

By Senator Brandes

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1 A bill to be entitled
2 An act relating to prearrest diversion programs;
3 creating s. 901.40, F.S.; providing legislative
4 findings and intent; encouraging counties,
5 municipalities, and public or private educational
6 institutions to implement prearrest diversion
7 programs; requiring that in each judicial circuit the
8 public defender, the state attorney, the clerks of the
9 court, and representatives of participating law
10 enforcement agencies create a prearrest diversion
11 program and develop its policies and procedures;
12 authorizing such entities to solicit stakeholders for
13 input in developing the program's policies and
14 procedures; providing requirements for the prearrest
15 diversion program; requiring the state attorney of
16 each circuit to operate the prearrest diversion
17 program; providing an exception; providing
18 construction; requiring the arresting law enforcement
19 officer to make a determination if an adult does not
20 successfully complete the prearrest diversion program;
21 requiring the state attorney or the person operating
22 an independent prearrest diversion program to
23 electronically provide certain information to the
24 clerk of the court; requiring the clerk of the court
25 to maintain the confidentiality of such information;
26 requiring the clerk of the court to maintain that
27 information in a statewide database; amending s.
28 943.0582, F.S.; requiring, rather than authorizing,
29 the Department of Law Enforcement to adopt rules for

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30 the expunction of certain nonjudicial records of the
31 arrest of a minor upon his or her successful
32 completion of a certain diversion program; authorizing
33 such expunctions for certain first-time misdemeanor
34 offenses; defining and revising terms; revising the
35 circumstances under which the department must expunge
36 certain nonjudicial arrest records; deleting the
37 department's authority to charge a processing fee for
38 the expunction; amending s. 985.12, F.S.; providing
39 legislative findings and intent; deleting provisions
40 establishing a juvenile civil citation process with a
41 certain purpose; establishing a civil citation or
42 similar diversion program in each judicial circuit,
43 rather than at the local level with the concurrence of
44 specified persons; requiring that the state attorney
45 and public defender of each circuit, the clerk of the
46 court for each county in the circuit, and
47 representatives of participating law enforcement
48 agencies create a civil citation or similar diversion
49 program and develop its policies and procedures;
50 authorizing such entities to solicit stakeholders for
51 input in developing the program's policies and
52 procedures; providing requirements for the civil
53 citation or similar diversion program; requiring the
54 state attorney of each judicial circuit to operate the
55 civil citation or similar diversion program; providing
56 an exception; providing construction; requiring the
57 arresting law enforcement officer to make a
58 determination if a juvenile does not successfully

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59 complete the civil citation or similar diversion
60 program; deleting provisions relating to the operation
61 of and requirements for a civil citation or similar
62 diversion program; requiring that a copy of each civil
63 citation or similar diversion program notice be
64 provided to the Department of Juvenile Justice;
65 conforming provisions to changes made by the act;
66 deleting provisions relating to requirements for a
67 civil citation or similar diversion program; amending
68 s. 985.125, F.S.; conforming a provision to changes
69 made by the act; creating s. 985.126, F.S.; defining
70 the term "diversion program"; requiring a diversion
71 program to submit to the Department of Law Enforcement
72 a certification for expunction of the nonjudicial
73 arrest record of a juvenile under specified
74 circumstances; requiring a diversion program to submit
75 to the Department of Juvenile Justice specified data
76 relating to diversion programs; requiring the
77 Department of Juvenile Justice to compile and publish
78 the data in a specified manner; authorizing a juvenile
79 under certain circumstances to deny or fail to
80 acknowledge his or her participation in a diversion
81 program or the expunction of a certain nonjudicial
82 arrest record unless an exception applies; providing
83 an effective date.

84
85 Be It Enacted by the Legislature of the State of Florida:

86
87 Section 1. Section 901.40, Florida Statutes, is created to

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88 read:

89 901.40 Prearrest diversion programs.-

90 (1) LEGISLATIVE FINDINGS AND INTENT.-The Legislature finds
91 that the creation and implementation of prearrest diversion
92 programs at the judicial circuit level promotes public safety,
93 aids interagency cooperation, and provides the greatest chance
94 of success for prearrest diversion programs. The Legislature
95 further finds that the widespread use of prearrest diversion
96 programs has a positive effect on the criminal justice system
97 and contributes to an overall reduction in the crime rate and
98 recidivism in the state. The Legislature encourages but does not
99 mandate that counties, municipalities, and public or private
100 educational institutions participate in a prearrest diversion
101 program created by their judicial circuit under this section.

102 (2) JUDICIAL CIRCUIT PREARREST DIVERSION PROGRAM
103 DEVELOPMENT, IMPLEMENTATION, OPERATION.-

104 (a) In each judicial circuit in the state, the public
105 defender, the state attorney, the clerk of the court for each
106 county in the circuit, and representatives of participating law
107 enforcement agencies in the circuit shall create a prearrest
108 diversion program and develop its policies and procedures. In
109 developing the program's policies and procedures, input from
110 other interested stakeholders may be solicited.

111 (b) Each judicial circuit's prearrest diversion program
112 must specify:

113 1. The misdemeanor offenses that qualify an adult for
114 participation in the program;

115 2. The eligibility criteria for the program;

116 3. The program's implementation and operation;

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117 4. The program's requirements, including, but not limited
118 to, the completion of community service hours, payment of
119 restitution, if applicable, and intervention services indicated
120 by a needs assessment of the adult, such as urinalysis
121 monitoring and substance abuse and mental health treatment
122 services; and

123 5. A program fee, if any, to be paid by an adult
124 participating in the program. If the program imposes a fee, the
125 clerk of the court of the applicable county must receive a
126 reasonable portion of the fee.

127 (c) The state attorney of each circuit shall operate a
128 prearrest diversion program in each circuit, except that a
129 sheriff, police department, county, municipality, or public or
130 private educational institution that has an independent
131 prearrest diversion program in operation as of October 1, 2018,
132 may continue to operate it if the independent program is
133 reviewed by the state attorney of the applicable circuit and he
134 or she determines that the independent program is substantially
135 similar to the prearrest diversion program developed by the
136 circuit. If the state attorney determines that the independent
137 program is not substantially similar to the prearrest diversion
138 program developed by the circuit, the operator of the
139 independent diversion program may revise the program and the
140 state attorney may conduct an additional review of the
141 independent program.

142 (d) This section does not prevent a judicial circuit from
143 adopting an existing sheriff, police department, county,
144 municipality, or public or private educational institution's
145 independent prearrest diversion program as the prearrest

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146 diversion program for the circuit.

147 (e) If an adult does not successfully complete the
148 prearrest diversion program, the arresting law enforcement
149 officer shall determine if there is good cause to arrest the
150 adult for the original misdemeanor offense and refer the case to
151 the state attorney to determine if prosecution is appropriate or
152 allow the adult to continue in the program.

153 (f) Upon intake of an adult participating in the prearrest
154 diversion program, the state attorney or the person operating
155 the independent prearrest diversion program shall electronically
156 provide the adult's personal identifying information to the
157 clerk of the court for the county in which the adult is
158 participating in the prearrest diversion program. Such
159 information is not a court record, and the clerk of the court
160 shall maintain the confidentiality of the adult's personal
161 identifying information as provided in subsection (3). The clerk
162 of the court shall maintain such information in a statewide
163 database, which must provide a single point of access for all
164 such statewide information.

165 Section 2. Section 943.0582, Florida Statutes, is amended
166 to read:

167 943.0582 Prearrest, postarrest, or teen court diversion
168 program expunction.—

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

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175 ~~as authorized by s. 985.125.~~

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

177 (a) "Diversion program" means a program under s. 985.12, s.
178 985.125, s. 985.155, or s. 985.16 or a program to which a
179 referral is made by a state attorney under s. 985.15(1)(g).

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

182 1. Section ~~The provisions of s. 943.0585(4) (a) does de~~ not
183 apply, except that the criminal history record of a person whose
184 record is expunged pursuant to this section shall be made
185 available only to criminal justice agencies for the purpose of:

186 a. Determining eligibility for ~~prearrest, postarrest, or~~
187 ~~teen court~~ diversion programs;

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

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

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

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

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204 (3) The department shall expunge the nonjudicial arrest
205 record of a minor ~~who has successfully completed a prearrest or~~
206 ~~postarrest diversion program~~ if the minor has never previously
207 received an expunction under this section and the diversion
208 program submits a certification for expunction ~~that minor:~~

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

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

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

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

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

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

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

243 Section 3. Section 985.12, Florida Statutes, is amended to
244 read:

245 985.12 Civil citation or similar diversion programs.-

246 (1) LEGISLATIVE FINDINGS AND INTENT.-The Legislature finds
247 that the creation and implementation of civil citation or
248 similar diversion programs at the judicial circuit level
249 promotes public safety, aids interagency cooperation, and
250 provides the greatest chance of success for civil citation and
251 similar diversion programs. The Legislature further finds that
252 the widespread use of civil citation and similar diversion
253 programs has a positive effect on the criminal justice system
254 and contributes to an overall reduction in the crime rate and
255 recidivism in the state. The Legislature encourages but does not
256 mandate that counties, municipalities, and public or private
257 educational institutions participate in a civil citation or
258 similar diversion program created by their judicial circuit
259 under this section. There is established a juvenile civil
260 citation process for the purpose of providing an efficient and
261 innovative alternative to custody by the Department of Juvenile

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262 ~~Justice for children who commit nonserious delinquent acts and~~
263 ~~to ensure swift and appropriate consequences. The department~~
264 ~~shall encourage and assist in the implementation and improvement~~
265 ~~of civil citation programs or other similar diversion programs~~
266 ~~around the state.~~

267 (2) JUDICIAL CIRCUIT CIVIL CITATION OR SIMILAR DIVERSION
268 PROGRAM DEVELOPMENT, IMPLEMENTATION AND OPERATION.—

269 (a) A ~~The~~ civil citation or similar diversion program shall
270 be established in each judicial circuit in the state. The ~~at the~~
271 ~~local level with the concurrence of the chief judge of the~~
272 ~~circuit, state attorney and, public defender of each circuit,~~
273 the clerk of the court for each county in the circuit, and
274 representatives of participating law enforcement agencies in the
275 circuit shall create a civil citation or similar diversion
276 program and develop its policies and procedures. In developing
277 the program's policies and procedures, input from other
278 interested stakeholders may be solicited.

279 (b) Each judicial circuit's civil citation or similar
280 diversion program must specify:

- 281 1. The misdemeanor offenses that qualify a juvenile for
282 participation in the program;
- 283 2. The eligibility criteria for the program;
- 284 3. The program's implementation and operation;
- 285 4. The program's requirements, including, but not limited
286 to, the completion of community service hours, payment of
287 restitution, if applicable, and intervention services indicated
288 by a needs assessment of the juvenile, such as family
289 counseling, urinalysis monitoring, and substance abuse and
290 mental health treatment services; and

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291 5. A program fee, if any, to be paid by a juvenile
292 participating in the program. If the program imposes a fee, the
293 clerk of the court of the applicable county must receive a
294 reasonable portion of the fee.

295 (c) The state attorney of each circuit shall operate a
296 civil citation or similar diversion program in each circuit,
297 except that a sheriff, police department, county, municipality,
298 or public or private educational institution that has an
299 independent civil citation or similar diversion program in
300 operation as of October 1, 2018, may continue to operate it if
301 the independent program is reviewed by the state attorney of the
302 applicable circuit and he or she determines that the independent
303 program is substantially similar to the civil citation or
304 similar diversion program developed by the circuit. If the state
305 attorney determines that the independent program is not
306 substantially similar to the civil citation or similar diversion
307 program developed by the circuit, the operator of the
308 independent diversion program may revise the program and the
309 state attorney may conduct an additional review of the
310 independent program.

311 (d) This section does not prevent a judicial circuit from
312 adopting an existing sheriff, police department, county,
313 municipality, or public or private educational institution's
314 independent civil citation or similar diversion program as the
315 civil citation or similar diversion program for the circuit.

316 (e) If a juvenile does not successfully complete the civil
317 citation or similar diversion program, the arresting law
318 enforcement officer shall determine if there is good cause to
319 arrest the juvenile for the original misdemeanor offense and

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320 refer the case to the state attorney to determine if prosecution
321 is appropriate or allow the juvenile to continue in the program
322 ~~and the head of each local law enforcement agency involved. The~~
323 ~~program may be operated by an entity such as a law enforcement~~
324 ~~agency, the department, a juvenile assessment center, the county~~
325 ~~or municipality, or another entity selected by the county or~~
326 ~~municipality. An entity operating the civil citation or similar~~
327 ~~diversion program must do so in consultation and agreement with~~
328 ~~the state attorney and local law enforcement agencies. Under~~
329 ~~such a juvenile civil citation or similar diversion program, a~~
330 ~~law enforcement officer, upon making contact with a juvenile who~~
331 ~~admits having committed a misdemeanor, may choose to issue a~~
332 ~~simple warning or inform the child's guardian or parent of the~~
333 ~~child's infraction, or may issue a civil citation or require~~
334 ~~participation in a similar diversion program, and assess up to~~
335 ~~50 community service hours, and require participation in~~
336 ~~intervention services as indicated by an assessment of the needs~~
337 ~~of the juvenile, including family counseling, urinalysis~~
338 ~~monitoring, and substance abuse and mental health treatment~~
339 ~~services.~~

340 (f) A copy of each civil citation or similar diversion
341 program notice issued under this section shall be provided to
342 the department, and the department shall enter appropriate
343 information into the juvenile offender information system. Use
344 ~~of the civil citation or similar diversion program is not~~
345 ~~limited to first-time misdemeanors and may be used in up to two~~
346 ~~subsequent misdemeanors. If an arrest is made, a law enforcement~~
347 ~~officer must provide written documentation as to why an arrest~~
348 ~~was warranted.~~

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349 (g) At the conclusion of a juvenile's civil citation
350 ~~program~~ or similar diversion program, the state attorney agency
351 operating the program shall report the outcome to the
352 department. The issuance of a civil citation or similar
353 diversion program notice is not considered a referral to the
354 department.

355 ~~(2) The department shall develop guidelines for the civil~~
356 ~~citation program which include intervention services that are~~
357 ~~based upon proven civil citation or similar diversion programs~~
358 ~~within the state.~~

359 (h) ~~(3)~~ Upon issuing such a civil citation or similar
360 diversion program notice, the law enforcement officer shall send
361 a copy of ~~to~~ the civil citation or similar diversion program
362 notice to county sheriff, state attorney, the appropriate intake
363 office of the department, or the community service performance
364 monitor designated by the department, the parent or guardian of
365 the child, and to the victim.

366 ~~(4) The child shall report to the community service~~
367 ~~performance monitor within 7 working days after the date of~~
368 ~~issuance of the citation. The work assignment shall be~~
369 ~~accomplished at a rate of not less than 5 hours per week. The~~
370 ~~monitor shall advise the intake office immediately upon~~
371 ~~reporting by the child to the monitor, that the child has in~~
372 ~~fact reported and the expected date upon which completion of the~~
373 ~~work assignment will be accomplished.~~

374 ~~(5) If the child fails to report timely for a work~~
375 ~~assignment, complete a work assignment, or comply with assigned~~
376 ~~intervention services within the prescribed time, or if the~~
377 ~~juvenile commits a subsequent misdemeanor, the law enforcement~~

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378 ~~officer shall issue a report alleging the child has committed a~~
379 ~~delinquent act, at which point a juvenile probation officer~~
380 ~~shall process the original delinquent act as a referral to the~~
381 ~~department and refer the report to the state attorney for~~
382 ~~review.~~

383 ~~(6) At the time of issuance of the citation by the law~~
384 ~~enforcement officer, such officer shall advise the child that~~
385 ~~the child has the option to refuse the citation and to be~~
386 ~~referred to the intake office of the department. That option may~~
387 ~~be exercised at any time before completion of the work~~
388 ~~assignment.~~

389 Section 4. Subsection (3) of section 985.125, Florida
390 Statutes, is amended to read:

391 985.125 Prearrest or postarrest diversion programs.—

392 ~~(3) The prearrest or postarrest diversion program may, upon~~
393 ~~agreement of the agencies that establish the program, provide~~
394 ~~for the expunction of the nonjudicial arrest record of a minor~~
395 ~~who successfully completes such a program pursuant to s.~~
396 ~~943.0582.~~

397 Section 5. Section 985.126, Florida Statutes, is created to
398 read:

399 985.126 Diversion programs; data collection; denial of
400 participation or expunged record.—

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

403 (2) Each diversion program shall submit:

404 (a) A certification for expunction to the Department of Law
405 Enforcement of the juvenile's nonjudicial arrest record under s.
406 943.0582 if the juvenile:

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- 407 1. Successfully completes the diversion program for a
408 first-time misdemeanor offense; and
- 409 2. Has not otherwise been charged by the state attorney
410 with, or been found to have committed, a criminal offense or
411 comparable ordinance violation.
- 412 (b) Data to the department in a form prescribed by the
413 department which identifies for each juvenile who participates
414 in the diversion program:
- 415 1. The race, ethnicity, gender, and age of the juvenile;
416 2. The offense committed, with citation to the specific law
417 establishing the offense; and
- 418 3. The judicial circuit and county in which the offense was
419 committed and the law enforcement agency that had contact with
420 the juvenile for the offense.
- 421 (3) The department shall provide the following data for
422 each juvenile who is eligible for the diversion program, but
423 who, instead, is referred to the department, is provided a
424 notice to appear, or is arrested:
- 425 (a) The data required under paragraph (2) (a); and
426 (b) Whether the juvenile was offered the opportunity to
427 participate in the diversion program. If the juvenile:
- 428 1. Was not offered such opportunity, the department must
429 attempt to find out the reason the law enforcement officer
430 declined to make the offer.
- 431 2. Was offered such opportunity, the department must
432 indicate whether the juvenile or his or her parent or legal
433 guardian declined to participate in the diversion program.
- 434 (4) The department shall compile the data required under
435 subsections (2) and (3) and publish it on the department's

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436 website in a format that is, at a minimum, sortable by judicial
437 circuit, county, law enforcement agency, race or ethnicity,
438 gender, age, and offense committed.

439 (5) A juvenile who successfully completes a diversion
440 program for a first-time misdemeanor offense may lawfully deny
441 or fail to acknowledge his or her participation in the program
442 and an expunction of a nonjudicial arrest record under s.
443 943.0582, unless the inquiry is made by a criminal justice
444 agency, as defined in s. 943.045, for a purpose described in s.
445 943.0582(2)(a)1.

446 Section 6. This act shall take effect October 1, 2018.