

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; specifying that certain
45 offenses are ineligible for such programs; amending s.
46 943.0582, F.S.; requiring, rather than authorizing,
47 the Department of Law Enforcement to adopt rules for
48 the expunction of certain nonjudicial records of the
49 arrest of a minor upon successful completion by the
50 minor of certain diversion programs; creating and

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

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69 Be It Enacted by the Legislature of the State of Florida:

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71 Section 1. Section 901.41, Florida Statutes, is created to
72 read:

73 901.41 Prearrest diversion programs.—

74 (1) LEGISLATIVE INTENT.—The Legislature encourages local
75 communities and public or private educational institutions to

76 implement prearrest diversion programs that afford certain
77 adults who fulfill specified intervention and community service
78 obligations the opportunity to avoid an arrest record. The
79 Legislature does not mandate that a particular prearrest
80 diversion program for adults be adopted, but finds that the
81 adoption of the model program provided in this section would
82 allow certain adults to avoid an arrest record while ensuring
83 that they receive appropriate services and fulfill their
84 community service obligations. If a prearrest diversion program
85 is implemented, the program is encouraged to share information
86 with other prearrest diversion programs.

87 (2) MODEL PREARREST DIVERSION PROGRAM.—Local communities
88 and public or private educational institutions may adopt a
89 prearrest diversion program in which:

90 (a) Law enforcement officers, at their sole discretion,
91 may issue a civil citation or similar prearrest diversion
92 program notice to certain adults who commit a qualifying
93 misdemeanor offense, as determined by the representatives that
94 develop the program under subsection (3). A civil citation or
95 similar prearrest diversion program notice may be issued if the
96 adult who commits the offense:

97 1. Admits that he or she committed the offense or does not
98 contest the offense; and

99 2. Has not previously been arrested and has not received
100 an adult civil citation or similar prearrest diversion program

101 notice, unless the terms of the local adult prearrest diversion
102 program allow otherwise.

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

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

119 (a) Representatives of participating law enforcement
120 agencies, a representative of the program services provider, the
121 public defender, the state attorney, and the clerk of the
122 circuit court shall create the prearrest diversion program and
123 develop its policies and procedures, including, but not limited
124 to, eligibility criteria, program implementation and operation,
125 and the determination of the fee, if any, to be paid by adults

126 participating in the program. In developing the program's
127 policies and procedures, which must include the designation of
128 the misdemeanor offenses that qualify adults for participation
129 in the program, the representatives must solicit input from
130 other interested stakeholders. The program may be operated by an
131 entity such as a law enforcement agency or a county or
132 municipality, or other entity selected by the county or
133 municipality.

134 (b) Upon intake of an adult participating in the prearrest
135 diversion program, the program operator shall electronically
136 provide the participant's personal identifying information to
137 the clerk of the circuit court for the county in which the
138 program provides services. Such information is not a court
139 record, and the clerk of the circuit court shall maintain the
140 confidentiality of the participant's personal identifying
141 information as provided in subsection (5). The clerk of the
142 circuit court shall maintain such information in a statewide
143 database, which must provide a single point of access for all
144 such statewide information. If the program imposes a
145 participation fee, the clerk of the circuit court must receive a
146 reasonable portion, to be determined by the stakeholders
147 creating the program, for receipt and maintenance of the
148 required information. The fee shall be deposited by the clerk of
149 the circuit court into the fine and forfeiture fund established
150 under s. 142.01.

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

157 (6) ELIGIBILITY.—A misdemeanor crime of domestic violence,
 158 as defined in s. 741.28, or a misdemeanor under s. 741.29, s.
 159 741.31, s. 784.046, s. 784.047, s. 784.048, s. 784.0487, or s.
 160 784.049 does not qualify for a civil citation or prearrest
 161 diversion program.

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 that minor:

204 (a) Submits an application for ~~prearrest or postarrest~~
205 diversion expunction, on a form prescribed by the department,
206 signed by the minor's parent or legal guardian, or by the minor
207 if he or she has reached the age of majority at the time of
208 applying.

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

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

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

224 (c) ~~(e)~~ Has never been, before filing the application for
225 expunction, charged by the state attorney with, or found to have

226 committed, any criminal offense or comparable ordinance
 227 violation.

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

233 (4)(5) Expunction or sealing granted under this section
 234 does not prevent the minor who receives such relief from
 235 petitioning for the expunction or sealing of a later criminal
 236 history record as provided for in ss. 943.0583, 943.0585, and
 237 943.059, if the minor is otherwise eligible under those
 238 sections.

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

241 985.125 Prearrest or postarrest diversion programs.—

242 ~~(3) The prearrest or postarrest diversion program may,~~
 243 ~~upon agreement of the agencies that establish the program,~~
 244 ~~provide for the expunction of the nonjudicial arrest record of a~~
 245 ~~minor who successfully completes such a program pursuant to s.~~
 246 ~~943.0582.~~

247 Section 4. Section 985.126, Florida Statutes, is created
 248 to read:

249 985.126 Diversion programs; data collection; denial of
 250 participation or expunged record.—

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

253 (2) Upon issuance of documentation requiring a minor to
254 participate in a diversion program, before or without an arrest,
255 the issuing law enforcement officer shall send a copy of such
256 documentation to the entity designated to operate the diversion
257 program and to the department, which shall enter such
258 information into the Juvenile Justice Information System
259 Prevention Web.

260 (3)(a) Beginning October 1, 2018, each diversion program
261 shall submit data to the department which identifies for each
262 minor participating in the diversion program:

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

264 2. The offense committed, including the specific law
265 establishing the offense.

266 3. The judicial circuit and county in which the offense
267 was committed and the law enforcement agency that had contact
268 with the minor for the offense.

269 (b) Beginning October 1, 2018, each law enforcement agency
270 shall submit to the department data that identifies for each
271 minor who was eligible for a diversion program, but was instead
272 referred to the department, provided a notice to appear, or
273 arrested:

274 1. The data required pursuant to paragraph (a).

275 2. Whether the minor was offered the opportunity to

276 participate in a diversion program. If the minor was:

277 a. Not offered such opportunity, the reason such offer was
278 not made.

279 b. Offered such opportunity, whether the minor or his or
280 her parent or legal guardian declined to participate in the
281 diversion program.

282 (c) The data required pursuant to paragraphs (a) and (b)
283 shall be submitted to the department quarterly.

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

289 (5) A minor who successfully completes a diversion program
290 for a first-time misdemeanor offense may lawfully deny or fail
291 to acknowledge his or her participation in the program and an
292 expunction of a nonjudicial arrest record under s. 943.0582,
293 unless the inquiry is made by a criminal justice agency, as
294 defined in s. 943.045, for a purpose described in s.
295 943.0582(2)(b)1.

296 (6) The department shall adopt rules to implement this
297 section.

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