

1 A bill to be entitled
2 An act relating to diversion programs; creating s.
3 901.41, F.S.; providing legislative intent;
4 encouraging local communities and public or private
5 educational institutions to implement prearrest
6 diversion programs for certain offenders; encouraging
7 prearrest diversion programs to share information with
8 other prearrest diversion programs; authorizing law
9 enforcement officers, at their sole discretion, to
10 issue a civil citation or similar prearrest diversion
11 program notice under specified circumstances to adults
12 who commit certain misdemeanor offenses; requiring an
13 adult who receives a civil citation or similar
14 prearrest diversion program notice to report for
15 intake as required by the prearrest diversion program;
16 requiring that the prearrest diversion program provide
17 specified services to adults who participate, as
18 appropriate; requiring that an adult who is issued a
19 civil citation or similar prearrest diversion program
20 notice fulfill a community service requirement;
21 requiring the adult to pay restitution to a victim;
22 requiring law enforcement officers to determine
23 whether there is good cause to arrest participants who
24 do not successfully complete a prearrest diversion
25 program and, if so, to refer the case to the state

26 attorney, or, in the absence of good cause, to allow
27 the participant to continue in the program; requiring
28 representatives of specified entities to create the
29 prearrest diversion program; requiring the entities to
30 develop policies and procedures for the development
31 and operation of the program, including designation of
32 the misdemeanor offenses that qualify persons for
33 participation, and to solicit input from other
34 interested stakeholders; authorizing specified
35 entities to operate programs; requiring prearrest
36 diversion program operators to electronically provide
37 participants' personal identifying information to the
38 clerk of the circuit court; specifying requirements
39 for the clerks' handling and maintenance of certain
40 information; requiring that a portion of any
41 participation fee go to the appropriate clerk of the
42 circuit court; requiring fees received by the clerks
43 of the circuit court to be deposited in a certain
44 fund; providing applicability; amending s. 943.0582,
45 F.S.; requiring, rather than authorizing, the
46 Department of Law Enforcement to adopt rules for the
47 expunction of certain nonjudicial records of the
48 arrest of a minor upon successful completion by the
49 minor of certain diversion programs; creating and
50 revising definitions; authorizing such expunctions for

51 certain first-time misdemeanor offenses; revising the
52 circumstances under which the department must expunge
53 certain nonjudicial arrest records; deleting the
54 department's authority to charge a processing fee for
55 the expunction; amending s. 985.125, F.S.; conforming
56 a provision to changes made by the act; creating s.
57 985.126, F.S.; defining the term "diversion program";
58 requiring the Department of Juvenile Justice to submit
59 to the Department of Law Enforcement a certification
60 for expunction of the nonjudicial arrest record of a
61 minor under specified circumstances; requiring a
62 diversion program to submit to the department
63 specified data relating to diversion programs;
64 requiring a law enforcement agency to submit to the
65 department specified data about diversion programs;
66 requiring the department to compile and publish the
67 data in a specified manner; authorizing a minor under
68 certain circumstances to deny or fail to acknowledge
69 his or her expunction of a certain nonjudicial arrest
70 record unless an exception applies; requiring the
71 department to adopt rules; providing an effective
72 date.

73
74 Be It Enacted by the Legislature of the State of Florida:
75

76 Section 1. Section 901.41, Florida Statutes, is created to
 77 read:

78 901.41 Prearrest diversion programs.-

79 (1) LEGISLATIVE INTENT.-The Legislature encourages local
 80 communities and public or private educational institutions to
 81 implement prearrest diversion programs that afford certain
 82 adults who fulfill specified intervention and community service
 83 obligations the opportunity to avoid an arrest record. The
 84 Legislature does not mandate that a particular prearrest
 85 diversion program for adults be adopted, but finds that the
 86 adoption of the model program provided in this section would
 87 allow certain adults to avoid an arrest record while ensuring
 88 that they receive appropriate services and fulfill their
 89 community service obligations. If a prearrest diversion program
 90 is implemented, the program is encouraged to share information
 91 with other prearrest diversion programs.

92 (2) MODEL PREARREST DIVERSION PROGRAM.-Local communities
 93 and public or private educational institutions may adopt a
 94 prearrest diversion program in which:

95 (a) Law enforcement officers, at their sole discretion,
 96 may issue a civil citation or similar prearrest diversion
 97 program notice to certain adults who commit a qualifying
 98 misdemeanor offense, as determined by the representatives that
 99 develop the program under subsection (3). A civil citation or
 100 similar prearrest diversion program notice may be issued if the

101 adult who commits the offense:

102 1. Admits that he or she committed the offense or does not
103 contest the offense; and

104 2. Has not previously been arrested and has not received
105 an adult civil citation or similar prearrest diversion program
106 notice, unless the terms of the local adult prearrest diversion
107 program allow otherwise.

108 (b) An adult who receives a civil citation or similar
109 prearrest diversion program notice shall report for intake as
110 required by the local prearrest diversion program and must be
111 provided appropriate assessment, intervention, education, and
112 behavioral health care services by the program. While in the
113 local prearrest diversion program, the adult shall perform
114 community service hours as specified by the program. The adult
115 shall pay restitution due to the victim as a program
116 requirement. If the adult does not successfully complete the
117 prearrest diversion program, the law enforcement officer must
118 determine if there is good cause to arrest the adult for the
119 original misdemeanor offense and, if so, refer the case to the
120 state attorney to determine whether prosecution is appropriate
121 or, in the absence of a finding of good cause, allow the adult
122 to continue in the program.

123 (3) PROGRAM DEVELOPMENT; IMPLEMENTATION; OPERATION.-

124 (a) Representatives of participating law enforcement
125 agencies, a representative of the program services provider, the

126 public defender, the state attorney, and the clerk of the
127 circuit court shall create the prearrest diversion program and
128 develop its policies and procedures, including, but not limited
129 to, eligibility criteria, program implementation and operation,
130 and the determination of the fee, if any, to be paid by adults
131 participating in the program. In developing the program's
132 policies and procedures, which must include the designation of
133 the misdemeanor offenses that qualify adults for participation
134 in the program, the representatives must solicit input from
135 other interested stakeholders. The program may be operated by an
136 entity such as a law enforcement agency or a county or
137 municipality, or other entity selected by the county or
138 municipality.

139 (b) Upon intake of an adult participating in the prearrest
140 diversion program, the program operator shall electronically
141 provide the participant's personal identifying information to
142 the clerk of the circuit court for the county in which the
143 program provides services. Such information is not a court
144 record, and the clerk of the circuit court shall maintain the
145 confidentiality of the participant's personal identifying
146 information as provided in subsection (5). The clerk of the
147 circuit court shall maintain such information in a statewide
148 database, which must provide a single point of access for all
149 such statewide information. If the program imposes a
150 participation fee, the clerk of the circuit court must receive a

151 reasonable portion, to be determined by the stakeholders
 152 creating the program, for receipt and maintenance of the
 153 required information. The fee shall be deposited by the clerk of
 154 the circuit court into the fine and forfeiture fund established
 155 under s. 142.01.

156 (4) APPLICABILITY.—This section does not preempt a county
 157 or municipality from enacting noncriminal sanctions for a
 158 violation of an ordinance or other violation, and it does not
 159 preempt a county, a municipality, or a public or private
 160 educational institution from creating its own model for a
 161 prearrest diversion program for adults.

162 Section 2. Section 943.0582, Florida Statutes, is amended
 163 to read:

164 943.0582 ~~Prearrest, postarrest, or teen court~~ Diversion
 165 program expunction.—

166 (1) Notwithstanding any law dealing generally with the
 167 preservation and destruction of public records, the department
 168 shall adopt rules to ~~may provide, by rule adopted pursuant to~~
 169 ~~chapter 120,~~ for the expunction of a ~~any~~ nonjudicial record of
 170 the arrest of a minor who has successfully completed a ~~prearrest~~
 171 ~~or postarrest~~ diversion program for a misdemeanor offense ~~minors~~
 172 as ~~authorized by s. 985.125.~~

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

174 (a) "Diversion program" means a program under s. 985.12,
 175 s. 985.125, s. 985.155, or s. 985.16 or a program to which a

176 referral is made by a state attorney under s. 985.15.

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

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

183 a. Determining eligibility for ~~prearrest, postarrest, or~~
184 ~~teen court~~ diversion programs;

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

187 c. Making a prosecutorial decision under s. 985.15 ~~when~~
188 ~~the subject of the record is a candidate for employment with a~~
189 ~~criminal justice agency. For all other purposes, a person whose~~
190 ~~record is expunged under this section may lawfully deny or fail~~
191 ~~to acknowledge the arrest and the charge covered by the expunged~~
192 ~~record.~~

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

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

201 (3) The department shall expunge the nonjudicial arrest
202 record of a minor ~~who has successfully completed a prearrest or~~
203 ~~postarrest diversion program~~ if the minor has not previously
204 received an expunction under this section, the Department of
205 Juvenile Justice submits a certification for expunction, and the
206 department determines the minor has not been, before the
207 expunction of the record, charged by a state attorney with or
208 found to have committed any subsequent criminal offense or
209 ordinance violation. ~~that minor:~~

210 ~~(a) Submits an application for prearrest or postarrest~~
211 ~~diversion expunction, on a form prescribed by the department,~~
212 ~~signed by the minor's parent or legal guardian, or by the minor~~
213 ~~if he or she has reached the age of majority at the time of~~
214 ~~applying.~~

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

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

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

230 ~~(e) Has never been, before filing the application for~~
231 ~~expunction, charged by the state attorney with, or found to have~~
232 ~~committed, any criminal offense or comparable ordinance~~
233 ~~violation.~~

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

239 (4)~~(5)~~ Expunction or sealing granted under this section
240 does not prevent the minor who receives such relief from
241 petitioning for the expunction or sealing of a later criminal
242 history record as provided for in ss. 943.0583, 943.0585, and
243 943.059, if the minor is otherwise eligible under those
244 sections.

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

247 985.125 Prearrest or postarrest diversion programs.—

248 ~~(3) The prearrest or postarrest diversion program may,~~
249 ~~upon agreement of the agencies that establish the program,~~
250 ~~provide for the expunction of the nonjudicial arrest record of a~~

251 ~~minor who successfully completes such a program pursuant to s.~~
252 ~~943.0582.~~

253 Section 4. Section 985.126, Florida Statutes, is created
254 to read:

255 985.126 Diversion programs; data collection; denial of
256 participation or expunged record.—

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

259 (2) Upon issuance of documentation requiring a minor to
260 participate in a diversion program, before or without an arrest,
261 the issuing law enforcement officer shall send a copy of such
262 documentation to the entity designated to operate the diversion
263 program and to the department, which shall enter such
264 information into the Juvenile Justice Information System
265 Prevention Web.

266 (3) After a minor completes a diversion program, the
267 entity operating the program shall report to the department the
268 outcome of the minor's participation in the diversion program.
269 Upon confirming the minor's successful completion of the
270 diversion program, including a nolle prosequi or no information
271 of the charges, if applicable, the department shall
272 electronically submit to the Department of Law Enforcement a
273 certification for expunction of the minor's nonjudicial arrest
274 record under s. 943.0582. Such certification must include the
275 minor's name, date of birth, and offender-based transaction

276 system number.

277 (a) Upon receipt of the certification for expunction from
278 the department, the Department of Law Enforcement shall confirm
279 the minor has not otherwise been charged by a state attorney
280 with or been found to have committed a criminal offense or
281 ordinance violation. Upon confirmation, the Department of Law
282 Enforcement must expunge the minor's nonjudicial arrest record
283 within 3 days. If the minor is found to have been charged by a
284 state attorney with or been found to have committed a criminal
285 offense or ordinance violation before the record expunction, the
286 certification for expunction shall be denied and returned to the
287 department, citing the reason for denial.

288 (b) Beginning October 1, 2018, each diversion program
289 shall submit data to the department which identifies for each
290 minor participating in the diversion program:

291 1. The race, ethnicity, gender, and age of that minor.

292 2. The offense committed, including the specific law
293 establishing the offense.

294 3. The judicial circuit and county in which the offense
295 was committed and the law enforcement agency that had contact
296 with the minor for the offense.

297 (c) Beginning October 1, 2018, each law enforcement agency
298 shall submit to the department data that identifies for each
299 minor who was eligible for a diversion program, but was instead
300 referred to the department, provided a notice to appear, or

301 arrested:

302 1. The data required pursuant to paragraph (b).

303 2. Whether the minor was offered the opportunity to
304 participate in a diversion program. If the minor was:

305 a. Not offered such opportunity, the reason such offer was
306 not made.

307 b. Offered such opportunity, whether the minor or his or
308 her parent or legal guardian declined to participate in the
309 diversion program.

310 (d) The data required pursuant to paragraphs (b) and (c)
311 shall be submitted to the department quarterly.

312 (4) Beginning January 1, 2019, the department shall
313 compile and semiannually publish the data required by subsection
314 (3) on the department's website in a format that is, at a
315 minimum, sortable by judicial circuit, county, law enforcement
316 agency, race, ethnicity, gender, age, and offense committed.

317 (5) A minor who successfully completes a diversion program
318 for a first-time misdemeanor offense may lawfully deny or fail
319 to acknowledge his or her participation in the program and an
320 expunction of a nonjudicial arrest record under s. 943.0582,
321 unless the inquiry is made by a criminal justice agency, as
322 defined in s. 943.045, for a purpose described in s.
323 943.0582(2)(b)1.

324 (6) The department shall adopt rules to implement this
325 section.

CS/HB 1197

2018

326 | Section 5. This act shall take effect July 1, 2018. |