

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 Committee on Rules

BILL: CS/CS/CS/SB 408

INTRODUCER: Rules Committee; Children, Families, and Elder Affairs Committee; Criminal Justice Committee; and Senator Altman and others

SUBJECT: Juvenile Civil Citations and Similar Diversion Programs

DATE: March 1, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
3.	<u>Dugger</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE – Substantial Changes

I. Summary:

CS/CS/CS/SB 408 *requires* a law enforcement officer to issue a civil citation or require the juvenile's participation in a similar diversion program when the juvenile is under 16 years of age for the following enumerated first-time "misdemeanor offenses":

- Possession of alcoholic beverages by a person under age 21;
- Petit theft;
- Retail theft;
- Resisting an officer without violence;
- Disorderly conduct;
- Possession of cannabis or other controlled substances; or
- Use, possession, manufacture, delivery, transportation, advertisement, or retail sale of drug paraphernalia.

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

- Any first-time misdemeanor offense that is not one of the enumerated "misdemeanor offenses" or any enumerated "misdemeanor offense" that is committed by a juvenile who is 16 years of age or older; or
- Any second or third-time misdemeanor offense, regardless of whether the offense is one of the enumerated "misdemeanor offenses."

A law enforcement officer must provide written documentation articulating why an arrest is warranted if he or she has discretion under the statute to issue a civil citation but chooses instead to arrest the juvenile.

The bill also provides that the civil citation law does not modify the authority of a law enforcement officer to issue only a simple warning to the juvenile or to notice the juvenile's guardian or parent of the alleged offense.

The bill could have a positive fiscal impact and has an effective date of July 1, 2016.

II. Present Situation:

Section 985.12, F.S., establishes a civil citation process that provides an efficient and innovative alternative to the Department of Juvenile Justice's (DJJ) custody for youth who commit nonserious delinquent acts.¹ The DJJ is required to encourage and assist in the implementation and improvement of civil citation programs or other similar diversion programs around the state.²

The DJJ must also develop guidelines for civil citation programs which include intervention services based upon proven civil citation or similar diversion programs within the state.³ These programs are to be established at the local level in concurrence with the chief judge, state attorney, public defender, and head of each local law enforcement agency.⁴

Currently, statute provides that a law enforcement officer may issue a civil citation to a youth who admits to committing a misdemeanor⁵ without taking the youth into custody.⁶ Last session, the Legislature amended the law to allow a law enforcement officer to issue a simple warning to the youth or inform the youth's parents of the misdemeanor, or issue a civil citation or require participation in a similar diversion program.⁷

Another significant change to the statute last session was allowing a law enforcement officer to issue a civil citation to a youth who admits committing a second or third misdemeanor. (Civil citation was previously limited to the commission of a first-time misdemeanor.) If an arrest is made, the law enforcement officer is required to provide written documentation as to why the arrest is warranted under another amendment to the law last session.⁸

The law enforcement officer must send a copy of the citation to the department, sheriff, state attorney, DJJ's intake office or the community service performance monitor, parent or guardian

¹ Section 985.12(1), F.S.

² *Id.*

³ Section 985.12(2), 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*. Department of Juvenile Justice, *2016 Bill Analysis for SB 408* (February 2, 2016) (on file with the Senate Criminal Justice Committee).

⁶ *Id.*

⁷ Ch. 2015-46, s. 1, Laws of Fla. (amending s. 985.12, F.S., effective October 1, 2015).

⁸ *Id.*

of the youth, and the victim.⁹ The issuance of a civil citation is not considered a referral to the department.¹⁰

A civil citation program or similar diversion program may be operated by law enforcement, the DJJ, a juvenile assessment center, a county or municipality, or an entity selected by the county or municipality. Operations must be in consultation and agreement with the state attorney and local law enforcement agencies.¹¹ According to the DJJ, since law enforcement agencies are not required to issue civil citations, there is variation in the use of civil citation programs among agencies and counties statewide.¹²

Youth issued a civil citation may be assigned up to 50 hours of community service and must participate in intervention services as indicated by a needs assessment. Intervention services include family counseling, urinalysis monitoring, substance abuse and mental health treatment services.¹³ 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 DJJ. The youth may refuse the civil citation at any time before completion of the work assignment.¹⁴

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 to DJJ regarding the youth's service hour completion and the expected completion date.¹⁵ If the youth fails to timely report or complete a work assignment, fails to timely comply with assigned intervention services, or if the youth commits a subsequent misdemeanor, the law enforcement officer must issue a report to DJJ alleging that the youth has committed a delinquent act, thereby initiating formal judicial processing.¹⁶

According to the DJJ, there are 61 counties that have implemented a civil citation program in Florida. Taylor County has committed to implementing one. Bradford, Calhoun, Gulf, Hardee, and Washington counties use a similar diversion program without civil citations.¹⁷

In Fiscal Year 2014-15, there were 20,833 youth who were eligible to receive a civil citation (first-time misdemeanants who were not accused of a firearm or sexual offense). Statewide, 8,961 eligible youth (43% of eligible first-time misdemeanants) were issued a civil citation, according to DJJ.¹⁸

⁹ Section 985.12(3), F.S.

¹⁰ Section 985.12(1), F.S.

¹¹ *Id.*

¹² Department of Juvenile Justice, *2016 Bill Analysis for SB 408* (February 2, 2016) (on file with the Senate Criminal Justice Committee).

¹³ *Id.*

¹⁴ Section 985.12(6), F.S.

¹⁵ Section 985.12(4), F.S.

¹⁶ Section 985.12(5), F.S.

¹⁷ Department of Juvenile Justice, *2016 Bill Analysis for SB 408* (February 2, 2016) (on file with the Senate Criminal Justice Committee).

¹⁸ *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 985.12, F.S., to allow the establishment of one or more civil citation or similar diversion programs in each county to serve all juveniles alleged to have committed a violation of law which would be a misdemeanor if committed by an adult.

The bill *requires* a “law enforcement officer”¹⁹ to issue a civil citation or require the juvenile’s participation in a similar diversion program when the juvenile is under 16 years of age for the following enumerated first-time “misdemeanor offenses”:²⁰

- Possession of alcoholic beverages by a person under age 21;²¹
- Petit theft;²²
- Retail theft;²³
- Resisting an officer without violence;²⁴
- Disorderly conduct;²⁵
- Possession of cannabis or other controlled substances;²⁶ or
- Use, possession, manufacture, delivery, transportation, advertisement, or retail sale of drug paraphernalia.²⁷

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

- Any first-time misdemeanor offense that is not one of the enumerated “misdemeanor offenses” or any enumerated “misdemeanor offense” that is committed by a juvenile who is 16 years of age or older; or
- Any second or third-time misdemeanor offense, regardless of whether the offense is one of the enumerated “misdemeanor offenses.”

A law enforcement officer must provide written documentation articulating why an arrest is warranted if he or she has discretion under the statute to issue a civil citation but chooses instead to arrest the juvenile.

The bill specifies that civil citation programs do not apply to the following:

¹⁹ 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.

²⁰ The bill defines “misdemeanor offense” as one or more violations of law arising out of the same criminal episode, act, or transaction.

²¹ Section 562.111, F.S.

²² Section 812.014(2)(e) and (3)(a), F.S.

²³Section 812.015(2), F.S.

²⁴ Section 843.02, F.S.

²⁵ Section 877.03, F.S.

²⁶ Section 893.13(6)(b), F.S.

²⁷Section 893.147, F.S.

- 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.
- A 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.
- A 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 the civil citation law, s. 985.12, F.S., does not modify the authority of a law enforcement officer to issue only a simple warning to the juvenile or to notice the juvenile's guardian or parent of the alleged offense.

The bill retains current statutory provisions relating to the following:

- The program requirements placed upon juveniles participating in a civil citation program, including community service hours, intervention services, and time frames to complete the program;
- The ability of juveniles to refuse participation in a civil citation program;
- The requirement of DJJ and law enforcement officers to forward civil citations to specified parties;
- The requirement for civil citation programs to report the juveniles' outcomes to DJJ; and
- Participation in a civil citation program is not considered a referral to DJJ.

The bill extends the time period that a youth is required to report to a community service performance monitor from seven to ten working days after the civil citation has been issued.

Section 2 amends s. 943.051, F.S., to make conforming changes.

Section 3 amends s. 985.11, F.S., to make conforming changes.

Section 4 provides an effective date of July 1, 2016.

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:

Expanding the use of civil citation programs could result in more youth having future opportunities for employment since these youth will not have the hurdle of an arrest record.

C. Government Sector Impact:

The increase in civil citations under the bill could result in a potential cost savings to the state and local governments as youth are diverted from the more costly juvenile justice system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 985.12 of the Florida Statutes.

The bill makes conforming technical changes to sections 943.051 and 985.11 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Rules on February 29, 2016:

- Deletes s. 784.03(1), relating to battery, and s. 870.01(1), relating to affrays and riots, from the list of enumerated “misdemeanor offenses” under the bill.

CS/CS by Children, Families, and Elder Affairs on February 24, 2016:

- Requires the law enforcement officer to issue a civil citation or require the participation in a similar diversion program to a juvenile when the juvenile is under 16 years of age and if each violation of law in the misdemeanor offense is one of the enumerated offenses.

- Allows law enforcement officers the discretion to issue a civil citation or require the juvenile's participation in a similar diversion program regardless of whether the violation is one of the enumerated offenses identified in the bill.

CS by Criminal Justice on February 16, 2016:

- Requires a law enforcement officer to issue a civil citation or require the juvenile's participation in a similar diversion program for specified first-time "misdemeanor offenses" as enumerated by the bill.
- Permits the issuance of a civil citation or similar diversion program for a first-time misdemeanor offense that is not enumerated under the bill or any second or third-time misdemeanor offense, regardless of whether the offense is an enumerated "misdemeanor offense."
- Provides that the following misdemeanors are enumerated "misdemeanor offenses" for purposes of issuing a civil citation: possession of alcoholic beverages by a minor; battery, under certain circumstances; petit theft; retail theft; affrays and riots; disorderly conduct; possession of cannabis or other controlled substances; use, possession, sale, manufacture, delivery, transportation, advertisement, or retail sale of drug paraphernalia; and resisting an officer without violence.
- Deletes the provision requiring prior approval if a law enforcement officer makes an arrest instead of issuing a civil citation.
- Extends the time period that a youth is required to report to a community service performance monitor from seven to ten working days after the civil citation has been issued.

B. Amendments:

None.