

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 1392

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Prearrest Diversion Programs

DATE: January 26, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Storch</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Harkness</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

I. Summary:

CS/SB 1392 requires the state attorney, the public defender, the clerk of the circuit court, and law enforcement agencies to establish a prearrest diversion program for adults and a civil citation or similar diversion program for juveniles in each judicial circuit.

Each judicial circuit's prearrest and civil citation or similar diversion program must specify:

- The misdemeanor offenses that qualify an offender for participation in the program;
- The eligibility criteria for the program;
- The program's implementation and operation;
- The program's requirements, including, but not limited to:
 - The completion of community service hours;
 - Payment of restitution, if applicable; and
 - Intervention services indicated by a needs assessment of the offender; and
- A program fee, if any, to be paid by a participant of the program.

The bill requires the Florida Department of Law Enforcement (FDLE) to adopt rules to provide for the expunction of a nonjudicial record of the arrest of a juvenile who has successfully completed a diversion program for a misdemeanor offense.

The bill requires the civil citation or similar diversion programs to submit certain information to the FDLE and the Department of Juvenile Justice (DJJ) regarding a juvenile's participation in the program. The bill also requires each law enforcement agency to submit to the DJJ certain

information relating to each juvenile who is eligible for the diversion program but is instead referred to the DJJ, provided a notice to appear, or is arrested.

The bill requires the DJJ to compile such data relating to juvenile civil citation or similar diversion programs and publish it on the DJJ's website.

The bill's expunction and data collection provisions may have an impact on state expenditures. The creation of a prearrest diversion program could result in cost savings for local governments. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2018.

II. Present Situation:

The civil citation process is designed to provide an alternative to formal judicial handling for first time misdemeanor offenses.¹ The term "diversion" has been used broadly through the years to refer to programs that permit an individual to avoid incarceration, but still result in a criminal conviction. In recent years, the term diversion has also begun to refer to programs that address an individual's behavior but do not result in a conviction. An example of diversion is prearrest diversion.² One form of prearrest diversion is a civil citation program where a law enforcement officer has discretion to issue a civil citation to an individual who commits an eligible misdemeanor offense, meets other eligibility requirements, and agrees to participate in a diversion program. If the individual successfully completes the program, he or she does not have an arrest record.³

Adult prearrest diversion programs and juvenile civil citation programs are handled differently in Florida. Juvenile civil citation programs are encouraged by Florida law⁴ and are in operation throughout the state. Florida law does not specifically address adult civil citation programs or other prearrest diversion programs for adults. However, sheriffs and counties across the state have implemented their own prearrest diversion programs for adults.

Adult Prearrest Diversion Programs

Leon County has established an adult civil citation program for first-time misdemeanants. Citations are issued by law enforcement based on the officer's discretion, the qualifying offense, and the individual's eligibility. The chief judge, state attorney, and public defender for the

¹ Civil Citation Network, *About Civil Citation*, available at <http://civilcitationnetwork.com/home.html#about> (last visited January 17, 2018).

² Center for Health and Justice at TASC, *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives*, (December 2013), pg. 6 and 8, available at http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf (last visited January 18, 2018).

³ Civil Citation Network, *Adult Civil Citation Program*, pg. 2, available at <http://www.discvillage.com/DOCS/AdultCivilCitationBrochure.pdf> (last visited January 17, 2018).

⁴ Section 985.12, F.S.

Second Judicial Circuit cooperate in the program, along with the Leon County Commission and Sheriff's Office, and the City of Tallahassee Commission and Police Department.⁵

Pinellas County Sheriff's Office has also established a prearrest diversion program for adults. The Adult Pre-Arrest Diversion Program (APAD) is designed to help adults who commit low-level crimes avoid a criminal record. Rather than going to jail, the adults are required to complete community service, along with counseling or drug treatment.⁶ The program was created as a way to prevent adults from getting a criminal record, while simultaneously lessening the burden on the Pinellas County court system. Since the APAD's launch in October 2016, there have been 1,851 adults who have participated in the program, resulting in the completion of nearly 25,000 community service hours and more than \$17,000 paid in restitution.⁷

Juvenile Civil Citation

Section 985.12, F.S., encourages local entities to establish juvenile civil citation programs that provide law enforcement an alternative to arresting juveniles for nonserious delinquent acts. The 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.⁸

The civil citation process is designed to divert juveniles prior to arrest and prevent the juvenile's further involvement in the juvenile justice system.⁹ A civil citation or similar diversion program has been implemented in 61 counties in Florida, with Taylor County in the process of implementation.¹⁰ The following counties have not established a civil citation program: Bradford, Calhoun, Gulf, Hardee, and Washington.¹¹

If established at the local level, the program must be created with the concurrence of the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement agency. The program may be operated by a law enforcement agency, the DJJ, a juvenile assessment center, the county or municipality, or another entity selected by the county or municipality.¹²

⁵ Civil Citation Network, *Adult Civil Citation Program*, pg. 2, available at <http://www.discvillage.com/DOCS/AdultCivilCitationBrochure.pdf> (last visited January 17, 2018).

⁶ Laura C. Morel, *Pinellas sheriff leads effort for second chance program for low-level offenders*, TAMPA BAY TIMES, August 5, 2016, available at <http://www.tampabay.com/news/publicsafety/pinellas-sheriff-leads-effort-for-second-chance-program-for-low-level/2288358> (last visited January 18, 2018).

⁷ Laura C. Morel, *Pinellas sheriff calls pre-arrest diversion program a success amid challenges by St. Petersburg lawyer*, TBO, January 12, 2018, available at http://tbo.com/news/courts/criminal/Pinellas-Sheriff-calls-pre-arrest-diversion-program-a-success-amid-challenges-by-St-Petersburg-lawyer_164377717 (last visited January 18, 2018).

⁸ Section 985.12(1) and (2), F.S.

⁹ Florida Department of Juvenile Justice 2014-15, *Civil Citation*, [http://www.djj.state.fl.us/docs/car-reports/\(2014-15-car\)-civil-citation-\(12-21-2015\)-mg-final.pdf?sfvrsn=2](http://www.djj.state.fl.us/docs/car-reports/(2014-15-car)-civil-citation-(12-21-2015)-mg-final.pdf?sfvrsn=2) (last visited January 18, 2018).

¹⁰ Florida Department of Juvenile Justice, *Civil Citation Implementation by County as of July 21, 2017*, <http://www.djj.state.fl.us/docs/probation-policy-memos/counties-with-cc-as-of-may-09-2016.pdf?Status=Master&sfvrsn=25> (last visited January 18, 2018).

¹¹ *Id.*

¹² Section 985.12(1), F.S.

Currently, a law enforcement officer who makes contact with a juvenile who admits to having committed a misdemeanor¹³ has the discretion to:

- Issue a warning or inform the juvenile's parent or guardian of the child's infraction;
- Issue a civil citation or require participation in a similar diversion program; or
- Arrest the juvenile.¹⁴

A copy of each civil citation issued is provided to the DJJ, the county sheriff, state attorney, the appropriate intake office of the DJJ, or the community service performance monitor designated by the DJJ, the parent or guardian of the child, and the victim.¹⁵

From December 2016 to November 2017, there were 18,101 juveniles eligible to receive a civil citation. Of those eligible, 10,335 juveniles were issued a civil citation and the remaining 7,766 were arrested.¹⁶

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.¹⁷ The officer must advise the juvenile of the option to refuse the civil citation and instead be referred to the DJJ. The juvenile may exercise that option at any time prior to completion of the program.¹⁸ An officer who issues a civil citation or requires participation in a similar diversion program may also assess up to 50 hours of community service and require participation in intervention services.¹⁹

The juvenile must report to the community service performance monitor within seven business days after being issued the civil citation and complete at least five hours of work per week. The monitor must inform the DJJ intake office when the juvenile has reported to them and the expected date that the work assignment will be completed.²⁰

The issuance of a civil citation is not considered a referral to the DJJ. However, the law enforcement officer must issue a report alleging the juvenile has committed a delinquent act, resulting in the juvenile probation officer processing the act as a referral to the DJJ, if:

- The child fails to report on time for a work assignment or fails to complete a work assignment;
- The child fails to comply with assigned intervention services within the prescribed time; or
- The child commits a subsequent misdemeanor.²¹

¹³ Misdemeanors involving sex or firearm offenses are currently ineligible for civil citations. Florida Department of Juvenile Justice, *Civil Citation Model Plan: A Guide to Implementation*, <http://www.djj.state.fl.us/docs/probation-policy-memos/civil-citation-model-plan.pdf?Status=Master&sfvrsn=4> (last visited January, 2018).

¹⁴ An officer who elects to arrest the juvenile must provide written documentation explaining why the arrest was warranted. Section 985.12(1), F.S.

¹⁵ Section 985.12(1), F.S.

¹⁶ Florida Department of Juvenile Justice, *Civil Citation & Other Similar Diversion Program Dashboard*, <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/civil-citation-dashboard/cc-dashboard> (last visited January 18, 2018).

¹⁷ Section 985.12(1), F.S.

¹⁸ Section 985.12(6), F.S.

¹⁹ Section 985.12(1), F.S.

²⁰ Section 985.12(4), F.S.

²¹ Section 985.12(5), F.S.

Expunction of Juvenile Criminal History Record

Expunction is the 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.²² Section 943.0582(1), F.S., authorizes the FDLE to adopt rules to provide for the expunction of a nonjudicial arrest record of a juvenile who has successfully completed a prearrest or postarrest diversion program.²³

The FDLE must expunge the nonjudicial arrest record of a juvenile who has successfully completed a prearrest or postarrest diversion program if that juvenile:

- Submits an application for prearrest or postarrest diversion expunction, on a form prescribed by the FDLE, signed by the juvenile's parent or legal guardian, or by the juvenile if he or she has reached the age of majority at the time of applying;
- Submits to the FDLE, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that:
 - He or she has successfully completed that county's prearrest or postarrest diversion program;
 - His or her participation in the program was based on an arrest for a nonviolent misdemeanor; and
 - He or she has not otherwise been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.
- Participated in a prearrest or postarrest diversion program that expressly authorizes or permits such expunction;
- Participated in a prearrest or postarrest diversion program based on an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence;²⁴ and
- Has never been, before filing the application for expunction, charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.²⁵

The FDLE is authorized to charge a \$75 processing fee for each request received for prearrest or postarrest diversion program expunction. The fee may be waived by the executive director.²⁶

Generally, a person who has his or her nonjudicial arrest record expunged by the FDLE may lawfully deny or fail to acknowledge the arrest and the charge covered by the expunged record.²⁷ However, the expunged nonjudicial arrest record will be made available to criminal justice agencies for the following purposes:

- Determining eligibility for prearrest, postarrest, or teen court diversion programs;
- When the record is sought as part of a criminal investigation; or

²² Section 943.045(16), F.S.

²³ Section 943.0582(1), F.S.

²⁴ Section 741.287, F.S., defines domestic violence to mean any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

²⁵ Section 943.0582(3)(a)-(e), F.S.

²⁶ Section 943.0582(4), F.S.

²⁷ *Id.*

- When the subject of the record is a candidate for employment with a criminal justice agency.²⁸

The nonjudicial arrest record eligible for expunction by the FDLE is not expunged by the local criminal justice agencies in the county in which the arrest occurred.²⁹ Section 943.0582(2)(a)2., F.S., requires that the records maintained by these local criminal justice agencies be sealed.³⁰

Expunction or sealing granted pursuant to s. 943.0582, F.S., does not prevent a juvenile from petitioning for the expunction or sealing of a later criminal history record as provided for in other provisions of Florida law, if the juvenile is otherwise eligible.³¹

III. Effect of Proposed Changes:

Prearrest Diversion Programs (Adults and Juveniles)

The Legislature finds that the creation and implementation of a prearrest diversion program for adults and a civil citation or similar diversion program for juveniles (collectively referred to as prearrest diversion programs) at the judicial circuit level promotes public safety, aids interagency cooperation, and provides the greatest chance of success for prearrest diversion programs. Further, the Legislature finds that the widespread use of prearrest diversion programs has a positive effect on the criminal justice system and contributes to an overall reduction in the crime rate and recidivism in the state. The Legislature encourages counties, municipalities, and public or private educational institutions to participate in the prearrest diversion programs created by their judicial circuits.

The bill requires the establishment of two prearrest diversion programs in each judicial circuit in the state, one for adults and one for juveniles. The bill requires the programs to be created with the collaboration of the public defender, the state attorney, the clerk of the court for each county in the circuit, and representatives of participating law enforcement agencies in the circuit. The bill requires the DJJ to develop and provide guidelines for best practice models for civil citation or similar diversion programs to the judicial circuits to use as a resource in developing and refining the circuit-wide programs.

The bill provides that each judicial circuit's prearrest diversion program must specify:

- The misdemeanor offenses that qualify an adult or juvenile for participation in the program;
- The eligibility criteria for the program;
- The program's implementation and operation;
- The program's requirements, including, but not limited to:
 - The completion of community service hours;
 - Payment of restitution, if applicable; and
 - Intervention services indicated by a needs assessment of the adult or juvenile; and

²⁸ Section 943.0582(2)(a)1., F.S.

²⁹ Section 943.0582(2)(a)2., F.S.

³⁰ Sealing of a 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 of the information contained and preserved therein. *See* s. 943.054(19), F.S.

³¹ Section 943.0582(5), F.S. *See* ss. 943.0583, 943.0585, and 943.059, F.S.

- A program fee, if any, to be paid by an adult or juvenile participating in the program.³²

The bill requires the state attorney of each circuit to operate both prearrest diversion programs. A sheriff, police department, county, municipality, or public or private educational institution may continue to operate an independent prearrest diversion program if it is in operation as of October 1, 2018, and is determined by the state attorney of that circuit to be substantially similar to the prearrest diversion program developed by the circuit. If the independent program is not substantially similar to the program developed by the circuit, the operator of the independent program may revise the program and the state attorney may conduct an additional review of the independent program.

The bill provides that a judicial circuit may look to model the circuit's programs after an existing sheriff, police department, county, municipality or public or private educational institution's prearrest diversion program.

The bill provides that if an adult or juvenile does not successfully complete the prearrest diversion program, the arresting law enforcement officer must determine if there is good cause to arrest the adult or juvenile for the original misdemeanor offense and refer the case to the state attorney to determine if prosecution is appropriate or rather, allow the adult or juvenile to continue in the prearrest diversion program.

The bill handles an adult participant's personal identifying information differently than that of a juvenile participant. Upon intake of an adult participating in the program, the state attorney or the person operating the independent program must electronically provide the adult's personal identifying information to the clerk of the court for the county in which the adult is participating in the program. This personal identifying information is not considered a court record and the confidentiality of the information must be maintained. The bill requires the clerk of the court to maintain this information in the Comprehensive Case Information System, which provides a single point of access for all such statewide information.

Whereas, when a juvenile participates in a prearrest diversion program, the DJJ receives a copy of the civil citation or similar diversion program notice and enters the appropriate information into the juvenile offender information system. The notice of a juvenile's civil citation or similar diversion program is also sent to the juvenile's parent or guardian and the victim. At the conclusion of a juvenile's participation in a civil citation or similar diversion program, the state attorney operating the program must report the outcome to the DJJ.

Expunction of Juvenile Criminal History Record

The bill amends s. 943.0582, F.S., to require the FDLE to adopt rules to provide for the expunction of a nonjudicial record of the arrest of a juvenile who has successfully completed a diversion program for a misdemeanor offense. The bill specifies that an expunction under this section is limited to misdemeanor offenses.

³² If the program imposes a fee, the clerk of the court of the applicable county must receive a reasonable portion of the fee.

The bill defines “diversion program” as a program under s. 985.12, F.S. (civil citation), s. 985.125, F.S. (prearrest or postarrest diversion programs), s. 985.155, F.S. (neighborhood restorative justice), or s. 985.16, F.S. (community arbitration), or a program to which a referral is made by a state attorney under s. 985.15(1)(g), F.S.

The bill requires the FDLE to expunge the nonjudicial arrest record of a juvenile if the juvenile has never previously received an expunction under s. 943.0582, F.S. The bill also requires the diversion program to submit a certification for expunction to the FDLE as a prerequisite to expunging the juvenile’s nonjudicial arrest record under this section.

The bill removes the requirements for the juvenile to submit an application and official written statement from the state attorney to the FDLE prior to obtaining an expunction of his or her nonjudicial arrest record. The bill also removes the authority granted to the FDLE to charge a \$75 processing fee for seeking an expunction under this section.

The bill maintains that “expunction” has the same meaning and effect as in s. 943.0585, F.S., providing that a person who has his or her nonjudicial arrest record expunged may lawfully deny or fail to acknowledge the arrest and the charge covered by the expunged record. However, the bill limits the purposes in which an expunged nonjudicial arrest record will be made available to criminal justice agencies to the following:

- Determining eligibility for diversion programs;
- A criminal investigation; or
- Making a prosecutorial decision under s. 985.15, F.S.

Thus, the bill provides that the nonjudicial arrest record of a person whose record is expunged under this section will no longer be made available when the subject of the record is a candidate for employment with a criminal justice agency.

Diversion Program Data Collection

The bill provides that the term “diversion program” has the same meaning as provided in s. 943.0582, F.S.³³

The bill requires each diversion program to submit the following:

- A certification for expunction to the FDLE of the juvenile’s nonjudicial arrest record under s. 943.0582, F.S., if the juvenile:
 - Successfully completes the diversion program for a first-time misdemeanor offense; and
 - Has not otherwise been charged by the state attorney with, or been found to have committed, a criminal offense or comparable ordinance violation.
- Data to the DJJ in a form prescribed by the DJJ which identifies the following for each juvenile who participates in the diversion program:
 - The race, ethnicity, gender, and age of the juvenile;
 - The offense committed, with citation to the specific law establishing the offense; and

³³ The bill defines “diversion program” as a program under s. 985.12, F.S. (civil citation), s. 985.125, F.S. (prearrest or postarrest diversion programs), s. 985.155, F.S. (neighborhood restorative justice), or s. 985.16, F.S. (community arbitration), or a program to which a referral is made by a state attorney under s. 985.15(1)(g), F.S.

- The judicial circuit and county in which the offense was committed and the law enforcement agency that had contact with the juvenile for the offense.³⁴

Additionally, each law enforcement agency must submit the following data to the DJJ for each juvenile who is eligible for the diversion program, but who is instead referred to the DJJ, provided a notice to appear, or arrested:

- Whether the juvenile was offered the opportunity to participate in the diversion program. If the juvenile was:
 - Not offered such opportunity, the reason such offer was not made.
 - Offered such opportunity, whether juvenile or his or her parent or legal guardian declined to participate in the diversion program.

The DJJ must compile the data listed above and publish it on the DJJ's website in a format that is, at a minimum, sortable by:

- Judicial circuit;
- County;
- Law enforcement agency;
- Race or ethnicity;
- Gender;
- Age; and
- Offense committed.

The bill takes effect October 1, 2018.

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.

³⁴ Each law enforcement agency is also required to collect and submit this data to the DJJ for each juvenile who was eligible for a diversion program, but was instead referred to the DJJ, provided a notice to appear, or arrested.

B. Private Sector Impact:

Adults and juveniles who wish to participate in a prearrest diversion program may have to pay a fee, depending on the guidelines established by each individual judicial circuit. The participant may also have to pay restitution as part of the prearrest diversion program, depending on what is indicated by the assessment of the adult or juvenile.

C. Government Sector Impact:

The bill provides that if there is a fee imposed, a reasonable portion of the fee must be given to the clerk of the court of the applicable county. The amount of fee revenue the clerks will collect from this provision is indeterminate.

The Florida Department of Law Enforcement will experience an increase in workload related to the implementation of the expunction processing. The magnitude of the costs associated with this additional workload, along with costs for computer programming, are indeterminate. The department will also experience a reduction in revenue associated with the removal of its authority to charge a \$75 processing fee for those seeking a prearrest or postarrest diversion program expunction. The magnitude of the revenue loss is indeterminate.

In addition, the Department of Juvenile Justice will experience an increase in workload relating to data collection and website publishing requirements. The costs associated with this workload is indeterminate.

Creation of a prearrest diversion program for adults may result in cost savings for local government (reduced booking/arrest-processing costs), depending on the number of eligible offenses, other eligibility criteria chosen, 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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 943.0582, 985.12, and 985.125.

This bill creates the following sections of the Florida Statutes: 901.40 and 985.126.

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 22, 2018:

The Committee Substitute:

- Requires the DJJ to develop and provide guidelines for best practice models for civil citation or similar diversion programs to the judicial circuits as a resource;
- Clarifies that the state attorney will be required to operate the prearrest diversion programs for the circuit;
- Clarifies that an independent prearrest diversion program may continue to operate in addition to the circuit-wide program;
- Specifies that the clerk of the court will store an adult’s personal identifying information in the Comprehensive Case Information System; and
- Requires each law enforcement agency to submit certain information to the DJJ relating to a juvenile who is eligible to participate in a civil citation or similar diversion program, but was instead referred to the DJJ, provided a notice to appear, or arrested.

- B. **Amendments:**

None.