

By Senator Brandes

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1                   A bill to be entitled  
2           An act relating to prearrest diversion programs;  
3           creating s. 901.40, F.S.; providing legislative  
4           findings and intent; encouraging counties,  
5           municipalities, and public or private educational  
6           institutions to implement prearrest diversion  
7           programs; requiring that in each judicial circuit the  
8           public defender, the state attorney, the clerks of the  
9           court, and representatives of participating law  
10          enforcement agencies create a prearrest diversion  
11          program and develop its policies and procedures;  
12          authorizing such entities to solicit stakeholders for  
13          input in developing the program's policies and  
14          procedures; providing requirements for the prearrest  
15          diversion program; requiring the state attorney of  
16          each circuit to operate the prearrest diversion  
17          program; providing an exception; providing  
18          construction; requiring the arresting law enforcement  
19          officer to make a determination if an adult does not  
20          successfully complete the prearrest diversion program;  
21          requiring the state attorney or the person operating  
22          an independent prearrest diversion program to  
23          electronically provide certain information to the  
24          clerk of the court; requiring the clerk of the court  
25          to maintain the confidentiality of such information;  
26          requiring the clerk of the court to maintain that  
27          information in a statewide database; amending s.  
28          943.0582, F.S.; requiring, rather than authorizing,  
29          the Department of Law Enforcement to adopt rules for

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30 the expunction of certain nonjudicial records of the  
31 arrest of a minor upon his or her successful  
32 completion of a certain diversion program; authorizing  
33 such expunctions for certain first-time misdemeanor  
34 offenses; defining and revising terms; revising the  
35 circumstances under which the department must expunge  
36 certain nonjudicial arrest records; deleting the  
37 department's authority to charge a processing fee for  
38 the expunction; amending s. 985.12, F.S.; providing  
39 legislative findings and intent; deleting provisions  
40 establishing a juvenile civil citation process with a  
41 certain purpose; establishing a civil citation or  
42 similar diversion program in each judicial circuit,  
43 rather than at the local level with the concurrence of  
44 specified persons; requiring that the state attorney  
45 and public defender of each circuit, the clerk of the  
46 court for each county in the circuit, and  
47 representatives of participating law enforcement  
48 agencies create a civil citation or similar diversion  
49 program and develop its policies and procedures;  
50 authorizing such entities to solicit stakeholders for  
51 input in developing the program's policies and  
52 procedures; providing requirements for the civil  
53 citation or similar diversion program; requiring the  
54 state attorney of each judicial circuit to operate the  
55 civil citation or similar diversion program; providing  
56 an exception; providing construction; requiring the  
57 arresting law enforcement officer to make a  
58 determination if a juvenile does not successfully

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59 complete the civil citation or similar diversion  
60 program; deleting provisions relating to the operation  
61 of and requirements for a civil citation or similar  
62 diversion program; requiring that a copy of each civil  
63 citation or similar diversion program notice be  
64 provided to the Department of Juvenile Justice;  
65 conforming provisions to changes made by the act;  
66 deleting provisions relating to requirements for a  
67 civil citation or similar diversion program; amending  
68 s. 985.125, F.S.; conforming a provision to changes  
69 made by the act; creating s. 985.126, F.S.; defining  
70 the term "diversion program"; requiring a diversion  
71 program to submit to the Department of Law Enforcement  
72 a certification for expunction of the nonjudicial  
73 arrest record of a juvenile under specified  
74 circumstances; requiring a diversion program to submit  
75 to the Department of Juvenile Justice specified data  
76 relating to diversion programs; requiring the  
77 Department of Juvenile Justice to compile and publish  
78 the data in a specified manner; authorizing a juvenile  
79 under certain circumstances to deny or fail to  
80 acknowledge his or her participation in a diversion  
81 program or the expunction of a certain nonjudicial  
82 arrest record unless an exception applies; providing  
83 an effective date.

84  
85 Be It Enacted by the Legislature of the State of Florida:

86  
87 Section 1. Section 901.40, Florida Statutes, is created to

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88 read:

89 901.40 Prearrest diversion programs.-

90 (1) LEGISLATIVE FINDINGS AND INTENT.-The Legislature finds  
91 that the creation and implementation of prearrest diversion  
92 programs at the judicial circuit level promotes public safety,  
93 aids interagency cooperation, and provides the greatest chance  
94 of success for prearrest diversion programs. The Legislature  
95 further finds that the widespread use of prearrest diversion  
96 programs has a positive effect on the criminal justice system  
97 and contributes to an overall reduction in the crime rate and  
98 recidivism in the state. The Legislature encourages but does not  
99 mandate that counties, municipalities, and public or private  
100 educational institutions participate in a prearrest diversion  
101 program created by their judicial circuit under this section.

102 (2) JUDICIAL CIRCUIT PREARREST DIVERSION PROGRAM  
103 DEVELOPMENT, IMPLEMENTATION, OPERATION.-

104 (a) In each judicial circuit in the state, the public  
105 defender, the state attorney, the clerk of the court for each  
106 county in the circuit, and representatives of participating law  
107 enforcement agencies in the circuit shall create a prearrest  
108 diversion program and develop its policies and procedures. In  
109 developing the program's policies and procedures, input from  
110 other interested stakeholders may be solicited.

111 (b) Each judicial circuit's prearrest diversion program  
112 must specify:

- 113 1. The misdemeanor offenses that qualify an adult for  
114 participation in the program;
- 115 2. The eligibility criteria for the program;
- 116 3. The program's implementation and operation;

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117 4. The program's requirements, including, but not limited  
118 to, the completion of community service hours, payment of  
119 restitution, if applicable, and intervention services indicated  
120 by a needs assessment of the adult, such as urinalysis  
121 monitoring and substance abuse and mental health treatment  
122 services; and

123 5. A program fee, if any, to be paid by an adult  
124 participating in the program. If the program imposes a fee, the  
125 clerk of the court of the applicable county must receive a  
126 reasonable portion of the fee.

127 (c) The state attorney of each circuit shall operate a  
128 prearrest diversion program in each circuit, except that a  
129 sheriff, police department, county, municipality, or public or  
130 private educational institution that has an independent  
131 prearrest diversion program in operation as of October 1, 2018,  
132 may continue to operate it if the independent program is  
133 reviewed by the state attorney of the applicable circuit and he  
134 or she determines that the independent program is substantially  
135 similar to the prearrest diversion program developed by the  
136 circuit. If the state attorney determines that the independent  
137 program is not substantially similar to the prearrest diversion  
138 program developed by the circuit, the operator of the  
139 independent diversion program may revise the program and the  
140 state attorney may conduct an additional review of the  
141 independent program.

142 (d) This section does not prevent a judicial circuit from  
143 adopting an existing sheriff, police department, county,  
144 municipality, or public or private educational institution's  
145 independent prearrest diversion program as the prearrest

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146 diversion program for the circuit.

147 (e) If an adult does not successfully complete the  
148 prearrest diversion program, the arresting law enforcement  
149 officer shall determine if there is good cause to arrest the  
150 adult for the original misdemeanor offense and refer the case to  
151 the state attorney to determine if prosecution is appropriate or  
152 allow the adult to continue in the program.

153 (f) Upon intake of an adult participating in the prearrest  
154 diversion program, the state attorney or the person operating  
155 the independent prearrest diversion program shall electronically  
156 provide the adult's personal identifying information to the  
157 clerk of the court for the county in which the adult is  
158 participating in the prearrest diversion program. Such  
159 information is not a court record, and the clerk of the court  
160 shall maintain the confidentiality of the adult's personal  
161 identifying information as provided in subsection (3). The clerk  
162 of the court shall maintain such information in a statewide  
163 database, which must provide a single point of access for all  
164 such statewide information.

165 Section 2. Section 943.0582, Florida Statutes, is amended  
166 to read:

167 943.0582 Prearrest, postarrest, or teen court diversion  
168 program expunction.—

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

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175 ~~as authorized by s. 985.125.~~

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

177 (a) "Diversion program" means a program under s. 985.12, s.  
178 985.125, s. 985.155, or s. 985.16 or a program to which a  
179 referral is made by a state attorney under s. 985.15(1)(g).

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

182 1. Section ~~The provisions of s. 943.0585(4) (a) does de~~ not  
183 apply, except that the criminal history record of a person whose  
184 record is expunged pursuant to this section shall be made  
185 available only to criminal justice agencies for the purpose of:

186 a. Determining eligibility for ~~prearrest, postarrest, or~~  
187 ~~teen court~~ diversion programs;

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

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

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

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

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204 (3) The department shall expunge the nonjudicial arrest  
205 record of a minor ~~who has successfully completed a prearrest or~~  
206 ~~postarrest diversion program~~ if the minor has never previously  
207 received an expunction under this section and the diversion  
208 program submits a certification for expunction that minor:

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

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

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

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

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



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

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

243           Section 3. Section 985.12, Florida Statutes, is amended to  
244 read:

245           985.12 Civil citation or similar diversion programs.-

246           (1) LEGISLATIVE FINDINGS AND INTENT.-The Legislature finds  
247 that the creation and implementation of civil citation or  
248 similar diversion programs at the judicial circuit level  
249 promotes public safety, aids interagency cooperation, and  
250 provides the greatest chance of success for civil citation and  
251 similar diversion programs. The Legislature further finds that  
252 the widespread use of civil citation and similar diversion  
253 programs has a positive effect on the criminal justice system  
254 and contributes to an overall reduction in the crime rate and  
255 recidivism in the state. The Legislature encourages but does not  
256 mandate that counties, municipalities, and public or private  
257 educational institutions participate in a civil citation or  
258 similar diversion program created by their judicial circuit  
259 under this section. There is established a juvenile civil  
260 citation process for the purpose of providing an efficient and  
261 innovative alternative to custody by the Department of Juvenile

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262 ~~Justice for children who commit nonserious delinquent acts and~~  
263 ~~to ensure swift and appropriate consequences. The department~~  
264 ~~shall encourage and assist in the implementation and improvement~~  
265 ~~of civil citation programs or other similar diversion programs~~  
266 ~~around the state.~~

267 (2) JUDICIAL CIRCUIT CIVIL CITATION OR SIMILAR DIVERSION  
268 PROGRAM DEVELOPMENT, IMPLEMENTATION AND OPERATION.—

269 (a) A ~~The~~ civil citation or similar diversion program shall  
270 be established in each judicial circuit in the state. The ~~at the~~  
271 ~~local level with the concurrence of the chief judge of the~~  
272 ~~circuit, state attorney and, public defender of each circuit,~~  
273 the clerk of the court for each county in the circuit, and  
274 representatives of participating law enforcement agencies in the  
275 circuit shall create a civil citation or similar diversion  
276 program and develop its policies and procedures. In developing  
277 the program's policies and procedures, input from other  
278 interested stakeholders may be solicited.

279 (b) Each judicial circuit's civil citation or similar  
280 diversion program must specify:

- 281 1. The misdemeanor offenses that qualify a juvenile for  
282 participation in the program;
- 283 2. The eligibility criteria for the program;
- 284 3. The program's implementation and operation;
- 285 4. The program's requirements, including, but not limited  
286 to, the completion of community service hours, payment of  
287 restitution, if applicable, and intervention services indicated  
288 by a needs assessment of the juvenile, such as family  
289 counseling, urinalysis monitoring, and substance abuse and  
290 mental health treatment services; and

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291 5. A program fee, if any, to be paid by a juvenile  
292 participating in the program. If the program imposes a fee, the  
293 clerk of the court of the applicable county must receive a  
294 reasonable portion of the fee.

295 (c) The state attorney of each circuit shall operate a  
296 civil citation or similar diversion program in each circuit,  
297 except that a sheriff, police department, county, municipality,  
298 or public or private educational institution that has an  
299 independent civil citation or similar diversion program in  
300 operation as of October 1, 2018, may continue to operate it if  
301 the independent program is reviewed by the state attorney of the  
302 applicable circuit and he or she determines that the independent  
303 program is substantially similar to the civil citation or  
304 similar diversion program developed by the circuit. If the state  
305 attorney determines that the independent program is not  
306 substantially similar to the civil citation or similar diversion  
307 program developed by the circuit, the operator of the  
308 independent diversion program may revise the program and the  
309 state attorney may conduct an additional review of the  
310 independent program.

311 (d) This section does not prevent a judicial circuit from  
312 adopting an existing sheriff, police department, county,  
313 municipality, or public or private educational institution's  
314 independent civil citation or similar diversion program as the  
315 civil citation or similar diversion program for the circuit.

316 (e) If a juvenile does not successfully complete the civil  
317 citation or similar diversion program, the arresting law  
318 enforcement officer shall determine if there is good cause to  
319 arrest the juvenile for the original misdemeanor offense and

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320 ~~refer the case to the state attorney to determine if prosecution~~  
321 ~~is appropriate or allow the juvenile to continue in the program~~  
322 ~~and the head of each local law enforcement agency involved. The~~  
323 ~~program may be operated by an entity such as a law enforcement~~  
324 ~~agency, the department, a juvenile assessment center, the county~~  
325 ~~or municipality, or another entity selected by the county or~~  
326 ~~municipality. An entity operating the civil citation or similar~~  
327 ~~diversion program must do so in consultation and agreement with~~  
328 ~~the state attorney and local law enforcement agencies. Under~~  
329 ~~such a juvenile civil citation or similar diversion program, a~~  
330 ~~law enforcement officer, upon making contact with a juvenile who~~  
331 ~~admits having committed a misdemeanor, may choose to issue a~~  
332 ~~simple warning or inform the child's guardian or parent of the~~  
333 ~~child's infraction, or may issue a civil citation or require~~  
334 ~~participation in a similar diversion program, and assess up to~~  
335 ~~50 community service hours, and require participation in~~  
336 ~~intervention services as indicated by an assessment of the needs~~  
337 ~~of the juvenile, including family counseling, urinalysis~~  
338 ~~monitoring, and substance abuse and mental health treatment~~  
339 ~~services.~~

340 (f) A copy of each civil citation or similar diversion  
341 program notice issued under this section shall be provided to  
342 the department, and the department shall enter appropriate  
343 information into the juvenile offender information system. ~~Use~~  
344 ~~of the civil citation or similar diversion program is not~~  
345 ~~limited to first-time misdemeanors and may be used in up to two~~  
346 ~~subsequent misdemeanors. If an arrest is made, a law enforcement~~  
347 ~~officer must provide written documentation as to why an arrest~~  
348 ~~was warranted.~~

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349       (g) At the conclusion of a juvenile's civil citation  
350 ~~program~~ or similar diversion program, the state attorney agency  
351 operating the program shall report the outcome to the  
352 department. The issuance of a civil citation or similar  
353 diversion program notice is not considered a referral to the  
354 department.

355       ~~(2) The department shall develop guidelines for the civil~~  
356 ~~citation program which include intervention services that are~~  
357 ~~based upon proven civil citation or similar diversion programs~~  
358 ~~within the state.~~

359       (h) ~~(3)~~ Upon issuing such a civil citation or similar  
360 diversion program notice, the law enforcement officer shall send  
361 a copy of ~~to~~ the civil citation or similar diversion program  
362 notice to county sheriff, state attorney, the appropriate intake  
363 office of the department, or the community service performance  
364 monitor designated by the department, the parent or guardian of  
365 the child, and to the victim.

366       ~~(4) The child shall report to the community service~~  
367 ~~performance monitor within 7 working days after the date of~~  
368 ~~issuance of the citation. The work assignment shall be~~  
369 ~~accomplished at a rate of not less than 5 hours per week. The~~  
370 ~~monitor shall advise the intake office immediately upon~~  
371 ~~reporting by the child to the monitor, that the child has in~~  
372 ~~fact reported and the expected date upon which completion of the~~  
373 ~~work assignment will be accomplished.~~

374       ~~(5) If the child fails to report timely for a work~~  
375 ~~assignment, complete a work assignment, or comply with assigned~~  
376 ~~intervention services within the prescribed time, or if the~~  
377 ~~juvenile commits a subsequent misdemeanor, the law enforcement~~

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378 ~~officer shall issue a report alleging the child has committed a~~  
379 ~~delinquent act, at which point a juvenile probation officer~~  
380 ~~shall process the original delinquent act as a referral to the~~  
381 ~~department and refer the report to the state attorney for~~  
382 ~~review.~~

383 ~~(6) At the time of issuance of the citation by the law~~  
384 ~~enforcement officer, such officer shall advise the child that~~  
385 ~~the child has the option to refuse the citation and to be~~  
386 ~~referred to the intake office of the department. That option may~~  
387 ~~be exercised at any time before completion of the work~~  
388 ~~assignment.~~

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

391 985.125 Prearrest or postarrest diversion programs.—

392 ~~(3) The prearrest or postarrest diversion program may, upon~~  
393 ~~agreement of the agencies that establish the program, provide~~  
394 ~~for the expunction of the nonjudicial arrest record of a minor~~  
395 ~~who successfully completes such a program pursuant to s.~~  
396 ~~943.0582.~~

397 Section 5. Section 985.126, Florida Statutes, is created to  
398 read:

399 985.126 Diversion programs; data collection; denial of  
400 participation or expunged record.—

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

403 (2) Each diversion program shall submit:

404 (a) A certification for expunction to the Department of Law  
405 Enforcement of the juvenile's nonjudicial arrest record under s.  
406 943.0582 if the juvenile:

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- 407       1. Successfully completes the diversion program for a  
408 first-time misdemeanor offense; and
- 409       2. Has not otherwise been charged by the state attorney  
410 with, or been found to have committed, a criminal offense or  
411 comparable ordinance violation.
- 412       (b) Data to the department in a form prescribed by the  
413 department which identifies for each juvenile who participates  
414 in the diversion program:
- 415           1. The race, ethnicity, gender, and age of the juvenile;  
416           2. The offense committed, with citation to the specific law  
417 establishing the offense; and
- 418           3. The judicial circuit and county in which the offense was  
419 committed and the law enforcement agency that had contact with  
420 the juvenile for the offense.
- 421       (3) The department shall provide the following data for  
422 each juvenile who is eligible for the diversion program, but  
423 who, instead, is referred to the department, is provided a  
424 notice to appear, or is arrested:
- 425           (a) The data required under paragraph (2) (a); and  
426           (b) Whether the juvenile was offered the opportunity to  
427 participate in the diversion program. If the juvenile:
- 428           1. Was not offered such opportunity, the department must  
429 attempt to find out the reason the law enforcement officer  
430 declined to make the offer.
- 431           2. Was offered such opportunity, the department must  
432 indicate whether the juvenile or his or her parent or legal  
433 guardian declined to participate in the diversion program.
- 434       (4) The department shall compile the data required under  
435 subsections (2) and (3) and publish it on the department's

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436 website in a format that is, at a minimum, sortable by judicial  
437 circuit, county, law enforcement agency, race or ethnicity,  
438 gender, age, and offense committed.

439 (5) A juvenile who successfully completes a diversion  
440 program for a first-time misdemeanor offense may lawfully deny  
441 or fail to acknowledge his or her participation in the program  
442 and an expunction of a nonjudicial arrest record under s.  
443 943.0582, unless the inquiry is made by a criminal justice  
444 agency, as defined in s. 943.045, for a purpose described in s.  
445 943.0582(2)(a)1.

446 Section 6. This act shall take effect October 1, 2018.