

By the Committees on Appropriations; and Criminal Justice; and
Senators Brandes and Perry

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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 prearrest diversion program in each judicial
43 circuit, rather than at the local level, with the
44 concurrence of specified persons; requiring that the
45 state attorney and public defender of each circuit,
46 the clerk of the court for each county in the circuit,
47 and representatives of participating law enforcement
48 agencies create a civil citation or similar prearrest
49 diversion program and develop its policies and
50 procedures; authorizing such entities to solicit
51 stakeholders for input in developing the program's
52 policies and procedures; requiring the Department of
53 Juvenile Justice to annually develop and provide
54 guidelines on civil citation or similar prearrest
55 diversion programs to the judicial circuits; providing
56 requirements for the civil citation or similar
57 prearrest diversion program; requiring the state
58 attorney of each judicial circuit to operate the civil

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59 citation or similar prearrest diversion program;
60 providing an exception; providing construction;
61 requiring the arresting law enforcement officer to
62 make a determination if a juvenile does not
63 successfully complete the civil citation or similar
64 prearrest diversion program; deleting provisions
65 relating to the operation of and requirements for a
66 civil citation or similar prearrest diversion program;
67 requiring that a copy of each civil citation or
68 similar prearrest diversion program notice be provided
69 to the Department of Juvenile Justice; conforming
70 provisions to changes made by the act; deleting
71 provisions relating to requirements for a civil
72 citation or similar prearrest diversion program;
73 amending s. 985.125, F.S.; conforming a provision to
74 changes made by the act; creating s. 985.126, F.S.;
75 defining the term "diversion program"; requiring a
76 diversion program to submit to the Department of Law
77 Enforcement a certification for expunction of the
78 nonjudicial arrest record of a juvenile under
79 specified circumstances; requiring a diversion program
80 to submit to the Department of Juvenile Justice
81 specified data relating to diversion programs;
82 requiring each law enforcement agency to submit to the
83 Department of Juvenile Justice specified data about
84 juveniles eligible to participate in diversion
85 programs; requiring the Department of Juvenile Justice
86 to compile and publish the data in a specified manner;
87 authorizing a juvenile under certain circumstances to

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88 deny or fail to acknowledge his or her participation
89 in a diversion program or the expunction of a certain
90 nonjudicial arrest record unless an exception applies;
91 providing an effective date.
92

93 Be It Enacted by the Legislature of the State of Florida:
94

95 Section 1. Section 901.40, Florida Statutes, is created to
96 read:

97 901.40 Prearrest diversion programs.—

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

110 (2) JUDICIAL CIRCUIT PREARREST DIVERSION PROGRAM
111 DEVELOPMENT, IMPLEMENTATION, OPERATION.—

112 (a) In each judicial circuit in the state, the public
113 defender, the state attorney, the clerk of the court for each
114 county in the circuit, and representatives of participating law
115 enforcement agencies in the circuit shall create a prearrest
116 diversion program and develop its policies and procedures. In

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117 developing the program's policies and procedures, input from
118 other interested stakeholders may be solicited.

119 (b) Each judicial circuit's prearrest diversion program
120 must specify:

121 1. The misdemeanor offenses that qualify an adult for
122 participation in the program;

123 2. The eligibility criteria for the program;

124 3. The program's implementation and operation;

125 4. The program's requirements, including, but not limited
126 to, the completion of community service hours, payment of
127 restitution, if applicable, and intervention services indicated
128 by a needs assessment of the adult, such as urinalysis
129 monitoring and substance abuse and mental health treatment
130 services; and

131 5. A program fee, if any, to be paid by an adult
132 participating in the program. If the program imposes a fee, the
133 clerk of the court of the applicable county must receive a
134 reasonable portion of the fee.

135 (c) The state attorney of each circuit shall operate a
136 prearrest diversion program in each circuit. A sheriff, police
137 department, county, municipality, or public or private
138 educational institution may continue to operate an independent
139 prearrest diversion program that is in operation as of October
140 1, 2018, if the independent program is reviewed by the state
141 attorney of the applicable circuit and he or she determines that
142 the independent program is substantially similar to the
143 prearrest diversion program developed by the circuit. If the
144 state attorney determines that the independent program is not
145 substantially similar to the prearrest diversion program

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146 developed by the circuit, the operator of the independent
147 diversion program may revise the program and the state attorney
148 may conduct an additional review of the independent program.

149 (d) A judicial circuit may model an existing sheriff,
150 police department, county, municipality, or public or private
151 educational institution's independent prearrest diversion
152 program in developing the prearrest diversion program for the
153 circuit.

154 (e) If an adult does not successfully complete the
155 prearrest diversion program, the arresting law enforcement
156 officer shall determine if there is good cause to arrest the
157 adult for the original misdemeanor offense and refer the case to
158 the state attorney to determine if prosecution is appropriate or
159 allow the adult to continue in the program.

160 (f) Upon intake of an adult participating in the prearrest
161 diversion program, the state attorney or the person operating
162 the independent prearrest diversion program shall electronically
163 provide the adult's personal identifying information to the
164 clerk of the court for the county in which the adult is
165 participating in the prearrest diversion program. Such
166 information is not a court record, and the clerk of the court
167 shall maintain the confidentiality of the adult's personal
168 identifying information as provided in subsection (3). The clerk
169 of the court shall maintain such information as a separate
170 component of the Comprehensive Case Information System created
171 and operated pursuant to s. 28.24, which must provide a single
172 point of access for all such statewide information.

173 Section 2. Section 943.0582, Florida Statutes, is amended
174 to read:

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175 943.0582 Prearrest, postarrest, or teen court diversion
176 program expunction.—

177 (1) Notwithstanding any law dealing generally with the
178 preservation and destruction of public records, the department
179 shall adopt rules to ~~may provide, by rule adopted pursuant to~~
180 ~~chapter 120,~~ for the expunction of a ~~any~~ nonjudicial record of
181 the arrest of a minor who has successfully completed a ~~prearrest~~
182 ~~or postarrest~~ diversion program for a misdemeanor offense ~~minors~~
183 ~~as authorized by s. 985.125.~~

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

185 (a) "Diversion program" means a program under s. 985.12, s.
186 985.125, s. 985.155, or s. 985.16 or a program to which a
187 referral is made by a state attorney under s. 985.15(1)(g).

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

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

194 a. Determining eligibility for ~~prearrest, postarrest, or~~
195 ~~teen court~~ diversion programs;

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

198 c. Making a prosecutorial decision under s. 985.15; ~~or when~~
199 ~~the subject of the record is a candidate for employment with a~~
200 ~~criminal justice agency. For all other purposes, a person whose~~
201 ~~record is expunged under this section may lawfully deny or fail~~
202 ~~to acknowledge the arrest and the charge covered by the expunged~~
203 ~~record.~~

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

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

212 (3) The department shall expunge the nonjudicial arrest
213 record of a minor ~~who has successfully completed a prearrest or~~
214 ~~postarrest diversion program~~ if the minor has never previously
215 received an expunction under this section and the diversion
216 program submits a certification for expunction that minor:

217 ~~(a) Submits an application for prearrest or postarrest~~
218 ~~diversion expunction, on a form prescribed by the department,~~
219 ~~signed by the minor's parent or legal guardian, or by the minor~~
220 ~~if he or she has reached the age of majority at the time of~~
221 ~~applying.~~

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

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

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

237 ~~(e) Has never been, before filing the application for~~
238 ~~expunction, charged by the state attorney with, or found to have~~
239 ~~committed, any criminal offense or comparable ordinance~~
240 ~~violation.~~

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

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

251 Section 3. Section 985.12, Florida Statutes, is amended to
252 read:

253 985.12 Civil citation or similar prearrest diversion
254 programs.—

255 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
256 that the creation and implementation of civil citation or
257 similar prearrest diversion programs at the judicial circuit
258 level promotes public safety, aids interagency cooperation, and
259 provides the greatest chance of success for civil citation and
260 similar prearrest diversion programs. The Legislature further
261 finds that the widespread use of civil citation and similar

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262 prearrest diversion programs has a positive effect on the
263 criminal justice system and contributes to an overall reduction
264 in the crime rate and recidivism in the state. The Legislature
265 encourages but does not mandate that counties, municipalities,
266 and public or private educational institutions participate in a
267 civil citation or similar prearrest diversion program created by
268 their judicial circuit under this section. There is established
269 a juvenile civil citation process for the purpose of providing
270 an efficient and innovative alternative to custody by the
271 Department of Juvenile Justice for children who commit
272 nonserious delinquent acts and to ensure swift and appropriate
273 consequences. The department shall encourage and assist in the
274 implementation and improvement of civil citation programs or
275 other similar diversion programs around the state.

276 (2) JUDICIAL CIRCUIT CIVIL CITATION OR SIMILAR PREARREST
277 DIVERSION PROGRAM DEVELOPMENT, IMPLEMENTATION AND OPERATION.—

278 (a) A ~~The~~ civil citation or similar prearrest diversion
279 program shall be established in each judicial circuit in the
280 state. The ~~at the local level with the concurrence of the chief~~
281 judge of the circuit, state attorney and, public defender of
282 each circuit, the clerk of the court for each county in the
283 circuit, and representatives of participating law enforcement
284 agencies in the circuit shall create a civil citation or similar
285 prearrest diversion program and develop its policies and
286 procedures. In developing the program's policies and procedures,
287 input from other interested stakeholders may be solicited. The
288 department shall annually develop and provide guidelines on best
289 practice models for civil citation or similar prearrest
290 diversion programs to the judicial circuits as a resource.

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291 (b) Each judicial circuit's civil citation or similar
292 prearrest diversion program must specify:

- 293 1. The misdemeanor offenses that qualify a juvenile for
294 participation in the program;
295 2. The eligibility criteria for the program;
296 3. The program's implementation and operation;
297 4. The program's requirements, including, but not limited
298 to, the completion of community service hours, payment of
299 restitution, if applicable, and intervention services indicated
300 by a needs assessment of the juvenile, approved by the
301 department, such as family counseling, urinalysis monitoring,
302 and substance abuse and mental health treatment services; and
303 5. A program fee, if any, to be paid by a juvenile
304 participating in the program. If the program imposes a fee, the
305 clerk of the court of the applicable county must receive a
306 reasonable portion of the fee.

307 (c) The state attorney of each circuit shall operate a
308 civil citation or similar prearrest diversion program in each
309 circuit. A sheriff, police department, county, municipality, or
310 public or private educational institution may continue to
311 operate an independent civil citation or similar prearrest
312 diversion program that is in operation as of October 1, 2018, if
313 the independent program is reviewed by the state attorney of the
314 applicable circuit and he or she determines that the independent
315 program is substantially similar to the civil citation or
316 similar prearrest diversion program developed by the circuit. If
317 the state attorney determines that the independent program is
318 not substantially similar to the civil citation or similar
319 prearrest diversion program developed by the circuit, the

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320 operator of the independent diversion program may revise the
321 program and the state attorney may conduct an additional review
322 of the independent program.

323 (d) A judicial circuit may model an existing sheriff,
324 police department, county, municipality, or public or private
325 educational institution's independent civil citation or similar
326 prearrest diversion program in developing the civil citation or
327 similar prearrest diversion program for the circuit.

328 (e) If a juvenile does not successfully complete the civil
329 citation or similar prearrest diversion program, the arresting
330 law enforcement officer shall determine if there is good cause
331 to arrest the juvenile for the original misdemeanor offense and
332 refer the case to the state attorney to determine if prosecution
333 is appropriate or allow the juvenile to continue in the program
334 and the head of each local law enforcement agency involved. The
335 program may be operated by an entity such as a law enforcement
336 agency, the department, a juvenile assessment center, the county
337 or municipality, or another entity selected by the county or
338 municipality. An entity operating the civil citation or similar
339 diversion program must do so in consultation and agreement with
340 the state attorney and local law enforcement agencies. Under
341 such a juvenile civil citation or similar diversion program, a
342 law enforcement officer, upon making contact with a juvenile who
343 admits having committed a misdemeanor, may choose to issue a
344 simple warning or inform the child's guardian or parent of the
345 child's infraction, or may issue a civil citation or require
346 participation in a similar diversion program, and assess up to
347 50 community service hours, and require participation in
348 intervention services as indicated by an assessment of the needs

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349 ~~of the juvenile, including family counseling, urinalysis~~
350 ~~monitoring, and substance abuse and mental health treatment~~
351 ~~services.~~

352 (f) A copy of each civil citation or similar prearrest
353 diversion program notice issued under this section shall be
354 provided to the department, and the department shall enter
355 appropriate information into the juvenile offender information
356 system. ~~Use of the civil citation or similar diversion program~~
357 ~~is not limited to first-time misdemeanors and may be used in up~~
358 ~~to two subsequent misdemeanors. If an arrest is made, a law~~
359 ~~enforcement officer must provide written documentation as to why~~
360 ~~an arrest was warranted.~~

361 (g) At the conclusion of a juvenile's civil citation
362 ~~program~~ or similar prearrest diversion program, the state
363 attorney or operator of the independent program agency operating
364 ~~the program~~ shall report the outcome to the department. The
365 issuance of a civil citation or similar prearrest diversion
366 program notice is not considered a referral to the department.

367 ~~(2) The department shall develop guidelines for the civil~~
368 ~~citation program which include intervention services that are~~
369 ~~based upon proven civil citation or similar diversion programs~~
370 ~~within the state.~~

371 (h) ~~(3)~~ Upon issuing ~~such~~ a civil citation or similar
372 prearrest diversion program notice, the law enforcement officer
373 shall send a copy ~~of~~ to the civil citation or similar prearrest
374 diversion program notice to ~~county sheriff, state attorney, the~~
375 ~~appropriate intake office of the department, or the community~~
376 ~~service performance monitor designated by the department, the~~
377 ~~parent or guardian of the child,~~ and to the victim.

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378 ~~(4) The child shall report to the community service~~
379 ~~performance monitor within 7 working days after the date of~~
380 ~~issuance of the citation. The work assignment shall be~~
381 ~~accomplished at a rate of not less than 5 hours per week. The~~
382 ~~monitor shall advise the intake office immediately upon~~
383 ~~reporting by the child to the monitor, that the child has in~~
384 ~~fact reported and the expected date upon which completion of the~~
385 ~~work assignment will be accomplished.~~

386 ~~(5) If the child fails to report timely for a work~~
387 ~~assignment, complete a work assignment, or comply with assigned~~
388 ~~intervention services within the prescribed time, or if the~~
389 ~~juvenile commits a subsequent misdemeanor, the law enforcement~~
390 ~~officer shall issue a report alleging the child has committed a~~
391 ~~delinquent act, at which point a juvenile probation officer~~
392 ~~shall process the original delinquent act as a referral to the~~
393 ~~department and refer the report to the state attorney for~~
394 ~~review.~~

395 ~~(6) At the time of issuance of the citation by the law~~
396 ~~enforcement officer, such officer shall advise the child that~~
397 ~~the child has the option to refuse the citation and to be~~
398 ~~referred to the intake office of the department. That option may~~
399 ~~be exercised at any time before completion of the work~~
400 ~~assignment.~~

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

403 985.125 Prearrest or postarrest diversion programs.—

404 ~~(3) The prearrest or postarrest diversion program may, upon~~
405 ~~agreement of the agencies that establish the program, provide~~
406 ~~for the expunction of the nonjudicial arrest record of a minor~~

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407 ~~who successfully completes such a program pursuant to s.~~
408 ~~943.0582.~~

409 Section 5. Section 985.126, Florida Statutes, is created to
410 read:

411 985.126 Diversion programs; data collection; denial of
412 participation or expunged record.—

413 (1) As used in this section, the term “diversion program”
414 has the same meaning as in s. 943.0582.

415 (2) Each diversion program shall submit:

416 (a) A certification for expunction to the Department of Law
417 Enforcement of the juvenile’s nonjudicial arrest record under s.
418 943.0582 if the juvenile:

419 1. Successfully completes the diversion program for a
420 first-time misdemeanor offense; and

421 2. Has not otherwise been charged by the state attorney
422 with, or been found to have committed, a criminal offense or
423 comparable ordinance violation.

424 (b) Data to the department in a form prescribed by the
425 department which identifies for each juvenile who participates
426 in the diversion program:

427 1. The race, ethnicity, gender, and age of the juvenile;

428 2. The offense committed, with citation to the specific law
429 establishing the offense; and

430 3. The judicial circuit and county in which the offense was
431 committed and the law enforcement agency that had contact with
432 the juvenile for the offense.

433 (3) Each law enforcement agency shall submit to the
434 department data that identifies for each juvenile who was
435 eligible for a diversion program, but was instead referred to

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436 the department, provided a notice to appear, or arrested:

437 (a) The data required under paragraph (2) (b).

438 (b) Whether the juvenile was offered the opportunity to
439 participate in the diversion program. If the juvenile was:

440 1. Not offered such opportunity, the reason such offer was
441 not made.

442 2. Offered such opportunity, whether the juvenile or his or
443 her parent or legal guardian declined to participate in the
444 diversion program.

445 (4) The department shall compile the data required under
446 subsections (2) and (3) and publish it on the department's
447 website in a format that is, at a minimum, sortable by judicial
448 circuit, county, law enforcement agency, race or ethnicity,
449 gender, age, and offense committed.

450 (5) A juvenile who successfully completes a diversion
451 program for a first-time misdemeanor offense may lawfully deny
452 or fail to acknowledge his or her participation in the program
453 and an expunction of a nonjudicial arrest record under s.
454 943.0582, unless the inquiry is made by a criminal justice
455 agency, as defined in s. 943.045, for a purpose described in s.
456 943.0582(2) (b) 1.

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