

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: PCS/CS/SB 448 (475178)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Criminal Justice Committee; and Senator Brandes

SUBJECT: Prearrest Diversion Programs

DATE: April 14, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>McAuliffe</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 448 creates s. 901.40, F.S., to encourage local communities and public or private educational institutions to implement a prearrest diversion program. The bill prescribes a model program that local communities may adopt. The model program allows a law enforcement officer, at the officer's sole discretion, to issue a civil citation or similar prearrest diversion program notice to an adult who:

- Commits a misdemeanor offense (as determined by the program);
- Admits to committing the offense or does not contest the offense;
- Has not previously been arrested; and
- Has not previously received an adult civil citation or similar prearrest diversion program notice, unless the terms of the local adult prearrest diversion program allows otherwise.

The model program requires the program operator to electronically provide the participant's personal identifying information to the clerk of the circuit court in the county where the operator provides services. The clerk must keep this information in a statewide database and provide a single point of access for the information.

An adult who agrees to a civil citation or similar prearrest diversion program notice must successfully complete a program that includes intervention and community service hours. If the adult does not successfully complete the program, the law enforcement officer must determine if there is good cause to arrest the adult for the original misdemeanor offense, and refer the case to

the state attorney to determine if prosecution is appropriate, or to allow the adult to continue in the program.

The bill has no impact on state revenues or 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 July 1, 2018.

II. Present Situation:

Through the years the term “diversion” has been used broadly to refer to programs that allow an individual to avoid incarceration but still result in a criminal conviction. In recent years, the term diversion has also begun to be used to refer to programs that address an individual’s behavior but do not result in a conviction. “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

An example of diversion is prearrest diversion. 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.²

Juvenile civil citation programs are in operation throughout the state and are recommended by Florida law.³ 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., encourages local entities to establish juvenile civil citation programs. The statute provides a framework for a modal juvenile civil citation program, which provides an alternative to custody by the Department of Juvenile Justice (DJJ) for children who commit nonserious delinquent acts.⁴ Under the model program, if a juvenile admits to committing a misdemeanor⁵ a law enforcement officer has the discretion to:

- Issue a warning or inform the juvenile’s parent of the child’s infraction;
- Issue a civil citation or require participation in a similar diversion program; or

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 February 20, 2017).

² Civil Citation Network, *Adult Civil Citation Program*, (revised September 2013), pg. 2, available at <http://www.discvillage.com/DOCS/AdultCivilCitationBrochure.pdf> (last visited February 20, 2017).

³ Section 985.12, F.S.

⁴ Section 985.12(1), F.S.

⁵ Misdemeanors involving sexual or firearm offenses are currently ineligible for civil citation programs under the DJJ Civil Citation Model Plan. *2017 Bill Analysis for SB 196*, Department of Juvenile Justice, (January 18, 2017) (on file with the Senate Criminal Justice Committee).

- Arrest the juvenile.⁶

These programs are discretionary⁷ to participate in by the child and require the youth to complete no more than 50 community service hours. The programs may also 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.⁸

The Leon County Adult Civil Citation Program

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.”⁹ Leon County operates an adult civil citation program.¹⁰

The Leon County’s program provides a law enforcement officer with 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.¹¹ 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;
 - 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);
 - Trespass;
 - Non-domestic battery or assault;
 - Petit theft (restitution may not exceed \$50); or
 - Disorderly conduct.
- The adult resides within the Second Judicial Circuit;¹² and
- The adult is a first-time adult offender (no previous arrest as an adult, and no previous adult civil citation).¹³

⁶ Section 985.12(1), F.S.

⁷ See example, Nineteenth Judicial Circuit Court of Florida, Programs and Services, Juvenile, Civil Citation, *Juvenile Programs – Civil Citation*, available at <http://www.circuit19.org/programs/prgjuvenilecc.html> (last visited February 20, 2017).

⁸ Section 985.12(1), F.S.

⁹ 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 February 20, 2017).

¹⁰ Alert M. Kopak, *Top reasons to expand adult civil citation program*, Tallahassee Democrat, June 17, 2016, available at <http://www.tallahassee.com/story/opinion/2016/06/17/top-reasons-expand-adult-civil-citation-program/86046394/> (last visited February 20, 2017).

¹¹ 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 February 20, 2017).

¹² 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 February 20, 2017). *Supra* note 11 at 2-3.

¹³ A prior juvenile civil citation does not make the adult ineligible for a civil citation. *Supra* note 11 at 3.

If the officer determines that the adult is eligible to participate in the adult civil citation program and a civil citation is appropriate, the officer then must explain to the adult that participation in the adult civil citation program is voluntary.¹⁴ If the adult chooses not to participate in the adult civil citation program, the officer either issues a Notice to Appear (NTA) or transports the adult to the jail for formal booking.¹⁵

If the adult agrees to participate in the adult civil citation program, the officer issues a civil citation and the adult has 7 days to report to DISC Village, Inc.,¹⁶ 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; and
- Community service hours.¹⁷

The adult must also pay a \$350 fee to participate in the program.¹⁸ 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.¹⁹

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.²⁰

Statistics on the Leon County Adult Civil Citation Program

From March 2013 to August 2016, the Tallahassee Police Department and Leon County Sheriff's Office issued 1,113 adult civil citations with an average successful completion rate of 83 percent. Of those who successfully completed the adult civil citation program, the rearrest rate was 7 percent and for those who did not successfully complete the program, the rearrest rate was 61 percent.²¹

¹⁴ *Supra* note 11 at 4.

¹⁵ *Supra* note 11 at 3.

¹⁶ 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 February 20, 2017).

¹⁷ *Supra* note 11 at 5, 9-10, and 12.

¹⁸ Email from Barney T. Bishop, President and CEO, Florida Smart Justice Alliance, to Senate Criminal Justice Committee Staff, (February 27, 2017) (on file with the Senate Criminal Justice Committee).

¹⁹ *Id.* at 12.

²⁰ *Id.*

²¹ Civil Citation Network, *Tallahassee/Leon County Three-Year Outcomes, Pre-arrest Diversion Adult Civil Citation Program*, p. 1, (on file with the Senate Criminal Justice Committee).

III. Effect of Proposed Changes:

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 adult civil citation program that may be adopted.

The model program allows a law enforcement officer, at the officer's sole discretion, to issue a civil citation or similar prearrest diversion program notice to an adult who:

- Commits a misdemeanor offense (as determined by the program);
- Admits to committing the offense or does not contest the offense;
- Has not previously been arrested; and
- Has not previously received an adult civil citation or similar prearrest diversion program notice, unless the terms of the local adult prearrest diversion program allows otherwise.

The model program requires a committee to develop policies and procedures for the program, including, eligibility criteria, program implementation and operation, the determination of a fee, if any, to be paid by adults participating in the program, and qualifying misdemeanor offenses.

The committee is comprised of:

- Representatives of participating law enforcement agencies;
- A representative of the program services provider;
- The public defender;
- The state attorney; and
- The clerk of the circuit court.

The model program committee must solicit input from other interested stakeholders when developing the program's policies and procedures. The model program may be operated by a law enforcement agency, the county or municipality, or another entity that the county or city selects.

The model program requires an adult who receives a civil citation or similar prearrest diversion program notice to report for intake and be provided appropriate assessment, intervention, education, and behavioral health care services. While in the model program, the adult must complete the required community service hours and pay restitution.

The model program also requires the program operator to electronically provide the participant's personal identifying information to the clerk of the circuit court in the county where the operator provides services. The clerk must keep this information in a statewide database and provide a single point of access for the information.

If the program assesses a fee for participation in the civil citation or similar prearrest diversion program, the clerks receive a reasonable portion for receiving and maintaining the specified information. The clerk's portion must be deposited into the clerk's fine and forfeiture fund established in s. 142.01, F.S. The bill specifies that this information is not a court record and requires the clerk maintain confidentiality of the participant's personal identifying information.

The model program provides that if the adult does not successfully complete the program, the law enforcement officer must determine if there is good cause to arrest the adult for the original

misdemeanor offense, and refer the case to the state attorney to determine if prosecution is appropriate, or to allow the adult to continue in the program.

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 model for a prearrest diversion program for adults. However, if a prearrest diversion program is implemented the program is encouraged to share information with other programs.

The bill is effective July 1, 2017.

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:

Participants of a prearrest diversion program will likely have to pay fees to participate. For example, under the Leon County model, an eligible adult who chooses to participate in the adult civil citation program must pay a program fee of \$350, but this fee may be waived if the participant does not have the means to pay it.²² The participant may also have to pay restitution as part of a prearrest diversion program.

C. Government Sector Impact:

Any fiscal impact on the clerks is indeterminate at the time because it is not known how many programs will choose to participate in the model civil citation program. However, the bill provides that if the program assesses a fee for participation in the civil citation or

²² *Supra* note 18.

similar prearrest diversion program, the clerks receive a reasonable portion for receiving and maintaining the specified information.

The bill does not mandate that local governments or public or private educational institutions create prearrest diversion programs for adults. Under the Leon County model, the adult civil citation program is self-sustaining (paid for by program fees).²³ The fee for the Leon County adult civil citation program is \$350.²⁴

Creation of a prearrest diversion program may 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 or similar prearrest diversion program notices by those agencies, and any impact the program may have in reducing arrests.

The Criminal Justice Impact Conference met on March 2, 2017, and found that the bill would have no impact on prison beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The approach taken by the bill affords law enforcement officers complete discretion in the decision to arrest or issue a civil citation or similar prearrest diversion program notice. 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.”²⁵

The bill does not require the provider to notify the clerk of the civil citation; the bill only requires personal identifying information be provided.

The bill also does not specify what database system the clerks will use to maintain this information.

CS/CS/CS/SB 450 is the related public records bill linked to this bill.

VIII. Statutes Affected:

This bill creates section 901.40 of the Florida Statutes.

²³ Adult Civil Citation, *Senate Bill 618 – Pre-Arrest Diversion Programs*, November 5, 2015 (on file with the Senate Committee on Criminal Justice).

²⁴ *Supra* note 18.

²⁵ *Everton v. Willard*, 468 So.2d 936, 938 (Fla.1985).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on April 13, 2017:

The committee substitute:

- Requires the program operator to electronically provide the participant's personal identifying information to the clerk of the circuit court in the county where the program provides services;
- Specifies that this information is not a court record and the clerk must maintain confidentiality of the participant's personal identifying information;
- Requires the clerk to keep this information in a statewide database and provide a single point of access; and
- Specifies that if the program requires a fee for participation then the clerk must receive a reasonable portion for receiving and maintaining the information.

CS by Criminal Justice on March 13, 2017:

The committee substitute:

- Removes the requirement that the misdemeanor offense must be a *nonviolent* misdemeanor;
- Revises model program criteria to allow an eligible adult to not contest the offense (as an alternative to admitting to committing the offense);
- Allows local adult prearrest diversion programs to determine whether an adult can receive another civil citation or similar prearrest diversion program notice even if he or she already has received one;
- Removes the provision allowing the victim to object to the issuance of a civil citation;
- Specifies that if an adult does not successfully complete the program, the law enforcement officer has the discretion to arrest the adult or allow the adult to continue in the program;
- Clarifies that programs can determine whether to charge a fee for participation; and
- Makes technical changes recommended by staff.

- B. **Amendments:**

None.