

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 Criminal Justice

BILL: SB 618

INTRODUCER: Senator Evers

SUBJECT: Prearrest Diversion Programs

DATE: November 16, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.			CA	
3.			FP	

I. Summary:

SB 618 encourages local communities to implement prearrest diversion programs that afford certain adults who fulfill specified intervention and community service obligations the opportunity to avoid an arrest record. These programs shall allow law enforcement officers, at their sole discretion, to issue civil citations to certain adults who commit nonviolent misdemeanor offenses (determined by the local prearrest diversion program). To participate in the program, the adult must admit that he or she committed the offense, which must be the adult's first offense.

The program participant shall report for intake, be provided appropriate behavioral health care services, and perform community service hours while in 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 refer the adult to the state attorney for possible prosecution. A bench warrant may be issued.

II. Present Situation:

“...[S]tates and local jurisdictions have been pursuing justice practices that fall under the broad heading of ‘diversion.’ 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

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 November 9, 2015).

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 provisions.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 services 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. Florida law does not specifically address adult civil citation programs.

Juvenile Civil Citation Program

Section 985.12, F.S.,⁴ 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.” These programs are discretionary. 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. Civil citation programs require the youth to complete no more than 50 community service hours, and may require participation in intervention services appropriate to the identified needs of the youth, including family counseling, urinalysis monitoring, and substance abuse and mental health treatment services.

A law enforcement officer is authorized to issue a civil citation to a youth who admits having committed a misdemeanor. 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. 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. 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

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 bad check-writing. Section 832.08, F.S.

³ Section 985.12, F.S.

⁴ All information regarding juvenile civil citations is from this source.

citation and of being referred to the DJJ. The youth may refuse the civil citation at any time before completion of the work assignment.

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

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."⁵ As previously noted, it appears that Leon County currently operates the only adult civil citation program ("ACCP"). This program was created in March of 2013. 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.⁶ (the social services provider).

The current program is a partnership⁷ involving DISC Village, Inc., TPD, LCSO, and the Tallahassee Community College Police Department, which recently joined the partnership. The Florida A&M University Police Department will also be joining the partnership.

⁵ *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 November 9, 2015).

⁶ 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.

⁷ The partnership is pursuant to memorandums of understanding. A steering committee of the partners provides oversight.

*The Leon County Adult Civil Citation Process*⁸

Once the law enforcement officer has determined there is probable cause to arrest an adult⁹ 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:

- The offense is one of the following misdemeanor offenses:
 - 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);¹⁰
 - Trespass;
 - Non-domestic battery or assault;
 - Petit theft (restitution may not exceed \$50); or
 - Disorderly conduct.
- The adult must be cooperative and admit that he or she committed the misdemeanor offense.
- The adult must reside within the Second Judicial Circuit.¹¹
- The adult must be a first-time adult offender (no previous arrest as an adult and no previous adult civil citation).¹²

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. Participation in the ACCP is voluntary. 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. Subsequently, the adult may face prosecution if the state attorney determines that prosecution is appropriate.

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.¹³ Based on the results of the assessment

⁸ Most of the information regarding the adult civil citation process was compiled from information provided by the Civil Citation Network on its website (<http://www.civilcitationnetwork.com/>). “The Civil Citation Network is a non-profit organization created and supported through a private foundation. Its mission is to advocate the use of adult and juvenile civil citations with integrated intervention services.” Frost, Greg. “Adult Civil Citations: A Practical Tool in the Sea of Reform,” *The Police Chief* (September 2015), available at http://www.policechiefmagazine.org/magazine/issues/92015/pdfs/Frost_PoliceChief_September2015.pdf (last visited on November 9, 2015). Additional information came from the following sources: “Leon County Adult Civil Citation Program,” *Crime Watch* (May-July 2014), Leon County Sheriff’s Office, available at http://www.leoncountyso.com/docs/default-source/crime-watch-magazine/2014_cw_spring.pdf?sfvrsn=2 (last visited on November 9, 2015); the Tallahassee Police Department’s General Orders Manual and technical training materials (on file with the Senate Committee on Criminal Justice); and telephonic or e-mail communications between staff of the Senate Committee on Criminal Justice and staff of the Civil Citation Network, the Florida Smart Justice Alliance, and Disc Village, Inc.

⁹ Eighteen years of age or older. There is no age cap.

¹⁰ Restitution may be a sanction or condition of diversion. It is not part of the program fee.

¹¹ The Second Judicial Circuit includes the following counties: Franklin; Gadsden; Jefferson; Leon; Liberty; and Wakulla.

¹² A prior juvenile civil citation does not make the adult ineligible.

¹³ 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.

and initial drug screening, the provider creates an individualized intervention plan. Generally, the participant must complete the plan within 90 days.¹⁴

The intervention plan includes:

- Counseling sessions (at least three with a behavioral health specialist);
- Cognitive behavioral therapy;
- Motivational interviewing;
- Drug screening;
- At least one screening (and depending on charge and results, 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;¹⁵ and
- A program fee.¹⁶

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.

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 is 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.

Information on Leon County Adult Civil Citation Program Participants¹⁷

According to information provided by the Civil Citation Network,¹⁸ since March of 2013, approximately 1,000 adult civil citations have been issued by the Tallahassee Police Department and Leon County Sheriff's Office.

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).¹⁹

¹⁴ Should individual circumstance create obstacles to completing the program within the 90-day period, (e.g., illness or family emergencies), the case manager can extend the completion deadline by a reasonable period.

¹⁵ 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.

¹⁶ The current program fee is \$350. A flexible payment schedule is available and a payment waiver may be requested. No person is denied services based on inability to pay.

¹⁷ 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.

¹⁸ Supplemental information was provided by Greg Frost, President of the Civil Citation Network.

¹⁹ 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); other offenses (1 percent).

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 rearrest²⁰ 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 to implement prearrest diversion programs that afford certain adults who fulfill specified intervention and community service obligations the opportunity to avoid an arrest record. These programs shall allow law enforcement officers, at their sole discretion, to issue civil citations to certain adults who commit nonviolent misdemeanor offenses, which the local prearrest diversion program shall specify. A civil citation may be issued under this section only if the adult admits that he or she committed the offense and the alleged violation is the adult's first offense.

An adult who receives a civil citation shall report for intake as required by the local prearrest diversion program. The adult shall be provided appropriate behavioral health care services. While in the program, the adult shall complete community service hours as specified by the local prearrest diversion 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 refer the adult to the state attorney for possible prosecution. A bench warrant may be issued.

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.

²⁰ Rearrest covers arrests for any offense committed in this state.

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 create a civil citation 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 (and the program fees are sufficient to sustain the program), there should be no fiscal impact on local governments.

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 citation by those agencies, and a potential reduction in the rearrest rate for eligible civil citation offenses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Florida law does specifically address adult civil citation programs. 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.”²¹

VIII. Statutes Affected:

This bill creates section 901.40 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

²¹ *Everton v. Willard*, 468 So.2d 936, 938 (Fla.1985) (citations omitted). *See also Sams v. Oelrich*, 717 So.2d 1044, 1047 (Fla. 1st. DCA 1998), *review denied*, 725 So.2d 1109 (Fla. 1998).