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Committee on Criminal Justice

AN EXAMINATION OF THE NEED TO EXPUNGE RECORDS OF SUCCESSFUL PARTICIPANTS IN FLORIDA'S JUVENILE CIVIL CITATION PROGRAMS

Issue Description

During the 2010 Legislative Session, legislation involving local juvenile civil citation programs in Florida was filed. One of the bills (SB 2544) proposed to allow a youth who successfully completes a civil citation program to have his or her misdemeanor civil citation record expunged. Although this bill was heard by the Criminal Justice Committee and passed the Senate, it did not pass in the House.¹ The question arose whether it is necessary to legislatively require the expungement of successful program participants' records, or whether this step is unnecessary since the information is essentially inaccessible to the public given its confidential nature under ch. 985, F.S.

This interim project looks at whether there is a need to legislatively require record expungement of youth who successfully complete a juvenile civil citation program, similar to the statutory process now in place for successful participants of a prearrest, postarrest, or teen court diversion program. The project contains an examination of relevant statutes, administrative rules, and input from several sources, including civil citation programs, the Department of Juvenile Justice (DJJ), the Florida Department of Law Enforcement (FDLE), and the sheriffs. It concludes with several options for addressing this issue.

Background

Statutory Requirements for Civil Citation Programs

Civil citation programs are an efficient and innovative alternative to DJJ's custody and ensure swift and appropriate consequences for youth who commit nonserious delinquent acts.² A law enforcement officer is authorized to issue a civil citation to a youth who admits having committed a misdemeanor. The programs 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. Local law enforcement agencies report information regarding civil citations to the DJJ. Civil citation records are entered into the Juvenile Justice Information System (JJIS).³

Civil citation programs require the youth to complete no more than 50 community service hours, and may require participation in intervention services appropriate to identified needs of the youth, including family counseling, urinalysis monitoring, and substance abuse and mental health treatment services.⁴ After issuing a civil citation, the law enforcement officer must send a copy to the county sheriff, state attorney, the appropriate intake office of the department, the community service performance monitor designated by the department, the parent or guardian of the youth, and the victim.⁵

The youth is required to report to a community service performance monitor within seven working days after the civil citation has been issued. The youth must also complete at least five community service hours per week. The

¹ The other legislation that was filed but not heard was SB 1210, requiring these programs to be established with the concurrence of the chief circuit judge, the state attorney, public defender, and law enforcement head.

² Section 985.12(1), F.S.

³ *Id.*

⁴ *Id.*

⁵ Section 985.12(2), F.S.

monitor reports information regarding the youth's service hour completion and the expected completion date to the DJJ.⁶ If the youth fails to timely report for a work assignment, complete a work assignment, comply with assigned intervention services within the prescribed time, or if the youth commits a third or subsequent misdemeanor, the law enforcement officer must issue a report alleging the youth has committed a delinquent act.⁷

- (a) 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.⁸ However, if a youth successfully completes the civil citation program, there is no express authority in the statute to make the youth eligible to obtain an expungement of the civil citation record (unlike the express statutory expungement authority for a successful participant in a prearrest, postarrest, or teen court diversion program⁹).

Administrative Rules

The administrative rule relevant to the civil citation programs explains the purpose of the program and provides basic steps that must be performed by the DJJ, including the following:

- Civil citation programs provide law enforcement with an alternative to taking youth into custody, while ensuring swift and appropriate consequences for youth who commit non-serious delinquent acts.
- A record check of the Juvenile Justice Information System (JJIS), which is the department's electronic information system used to gather and store information on youth having contact with the department to determine program eligibility.
- Upon receipt of the citation, the department shall enter the appropriate information into JJIS.¹⁰

There is also a rule implementing juvenile diversion record expunction. It sets forth information concerning the following: paying the application fee; obtaining, completing, and submitting the application form; submitting fingerprints for positive identification of subject and the record; and processing the application by the FDLE and the arresting law enforcement agency.¹¹

Expunction of Juvenile Criminal History Records

Youth who successfully complete a prearrest, postarrest, or teen court diversion program after being arrested for a nonviolent misdemeanor are eligible to have their arrest expunged, provided they have no other past criminal history.¹² A nonviolent misdemeanor includes simple assault or battery when this expunction process is approved by the local state attorney. A domestic violence arrest is not eligible for expunction.¹³

The expunction processing fee is \$75. It, along with the application, must be submitted to the FDLE no later than six months after completion of the diversion program. An official written statement from the prosecutor must also accompany the application, certifying that the program was successfully completed and limited to youth arrested for a nonviolent misdemeanor who have no other prior criminal history.¹⁴

This expunction does not prohibit the youth from requesting a regular record sealing or expunction under s. 943.0585 or s. 943.059, F.S., if the youth is otherwise eligible.¹⁵ The expunged record is available to law enforcement only under certain enumerated circumstances, such as when needed to determine eligibility for these

⁶ Section 985.12(3), F.S.

⁷ Section 985.12(4), F.S.

⁸ Section 985.12(5), F.S.

⁹ Section 985.125, F.S.

¹⁰ Fla. Admin. Code R. 63D-10.002(4) (2010).

¹¹ Fla. Admin. Code R. 11C-7.009 (2008).

¹² See *supra* note 8 and s. 943.0582, F.S.

¹³ Section 943.0582(2) (3), F.S.

¹⁴ Section 943.0582(3) (4), F.S.

¹⁵ Section 943.0582, F.S.

programs, when a youth is seeking law enforcement employment, or when it is needed for a criminal justice investigation. Local law enforcement records are treated as if they are sealed (only available to limited entities).

Juvenile delinquency criminal history records maintained by the FDLE are also expunged automatically when the youth turns 24 years of age (if the youth was not a serious or habitual juvenile offender or was not committed to a juvenile prison) or 26 years of age (if the youth was a serious or habitual juvenile offender or was committed to a juvenile prison), as long as the youth is not arrested as an adult or adjudicated as an adult for a forcible felony.¹⁶ This automatic expunction does not prohibit the youth from requesting a sealing or expunction under s. 943.0585 or s. 943.095, F.S., if he or she is otherwise eligible. Administrative expunction is also available if the arrest is made contrary to law or by mistake.¹⁷

Criminal history records are public records under Florida law and must be disclosed unless they have been sealed or expunged or have otherwise been exempted or made confidential.¹⁸ (Fingerprints are exempt and are not disclosed by the FDLE.) Juvenile criminal history information that has been compiled and maintained by the FDLE since July 1, 1994 for felonies, and after July 1, 1996 for certain enumerated misdemeanors, is considered by the department to be a public record.¹⁹ (An ongoing lawsuit, originating in the Eleventh Judicial Circuit, is challenging the FDLE's position on juvenile criminal history information, based upon the general confidentiality provisions for juvenile records in s. 985.04(1), F.S.²⁰)

In contrast to juvenile criminal history information maintained by the FDLE, juvenile records maintained by the DJJ under ch. 985, F.S., are generally treated as confidential and inaccessible to the general public.²¹ One exception is that juvenile information comprising the name, photograph, address, and arrest report can be released to the public after the youth is taken into custody for allegedly committing a felony or after committing three or more misdemeanors.²² The DJJ is also authorized to share its juvenile information with other designated entities, including law enforcement.²³

Military recruiters are also able to access a youth's criminal history information if the potential recruit has signed a release form authorizing the recipient of the information (in this case the DJJ) to supply the military recruiter with such information.²⁴ This authority comes from federal law.²⁵

Proposed 2010 Legislation Authorizing Civil Citation Expungement

As previously mentioned, SB 2544 passed in the full Senate, but died in the House of Representatives. The bill proposed to allow a youth who successfully completed a civil citation program to have his or her nonjudicial civil citation record expunged. (This expunction process is currently available to youth who successfully complete a

¹⁶ Section 943.0515(1) and (2), F.S.

¹⁷ Section 943.0581, F.S.

¹⁸ Section 119.07(1), F.S., s. 24(a), Art. I, State Constitution.

¹⁹ Section 943.053(3)(a), F.S., ch. 96-388, L.O.F.

²⁰ *G.G. v. FDLE*, Case No.: 07-00599 CA 21 (Miami-Dade Circuit Court); Section 985.04(1), F.S., provides that juvenile records are confidential, subject to specified exceptions, and limited disclosure to certain enumerated entities or upon court order. Subsection (2) generally allows for the disclosure of an arrest report for a juvenile arrested for a felony or an arrest report for a juvenile found by a court to have committed three or more misdemeanor offenses.

²¹ Section 985.04, F.S.

²² Section 985.04 (2), F.S.

²³ Section 985.04(1), F.S.

²⁴ Response from the DJJ to inquiry by Senate Criminal Justice professional staff about civil citation expungement, dated 8-19-10, on file with the Committee in Room 510 Knott Bldg., Tallahassee, FL 32399. This written release form is a Department of Defense (DOD) Form #369.

²⁵ Response from the FDLE to inquiry by Senate Criminal Justice professional staff about civil citation expungement, dated 8-20-10, on file with the Committee in Room 510 Knott Bldg., Tallahassee, FL 32399. Per 5 U.S.C. section 9101(a)(2), the DOD is given access, based on fingerprint submission, to criminal history record information that would be "accessible by State and local criminal justice agencies." However, per subsection (c) thereof, a federal agency such as DOD "shall not obtain criminal history record information pursuant to this subsection unless it has received written consent from the individual under investigation of the release of such information for the purposes set forth above, which include "acceptance or retention in the armed forces."

prearrest, postarrest, or teen court diversion program after being arrested for a nonviolent misdemeanor under s. 943.0582, F.S.) The expunged record, under the bill, would have been available to law enforcement under enumerated circumstances, such as when needed to determine eligibility for these programs, when the youth was seeking law enforcement employment, or when it was needed in a criminal justice investigation.

Local law enforcement records would have been treated as if they had been sealed (only available to limited entities). The applicant would have been required to submit an expunction application to the FDLE, a \$75 processing fee, and an official written statement from the state attorney certifying that the program was successfully completed and limited to youth arrested for a nonviolent misdemeanor who also had no other criminal history.

Findings and/or Conclusions

Senate professional staff examined the relevant laws, rules, and current practices relating to juvenile civil citation programs in Florida. As part of this examination, professional staff sought input from the DJJ, the FDLE, the sheriffs, and local juvenile civil citation programs around the state.

Input from Civil Citation Programs

Professional staff sent questionnaires to 21 local civil citation programs around the state. Out of 21 programs, 18 responses were received.²⁶ One of these programs ended on June 30, 2010 because of inadequate funding.²⁷ Similarly, one of the three program recipients that did not complete the questionnaire also indicated that its program ended then for the same reason.²⁸ (Nine of the 21 civil citation programs were funded through the DJJ until the end of June when the 3-year grant funding ended.²⁹) Another of the program respondents indicated that its civil citation program was discontinued last year by choice and instead, a local diversion program was developed in its place.³⁰

About half of these programs are run through the local sheriff,³¹ and the rest are through a local DJJ or a youth services organization,³² the state attorney,³³ or the city or court administrator.³⁴ Program lengths range anywhere from one month to six months, with two or three months being more typical. Several respondents commented that the juvenile civil citation programs are a cost effective alternative to formal judicial processing and need to be encouraged.

Eligibility Requirements:

Although program admission eligibility requirements vary from circuit to circuit, most of the programs seem fairly consistent with the general requirements, the most common including:

- must not have a prior criminal history (some programs specify no prior felony arrests, but will allow one prior misdemeanor);
- must be between 10 and 17 years of age (some programs do not specify a minimum age, but specify the maximum age to be 17 years);

²⁶ The following judicial circuits have (or had) at least one such program: judicial circuit 1 (program ended June 2010), judicial circuit 2 (2 of 3 circuits responded), judicial circuits 4, 5, and 6 (program ended but started a similar diversion program), judicial circuit 7 (2 of 3 programs responded), judicial circuit 8 (program ended June 2010), and judicial circuits 9, 11, 13, 16, 17, 18, 19, and 20.

²⁷ Judicial circuit 8.

²⁸ Judicial circuit 1.

²⁹ Judicial circuits 1, 4, 5, 8, 11, 13, 17, 19, and 20.

³⁰ Judicial circuit 6. The program is called "Juvenile Arrest Avoidance Program" and its purpose is to prevent first time juvenile misdemeanants in Pinellas County from having a juvenile record. Everything about the program is kept local, including the youth's record.

³¹ Judicial circuits 2, 5, 7 (has several programs), 16, 17, and 20 (has a few programs).

³² Judicial circuits 6, 9, 11 are DJJ operated and Circuits 1, 2, 13, and 18 are operated by a youth services organization.

³³ Judicial circuit 20.

³⁴ Judicial circuits 4 and 19.

- must not have participated in a prior diversion program, including civil citation, or be on any form of court-ordered supervision;
- must be a first-time misdemeanor offense (some programs require there be no restitution issues, or some specify that it must be a nonviolent misdemeanor);
- must not have committed a domestic violence offense, traffic offense, sexual crime, hate crime, or malicious act of violence;
- must be a resident of the applicable county; and
- must have a written agreement among the youth, the victim, and the parents.

Several of the programs specified the following misdemeanors as being “acceptable” for admission into their programs:

- Petit theft,
- Criminal mischief,
- Trespassing,
- Simple assault/battery,
- Disruption of a school function,
- Disorderly conduct, and
- Breach of the peace.

Issuance of Civil Citation in Lieu of Formal Arrest and Fingerprint Submission to the FDLE:

All of the questionnaire respondents indicated that in each of their respective jurisdictions, the law enforcement officer does indeed issue a civil citation instead of formally arresting the youth for an eligible misdemeanor offense. Moreover, all agreed that no one from the program or the law enforcement officer sends the youth’s fingerprints or other information about the youth to the FDLE for processing into the criminal justice information system (CJIS).³⁵

With these responses, it became clear that the issue is not that the civil citation program respondents are sending the youth’s fingerprint information to the FDLE where it becomes accessible to the public.

Is Current Law Sufficient for Successful Program Participants to Receive Civil Citation Expungement:

Almost half of the respondents said that since there is no formal arrest associated with a civil citation, nor are the youth’s fingerprints being submitted by them to the FDLE, there is nothing to expunge from FDLE’s criminal history database. Thus, these respondents felt there is no need to add civil citation programs to the statute allowing successful participants from prearrest, postarrest, and teen court diversion programs to expunge their misdemeanor records within FDLE’s criminal history data base.³⁶

Rather than being submitted to the FDLE criminal history database, a copy of the civil citations are being sent to the DJJ and entered into the Juvenile Justice Information System (JJIS) where they can be monitored by law enforcement and the civil citation programs. Several program respondents, particularly law enforcement officers and prosecutors, reiterated the importance of maintaining a central tracking system for civil citations within the DJJ. Without it, determining a youth’s eligibility (many programs are restricted to a first-time arrest) based upon prior arrest history will become very difficult because there will be no way to know how many prior civil citations a youth has received, especially from another jurisdiction.³⁷

If Current Law is not Sufficient, Offer Suggestions on how to Provide Relief:

Almost half of the respondents said that the problem is not with civil citation information being accessible through the FDLE’s database, but rather that the information is accessible, not to the public, but to the military

³⁵ Responses from civil citation programs to inquiry by Senate Criminal Justice professional staff about civil citation expungement, dated August 2010, on file with the Committee in Room 510 Knott Bldg., Tallahassee, Fl 32399.

³⁶ *Id.*

³⁷ *Id.*

through the DJJ's Juvenile Justice Information System. (The military can access any criminal history information that criminal justice agencies can, but only if the potential recruit provides written consent.³⁸) According to these respondents, when the record is accessed by the military, the civil citation notation can look like a formal arrest and that can cause problems for the potential recruit.

Two suggestions were offered by these respondents to address this issue:

- expunge the civil citation from JJIS after the youth successfully completes the program, or after the youth turns 18 years of age, or after some other appropriate time period; or
- require the DJJ to enter the civil citations in the "prevention" side of JJIS (which is not accessible to criminal justice agencies so it is not accessible to the military) instead of entering them into the "offender" side of JJIS (which is accessible to criminal justice agencies).

Input from the FDLE

A criminal history record is not created by the FDLE unless it has accompanying fingerprints. According to the FDLE, the civil citation programs authorized by law are by definition civil not criminal and s. 985.12, F.S., does not require (nor seem to contemplate) the taking of fingerprints.³⁹ Accordingly, if FDLE were to receive a civil citation record with fingerprints attached, it would not be entered into the FDLE criminal history record system because of its civil nature. If such an entry did happen to be made by mistake, the FDLE could have it removed through corrective action.⁴⁰

Furthermore, the FDLE states that there is no reason to involve it in the process of expunging civil citation information that is more appropriately handled by the DJJ. To involve the FDLE in this process would mean changing the operation of the programs and imposing additional responsibilities on the department because it does not currently interact with the civil citation programs. Finally, the FDLE points out that the military is getting the civil citation participant information from the DJJ, not from the FDLE.⁴¹

Input from the DJJ

The DJJ concurs with the FDLE's statement that the military gets its access to information concerning civil citation participants through the DJJ's database (JJIS), usually in the form of a FACE sheet. This sheet typically contains all the referral information, including charges that were nol prossed, diverted or otherwise resulted in no adjudication (like a civil citation.)⁴² The military request comes to the DJJ as a self-request, meaning the potential recruit signs a release form authorizing the DJJ to supply the recruiter with all referral information.⁴³

Three suggestions were offered to address this issue:

- add legislative intent language to the civil citation statute emphasizing that the law is providing an alternative civil process to formal judicial processing and that successful participation in a civil program should not exclude a youth from a military career and other employment opportunities;
- expunge the civil citation from JJIS six months or one year after the youth successfully completes the program, or after the youth turns 18 years of age, if the youth has not been adjudicated delinquent within that same time period; or
- require the department to enter civil citations into the "prevention" side of JJIS (which is not accessible to law enforcement agencies, thus not accessible to the military) instead of entering them into the "offender"

³⁸ See *supra* note 25.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See *supra*, note 24.

⁴³ *Id.*

side of JJIS (which is accessible to law enforcement agencies, thus accessible to the military). (Doing this means that the FACE sheet will only display the youth's name and a note that "prevention services were received."⁴⁴)

Input from the Florida Sheriffs

The President of the Florida Sheriffs Association indicated that the sheriffs will have concerns about any legislative change that results in them not being able to track a youth's civil citation history. The sheriffs cite instances in which a youth has moved to a different county and commits a new law violation, and unbeknownst to the sheriff in the new jurisdiction who is considering civil citation eligibility, the youth has already received civil citations in the former county. The sheriffs do not want to be put in a position that makes this scenario any more likely to happen.

One sheriff points out that under s. 943.0582, F.S., a successful participant in a diversion program has six months to apply for an expungement of his or her misdemeanor record. Under this law, a law enforcement officer has access to the expunged information. The sheriffs suggest that maybe there can be a similar application process for civil citation participants, or at least there can be some mechanism for tracking civil citations participants that is open to law enforcement.⁴⁵

Summarized Input

Almost half of the program respondents as well as the FDLE said that since there is no formal arrest associated with a civil citation, nor are the youth's fingerprints being submitted to the FDLE, there is nothing to expunge from FDLE's criminal history database. Thus, there is no need to add civil citation programs to the statute allowing successful participants from prearrest, postarrest, and teen court diversion programs to expunge their misdemeanor records within FDLE's criminal history data base. (This is what the proposed 2010 legislation attempted to do last session.⁴⁶)

Almost half of the respondents said that the issue is not with civil citation information being accessible through the FDLE's database, but rather that the information is accessible to the military through the DJJ's Juvenile Justice Information System (JJIS). (The military can access any criminal history information that criminal justice agencies can, but only if the potential recruit provides written consent.⁴⁷) According to these respondents, when the record is accessed by the military, the civil citation notation looks like a formal arrest and that can cause eligibility problems for the potential recruit.

Several respondents, particularly law enforcement officers and prosecutors, reiterated the importance of maintaining a central tracking system for civil citations within the DJJ. Without it, determining a youth's prior arrest history will become very difficult because there will be no way to know how many prior civil citations a youth has received, especially if the youth has moved from another jurisdiction.

Options and/or Recommendations

Based upon the findings outlined above, there appears to be a desire by some, but not all respondents to limit access to these records. The real issue becomes how to limit access to some (military) but not to others (law enforcement). The following options are available for possible legislative action, depending upon which way the members wish to proceed. However, since there appears to be no viable way to exclude military access to civil citation information without also excluding law enforcement access, which is problematic, none of these options will provide an absolute solution.

⁴⁴ Follow up response from the DJJ to inquiry by Senate Criminal Justice professional staff about civil citation expungement, dated 9-14-10, on file with the Committee in Room 510 Knott Bldg., Tallahassee, FL 32399

⁴⁵ Response from the Florida Sheriffs Association re inquiry by Senate professional staff about civil citation expungement, dated 9-7-10, on file with the Committee in Room 510 Knott Bldg., Tallahassee, FL 32399.

⁴⁶ See SB 2544, died in House messages (identical HB 1497, died in House Criminal and Civil Justice Policy Council.)

⁴⁷ See *supra* note 24.

- Add legislative intent language to the juvenile civil citation statute emphasizing that the law's purpose is to provide civil processing as an alternative to formal judicial processing, and that successful participation in such a program should not exclude a youth from a military career or other employment opportunities.

This option will allow law enforcement continued access to civil citations, and although it still allows military access (providing the youth consents), hopefully the new language will also provide additional support for the youth if asked to explain the incident.

- Explore the possibility of the DJJ “flagging” a “successful civil citation completion” on the FACE sheet, somehow explaining that it means “successful completion of a prevention/intervention service.”

This option will accomplish the same result as the previous option.

- Expunge the civil citation from JJIS at a statutorily prescribed time (for example, six months or one year after the youth successfully completes the program) or after the youth turns 18 years of age, if the youth has not been adjudicated delinquent within that same time period.

This option will allow law enforcement (and thus the military) to track civil citations up until the prescribed time (one year after successful program completion or when the youth turns 18), but prevents further tracking after that. Accordingly, if the prescribed time is determined to be “after the youth turns 18 years of age,” law enforcement (and the military) will have access to the civil citation information through the period of time a youth is eligible to participate in the program, but not after that.

- Require the DJJ to enter civil citations into the “prevention” side of JJIS (which is not accessible to law enforcement agencies or the military) instead of entering them into the “offender” side of JJIS (which is accessible to law enforcement agencies and the military).

This option will prevent the military from accessing civil citations, but it will also prevent law enforcement from being able to track civil citations.