

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Ahern offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

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

901.41 Prearrest diversion programs.-

(1) LEGISLATIVE 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

711177

Approved For Filing: 3/6/2018 8:20:58 AM

Amendment No.

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

21 (2) MODEL PREARREST DIVERSION PROGRAM.—Local communities
22 and public or private educational institutions may adopt a
23 prearrest diversion 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, as determined by the representatives that
28 develop the program under subsection (3). A civil citation or
29 similar prearrest diversion program notice may be issued if the
30 adult who commits the offense:

31 1. Admits that he or she committed the offense or does not
32 contest the offense; and

33 2. Has not previously been arrested and has not received
34 an adult civil citation or similar prearrest diversion program
35 notice, unless the terms of the local adult prearrest diversion
36 program allow otherwise.

37 (b) An adult who receives a civil citation or similar
38 prearrest diversion program notice shall report for intake as

711177

Approved For Filing: 3/6/2018 8:20:58 AM

Amendment No.

39 required by the local prearrest diversion program and must be
40 provided appropriate assessment, intervention, education, and
41 behavioral health care services by the program. While in the
42 local prearrest diversion program, the adult shall perform
43 community service hours as specified by the program. The adult
44 shall pay restitution due to the victim as a program
45 requirement. If the adult does not successfully complete the
46 prearrest diversion program, the law enforcement officer must
47 determine if there is good cause to arrest the adult for the
48 original misdemeanor offense and, if so, refer the case to the
49 state attorney to determine whether prosecution is appropriate
50 or, in the absence of a finding of good cause, allow the adult
51 to continue in the program.

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

53 (a) Representatives of participating law enforcement
54 agencies, a representative of the program services provider, the
55 public defender, the state attorney, and the clerk of the
56 circuit court shall create the prearrest diversion program and
57 develop its policies and procedures, including, but not limited
58 to, eligibility criteria, program implementation and operation,
59 and the determination of the fee, if any, to be paid by adults
60 participating in the program. In developing the program's
61 policies and procedures, which must include the designation of
62 the misdemeanor offenses that qualify adults for participation
63 in the program, the representatives must solicit input from

711177

Approved For Filing: 3/6/2018 8:20:58 AM

Amendment No.

64 other interested stakeholders. The program may be operated by an
65 entity such as a law enforcement agency or a county or
66 municipality, or other entity selected by the county or
67 municipality.

68 (b) Upon intake of an adult participating in the prearrest
69 diversion program, the program operator shall electronically
70 provide the participant's personal identifying information to
71 the clerk of the circuit court for the county in which the
72 program provides services. Such information is not a court
73 record, and the clerk of the circuit court shall maintain the
74 confidentiality of the participant's personal identifying
75 information as provided in subsection (5). The clerk of the
76 circuit court shall maintain such information in a statewide
77 database, which must provide a single point of access for all
78 such statewide information. If the program imposes a
79 participation fee, the clerk of the circuit court must receive a
80 reasonable portion, to be determined by the stakeholders
81 creating the program, for receipt and maintenance of the
82 required information. The fee shall be deposited by the clerk of
83 the circuit court into the fine and forfeiture fund established
84 under s. 142.01.

85 (4) APPLICABILITY.—This section does not preempt a county
86 or municipality from enacting noncriminal sanctions for a
87 violation of an ordinance or other violation, and it does not
88 preempt a county, a municipality, or a public or private

711177

Approved For Filing: 3/6/2018 8:20:58 AM

Amendment No.

89 educational institution from creating its own model for a
90 prearrest diversion program for adults.

91 (6) ELIGIBILITY.-A violent misdemeanor, a misdemeanor
92 crime of domestic violence, as defined in s. 741.28, or a
93 misdemeanor under s. 741.29, s. 741.31, s. 784.046, s. 784.047,
94 s. 784.048, s. 784.0487, or s. 784.049 does not qualify for a
95 civil citation or prearrest diversion program.

96 Section 2. Section 943.0582, Florida Statutes, is amended
97 to read:

98 943.0582 ~~Prearrest, postarrest, or teen court~~ Diversion
99 program expunction.-

100 (1) Notwithstanding any law dealing generally with the
101 preservation and destruction of public records, the department
102 shall adopt rules to ~~may provide, by rule adopted pursuant to~~
103 ~~chapter 120,~~ for the expunction of a ~~any~~ nonjudicial record of
104 the arrest of a minor who has successfully completed a ~~prearrest~~
105 ~~or postarrest~~ diversion program for a misdemeanor offense ~~minors~~
106 ~~as authorized by s. 985.125.~~

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

108 (a) "Diversion program" means a program under s. 985.12,
109 s. 985.125, s. 985.155, or s. 985.16 or a program to which a
110 referral is made by a state attorney under s. 985.15.

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

711177

Approved For Filing: 3/6/2018 8:20:58 AM

Amendment No.

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

117 a. Determining eligibility for ~~prearrest, postarrest, or~~
118 ~~teen court~~ diversion programs;

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

121 c. Making a prosecutorial decision under s. 985.15 ~~when~~
122 ~~the subject of the record is a candidate for employment with a~~
123 ~~criminal justice agency. For all other purposes, a person whose~~
124 ~~record is expunged under this section may lawfully deny or fail~~
125 ~~to acknowledge the arrest and the charge covered by the expunged~~
126 ~~record.~~

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

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

135 (3) The department shall expunge the nonjudicial arrest
136 record of a minor who has successfully completed a ~~prearrest or~~
137 ~~postarrest~~ diversion program if that minor:

711177

Approved For Filing: 3/6/2018 8:20:58 AM

Amendment No.

138 (a) Submits an application for ~~prearrest or postarrest~~
139 diversion expunction, on a form prescribed by the department,
140 signed by the minor's parent or legal guardian, or by the minor
141 if he or she has reached the age of majority at the time of
142 applying.

143 (b) Submits to the department, with the application, an
144 official written statement from the state attorney for the
145 county in which the arrest occurred certifying that he or she
146 has successfully completed that county's ~~prearrest or postarrest~~
147 diversion program, that his or her participation in the program
148 was based on an arrest for a ~~nonviolent~~ misdemeanor, and that he
149 or she has not otherwise been charged by the state attorney
150 with, or found to have committed, any criminal offense or
151 comparable ordinance violation.

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

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

158 (c)-(e) Has never been, before filing the application for
159 expunction, charged by the state attorney with, or found to have
160 committed, any criminal offense or comparable ordinance
161 violation.

711177

Approved For Filing: 3/6/2018 8:20:58 AM

Amendment No.

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

167 (4)~~(5)~~ Expunction or sealing granted under this section
168 does not prevent the minor who receives such relief from
169 petitioning for the expunction or sealing of a later criminal
170 history record as provided for in ss. 943.0583, 943.0585, and
171 943.059, if the minor is otherwise eligible under those
172 sections.

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

175 985.125 Prearrest or postarrest diversion programs.—

176 ~~(3) The prearrest or postarrest diversion program may,~~
177 ~~upon agreement of the agencies that establish the program,~~
178 ~~provide for the expunction of the nonjudicial arrest record of a~~
179 ~~minor who successfully completes such a program pursuant to s.~~
180 ~~943.0582.~~

181 Section 4. Section 985.126, Florida Statutes, is created
182 to read:

183 985.126 Diversion programs; data collection; denial of
184 participation or expunged record.—

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

711177

Approved For Filing: 3/6/2018 8:20:58 AM

Amendment No.

187 (2) Upon issuance of documentation requiring a minor to
188 participate in a diversion program, before or without an arrest,
189 the issuing law enforcement officer shall send a copy of such
190 documentation to the entity designated to operate the diversion
191 program and to the department, which shall enter such
192 information into the Juvenile Justice Information System
193 Prevention Web.

194 (3)(a) Beginning October 1, 2018, each diversion program
195 shall submit data to the department which identifies for each
196 minor participating in the diversion program:

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

198 2. The offense committed, including the specific law
199 establishing the offense.

200 3. The judicial circuit and county in which the offense
201 was committed and the law enforcement agency that had contact
202 with the minor for the offense.

203 (b) Beginning October 1, 2018, each law enforcement agency
204 shall submit to the department data that identifies for each
205 minor who was eligible for a diversion program, but was instead
206 referred to the department, provided a notice to appear, or
207 arrested:

208 1. The data required pursuant to paragraph (a).

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

711177

Approved For Filing: 3/6/2018 8:20:58 AM

Amendment No.

211 a. Not offered such opportunity, the reason such offer was
212 not made.

213 b. Offered such opportunity, whether the minor or his or
214 her parent or legal guardian declined to participate in the
215 diversion program.

216 (c) The data required pursuant to paragraphs (a) and (b)
217 shall be submitted to the department quarterly.

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

223 (5) A minor who successfully completes a diversion program
224 for a first-time misdemeanor offense may lawfully deny or fail
225 to acknowledge his or her participation in the program and an
226 expunction of a nonjudicial arrest record under s. 943.0582,
227 unless the inquiry is made by a criminal justice agency, as
228 defined in s. 943.045, for a purpose described in s.
229 943.0582(2)(b)1.

230 (6) The department shall adopt rules to implement this
231 section.

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

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235 **T I T L E A M E N D M E N T**

711177

Approved For Filing: 3/6/2018 8:20:58 AM

Amendment No.

236 Remove everything before the enacting clause and insert:
237 A bill to be entitled
238 An act relating to diversion programs; creating s.
239 901.41, F.S.; providing legislative intent;
240 encouraging local communities and public or private
241 educational institutions to implement prearrest
242 diversion programs for certain offenders; encouraging
243 prearrest diversion programs to share information with
244 other prearrest diversion programs; authorizing law
245 enforcement officers, at their sole discretion, to
246 issue a civil citation or similar prearrest diversion
247 program notice under specified circumstances to adults
248 who commit certain misdemeanor offenses; requiring an
249 adult who receives a civil citation or similar
250 prearrest diversion program notice to report for
251 intake as required by the prearrest diversion program;
252 requiring that the prearrest diversion program provide
253 specified services to adults who participate, as
254 appropriate; requiring that an adult who is issued a
255 civil citation or similar prearrest diversion program
256 notice fulfill a community service requirement;
257 requiring the adult to pay restitution to a victim;
258 requiring law enforcement officers to determine
259 whether there is good cause to arrest participants who
260 do not successfully complete a prearrest diversion

711177

Approved For Filing: 3/6/2018 8:20:58 AM

Amendment No.

261 program and, if so, to refer the case to the state
262 attorney, or, in the absence of good cause, to allow
263 the participant to continue in the program; requiring
264 representatives of specified entities to create the
265 prearrest diversion program; requiring the entities to
266 develop policies and procedures for the development
267 and operation of the program, including designation of
268 the misdemeanor offenses that qualify persons for
269 participation, and to solicit input from other
270 interested stakeholders; authorizing specified
271 entities to operate programs; requiring prearrest
272 diversion program operators to electronically provide
273 participants' personal identifying information to the
274 clerk of the circuit court; specifying requirements
275 for the clerks' handling and maintenance of certain
276 information; requiring that a portion of any
277 participation fee go to the appropriate clerk of the
278 circuit court; requiring fees received by the clerks
279 of the circuit court to be deposited in a certain
280 fund; providing applicability; specifying that certain
281 offenses are ineligible for such programs; amending s.
282 943.0582, F.S.; requiring, rather than authorizing,
283 the Department of Law Enforcement to adopt rules for
284 the expunction of certain nonjudicial records of the
285 arrest of a minor upon successful completion by the

711177

Approved For Filing: 3/6/2018 8:20:58 AM

Amendment No.

286 minor of certain diversion programs; creating and
287 revising definitions; revising the circumstances under
288 which the department must expunge certain nonjudicial
289 arrest records; deleting the department's authority to
290 charge a processing fee for the expunction; amending
291 s. 985.125, F.S.; conforming a provision to changes
292 made by the act; creating s. 985.126, F.S.; defining
293 the term "diversion program"; requiring a diversion
294 program to submit to the department specified data
295 relating to diversion programs; requiring a law
296 enforcement agency to submit to the department
297 specified data about diversion programs; requiring the
298 department to compile and publish the data in a
299 specified manner; authorizing a minor under certain
300 circumstances to deny or fail to acknowledge his or
301 her expunction of a certain nonjudicial arrest record
302 unless an exception applies; requiring the department
303 to adopt rules; providing an effective date.

711177

Approved For Filing: 3/6/2018 8:20:58 AM