

Youth Diversion Procedures

The Texas Legislature, in the 88th Regular Session (2023), passed H.B. 3186, which increases opportunities for the early identification of at-risk youth and for redirecting children accused of certain “gateway” Class C misdemeanors from the criminal justice system to something more similar to the civil juvenile justice system. Currently, municipal judges and justices of the peace can only order diversion strategies after a case has resulted in a conviction or deferral of disposition; thus, the diversion is really only avoiding a conviction on their record. H.B. 3186 makes these strategies available at the front end of a case where they can be more effective. This aligns municipal and justice court practices with those used by juvenile probation and juvenile courts. The bill also recalibrates and expands opportunities for collaboration and financial resources in both rural and urban parts of Texas. H.B. 3186 requires the adoption of a youth diversion plan for every municipal and justice court no later than January 1, 2025.

“Diversion” means an intervention strategy that redirects a child from formal criminal prosecution and holds the child accountable for the child’s actions. The term includes two types of diversion: (1) intermediate diversion under Article 45.309, which occurs before a charge involving an eligible child is filed and (2) diversion by judge under Article 45.310, which occurs after a charge involving an eligible child is filed or after a trial involving an eligible child results in a verdict or finding of guilt. Courts may choose to implement intermediate diversion, but all courts have requirements related to diversion by judge. Regardless which type of diversion the court implements, the process is generally the same. Below are procedures related to the youth diversion process codified in Subchapter E of Chapter 45 of the Code of Criminal Procedure, which applies to non-traffic offenses committed by children on or after January 1, 2025. The process below applies to both types of diversion except where noted.

Checklist	Notes
❑ 1. Each municipal and justice court must adopt a written youth diversion plan that describes the types of strategies that will be used to implement youth diversion. A current plan must be maintained in the court for public inspection.	Art. 45.306, C.C.P. Courts must implement a youth diversion plan by January 1, 2025. The plan may be devised for a county or municipality or an individual court. A local government may enter into an agreement with other local governments to create a regional plan. The plan may also include an agreement with a service provider to provide services for a diversion strategy. It may contain non-mandatory guidelines for diversion by law enforcement. It may also contain guidelines for diversion by law enforcement in lieu of filing a criminal charge, though those guidelines are not mandatory on law enforcement to follow. Art. 45.306, C.C.P.

2. If the youth diversion plan provides for intermediate diversion, a youth diversion coordinator or juvenile case manager must advise the child and the child's parent before a case is filed that the case may be diverted for a reasonable period not to exceed 180 days if:

- a. the child is eligible;
- b. diversion is in the best interests of the child and promotes the long-term safety of the community;
- c. the child and parent consent to the diversion with the knowledge that it is optional; and
- d. the child and parent are informed that they may terminate the diversion at any time and, if terminated, the case will be referred to court.

If the plan does not provide for intermediate diversion, proceed to Step 3.

The court may designate a youth diversion coordinator to assist in various responsibilities related to youth diversion. See, Art. 45.307(a), C.C.P. Such responsibilities may be performed by a court administrator; court clerk; an individual or entity that provides JCM services under Art. 45.056/45A.451, C.C.P.; a court-related services office; a community supervision and corrections department, including a juvenile probation department; a county or municipal employee, including a peace officer; a community volunteer; an institution of higher education; or a qualified nonprofit organization as determined by the court. Art. 45.307(b), C.C.P.

Art. 45.309(a)(1), C.C.P. See Step 3 below.

Art. 45.309(a)(2), C.C.P.

Art. 45.309(a)(3), C.C.P.

“Parent” has the meaning assigned by Article 45.057(a)/45A.457(a), C.C.P.

Art. 45.309(a)(4), C.C.P.

3. After receiving a charge (non-traffic) involving a child, whether filed (diversion by judge) or not (intermediate diversion), determine if the child is eligible for diversion.

Art. 45.304, C.C.P.

“Charge” means a formal or informal allegation of an offense, including a citation, written promise to appear, complaint, or pending complaint. Art. 45.301(1), C.C.P.

“Child” has the meaning assigned by Article 45.058(h)/45A.453(a). Art. 45.301(2), C.C.P.

a. A child may enter into a diversion agreement once every 365 days. Thus, a child who has entered into a diversion agreement within the prior year is ineligible for diversion.

Art. 45.304(b), C.C.P.

b. A child is also not eligible for diversion if:

(1) the child has previously had an unsuccessful diversion under Subchapter E or

Art. 45.304(c), C.C.P.

(2) the prosecutor objects to the diversion.

Art. 45.304(d), C.C.P.

c. A court may not divert a child under Subchapter E without the written consent of the child and parent.

Art. 45.304(e), C.C.P.

4. Determine if the child contests the charge.

A charge may not be filed against a child, or if filed, shall be dismissed by the court if the child does not contest the charge, is eligible for diversion, and accepts the terms of the agreement. Art. 45.308(e), C.C.P.

a. If the child does not contest the charge, divert the case without the child having to enter a plea. Proceed to Step 5.

Art. 45.310(a)(1), C.C.P.

- b. If the child contests the charge, the case proceeds with formal criminal prosecution.

Art. 45.310(a)(2), C.C.P.

If the child contested the charge, the case resulted in a trial, and either the court determines that the evidence presented in a bench trial would support a finding of guilt, or if a jury returns a verdict of guilty, determine whether the child is eligible for diversion. Arts. 45.041(a-2) and 45.310(a)(2), C.C.P. See Step 3 for eligibility.

If the child is eligible, provide the child and parent the opportunity to accept placement in diversion instead of entering an adjudication of guilt. Art. 45.041(a-2), C.C.P.

If the child and parent accept placement in diversion under Art. 45.310, place the child in diversion. See Steps 5-7.

If the child and parent decline placement in diversion under Art. 45.310, find the child guilty and proceed to sentencing.

Entering into a diversion agreement extends the court's jurisdiction for the term of the agreement. Art. 45.308(g), C.C.P.

Art. 45.308(a), C.C.P.

- 5. Complete a written diversion agreement.
 - a. A diversion agreement must identify the parties to the agreement and the responsibilities of the child and parent to ensure their meaningful participation in a diversion, whether intermediate diversion or diversion by judge.

Art. 45.308(b), C.C.P.
 - b. Stated objectives in a diversion agreement must be measurable, realistic, and reasonable and consider the circumstances of the child, the best interests of the child, and the long-term safety of the community.

c. A diversion agreement must be in writing and include:

(1) the terms of the agreement, including one or more diversions required to be completed by the child, written in a clear and concise manner and identifying any offense or charge being diverted;

(2) possible outcomes or consequences of a successful diversion and an unsuccessful diversion;

(3) an explanation that participation in a diversion is not an admission of guilt and a guilty plea is not required to participate in a diversion;

(4) the period of the diversion;

Art. 45.308(c), C.C.P.

The terms may vary depending on the circumstances of the child, including the child's age and ability, the charge being diverted, or the diversion strategy used. Art. 45.308(d), C.C.P.

The terms may include any of the diversion strategies described by Art. 45.305, C.C.P. Arts. 45.309(b), 45.310(c), C.C.P.

If the optional administrative fee in Art. 3.112 will be assessed, then it must be specified as a term of the diversion agreement. Art. 45.312(b), C.C.P.

For example, the case of a child who successfully complies with the terms of a diversion agreement shall be closed and reported as successful to the court. Arts. 45.309(c) and 45.310(d), C.C.P. A child who does not comply with the terms of a diversion agreement shall be referred to court for a non-adversarial hearing. Arts. 45.309(d), 45.310(e), 45.311, C.C.P.

A diversion under Art. 45.309 or 45.310 may not exceed 180 days. Arts. 45.309(a), 45.310(b), C.C.P.

- (5) a verification that the child and parent were notified of the child’s rights, including the right to refuse diversion; and the child knowingly and voluntarily consents to participate in the diversion; and
 - (6) a written acknowledgment and acceptance of the agreement by the child and the child’s parent.
6. Determine whether to assess the optional \$50 local youth diversion administrative fee to defray the costs of the diversion of the child’s case.
7. Provide a copy of the agreement to the child, parent, clerk of the court, youth diversion coordinator, and any person specified by the youth diversion plan.
- a. The fee may not be collected unless specified as a term of the diversion agreement accepted by the child’s parent.
 - b. A court shall waive the fee if the parent is indigent or does not have sufficient resources or income to pay the fee.

Art. 45.312, C.C.P.

The diversion of a child may not be contingent on payment of this fee.

Except for this fee, no other fee may be assessed for a child diverted under Subchapter E. Art. 45.312(h), C.C.P.

Art. 45.308(g), C.C.P.

Art. 45.312(b), C.C.P.

If the fee is not paid after giving the child’s parent an opportunity to be heard, the court shall order the parent, if financially able, to pay the fee to the clerk of the court. This order is enforceable by contempt. Art. 45.312(e), C.C.P.

A court may adopt rules for the waiver of this fee for financial hardship. Art. 45.312(d), C.C.P.

<p><input type="checkbox"/> c. The clerk of the court shall keep a record of the fees collected under Art. 45.312 and shall forward the funds to the municipal treasurer or person fulfilling that role, as appropriate.</p>	<p>Art. 45.312(f), C.C.P.</p> <p>The collected fees shall be deposited in a special account that can be used only to offset the cost of the operations of youth diversion programs under Subchapter E. Art. 45.312(g), C.C.P.</p>
<p><input type="checkbox"/> 8. At the end of the diversion period, determine whether the diversion was successful.</p>	
<p><input type="checkbox"/> 9. If the child successfully complies with the terms of the diversion agreement, close the case and report it to the court as successful.</p>	<p>Arts. 45.309(c), 45.310(d), C.C.P.</p>
<p><input type="checkbox"/> 10. If the child does not comply with the terms of the diversion agreement, refer the child to court for a hearing.</p>	<p>Arts. 45.309(d), 45.310(e), C.C.P.</p>
<p><input type="checkbox"/> 11. The court shall conduct a non-adversarial hearing for a child who does not successfully complete the terms of the diversion agreement and is referred to court.</p>	<p>Art. 45.311(a), C.C.P.</p> <p>The hearing is an opportunity for a justice or judge to confer with the child and the child's parent to determine whether a diversion should be declared unsuccessful by the court. The court may also hear from any person who may be of assistance to the child or the court in determining what is in the best interests of the child and the long-term safety of the community. Art. 45.311(b), C.C.P.</p>
<p><input type="checkbox"/> 12. After the hearing, a court may enter an order:</p> <p><input type="checkbox"/> a. amending or setting aside terms in the diversion agreement;</p>	<p>Art. 45.311(c), C.C.P.</p> <p>Note: This would not be done in isolation but in conjunction with one of the other options below, such as extending the diversion period, issuing a continuance, or finding the diversion successful on the basis of substantial compliance.</p>

- b. extending the diversion for a period not to exceed one year from the initial start date of the diversion;
- c. issuing a continuance for the hearing for a period not to exceed 60 days to allow an opportunity for compliance with the terms of the diversion;
- d. Subject to Art. 45.311(d), requiring the parent to perform or refrain from performing any act the court determines will increase the likelihood the child will successfully complete the diversion and comply with any other order of the court that is reasonable and necessary for the welfare of the child;
- e. finding the diversion successful on the basis of substantial compliance; or
- f. finding the diversion unsuccessful and:
 - (1) transferring the child to juvenile court for alleged conduct indicating a need for supervision (CINS) under Section 51.08 of the Family Code; or
 - (2) referring the charge to the prosecutor for consideration of re-filing.
- 13. The court shall maintain statistics for each diversion strategy authorized by Subchapter E.

This order may not have the substantive effect of interfering with a parent's fundamental right to determine how to raise the parent's child, unless the court finds that the interference is necessary to prevent significant impairment of the child's physical, mental, or emotional health. Art. 45.311(d), C.C.P.

This order is enforceable against the parent by contempt. Art. 45.311(e), C.C.P.

If the charge was never filed, the referral of the charge would be for consideration of filing instead of re-filing.

Art. 45.313(a), C.C.P. Other than statistical records, all records generated under Subchapter E are confidential under Art. 45.0217, C.C.P. Art. 45.313(b), C.C.P.

- 14. All records of a diversion pertaining to a child under Subchapter E shall be expunged without the requirement of a motion or request, on the child's 18th birthday.

Art. 45.313(c), C.C.P.