

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1031 Prearrest Diversion Programs
SPONSOR(S): Criminal Justice Subcommittee; Plakon and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/CS/SB 618

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cox	White
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Diversion means that an individual is placed on a justice track that is less restrictive and affords more opportunities for rehabilitation and restoration. Diversion may result in the avoidance or dropping of a charge and dismissal of a case completely.

One form of prearrest diversion is a civil citation program where a law enforcement officer may issue a civil citation to an individual who commits an eligible misdemeanor offense (as determined by the prearrest diversion program), meets other eligibility requirements, and agrees to participate in and successfully complete a program (interventions and sanctions, including community service hours).

Juvenile civil citation programs are in operation throughout the state and are established by Florida law. Leon County also operates an adult civil citation program (ACCP). Florida law does not specifically address adult civil citation programs or other prearrest diversion programs for adults.

The bill creates s. 901.40, F.S., to encourage local communities and public or private educational institutions to implement a prearrest diversion program. The bill provides a framework for a model ACCP and allows a law enforcement officer, at the officer's sole discretion, to issue a civil citation to an adult who:

- Commits an eligible misdemeanor offense (as determined by the program); and
- Admits to committing the offense.

The bill requires an adult who receives ACCP to report for intake and comply with specified requirements. Additionally, if the adult successfully completes ACCP, an arrest record may not be associated with the offense. If the adult does not successfully complete ACCP, the law enforcement agency that issued the citation must criminally charge the adult for the original offense and refer the case to the state attorney to determine if prosecution is appropriate.

The model program requires the creation of a steering committee to develop policies and procedures for the program and requires specified persons to be participants of the steering committee.

The bill does not mandate that local governments or public or private educational institutions create ACCP. Creation of an ACCP could result in cost savings (e.g., reduced detention/confinement costs and 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 civil citations by those agencies, and any impact the program may have in reducing arrests.

The bill is effective on July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Diversion - Generally

In its most general usage, diversion means that an individual is placed on a justice track that is less restrictive and affords more opportunities for rehabilitation and restoration.¹ Diversion may result in the avoidance or dropping of a charge and dismissal of a case completely.² Florida currently provides several options for a person who is alleged to have committed specified criminal offenses to participate in diversion, including pretrial intervention programs and pretrial diversion programs.³

One form of prearrest diversion is a civil citation program where a law enforcement officer may issue a civil citation to an individual who commits an eligible misdemeanor offense (as determined by the prearrest diversion program), meets other eligibility requirements, and agrees to participate in and successfully complete a program (interventions and sanctions, including community service hours). If the individual successfully completes the program, he or she does not have an arrest or arrest record.⁴

Juvenile civil citation programs are in operation throughout the state and are established by Florida law.⁵ Leon County also operates an adult civil citation program.⁶ Florida law does not specifically address adult civil citation programs or other prearrest diversion programs for adults.

Juvenile Civil Citation Program

The Juvenile Civil Citation Program (JCCP), created by s. 985.12, F.S., gives law enforcement an alternative to taking juveniles who have committed non-serious delinquent acts into custody while ensuring swift and appropriate consequences.⁷ JCCPs are open to juveniles with no offense history who admit to committing a qualifying misdemeanor.⁸ Law enforcement agencies are not required to issue civil citations and there is variation in current use of JCCPs among agencies and counties.⁹ Under a JCCP, a LEO has discretion to:

- Issue a warning or inform the juvenile's parent when a juvenile admits to having committed a misdemeanor;
- Issue a civil citation or require participation in a similar diversion program if he or she decides not to issue a warning or notify the juvenile's parents; or
- Arrest the juvenile, conditioned upon the LEO providing written documentation as to why an arrest was warranted.¹⁰

The above-mentioned options are available to a LEO who comes into contact with a juvenile who admits to committing a first-time, second-time, or third-time misdemeanor.¹¹

¹ 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 29, 2016).

² *Id.*

³ Section 948.08, F.S., provides for pretrial intervention programs.

Pretrial Diversion (PTD) is a deferred prosecution program for selected misdemeanor/misdemeanor DUI offenders

⁴ Civil Citation Network, *Adult Civil Citation Program*, (revised September 2013), pg. 2, available at <http://www.discvillage.com/DOCS/AdultCivilCitationBrochure.pdf> (last visited January 29, 2016).

⁵ Section 985.12, F.S.

⁶ Sean Rossman, Tallahassee Democrat, *Adult Civil-Citations Program Announced*, (November 1, 2012) available at <http://smartjusticealliance.org/adult-civil-citations-program-announced/> (last visited January 29, 2016).

⁷ s. 985.12(1), F.S.

⁸ Misdemeanors involving sex or firearm offenses are currently exempt from civil citation under Department of Juvenile Justice's guidelines. DJJ, *Civil Citation Model Plan, A Guide to Implementation*, DJJ (October 2015) <http://www.djj.state.fl.us/docs/probation-policy-memos/civil-citation-model-plan.pdf?Status=Master&sfvrsn=4> (last visited January 29, 2016).

⁹ *Id.*

¹⁰ s. 985.12, F.S.

¹¹ *Id.*

If a civil citation is issued under a JCCP, the LEO must assess not more than 50 community service hours and require participation in intervention services appropriate to identified needs of the juvenile. The statute requires the LEO issuing the civil citation¹² to advise the juvenile of his or her option to refuse the citation and instead be arrested and referred to a DJJ intake office.¹³

A juvenile that elects to participate in the JCCP must report to a community service performance monitor within seven working days after the date of issuance of the civil citation, and must complete the work assignment at a rate of not less than five hours per week.¹⁴ Upon completion of the program, the agency operating the JCCP must report the outcome to DJJ.¹⁵

Adult Civil Citation

The American Bar Association has observed: "Although Florida's civil citation programs are focused on juveniles, the guidelines and principles inherent in the programs are generally applicable to adults, as well."¹⁶ Leon County currently operates an adult civil citation program (ACCP).

The Leon County Adult Civil Citation Process

A law enforcement officer has the discretion to issue a civil citation once probable cause has been determined to arrest an adult and the officer has advised the adult of his or her Miranda rights and obtained an admission.¹⁷ The law enforcement officer must then verify whether the adult meets all of the following criteria:

- The offense is one of the following misdemeanor offenses:
 - Possession of alcohol by a person under 21 years of age;¹⁸
 - Possession of less than 20 grams of marijuana;¹⁹
 - Possession of drug paraphernalia;²⁰
 - An open house party violation;²¹
 - Selling or giving alcoholic beverages to a minor;²²
 - Criminal mischief (restitution may not exceed \$50);²³
 - Trespass;²⁴
 - Non-domestic battery or assault;²⁵
 - Petit theft (restitution may not exceed \$50);²⁶ or
 - Disorderly conduct.²⁷
- The adult resides within the Second Judicial Circuit;²⁸ and

¹² If the LEO issues a civil citation, a copy must be provided to the county sheriff, state attorney, the appropriate DJJ intake office or the community performance monitor designated by DJJ, the parents or guardian of the youth, and the victim. s. 985.12(1), F.S.

¹³ The youth has the right to opt out of the CCP and be referred to a DJJ intake office at any time before completion of the work assignment. s. 985.12(6), F.S.

¹⁴ s. 985.12(4), F.S.

¹⁵ s. 985.12(1), F.S.

¹⁶ American Bar Association, Criminal Justice Section, *State Policy Implementation Project*, pg. 5, available at http://www.americanbar.org/content/dam/aba/administrative/criminal_justice/spip_civilcitations_authcheckdam.pdf (last visited January 21, 2015).

¹⁷ Civil Citation Network, Pilot Adult Civil Citation Program, *Implementation Guide*, Second Judicial Circuit of Florida, (August 2013), pg. 4, available at <http://www.civilcitationnetwork.com/docs/Implementation-Guide.pdf> (last visited January 29, 2016)(hereinafter cited to as "Implementation Guide").

¹⁸ In violation of s. 562.111, F.S.

¹⁹ In violation of s. 893.13, F.S.

²⁰ In violation of s. 893.147, F.S.

²¹ In violation of s. 856.015, F.S.

²² In violation of s. 562.11, F.S.

²³ Restitution may be a sanction or condition of diversion. *Id.* at 3.

²⁴ In violation of s. 810.08, F.S.

²⁵ In violation of s. 784.03, or s. 784.011, F.S., respectively.

²⁶ In violation of s. 812.014, F.S.

²⁷ In violation of s. 877.03, F.S.

²⁸ The Second Judicial Circuit includes the following counties: Franklin; Gadsden; Jefferson; Leon; Liberty; and Wakulla. *See* Florida's Second Judicial Circuit, *Court Map*, available at <http://2ndcircuit.leoncountyfl.gov/> (last visited January 29, 2016). *See also* Implementation Guide, at p. 2-3.

- The adult is a first-time adult offender (no previous arrest as an adult and no previous adult civil citation).²⁹

If the officer determines that the adult is eligible to participate in the ACCP and that a civil citation is appropriate, the officer then must explain to the adult that participation in the ACCP is voluntary.³⁰ If the adult chooses not to participate in the ACCP, the officer either issues a Notice to Appear (NTA) or transports the adult to the jail for formal booking.³¹

If the adult agrees to participate in the ACCP, the officer issues a civil citation and the adult has seven days to report to DISC Village, Inc.,³² for intake and assessment. Based on the results of the assessment and initial drug screening, the provider creates an individualized intervention plan. The intervention plan includes:

- Counseling sessions (at least three with a behavioral health specialist);
- Drug screening;
- Online educational intervention modules;
- Community service hours; and
- A program fee.³³

If the adult successfully completes all sanctions and intervention services, the social services provider notifies the referring law enforcement agency and the person does not have an arrest record.³⁴

If the participant does not successfully complete the program, the referring law enforcement agency is notified and then contacts the adult and attempts to issue a NTA. If the adult does not comply with arrangements to receive a NTA, an arrest affidavit and warrant are submitted. Subsequently, the adult may face prosecution if the state attorney determines that prosecution is appropriate.³⁵

Statistics on the Leon County Adult Civil Citation Program

Since March, 2013, approximately 1,000 adult civil citations have been issued by the Tallahassee Police Department and Leon County Sheriff's Office.³⁶ From March of 2013 to August of 2015, approximately 825 adult civil citations were issued.³⁷ Fifty-four percent of the citations issued were for petit theft; twenty-four percent issued were for possession of marijuana; and nine percent issued were for possession of alcohol by a minor.³⁸

Approximately 80 percent of the ACCP participants successfully completed the program. The successful completion rate for each offense was:

- 93 percent for criminal mischief;
- 90 percent for possession of alcohol by a person under 21 years of age;
- 84 percent for petit theft;
- 80 percent for possession of less than 20 grams of marijuana;
- 68 percent for non-domestic battery or assault; and

²⁹ A prior juvenile civil citation does not make the adult ineligible. Implementation Guide, at p. 3.

³⁰ *Supra* note 11 at 4.

³¹ *Supra* note 11 at 3.

³² DISC Village, Inc., is a non-profit social services provider. DISC Village, Inc., also operates the juvenile assessment center and juvenile civil citation program that serve counties in the Second Judicial Circuit. *See Disc Village*, available at <http://www.discvillage.com/home.html> (last visited January 21, 2016).

³³ *Supra* note 11 at 5, 9-10, and 12.

³⁴ *Id.* at 12.

³⁵ *Id.*

³⁶ Electronic mail from Greg Frost, President, Civil Citation Network, Prearrest Diversion Data, February 1, 2016 (on file with Criminal Justice Subcommittee).

³⁷ *Id.* Information regarding ACCP participants comes from data provided by DISC Village, Inc. This data was aggregated by Dr. Albert Kopak, an assistant professor with the Department of Criminology and Criminal Justice, Western Carolina University.

³⁸ Civil Citation Network, *Adult Civil Citation Briefing*, p. 12. (On file with the Criminal Justice Subcommittee). Other offenses: Non-domestic battery or assault (4 percent); possession of drug paraphernalia (3 percent); criminal mischief (2 percent); trespass (1 percent); and other offenses (1 percent).

- 68 percent for other offenses.³⁹

Of those who successfully completed the ACCP, the rearrest rate was six percent. Of those who did not successfully complete the program, the rearrest rate was 43 percent.⁴⁰

Effect of the Bill

The bill creates s. 901.40, F.S., to encourage local communities and public or private educational institutions to implement a prearrest diversion program. The bill provides a framework for a model ACCP. The program allows a law enforcement officer, at the officer's sole discretion, to issue a civil citation to an adult who:

- Commits an eligible misdemeanor offense (as determined by the program); and
- Admits to committing the offense.

An adult is ineligible for ACCP if:

- He or she has previously been arrested;
- He or she has previously received an adult civil citation; or
- The misdemeanor involves a victim and the victim objects to the issuance of the citation.

The misdemeanor offenses that qualify for ACCP include, but are not limited to:

- Disorderly conduct;
- Open house parties;
- Petit theft of property valued at less than \$50;
- Possession of alcohol by a person younger than 21 years of age;
- Possession of 20 grams or less of cannabis;
- Selling or providing alcoholic beverages to a minor; and
- Trespass in structure or conveyance.

The bill requires an adult who receives ACCP to report for intake and be provided appropriate assessment, intervention, education, and behavioral health care services. While in ACCP, the adult must complete the required community service hours and pay restitution.

The bill provides that if the adult successfully completes ACCP, an arrest record may not be associated with the offense. If the adult does not successfully complete ACCP, the law enforcement agency that issued the citation must criminally charge the adult for the original offense and refer the case to the state attorney to determine if prosecution is appropriate.

The model program requires the creation of a steering committee to develop policies and procedures for the program, including, eligibility criteria, program implementation and operation, and the fee to be paid by adults participating in the program. The steering committee must be composed of:

- Representatives of the law enforcement agencies participating in the program;
- A representative of the program services provider;
- A public defender or his or her designee;
- A state attorney or his or her designee;
- A clerk of the circuit court or his or her designee; and
- Other interested stakeholders.

Counties and municipalities are not preempted from enacting noncriminal sanctions for a violation of an ordinance or other violation. Counties, municipalities, and public or private educational institutions are not preempted from creating their own models for ACCP. However, if ACCP is implemented, then the program is required to share information with other programs.

B. SECTION DIRECTORY:

Section 1. Creates s. 901.40, F.S., relating to prearrest diversion programs.

³⁹ *Id.*

⁴⁰ *Id.*

Section 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state government revenues.

2. Expenditures:

The bill does not appear to have any impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not mandate that local governments or public or private educational institutions create a prearrest diversion program for adults. Under the Leon County model, the adult civil citation program is self-sustaining (paid for by program fees). Creation of an adult civil citation program could result in cost savings (e.g., reduced detention/confinement costs and 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 civil citations by those agencies, and any impact the program may have in reducing arrests.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Under the Leon County model, an eligible adult who chooses to participate in the ACCP must pay a program fee, but this fee may be waived if the participant does not have the means to pay it.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not mandate that local governments create a prearrest diversion program for adults; it only "encourages" the creation of such a program. Additionally, criminal laws are excluded from Article VII, section 18 of the Florida Constitution, relating to state mandates that affect revenues and expenditures of local governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 3, 2016, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute:

- Provides a framework for a model adult civil citation program and specifies that a law enforcement officer may, at the officer's sole discretion, issue an adult civil citation to an eligible adult who:
 - Commits an eligible misdemeanor offense (as determined by the program); and
 - Admits to committing the offense;
- Prohibits a person's participation in adult civil citation in specified instances;
- Requires a person that participates in an adult civil citation program to comply with specified conditions; and
- Requires the creation of a steering committee in circuits that develop adult civil citation programs.

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