

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Ahern offered the following:

**Amendment to Amendment (814130) (with title amendment)**

Remove lines 69-455 of the amendment and insert:

Section 2. Section 901.40, Florida Statutes, is created to read:

901.40 Prearrest diversion programs.-

(1) INTENT.-The Legislature encourages local communities and public or private educational institutions to implement prearrest diversion programs that afford certain adults who fulfill specified intervention and community service obligations the opportunity to avoid an arrest record. The Legislature does not mandate that a particular prearrest diversion program for

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14 adults be adopted, but finds that the adoption of the model  
15 provided in this section would allow certain adults to avoid an  
16 arrest record, while ensuring that those adults receive  
17 appropriate intervention and fulfill community service  
18 obligations. If a prearrest diversion program is implemented,  
19 the program is encouraged to share information with other  
20 prearrest diversion programs.

21 (2) MODEL ADULT CIVIL CITATION PROGRAM.—Local communities  
22 and public or private educational institutions may adopt a  
23 program in which:

24 (a) Law enforcement officers, at their sole discretion,  
25 may issue a civil citation or similar prearrest diversion  
26 program notice to certain adults who commit a qualifying  
27 misdemeanor offense selected by the program. A civil citation or  
28 similar notice may be issued only if the adult does not contest  
29 that he or she committed the offense and if the adult has not  
30 previously been arrested and has not previously received an  
31 adult civil citation or similar notice, unless the terms of the  
32 program allow otherwise.

33 (b) An adult who receives a civil citation or similar  
34 notice shall report for intake as required by the prearrest  
35 diversion program and shall be provided appropriate assessment,  
36 intervention, education, and behavioral health care services by  
37 the program. While in the program, the adult shall perform  
38 community service hours as specified by the program. The adult

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39 shall pay restitution due to the victim as a program  
40 requirement. If the adult does not successfully complete the  
41 prearrest diversion program, the law enforcement agency that  
42 issued the civil citation or similar notice may criminally  
43 charge the adult for the original offense and refer the case to  
44 the state attorney to determine if prosecution is appropriate.  
45 If the adult successfully completes the program, an arrest  
46 record may not be associated with the offense.

47 (3) PROGRAM DEVELOPMENT, IMPLEMENTATION, AND OPERATION.—

48 (a) Representatives of participating law enforcement  
49 agencies, a representative of the program services provider, the  
50 public defender, the state attorney, and the clerk of the  
51 circuit court shall create the prearrest diversion program and  
52 develop its policies and procedures including, but not limited  
53 to, eligibility criteria, program implementation and operation,  
54 and the determination of the fee, if any, to be paid by adults  
55 participating in the program. In developing the policies and  
56 procedures for the program, the parties must solicit input from  
57 other interested stakeholders. The program may be operated by an  
58 entity such as a law enforcement agency, the county or  
59 municipality, or another entity selected by the county or  
60 municipality.

61 (b) Upon intake of any person participating in the  
62 program, the program operator shall electronically provide a  
63 participant's personal identifying information to the clerk of

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64 the circuit court for the county in which the program provides  
65 services. Such information is not a court record, and the clerk  
66 must maintain confidentiality of the participant's personal  
67 identifying information. The clerk shall maintain such  
68 information in a statewide database, which must provide a single  
69 point of access for all such statewide information. If the  
70 program includes a fee for participation, the clerk must receive  
71 a reasonable portion, to be determined by the stakeholders  
72 creating the program, for receiving and maintaining the personal  
73 identifying information. The fee must be deposited by the clerk  
74 into the clerk's fine and forfeiture fund established pursuant  
75 to s. 142.01.

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

79 (5) APPLICABILITY.—This section does not preempt a county  
80 or municipality from enacting noncriminal sanctions for a  
81 violation of an ordinance or other violation, and it does not  
82 preempt a county, a municipality, or a public or private  
83 educational institution from creating its own model for a  
84 prearrest diversion program for adults.

85 Section 3. Section 943.0582, Florida Statutes, is amended  
86 to read:

87 943.0582 ~~Prearrest, postarrest, or teen court~~ Diversion  
88 program expunction.—

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89 (1) Notwithstanding any law dealing generally with the  
90 preservation and destruction of public records, the department  
91 shall adopt rules to ~~may provide, by rule adopted pursuant to~~  
92 ~~chapter 120,~~ for the expunction of a ~~any~~ nonjudicial record of  
93 the arrest of a minor who has successfully completed a ~~prearrest~~  
94 ~~or postarrest~~ diversion program for a misdemeanor offense ~~minors~~  
95 as ~~authorized by s. 985.125.~~

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

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

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

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

106 a. Determining eligibility for ~~prearrest, postarrest, or~~  
107 ~~teen court~~ diversion programs;

108 b. when the record is sought as part of A criminal  
109 investigation; or

110 c. Making a prosecutorial decision under s. 985.15; ~~or~~  
111 ~~when the subject of the record is a candidate for employment~~  
112 ~~with a criminal justice agency. For all other purposes, a person~~  
113 ~~whose record is expunged under this section may lawfully deny or~~

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114 ~~fail to acknowledge the arrest and the charge covered by the~~  
115 ~~expunged record.~~

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

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

124 (3) The department shall expunge the nonjudicial arrest  
125 record of a minor ~~who has successfully completed a prearrest or~~  
126 ~~postarrest diversion program~~ if the minor has never previously  
127 received an expunction under this section and the diversion  
128 program submits a certification for expunction that minor:

129 ~~(a) Submits an application for prearrest or postarrest~~  
130 ~~diversion expunction,~~ on a form prescribed by the department,  
131 ~~signed by the minor's parent or legal guardian, or by the minor~~  
132 ~~if he or she has reached the age of majority at the time of~~  
133 ~~applying.~~

134 ~~(b) Submits to the department, with the application, an~~  
135 ~~official written statement from the state attorney for the~~  
136 ~~county in which the arrest occurred certifying that he or she~~  
137 ~~has successfully completed that county's prearrest or postarrest~~

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138 ~~diversion program, that his or her participation in the program~~  
139 ~~was based on an arrest for a nonviolent misdemeanor, and~~  
140 ~~that he or she has not otherwise been charged by the state~~  
141 ~~attorney with, or found to have committed, any criminal offense~~  
142 ~~or comparable ordinance violation.~~

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

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

149 ~~(e) Has never been, before filing the application for~~  
150 ~~expunction, charged by the state attorney with, or found to have~~  
151 ~~committed, any criminal offense or comparable ordinance~~  
152 ~~violation.~~

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

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

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

165 985.125 Prearrest or postarrest diversion programs.—

166 ~~(3) The prearrest or postarrest diversion program may,~~  
167 ~~upon agreement of the agencies that establish the program,~~  
168 ~~provide for the expunction of the nonjudicial arrest record of a~~  
169 ~~minor who successfully completes such a program pursuant to s.~~  
170 ~~943.0582.~~

171 Section 5. Section 985.126, Florida Statutes, is created  
172 to read:

173 985.126 Diversion programs; denial of participation or  
174 expunged record; data collection.—

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

177 (2) Each diversion program shall submit:

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

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

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

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

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188 1. Participates in the diversion program:

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

190 b. The offense committed with citation to the specific law  
191 establishing the offense; and

192 c. The judicial circuit and county in which the offense  
193 was committed and the law enforcement agency that had contact  
194 with the minor for the offense.

195 2. Is eligible for the diversion program, but who,  
196 instead, is referred to the department, is provided a notice to  
197 appear, or is arrested:

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

199 b. Whether the minor was offered the opportunity to  
200 participate in the diversion program. If the minor:

201 (I) Was not offered such opportunity, the diversion  
202 program shall provide the reason for declining to make the  
203 offer.

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

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

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212       (4) A minor who successfully completes a diversion program  
 213 for a first-time misdemeanor offense may lawfully deny or fail  
 214 to acknowledge his or her participation in the program and a  
 215 nonjudicial arrest record expunged under s. 943.0582, unless the  
 216 inquiry is made by a criminal justice agency, as defined in s.  
 217 943.045, for a purpose described in s. 943.0582(2)(b)1.

218       Section 6. This act shall take effect July 1, 2017.

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**T I T L E   A M E N D M E N T**

223       Remove lines 466-492 of the amendment and insert:  
 224       legislative review and repeal; creating s. 901.40,  
 225       F.S.; encouraging local communities and public or  
 226       private educational institutions to implement  
 227       prearrest diversion programs for certain offenders;  
 228       encouraging prearrest diversion programs to share  
 229       information with other prearrest diversion programs;  
 230       authorizing law enforcement officers, at their sole  
 231       discretion, to issue a civil citation or similar  
 232       prearrest diversion program notice to adults under  
 233       specified circumstances; requiring an adult who is  
 234       issued a civil citation or similar notice by a  
 235       participating law enforcement agency to report for  
 236       intake as required by the prearrest diversion program;

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237 requiring the program to provide certain appropriate  
238 services; requiring that an adult who is issued a  
239 civil citation or similar notice fulfill a community  
240 service requirement; requiring the adult to pay  
241 restitution to a victim; specifying that a law  
242 enforcement agency may criminally charge an adult who  
243 fails to complete the prearrest diversion program and  
244 refer the case for prosecution; prohibiting an arrest  
245 record from being associated with a certain offense  
246 for an adult who successfully completes the program;  
247 requiring specified entities to create the prearrest  
248 diversion program; requiring the entities to develop  
249 policies and procedures for the development and  
250 operation of the program and to solicit input from  
251 other interested stakeholders; authorizing specified  
252 entities to operate the program; requiring the  
253 prearrest diversion program operator to electronically  
254 provide a participant's personal identifying  
255 information to the clerk of the circuit court;  
256 specifying requirements for the clerk on the handling  
257 of the information and maintaining it in a statewide  
258 database; providing for fee sharing under certain  
259 circumstances; requiring fees received by the clerk to  
260 be deposited in a certain fund; specifying how the  
261 misdemeanor offenses that are eligible for the

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262 prearrest diversion program are selected; providing  
263 applicability; amending s. 943.0582, F.S.; requiring,  
264 rather than authorizing, the Department of Law  
265 Enforcement to adopt rules for the expunction of  
266 certain nonjudicial records of the arrest of a minor  
267 upon successful completion by the minor of certain  
268 diversion programs; authorizing such expunctions for  
269 certain first-time misdemeanor offenses; creating and  
270 revising definitions; revising the circumstances under  
271 which the department must expunge certain nonjudicial  
272 arrest records; deleting the department's authority to  
273 charge a processing fee for the expunction; amending  
274 s. 985.125, F.S.; conforming a provision to changes  
275 made by the act; creating s. 985.126, F.S.; creating a  
276 definition; requiring a diversion program to submit to  
277 the department a certification for expunction of the  
278 nonjudicial arrest record of a minor under specified  
279 circumstances; requiring a diversion program to submit  
280 to the Department of Juvenile Justice specified data  
281 relating to diversion programs; requiring the  
282 Department of Juvenile Justice to compile and publish  
283 the data in a specified manner; authorizing a minor  
284 under certain circumstances to deny or fail to  
285 acknowledge his or her participation in a specified  
286 diversion program or the expungement of a certain

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287 | nonjudicial arrest record unless an exception applies;  
288 | providing an effective date.  
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