

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB CRJS 16-06 Civil Citations and Similar Diversion Programs

**SPONSOR(S):** Criminal Justice Subcommittee; Trujillo

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 408; SB 506

| REFERENCE                                  | ACTION    | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|-----------|---------|--|
| Orig. Comm.: Criminal Justice Subcommittee | 10 Y, 0 N | Cox     | White                                    |

### SUMMARY ANALYSIS

Civil Citation Programs (CCPs) give law enforcement officers (LEO) an alternative to arresting youth who have committed non-serious delinquent acts. Under a CCP, 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.

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

If the LEO issues a civil citation to a juvenile, the juvenile is assessed not more than 50 community service hours, and must participate in intervention services appropriate to any identified needs of the juvenile.

Currently, law enforcement agencies are not required to issue civil citations and there is variation in current use of the program among agencies and counties.

As of January 2016, CCPs were operational in 61 of Florida's 67 counties.

The bill *requires* a law enforcement officer to issue a civil citation or similar diversion program to a juvenile that admits to having committed one or more specified first-time "eligible offenses" that are part of the same criminal episode. The bill permits a LEO to issue a CCP for first-time misdemeanor offenses that are not enumerated as an "eligible offense," and for any second- or third-time misdemeanors.

The bill defines "eligible offense," "episode," and "law enforcement officer."

The bill also provides that the existence of CCP does not modify the authority of a LEO to issue a warning or inform the juvenile's guardian or parent of the alleged offense.

To the extent the bill prevents youth from being arrested and placed in detention at a JAC, the bill will result in a positive fiscal impact on local government expenditures.

The bill is effective July 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Juvenile Justice Process**

The juvenile justice process usually starts when a law enforcement officer (LEO) arrests a youth<sup>1</sup> for a criminal offense.<sup>2</sup> Depending on the seriousness of the offense and the LEO's view of what is needed to appropriately address the offense, the LEO may:

- Deliver the youth to a Juvenile Assessment Center (JAC) for intake screening to further assess the youth's risk to the community and to determine if some type of detention is necessary;
- Call an "on call screener" to assess the youth's risk and determine if detention is necessary (this is done in localities where a JAC is not available);
- Release the youth to a parent or guardian and forward the charges to the local clerk of court and Department of Juvenile Justice (DJJ) Probation office; or
- Release the youth to parent or guardian with a direct referral to a diversion program.<sup>3</sup>

In lieu of arresting a youth, LEOs have the option of issuing certain youth a civil citation.

#### **Civil Citation Program**

The Civil Citation Program (CCP), 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.<sup>4</sup> CCPs are open to juveniles with no offense history who admit to committing a qualifying misdemeanor.<sup>5</sup> Misdemeanors involving sex or firearm offenses are currently exempt from civil citation under DJJ's guidelines.<sup>6</sup> Law enforcement agencies are not required to issue civil citations and there is variation in current use of CCPs among agencies and counties.<sup>7</sup>

Under a CCP, 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.<sup>8</sup>

The above-mentioned options are available to a LEO that comes into contact with a juvenile who admits to committing a first-time, second-time, or third-time misdemeanor.<sup>9</sup>

If a civil citation is issued under a CCP, the LEO must assess not more than 50 community service hours and require participation in intervention services appropriate to identified needs of the juvenile.

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<sup>1</sup> "Child" or "juvenile" or "youth" means any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years. s. 985.03(7), F.S.

<sup>2</sup> Florida Department of Juvenile Justice, Probation and Community Intervention, General. <http://www.djj.state.fl.us/faqs/probation-community-intervention> (last visited January 13, 2016).

<sup>3</sup> *Id.*

<sup>4</sup> s. 985.12(1), F.S.

<sup>5</sup> Department of Juvenile Justice (DJJ), Agency Analysis of 2016 SB 408, p. 2 (November 5, 2015)(hereinafter cited as "DJJ Analysis").

<sup>6</sup> 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 12, 2016).

<sup>7</sup> *Id.*

<sup>8</sup> s. 985.12, F.S.

<sup>9</sup> *Id.*

The statute requires the LEO issuing the civil citation<sup>10</sup> to advise the juvenile of his or her option to refuse the citation and instead be arrested and referred to a DJJ intake office.<sup>11</sup>

A juvenile that elects to participate in the CCP 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.<sup>12</sup> Upon completion of the program, the agency operating the CCP must report the outcome to DJJ.<sup>13</sup>

If the juvenile fails to report timely for a work assignment, complete a work assignment, comply with assigned intervention services within the prescribed time, or commits a subsequent misdemeanor, the LEO must issue a report alleging the juvenile has committed a delinquent act.<sup>14</sup> A juvenile probation officer must then process the original delinquent act as a referral to DJJ and refer the report to the state attorney for review.<sup>15</sup>

Currently, s. 985.12, F.S., requires CCPs or another similar diversion program<sup>16</sup> to be established 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. The program may be operated by a law enforcement agency, DJJ, a JAC, a county or municipality, or an entity selected by a county or municipality.<sup>17</sup>

The civil citation program has been implemented in 61 counties in Florida.<sup>18</sup> The following five counties in Florida have no established civil citation program: Bradford, Calhoun, Gulf, Hardee, and Washington.<sup>19</sup> These counties utilize a diversion program without the civil citation overlay.<sup>20</sup>

For Fiscal Year 2014-15, 20,833 juveniles were eligible for civil citation (first-time misdemeanants who were not accused firearm or sex-related offenses) and 8,961 eligible juveniles (43%) were issued civil citation.

### **Effect of the Bill**

As mentioned above, there are no circumstances under CCPs where a LEO is required to issue a civil citation or similar diversion program. The bill *requires* a LEO<sup>21</sup> to issue a civil citation or require the juvenile's participation in a similar diversion program for specified first-time misdemeanor "eligible offenses" arising out of the same episode.<sup>22</sup> The bill defines an "eligible offense" as a misdemeanor violation of:

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<sup>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> s. 985.12(4), F.S.

<sup>13</sup> s. 985.12(1), F.S.

<sup>14</sup> s. 985.12(5), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Diversion programs are non-judicial alternatives used to keep youth who have committed a delinquent act from being handled through the traditional juvenile justice system. Diversion programs may be pre-arrest or post-arrest programs and are established by law enforcement agencies or school districts in cooperation with state attorneys. See s. 985.125, F.S., and *DJJ Youth and Families, Glossary*, <http://www.djj.state.fl.us/youth-families/glossary> (last visited January 12, 2016).

<sup>17</sup> s. 985.12(1), F.S.

<sup>18</sup> Email from Meredith Stanfield, Legislative Affairs Director, Re: Civil Citation Reminder, January 13, 2016 (on file with the Criminal Justice Subcommittee) and DJJ Analysis at p. 2.

<sup>19</sup> *Id.*

<sup>20</sup> DJJ Analysis at p. 2.

<sup>21</sup> The bill defines "law enforcement officer" to have the same meaning as in s. 943.10, F.S. Section 943.10, F.S., defines the term to mean any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

<sup>22</sup> The bill defines "episode" to mean the same act, criminal episode, or transaction.

- Possession of alcoholic beverages by a minor;<sup>23</sup>
- Battery, provided the victim approves of the issuance of the civil citation or similar diversion program;<sup>24</sup>
- Petit theft;<sup>25</sup>
- Retail theft;<sup>26</sup>
- Affrays and riots;<sup>27</sup>
- Disorderly conduct;<sup>28</sup>
- Possession of cannabis or other controlled substances;<sup>29</sup> and
- Possession, sale, manufacture, etc. of drug paraphernalia.<sup>30</sup>

The bill *permits* the issuance of a civil citation or similar diversion program for:

- A first-time misdemeanor offense that does not meet the definition of an “eligible offense;” or
- Any second- or third-time misdemeanors, regardless of whether the offenses are considered “eligible offenses.”

Written documentation articulating why an arrest is warranted must be provided when a LEO arrests a juvenile in the above-referenced instances where CCP is permitted.

The bill retains current law regarding:

- The program requirements placed upon a juveniles participating in CCPs, including community service hours, intervention services, reporting to the community service performance monitor, and time frames to complete the program;
- The ability of juveniles to refuse participation in CCPs;
- Participation in CCPs not being considered a referral to DJJ;
- The requirement of DJJ and LEAs to forward civil citations to specified parties; and
- The requirement for CCPs to report the juveniles’ outcomes to DJJ.

The bill clarifies that each judicial circuit must establish one or more CCPs that must individually or collectively serve all juveniles who are alleged to have committed a misdemeanor offense. The bill also clarifies that CCPs do not apply to a:

- Juvenile who is currently alleged to have committed, or is currently charged with, and awaiting final disposition of an offense that would be a felony if committed by an adult.
- Juvenile who has entered a plea of nolo contendere or guilty to, or has been found to have committed, an offense that would be a felony if committed by an adult.
- Misdemeanor arising out of an episode in which the juvenile is also alleged to have committed an offense that would be a felony if committed by an adult.

The bill provides that s. 985.12, F.S., does not modify the authority of a LEO to issue only a simple warning to the juvenile or to notice the juvenile’s guardian or parent of the alleged offense.

Lastly, the bill makes conforming changes to ss. 943.051 and 985.11, F.S.

## B. SECTION DIRECTORY:

Section 1. Amends s. 985.12, F.S., relating to civil citation.

<sup>23</sup> s. 562.111, F.S.

<sup>24</sup> s. 784.03, F.S.

<sup>25</sup> s. 812.014(2)(e) and (3)(a), F.S.

<sup>26</sup> s. 812.015(2), F.S.

<sup>27</sup> s. 870.01, F.S.

<sup>28</sup> s. 877.03, F.S.

<sup>29</sup> s. 893.13(6)(b), F.S.

<sup>30</sup> s. 893.147, F.S.

Section 2. Amends s. 943.051, F.S., relating to criminal justice information; collection and storage; fingerprinting.

Section 3. Amends s. 985.11, F.S., relating to fingerprinting.

Section 4. 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 revenues.

#### **2. Expenditures:**

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

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

To the extent the bill prevents youth from being arrested and placed in detention at a JAC, the bill will result in a positive fiscal impact on local government expenditures.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

#### **2. Other:**

None.

### **B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A