

1 A bill to be entitled
2 An act relating to juvenile diversion programs;
3 amending s. 943.0582, F.S.; requiring, rather than
4 authorizing, the Department of Law Enforcement to
5 adopt rules for the expunction of certain nonjudicial
6 records of the arrest of a minor upon successful
7 completion by the minor of certain diversion programs;
8 authorizing such expunctions for certain first-time
9 misdemeanor offenses; creating and revising
10 definitions; revising the circumstances under which
11 the department must expunge certain nonjudicial arrest
12 records; deleting the department's authority to charge
13 a processing fee for the expunction; amending s.
14 985.125, F.S.; conforming a provision to changes made
15 by the act; creating s. 985.126, F.S.; creating a
16 definition; requiring a diversion program to submit to
17 the department a certification for expunction of the
18 nonjudicial arrest record of a minor under specified
19 circumstances; requiring a diversion program to submit
20 to the Department of Juvenile Justice specified data
21 relating to diversion programs; requiring the
22 Department of Juvenile Justice to compile and publish
23 the data in a specified manner; authorizing a minor
24 under certain circumstances to deny or fail to
25 acknowledge his or her participation in a specified

26 | diversion program or the expungement of a certain
 27 | nonjudicial arrest record unless an exception applies;
 28 | providing an effective date.

30 | Be It Enacted by the Legislature of the State of Florida:

32 | Section 1. Section 943.0582, Florida Statutes, is amended
 33 | to read:

34 | 943.0582 ~~Prearrest, postarrest, or teen court~~ Diversion
 35 | program expunction.—

36 | (1) Notwithstanding any law dealing generally with the
 37 | preservation and destruction of public records, the department
 38 | shall adopt rules to ~~may provide, by rule adopted pursuant to~~
 39 | ~~chapter 120,~~ for the expunction of a ~~any~~ nonjudicial record of
 40 | the arrest of a minor who has successfully completed a ~~prearrest~~
 41 | ~~or postarrest~~ diversion program for a misdemeanor offense ~~minors~~
 42 | ~~as authorized by s. 985.125.~~

43 | (2)(a) As used in this section, the term:

44 | (a) "Diversion program" means a program under s. 985.12,
 45 | s. 985.125, s. 985.155, or s. 985.16 or a program to which a
 46 | referral is made by a state attorney under s. 985.15(1)(g).

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

49 | 1. The provisions of s. 943.0585(4) (a) do not apply,
 50 | except that the criminal history record of a person whose record

51 is expunged pursuant to this section shall be made available
52 only to criminal justice agencies for the purpose of:

53 a. Determining eligibility for ~~prearrest, postarrest, or~~
54 ~~teen court~~ diversion programs;

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

57 c. Making a prosecutorial decision under s. 985.15; ~~or~~
58 ~~when the subject of the record is a candidate for employment~~
59 ~~with a criminal justice agency. For all other purposes, a person~~
60 ~~whose record is expunged under this section may lawfully deny or~~
61 ~~fail to acknowledge the arrest and the charge covered by the~~
62 ~~expunged record.~~

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

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

71 (3) The department shall expunge the nonjudicial arrest
72 record of a minor ~~who has successfully completed a prearrest or~~
73 ~~postarrest diversion program~~ if the minor has never previously
74 received an expunction under this section and the diversion
75 program submits a certification for expunction that minor:

76 ~~(a) Submits an application for prearrest or postarrest~~
77 ~~diversion expunction, on a form prescribed by the department,~~
78 ~~signed by the minor's parent or legal guardian, or by the minor~~
79 ~~if he or she has reached the age of majority at the time of~~
80 ~~applying.~~

81 ~~(b) Submits to the department, with the application, an~~
82 ~~official written statement from the state attorney for the~~
83 ~~county in which the arrest occurred certifying that he or she~~
84 ~~has successfully completed that county's prearrest or postarrest~~
85 ~~diversion program, that his or her participation in the program~~
86 ~~was based on an arrest for a nonviolent misdemeanor, and~~
87 ~~that he or she has not otherwise been charged by the state~~
88 ~~attorney with, or found to have committed, any criminal offense~~
89 ~~or comparable ordinance violation.~~

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

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

96 ~~(e) Has never been, before filing the application for~~
97 ~~expunction, charged by the state attorney with, or found to have~~
98 ~~committed, any criminal offense or comparable ordinance~~
99 ~~violation.~~

100 ~~(4) The department is authorized to charge a \$75~~

101 ~~processing fee for each request received for prearrest or~~
102 ~~postarrest diversion program expunction, for placement in the~~
103 ~~Department of Law Enforcement Operating Trust Fund, unless such~~
104 ~~fee is waived by the executive director.~~

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

110 Section 2. Subsection (3) of section 985.125, Florida
111 Statutes, is amended to read:

112 985.125 Prearrest or postarrest diversion programs.—

113 ~~(3) The prearrest or postarrest diversion program may,~~
114 ~~upon agreement of the agencies that establish the program,~~
115 ~~provide for the expunction of the nonjudicial arrest record of a~~
116 ~~minor who successfully completes such a program pursuant to s.~~
117 ~~943.0582.~~

118 Section 3. Section 985.126, Florida Statutes, is created
119 to read:

120 985.126 Diversion programs; denial of participation or
121 expunged record; data collection.—

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

124 (2) Each diversion program shall submit:

125 (a) A certification for expunction to the Department of

126 Law Enforcement of the minor's nonjudicial arrest record under
127 s. 943.0582 if the minor:

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

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

133 (b) Data to the department in a form prescribed by the
134 department which identifies for each minor who:

135 1. Participates in the diversion program:

136 a. The race, ethnicity, gender, and age of the minor;

137 b. The offense committed with citation to the specific law
138 establishing the offense; and

139 c. The judicial circuit and county in which the offense
140 was committed and the law enforcement agency that had contact
141 with the minor for the offense.

142 2. Is eligible for the diversion program, but who,
143 instead, is referred to the department, is provided a notice to
144 appear, or is arrested:

145 a. The data required under subparagraph 1.; and

146 b. Whether the minor was offered the opportunity to
147 participate in the diversion program. If the minor:

148 (I) Was not offered such opportunity, the diversion
149 program shall provide the reason for declining to make the
150 offer.

151 (II) Was offered such opportunity, the diversion program
152 shall indicate whether the minor or his or her parent or legal
153 guardian declined to participate in the program.

154 (3) The department shall compile the data required under
155 subsection (2) and publish it on the department's website in a
156 format that is, at a minimum, sortable by judicial circuit,
157 county, law enforcement agency, race or ethnicity, gender, age,
158 and offense committed.

159 (4) A minor who successfully completes a diversion program
160 for a first-time misdemeanor offense may lawfully deny or fail
161 to acknowledge his or her participation in the program and a
162 nonjudicial arrest record expunged under s. 943.0582, unless the
163 inquiry is made by a criminal justice agency, as defined in s.
164 943.045, for a purpose described in s. 943.0582(2)(b)1.

165 Section 4. This act shall take effect July 1, 2017.