

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 997 Juvenile Civil Citations

SPONSOR(S): Justice Appropriations Subcommittee; Pilon and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1300

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|------------------|----------|--|
| 1) Criminal Justice Subcommittee | 12 Y, 0 N | Williams | Cunningham |
| 2) Justice Appropriations Subcommittee | 11 Y, 0 N, As CS | Toms | Jones Darity |
| 3) Judiciary Committee | | Williams | Havlicak |

SUMMARY ANALYSIS

Civil Citation Programs (CCP) and other diversion programs provide law enforcement with an alternative to taking youth into custody. Under a diversion program, a law enforcement officer, upon making contact with a juvenile who admits having committed a misdemeanor, may issue a civil citation assessing not more than 50 community service hours, and requiring participation in intervention services appropriate to identified needs of the juvenile. If the child fails to report timely for a work assignment, complete a work assignment, or comply with assigned intervention services within the prescribed time, the law enforcement officer must issue a report alleging the child has committed a delinquent act and a juvenile probation officer must commence the intake process pursuant to s. 985.145, F.S.

Currently, s. 985.12, F.S., *authorizes* the establishment of civil citation programs 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. Local entities are not *required* to establish civil citation programs.

The bill amends s. 985.12, F.S., to *require* that a civil citation or similar diversion program be established at the local level. The bill specifies that the program may be operated by:

- A law enforcement agency;
- The Department of Juvenile Justice (DJJ);
- A juvenile assessment center;
- A county or municipality; or
- An entity selected by a county or municipality.

The bill requires DJJ to develop guidelines for the civil citation program which include intervention services that are based upon proven civil citation or similar diversion programs within Florida.

The bill restricts civil citation or similar diversion programs to only first-time misdemeanor offenders and requires juveniles participating in a civil citation or similar diversion program to participate in no more than 50 community service hours and intervention services as indicated by an assessment of the juvenile's needs. Upon completion of the civil citation or similar diversion program, the agency who issued the citation must report the outcome to DJJ.

By requiring that civil citation or similar diversion programs be established at the local level, the bill may have a positive fiscal impact on DJJ, the counties, and the courts. However, the precise impact of the bill will depend on the utilization of the civil citation or similar diversion program and the success rate of the program. See "Fiscal Analysis" section.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Juvenile Justice Process

The juvenile justice process starts when a law enforcement agency charges a youth¹ with a law violation.² Depending on the seriousness of the offense and the law enforcement officer's view of what is needed to appropriately address the offense, the law enforcement officer may:

- Deliver the youth to a Juvenile Assessment Center (JAC) for intake screening to further assess the youth's risk to the community and to determine if some type of detention is necessary.
- Call an "on call screener" to assess the youth's risk and determine if detention is necessary (this is done in localities where a JAC is not available).
- Release the youth to a parent or guardian and forward the charges to the local clerk of court and Department of Juvenile Justice (DJJ) Probation office.
- Release the youth to parent or guardian with a direct referral to a diversion program.³

Civil Citation Program

The Civil Citation Program (CCP) is a diversion program, created by s. 985.12, F.S., that provides law enforcement with an alternative to taking youth into custody while ensuring swift and appropriate consequences for youth who commit non-serious delinquent acts.⁴ Under a CCP, a law enforcement officer, upon making contact with a juvenile who admits having committed a misdemeanor, may issue a civil citation assessing not more than 50 community service hours, and requiring participation in intervention services appropriate to identified needs of the juvenile, including family counseling, urinalysis monitoring, and substance abuse and mental health treatment services.⁵ The statute requires the law enforcement officer issuing the civil citation to advise the child of his or her option to refuse the citation and be referred to a DJJ intake office.⁶

A child that elects to participate in the CCP must report to the community service performance monitor within seven working days after the date of issuance of the civil citation.⁷ The work assignment must be accomplished at a rate of not less than 5 hours per week.⁸ If the child 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 must issue a report alleging the child has committed a delinquent act and a juvenile probation officer must commence the intake process pursuant to s. 985.145, F.S.⁹

The statute requires the law enforcement officer issuing the civil citation to provide a copy to:

- DJJ;¹⁰
- The county sheriff;
- State attorney;
- The appropriate DJJ intake office;
- The community performance monitor designated by DJJ;

¹ "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." s. 985.03(6), F.S.,

² Florida Department of Juvenile Justice, Juvenile, Justice Process. May 2009. (<http://www.djj.state.fl.us/Parents/juvenileprocess.html>) (last accessed March 17, 2011).

³ *Id.*

⁴ Rule 63D-10.002(4) (2010), F.A.C.

⁵ Section 985.12(1), F.S.

⁶ Section 985.12(5), F.S.

⁷ Section 985.12(3), F.S.

⁸ *Id.*

⁹ Section 985.12(4), F.S.

¹⁰ Upon receiving the citation, DJJ must enter the information into the juvenile offender information system. s. 985.12(1), F.S.

- The parents or guardian of the youth; and
- The victim.¹¹

Currently, s. 985.12, F.S., authorizes the establishment of civil citation programs 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.¹² Local entities are not required to establish civil citation programs.

There are currently 28 CCPs, all of which are funded at the local level.¹³

Diversion Programs

Diversion programs are non-judicial alternatives used to keep youth who have committed a delinquent act from being handled through the traditional juvenile justice system.¹⁴ These services are intended to intervene at an early stage of delinquency, prevent subsequent offenses during and after participation in the programs, and provide an array of services to juvenile offenders.¹⁵ Diversion programs include Community Arbitration, Juvenile Alternative Services Program, Teen Court, Boy and Girl Scouts, Boys and Girls Clubs, alternative schools and other mentoring programs. Diversion programs that use non-judicial sanctions include:

- restitution (payment) to victims;
- community service;
- letter of apology to the victims;
- curfew;
- forfeiture of driver's license;
- encouragement to avoid contact with inappropriate associations;
- referrals to local social services agencies and/or
- substance abuse or mental health counseling.¹⁶

Diversion programs are established in statute and may be pre-arrest or post-arrest programs. Section 985.125, F.S., allows for law enforcement agencies or school districts, in cooperation with state attorneys, to establish diversion programs. These programs may provide for the expunction of the nonjudicial arrest record of a minor who successfully completes the program.¹⁷

Effect of the bill

The bill amends s. 985.12, F.S., to require that a civil citation or similar diversion program be established at the local level. The bill specifies that the program may be operated by a law enforcement agency, DJJ, a juvenile assessment center, a county or municipality, or an entity selected by a county or municipality.

Currently, there are six circuits that do not have civil citation programs in place:¹⁸

- 1st Circuit (Escambia, Okaloosa, Santa Rosa, & Walton Counties);
- 3rd Circuit (Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, & Taylor Counties);
- 10th Circuit (Hardee, Highlands, & Polk Counties);
- 12th Circuit (DeSoto, Manatee, & Sarasota Counties);
- 14th Circuit (Bay, Calhoun, Gulf, Holmes, Jackson, & Washington Counties); and
- 15th Circuit (Palm Beach County).

¹¹ Section 985.12(2), F.S.

¹² Section 985.12(1), F.S.

¹³ March 18, 2011 e-mail from DJJ employee Theda Roberts (on file with Criminal Justice Subcommittee staff).

¹⁴ Rule 63D-10.002(1) (2010), F.A.C.

¹⁵ *Id.*

¹⁶ *Probation and Community Intervention*, <http://www.djj.state.fl.us/probation/index.html> (last accessed March 28, 2011)

¹⁷ Section 985.12(3), F.S.

¹⁸ *Circuit Civil Citation Programs – March 15, 2011*, Department of Juvenile Justice (on file with Justice Appropriations Subcommittee staff)

The bill requires DJJ to develop guidelines for the civil citation program which include intervention services that are based upon proven civil citation or similar diversion programs within Florida.

The bill restricts the program to only first-time misdemeanor offenders and requires juveniles participating in the program to participate in no more than 50 community service hours and intervention services as indicated by an assessment of the juvenile's needs. Upon completion of the program, the agency who issued the citation must report the outcome to DJJ.

The bill provides that the issuance of a civil citation is not considered a referral to DJJ. However, if the juvenile fails to report timely for a work assignment, complete a work assignment, or comply with assigned intervention services required by the citation within the prescribed time, the law enforcement officer must issue a report stating that the child has not complied with the requirements of the civil citation and the juvenile probation officer must process the original delinquent act as a referral to DJJ.

B. SECTION DIRECTORY:

Section 1. Amends s. 985.12, F.S., relating to civil citation.

Section 2. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Civil citation and diversion programs are designed to prevent youth from formally entering into the juvenile justice system. By requiring that civil citation or similar diversion programs be established at the local level, it is possible for the bill to have a positive fiscal impact on DJJ and the courts. Because civil citation and other diversion programs are designed to prevent youth from formally entering into the juvenile justice system, cost savings could occur throughout several entities within DJJ. However, the precise impact of the bill will depend on the utilization of the civil citation or similar diversion programs and the success rate of the programs.

2. Expenditures:

The bill requires DJJ to develop guidelines for the civil citation program. DJJ's analysis states the cost of the requirements in this bill are cost neutral and can be accomplished within existing funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Civil citation and diversion programs are designed to prevent youth from formally entering the juvenile justice system. Juveniles who participate in civil citation or diversion programs may avoid being placed in detention, which could have a positive fiscal impact on counties. However, the precise impact of the bill will depend on the utilization of the civil citation or similar diversion programs and the success rate of the programs.

2. Expenditures:

The bill requires that civil citation or similar diversion programs be established at the local level. Local governments may incur costs to establish such programs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill states that the civil citation or similar diversion programs "may be operated by ... some other entity selected by the county or municipality." This allows for the possibility of a private company to operate a civil citation or similar diversion program.

D. FISCAL COMMENTS:

The Department of Juvenile Justice has stated that civil citation programs can be accomplished within existing funds at the department level.¹⁹ The Department's bill analysis states that "implementation of civil citation is cost neutral" for the agency.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

To the extent that political subdivisions are obligated to expend funds in order to establish civil citation or similar diversion programs as required by the bill, the bill could constitute a mandate as defined in Article VII, Section 18 of the Florida Constitution for which no funding source is provided.

Laws that have an insignificant fiscal impact are exempt from the requirements of Article VII, Section 18 of the Florida Constitution. For purposes of legislative application of Article VII, Section 18 of the Florida Constitution, the term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Based on Florida's estimated population on April 1, 2010,²⁰ a bill that has a statewide fiscal impact on counties and municipalities in aggregate or in excess of \$1.87 million would be characterized as a mandate. It is unknown at this time how much counties and cities would be required to spend to establish civil citation or similar diversion programs required by the bill. If the fiscal impact is less than \$1.87 million, the impact is insignificant, and an exemption to the mandates provision exists.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As drafted, the bill does not specify who performs the needs assessment of the juvenile to determine the appropriate intervention service.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2011, the Justice Appropriations Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a committee substitute. The amendment adds language which gives local governments the option of implementing a civil citation program or similar diversion program. The amendment also requires the Department of Juvenile Justice to encourage and assist in the implementation and improvements of the programs.

This analysis is drafted to the committee substitute.

¹⁹ March 24, 2011 e-mail from DJJ employee Theda Roberts (on file with Justice Appropriations Subcommittee staff).

²⁰ <http://edr.state.fl.us/Content/population-demographics/reports/econographicnews-2010v1a.pdf>