

1                   A bill to be entitled  
2           An act relating to diversion programs; creating s.  
3           901.41, F.S.; providing legislative intent;  
4           encouraging local communities and public or private  
5           educational institutions to implement prearrest  
6           diversion programs for certain offenders; encouraging  
7           prearrest diversion programs to share information with  
8           other prearrest diversion programs; authorizing law  
9           enforcement officers, at their sole discretion, to  
10          issue a civil citation or similar prearrest diversion  
11          program notice under specified circumstances to adults  
12          who commit certain misdemeanor offenses; requiring an  
13          adult who receives a civil citation or similar  
14          prearrest diversion program notice to report for  
15          intake as required by the prearrest diversion program;  
16          requiring that the prearrest diversion program provide  
17          specified services to adults who participate, as  
18          appropriate; requiring that an adult who is issued a  
19          civil citation or similar prearrest diversion program  
20          notice fulfill a community service requirement;  
21          requiring the adult to pay restitution to a victim;  
22          requiring law enforcement officers to determine  
23          whether there is good cause to arrest participants who  
24          do not successfully complete a prearrest diversion  
25          program and, if so, to refer the case to the state

26 attorney, or, in the absence of good cause, to allow  
27 the participant to continue in the program; requiring  
28 representatives of specified entities to create the  
29 prearrest diversion program; requiring the entities to  
30 develop policies and procedures for the development  
31 and operation of the program, including designation of  
32 the misdemeanor offenses that qualify persons for  
33 participation, and to solicit input from other  
34 interested stakeholders; authorizing specified  
35 entities to operate programs; requiring prearrest  
36 diversion program operators to electronically provide  
37 participants' personal identifying information to the  
38 clerk of the circuit court; specifying requirements  
39 for the clerks' handling and maintenance of certain  
40 information; requiring that a portion of any  
41 participation fee go to the appropriate clerk of the  
42 circuit court; requiring fees received by the clerks  
43 of the circuit court to be deposited in a certain  
44 fund; providing applicability; amending s. 943.0582,  
45 F.S.; requiring, rather than authorizing, the  
46 Department of Law Enforcement to adopt rules for the  
47 expunction of certain nonjudicial records of the  
48 arrest of a minor upon successful completion by the  
49 minor of certain diversion programs; creating and  
50 revising definitions; authorizing such expunctions for

51 certain first-time misdemeanor offenses; revising the  
52 circumstances under which the department must expunge  
53 certain nonjudicial arrest records; deleting the  
54 department's authority to charge a processing fee for  
55 the expunction; amending s. 985.125, F.S.; conforming  
56 a provision to changes made by the act; creating s.  
57 985.126, F.S.; defining the term "diversion program";  
58 requiring the Department of Juvenile Justice to submit  
59 to the Department of Law Enforcement a certification  
60 for expunction of the nonjudicial arrest record of a  
61 minor under specified circumstances; requiring a  
62 diversion program to submit to the department  
63 specified data relating to diversion programs;  
64 requiring a law enforcement agency to submit to the  
65 department specified data about diversion programs;  
66 requiring the department to compile and publish the  
67 data in a specified manner; authorizing a minor under  
68 certain circumstances to deny or fail to acknowledge  
69 his or her expunction of a certain nonjudicial arrest  
70 record unless an exception applies; requiring the  
71 department to adopt rules; providing an effective  
72 date.

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74 Be It Enacted by the Legislature of the State of Florida:  
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76 Section 1. Section 901.41, Florida Statutes, is created to  
77 read:

78 901.41 Prearrest diversion programs.-

79 (1) LEGISLATIVE INTENT.-The Legislature encourages local  
80 communities and public or private educational institutions to  
81 implement prearrest diversion programs that afford certain  
82 adults who fulfill specified intervention and community service  
83 obligations the opportunity to avoid an arrest record. The  
84 Legislature does not mandate that a particular prearrest  
85 diversion program for adults be adopted, but finds that the  
86 adoption of the model program provided in this section would  
87 allow certain adults to avoid an arrest record while ensuring  
88 that they receive appropriate services and fulfill their  
89 community service obligations. If a prearrest diversion program  
90 is implemented, the program is encouraged to share information  
91 with other prearrest diversion programs.

92 (2) MODEL PREARREST DIVERSION PROGRAM.-Local communities  
93 and public or private educational institutions may adopt a  
94 prearrest diversion program in which:

95 (a) Law enforcement officers, at their sole discretion,  
96 may issue a civil citation or similar prearrest diversion  
97 program notice to certain adults who commit a qualifying  
98 misdemeanor offense, as determined by the representatives that  
99 develop the program under subsection (3). A civil citation or  
100 similar prearrest diversion program notice may be issued if the

101 adult who commits the offense:

102 1. Admits that he or she committed the offense or does not  
103 contest the offense; and

104 2. Has not previously been arrested and has not received  
105 an adult civil citation or similar prearrest diversion program  
106 notice, unless the terms of the local adult prearrest diversion  
107 program allow otherwise.

108 (b) An adult who receives a civil citation or similar  
109 prearrest diversion program notice shall report for intake as  
110 required by the local prearrest diversion program and must be  
111 provided appropriate assessment, intervention, education, and  
112 behavioral health care services by the program. While in the  
113 local prearrest diversion program, the adult shall perform  
114 community service hours as specified by the program. The adult  
115 shall pay restitution due to the victim as a program  
116 requirement. If the adult does not successfully complete the  
117 prearrest diversion program, the law enforcement officer must  
118 determine if there is good cause to arrest the adult for the  
119 original misdemeanor offense and, if so, refer the case to the  
120 state attorney to determine whether prosecution is appropriate  
121 or, in the absence of a finding of good cause, allow the adult  
122 to continue in the program.

123 (3) PROGRAM DEVELOPMENT; IMPLEMENTATION; OPERATION.-

124 (a) Representatives of participating law enforcement  
125 agencies, a representative of the program services provider, the

126 public defender, the state attorney, and the clerk of the  
127 circuit court shall create the prearrest diversion program and  
128 develop its policies and procedures, including, but not limited  
129 to, eligibility criteria, program implementation and operation,  
130 and the determination of the fee, if any, to be paid by adults  
131 participating in the program. In developing the program's  
132 policies and procedures, which must include the designation of  
133 the misdemeanor offenses that qualify adults for participation  
134 in the program, the representatives must solicit input from  
135 other interested stakeholders. The program may be operated by an  
136 entity such as a law enforcement agency or a county or  
137 municipality, or other entity selected by the county or  
138 municipality.

139 (b) Upon intake of an adult participating in the prearrest  
140 diversion program, the program operator shall electronically  
141 provide the participant's personal identifying information to  
142 the clerk of the circuit court for the county in which the  
143 program provides services. Such information is not a court  
144 record, and the clerk of the circuit court shall maintain the  
145 confidentiality of the participant's personal identifying  
146 information as provided in subsection (5). The clerk of the  
147 circuit court shall maintain such information in a statewide  
148 database, which must provide a single point of access for all  
149 such statewide information. If the program imposes a  
150 participation fee, the clerk of the circuit court must receive a

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151 reasonable portion, to be determined by the stakeholders  
152 creating the program, for receipt and maintenance of the  
153 required information. The fee shall be deposited by the clerk of  
154 the circuit court into the fine and forfeiture fund established  
155 under s. 142.01.

156 (4) APPLICABILITY.—This section does not preempt a county  
157 or municipality from enacting noncriminal sanctions for a  
158 violation of an ordinance or other violation, and it does not  
159 preempt a county, a municipality, or a public or private  
160 educational institution from creating its own model for a  
161 prearrest diversion program for adults.

162 Section 2. Section 943.0582, Florida Statutes, is amended  
163 to read:

164 943.0582 ~~Prearrest, postarrest, or teen court~~ Diversion  
165 program expunction.—

166 (1) Notwithstanding any law dealing generally with the  
167 preservation and destruction of public records, the department  
168 shall adopt rules to ~~may provide, by rule adopted pursuant to~~  
169 ~~chapter 120,~~ for the expunction of a ~~any~~ nonjudicial record of  
170 the arrest of a minor who has successfully completed a ~~prearrest~~  
171 ~~or postarrest~~ diversion program for a misdemeanor offense ~~minors~~  
172 as ~~authorized by s. 985.125.~~

173 (2) ~~(a)~~ As used in this section, the term:

174 (a) "Diversion program" means a program under s. 985.12,  
175 s. 985.125, s. 985.155, or s. 985.16 or a program to which a

176 referral is made by a state attorney under s. 985.15.

177 (b) "Expunction" has the same meaning ascribed in and  
178 effect as s. 943.0585, except that:

179 1. The provisions of s. 943.0585(4)(a) do not apply,  
180 except that the criminal history record of a person whose record  
181 is expunged pursuant to this section shall be made available  
182 only to criminal justice agencies for the purpose of:

183 a. Determining eligibility for ~~prearrest, postarrest, or~~  
184 ~~teen court~~ diversion programs;

185 b. ~~when the record is sought as part of~~ A criminal  
186 investigation; or

187 c. Making a prosecutorial decision under s. 985.15 ~~when~~  
188 ~~the subject of the record is a candidate for employment with a~~  
189 ~~criminal justice agency. For all other purposes, a person whose~~  
190 ~~record is expunged under this section may lawfully deny or fail~~  
191 ~~to acknowledge the arrest and the charge covered by the expunged~~  
192 ~~record.~~

193 2. Records maintained by local criminal justice agencies  
194 in the county in which the arrest occurred that are eligible for  
195 expunction pursuant to this section shall be sealed as the term  
196 is used in s. 943.059.

197 ~~(b) As used in this section, the term "nonviolent~~  
198 ~~misdemeanor" includes simple assault or battery when prearrest~~  
199 ~~or postarrest diversion expunction is approved in writing by the~~  
200 ~~state attorney for the county in which the arrest occurred.~~



201 (3) The department shall expunge the nonjudicial arrest  
202 record of a minor ~~who has successfully completed a prearrest or~~  
203 ~~postarrest diversion program~~ if the minor has not previously  
204 received an expunction under this section, the Department of  
205 Juvenile Justice submits a certification for expunction, and the  
206 department determines the minor has not been, before the  
207 expunction of the record, charged by a state attorney with or  
208 found to have committed any subsequent criminal offense or  
209 ordinance violation. ~~that minor:~~

210 (a) ~~Submits an application for prearrest or postarrest~~  
211 ~~diversion expunction,~~ on a form prescribed by the department,  
212 signed by the minor's parent or legal guardian, or by the minor  
213 if he or she has reached the age of majority at the time of  
214 applying.

215 (b) ~~Submits to the department, with the application, an~~  
216 ~~official written statement from the state attorney for the~~  
217 ~~county in which the arrest occurred certifying that he or she~~  
218 ~~has successfully completed that county's prearrest or postarrest~~  
219 ~~diversion program, that his or her participation in the program~~  
220 ~~was based on an arrest for a nonviolent misdemeanor, and~~  
221 ~~that he or she has not otherwise been charged by the state~~  
222 ~~attorney with, or found to have committed, any criminal offense~~  
223 ~~or comparable ordinance violation.~~

224 (c) ~~Participated in a prearrest or postarrest diversion~~  
225 ~~program that expressly authorizes or permits such expunction.~~

226 ~~(d) Participated in a prearrest or postarrest diversion~~  
 227 ~~program based on an arrest for a nonviolent misdemeanor that~~  
 228 ~~would not qualify as an act of domestic violence as that term is~~  
 229 ~~defined in s. 741.28.~~

230 ~~(e) Has never been, before filing the application for~~  
 231 ~~expunction, charged by the state attorney with, or found to have~~  
 232 ~~committed, any criminal offense or comparable ordinance~~  
 233 ~~violation.~~

234 ~~(4) The department is authorized to charge a \$75~~  
 235 ~~processing fee for each request received for prearrest or~~  
 236 ~~postarrest diversion program expunction, for placement in the~~  
 237 ~~Department of Law Enforcement Operating Trust Fund, unless such~~  
 238 ~~fee is waived by the executive director.~~

239 (4)~~(5)~~ Expunction or sealing granted under this section  
 240 does not prevent the minor who receives such relief from  
 241 petitioning for the expunction or sealing of a later criminal  
 242 history record as provided for in ss. 943.0583, 943.0585, and  
 243 943.059, if the minor is otherwise eligible under those  
 244 sections.

245 Section 3. Subsection (3) of section 985.125, Florida  
 246 Statutes, is amended to read:

247 985.125 Prearrest or postarrest diversion programs.—

248 ~~(3) The prearrest or postarrest diversion program may,~~  
 249 ~~upon agreement of the agencies that establish the program,~~  
 250 ~~provide for the expunction of the nonjudicial arrest record of a~~

251 ~~minor who successfully completes such a program pursuant to s.~~  
252 ~~943.0582.~~

253 Section 4. Section 985.126, Florida Statutes, is created  
254 to read:

255 985.126 Diversion programs; data collection; denial of  
256 participation or expunged record.—

257 (1) As used in this section, the term "diversion program"  
258 has the same meaning as provided in s. 943.0582.

259 (2) Upon issuance of documentation requiring a minor to  
260 participate in a diversion program, before or without an arrest,  
261 the issuing law enforcement officer shall send a copy of such  
262 documentation to the entity designated to operate the diversion  
263 program and to the department, which shall enter such  
264 information into the Juvenile Justice Information System  
265 Prevention Web.

266 (3) After a minor completes a diversion program, the  
267 entity operating the program shall report to the department the  
268 outcome of the minor's participation in the diversion program.  
269 Upon confirming the minor's successful completion of the  
270 diversion program, including a nolle prosequi or no information  
271 of the charges, if applicable, the department shall  
272 electronically submit to the Department of Law Enforcement a  
273 certification for expunction of the minor's nonjudicial arrest  
274 record under s. 943.0582. Such certification must include the  
275 minor's name, date of birth, and offender-based transaction

276 system number.

277 (a) Upon receipt of the certification for expunction from  
278 the department, the Department of Law Enforcement shall confirm  
279 the minor has not otherwise been charged by a state attorney  
280 with or been found to have committed a criminal offense or  
281 ordinance violation. Upon confirmation, the Department of Law  
282 Enforcement must expunge the minor's nonjudicial arrest record  
283 within 3 days. If the minor is found to have been charged by a  
284 state attorney with or been found to have committed a criminal  
285 offense or ordinance violation before the record expunction, the  
286 certification for expunction shall be denied and returned to the  
287 department, citing the reason for denial.

288 (b) Beginning October 1, 2018, each diversion program  
289 shall submit data to the department which identifies for each  
290 minor participating in the diversion program:

291 1. The race, ethnicity, gender, and age of that minor.

292 2. The offense committed, including the specific law  
293 establishing the offense.

294 3. The judicial circuit and county in which the offense  
295 was committed and the law enforcement agency that had contact  
296 with the minor for the offense.

297 (c) Beginning October 1, 2018, each law enforcement agency  
298 shall submit to the department data that identifies for each  
299 minor who was eligible for a diversion program, but was instead  
300 referred to the department, provided a notice to appear, or

301 arrested:

302 1. The data required pursuant to paragraph (b).

303 2. Whether the minor was offered the opportunity to  
304 participate in a diversion program. If the minor was:

305 a. Not offered such opportunity, the reason such offer was  
306 not made.

307 b. Offered such opportunity, whether the minor or his or  
308 her parent or legal guardian declined to participate in the  
309 diversion program.

310 (d) The data required pursuant to paragraphs (b) and (c)  
311 shall be submitted to the department quarterly.

312 (4) Beginning January 1, 2019, the department shall  
313 compile and semiannually publish the data required by subsection  
314 (3) on the department's website in a format that is, at a  
315 minimum, sortable by judicial circuit, county, law enforcement  
316 agency, race, ethnicity, gender, age, and offense committed.

317 (5) A minor who successfully completes a diversion program  
318 for a first-time misdemeanor offense may lawfully deny or fail  
319 to acknowledge his or her participation in the program and an  
320 expunction of a nonjudicial arrest record under s. 943.0582,  
321 unless the inquiry is made by a criminal justice agency, as  
322 defined in s. 943.045, for a purpose described in s.  
323 943.0582(2)(b)1.

324 (6) The department shall adopt rules to implement this  
325 section.

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326 | Section 5. This act shall take effect July 1, 2018. |