

By the Committee on Criminal Justice; and Senator Brandes

591-02326-18

20181392c1

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

591-02326-18

20181392c1

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; requiring the Department of Juvenile
53 Justice to annually develop and provide guidelines on
54 civil citation or similar diversion programs to the
55 judicial circuits; providing requirements for the
56 civil citation or similar diversion program; requiring
57 the state attorney of each judicial circuit to operate
58 the civil citation or similar diversion program;

591-02326-18

20181392c1

59 providing an exception; providing construction;
60 requiring the arresting law enforcement officer to
61 make a determination if a juvenile does not
62 successfully complete the civil citation or similar
63 diversion program; deleting provisions relating to the
64 operation of and requirements for a civil citation or
65 similar diversion program; requiring that a copy of
66 each civil citation or similar diversion program
67 notice be provided to the Department of Juvenile
68 Justice; conforming provisions to changes made by the
69 act; deleting provisions relating to requirements for
70 a civil citation or similar diversion program;
71 amending s. 985.125, F.S.; conforming a provision to
72 changes made by the act; creating s. 985.126, F.S.;
73 defining the term "diversion program"; requiring a
74 diversion program to submit to the Department of Law
75 Enforcement a certification for expunction of the
76 nonjudicial arrest record of a juvenile under
77 specified circumstances; requiring a diversion program
78 to submit to the Department of Juvenile Justice
79 specified data relating to diversion programs;
80 requiring each law enforcement agency to submit to the
81 Department of Juvenile Justice specified data about
82 juveniles eligible to participate in diversion
83 programs; requiring the Department of Juvenile Justice
84 to compile and publish the data in a specified manner;
85 authorizing a juvenile under certain circumstances to
86 deny or fail to acknowledge his or her participation
87 in a diversion program or the expunction of a certain

591-02326-18

20181392c1

88 nonjudicial arrest record unless an exception applies;
89 providing an effective date.

90

91 Be It Enacted by the Legislature of the State of Florida:

92

93 Section 1. Section 901.40, Florida Statutes, is created to
94 read:

95 901.40 Prearrest diversion programs.—

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

108 (2) JUDICIAL CIRCUIT PREARREST DIVERSION PROGRAM
109 DEVELOPMENT, IMPLEMENTATION, OPERATION.—

110 (a) In each judicial circuit in the state, the public
111 defender, the state attorney, the clerk of the court for each
112 county in the circuit, and representatives of participating law
113 enforcement agencies in the circuit shall create a prearrest
114 diversion program and develop its policies and procedures. In
115 developing the program's policies and procedures, input from
116 other interested stakeholders may be solicited.

591-02326-18

20181392c1

117 (b) Each judicial circuit's prearrest diversion program
118 must specify:

119 1. The misdemeanor offenses that qualify an adult for
120 participation in the program;

121 2. The eligibility criteria for the program;

122 3. The program's implementation and operation;

123 4. The program's requirements, including, but not limited
124 to, the completion of community service hours, payment of
125 restitution, if applicable, and intervention services indicated
126 by a needs assessment of the adult, such as urinalysis
127 monitoring and substance abuse and mental health treatment
128 services; and

129 5. A program fee, if any, to be paid by an adult
130 participating in the program. If the program imposes a fee, the
131 clerk of the court of the applicable county must receive a
132 reasonable portion of the fee.

133 (c) The state attorney of each circuit shall operate a
134 prearrest diversion program in each circuit. A sheriff, police
135 department, county, municipality, or public or private
136 educational institution may continue to operate an independent
137 prearrest diversion program that is in operation as of October
138 1, 2018, if the independent program is reviewed by the state
139 attorney of the applicable circuit and he or she determines that
140 the independent program is substantially similar to the
141 prearrest diversion program developed by the circuit. If the
142 state attorney determines that the independent program is not
143 substantially similar to the prearrest diversion program
144 developed by the circuit, the operator of the independent
145 diversion program may revise the program and the state attorney

591-02326-18

20181392c1

146 may conduct an additional review of the independent program.

147 (d) A judicial circuit may model an existing sheriff,
148 police department, county, municipality, or public or private
149 educational institution's independent prearrest diversion
150 program in developing the prearrest diversion program for the
151 circuit.

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

158 (f) Upon intake of an adult participating in the prearrest
159 diversion program, the state attorney or the person operating
160 the independent prearrest diversion program shall electronically
161 provide the adult's personal identifying information to the
162 clerk of the court for the county in which the adult is
163 participating in the prearrest diversion program. Such
164 information is not a court record, and the clerk of the court
165 shall maintain the confidentiality of the adult's personal
166 identifying information as provided in subsection (3). The clerk
167 of the court shall maintain such information as a separate
168 component of the Comprehensive Case Information System created
169 and operated pursuant to s. 28.24, which must provide a single
170 point of access for all such statewide information.

171 Section 2. Section 943.0582, Florida Statutes, is amended
172 to read:

173 943.0582 Prearrest, postarrest, or teen court diversion
174 program expunction.—

591-02326-18

20181392c1

175 (1) Notwithstanding any law dealing generally with the
176 preservation and destruction of public records, the department
177 shall adopt rules to ~~may provide, by rule adopted pursuant to~~
178 ~~chapter 120,~~ for the expunction of a ~~any~~ nonjudicial record of
179 the arrest of a minor who has successfully completed a ~~prearrest~~
180 ~~or postarrest~~ diversion program for a misdemeanor offense ~~minors~~
181 as ~~authorized by s. 985.125.~~

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

183 (a) "Diversion program" means a program under s. 985.12, s.
184 985.125, s. 985.155, or s. 985.16 or a program to which a
185 referral is made by a state attorney under s. 985.15(1)(g).

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

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

192 a. Determining eligibility for ~~prearrest, postarrest, or~~
193 ~~teen court~~ diversion programs;

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

196 c. Making a prosecutorial decision under s. 985.15; ~~or when~~
197 ~~the subject of the record is a candidate for employment with a~~
198 ~~riminal justice agency. For all other purposes, a person whose~~
199 ~~record is expunged under this section may lawfully deny or fail~~
200 ~~to acknowledge the arrest and the charge covered by the expunged~~
201 ~~record.~~

202 2. Records maintained by local criminal justice agencies in
203 the county in which the arrest occurred that are eligible for

591-02326-18

20181392c1

204 expunction pursuant to this section shall be sealed as the term
205 is used in s. 943.059.

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

210 (3) The department shall expunge the nonjudicial arrest
211 record of a minor ~~who has successfully completed a prearrest or~~
212 ~~postarrest diversion program~~ if the minor has never previously
213 received an expunction under this section and the diversion
214 program submits a certification for expunction that minor:

215 ~~(a) Submits an application for prearrest or postarrest~~
216 ~~diversion expunction, on a form prescribed by the department,~~
217 ~~signed by the minor's parent or legal guardian, or by the minor~~
218 ~~if he or she has reached the age of majority at the time of~~
219 ~~applying.~~

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

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

231 ~~(d) Participated in a prearrest or postarrest diversion~~
232 ~~program based on an arrest for a nonviolent misdemeanor that~~

591-02326-18

20181392c1

233 ~~would not qualify as an act of domestic violence as that term is~~
234 ~~defined in s. 741.28.~~

235 ~~(c) Has never been, before filing the application for~~
236 ~~expunction, charged by the state attorney with, or found to have~~
237 ~~committed, any criminal offense or comparable ordinance~~
238 ~~violation.~~

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

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

249 Section 3. Section 985.12, Florida Statutes, is amended to
250 read:

251 985.12 Civil citation or similar diversion programs.-

252 (1) LEGISLATIVE FINDINGS AND INTENT.-The Legislature finds
253 that the creation and implementation of civil citation or
254 similar diversion programs at the judicial circuit level
255 promotes public safety, aids interagency cooperation, and
256 provides the greatest chance of success for civil citation and
257 similar diversion programs. The Legislature further finds that
258 the widespread use of civil citation and similar diversion
259 programs has a positive effect on the criminal justice system
260 and contributes to an overall reduction in the crime rate and
261 recidivism in the state. The Legislature encourages but does not

591-02326-18

20181392c1

262 mandate that counties, municipalities, and public or private
263 educational institutions participate in a civil citation or
264 similar diversion program created by their judicial circuit
265 under this section. ~~There is established a juvenile civil~~
266 ~~citation process for the purpose of providing an efficient and~~
267 ~~innovative alternative to custody by the Department of Juvenile~~
268 ~~Justice for children who commit nonserious delinquent acts and~~
269 ~~to ensure swift and appropriate consequences. The department~~
270 ~~shall encourage and assist in the implementation and improvement~~
271 ~~of civil citation programs or other similar diversion programs~~
272 ~~around the state.~~

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

275 (a) A ~~The~~ civil citation or similar diversion program shall be
276 established in each judicial circuit in the state. The ~~at the~~
277 ~~local level with the concurrence of the chief judge of the~~
278 ~~circuit,~~ state attorney and, public defender of each circuit,
279 the clerk of the court for each county in the circuit, and
280 representatives of participating law enforcement agencies in the
281 circuit shall create a civil citation or similar diversion
282 program and develop its policies and procedures. In developing
283 the program's policies and procedures, input from other
284 interested stakeholders may be solicited. The department shall
285 annually develop and provide guidelines on best practice models
286 for civil citation or similar diversion programs to the judicial
287 circuits as a resource.

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

290 1. The misdemeanor offenses that qualify a juvenile for

591-02326-18

20181392c1

291 participation in the program;

292 2. The eligibility criteria for the program;

293 3. The program's implementation and operation;

294 4. The program's requirements, including, but not limited
295 to, the completion of community service hours, payment of
296 restitution, if applicable, and intervention services indicated
297 by a needs assessment of the juvenile, approved by the
298 department, such as family counseling, urinalysis monitoring,
299 and substance abuse and mental health treatment services; and

300 5. A program fee, if any, to be paid by a juvenile
301 participating in the program. If the program imposes a fee, the
302 clerk of the court of the applicable county must receive a
303 reasonable portion of the fee.

304 (c) The state attorney of each circuit shall operate a
305 civil citation or similar diversion program in each circuit. A
306 sheriff, police department, county, municipality, or public or
307 private educational institution may continue to operate an
308 independent civil citation or similar diversion program that is
309 in operation as of October 1, 2018, if the independent program
310 is reviewed by the state attorney of the applicable circuit and
311 he or she determines that the independent program is
312 substantially similar to the civil citation or similar diversion
313 program developed by the circuit. If the state attorney
314 determines that the independent program is not substantially
315 similar to the civil citation or similar diversion program
316 developed by the circuit, the operator of the independent
317 diversion program may revise the program and the state attorney
318 may conduct an additional review of the independent program.

319 (d) A judicial circuit may model an existing sheriff,

591-02326-18

20181392c1

320 police department, county, municipality, or public or private
321 educational institution's independent civil citation or similar
322 diversion program in developing the civil citation or similar
323 diversion program for the circuit.

324 (e) If a juvenile does not successfully complete the civil
325 citation or similar diversion program, the arresting law
326 enforcement officer shall determine if there is good cause to
327 arrest the juvenile for the original misdemeanor offense and
328 refer the case to the state attorney to determine if prosecution
329 is appropriate or allow the juvenile to continue in the program
330 ~~and the head of each local law enforcement agency involved. The~~
331 ~~program may be operated by an entity such as a law enforcement~~
332 ~~agency, the department, a juvenile assessment center, the county~~
333 ~~or municipality, or another entity selected by the county or~~
334 ~~municipality. An entity operating the civil citation or similar~~
335 ~~diversion program must do so in consultation and agreement with~~
336 ~~the state attorney and local law enforcement agencies. Under~~
337 ~~such a juvenile civil citation or similar diversion program, a~~
338 ~~law enforcement officer, upon making contact with a juvenile who~~
339 ~~admits having committed a misdemeanor, may choose to issue a~~
340 ~~simple warning or inform the child's guardian or parent of the~~
341 ~~child's infraction, or may issue a civil citation or require~~
342 ~~participation in a similar diversion program, and assess up to~~
343 ~~50 community service hours, and require participation in~~
344 ~~intervention services as indicated by an assessment of the needs~~
345 ~~of the juvenile, including family counseling, urinalysis~~
346 ~~monitoring, and substance abuse and mental health treatment~~
347 ~~services.~~

348 (f) A copy of each civil citation or similar diversion

591-02326-18

20181392c1

349 program notice issued under this section shall be provided to
350 the department, and the department shall enter appropriate
351 information into the juvenile offender information system. ~~Use~~
352 ~~of the civil citation or similar diversion program is not~~
353 ~~limited to first-time misdemeanors and may be used in up to two~~
354 ~~subsequent misdemeanors. If an arrest is made, a law enforcement~~
355 ~~officer must provide written documentation as to why an arrest~~
356 ~~was warranted.~~

357 (g) At the conclusion of a juvenile's civil citation
358 ~~program~~ or similar diversion program, the state attorney or
359 operator of the independent program agency operating the program
360 shall report the outcome to the department. The issuance of a
361 civil citation or similar diversion program notice is not
362 considered a referral to the department.

363 ~~(2) The department shall develop guidelines for the civil~~
364 ~~citation program which include intervention services that are~~
365 ~~based upon proven civil citation or similar diversion programs~~
366 ~~within the state.~~

367 (h) ~~(3)~~ Upon issuing such a civil citation or similar
368 diversion program notice, the law enforcement officer shall send
369 a copy of ~~to~~ the civil citation or similar diversion program
370 notice to county sheriff, state attorney, the appropriate intake
371 office of the department, or the community service performance
372 monitor designated by the department, the parent or guardian of
373 the child, and to the victim.

374 ~~(4) The child shall report to the community service~~
375 ~~performance monitor within 7 working days after the date of~~
376 ~~issuance of the citation. The work assignment shall be~~
377 ~~accomplished at a rate of not less than 5 hours per week. The~~

591-02326-18

20181392c1

378 ~~monitor shall advise the intake office immediately upon~~
379 ~~reporting by the child to the monitor, that the child has in~~
380 ~~fact reported and the expected date upon which completion of the~~
381 ~~work assignment will be accomplished.~~

382 ~~(5) If the child fails to report timely for a work~~
383 ~~assignment, complete a work assignment, or comply with assigned~~
384 ~~intervention services within the prescribed time, or if the~~
385 ~~juvenile commits a subsequent misdemeanor, the law enforcement~~
386 ~~officer shall issue a report alleging the child has committed a~~
387 ~~delinquent act, at which point a juvenile probation officer~~
388 ~~shall process the original delinquent act as a referral to the~~
389 ~~department and refer the report to the state attorney for~~
390 ~~review.~~

391 ~~(6) At the time of issuance of the citation by the law~~
392 ~~enforcement officer, such officer shall advise the child that~~
393 ~~the child has the option to refuse the citation and to be~~
394 ~~referred to the intake office of the department. That option may~~
395 ~~be exercised at any time before completion of the work~~
396 ~~assignment.~~

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

399 985.125 Prearrest or postarrest diversion programs.—

400 ~~(3) The prearrest or postarrest diversion program may, upon~~
401 ~~agreement of the agencies that establish the program, provide~~
402 ~~for the expunction of the nonjudicial arrest record of a minor~~
403 ~~who successfully completes such a program pursuant to s.~~
404 ~~943.0582.~~

405 Section 5. Section 985.126, Florida Statutes, is created to
406 read:

591-02326-18

20181392c1

407 985.126 Diversion programs; data collection; denial of
408 participation or expunged record.-

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

411 (2) Each diversion program shall submit:

412 (a) A certification for expunction to the Department of Law
413 Enforcement of the juvenile's nonjudicial arrest record under s.
414 943.0582 if the juvenile:

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

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

420 (b) Data to the department in a form prescribed by the
421 department which identifies for each juvenile who participates
422 in the diversion program:

423 1. The race, ethnicity, gender, and age of the juvenile;

424 2. The offense committed, with citation to the specific law
425 establishing the offense; and

426 3. The judicial circuit and county in which the offense was
427 committed and the law enforcement agency that had contact with
428 the juvenile for the offense.

429 (3) Each law enforcement agency shall submit to the
430 department data that identifies for each juvenile who was
431 eligible for a diversion program, but was instead referred to
432 the department, provided a notice to appear, or arrested:

433 (a) The data required under paragraph (2) (b).

434 (b) Whether the juvenile was offered the opportunity to
435 participate in the diversion program. If the juvenile was:

591-02326-18

20181392c1

436 1. Not offered such opportunity, the reason such offer was
437 not made.

438 2. Offered such opportunity, whether the juvenile or his or
439 her parent or legal guardian declined to participate in the
440 diversion program.

441 (4) The department shall compile the data required under
442 subsections (2) and (3) and publish it on the department's
443 website in a format that is, at a minimum, sortable by judicial
444 circuit, county, law enforcement agency, race or ethnicity,
445 gender, age, and offense committed.

446 (5) A juvenile who successfully completes a diversion
447 program for a first-time misdemeanor offense may lawfully deny
448 or fail to acknowledge his or her participation in the program
449 and an expunction of a nonjudicial arrest record under s.
450 943.0582, unless the inquiry is made by a criminal justice
451 agency, as defined in s. 943.045, for a purpose described in s.
452 943.0582(2)(a)1.

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