

1 A bill to be entitled
2 An act relating to diversion programs; creating s.
3 901.40, F.S.; encouraging local communities and public
4 or private educational institutions to implement
5 prearrest diversion programs for certain offenders;
6 encouraging prearrest diversion programs to share
7 information with other prearrest diversion programs;
8 authorizing law enforcement officers, at their sole
9 discretion, to issue a civil citation or similar
10 prearrest diversion program notice to adults under
11 specified circumstances; requiring an adult who is
12 issued a civil citation or similar notice by a
13 participating law enforcement agency to report for
14 intake as required by the prearrest diversion program;
15 requiring the program to provide certain appropriate
16 services; requiring that an adult who is issued a
17 civil citation or similar notice fulfill a community
18 service requirement; requiring the adult to pay
19 restitution to a victim; specifying that a law
20 enforcement agency may criminally charge an adult who
21 fails to complete the prearrest diversion program and
22 refer the case for prosecution; prohibiting an arrest
23 record from being associated with a certain offense
24 for an adult who successfully completes the program;
25 requiring specified entities to create the prearrest

26 | diversion program; requiring the entities to develop
27 | policies and procedures for the development and
28 | operation of the program and to solicit input from
29 | other interested stakeholders; authorizing specified
30 | entities to operate the program; specifying how the
31 | misdemeanor offenses that are eligible for the
32 | prearrest diversion program are selected; providing
33 | applicability; amending s. 943.0582, F.S.; requiring,
34 | rather than authorizing, the Department of Law
35 | Enforcement to adopt rules for the expunction of
36 | certain nonjudicial records of the arrest of a minor
37 | upon successful completion by the minor of certain
38 | diversion programs; authorizing such expunctions for
39 | certain first-time misdemeanor offenses; creating and
40 | revising definitions; revising the circumstances under
41 | which the department must expunge certain nonjudicial
42 | arrest records; deleting the department's authority to
43 | charge a processing fee for the expunction; amending
44 | s. 985.125, F.S.; conforming a provision to changes
45 | made by the act; creating s. 985.126, F.S.; creating a
46 | definition; requiring a diversion program to submit to
47 | the department a certification for expunction of the
48 | nonjudicial arrest record of a minor under specified
49 | circumstances; requiring a diversion program to submit
50 | to the Department of Juvenile Justice specified data

51 relating to diversion programs; requiring the
52 Department of Juvenile Justice to compile and publish
53 the data in a specified manner; authorizing a minor
54 under certain circumstances to deny or fail to
55 acknowledge his or her participation in a specified
56 diversion program or the expungement of a certain
57 nonjudicial arrest record unless an exception applies;
58 providing an effective date.

59
60 Be It Enacted by the Legislature of the State of Florida:

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62 Section 1. Section 901.40, Florida Statutes, is created to
63 read:

64 901.40 Prearrest diversion programs.-

65 (1) INTENT.-The Legislature encourages local communities
66 and public or private educational institutions to implement
67 prearrest diversion programs that afford certain adults who
68 fulfill specified intervention and community service obligations
69 the opportunity to avoid an arrest record. The Legislature does
70 not mandate that a particular prearrest diversion program for
71 adults be adopted, but finds that the adoption of the model
72 provided in this section would allow certain adults to avoid an
73 arrest record, while ensuring that those adults receive
74 appropriate intervention and fulfill community service
75 obligations. If a prearrest diversion program is implemented,

76 | the program is encouraged to share information with other
77 | prearrest diversion programs.

78 | (2) MODEL ADULT CIVIL CITATION PROGRAM.—Local communities
79 | and public or private educational institutions may adopt a
80 | program in which:

81 | (a) Law enforcement officers, at their sole discretion,
82 | may issue a civil citation or similar prearrest diversion
83 | program notice to certain adults who commit a qualifying
84 | misdemeanor offense selected by the program. A civil citation or
85 | similar notice may be issued only if the adult does not contest
86 | that he or she committed the offense and if the adult has not
87 | previously been arrested and has not previously received an
88 | adult civil citation or similar notice, unless the terms of the
89 | program allow otherwise.

90 | (b) An adult who receives a civil citation or similar
91 | notice shall report for intake as required by the prearrest
92 | diversion program and shall be provided appropriate assessment,
93 | intervention, education, and behavioral health care services by
94 | the program. While in the program, the adult shall perform
95 | community service hours as specified by the program. The adult
96 | shall pay restitution due to the victim as a program
97 | requirement. If the adult does not successfully complete the
98 | prearrest diversion program, the law enforcement agency that
99 | issued the civil citation or similar notice may criminally
100 | charge the adult for the original offense and refer the case to

101 the state attorney to determine if prosecution is appropriate.
102 If the adult successfully completes the program, an arrest
103 record may not be associated with the offense.

104 (3) PROGRAM DEVELOPMENT, IMPLEMENTATION, AND OPERATION.—
105 Representatives of participating law enforcement agencies, a
106 representative of the program services provider, the public
107 defender, the state attorney, and the clerk of the circuit court
108 shall create the prearrest diversion program and develop its
109 policies and procedures including, but not limited to,
110 eligibility criteria, program implementation and operation, and
111 the determination of the fee, if any, to be paid by adults
112 participating in the program. In developing the policies and
113 procedures for the program, the parties must solicit input from
114 other interested stakeholders. The program may be operated by an
115 entity such as a law enforcement agency, the county or
116 municipality, or another entity selected by the county or
117 municipality.

118 (4) QUALIFYING OFFENSES.—Misdemeanor offenses that qualify
119 the offender for a prearrest diversion program must be selected
120 as part of the program development under subsection (3).

121 (5) APPLICABILITY.—This section does not preempt a county
122 or municipality from enacting noncriminal sanctions for a
123 violation of an ordinance or other violation, and it does not
124 preempt a county, a municipality, or a public or private
125 educational institution from creating its own model for a

126 prearrest diversion program for adults.

127 Section 2. Section 943.0582, Florida Statutes, is amended
128 to read:

129 943.0582 ~~Prearrest, postarrest, or teen court~~ Diversion
130 program expunction.—

131 (1) Notwithstanding any law dealing generally with the
132 preservation and destruction of public records, the department
133 shall adopt rules to ~~may provide, by rule adopted pursuant to~~
134 ~~chapter 120,~~ for the expunction of a ~~any~~ nonjudicial record of
135 the arrest of a minor who has successfully completed a ~~prearrest~~
136 ~~or postarrest~~ diversion program for a misdemeanor offense ~~minors~~
137 as ~~authorized by s. 985.125.~~

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

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

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

144 1. The provisions of s. 943.0585(4)(a) do not apply,
145 except that the criminal history record of a person whose record
146 is expunged pursuant to this section shall be made available
147 only to criminal justice agencies for the purpose of:

148 a. Determining eligibility for ~~prearrest, postarrest, or~~
149 ~~teen court~~ diversion programs;

150 b. ~~when the record is sought as part of A criminal~~

151 investigation; or

152 c. Making a prosecutorial decision under s. 985.15; ~~or~~
153 ~~when the subject of the record is a candidate for employment~~
154 ~~with a criminal justice agency. For all other purposes, a person~~
155 ~~whose record is expunged under this section may lawfully deny or~~
156 ~~fail to acknowledge the arrest and the charge covered by the~~
157 ~~expunged record.~~

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

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

166 (3) The department shall expunge the nonjudicial arrest
167 record of a minor ~~who has successfully completed a prearrest or~~
168 ~~postarrest diversion program~~ if the minor has never previously
169 received an expunction under this section and the diversion
170 program submits a certification for expunction ~~that minor:~~

171 ~~(a) Submits an application for prearrest or postarrest~~
172 ~~diversion expunction,~~ on a form prescribed by the department,
173 ~~signed by the minor's parent or legal guardian, or by the minor~~
174 ~~if he or she has reached the age of majority at the time of~~
175 ~~applying.~~

176 ~~(b) Submits to the department, with the application, an~~
177 ~~official written statement from the state attorney for the~~
178 ~~county in which the arrest occurred certifying that he or she~~
179 ~~has successfully completed that county's prearrest or postarrest~~
180 ~~diversion program, that his or her participation in the program~~
181 ~~was based on an arrest for a nonviolent misdemeanor, and~~
182 ~~that he or she has not otherwise been charged by the state~~
183 ~~attorney with, or found to have committed, any criminal offense~~
184 ~~or comparable ordinance violation.~~

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

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

191 ~~(e) Has never been, before filing the application for~~
192 ~~expunction, charged by the state attorney with, or found to have~~
193 ~~committed, any criminal offense or comparable ordinance~~
194 ~~violation.~~

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

200 ~~(5) Expunction or sealing granted under this section does~~

201 not prevent the minor who receives such relief from petitioning
 202 for the expunction or sealing of a later criminal history record
 203 as provided for in ss. 943.0583, 943.0585, and 943.059, if the
 204 minor is otherwise eligible under those sections.

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

207 985.125 Prearrest or postarrest diversion programs.—

208 ~~(3) The prearrest or postarrest diversion program may,~~
 209 ~~upon agreement of the agencies that establish the program,~~
 210 ~~provide for the expunction of the nonjudicial arrest record of a~~
 211 ~~minor who successfully completes such a program pursuant to s.~~
 212 ~~943.0582.~~

213 Section 4. Section 985.126, Florida Statutes, is created
 214 to read:

215 985.126 Diversion programs; denial of participation or
 216 expunged record; data collection.—

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

219 (2) Each diversion program shall submit:

220 (a) A certification for expunction to the Department of
 221 Law Enforcement of the minor's nonjudicial arrest record under
 222 s. 943.0582 if the minor:

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

225 2. Has not otherwise been charged by the state attorney

226 with, or been found to have committed, a criminal offense or
227 comparable ordinance violation.

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

230 1. Participates in the diversion program:

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

232 b. The offense committed with citation to the specific law
233 establishing the offense; and

234 c. The judicial circuit and county in which the offense
235 was committed and the law enforcement agency that had contact
236 with the minor for the offense.

237 2. Is eligible for the diversion program, but who,
238 instead, is referred to the department, is provided a notice to
239 appear, or is arrested:

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

241 b. Whether the minor was offered the opportunity to
242 participate in the diversion program. If the minor:

243 (I) Was not offered such opportunity, the diversion
244 program shall provide the reason for declining to make the
245 offer.

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

249 (3) The department shall compile the data required under
250 subsection (2) and publish it on the department's website in a

251 format that is, at a minimum, sortable by judicial circuit,
252 county, law enforcement agency, race or ethnicity, gender, age,
253 and offense committed.

254 (4) A minor who successfully completes a diversion program
255 for a first-time misdemeanor offense may lawfully deny or fail
256 to acknowledge his or her participation in the program and a
257 nonjudicial arrest record expunged under s. 943.0582, unless the
258 inquiry is made by a criminal justice agency, as defined in s.
259 943.045, for a purpose described in s. 943.0582(2)(b)1.

260 Section 5. This act shall take effect July 1, 2017.