

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1197 Diversion Programs  
**SPONSOR(S):** Judiciary Committee, Criminal Justice Subcommittee; Ahern  
**TIED BILLS:** HB 1199 **IDEN./SIM. BILLS:** SB 1392

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 0 N, As CS	Bruno	Sumner
2) Justice Appropriations Subcommittee	8 Y, 2 N	Welty	Gusky
3) Judiciary Committee	19 Y, 0 N, As CS	Bruno	Poche

### SUMMARY ANALYSIS

Generally, when a law enforcement officer has probable cause to believe that an adult has committed a misdemeanor offense in Florida, the officer may arrest the individual – with or without a warrant – or issue a notice to appear. Both an arrest and the issuance of a notice to appear refer the matter to the clerk of courts, where a criminal case is generated. The creation of that case becomes part of the person’s criminal record.

Some jurisdictions, including Pinellas, Leon, and Broward counties, have developed a civil citation or other prearrest diversion program as an alternative to referring the case to the court. These programs allow an officer to issue a citation or refer a person to the prearrest diversion program rather than make an arrest or issue a notice to appear. If the person successfully completes the requirements of the civil citation or prearrest diversion program, the offense is never referred to the court and does not appear on the individual’s criminal record.

Under current law, the Department of Law Enforcement (FDLE) must expunge the nonjudicial arrest record of a minor who successfully completes a prearrest or postarrest diversion program under certain circumstances. Other types of diversion programs are not eligible. The individual prearrest or postarrest diversion program must specify that expunction is available upon successful completion, and the offense for which the juvenile is referred to diversion must be a nonviolent misdemeanor.

CS/CS/HB 1197 establishes a model prearrest diversion program that local entities may, but are not mandated to, adopt. In implementing such a program, representatives from local law enforcement agencies, the program services provider, the public defender, the state attorney, and the clerk of the court, in consultation with other interested stakeholders, have wide latitude to develop the program, including defining eligibility criteria, program implementation and operation, and fees, if any.

The bill also expands eligibility criteria for juvenile diversion program expunction. The bill makes participants in all types of juvenile diversion programs eligible for expunction. The individual programs no longer have the discretion to specify whether expunction is available, and a minor who completes any diversion program for any misdemeanor is eligible.

The bill requires the diversion programs to submit data regarding participants and nonparticipants in diversion programs to the Department of Juvenile Justice (DJJ), which must compile and publish the data on its website.

The bill has an indeterminate fiscal impact on FDLE, DJJ and the clerks of the circuit court. The bill may have a fiscal impact on local governments that implement the civil citation program.

The bill provides an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Creation and Disposition of a Criminal Case

Generally, when a law enforcement officer has probable cause to believe that an adult has committed a misdemeanor<sup>1</sup> offense in Florida, the officer may arrest the individual – with or without a warrant<sup>2</sup> – or issue a notice to appear.<sup>3</sup> Both an arrest and the issuance of a notice to appear refer the matter to the clerk of courts, where a criminal case is generated.

A misdemeanor case may be resolved in any of the following ways:

- The case may be dismissed, by a no action or no information,<sup>4</sup> *nolle prosequi*,<sup>5</sup> or court dismissal.<sup>6</sup>
- The defendant may participate in pretrial intervention,<sup>7</sup> pretrial diversion, drug court, veterans' court, mental health court, or other intervention program.<sup>8</sup> Successful completion of a diversion program may result in the dismissal of the case.<sup>9</sup>
- The defendant may plead guilty or no contest to the charges.<sup>10</sup>
- The case may proceed to trial, at which the defendant may be found guilty or acquitted.

If the defendant pleads to the charges or is found guilty at trial, the court may either adjudicate the defendant guilty or withhold adjudication of guilt.<sup>11</sup> Regardless of the resolution, the case remains on an adult defendant's criminal record unless the court grants a petition to seal<sup>12</sup> or expunge<sup>13</sup> the record.<sup>14</sup>

Some jurisdictions have developed a civil citation or other prearrest diversion program as an alternative to referring the case to the court for disposition. These programs allow an officer to issue a citation or refer a person to the prearrest diversion program rather than make an arrest or issue a notice to appear. If the person successfully completes the requirements of the civil citation or prearrest diversion

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<sup>1</sup> Misdemeanor offenses are classified into two degrees. A first degree misdemeanor is punishable by up to one year in the county jail and a \$1,000 fine. A second degree misdemeanor is punishable by up to sixty days in the county jail and a \$500 fine. SS. 775.082 & 775.083, F.S.

<sup>2</sup> Section 901.15, F.S., outlines the circumstances in which an officer may make a warrantless arrest, which include when a person has committed a misdemeanor in the presence of the officer and when there is probable cause that the person committed an act of domestic violence, dating violence, battery, or criminal mischief.

<sup>3</sup> A notice to appear is a written order issued by a law enforcement officer in lieu of physical arrest requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time. Officers may issue a notice to appear in misdemeanor cases under certain circumstances. R. 3.125, Fla. R. Crim. P.

<sup>4</sup> A 'no action' is a dismissal of the pending charges before an information or indictment has been filed. *Genden v. Fuller*, 648 So.2d 1183, 1183 n. 1 (Fla. 1994).

<sup>5</sup> A *nolle prosequi* is the dismissal of a pending information or indictment. Id.

<sup>6</sup> The court may dismiss a case under certain circumstances, including on a defense motion to dismiss under Rule 3.90(c)(4), Fla. R. Crim. P., upon expiration of the speedy trial period under Rule 3.191, Fla. R. Crim. P., or upon granting Stand Your Ground immunity under s. 776.032, F.S.

<sup>7</sup> S. 948.08, F.S.

<sup>8</sup> S. 948.16, F.S.

<sup>9</sup> SS. 948.08(7)(c) & 948.16, F.S.

<sup>10</sup> R. 3.172, Fla. R. Crim. P.

<sup>11</sup> R. 3.670, Fla. R. Crim. P.

<sup>12</sup> Sealing of a criminal history record means the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein. S. 943.045(19), F.S.

<sup>13</sup> Expunction of a criminal history record means the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order, except that criminal history records in the custody of the department must be retained in all cases. S. 943.045(16), F.S.

<sup>14</sup> SS. 943.0581, 943.0585 & 943.059, F.S.

program, the offense is never referred to the court and does not appear on the individual's criminal, or delinquency for a juvenile, record.

### Juvenile Civil Citation and Prearrest Diversion Programs

Florida first adopted a civil citation program for juveniles in 1990.<sup>15</sup> The juvenile civil citation program allows each circuit, with assistance from the Department of Juvenile Justice (DJJ), to establish a civil citation or other prearrest diversion program.<sup>16</sup> Implementation of such a program is discretionary and requires consultation with and the consent of the state attorney and local law enforcement agencies.<sup>17</sup> In a participating jurisdiction, an officer making contact with an eligible child who admits to committing a misdemeanor offense may do any of the following in lieu of referring the child to DJJ:<sup>18</sup>

- Issue a warning;
- Notify the child's parent or guardian; or
- Issue a civil citation or require participation in a similar prearrest diversion program.<sup>19</sup>

Section 985.125, F.S., additionally authorizes a law enforcement agency or a school district, in cooperation with the state attorney, to establish a prearrest or postarrest diversion program.

Permissible conditions of a juvenile civil citation or other prearrest diversion program include up to fifty community service hours, family counseling, urinalysis monitoring, or substance abuse and mental health treatment services.<sup>20</sup> The program is available to a child for up to his or her first three misdemeanor offenses.<sup>21</sup> A child who refuses the citation, fails to successfully complete the required conditions, or commits a third or subsequent misdemeanor is referred to DJJ for the original offense.<sup>22</sup>

In fiscal year 2016-2017, DJJ reported a 55% utilization rate of the civil citation and prearrest diversion programs for eligible children. Dade and Pinellas counties reported utilization rates of 96% and 92%, respectively.<sup>23</sup> Nine counties did not offer any eligible child the civil citation program.<sup>24</sup>

### Adult Civil Citation and Prearrest Diversion

#### *Pinellas County Adult Pre-Arrest Diversion*

In October 2016, Pinellas County launched its Adult Pre-Arrest Diversion program.<sup>25</sup> Eligible misdemeanor offenses for this program include:

- Assault;
- Battery;
- Criminal mischief;
- Disorderly conduct;
- Littering;

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<sup>15</sup> Ch. 90-209, Laws of Fla.

<sup>16</sup> S. 985.12(1), F.S.

<sup>17</sup> Id.

<sup>18</sup> Every youth under the age of 18 charged with a crime in Florida is referred to the Department of Juvenile Justice. A referral is similar to an arrest in the adult criminal justice system. The Department provides a recommendation to the State Attorney and the Court regarding appropriate sanctions and services for the youth. See Department of Juvenile Justice, *Probation and Community Intervention*, available at: <http://www.djj.state.fl.us/services/probation> (last viewed February 16, 2018).

<sup>19</sup> S. 985.12(1), F.S.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> S. 985.12(5), F.S.

<sup>23</sup> Department of Juvenile Justice, *Civil Citation & Other Similar Diversion Program Dashboard*, available at:

<http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/civil-citation-dashboard/cc-dashboard> (last viewed February 16, 2018).

<sup>24</sup> Counties that did not utilize the juvenile civil citation program in FY 16-17 include Hardee, Dixie, Holmes, Bradford, Madison, Taylor, Gulf, Calhoun, and Washington. Id.

<sup>25</sup> Mark Puente, *Pinellas Sheriff Bob Gualtieri: New diversion program for minor offenses is working*, TAMPA BAY TIMES (April 12, 2017), available at: <http://www.tampabay.com/news/publicsafety/crime/pinellas-sheriff-bob-gualtieri-new-diversion-program-for-minor-offenses-is/2319960> (last viewed February 16, 2018).

- Petit theft;
- Possession of alcohol by a person less than 21 years old;
- Possession of marijuana;
- Possession of marijuana paraphernalia;
- Retail theft; and
- Trespassing.<sup>26</sup>

A person who commits an eligible offense in Pinellas county may participate in the program if he or she does not have a prior misdemeanor conviction within the past two years or a felony conviction within the past five years.<sup>27</sup> The program does not charge participants any fees or costs.<sup>28</sup> Since October 2016, 1,851 people have been accepted into the adult pre-arrest diversion program in Pinellas.<sup>29</sup> The top three offenses referred to the program were marijuana possession, retail theft, and battery.<sup>30</sup> Participants have completed approximately 24,874 community service hours and paid \$17,553 in restitution to victims.<sup>31</sup>

### *Leon County Adult Civil Citation*

Leon County adopted its adult civil citation program in 2013.<sup>32</sup> As with juvenile civil citations, the adult civil citation program in Leon County provides an alternative to arrest for eligible offenders, and law enforcement officers have sole discretion over whether to offer the program.<sup>33</sup> To be eligible for the program, an offender must:

- Be at least 18 years old;
- Reside within the Second Judicial Circuit of Florida;
- Be a first-time offender, with no prior arrests as an adult and no prior civil citations;
- Have committed an eligible offense; and
- Admit to the offense.<sup>34</sup>

Leon County stakeholders identified the following as eligible offenses:

- Non-domestic battery and assault;
- Petit theft with restitution less than \$50;
- Criminal mischief with restitution less than \$50;
- Possession of alcohol by a person less than 21 years old;
- Trespass;
- Misdemeanor possession of marijuana;
- Disorderly conduct;
- Allowing an open house party where drugs or alcohol are consumed by minors; and
- Selling or giving a minor alcoholic beverage.<sup>35</sup>

The following offenses are ineligible for the adult civil citation program in Leon County:

- Traffic offenses;
- Domestic violence offenses;
- Stalking;

<sup>26</sup> Laura Morel, *Pinellas Sheriff calls pre-arrest diversion program a success amid challenges by St. Petersburg lawyer*, Tampa Bay Times (January 12, 2018), available at: [http://www.tampabay.com/news/courts/criminal/Pinellas-Sheriff-calls-pre-arrest-diversion-program-a-success-amid-challenges-by-St-Petersburg-lawyer\\_164377717](http://www.tampabay.com/news/courts/criminal/Pinellas-Sheriff-calls-pre-arrest-diversion-program-a-success-amid-challenges-by-St-Petersburg-lawyer_164377717) (last viewed February 16, 2018).

<sup>27</sup> Supra, FN 25.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> Supra, FN 26.

<sup>31</sup> Id.

<sup>32</sup> Civil Citation Network, *Implementation Guide*, (August 2013), available at: <http://www.civilcitationnetwork.com/docs/Implementation-Guide.pdf> (last viewed February 16, 2018).

<sup>33</sup> Id. at 4.

<sup>34</sup> Id. at 2.

<sup>35</sup> Id. at 3.

- Exhibition of sexual organs;
- Loitering and prowling; and
- Theft or criminal mischief with more than \$50 in restitution.<sup>36</sup>

An offender must contact the program provider within seven days of receiving the citation.<sup>37</sup> He or she must sign a participation agreement, outlining the conditions assigned and additional program requirements.<sup>38</sup> At a minimum, the program must include a condition of twenty-five community service hours.<sup>39</sup> If the offender fails to successfully complete the program, law enforcement may either issue a notice to appear or request an arrest warrant for the case to proceed to a court disposition.<sup>40</sup> The program is entirely funded by the participants, who are assessed fees that must be paid or waived in order to successfully complete the program.<sup>41</sup>

### *Broward County Adult Civil Citation*

Broward County passed an ordinance in 2015 allowing an officer to issue an adult civil citation in lieu of arrest for possession of twenty grams or less of marijuana.<sup>42</sup> A person is eligible for the program for up to a third violation,<sup>43</sup> unless:

- The person was also charged with a felony, driving under the influence, a violent crime, or an incident of domestic violence; or
- The person has previously failed to complete the requirements of the adult civil citation program.<sup>44</sup>

As part of the program, participants must choose one of the following sanctions:

- Pay a fine;
- Perform community service; or
- Complete an educational program or drug treatment.<sup>45</sup>

### Expunction for Minors Who Complete Diversion

The Department of Law Enforcement (FDLE) must expunge the nonjudicial arrest record of a minor who successfully completes a prearrest or post arrest diversion program if that minor:

- Submits an application for prearrest or postarrest diversion expunction;
- Participated in a prearrest or postarrest diversion program based on the commission of a nonviolent misdemeanor that would not qualify as a crime of domestic violence;
- Has not committed any other criminal offense or comparable ordinance violation;
- Participated in a program that expressly allows for such expunction; and
- Submits certification from the state attorney that the minor meets the qualifications for the expunction.<sup>46</sup>

<sup>36</sup> Id.

<sup>37</sup> Id. at 2.

<sup>38</sup> Id. at 11.

<sup>39</sup> Id. at 2.

<sup>40</sup> Id. at 12.

<sup>41</sup> Id.

<sup>42</sup> S. 21-6, Code of Broward County; Ord. No. 2015-45 § 1, available at:

[https://library.municode.com/fl/broward\\_county/codes/code\\_of\\_ordinances?nodetid=PTIICOOR\\_CH21MIOFPR\\_ARTIINGE\\_S21-6POTW20GRLECA](https://library.municode.com/fl/broward_county/codes/code_of_ordinances?nodetid=PTIICOOR_CH21MIOFPR_ARTIINGE_S21-6POTW20GRLECA) (last viewed February 16, 2018).

<sup>43</sup> Id.

<sup>44</sup> Id.

<sup>45</sup> Id.; Broward County, *Adult Cannabis Citation Program: A New Option for Misdemeanor Marijuana Possession*, available at: <http://www.broward.org/HumanServices/JusticeServices/Documents/AdultCannibusBroch.pdf> (last viewed February 16, 2018).

<sup>46</sup> S. 943.0582(3), F.S.

The term expunction in the prearrest or postarrest diversion setting has the same meaning and effect as expunction of criminal history records under s. 943.0585, F.S., except that:

- FDLE may make available an expunged juvenile diversion criminal record to:
  - Criminal justice agencies for the purpose of determining eligibility for prearrest, postarrest, or teen court diversion programs;
  - When the record is sought as part of a criminal investigation; or
  - When the subject of the record is a candidate for employment with a criminal justice agency;<sup>47</sup> and
- Records maintained by local criminal justice agencies in the county in which the arrest occurred must be sealed instead of destroyed.<sup>48</sup>

Section 943.0582, F.S., authorizes FDLE to adopt rules allowing for the expunction of any nonjudicial record of arrest of a minor who has successfully completed a prearrest or postarrest diversion program as authorized by s. 985.125, F.S.<sup>49</sup> FDLE established the procedures for such expunction in Rule 11C-7.009, F.A.C. FDLE is also authorized to charge a \$75 processing fee for each request received for juvenile diversion program expunction.<sup>50</sup>

## **Effect of Proposed Changes**

### Adult Prearrest Diversion

CS/CS/HB 1197 establishes a model prearrest diversion program that local entities may, but are not mandated to, adopt. The model program incorporates several components of the juvenile civil citation program and existing adult prearrest diversion programs, including law enforcement officers' sole discretion to offer an eligible offender the program and a requirement that the offender admit to the offense. Representatives from local law enforcement agencies, the program services provider, the public defender, the state attorney, and the clerk of the court, in consultation with other interested stakeholders, have wide latitude to develop the program, including defining eligibility criteria, program implementation and operation, and fees, if any. However, crimes of domestic violence, injunction violations, stalking, and violations of pretrial release for crimes of domestic and dating violence are not eligible for a prearrest diversion program.

Participants in a prearrest diversion program must be provided appropriate assessment, intervention, education, and behavioral health care services. The program must also require the participant to perform community service hours and pay restitution to the victim. If the participant does not successfully complete the program's requirements, the law enforcement officer will determine whether there is good cause to arrest the individual for the original offense and, if so, refer the case to the state attorney.

The bill explicitly does not preempt local governments from enacting noncriminal sanctions for ordinance or other violations, nor does it preempt local entities from using a different model to establish an adult prearrest diversion program.

The bill requires a program operator to submit a participant's personal identifying information to the clerk of the circuit court, who must maintain the information in a statewide database. The personal identifying information of a program participant is confidential. If the local representatives assess a fee as part of the program, a reasonable portion of that fee must be paid to the clerk of the circuit court for maintaining the information.

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<sup>47</sup> S. 943.0582(2)(a)1., F.S.

<sup>48</sup> S. 943.0582(2)(a)2., F.S.

<sup>49</sup> Section 985.125, F.S., authorizes a law enforcement agency or school district to establish a prearrest or postarrest diversion program, in cooperation with the state attorney.

<sup>50</sup> S. 943.0582(4), F.S.

## Expunction for Minors Who Complete Diversion

The bill changes the requirements for diversion program expunction by allowing juveniles who have successfully completed a diversion program for any misdemeanor offense to have their nonjudicial arrest records expunged. The bill defines eligible diversion programs as the juvenile civil citation program,<sup>51</sup> prearrest and postarrest diversion programs,<sup>52</sup> a neighborhood restorative justice program,<sup>53</sup> a community arbitration program,<sup>54</sup> or a program to which a referral is made by a state attorney under s. 985.15, F.S. The bill's definition expands the current statute's applicability to include all juvenile diversion programs, rather than only prearrest and postarrest diversion programs under s. 985.125, F.S.

The bill amends the exceptions for when FDLE may make an expunged juvenile diversion record available. FDLE may no longer disclose the record when the subject of the record is a candidate for employment with a criminal justice agency. The bill adds an exception that FDLE may disclose the record when the record is needed by the state attorney to make a filing decision under s. 985.15, F.S.

The bill further deletes the provision that gives the individual agency establishing a prearrest or postarrest diversion program the discretion to make expunction available to participants or not.<sup>55</sup> This change ensures that a one-time expunction is available under the section. Under current law, the availability of such expunction depends on whether the agency that established the prearrest or postarrest diversion program authorized expunction.<sup>56</sup> The bill also repeals FDLE's authority to charge a child a \$75 processing fee for diversion program expunction.

The bill requires all juvenile diversion programs to provide data to DJJ for each participant, including:

- The race, ethnicity, gender, and age of the child;
- The offense committed with citation to the specific law establishing the offense; and
- The judicial circuit and county in which the offense was committed and the law enforcement agency that had contact with the child for the offense.

In addition to data on diversion program participants, each diversion program must submit data on children who are eligible for the diversion program, but who, instead, are referred to DJJ, given a notice to appear, or arrested. The data regarding children who did not participate must contain all of the information required for those children who did participate and information on whether the child was offered an opportunity to participate in a diversion program. If the child was not given an opportunity to participate in a diversion program, the program must provide the reason an offer was not made. If the child was offered the opportunity, the program must indicate whether the child or his or her parent or guardian declined to participate in the program.

DJJ is required to compile the data and publish it on its website in a sortable format based on judicial circuit, county, law enforcement agency, race or ethnicity, gender, age, and offense committed.

The bill provides an effective date of July 1, 2018.

### B. SECTION DIRECTORY:

**Section 1:** Creates s. 901.41, F.S., relating to prearrest diversion programs.

**Section 2:** Amends s. 943.0582, relating to prearrest, postarrest, or teen court diversion program expunction.

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<sup>51</sup> S. 985.12, F.S.

<sup>52</sup> S. 985.125, F.S.

<sup>53</sup> The state attorney may establish a neighborhood restorative justice center for the purposes of operating a deferred prosecution program for first-time, nonviolent juvenile offenders. S. 985.155, F.S.

<sup>54</sup> Under a community arbitration program, a juvenile faces an arbitrator or arbitration panel instead of being prosecuted in juvenile court. S. 985.16, F.S.

<sup>55</sup> S. 985.125(3), F.S.

<sup>56</sup> SS. 943.0582 & 985.125(6), F.S.

**Section 3:** Amends s. 985.125, F.S., relating to prearrest or postarrest diversion programs.

**Section 4:** Creates s. 985.126, relating to diversion programs; data collection; denial of participation or expunged record.

**Section 5:** Provides an effective date of July 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill repeals FDLE's current statutory authority to charge a \$75 processing fee for the expunction of a juvenile's arrest record if the juvenile has participated in a prearrest or postarrest diversion program. FDLE reports that it has waived the fee since July 1, 2016.<sup>57</sup> As such, removing the authorization to assess the fee will have no impact on state revenues.

#### 2. Expenditures:

The impact to FDLE is indeterminate, but it is anticipated that FDLE will absorb any additional expenditures within existing resources.

The bill's reporting requirements may increase DJJ's expenses; however, such impact is expected to be absorbed within existing resources.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill allows local communities to determine whether to charge a fee to participants in the prearrest diversion program. Those local communities that charge a fee will see an increase in revenues. If a local community does charge a fee for participation in the prearrest program, a "reasonable portion" of that fee must go to the clerk of the circuit court in order to cover some of the expenses incurred by the clerk.<sup>58</sup>

#### 2. Expenditures:

The clerk of the circuit court may incur costs related to programming for the Comprehensive Case Information System, as well as developing policies and procedures for the program. Additionally, the clerk will be expected to maintain the case files. This requirement includes ensuring the files remain confidential until completion of the diversionary period as well as acting as an eligibility clearinghouse to ensure an individual does not receive multiple diversions across jurisdictions.<sup>59</sup>

Creation of a prearrest diversion program for adults could result in cost savings (reduced booking/arrest-processing costs) depending on the number of eligible offenses, other eligibility criteria established, the pool of eligible adults, the number of participating law enforcement agencies, the use of the prearrest diversion program, and any impact the program may have in reducing arrests.

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

The bill encourages local governments to establish prearrest diversion programs, which may result in new contracts with private providers to operate those programs.

<sup>57</sup> Email from FDLE staff, *Re: Question on HB 1197*, (January 9, 2018) (on file with Judiciary Committee).

<sup>58</sup> Florida Clerks of Court Operation Corporation, *Agency Analysis of 2018 Senate Bill 1392*, p. 3 (January 30, 2018).

<sup>59</sup> *Id.*

#### D. FISCAL COMMENTS:

Since the bill provides a model framework for a prearrest diversion program and does not mandate that local governments or public or private educational institutions create a prearrest diversion program for adults, the overall fiscal impact is indeterminate for local governments. For example, the Leon County model is self-sustaining, but the Pinellas County model funds its program with county funds.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill requires FDLE to adopt rules for the expunction of a nonjudicial record of arrest of a minor who has successfully completed a diversion program for a misdemeanor offense.

The bill requires DJJ to adopt rules to implement the section relating to the diversion programs. This section includes data that DJJ must collect from the diversion programs for the purpose of expunction of a nonjudicial arrest record and the reasons an eligible youth was not provided the opportunity to participate in a diversion program. This information must be published on the department's website in a specific format.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 16, 2018, the Criminal Justice Subcommittee considered one amendment and reported the bill favorably as a committee substitute. The amendment corrected a technical error in drafting.

On February 21, 2018, the Judiciary Committee considered two amendments and reported the bill favorably as a committee substitute. The amendments:

- Disqualified misdemeanor crimes of domestic violence, stalking, pretrial release condition violations related to crimes of domestic violence or dating violence, and injunction violations from adult prearrest diversion or civil citation programs.
- Eliminated provisions requiring FDLE to automatically expunge a qualifying diversion record for a juvenile, instead requiring a juvenile to apply for expunction.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.