

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 1908

INTRODUCER: Criminal Justice Committee and Senator Pizzo

SUBJECT: Gain-time for Certain Women Prisoners

DATE: March 16, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1908 provides that:

- The absence of the mother of a young child on a daily basis may lead to problems and disorders connected to such absence;
- A mother's presence soothes a child's stress and helps to regulate a child's emotions;
- A mother's extended absence can cause a child to experience higher levels of stress and anxiety; and
- The more emotionally and physically present a mother can be for her child, the better the chance that child will be emotionally healthy and mentally well.

The bill makes a pregnant prisoner or a prisoner who is the mother of a child age three or younger eligible to earn or receive gain-time in an amount that would cause the woman's sentence to expire, end, or terminate or result in the prisoner's release after serving 65 percent of the imposed sentence, rather than 85 percent as currently required. The woman would be eligible for the 65 percent service requirement if she:

- Has not been convicted of a violent felony which the bill defines as offenses enumerated in ss. 775.084(1)(c)1., 827.03, 827.071, and 827.10, F.S.;
- Has demonstrated good behavior while incarcerated; and
- Has participated in at least one educational or rehabilitative program, if such programs were available; however, if the prisoner's participation is terminated for any reason other than the prisoner's voluntary termination or expulsion for the program for cause, participation is considered as completion of the program.

The bill provides that if the prisoner's qualifying pregnancy is terminated prior to the birth of the child or if the prisoner is no longer the legal parent of the qualifying child who was age 3 or younger at the time of the offense, then the prisoner is no longer eligible for the 65 percent service requirement.

The Legislature's Office of Economic and Demographic Research preliminarily estimates that the bill will have a "negative indeterminate" prison bed impact (an unquantifiable decrease in prison beds). The bill will also likely have a fiscal impact on the Department of Corrections. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code¹ (Code) as Florida's "primary sentencing policy."² The primary purpose of the Code is to punish the offender and though rehabilitation is desired, it is a subordinate goal.³

The Code also provides that the sentence imposed by the sentencing judge for noncapital felony offenses committed on or after October 1, 1998, reflects the length of actual time to be served, shortened only by the application of incentive and meritorious gain-time as provided by law.⁴ The sentence may not be shortened if the defendant would consequently serve less than 85 percent of his or her term of imprisonment as provided in s. 944.275(4)(b)3., F.S.⁵

Gain-Time

Section 944.275, F.S., allows the DOC to grant deductions from sentences in the form of gain-time in order to encourage satisfactory prisoner behavior, to provide incentive for prisoners to participate in productive activities, and to reward prisoners who perform outstanding deeds or services. Prisoners who committed sentences after October 1, 1995, may earn incentive gain-time, which includes educational achievement gain-time, and meritorious gain-time.

Incentive Gain-Time

The DOC may grant incentive gain-time for each month during which a prisoner works diligently, participates in training, uses time constructively, or otherwise engages in positive activities. The rate of incentive gain-time in effect on the date the prisoner committed the offense

¹ Sections 921.002-921.0027, F.S. The Code is effective for offenses committed on or after October 1, 1998.

² See chs. 97-194 and 98-204, L.O.F.

³ Section 921.002(1)(b), F.S.

⁴ Section 921.002(1)(e), F.S.

⁵ Persons sentenced for offenses committed prior to October 1, 1995, are not subject to the 85 percent requirement. See *Frequently Asked Questions Regarding Gaintime*, DOC, available at [https://www.floridasupremecourt.org/content/download/242696/file/Johnson%2013-711\(1\).pdf](https://www.floridasupremecourt.org/content/download/242696/file/Johnson%2013-711(1).pdf) (last visited on March 16, 2021).

that resulted in his or her incarceration is the prisoner's rate of eligibility to earn incentive gain-time throughout the period of incarceration and cannot be altered by a subsequent change in the severity level of the offense for which the prisoner was sentenced. Section 944.275(4)(b), F.S., specifies that:

- For sentences imposed for offenses committed prior to January 1, 1994, up to 20 days per month of incentive gain-time may be granted;
- For sentences imposed for offenses committed on or after January 1, 1994, and before October 1, 1995:
 - Up to 25 days per month of incentive gain-time may be granted for offenses ranked in offense severity levels 1 through 7;
 - Up to 20 days per month of incentive gain-time may be granted for offenses ranked in offense severity levels 8, 9, and 10; and
- For sentences imposed for offenses committed after October 1, 1995, up to 10 days per month of incentive gain-time may be granted.

The DOC may grant, upon a recommendation of the education program manager, a one-time award of 60 additional days of incentive gain-time to a prisoner who is otherwise eligible and who successfully completes requirements for and is awarded a high school equivalency diploma or vocational certificate. A prisoner may not receive more than 60 days for educational attainment.⁶ The DOC may grant an additional six days of incentive gain-time if a prisoner attends and actively participates in 150 hours of adult basic education to attain basic and functional literacy.⁷

The DOC may not grant incentive gain-time for sentences imposed for the following offenses committed on or after October 1, 2014:

- Homicide occurring in the perpetration of or attempted perpetration of a sexual battery;
- Kidnapping of a child under the age of 13, and in the course of committing the offense, commits sexual battery against the child or lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition;
- False imprisonment of a child under the age of 13, and in the course of committing the offense commits sexual battery against the child or lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition;
- Sexual battery;
- Lewd or lascivious offenses upon or in the presence of persons less than 16 years of age;
- Lewd or lascivious offenses upon or in the presence of an elderly person or disabled person; or
- Computer pornography.⁸

Meritorious Gain-Time

The DOC may grant meritorious gain-time to a prisoner who performs some outstanding deed, such as saving a life or assisting in recapturing an escaped prisoner, or who in some manner

⁶ Section 944.275(4)(d), F.S.

⁷ Section 944.801(3)(i), F.S. "Active participation" means at a minimum, that the inmate is attentive, responsive, cooperative, and completes assigned work.

⁸ Section 944.275(4)(e), F.S.

performs an outstanding service that would merit the granting of additional deductions from the term of his or her sentence. The grant of meritorious gain-time may be from 1 to 60 days.⁹

Limitations on Earning Gain-Time

For sentences imposed for offenses committed on or after October 1, 1995, a prisoner may not earn any type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release, prior to serving a minimum of 85 percent of the sentence imposed.¹⁰ Credits awarded by the court for time physically incarcerated are credited toward satisfaction of 85 percent of the sentence imposed. Except as provided by s. 944.275, F.S., a prisoner may not accumulate further gain-time awards at any point when the tentative release date is the same as that date at which the prisoner will have served 85 percent of the sentence imposed. If a prisoner is found to have violated state law or department rules, gain-time may be forfeited according to law.¹¹

State prisoners sentenced to life imprisonment must be incarcerated for the rest of their natural lives, unless granted pardon or clemency.¹² Certain offenders are statutorily prohibited from earning gain-time:

- Prison releasee reoffenders must serve 100 percent of the court-imposed sentence and may not earn gain-time to shorten the length of incarceration.¹³
- Certain prisoners convicted of offenses involving the fleeing or attempting to elude a law enforcement officer are ineligible for statutory gain-time.¹⁴
- Prisoners convicted of committing or attempting to commit certain felonies while possessing or using a firearm or destructive device.¹⁵
- Prisoners convicted of committing or attempting to commit certain felonies while possessing or using a semiautomatic firearm and its high-capacity box magazine or a machine gun.¹⁶
- Prisoners convicted of battery on a law enforcement officer, firefighter, emergency medical providers, public transit employees or agents, or other specified officers while possessing a firearm or semiautomatic firearm and its high-capacity box magazine.¹⁷
- Prisoners convicted under the dangerous sexual felony offender statute.¹⁸

⁹ Section 944.275(4)(c), F.S.

¹⁰ Section 944.275(4)(f), F.S.

¹¹ Sections 944.275(5) and 944.28, F.S.

¹² *Id.*

¹³ Under s. 775.082(9), F.S., a defendant may be designated a "prison releasee offender" if within three years of being released from incarceration commits or attempts to commit: treason, murder, manslaughter, sexual battery, carjacking, home-invasion robbery, robbery, arson, kidnaping, aggravated assault with a deadly weapon, aggravated battery, aggravated stalking, aircraft piracy, unlawful throwing, placing, or discharging of a destructive device or bomb, any felony that involves the use or threat of physical force or violence against an individual, armed burglary, burglary of a dwelling, or burglary of an occupied structure, or any felony violation of ss. 790.07, 800.04, 827.03, 827.071, or 847.0135(5), F.S. A "prison releasee offender" also means any defendant who commits or attempts to commit one of the aforementioned offenses while serving a prison sentence or on escape status from a correctional facility.

¹⁴ Section 316.1935(6), F.S.

¹⁵ Section 775.087(2), F.S.

¹⁶ Section 775.087(3), F.S.

¹⁷ Section 784.07(3), F.S.

¹⁸ Section 794.0115, F.S.

Pregnancy while Incarcerated

Women are the fastest growing segment of the incarcerated population.¹⁹ Reports predict that an estimated four to ten percent of women are pregnant upon being committed to prison or jail.²⁰ Documentation of pregnancies and pregnancy care while incarcerated is sparse. The most recent data from the Bureau of Justice Statistics (BJS) was collected more than 15 years ago. In 2002, the BJS found that five percent of women in local jails were pregnant when admitted. In 2004, the BJS reported that four percent of women in state prisons and three percent of women in federal prisons were pregnant upon admission. The government has not released any further national data since.²¹

Pregnant Women in Florida Correctional Facilities

The DOC has five female correctional institutions statewide.²² The DOC assigns prisoners to institutions based on current classification procedures while facilitating the individual risk and needs of prisoners to the extent possible considering security and health care needs.²³ The DOC also considers other factors, such as the programmatic and education needs of the prisoner. All newly committed females receive a complete physical examination, which includes a complete gynecological and obstetrical history, pelvic examination, and serum pregnancy test.²⁴ All inmates who are visibly pregnant or confirmed to be pregnant are housed at the Lowell Correctional Institution which houses all pregnant prisoners for the duration of the pregnancy, unless a medical condition prohibits transfer to or housing at the facility.

The DOC reports the pregnant prisoner population over the last three fiscal years is as follows:

- 69 in Fiscal Year 2019-2020;
- 101 in Fiscal Year 2018-2019; and
- 98 in Fiscal Year 2017-2018.²⁵

¹⁹ Sawyer, Wendy, Prison Policy Initiative, *The Gender Divide: Tracking Women's State Prison Growth*, p. 17, January 9, 2018, available at https://www.prisonpolicy.org/reports/women_overtime.html (last visited March 16, 2021).

²⁰ Ferszt, G., Palmer, M., and McGrane, C., Nursing for Women's Health, *Where Does Your State Stand on Shackling of Pregnant Incarcerated Women?*, February 2018, available at [https://nwhjournal.org/article/S1751-4851\(17\)30335-5/pdf](https://nwhjournal.org/article/S1751-4851(17)30335-5/pdf) (last visited March 16, 2021); Daniel, R., Prison Policy Initiative, *Prisons Neglect Pregnant Women in Their Healthcare Policies*, December 5, 2019, available at <https://www.prisonpolicy.org/blog/2019/12/05/pregnancy/> (last visited March 16, 2021).

²¹ Daniel, R., Prison Policy Initiative, *Prisons Neglect Pregnant Women in Their Healthcare Policies*, December 5, 2019, available at <https://www.prisonpolicy.org/blog/2019/12/05/pregnancy/> (last visited March 16, 2021). See also Sufrin, C., Beal, L., Clarke, J., Jones, R., and Mosher, W., *The American Journal of Public Health, Pregnancy Outcomes in US Prison, 2016-2017*, January 15, 2019, available at <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2019.305006> (last visited March 16, 2021).

²² These facilities are Gadsden Correctional Facility in Quincy, Lowell Correctional Institution in Ocala, Florida Women's Reception Center in Ocala, Hernando Correctional Institution in Brooksville, and Homestead Correctional Institution in Florida City. Office of Program Policy Analysis and Government Accountability, *Florida Correctional Facilities, Report No. 19-08*, (October 2019), p. 2, available at <https://oppaga.fl.gov/Documents/Reports/19-08.pdf> (last visited March 16, 2021).

²³ *Id.* at pp. 7-8.

²⁴ The DOC, *Agency Analysis for SB 1908*, March 12, 2021, p. 3, (on file with the Senate Criminal Justice Committee).

²⁵ *Id.* This measures the number of different prisoners who were pregnant at some point during the fiscal year; however, some prisoners may be counted in more than one fiscal year.

According to the DOC, the 69 pregnant prisoners incarcerated in FY 2019-2020, were serving sentences for the following offense categories:

Offense Category Description	Number of Inmates
Murder	0
Sex Crimes	1
Robbery	4
Violent Personal Crimes ²⁶	14
Burglary	9
Thefts, forgery, fraud	17
Drugs	19
Weapons	1
All Others	4

Protections for Pregnant Prisoners under State Law

Section 944.241, F.S., prohibits restraints²⁷ from being used on a prisoner²⁸ who is known to be pregnant during labor,²⁹ delivery, and postpartum recovery,³⁰ unless the corrections official³¹ makes an individualized determination that the prisoner presents an extraordinary circumstance.³² This section applies to any facility under the authority of the DOC, the Department of Juvenile Justice, a county or municipal detention facility, or a detention facility operated by a private entity.³³

State law also limits the involuntary placement of a pregnant prisoner in restrictive housing.³⁴ A pregnant prisoner may be involuntarily placed in restrictive housing if the corrections official of

²⁶ “Violent personal crimes” includes crimes such as aggravated battery, kidnapping, arson, and assault and battery on a law enforcement officer. E-mail from Scotti Vaughan, Legislative Affairs, Department of Corrections (March 15, 2021) (on file with the Senate Criminal Justice Committee).

²⁷ Section 944.241(2)(h), F.S., defines “restraints” to mean any physical restraint or mechanical device used to control the movement of a prisoner’s body or limbs, including, but not limited to, flex cuffs, soft restraints, hard metal handcuffs, a black box, chubb cuffs, leg irons, belly chains, a security or tether chain, or a convex shield.

²⁸ Section 944.241(2)(g), F.S., defines “prisoner” to mean any person incarcerated or detained in any correctional institution who is accused of, convicted of, sentenced for, or adjudicated delinquent for a violation of criminal law or the terms and conditions of parole, probation, community control, pretrial release, or a diversionary program. Additionally, the term includes any woman detained under the immigration laws of the United States at any correctional institution.

²⁹ Section 944.241(2)(e), F.S., defines “labor” to mean the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

³⁰ Section 944.241(2)(f), F.S., defines “postpartum recovery” to mean, as determined by her physician, the period immediately following delivery, including the recovery period when a woman is in the hospital or infirmary following birth, up to 24 hours after delivery unless the physician after consultation with the DOC or correctional institution recommends a longer period of time.

³¹ Section 944.241(2)(b), F.S., defines “corrections official” to mean the official who is responsible for oversight of a correctional institution, or his or her designee.

³² Section 944.241(2)(d), F.S., defines “extraordinary circumstance” to mean a substantial flight risk or some other extraordinary medical or security circumstance that dictates restraints be used to ensure the safety and security of the prisoner, the staff of the correctional institution or medical facility, other prisoners, or the public.

³³ See s. 944.241(2)(a), F.S.

³⁴ Section 944.241(2)(k), F.S., defines “restrictive housing” to mean housing a prisoner separately from the general population of a correctional institution and imposing restrictions on her movement, behavior, and privileges. The term includes placing a prisoner in medical isolation, in a medical housing unit, or in the infirmary.

the correctional institution makes an individualized determination that such housing is necessary to protect the health and safety of the pregnant prisoner or others. Pregnant prisoners placed in restrictive housing must be seen by a qualified healthcare professional every 24 hours and a corrections officer every hour. Pregnant prisoners must be given a medical treatment plan that has been developed and approved by a qualified healthcare professional at the correctional institution.³⁵

If a pregnant woman needs medical care or has passed her due date, she must be placed in a designated medical housing unit or admitted to the infirmary. She must have access to outdoor recreation, visitation, mail, telephone calls, and other privileges and classes available to the general population unless:

- A corrections official, in consultation with a qualified health care professional, determines such access poses a threat to the safety and security of the correctional institution; or
- A qualified health care professional determines that such access poses a danger of adverse clinical consequences for the pregnant prisoner or others.³⁶

Female Prisoners with Young Children

The DOC reports that prisoner family information is self-report and is not verified by the DOC's staff. Therefore, the DOC does not know how many female prisoners have children who were aged three or younger at the time of the offense for which they are incarcerated.

Family Reunification and Parenting Programs Offered by the DOC

The DOC indicates that it offers services to promote stronger relationships between returning citizens and their families to increase post-release success. The DOC:

- Fosters visitation of family members by moving prisoners closer to home, when suitable;
- Partners with organizations, such as Children of Inmates;³⁷
- Utilizes volunteers to implement the Parenting from Inside curriculum at DOC institutions;
- Employs video visitation and email to maintain family ties;
- Incorporates family reunification/parenting programs into each contract for substance use disorder treatment services;
- Identifies risk factors associated with family dynamics using the DOC's evidence-driven assessment, CINAS, and delivers programs and services to mitigate those risks for prisoners; and
- Utilizes a vast list of community providers to provide offenders with programs and services designed to teach positive parenting skills and prevent abuse and neglect.³⁸

³⁵ Section 944.241(4), F.S.

³⁶ Section 944.241(4)(d), F.S.

³⁷ Children of Inmates is a nonprofit organization that coordinates care and family reunification opportunities for Florida children whose parent is incarcerated. See <https://www.childrenofinmates.org/AboutUs.aspx> (last visited March 16, 2021).

³⁸ *Supra* note 24 at p. 3.

Children of Incarcerated Parents

In 2007, the U.S. Department of Justice, Bureau of Justice Statistics found that 52 percent of state prisoners were parents of minor children.³⁹ The study found that between 1991 and midyear 2007, the number of parents held in state and federal prisons increased by 79 percent and the number of children with incarcerated parents increased by 80 percent.⁴⁰ Unfortunately, this appears to have been the latest such report.

Parental incarceration may affect many aspects of a child's life, including his or her emotional and behavioral well-being, family stability, and financial circumstances. However, children of incarcerated parents have a number of other factors that must be taken into account in determining the impact of parental incarceration, such as family and caregiver instability, poverty, exposure to violence, parental substance abuse, and parental criminality.⁴¹ These factors, which may have led to the parental incarceration, may have a greater impact on the child than the actual parental incarceration.⁴²

Studies on the impact of parental incarceration have primarily focused on the effect of the father's incarceration; rather than maternal incarceration. The research that has been done appears to indicate that the father's incarceration is indeed harmful to children.⁴³ However, research on maternal incarceration is more variable as children of incarcerated mothers appear to be subject to more instability before and as a consequence of incarceration.⁴⁴ According to the Bureau of Justice Statistics, 64 percent of incarcerated mothers reported living with their minor child in the month before arrest or just prior to incarceration.⁴⁵

Some studies suggest that maternal incarceration is not a factor in certain aspects of a child's life, while other studies find that it plays a significant role.⁴⁶ For example, in several studies, once socio-economic and substance abuse were taken into account, it was found that maternal incarceration did not play a role in reported behavioral problems in children at ages five and nine and that it isn't independently associated with educational outcomes among young children.⁴⁷

³⁹ U.S. Department of Justice, Bureau of Justice Statistics, *Parents in Prison and Their Minor Children*, August 2008, available at <https://www.bjs.gov/content/pub/pdf/pptmc.pdf> (last visited March 16, 2021).

⁴⁰ *Id.*

⁴¹ Turney, K. and Goodsell R., *Parental Incarceration and Children's Wellbeing*, THE FUTURE OF CHILDREN, 28:1, Spring 2018, available at <https://files.eric.ed.gov/fulltext/EJ1179185.pdf> (last visited March 16, 2021).

⁴² U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Parental Incarceration and Children in Nonparental Care*, ASPE Research Brief, December 2016, p. 2, available at <https://aspe.hhs.gov/system/files/pdf/258536/ParentalIncarcerationChildrenNonparentalCare.pdf.pdf> (last visited March 16, 2021).

⁴³ Wakefield, Sara, Ph.D., and Wildeman, Christopher, Ph.D., National Council on Family Relations, *How Parental Incarceration Harms Children and What to Do About It*, POLICY BRIEF, January 2018, available at https://www.ncfr.org/sites/default/files/2018-01/How%20Parental%20Incarceration%20Harms%20Children%20NCFR%20Policy_Full%20Brief_Jan.%202018_0.pdf (last visited March 16, 2021).

⁴⁴ *Id.* See also U.S. Department of Justice, *supra* note 39 at p. 7.

⁴⁵ *Supra* note 39 at p. 4.

⁴⁶ See *supra* note 43 at pp. 2-3.

⁴⁷ *Id.* at p. 151

However, maternal incarceration was associated with depressive young adults and lower chance of college graduation.⁴⁸

With regards to infants, researchers express concern that incarcerated mothers who give birth while incarcerated are not afforded the opportunity to develop a bond to the baby or that the baby does not have a chance to become familiar with the mother and form an attachment to her.⁴⁹ Such children are likely to develop emotional or behavioral problems, because of the lack of this emotional bond and attachment to the mother.⁵⁰

Insecure attachments in younger children may also result in poor peer relationships and diminished cognitive abilities. According to one estimate, 70 percent of young children with incarcerated mothers had emotional or psychological problems, such as anxiety, withdrawal, hypervigilance, depression, shame, and guilt.⁵¹ Researchers again caution that incarceration is often preceded by other factors that may play a significant role in such outcomes.⁵²

III. Effect of Proposed Changes:

The preamble of the bill provides that:

- The absence of the mother of a young child on a daily basis may lead to problems and disorders connected to such absence;
- A mother's presence soothes a child's stress and helps to regulate a child's emotions;
- A mother's extended absence can cause a child to experience higher levels of stress and anxiety; and
- The more emotionally and physically present a mother can be for her child, the better the chance that child will be emotionally healthy and mentally well.

Under the bill, a pregnant prisoner⁵³ or a prisoner who is the mother of a child age three or younger at the time the offense or offenses were committed is eligible to earn or receive gain-time in an amount that would cause the woman's sentence to expire, end, or terminate or result in the prisoner's release after serving 65 percent of the imposed sentence, rather than 85 percent as currently required. The woman would be eligible for the 65 percent service requirement if she:

- Has not been convicted of a violent felony, which the bill defines as the offenses enumerated in ss. 775.084(1)(c)1., 827.03, 827.071, and 827.10, F.S.;
- Has demonstrated good behavior while incarcerated; and
- Has participated in at least one educational or rehabilitative program, if such programs were available. However, if the prisoner's participation in the program is terminated for any reason other than the prisoner's voluntary termination or expulsion from the program for cause, her participation in the program qualifies as completion of the program.

⁴⁸ *Id.* at pp. 151-152.

⁴⁹ U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Effects of Parental Incarceration on Young Children*, December 1, 2001, available at <https://aspe.hhs.gov/basic-report/effects-parental-incarceration-young-children#The> (last visited March 16, 2021).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* See also *supra* note 42 at p. 2, and *supra* note 43 at p. 2.

⁵³ Section 944.241(2)(h), F.S., defines "pregnant prisoner" as any prisoner whose pregnancy is confirmed by or otherwise known to a qualified health care professional at the correctional institution.

Under s. 775.084(1)(c)1., F.S., a violent felony includes, a conviction for the commission, or an attempt or conspiracy to commit:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;
- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery;
- Aggravated stalking;
- Home invasion/robbery;
- Carjacking; or
- An offense which is in violation of a law of any other jurisdiction if the elements of the offense are substantially similar to elements of any felony offense listed above, or an attempt to commit any such offense.

Sections 827.03, 827.071, and 827.10, F.S., address offenses related to abuse, aggravated abuse, and neglect of a child, sexual performance of a child, and unlawful desertion of a child, respectively.

The bill makes conforming changes.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by article VII, section 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

This bill may implicate the Equal Protection Clause of the U.S. Constitution and a similar clause in the Florida Constitution.⁵⁴ The Fourteenth Amendment of the U.S. Constitution provides that no state shall deny to any person within its jurisdiction the equal protection of the laws.⁵⁵ The Fourteenth Amendment prevents unreasonable discrimination based on the use of classification, thereby preventing laws which draw distinctions between individual classes based solely on differences that do not relate to a legitimate governmental objective. The Florida Equal Protection Clause provides that all natural persons, female and male, are equal before the law.⁵⁶

A law with gender classifications must serve important governmental objectives and must be substantially related to the achievement of those objectives.⁵⁷ A male prisoner who has a child aged three or younger at the time the offense for which he is incarcerated was committed and who meets the other criteria as outlined in the bill may claim that as such he is similarly situated and should be eligible for the 65 percent service requirement, rather than the 85 percent requirement.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "negative indeterminate" prison bed impact (an unquantifiable decrease in prison beds).

The EDR provided the following information relevant to its preliminary estimate:

⁵⁴ U.S. Const. amend. XIV, and Art. I, s. 2. Fla. Const.

⁵⁵ *Id.*

⁵⁶ Art. I, s. 2. Fla. Const.

⁵⁷ *Alachua County Court Executive v. Anthony*, 418 So.2d 264, 265-266 (Fla. 1982) (citing *Craig v. Boren*, 429 U.S. 190, 197 (1976)).

Per DOC, in FY 18-19, there were 101 pregnant inmates in the prison population, and in FY 19-20, there were 69 pregnant inmates. It is not known how many inmates in the prison population were mothers of children that were 3 years of age or younger. Additionally, by keeping the gain-time award at 10 days per month, shortening the time served to 65% would probably provide a smaller impact initially, since short sentence inmates do not have time to reach the 85% threshold, whereas the impact would be greater for inmates with longer sentences and would take time to be realized in its impact on beds.⁵⁸

The DOC may have reduced costs associated with a reduction in the prison population due to the release of qualified women being released after serving 65 percent, rather than 85 percent of the imposed sentence. However, there may be an increase in offenders supervised on community control, which may increase the need for additional staff and resources to supervise this population.⁵⁹

The DOC estimates that it would likely absorb the minimal technology impact cost associated with the need to reprogram systems.⁶⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of Florida Statutes: 921.002 and 944.275.

This bill creates section 944.243 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 16, 2021:

The committee substitute:

- Adds crimes related to child abuse and neglect to the definition of “violent crimes”;
- Provides that a prisoner must complete, rather than participate, in educational or rehabilitative programs to qualify for the 65 percent service requirement;
- Provides that if a woman’s participation in a program is terminated due to a reason other than the prisoner’s voluntary termination or expulsion from the program for cause, then such participation will count as completion of the program; and

⁵⁸ The EDR estimate is on file with the Senate Committee on Criminal Justice.

⁵⁹ *Supra* note 24 at p. 7.

⁶⁰ *Supra* note 24 at p. 8.

- Provides that a prisoner whose qualifying pregnancy terminates or is no longer the legal parent of the qualifying child due to adoption or termination of parental rights is ineligible for the 65 percent service requirement.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
