



811412

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/23/2017	.	
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	.	
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The Committee on Criminal Justice (Brandes) recommended the following:

1 **Senate Substitute for Amendment (343896) (with title**
2 **amendment)**

3
4 Delete lines 15 - 140
5 and insert:

6 Section 1. Subsections (1), (2), and (3) of section
7 943.0582, Florida Statutes, are amended to read:

8 943.0582 Prearrest, postarrest, or teen court diversion
9 program expunction.—

10 (1) Notwithstanding any law dealing generally with the



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11 preservation and destruction of public records, the department
12 shall adopt rules to ~~may provide, by rule adopted pursuant to~~
13 ~~chapter 120,~~ for the expunction of any nonjudicial records
14 ~~record~~ of the arrest of a minor who has successfully completed a
15 prearrest or postarrest diversion program for minors as
16 authorized by s. 985.125.

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

18 (a) "Eligible offense" means a criminal offense to which
19 the diversion program applies as determined under s. 985.125(1).

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

22 1. The provisions of s. 943.0585(4) (a) do not apply, except
23 that the criminal history record of a person whose record is
24 expunged pursuant to this section shall be made available only
25 to criminal justice agencies for the purpose of determining
26 eligibility for prearrest, postarrest, or teen court diversion
27 programs; when the record is sought as part of a criminal
28 investigation; or when the subject of the record is a candidate
29 for employment with a criminal justice agency. For all other
30 purposes, a person whose record is expunged under this section
31 may lawfully deny or fail to acknowledge the arrest and the
32 charge covered by the expunged record.

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

37 ~~(b) As used in this section, the term "nonviolent~~
38 ~~misdemeanor" includes simple assault or battery when prearrest~~
39 ~~or postarrest diversion expunction is approved in writing by the~~



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40 ~~state attorney for the county in which the arrest occurred.~~

41 (3) The department shall expunge the nonjudicial arrest
42 record of a minor who has successfully completed a prearrest or
43 postarrest diversion program if that minor meets all of the
44 following conditions:

45 (a) Submits an application for prearrest or postarrest
46 diversion expunction, on a form prescribed by the department,
47 signed by the minor's parent or legal guardian, or by the minor
48 if he or she has reached the age of majority at the time of
49 applying.

50 (b) Submits to the department, with the application, an
51 official written statement from the state attorney for the
52 county in which the arrest occurred certifying that he or she
53 has successfully completed that county's prearrest or postarrest
54 diversion program, that his or her participation in the program
55 was based on an arrest for an eligible offense ~~a nonviolent~~
56 ~~misdemeanor~~, and that he or she has not otherwise been charged
57 by the state attorney with, or found to have committed, any
58 criminal offense or comparable ordinance violation.

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

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

65 ~~(e) Has never been, before filing the application for~~
66 ~~expunction, charged by the state attorney with, or found to have~~
67 ~~committed, any criminal offense or comparable ordinance~~
68 ~~violation.~~



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69 Section 2. Section 985.125, Florida Statutes, is amended to
70 read:

71 985.125 Prearrest or postarrest diversion programs.—

72 (1) A law enforcement agency or school district, in
73 cooperation with the state attorney, may establish a prearrest
74 or postarrest diversion program. The diversion program, as
75 determined by the agency or school district establishing the
76 program, may be applicable to all, or a subset of, misdemeanor
77 offenses.

78 (2) As part of the ~~prearrest or postarrest diversion~~
79 ~~program:~~

80 (a) A child who is alleged to have committed a delinquent
81 act may be required to surrender his or her driver license, or
82 refrain from applying for a driver license, for not more than 90
83 days. If the child fails to comply with the requirements of the
84 program, the state attorney may notify the Department of Highway
85 Safety and Motor Vehicles in writing to suspend the child's
86 driver license for a period that may not exceed 90 days.

87 (b) ~~(3) The prearrest or postarrest diversion program may,~~
88 ~~upon agreement of the agencies that establish the program,~~
89 ~~provide for the expunction of~~ The nonjudicial arrest record of a
90 minor who successfully completes the such a program must be
91 expunged if the requirements of pursuant to s. 943.0582 are
92 satisfied.

93 Section 3. Section 985.12, Florida Statutes, is amended to
94 read:

95 985.12 Civil citation and similar diversion programs.—

96 (1) (a) There is established a process for the use of
97 juvenile civil citation and similar diversion programs to



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98 ~~provide process for the purpose of providing~~ an efficient and
99 innovative alternative to custody by the department ~~of Juvenile~~
100 ~~Justice~~ for juveniles ~~children~~ who commit nonserious delinquent
101 acts and to ensure swift and appropriate consequences. The
102 department shall encourage and assist in the implementation and
103 improvement of civil citation and ~~programs or other~~ similar
104 diversion programs in ~~around~~ the state.

105 (b) One or more ~~The~~ civil citation or similar diversion
106 programs ~~program~~ shall be established in each county which must
107 individually or collectively serve all juveniles who are alleged
108 to have committed a violation of law which would be a
109 misdemeanor offense if committed by an adult. Such programs must
110 meet the requirements of this section and be established ~~at the~~
111 ~~local level~~ with the concurrence of the chief judge of the
112 circuit, state attorney, public defender, and the head of each
113 local law enforcement agency involved. At least one program must
114 be operated by the county. Additional programs ~~The program~~ may
115 be operated by an entity such as a law enforcement agency, the
116 department, a juvenile assessment center, the county or
117 municipality, or another entity selected by the county or
118 municipality. Any additional programs shall complement the
119 established county program. An entity operating such a ~~the civil~~
120 ~~citation or similar diversion~~ program must do so in consultation
121 and agreement with the state attorney and local law enforcement
122 agencies.

123 (2) As used in this section, the term:

124 (a) "Law enforcement officer" has the same meaning as
125 provided in s. 943.10.

126 (b) "Misdemeanor offense" means one or more misdemeanor



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127 violations of law arising out of the same criminal episode, act,
128 or transaction.

129 (3) Under ~~such~~ a juvenile civil citation or similar
130 diversion program, a law enforcement officer ~~who makes,~~ upon
131 ~~making~~ contact with a juvenile who admits having committed a
132 first-time misdemeanor offense: ~~misdemeanor, may choose to issue~~
133 a simple warning or inform the child's guardian or parent of the
134 child's infraction, or may

135 (a) Shall issue a civil citation to the juvenile, or
136 require the juvenile's participation in a similar diversion
137 program, if the juvenile is younger than 14 years of age and if
138 each violation of law in the misdemeanor offense is one of the
139 following:

140 1. Section 562.111, relating to possession of alcoholic
141 beverages by persons younger than 21 years of age;

142 2. Section 784.03(1), relating to battery. This
143 subparagraph excludes battery related to domestic violence as
144 defined in s. 741.28;

145 3. Section 806.13, relating to criminal mischief;

146 4. Section 810.08 or s. 810.09, relating to trespass;

147 5. Section 812.014(2)(e) or (3)(a), relating to theft;

148 6. Section 812.015(2), relating to retail and farm theft
149 and transit fare evasion;

150 7. Section 843.02, relating to resisting an officer without
151 violence;

152 8. Section 870.01(1), relating to affrays;

153 9. Section 877.03, relating to disorderly conduct;

154 10. Section 893.13(6)(b), relating to possession of certain
155 amounts of cannabis;



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156 11. Section 893.147, relating to the use, possession,
157 manufacture, delivery, transportation, advertisement, or retail
158 sale of drug paraphernalia. This subparagraph applies only to
159 the use, possession, manufacture, delivery, transportation,
160 advertisement, or retail sale of drug paraphernalia related to
161 cannabis; or

162 12. Section 843.02, relating to resisting an officer
163 without violence.

164 (b) May issue a civil citation to the juvenile, or require
165 the juvenile's participation in a similar diversion program, if
166 the violations of law are misdemeanors not enumerated in
167 paragraph (a), or if the violations of law are one of the
168 enumerated offenses in paragraph (a) and the juvenile is 14
169 years of age or older.

170 (4) Under a juvenile civil citation or similar diversion
171 program, a law enforcement officer who makes contact with a
172 juvenile who admits having committed a second-time or third-time
173 misdemeanor offense may issue a civil citation to the juvenile
174 or require the juvenile's participation in a similar diversion
175 program, regardless of whether the violations of law are in
176 paragraph (3) (a).

177 (5) If an arrest is made for a misdemeanor offense subject
178 to paragraph (3) (b) or subsection (4), a law enforcement officer
179 must provide written documentation as to why the arrest was
180 warranted.

181 (6) A law enforcement officer shall advise a juvenile who
182 is subject to subsection (3) or subsection (4) that the juvenile
183 has the option to refuse the civil citation or other similar
184 diversion program and be referred to the department. This option



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185 may be exercised at any time before completion of the community
186 service assignment required under subsection (8). Participation
187 in a civil citation or similar diversion program is not
188 considered a referral to the department.

189 (7) Upon issuance of the civil citation or documentation
190 requiring a similar diversion program, the law enforcement
191 officer shall send a copy to the county sheriff, the state
192 attorney, the department or the entity operating the program as
193 designated by the department, the parent or guardian of the
194 juvenile, and the victim. The entity operating the program shall
195 enter such information into the juvenile justice information
196 system.

197 (8) A juvenile who elects to participate in a civil
198 citation or similar diversion program shall complete, and assess
199 up to 50 community service hours, and participate require
200 participation in intervention services as indicated by an
201 assessment of the needs of the juvenile, including family
202 counseling, urinalysis monitoring, and substance abuse and
203 mental health treatment services.

204 (a) The juvenile shall report to the entity operating the
205 program within 10 business days after the date of issuance of
206 the civil citation or documentation for a similar diversion
207 program. The juvenile shall spend a minimum of 5 hours per week
208 completing the community service assignment. The entity
209 operating the program shall immediately notify the department
210 through the juvenile justice information system that a juvenile
211 has reported to the entity operating the program and the
212 expected date on which the juvenile will complete the community
213 service assignment ~~A copy of each citation issued under this~~



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214 ~~section shall be provided to the department, and the department~~
215 ~~shall enter appropriate information into the juvenile offender~~
216 ~~information system. Use of the civil citation or similar~~
217 ~~diversion program is not limited to first-time misdemeanors and~~
218 ~~may be used in up to two subsequent misdemeanors. If an arrest~~
219 ~~is made, a law enforcement officer must provide written~~
220 ~~documentation as to why an arrest was warranted.~~

221 (b) At the conclusion of a juvenile's civil citation
222 program or similar diversion program, the entity agency
223 operating the program shall report the outcome of the program to
224 the department.

225 (c) If the juvenile fails to timely report for a community
226 service assignment, complete such assignment, or comply with
227 assigned intervention services within the prescribed time, the
228 entity operating the program shall notify the law enforcement
229 officer and the law enforcement officer shall proceed with an
230 arrest of the juvenile.

231 (d) If the juvenile commits a subsequent delinquent act
232 then the entity operating the program shall notify the law
233 enforcement officer and the law enforcement officer shall
234 proceed with an arrest of the juvenile ~~The issuance of a civil~~
235 ~~citation is not~~

236
237 ===== T I T L E A M E N D M E N T =====

238 And the title is amended as follows:

239 Delete line 3

240 and insert:

241 diversion programs; amending s. 943.0582, F.S.;

242 requiring, rather than authorizing, the Department of



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243 Law Enforcement to adopt rules to provide for the
244 expunction of nonjudicial records of the arrest of a
245 minor; defining the term "eligible offense"; deleting
246 the definition of the term "nonviolent misdemeanor";
247 revising the circumstances under which the department
248 must expunge the nonjudicial arrest record of a minor
249 who successfully completes a diversion program;
250 amending s. 985.125, F.S.; specifying that the
251 diversion program may apply to misdemeanor offenses;
252 requiring the expunction of the nonjudicial arrest
253 record of a minor who successfully satisfies certain
254 requirements; amending s. 985.12, F.S.;