

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 367 Prearrest Diversion Programs

SPONSOR(S): Plakon

TIED BILLS: HB 369 **IDEN./SIM. BILLS:** SB 448

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Brummett	White
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

In the criminal prosecution context, diversion refers to programs that place an individual on a justice track that is less restrictive and affords more opportunities for rehabilitation and restoration. Diversion may also result in the avoidance or dropping of a charge and dismissal of a criminal case completely.

One form of prearrest diversion is a civil citation program. Under this type of program, a law enforcement officer may issue a civil citation to an individual who commits an eligible misdemeanor offense (as determined by the prearrest diversion program), meets other eligibility requirements, and agrees to successfully complete a program that incorporates interventions and sanctions, such as community service hours and restitution.

Juvenile civil citation programs are established in Florida law and currently operate throughout the state. Leon County also operates an adult civil citation program (ACCP). Florida law does not specifically address ACCPs or other prearrest diversion programs for adults.

The bill creates s. 901.40, F.S., to encourage local communities and public and private educational institutions to implement a prearrest diversion program. The bill provides a framework for a model ACCP and allows a law enforcement officer, at the officer's sole discretion, to issue a civil citation or similar prearrest diversion program notice to an adult who:

- Commits a qualifying misdemeanor offense (as determined by the program);
- Does not contest that he or she committed the offense; and
- Has not previously been arrested or received an adult civil citation, unless the program terms provide otherwise.

The bill requires an adult who receives a civil citation or similar notice to report for intake and comply with specified requirements. Upon successful completion of the ACCP, the adult will avoid an arrest record for the offense. If the adult does not successfully complete the ACCP, the law enforcement agency that issued the citation or similar notice may criminally charge the adult for the original offense and refer the case to the state attorney to determine if prosecution is appropriate.

The model program requires specified persons to participate in the creation of the prearrest diversion program and in the development of its policies and procedures. The persons responsible for developing the program must solicit input from other interested stakeholders.

The bill is effective on July 1, 2017.

The bill does not have a fiscal impact on state government. With respect to local governments, the bill could result in a cost savings if an ACCP is created. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Diversion - Generally

In its most general usage, diversion means that an individual is placed on a justice track that is less restrictive and affords more opportunities for rehabilitation and restoration.¹ Diversion may result in the avoidance or dropping of a charge and dismissal of a case completely.² Florida currently provides *post* arrest diversion alternatives to certain qualifying offenders for participation in pretrial intervention programs that include, but are not limited to, therapeutic treatment court programs.³ Generally, failure to complete the requirements of such programs can result in the case reverting to normal channels for prosecution, while successful completion of the requirements results in dismissal of the charges.⁴

One diversion alternative that occurs *prior* to arrest is a civil citation program where a law enforcement officer issues a civil citation to an individual who commits an eligible misdemeanor offense (as determined by the prearrest diversion program), meets other eligibility requirements, and agrees to successfully complete a program that incorporates interventions and sanctions, such as community service hours and restitution. If the individual successfully completes the program, he or she is not arrested and will not have an arrest record.⁵

Juvenile civil citation programs are established in Florida law and operate throughout the state.⁶ Leon County also operates an adult civil citation program.⁷ Florida law does not specifically address adult civil citation programs or other prearrest diversion programs for adults.

Juvenile Civil Citation Program

The Juvenile Civil Citation Program (JCCP), created by s. 985.12, F.S., provides law enforcement with an alternative to taking juveniles who have committed non-serious delinquent acts into custody while ensuring swift and appropriate consequences.⁸ JCCPs are open to juveniles with no criminal history who admit to committing a qualifying misdemeanor.⁹ Law enforcement agencies are not required to issue civil citations and there is variation in the current use of JCCPs among agencies and counties.¹⁰ Under a JCCP, a law enforcement officer (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 and assess up to 50 hours of community service and require participation in intervention services; or

¹ Center for Health and Justice at TASC, *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives* (December 2013), pg. 6, available at

http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf (last visited February 3, 2017).

² *Id.*

³ Section 948.08, F.S., provides for pretrial intervention programs including a treatment based drug court program, a pretrial veterans' treatment intervention program, and a pretrial mental health court program.

⁴ *Id.*

⁵ Civil Citation Network, *Adult Civil Citation Program*, (revised September 2013), pg. 2, available at <http://www.discvillage.com/DOCS/AdultCivilCitationBrochure.pdf> (last visited February 3, 2017).

⁶ Section 985.12, F.S.

⁷ Dan Sullivan, *Florida Law Enforcement Agencies Consider Adult Civil Citations*, OFFICER.COM (December 3, 2012) <http://www.officer.com/news/10836959/fla-le-agencies-consider-adult-civil-citations>.

⁸ s. 985.12(1), F.S.

⁹ The Department of Juvenile Justice's guidelines suggest certain misdemeanors, including those related to the possession of a firearm, a sexually related offense, or a gang related offense may not always be appropriate for civil citation, but should be judged on a case by case basis. DJJ, *Civil Citation Model Plan, A Guide to Implementation*, DJJ (October 2015), available at <http://www.djj.state.fl.us/docs/probation-policy-memos/civil-citation-model-plan.pdf?Status=Master&sfvrsn=4> (last visited February 3, 2017).

¹⁰ *Id.*

- Arrest the juvenile, conditioned upon the LEO providing written documentation as to why an arrest was warranted.¹¹

The availability of the above-mentioned options are not limited to first-time misdemeanors and can also be used for up to two subsequent misdemeanors.¹² The statute requires the LEO issuing the civil citation¹³ to advise the juvenile of his or her option to refuse the citation and instead be arrested and referred to a DJJ intake office.¹⁴

A juvenile who elects to participate in the JCCP 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.¹⁵ Upon completion of the program, the agency operating the JCCP must report the outcome to DJJ.¹⁶

Adult Civil Citation

The American Bar Association has observed: “Although Florida’s civil citation programs are focused on juveniles, the guidelines and principles inherent in the programs are generally applicable to adults, as well.”¹⁷ Leon County currently operates an adult civil citation program (ACCP).

Leon County Adult Civil Citation Program

Under the Leon County program, a law enforcement officer has the discretion to issue a civil citation after the officer has determined probable cause for an arrest and has obtained an admission to the offense following the administration of Miranda Warnings.¹⁸ The law enforcement officer must then verify whether the adult meets all of the following criteria:

- The offense is one of the following misdemeanors:
 - Possession of alcohol by a person under 21 years of age;¹⁹
 - Possession of less than 20 grams of marijuana;²⁰
 - Possession of drug paraphernalia;²¹
 - An open house party violation;²²
 - Selling or giving alcoholic beverages to a minor;²³
 - Criminal mischief (restitution may not exceed \$50);²⁴
 - Trespass;²⁵
 - Non-domestic battery or assault;²⁶
 - Petit theft (restitution may not exceed \$50);²⁷ or
 - Disorderly conduct.²⁸

¹¹ s. 985.12(1), F.S.

¹² *Id.*

¹³ 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.

¹⁴ The youth has the right to opt out of the JCCP and be referred to a DJJ intake office at any time before completion of the work assignment. s. 985.12(6), F.S.

¹⁵ s. 985.12(4), F.S.

¹⁶ s. 985.12(1), F.S.

¹⁷ American Bar Association, Criminal Justice Section, *State Policy Implementation Project*, pg. 5, available at http://www.americanbar.org/content/dam/aba/administrative/criminal_justice/spip_civilcitations.authcheckdam.pdf (last visited February 4, 2017).

¹⁸ Civil Citation Network, Pilot Adult Civil Citation Program, *Implementation Guide*, Second Judicial Circuit of Florida, (August 2013), pg. 4, available at <http://www.civilcitationnetwork.com/docs/Implementation-Guide.pdf> (last visited February 4, 2017)(hereinafter cited to as “Implementation Guide”).

¹⁹ In violation of s. 562.111, F.S.

²⁰ In violation of s. 893.13, F.S.

²¹ In violation of s. 893.147, F.S.

²² In violation of s. 856.015, F.S.

²³ In violation of s. 562.11, F.S.

²⁴ In violation of s. 806.13, F.S..

²⁵ In violation of s. 810.08, F.S.

²⁶ In violation of s. 784.03 or s. 784.011, F.S., respectively.

²⁷ In violation of s. 812.014, F.S.

²⁸ In violation of s. 877.03, F.S.

- The adult resides within the Second Judicial Circuit;²⁹ and
- The adult is a first-time adult offender (no previous arrest as an adult and no previous adult civil citation).³⁰

If the officer determines that the adult is eligible to participate in the ACCP and that a civil citation is appropriate, the officer must explain to the adult that participation in the ACCP is voluntary.³¹ If the adult chooses not to participate in the ACCP, the officer either issues a Notice to Appear (NTA) or transports the adult to the jail for formal booking.³²

If the adult agrees to participate in the ACCP, the officer issues a civil citation and the adult has seven days to report to DISC Village, Inc.,³³ for intake and assessment. Based on the results of the assessment and initial drug screening, the provider creates an individualized intervention plan. The intervention plan includes:

- Counseling sessions (at least three with a behavioral health specialist);
- Drug screening;
- Online educational intervention modules;
- Community service hours; and
- A program fee.³⁴

If the participant successfully completes all sanctions and intervention services, the social services provider notifies the referring law enforcement agency and the person will not have an arrest record.³⁵

If the participant does not successfully complete the program, the referring law enforcement agency is notified and then contacts the adult and attempts to issue a NTA. If the adult does not comply with arrangements to receive a NTA, an arrest affidavit and warrant are submitted to the court. Subsequently, the adult may face prosecution if the state attorney determines that prosecution is appropriate.³⁶

Statistics on the Leon County Adult Civil Citation Program

Between March 2013 and August 2016, 1,113 adult civil citations were issued by the Tallahassee Police Department and Leon County Sheriff's Office.³⁷ Fifty-four percent of the citations issued were for petit theft; 25 percent issued were for possession of marijuana; seven percent issued were for possession of alcohol by a minor; five percent issued were for battery/assault; four percent issued were for possession of drug paraphernalia; two percent issued were for criminal mischief; and three percent issued were for other offenses.³⁸

Approximately 83 percent of the ACCP participants successfully completed the program. The successful completion rate for each offense was:

- 84 percent for criminal mischief;
- 88 percent for possession of alcohol by a person under 21 years of age;
- 83 percent for petit theft;

²⁹ The Second Judicial Circuit includes the following counties: Franklin; Gadsden; Jefferson; Leon; Liberty; and Wakulla. *See* Florida's Second Judicial Circuit, *Court Map*, available at <http://2ndcircuit.leoncountyfl.gov/> (last visited February 4, 2017). *See also* Implementation Guide, at 2-3.

³⁰ A prior juvenile civil citation does not make the adult ineligible. Implementation Guide, at pg. 3.

³¹ Civil Citation Network, *Adult Civil Citation Program* (revised September 2013), pg.2, available at <http://www.discvillage.com/DOCS/AdultCivilCitationBrochure.pdf> (last visited February 3, 2017). .

³² *Id.*

³³ DISC Village, Inc., is a non-profit social services provider. DISC Village, Inc., also operates the juvenile assessment center and juvenile civil citation program that serve counties in the Second Judicial Circuit. *See Disc Village*, available at <http://www.discvillage.com/home.html> (last visited February 4, 2017).

³⁴ Implementation Guide at 5, 7-12.

³⁵ *Id.* at 12.

³⁶ *Id.*

³⁷ Civil Citation Network, *Tallahassee/Leon County Three-Year Outcomes, Prearrest Diversion Adult Civil Citation Program*, pg.1 (on file with Criminal Justice Subcommittee).

³⁸ *Id.*

- 84 percent for possession of less than 20 grams of marijuana;
- 76 percent for non-domestic battery or assault; and
- 74 percent for other offenses.³⁹

Of those who successfully completed the ACCP, the rearrest rate was seven percent. Of those who did not successfully complete the program, the rearrest rate was 61 percent.⁴⁰

Effect of the Bill

The bill creates s. 901.40, F.S., to encourage local communities and public or private educational institutions to implement a prearrest diversion program for adults. The bill provides a framework for a model ACCP. The model program allows a law enforcement officer, at the officer's sole discretion, to issue a civil citation or similar prearrest diversion program notice to an adult who:

- Commits a qualifying misdemeanor offense (as determined by the program); and
- Does not contest that he or she committed the offense.

Unless the terms of the program allow otherwise, an adult is not eligible for ACCP if he or she has previously been arrested or received an adult civil citation.

The bill requires an adult who receives a civil citation or similar notice to report for intake and be provided with appropriate assessment, intervention, education, and behavioral health care services. While in the ACCP, the adult must complete the required community service hours and pay restitution.

The bill provides that if the adult successfully completes the ACCP, an arrest record may not be associated with the offense. If the adult does not successfully complete the ACCP, the law enforcement agency that issued the citation or similar notice may criminally charge the adult for the original offense and refer the case to the state attorney to determine if prosecution is appropriate.

The model program requires the participation of specific persons in the creation of the program and development of its policies and procedures relating to eligibility criteria, program implementation and operation, and determination of the program fee, if any. The following persons are required to participate in program development and to solicit input from other interested stakeholders:

- Representatives of the law enforcement agencies participating in the program;
- A representative of the program services provider;
- The public defender;
- The state attorney; and
- The clerk of the circuit court.

The bill specifies that the newly created section of law does not preempt a county or municipality from enacting noncriminal sanctions for a violation of an ordinance or other violation. Further, the bill states that a county, municipality, or public or private educational institution is not preempted from creating its own model for an ACCP.

The bill takes effect July 1, 2017.

B. SECTION DIRECTORY:

Section 1. Creates s. 901.40, F.S., relating to adult prearrest diversion programs.

Section 2. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

³⁹ *Id.* at 2.

⁴⁰ *Id.* at 3-4.

1. Revenues: The bill does not appear to have any impact on state government revenues.
2. Expenditures: The bill does not appear to have any impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not mandate that local governments or public or private educational institutions create a prearrest diversion program for adults. Under the Leon County model, the ACCP is self-sustaining (paid for by program fees). Creation of an adult civil citation program could result in cost savings (e.g., reduced detention/confinement costs and arrest/booking processing costs), depending on the number of eligible offenses, other eligibility criteria chosen, the pool of eligible adults, the number of participating law enforcement agencies, the use of civil citations by those agencies, and any impact the program may have in reducing arrests.
2. Expenditures: The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: Under the Leon County model, an eligible adult who chooses to participate in the ACCP must pay a program fee, but this fee may be waived if the participant does not have the means to pay it.

D. FISCAL COMMENTS: None.

II. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The bill does not mandate that local governments create ACCP; it only “encourages” the creation of such a program. Additionally, criminal laws are excluded from Article VII, section 18 of the Florida Constitution, relating to state mandates that affect revenues and expenditures of local governments.
2. Other: The bill does not appear to create the need for rulemaking or rulemaking or rulemaking authority.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

III. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 15, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that it amends the model ACCP outlined in the bill, which provides an implementation guide for local communities and educational institutions, to account for existing variances in adult prearrest diversion programs currently operating in this state. Under the CS, the suggested ACCP eligibility requirements are amended, with those existing programs in mind, to allow programs the option to permit an adult to be eligible for a civil citation: (a) when the adult commits any misdemeanor offense, rather than only a nonviolent misdemeanor offense; (b) without requiring the consent of a victim; (c) if the adult does not contest the offense, rather than requiring an admission to the offense; and (d) when the adult has a previous arrest or has previously received a civil citation. The CS also recognizes that an ACCP may determine that a fee for program participation should not

be required. Finally, the CS provides that if an adult fails to successfully complete the program, a model ACCP may decide if referral for prosecution is appropriate, rather than making such referral a requirement.

This analysis is drafted to the CS as passed by the Criminal Justice Subcommittee.