

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 Committee on Community Affairs

BILL: CS/CS/SB 618

INTRODUCER: Community Affairs Committee; Criminal Justice Committee; and Senator Evers

SUBJECT: Prearrest Diversion Programs

DATE: January 15, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 618 encourages local communities and public or private educational institutions to implement a prearrest diversion program that affords certain adults who fulfill specified intervention and community service obligations the opportunity to avoid an arrest record. The program shall allow a law enforcement officer, at the officer's sole discretion, to issue a civil citation to an adult who commits an eligible misdemeanor offense, admits to committing the offense, and does not have a prior arrest as an adult. An adult is ineligible for a civil citation if the misdemeanor involves a victim and the victim objects to the issuance of the citation.

An adult who agrees to a civil citation must successfully complete a program that includes interventions and community service hours. If the adult successfully completes the program, an arrest record may not be associated with the offense. If the adult does not successfully complete the program, the law enforcement agency that issued the citation shall criminally charge the adult for the original offense and refer the case to the state attorney to determine if prosecution is appropriate.

II. Present Situation:

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. In its most pure form, diversion may result in the avoidance or dropping of a charge and dismissal of a case

completely. At either end of the diversion spectrum, the overriding goals are the same – to maximize the opportunity for success and minimize the likelihood of recidivism.¹

One example of diversion is deferred prosecution, in which a state attorney enters into what is known as a “deferred prosecution agreement” with a defendant. This agreement requires the defendant to waive the right to speedy trial in order to allow time to complete the terms of the agreement. Often the terms of the agreement are tailored to the specific offense committed and require community service work, restitution, costs, and other requirements.² Upon completion of the terms of the agreement, the pending criminal case is disposed of by the state attorney.

Another example of diversion is prearrest diversion. One form of prearrest diversion is a civil citation program for juveniles or adults. A law enforcement officer may issue a civil citation to a juvenile or adult 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 juvenile or adult successfully completes the program, he or she does not have an arrest or arrest record.

Juvenile civil citation programs are in operation throughout the state and are established by Florida law.³ It appears that Leon County currently operates the only adult civil citation program.⁴ Florida law does not specifically address adult civil citation programs or other prearrest diversion programs for adults.

Juvenile Civil Citation

Section 985.12, F.S., establishes “a juvenile civil citation process for the purpose of providing an efficient and innovative alternative to custody by the Department of Juvenile Justice for children who commit nonserious delinquent acts and to ensure swift and appropriate consequences.” This section requires the Department of Juvenile Justice (DJJ) to “encourage and assist in the implementation and improvement of civil citation programs or other similar diversion programs around the state.”⁵ These programs are discretionary.⁶ They exist at the local level with the concurrence of the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement agency involved.⁷ Civil citation programs require the youth to complete no more than 50 community service hours, and may require participation in intervention services

¹ *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives* (2013), The Center for Health and Justice at TASC, available at http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf (last visited on December 21, 2015).

² For example, state attorneys are specifically authorized by law to establish worthless check case diversion programs. Restitution and costs are paid by the worthless check defendant through these programs and the defendant is required to attend a program designed to assist and educate them on the issue of worthless checks. Section 832.08, F.S.

³ Section 985.12, F.S.

⁴ Sean Rossman, *Adult Civil-Citations Program Announced*, available at <http://www.tallahassee.com/article/20121101/NEWS01/311010036/Adult-civil-citations-program-announced> (last visited December 21, 2015).

⁵ Section 985.12(1), F.S.

⁶ See example, Nineteenth Judicial Circuit Court of Florida Juvenile Programs-Civil Citation, available at <http://www.circuit19.org/programs/prgjuvenilecc.html> (last visited December 21, 2015).

⁷ Section 985.12(1), F.S.

appropriate to the identified needs of the youth, including family counseling, urinalysis monitoring, and substance abuse and mental health treatment services.⁸

A law enforcement officer is authorized to issue a civil citation to a youth who admits having committed a misdemeanor.⁹ Upon issuance of a citation, the local law enforcement agencies are required to send a copy of the citation to the DJJ so that the department can enter the appropriate information into the Juvenile Justice Information System.¹⁰ A copy must also be sent by law enforcement to the sheriff, state attorney, the DJJ's intake office, the community service performance monitor, the youth's parent, and the victim.¹¹ At the time a civil citation is issued, the law enforcement officer must advise the youth that he or she has the option of refusing the civil citation and of being referred to the DJJ. The youth may refuse the civil citation at any time before completion of the work assignment.¹²

The youth is required to report to a community service performance monitor within 7 working days after the civil citation has been issued, and must also complete at least 5 community service hours per week.¹³ The monitor reports information to the DJJ regarding the youth's service hour completion and the expected completion date.¹⁴ If the youth 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 youth has committed a delinquent act, thereby initiating formal judicial processing.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 As previously noted, it appears that Leon County currently operates the only adult civil citation program (ACCP). Stakeholders in the creation of the program included: the chief judge, state attorney, and public defender for the Second Judicial Circuit; the Leon County Commission; the Leon County Sheriff's Office (LCSO); the Tallahassee City Commission; the Tallahassee Police Department (TPD); and DISC Village, Inc. (the social services provider).¹⁷

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Section 985.12(3), F.S.

¹² Section 985.12(6), F.S.

¹³ Section 985.12(4), F.S.

¹⁴ *Id.*

¹⁵ Section 985.12(5), F.S.

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

¹⁷ Adult Civil Citation Program, see <http://www.discvillage.com/DOCS/AdultCivilCitationBrochure.pdf> (last visited December 21, 2015). 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.

The Leon County Adult Civil Citation Process

Once the law enforcement officer has determined there is probable cause to arrest an adult¹⁸ and has advised the adult of his or her Miranda rights, the officer has the discretion to issue a civil citation if he or she determines the adult meets all of the following criteria:¹⁹

- The offense is one of the following misdemeanor offenses:²⁰
 - Possession of alcohol by a person under 21 years of age;
 - Possession of less than 20 grams of marijuana;
 - Possession of drug paraphernalia;
 - An open house party violation;
 - Selling or giving alcoholic beverages to a minor;
 - Criminal mischief (restitution may not exceed \$50);²¹
 - Trespass;
 - Non-domestic battery or assault;
 - Petit theft (restitution may not exceed \$50); or
 - Disorderly conduct.
- The adult must reside within the Second Judicial Circuit.²²
- The adult must be a first-time adult offender (no previous arrest as an adult and no previous adult civil citation).²³

If the officer determines that the adult is eligible to participate in the ACCP and that a civil citation is appropriate, the officer explains to the adult that he or she may participate in the ACCP.²⁴ Participation in the ACCP is voluntary.²⁵ If the adult agrees to participate in the ACCP, the officer issues a civil citation. 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.²⁶ Subsequently, the adult may face prosecution if the state attorney determines that prosecution is appropriate.

¹⁸ Eighteen years of age or older. There is no age cap. Pilot Adult Civil Citation Program Implementation Guide, available at <http://www.civilcitationnetwork.com/docs/Implementation-Guide.pdf> (last visited December 21, 2015) (hereinafter “Implementation Guide”).

¹⁹ Leon County Sheriff’s Office Crime Watch Publication, *Leon County Adult Civil Citation Program*, May-July 2014, http://www.leoncountysos.com/docs/default-source/crime-watch-magazine/2014_cw_spring.pdf?sfvrsn=2 at 6 (last visited December 21, 2015) (hereinafter “Crime Watch Publication”); Implementation Guide at 4.

²⁰ Implementation Guide at 3.

²¹ Restitution may be a sanction or condition of diversion. It is not part of the program fee; Implementation Guide at 3.

²² The Second Judicial Circuit includes the following counties: Franklin; Gadsden; Jefferson; Leon; Liberty; and Wakulla. Florida’s Second Judicial Circuit, *Court Map*, available at <http://2ndcircuit.leoncountyfl.gov/> (last visited December 21, 2015); Implementation Guide at 2-3.

²³ A prior juvenile civil citation does not make the adult ineligible; Implementation Guide at 3.

²⁴ *Id.* at 4.

²⁵ DISC Village, Inc., Adult Civil Citation Program Brochure, available at <http://www.discvillage.com/DOCS/AdultCivilCitationBrochure.pdf> (last visited December 21, 2015) (hereinafter “ACCP Brochure”).

²⁶ Implementation Guide at 3.

The adult who agrees to participate in the ACCP has 7 days to report to the social service provider (DISC Village, Inc.) for intake and assessment.²⁷ Based on the results of the assessment and initial drug screening, the provider creates an individualized intervention plan.

The intervention plan includes:²⁸

- Counseling sessions (at least three with a behavioral health specialist);
- Cognitive behavioral therapy;
- Motivational interviewing;
- Drug screening;
- At least one screening (and depending on offense assessment, up to three screenings);
- Online intervention modules, which may include drug education, anger management, decision making, and petit theft (associated behaviors and risks);
- Community service hours;²⁹ and
- A program fee.³⁰

If the adult successfully completes all sanctions and intervention services, the social services provider notifies the referring law enforcement agency and the case is cleared “exceptionally” and the person does not have an arrest record.³¹

If the participant does not successfully complete the program, the social services provider notifies the referring law enforcement agency. The law enforcement agency 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 to the court. The case is closed and cleared by the law enforcement agency upon notification of the arrest. Subsequently, the adult may face prosecution if the state attorney determines that prosecution is appropriate.³²

Information on Leon County Adult Civil Citation Program Participants³³

According to information provided by the Civil Citation Network,³⁴ since March of 2013, approximately 1,000 adult civil citations have been issued by the Tallahassee Police Department and Leon County Sheriff's Office.

²⁷ If there is no communication with the adult within the 7-day period, the case is referred back to the law enforcement agency for further action; Crime Watch Publication at 6.

²⁸ Implementation Guide at 4-11.

²⁹ The general requirement appears to be that the law enforcement officer assigns 25 hours of community service. The program case manager may impose additional community service hours; Implementation Guide at 2.

³⁰ Implementation Guide at 12.

³¹ *Id.* at 12.

³² *Id.*

³³ 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.

³⁴ Supplemental information was provided by Greg Frost, President of the Civil Citation Network.

For the time period of March of 2013 to August of 2015, approximately 850 adult civil citations were issued. Most of the citations issued were for petit theft (54 percent).³⁵

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
- 68 percent for other offenses.

Of those who successfully completed the ACCP, the rearrest³⁶ rate was 6 percent. Of those who did not successfully complete the program, the rearrest rate was 43 percent.

III. Effect of Proposed Changes:

The bill creates s. 901.40, F.S., which encourages local communities and public or private educational institutions to implement a prearrest diversion program that affords certain adults who fulfill specified intervention and community service obligations the opportunity to avoid an arrest record. The program shall allow 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), admits to committing the offense, and does not have a prior arrest as an adult. An adult is ineligible for a civil citation if the misdemeanor involves a victim and the victim objects to the issuance of the citation. A steering committee shall be created to develop policies and procedures for the program, including, but not limited to, eligibility criteria, program implementation and operation, and the fee to be paid by adults participating in the program. The steering committee shall be composed of representatives of the law enforcement agencies participating in the program, a representative of the program services provider, and other interested stakeholders.

The bill provides that misdemeanor offenses that qualify for a prearrest diversion program include, but are not limited to:

- Disorderly conduct.
- Open house parties.
- Petit theft of stolen 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.
- Trespass in structure or conveyance.

³⁵ Other offenses: Possession of less than 20 grams of marijuana (24 percent); possession of alcohol by a person under 21 year of age (9 percent); 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).

³⁶ Rearrest covers arrests for any offense committed in this state.

An adult who receives a civil citation shall report for intake as required by the program. The adult shall be provided appropriate assessment, intervention, education, and behavioral health care services. While in the program, the adult shall complete community service hours as specified by the program.

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

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 a prearrest diversion program for adults.

The bill takes effect on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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.

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:

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.

Under the Leon County model, the social services provider for the ACCP is a non-profit services provider: DISC Village, Inc. The program is paid for through program fees.

C. Government Sector Impact:

The bill does not require any state expenditures.

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). If this program model is adopted in other localities or by educational institutions (and the program fees are sufficient to sustain the program), there should be no fiscal impact.

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.

VI. Technical Deficiencies:

The reference to “petit theft of stolen property” should be reworded to read: “petit theft of property.”

VII. Related Issues:

Florida law does not specifically address adult civil citation programs or other prearrest diversion programs for adults. If the bill were to become law, the law would specifically indicate that the Legislature encourages the creation of such programs.

The approach taken by the bill affords law enforcement officers complete discretion in the decision to arrest or issue a civil citation. The Florida Supreme Court has remarked that “the discretionary judgmental power granted a police officer to make an arrest and enforce the law” is “considered basic to the police power function of governmental entities and is recognized as critical to a law enforcement officer’s ability to carry out his duties.”³⁷

VIII. Statutes Affected:

This bill creates section 901.40 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/CS by Community Affairs on January 19, 2016:**

Recommends a steering committee to help develop policies and procedures for the prearrest diversion program; removes simple battery and assault from the list of qualifying offenses; clarifies that a county or municipality may create its own model for a program; and provides that a county, municipality, or public or private entity is not

³⁷ *Everton v. Willard*, 468 So.2d 936, 938 (Fla.1985) (citations omitted).

preempted from enacting noncriminal sanctions for a violation of an ordinance or other violation.

CS by Criminal Justice on November 17, 2015:

- Encourages public or private educational institutions to implement a prearrest diversion program that affords certain adults who fulfill specified intervention and community service obligations the opportunity to avoid an arrest record.
- Authorizes the prearrest diversion program to determine eligible “misdemeanor” offenses rather than eligible “nonviolent” misdemeanor offenses.
- Clarifies that an adult with a prior arrest as an adult is ineligible to receive a civil citation.
- Provides that an adult is ineligible to receive a civil citation if the misdemeanor involves a victim and the victim objects to the issuance of the citation.
- Provides that a prearrest diversion program shall also provide appropriate assessment, intervention, and education services to an adult in the program.
- Specifies some misdemeanor offenses the prearrest diversion program may wish to consider as eligible misdemeanor offenses.
- Clarifies that the law enforcement agency that issued a citation to an adult shall criminally charge the adult for the original offense if the adult does not successfully complete the prearrest diversion program and shall refer the case to the state attorney to determine if prosecution is appropriate.

B. Amendments:

None.