

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 196

INTRODUCER: Criminal Justice Committee and Senator Flores and others

SUBJECT: Juvenile Civil Citation and Similar Diversion Programs

DATE: February 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Sadberry</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes
COMMITTEE
SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 196 requires a law enforcement officer to issue a civil citation or require the juvenile's participation in a similar diversion program when the juvenile admits to committing one of the following first-time misdemeanor offenses:

- Possession of alcoholic beverages by a person under age 21 (s. 562.111, F.S.);
- Battery (s. 784.03(1), F.S.);
- Criminal Mischief (s. 806.13, F.S.);
- Trespass (ss. 810.08, and 810.09, F.S.);
- Theft (ss. 812.04(2)(e) and (3)(a), F.S.);
- Retail and farm theft (s. 812.015(2), F.S.);
- Loitering and prowling (s. 856.021, F.S.);
- Affrays and riots (s. 870.01(1), F.S.);
- Disorderly conduct (s. 877.03, F.S.);
- Possession of 20 grams or less of cannabis (s. 893.13(6)(b), F.S.);
- Use, possession, manufacture, delivery, transportation, advertisement, or retail sale of drug paraphernalia (s. 893.147, F.S.); or
- Resisting an officer without violence (s. 843.02, F.S.).

The bill permits a law enforcement officer to issue a civil citation or require the juvenile's participation in a similar diversion program when the juvenile admits to committing:

- A misdemeanor offense not enumerated in the bill; or
- A second-time or third-time misdemeanor offense not enumerated in the bill.

A law enforcement officer must provide written documentation articulating why an arrest is warranted when he or she has the discretion to issue a civil citation but instead chooses to arrest the juvenile.

The bill specifies that the option of the issuance of a civil citation or referral to a similar diversion program does not apply to:

- A juvenile who is alleged to have committed, is currently charged with, or has plead or has been convicted of a felony; or
- A misdemeanor offense arising out of an episode in which the juvenile is also alleged to have committed a felony.

The bill may have a positive fiscal impact to state and local governments because an increase in civil citation or similar diversion programs may result in juveniles being diverted from the Department of Juvenile Justice's more costly residential program. It also may reduce the cost to state and local governments for housing youth in juvenile detention, which is currently at a 50/50 cost share.

The bill is effective July 1, 2017.

II. Present Situation:

Section 985.12, F.S., establishes a civil citation process that provides law enforcement an alternative to arresting juveniles for nonserious delinquent acts. The Department of Juvenile Justice (DJJ) is required to assist in the implementation of civil citation or other similar diversion programs. The DJJ must also develop guidelines for these programs that include intervention services based upon proven civil citation or similar diversion programs within the state.¹

These civil citation or similar diversion programs are discretionary and are established at the local level in concurrence with the chief judge, state attorney, public defender, and head of each local law enforcement agency. The program may be operated by law enforcement, the DJJ, a juvenile assessment center, a county or municipality, or an entity selected by the county or municipality.

Currently, if a juvenile admits to committing a misdemeanor² a law enforcement officer has the discretion to:

- Issue a warning or inform the juvenile's parent of the child's infraction;
- Issue a civil citation or require participation in a similar diversion program; or

¹ Section 985.12(1) and (2), F.S.

² Misdemeanors involving sexual or firearm offenses are currently ineligible for civil citation programs under the DJJ Civil Citation Model Plan. *2017 Bill Analysis for SB 196*, Department of Juvenile Justice, (January 18, 2017) (on file with the Senate Criminal Justice Committee).

- Arrest the juvenile.³

A law enforcement officer can issue a civil citation to any juvenile who admits to committing a first-time, second-time, or third-time misdemeanor.⁴ When issuing a civil citation the law enforcement officer must advise the juvenile that he or she has the option of refusing the civil citation and of being referred to the DJJ.⁵ If an arrest is made, the law enforcement officer must provide written documentation as to why an arrest was warranted.⁶

A juvenile issued a civil citation or required to participate in a similar diversion program may be assessed up to 50 hours of community service and must participate in intervention services as indicated by a needs assessment. Intervention services include family counseling, urinalysis monitoring, and substance abuse and mental health treatment services.

A juvenile is required to report to a community service performance monitor within seven working days after the civil citation has been issued and complete at least five community service hours per week. The monitor also reports information regarding the juvenile's service hour completion and the expected completion date to the DJJ.⁷

If a juvenile fails to timely report or complete a work assignment, fails to timely comply with assigned intervention services, or commits a subsequent misdemeanor, the law enforcement officer must issue a report to the DJJ alleging that the juvenile has committed a delinquent act, thereby initiating formal judicial processing.⁸

Sixty counties have implemented a civil citation or similar program in Florida. Taylor and Polk counties are in the process of implementing programs. Bradford, Calhoun, Gulf, Hardee, and Washington counties have not established civil citation programs; however, these counties do utilize a different type of diversion program.⁹

For Fiscal Year 2015-16, 19,386 juveniles were eligible for a civil citation, and only 9,636 eligible juveniles were issued a civil citation. The recidivism rate for the juveniles who completed a civil citation program in Fiscal Year 2014-15 was 3.8 percent.¹⁰

III. Effect of Proposed Changes:

Section 985.12, F.S., is amended to require the establishment of one or more civil citation or similar diversion programs in each county. At least one program must be operated by the county.

³ Section 985.12(1), F.S.

⁴ *Id.*

⁵ Section 985.12(6), F.S. A juvenile may refuse the civil citation at any time before completion of the work assignment.

⁶ Section 985.12(1), F.S.

⁷ Section 985.12(4), F.S.

⁸ Section 985.12(5), F.S.

⁹ *2017 Bill Analysis for SB 196*, Department of Juvenile Justice, (January 18, 2017) (on file with the Senate Criminal Justice Committee).

¹⁰ *Id.*

The bill requires a law enforcement officer¹¹ to issue a civil citation or require the juvenile's participation in a similar diversion program when the juvenile admits to committing one of the following first-time misdemeanor offenses:¹²

- Possession of alcoholic beverages by a person under age 21 (s. 562.111, F.S.);
- Battery (s. 784.03(1), F.S.);
- Criminal Mischief (s. 806.13, F.S.);
- Trespass (ss. 810.08 and 810.09, F.S.);
- Theft (ss. 812.04(2)(e) and (3)(a), F.S.);
- Retail and farm theft (s. 812.015(2), F.S.);
- Loitering and prowling (s. 853.021, F.S.);
- Affrays and riots (s. 870.01(1), F.S.);
- Disorderly conduct (s. 877.03, F.S.);
- Possession of 20 grams or less of cannabis (s. 893.13(6)(b), F.S.);
- Use, possession, manufacture, delivery, transportation, advertisement, or retail sale of drug paraphernalia (s. 893.147, F.S.); or
- Resisting an officer without violence (s. 843.02, F.S.).

The bill permits a law enforcement officer to issue a civil citation or require the juvenile's participation in a similar diversion program when the juvenile admits to committing:

- A misdemeanor offense not enumerated in the bill; or
- A second-time or third-time misdemeanor offense not enumerated in the bill.

A law enforcement officer must provide written documentation articulating why an arrest is warranted when he or she has the discretion to issue a civil citation but instead chooses to arrest the juvenile.

The bill specifies that the option for receiving a civil citation or referral to a similar diversion program does not apply to:

- A juvenile who is alleged to have committed, is currently charged with, or has plead or has been convicted of a felony; or
- A misdemeanor offense arising out of an episode in which the juvenile is also alleged to have committed a felony.

The bill provides that the civil citation statute, s. 985.12, F.S., does not modify the authority of a law enforcement officer to issue a simple warning to a juvenile or to notice the juvenile's guardian or parent for an alleged misdemeanor offense.

¹¹ The bill defines "law enforcement officer" to have the same meaning as in s. 943.10, F.S. Section 943.10, F.S., defines the term to mean any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

¹² A "misdemeanor offense" is defined as one or more violations of law arising out of the same criminal episode, act, or transaction.

The bill retains current statutory provisions relating to:

- The program requirements placed upon juveniles participating in a civil citation program, including community service hours, intervention services, and time frames to complete the program;
- The ability of juveniles to refuse participation in a civil citation or similar diversion program;
- The requirement of law enforcement officers to forward civil citations to specified parties;
- The requirement for civil citation or similar diversion programs to report the juveniles' outcomes to the DJJ and law enforcement officers; and
- Participation in a civil citation or similar diversion program not being considered a referral to the DJJ.

The bill extends the time period in which a juvenile is required to report to a community service performance monitor from seven to ten working days after the civil citation or documentation for a similar diversion program has been issued.

The bill amends ss. 943.051 and 985.11, F.S., to make conforming changes.

The bill is effective July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Expanding the use of civil citation or similar diversion programs could result in more juveniles having future opportunities for employment since these juveniles will not have the hurdle of an arrest record.

C. Government Sector Impact:

The bill could have positive fiscal impacts to state and local governments because an increase in civil citation or similar diversion programs could lead to juveniles being diverted from the Department of Juvenile Justice's more costly residential program. This bill should have the impact of reducing the number of residential beds in the Department of Juvenile Justice.

VI. Technical Deficiencies:

The provisions noted below may need to be clarified:

1. On lines 29-31, the bill appears to require the civil citation or similar diversion program to serve all juveniles who are alleged to have committed a violation of law which would be a misdemeanor offense if committed by an adult. Lines 51-60 appear to limit participation to those juveniles who admit committing misdemeanor offenses.
2. Lines 164-168 states that this section does not modify the law enforcement officer's authority to issue a warning instead of a civil citation. However, lines 54-56 appear to delete the current authority granted by statute to a law enforcement officer to issue the warning. In addition, line 57 appears to mandate the issuance of a civil citation or participation in a diversion program in some instances.
3. The bill uses the terms "first-time misdemeanor offense", "second-time misdemeanor offense" and "third-time misdemeanor offense." It is unclear whether the use of these terms is intended to denote the number of times a misdemeanor offense has occurred.
4. Lines 83-89 suggest that a juvenile may commit a second- or third-time misdemeanor and remain eligible to participate or continue to participate in a diversion program. Lines 144-147 require the arrest of a juvenile who commits a subsequent delinquent act.

VII. Related Issues:

The bill requires all counties to establish a civil citation or similar diversion program which could make implementation by the July 1, 2017, effective date difficult.

VIII. Statutes Affected:

This bill substantially amends section 985.12 of the Florida Statutes.

This bill makes conforming technical changes to sections 943.051 and 985.11 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 January 23, 2017:

The Committee Substitute does the following:

- Adds the second degree misdemeanor of loitering and prowling to the list of qualifying offenses for a civil citation;
- Specifies that at least one program must be operated by the county;
- Clarifies program requirements; and
- Makes technical changes recommended by the DJJ.

- B. **Amendments:**

None.