

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1497

Civil Citations

SPONSOR(S): Cruz

TIED BILLS:

IDEN./SIM. BILLS: SB 2544

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee	11 Y, 0 N	Krol	De La Paz
2)	Criminal & Civil Justice Policy Council			
3)				
4)				
5)				

SUMMARY ANALYSIS

The civil citation process allows juveniles who have committed a misdemeanor to complete community services hours or participate in intervention services as an alternative to being arrested and taken into custody by the Department of Juvenile Justice. Some counties that participate in the civil citation program may create a police report and send fingerprint records to the Florida Department of Law Enforcement, which can result in the creation of a nonjudicial arrest record.

HB 1497 provides that completion of the citation program will allow a juvenile to expunge a nonjudicial misdemeanor arrest record.

The bill appears to have an indeterminate fiscal impact on the Florida Department of Law Enforcement.

The bill provides an effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### **Civil Citations**

The civil citation program is an alternative to being arrested for juveniles<sup>1</sup> who commit a misdemeanor. The program exists 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. Currently there are 9 civil citation programs funded by the Department of Juvenile Justice (department) and 7 programs that are funded locally. Local law enforcement agencies report information regarding citations to the department. Citation records are input in the Juvenile Justice Information System. Some counties that participate in the program allow for the juvenile to be fingerprinted and may fill out an arrest report which is then sent to the Florida Department of Law Enforcement for data purposes for the Uniform Crime Reporting Program.<sup>2</sup> This can result in the creation of a nonjudicial arrest record for the juvenile.<sup>3</sup>

Any law enforcement officer may issue a civil citation to a juvenile who admits having committed a misdemeanor. However the eligibility requirements for the program may differ by county. For example, in Miami-Dade County the program is open to “[a]ll children who have committed a minor first-time misdemeanor offense.”<sup>4</sup> While in Lee County the requirement reads “[a]ll juveniles between the ages of 8-17 who do not have a previous arrest record for more than one misdemeanor or any felony crime is eligible for the Civil Citation Program.”<sup>5</sup>

Citations issued may require the juvenile to complete no more than 50 community service hours, and may require participation in intervention services appropriate to identified needs of the juvenile,

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<sup>1</sup> Section 985.03(6), F.S., "Child" or "juvenile" or "youth" is defined as “any unmarried person under the age of 18 who has not been emancipated by order of the court and who has been found or alleged to be dependent, in need of services, or from a family in need of services; or any married or unmarried person who is charged with a violation of law occurring prior to the time that person reached the age of 18 years.”

<sup>2</sup> The Uniform Crime Reporting (UCR) Program was conceived in 1929 by the International Association of Chiefs of Police to meet a need for reliable, uniform crime statistics for the nation. Federal Bureau of Investigations. <http://www.fbi.gov/ucr/ucr.htm>. (Last accessed on March 19, 2010).

<sup>3</sup> Personal contact on March 19, 2010. Jason Welty from the Department of Juvenile Justice.

<sup>4</sup> Miami-Dade County Civil Citation. [http://www.miamidade.gov/jsd/civil\\_citation.asp](http://www.miamidade.gov/jsd/civil_citation.asp). (Last accessed on March 19, 2010).

<sup>5</sup> Lee County Sheriff's Office brochure. [www.swfljac.org/CivilCitationBrochure.pdf](http://www.swfljac.org/CivilCitationBrochure.pdf). (Last accessed on March 19, 2010).

including family counseling, urinalysis monitoring, and substance abuse and mental health treatment services.<sup>6</sup>

A copy of each citation issued under this section is provided to the department, and the department enters the information into the juvenile offender information system.<sup>7</sup>

After issuing a citation, the law enforcement officer will send a copy to the county sheriff, state attorney, the appropriate intake office of the department, the community service performance monitor<sup>8</sup> designated by the department, the parent or guardian of the juvenile, and the victim.<sup>9</sup>

The juvenile is required to report to the community service performance monitor within 7 working days after the date of issuance of the citation. The juvenile is required to complete at least 5 community service hours. The monitor reports information regarding the juvenile's completion of service hours and the expected completion date of the work assignment to the intake office of the department.<sup>10</sup>

If the juvenile fails to report timely for a work assignment, complete a work assignment, or comply with assigned intervention services within the prescribed time, or if the juvenile commits a third or subsequent misdemeanor, the law enforcement officer will issue a report alleging the juvenile has committed a delinquent act. The officer will then perform a preliminary determination,<sup>11</sup> and with the approval of the state attorney, which can result in a referral for the juvenile to:

- care, diagnostic, and evaluation services;
- substance abuse treatment services;
- mental health services;
- retardation services;
- a diversionary, arbitration, or mediation program; community service work; or
- other programs or treatment services voluntarily accepted by the child and the child's parents or legal guardian.<sup>12</sup>

The juvenile may also be arrested for the offense for which he or she was participating in the civil citation program.<sup>13</sup>

At the time of issuance of the citation, the law enforcement officer will advise the juvenile that the he or she has the option to refuse the citation and to be referred to the intake office of the department. The juvenile may decide to refuse the citation at any time before completion of the work assignment.<sup>14</sup>

### **Expunction of Juvenile Criminal History Records**

Juveniles have a few more options than adults do when choosing to have a record expunged. If a juvenile successfully completes a prearrest, postarrest, or teen court diversion program after being arrested for a nonviolent misdemeanor, he or she is eligible to have the arrest expunged providing there is no other past criminal history. This expunction does not prohibit the juvenile from requesting a regular sealing or expunction under s. 943.0585 or s. 943.059, F.S., if he or she is otherwise eligible.<sup>15</sup>

Juvenile delinquency criminal history records maintained by the FDLE are also expunged automatically when the juvenile turns 24 years of age (if he or she is not a serious or habitual juvenile offender or committed to a juvenile prison) or 26 years of age (if he or she was a serious or habitual juvenile

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<sup>6</sup> Section 985.12(1), F.S.

<sup>7</sup> Section 985.12(1), F.S.

<sup>8</sup> This position is not defined in statute. Designated by the Department of Juvenile Justice, the monitor appears to manage the juvenile's community service hours.

<sup>9</sup> Section 985.12(2), F.S.

<sup>10</sup> Section 985.12(3), F.S.

<sup>11</sup> Section 985.12(4), F.S.

<sup>12</sup> Section 985.145(5), F.S.

<sup>13</sup> Hillsborough County Civil Citation Program website, <http://www.cchillsborough.org/faq.html>. (Last accessed on March 19, 2010).

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

<sup>15</sup> Section 943.0582, F.S.

offender or was in a juvenile prison), as long as the juvenile is not arrested as an adult or adjudicated as an adult for a forcible felony.<sup>16</sup> This automatic expunction does not prohibit the juvenile from requesting a sealing or expunction under s. 943.0585 or s. 943.095, F.S., if he or she is otherwise eligible.

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.<sup>17</sup> 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, 1996, is also considered by the department to be a public record, including felony and misdemeanor criminal history information.<sup>18</sup> However, an ongoing lawsuit was filed by the Public Defender's Office in the Eleventh Judicial Circuit Court in Miami-Dade County, which challenges the department's position based upon the general confidentiality provisions for juvenile records in s. 985.04 (1), F.S.<sup>19</sup>

### **Effect of Proposed Changes**

HB 1497 provides that completion of the citation program will allow, with the concurrence of the agencies that established the program, a juvenile to expunge a nonjudicial arrest record.

The bill amends s. 943.0582, F.S., which currently describes the process for juveniles who wish to expunge a nonviolent misdemeanor record through the completion of a prearrest, postarrest, or teen court diversion program, to allow the same type of expunction to occur for juveniles who complete the civil citation program. Juveniles must complete the application for expunction within 6 months from the completion of the civil citation program.

An arrest record would not be eligible for expunction if the arrest was for an act of domestic violence, as defined in s. 741.28, F.S.<sup>20</sup>

Currently the statute states that FDLE "is authorized to charge" the \$75 processing fee associated with the expunction. The bill changes that language to "may charge."

The bill removes outdated language regarding expunction applications for juveniles who have completed a prearrest or postarrest diversion program before the effective date of the section.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 985.12, relating to civil citations.

Section 2. Amends s. 943.0582, relating to prearrest, postarrest, or teen court diversion program expunction.

Section 3. Provides an effective date of July 1, 2010.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

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<sup>16</sup> Section 943.0515(1) and (2), F.S.

<sup>17</sup> Section 119.07(1), F.S., s. 24(a), Art. I, State Constitution.

<sup>18</sup> Section 943.053(3)(a), F.S., ch. 96-388, L.O.F.

<sup>19</sup> *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.

<sup>20</sup> "Domestic violence" is defined as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member."

1. Revenues:  
See "Fiscal Comments."
2. Expenditures:  
See "Fiscal Comments."

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

1. Revenues:  
See "Fiscal Comments."
2. Expenditures:  
See "Fiscal Comments."

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

See "Fiscal Comments."

**D. FISCAL COMMENTS:**

The Florida Department of Law Enforcement has no way to estimate the potential volume of arrest records held by juveniles who have completed the civil citation process. FDLE states there is both a potential for revenue and additional workload.

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

The bill does not provide a time limit for a juvenile who has completed a civil citation program before the bill's effective date to apply for expunction.

### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**