Offender Rehabilitation.

I might note as a matter of information that s. 944.27(1), F. S., is also repealed by s. 19 of Ch. 76-273, Laws of Florida, but the repeal does not take effect until January 1, 1979. See s. 20, Ch. 76-273.