

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 Budget Committee

BILL: SB 352
 INTRODUCER: Senator Joyner
 SUBJECT: Civil Citations/Minors
 DATE: April 12, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sadberry	Meyer, C.	BC	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill allows a youth who successfully completes a civil citation program to have his or her nonjudicial misdemeanor arrest record expunged. The civil citation programs provide an alternative to custody by the Department of Juvenile Justice for children who commit nonserious delinquent acts. This expunction process is currently available to youth who successfully complete a prearrest, postarrest, or teen court diversion program after being arrested for a nonviolent misdemeanor under s. 943.0582, F.S.

This bill substantially amends sections 985.12 and 943.0582, Florida Statutes.

II. Present Situation:

Civil Citations

Civil citation programs are an alternative to custody by the Department of Juvenile Justice (DJJ) for youth who commit nonserious delinquent acts. 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.¹ Local law enforcement agencies report information regarding civil citations to the DJJ. Civil citation records are entered into the Juvenile Justice Information System.²

¹ Department of Juvenile Justice, *2010 Legislative Session Bill Analysis* (on file with Senate Committee on Judiciary).

² Department of Juvenile Justice, *supra* note 1.

A law enforcement officer is authorized to issue a civil citation to a youth who admits having committed a misdemeanor. 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.”³ 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.”⁴

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.⁵ After issuing a 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.⁶

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 monitor reports information regarding the youth’s service hour completion and the expected completion date to the DJJ.⁷

If the youth fails to timely report for a work assignment, complete a work assignment, or 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. 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

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, providing they have no other past criminal history.⁹ 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. This expunction does not prohibit the youth from requesting a regular sealing or expunction under s. 943.0585 or s. 943.059, F.S., if he or she is otherwise eligible.¹⁰ The expunged record is available to law enforcement only under certain enumerated circumstances, such as when needed to determine eligibility for these programs, when a youth is

³ Miami-Dade County, *Civil Citation*, http://www.miamidade.gov/jsd/civil_citation.asp (last visited Apr. 8, 2010).

⁴ Lee County Sheriff’s Office, *Civil Citation Program*, www.swfljac.org/CivilCitationBrochure.pdf (last visited Apr. 8, 2010).

⁵ Section 985.12(1), F.S.

⁶ Section 985.12(2), F.S.

⁷ Section 985.12(3), F.S.

⁸ Section 985.12(5), F.S.

⁹ Section 985.125, F.S.

¹⁰ Section 943.0582, F.S.

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 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 is a serious or habitual juvenile offender or 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.¹¹ 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.

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.¹² 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.¹³ 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.¹⁴

III. Effect of Proposed Changes:

This bill allows a youth who successfully completes a civil citation program to have his or her nonjudicial misdemeanor arrest record expunged. The civil citation program provides an alternative to custody by the Department of Juvenile Justice for children who commit nonserious delinquent acts.¹⁵ This expunction process is currently available to youth who successfully complete a prearrest, postarrest, or teen court diversion program after being arrested for a nonviolent misdemeanor under s. 943.0582, F.S.

The expunged record will be available to law enforcement under enumerated circumstances, such as when needed to determine eligibility for these programs, when the youth is seeking law enforcement employment, or when it is needed in a criminal justice investigation. Local law enforcement records will be treated as if they are sealed and will only be available to limited entities.

¹¹ Section 943.0515(1) and (2), F.S.

¹² Section 119.07(1), F.S.; FLA. CONST. art. I, s. 24(a).

¹³ Section 943.053(3)(a), F.S.; Chapter 96-388, Laws of Fla.

¹⁴ *G.G. v. FDLE*, Case No.: 07-00599 CA 21 (Miami-Dade Circuit Court). A copy of the complaint is available at http://www.pdmiami.com/cpr/GG_v_FDLE.pdf (last visited Apr. 8, 2010). Section 985.04(1), F.S., provides that juvenile records are confidential, subject to specified exceptions, and limits 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.

¹⁵ Section 985.12, F.S.

The bill amends s. 943.0582, F.S., to include the same type of expunction process for youth who successfully complete a civil citation program as is currently allowed for youth completing a prearrest, postarrest, or teen court diversion program. The bill requires the applicant to submit an expunction application to the FDLE, a \$75 processing fee, and an official written statement from the state attorney. The accompanying prosecutorial statement must certify that the program was successfully completed and limited to youth arrested for a nonviolent misdemeanor who also have no other criminal history. The expunction application must be submitted no later than six months after completion of the civil citation program.

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

An expungement applicant will be required to pay a \$75 processing fee to the Florida Department of Law Enforcement.

C. Government Sector Impact:

According to the Florida Department of Law Enforcement, there is no way to estimate the potential volume of expungement applications, which would dictate both potential revenue and additional workload.¹⁶

VI. Technical Deficiencies:

None.

¹⁶ Florida Department of Law Enforcement, *Senate Bill 2544 Analysis* (Mar. 17, 2010) (on file with the Senate Committee on Judiciary).

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial 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.
