

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 779 Pregnant Women in the Criminal Justice System

**SPONSOR(S):** Criminal Justice Subcommittee, Hart, Nixon and others

**TIED BILLS:** IDEN./SIM. BILLS: SB 730

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 1 N, As CS	Padgett	Hall
2) Justice Appropriations Subcommittee	14 Y, 1 N	Smith	Keith
3) Judiciary Committee			

### SUMMARY ANALYSIS

On August 9, 2021, Erica Thompson was booked into the Alachua County Jail after being arrested for a violation of probation. While being booked into the jail, Thompson informed the booking officer that she was pregnant and having contractions. After being processed into the facility, the contractions continued and Thompson gave birth to a baby, Ava, who was born three months premature. Following the birth, the baby was taken to the hospital, where she died hours later. An internal review by the Alachua County Sheriff's Office found that "there were no findings of law or policy violations on the part of Alachua County Sheriff's Office employees or the contracted medical provider."

The Florida Model Jail Standards ("FMJS") require that a pregnant prisoner in a detention facility receive timely and appropriate prenatal care from a qualified medical practitioner. Such care must include medical examinations, advice on appropriate levels of activity and safety precautions, nutritional guidance, and counseling. Under current law, there is no explicit requirement for every female arrestee to be provided a pregnancy test.

CS/HB 779, which may be cited as "Ava's Law," creates two statutes relating to pregnant women in the criminal justice system.

The bill:

- Creates s. 907.033, F.S., to require a county or municipal detention facility, and a juvenile detention center or facility, to:
  - Inform a female who is arrested and detained in such a facility that she has the right to request a pregnancy test if she is still in custody 72 hours after her arrest; and
  - If she is still in custody 72 hours after her arrest, upon request, to administer a pregnancy test within 24 hours of the request and inform the female of the results.
- Creates s. 925.13, F.S., to authorize a pregnant woman who is convicted of a felony and sentenced to a term of incarceration in a state correctional institution to, at the time of her sentencing, petition the court to defer the incarcerative portion of her sentence for up to 12 weeks after she gives birth to a child or the pregnancy ends, whichever occurs sooner.

The bill amends s. 944.24, F.S., to require the Department of Corrections to collect the following information and annually submit a report containing such information to the Governor, the President of the Senate, and the Speaker of the House of Representatives:

- The total number of pregnant inmates who give birth during their term of imprisonment, and whether the birth was a live birth or stillbirth.
- The gestational age and birth weight of each infant born to a woman during her term of imprisonment.
- The total number of pregnant inmates who experience complications during their term of imprisonment and the types of complications experienced.
- The total number of pregnant inmates who experience miscarriages.

The bill requires county and municipal detention facilities and juvenile detention centers or facilities to provide pregnancy tests, upon request, to female arrestees who have been detained for longer than 72 hours following arrest. To the extent the government entities that operate such facilities are not already providing such tests, there may be an indeterminate fiscal impact.

The bill provides an effective date of July 1, 2023.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives .**

**STORAGE NAME:** h0779b.JUA

**DATE:** 4/11/2023

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Pregnancy Testing Upon Arrest

The Florida Model Jail Standards<sup>1</sup> (“FMJS”) require that a pregnant prisoner in a detention facility receive timely and appropriate prenatal care from a qualified medical practitioner.<sup>2</sup> Such care must include medical examinations, advice on appropriate levels of activity and safety precautions, nutritional guidance, and counseling.<sup>3</sup> Under current law, there is no explicit requirement for every female arrestee to be provided a pregnancy test.

##### Alachua County Incident

On August 9, 2021, Erica Thompson was booked into the Alachua County Jail after being arrested for a violation of probation.<sup>4</sup> While being booked into the jail, Thompson informed the booking officer that she was pregnant and having contractions.<sup>5</sup> After being processed into the facility, the contractions continued and Thompson gave birth to a baby, Ava, who was born three months premature.<sup>6</sup> Following the birth, the baby was taken to the hospital, where she died hours later.<sup>7</sup> An internal review by the Alachua County Sheriff’s Office found that “there were no findings of law or policy violations on the part of Alachua County Sheriff’s Office employees or the contracted medical provider.”<sup>8</sup>

##### Probation

Probation is a form of community supervision requiring specified contacts with probation officers and compliance with certain terms and conditions.<sup>9</sup> Following a conviction for a criminal offense, the court determines the terms and conditions of probation.<sup>10</sup> Standard conditions of probation include:

- Reporting to the probation officer as directed.
- Permitting the probation officer to visit the probationer at his or her home.
- Working faithfully at suitable employment, when possible.
- Residing at a specified place.
- Living without violating the law.
- Paying restitution to any aggrieved party for the damage or loss caused by a probationer’s offense.
- Being prohibited from possessing, carrying, or owning a firearm or weapon, without the probation officer’s consent.
- Being prohibited from using intoxicants to excess or possessing any drugs or narcotics.<sup>11</sup>

Community control is a form of intensive supervised custody of an offender who remains in the community, but whose freedom is restricted within the home, community, or noninstitutional residential

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<sup>1</sup> The FMJS are minimum standards which jails across Florida must meet to protect the constitutional rights of those incarcerated. Florida Sheriffs Association, *Florida Model Jail Standards*, <https://www.flsheriffs.org/law-enforcement-programs/training/florida-model-jail-standards> (last visited April 3, 2023).

<sup>2</sup> Florida Sheriffs Association, *FMJS Manual*, [https://www.flsheriffs.org/uploads/docs/FMJS\\_Manual\\_Eff\\_04\\_01\\_21.pdf](https://www.flsheriffs.org/uploads/docs/FMJS_Manual_Eff_04_01_21.pdf) (last visited April 3, 2023).

<sup>3</sup> *Id.*

<sup>4</sup> Cindy Swirko, *Internal investigation clears Alachua County jail staff in case of baby's birth*, Gainesville Sun <https://www.gainesville.com/story/news/2021/11/30/alachua-county-jail-staff-cleared-case-babys-birth/8811638002/> (Nov. 30, 2021) (last visited April 3, 2023).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> S. 948.01(8), F.S.

<sup>10</sup> S. 948.03(1), F.S.

<sup>11</sup> *Id.*

placement and includes specific sanctions and monitoring by probation officers with restricted caseloads.<sup>12</sup> In addition to the standard conditions which apply to normal probationers, an offender on community control must:

- Maintain specified contact with his or her parole or probation officer;
- Be confined to an agreed-upon residence during any hours he or she is away from work or public service activities;
- Complete mandatory public service;
- Be supervised by the Department of Corrections (DOC) by means of an electronic monitoring device or system.<sup>13</sup>

Section 948.11, F.S., requires DOC to electronically monitor an offender sentenced to community control if a court imposes electronic monitoring as a condition of community control. Any offender under DOC supervision who violates the terms and conditions of such supervision may be supervised by electronic monitoring if ordered by a court.<sup>14</sup> A person who DOC is monitoring electronically is required to pay DOC the costs of such monitoring.<sup>15</sup> The rate for electronic monitoring charged to the offender must not exceed the full cost of the monitoring service in addition to the cost of supervision required by the sentencing court.<sup>16</sup>

### Split Sentences

Section 948.012, F.S., authorizes a court, at the time of sentencing, to impose a split sentence in which a defendant is ordered to serve *both* a term of incarceration and a term of probation or community control. The term of probation or community control may be imposed before or after the term of incarceration. If a court imposes a term of probation or community control followed by a period of incarceration, the court may:

- Eliminate the term of incarceration if the offender meets the terms and conditions of probation or community control.
- Revoke, modify, or continue the probation or community control.<sup>17</sup>

If a court revokes an offender's probation or community control, the court may impose any sentence that it could have imposed at the time the offender was placed on probation or community control.<sup>18</sup>

### **Effect of Proposed Changes**

#### Pregnancy Testing of Female Arrestees

CS/HB 779, which may be cited as "Ava's Law," creates s. 907.033, F.S., to require a county or municipal detention facility,<sup>19,20</sup> and a juvenile detention center or facility,<sup>21</sup> to:

- Inform a female who is arrested and detained in such a facility that she has the right to request a pregnancy test if she is still in custody 72 hours after her arrest; and

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<sup>12</sup> S. 948.001(3), F.S.

<sup>13</sup> S. 948.101(1), F.S.

<sup>14</sup> S. 948.11(2), F.S.

<sup>15</sup> S. 948.11(5), F.S.

<sup>16</sup> S. 948.09, F.S.

<sup>17</sup> S. 948.012(2), F.S.

<sup>18</sup> S. 948.012(2)(b), F.S.

<sup>19</sup> "County detention facility" means a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of a felony or a misdemeanor, regardless of whether such facility is operated by a board of county commissioners, a sheriff, or any other entity. S. 951.23(1)(a), F.S.

<sup>20</sup> "Municipal detention facility" means a city jail, a city stockade, a city prison camp, and any other place except a county detention facility used by a municipality or municipal officer for the detention of persons charged with or convicted of violation of municipal laws or ordinances, regardless of whether such facility is operated by a city or any other entity. S. 951.23(1)(d), F.S.

<sup>21</sup> "Detention center or facility" means a facility used pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention center or facility may provide secure custody. A facility used for the commitment of adjudicated delinquents shall not be considered a detention center or facility. S. 985.013(19), F.S.

- If she is still in custody 72 hours after her arrest, upon request, to administer a pregnancy test within 24 hours of the request.

The bill requires a facility to timely inform the female of the results of the pregnancy test, which may be conducted by a urine or blood test, ultrasound scan, or any other standard pregnancy testing protocols adopted by the facility.

### Sentence Deferral for Pregnant Women

The bill creates s. 925.13, F.S., which authorizes a pregnant woman who is convicted of a felony<sup>22</sup> and sentenced to a term of incarceration in a state correctional institution<sup>23</sup> to, at the time of her sentencing, petition the court to defer the incarcerative portion of her sentence for up to 12 weeks after she gives birth to a child or the pregnancy ends, which occurs sooner. Under the bill, a pregnant woman who petitions the court for a sentence deferral must provide the court with verifiable proof of her pregnancy along with the petition for sentence deferral. Such verifiable proof may be demonstrated by providing records pursuant to a medical examination or other suitable means as determined by the court.

The bill requires a judge to consider the following when determining whether to grant a petition for sentence deferral:

- The severity of the offense for which the pregnant woman was convicted;
- The pregnant woman's prior criminal history;
- Whether deferring the incarcerative portion of the pregnant woman's sentence poses a danger to the community;
- The health of the pregnant woman; and
- Any special circumstances related to the woman's pregnancy.

Under the bill, if the sentencing court grants a pregnant woman's petition to defer the incarcerative portion of her sentence, the court must place the woman on probation until the pregnant woman is incarcerated. The bill requires a sentencing court to require, in addition to the standard conditions of probation, the pregnant woman to inform her probation officer if she gives birth or her pregnancy ends. The bill authorizes a court to order electronic monitoring as a condition of probation if necessary.

If a court grants a pregnant woman's petition to defer the incarcerative portion of her sentence and the pregnant woman is arrested for committing a criminal offense during the deferral period or violates any conditions of probation imposed by the court, the court may impose any sanction, including revoking the pregnant woman's probation and requiring her term of incarceration to begin immediately.

### Report on Births by Women in Department of Corrections Custody

The bill amends s. 944.24, F.S., to require DOC to collect the following information and annually submit a report containing such information to the Governor, the President of the Senate, and the Speaker of the House of Representatives:

- The total number of pregnant inmates who give birth during a term of imprisonment, and whether the birth was a live birth or stillbirth.
- The gestational age and birth weight of each infant born to a woman during a term of imprisonment.
- The total number of pregnant inmates who experience complications during a term of imprisonment and the types of complications experienced.
- The total number of pregnant inmates who experience miscarriages.

Under the bill, DOC must exclude any personally identifying information and comply with state and federal confidentiality laws when compiling and submitting the report.

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<sup>22</sup> "Felony" means any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or imprisonment in a state penitentiary. S. 775.08(1), F.S.

<sup>23</sup> "State correctional institution" means any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the department. S. 944.02(8), F.S.

The bill provides an effective date of July 1, 2023.

**B. SECTION DIRECTORY:**

**Section 1:** Provides this act may be cited as “Ava’s Law.”

**Section 2:** Creates s. 907.033, F.S., relating to pregnancy testing of female arrestees.

**Section 3:** Creates s. 925.13, F.S., relating to sentence deferral for pregnant women.

**Section 4:** Amends s. 944.24, F.S., relating to administration of correctional institutions for women.

**Section 5:** Provides an effective date of July 1, 2023.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill requires juvenile detention centers or facilities to provide pregnancy tests, upon request, to female arrestees who have been detained for longer than 72 hours following arrest. To the extent such facilities are not already providing such tests, there may be an indeterminate fiscal impact to the Department of Juvenile Justice.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill requires county and municipal detention facilities to provide pregnancy tests, upon request, to female arrestees who have been detained for longer than 72 hours following arrest. To the extent county and municipal detention facilities are not already providing such tests, there may be an indeterminate fiscal impact on local governments that operate such facilities.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 29, 2023, the Criminal Justice Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill as it:

- Required a juvenile detention center or facility to offer a pregnancy test, upon request, to a juvenile who is detained for 72 hours after her arrest.
- Required a detention facility that administers a pregnancy test to timely inform a female of the results of the test.
- Limited eligibility for a sentence deferral to pregnant women who have been convicted of a felony and sentenced to a term of incarceration in a state correctional institution.
- Required a person who petitions a court for a sentence deferral to provide verifiable proof of her pregnancy to the court.
- Provided factors for a court to consider in determining whether to grant a petition for sentence deferral.
- Required a court to place a pregnant woman who has been granted a sentence deferral on DOC probation.
- Revised a provision that required DOC to report specified data on its website to require DOC to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.