

YOUTH DIVERSION PLAN
JUSTICE OF THE PEACE, PCT. 3 COURT
JUDGE JOY DUBOSE-SIMONTON, PRESIDING JUDGE
(Effective January 1, 2025)

I. OBJECTIVE

The Youth Diversion Plan is to develop intervention strategies that redirect a child from formal criminal prosecution while still holding the child accountable for the child's actions. The diversion plan allows a child to maintain a clean record upon successful completion of the diversion agreement.

II. APPLICABILITY

This plan applies to a child that is alleged to have engaged in conduct that constitutes a misdemeanor punishable by fine only, excluding traffic offenses. "Child" is defined as a person that is at least 10 years of age and younger than 17 years of age. *Texas Code of Criminal Procedure, Art. 45.058(h)*. This plan does not prohibit a child from being referred, adjudicated, or disposed of as conduct indicating a need for supervision under *Title 3, Family Code*, or a waiver of jurisdiction and transfer of a child's case as provided by section *51.01 of the Texas Family Code*.

III. ELIGIBILITY

The following are eligibility requirements:

1. Must not have had an unsuccessful diversion;
2. Must not have had a successful diversion in the previous 365 days;
3. The prosecuting attorney does not object to the diversion; and
4. Both the parent and child agree in written consenting to the diversion.
Texas Code of Criminal Procedure, Art. 45.304.

A child shall be diverted from formal criminal prosecution if the child meets the eligibility requirements. Once the diversion agreement becomes effective the case shall be dismissed, if the case was filed in a court. If the child and the child's parents decline to accept the diversion opportunity the case will move forward in the court where the case is filed.

A child that is eligible under this section and wishes to exercise their right to a trial, and the judge or a jury determines the evidence would support a finding of guilt, the court shall provide the child and the child's parents the opportunity to accept placement in a diversion instead of entering an adjudication of guilt. If the child and the child's parents chose to accept the opportunity for diversion, the court shall place the child in the diversion program. However, if the child and the child's parents decline to accept the diversion opportunity, the court shall find the child guilty and proceed with sentencing.

IV. DIVERSION STRATEGIES

Diversion strategies may be imposed by the youth diversion coordinator and in some cases by the justice or judge under *Texas Code of Criminal Procedure, Art. 45.305(a)(4), 45.307*, or

a system of graduated sanctions for certain school offenses under *Texas Education Code 37.144*.

Diversion strategies include, but are not limited to the following:

1. Educational Program
 - a) Alcohol awareness program
 - b) Tobacco awareness program
 - c) Drug education program
 2. Rehabilitation program
 3. Self-Improvement Program (related to self-esteem, leadership, self-responsibility, empathy, parenting, parental responsibility, manners, violence avoidance, anger management, life skills, wellness, or dispute resolution.
 4. Referral of child to a service provider for services related to:
 - a) At risk youth
 - b) Work and job skills training, including job interviewing and work preparation
 - c) Academic monitoring or tutoring, including preparation for a high school equivalency examination administered under section *7.11 of the Texas Education Code*.
 5. Community-Based Services
 6. Mental Health Screening and Clinical assessment - Requires additional court order
 7. Counseling, including private or in-school counseling
 8. Mentoring Services
 9. Participation in mediation or other dispute resolution processes
 10. Submit to drug or alcohol testing
 11. Requiring a child to:
 - a) Participate in mediation or other dispute resolution processes
 - b) Submit to alcohol or drug testing
 - c) Substantially comply with a physicians or other licenses medical or mental health professional's course of treatment
 12. Requiring a child, by court order, to:
 - a) Pay restitution not to exceed \$100 for an offense against property under *Title 7, Penal Code*
 - b) Perform not more than 20 hours of community service
 - c) Or perform any other reasonable action determined by the court.
- Texas Code of Criminal Procedure Art. 45.305*

V. PROHIBITED STRATEGIES

A diversion strategy may not require a child who is a home-schooled student, as defined by *Section 29.916 of the Texas Education Code*, to:

1. Attend an elementary school or secondary school, or
2. Use an educational curriculum other than the curriculum selected by the parent.

VI. YOUTH DIVERSION COORDINATOR

The designated Youth Diversion Coordinator for this court under a “Diversion by Judge” is the Justice of the Peace, Precinct 3, clerk of the court as provided for under CCP Art. 45.307(b)(1).

The designated Youth Diversion Coordinator for this court under a “Intermediate Diversion” is Constable, Precinct 2, Jeremiah Gunter as provided for under CCP Art. 45.307(b)(5);

The Youth Diversion Coordinator is responsible for the following:

1. Determine whether the child is eligible to participate in the plan;
2. Employing strategies authorized by this plan;
3. Presenting and maintaining diversion agreements;
4. Monitoring diversions;
5. Maintaining records regarding whether one or more diversions were successful or unsuccessful; and
6. Coordinating referrals to the court.

Texas Code of Criminal Procedure Art. 45.307

VII. DIVERSION AGREEMENT

A diversion agreement is voluntary and must be in writing. It must layout all the terms of the agreement, explain the process that will be used to review and monitor compliance, define the period of the diversion, not to exceed 180 days and must state possible outcomes or consequences, among other requirements. *Texas Code of Criminal Procedure Art. 45.308*

VIII. INTERMEDIATE DIVERSION

A charge referred to this court, but has not been formally filed, is an Intermediate Diversion. *Texas Code of Criminal Procedure, Art. 45.309*

IX. DIVERSION BY JUDGE

If a charge is filed with the court, and the child is eligible for diversion, the Judge shall divert the case under *Texas Code of Criminal Procedure 45.310*.

X. COMPLETION

If the child successfully complies with the terms of a diversion agreement the child’s case shall be closed and reported as successful to the court. *Texas Code of Criminal Procedure Art. 45.310(d)*.

XI. REFERRAL TO COURT

The court shall conduct a non-adversarial hearing for a child that does not successfully complete the terms of the diversion, and the case is referred to the court. This hearing is designed for the judge to address the child and the child’s parents to determine whether a diversion should be declared unsuccessful by the court. The court may hear from the Youth Diversion Coordinator, the child, the child’s parent/guardian or any person who may be of assistance to the child for the court to determine what is in the best interests of the child and the long-term safety of the community. The court has options on how to

proceed depending on the outcome of the hearing pursuant to *Texas Code of Criminal Procedure 45.311*.

XII. DIVERSION ADMINISTRATIVE FEE

The clerk of the court may collect a \$50 administrative fee to defray the cost of the diversion of the child's case under this plan. However, the fee may not be collected unless specified as a term of the diversion agreement accepted by the child's parent. 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. The Court shall waive the fee if the child's parent is indigent or does not have sufficient resources or income to pay the fee. If the parent is ordered to pay and is determined to have sufficient resources and is not deemed indigent, and fails to pay, this is enforceable against the party by contempt. *Texas Code of Criminal Procedure Art. 45.312*.

XIII. DIVERSION RECORDS - EXPUNGMENT

This plan requires the court to maintain statistical records for each strategy authorized by this chapter. Other than statistical records, all other records generated under this plan and the *Texas Code of Criminal Procedure 45.313* or confidential pursuant to *Art. 45.0217 Texas Code of Criminal Procedure*. All records of a diversion pertaining to a child under this plan shall be expunged without the requirement of a motion or request, on the child's 18th birthday.

APPROVED and ADOPTED on December 27, 2024.



JUDGE JOY DUBOSE-SIMONTON
PRESIDING JUDGE
JUSTICE OF THE PEACE, PCT. 3
ORANGE COUNTY, TEXAS

APPENDIX "A"

CODE OF CRIMINAL PROCEDURE SUBCHAPTER E. YOUTH DIVERSION

(Added by Acts 2023, 88th Leg., R.S., Ch. 525 (H.B. [3186](#)), Sec. 2, eff. January 1, 2024.)

Art. 45.301. DEFINITIONS. In this subchapter:

- (1) "Charge" means a formal or informal allegation of an offense, including a citation, written promise to appear, complaint, or pending complaint.
- (2) "Child" has the meaning assigned by Article [45.058](#)(h).
(45.058 (h) In this article, "child" means a person who is:
(1) at least 10 years of age and younger than 17 years of age;
- (3) "Court" means a justice court, municipal court, or other court subject to this chapter.
- (4) "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 diversion under Article [45.309](#) or [45.310](#).
- (5) "Offense" means a misdemeanor punishable by fine only, other than a traffic offense.
- (6) "Parent" has the meaning assigned by Article [45.057](#)(a).
- (7) "Service provider" means a governmental agency, political subdivision, open-enrollment charter school, nonprofit organization, or other entity that provides services to children or families.
- (8) "Youth diversion plan" means a plan adopted under Article [45.306](#).

Art. 45.302. APPLICABILITY. This subchapter applies only to a child who is alleged to have engaged in conduct that constitutes a misdemeanor punishable by fine only, other than a traffic offense.

Art. 45.303. TRANSFER TO JUVENILE COURT NOT AFFECTED. Nothing in this subchapter precludes:

- (1) a case involving a child from being referred, adjudicated, or disposed of as conduct indicating a need for supervision under Title 3, Family Code; or
- (2) a waiver of criminal jurisdiction and transfer of a child's case as provided by Section [51.08](#), Family Code.

Art. 45.304. DIVERSION ELIGIBILITY. (a) Except as otherwise provided by this subchapter, a child shall be diverted from formal criminal prosecution as provided by this subchapter.

(b) A child is eligible to enter into a diversion agreement under this subchapter only once every 365 days.

(c) A child is not eligible for diversion if the child has previously had an unsuccessful diversion under this subchapter.

(d) A child is not eligible for diversion if a diversion is objected to by the attorney representing the state.

(e) A court may not divert a child from criminal prosecution as provided by this subchapter without the written consent of the child and the child's parent.

Art. 45.305. DIVERSION STRATEGIES. (a) Diversion strategies include:

(1) requiring a child to participate in a program, including:

(A) a court-approved teen court program operated by a service provider;

(B) a school-related program;

(C) an educational program, including an alcohol awareness program, a tobacco awareness program, or a drug education program;

(D) a rehabilitation program; or

(E) a self-improvement program, including a program relating to self-esteem, leadership, self-responsibility, empathy, parenting, parental responsibility, manners, violence avoidance, anger management, life skills, wellness, or dispute resolution;

(2) referring a child to a service provider for services, including:

(A) at-risk youth services under Subchapter D, Chapter [264](#), Family Code;

(B) juvenile case manager services under Article [45.056](#);

(C) work and job skills training, including job interviewing and work preparation;

(D) academic monitoring or tutoring, including preparation for a high school equivalency examination administered under Section [7.111](#), Education Code;

(E) community-based services;

(F) mental health screening and clinical assessment;

(G) counseling, including private or in-school counseling; or

(H) mentoring services;

(3) requiring a child to:

(A) participate in mediation or other dispute resolution processes;

(B) submit to alcohol or drug testing; or

(C) substantially comply with a course of treatment prescribed by a physician or other licensed medical or mental health professional; and

(4) requiring a child, by court order, to:

(A) pay restitution not to exceed \$100 for an offense against property under Title 7, Penal Code;

(B) perform not more than 20 hours of community service; or

(C) perform any other reasonable action determined by the court.

(b) A diversion strategy may be imposed under:

- (1) an intermediate diversion under Article [45.309](#);
- (2) a diversion by a justice or judge under Article [45.310](#); or
- (3) a system of graduated sanctions for certain school offenses under Section [37.144](#),

Education Code.

(c) A diversion strategy under this subchapter may not require a child who is a home-schooled student, as defined by Section [29.916](#), Education Code, to:

- (1) attend an elementary or secondary school; or
- (2) use an educational curriculum other than the curriculum selected by the parent.

Art. 45.306. YOUTH DIVERSION PLAN. (a) A youth diversion plan is a written plan that describes the types of strategies that will be used to implement youth diversion. A youth diversion plan does not limit the types of diversion strategies that may be imposed under a diversion agreement under Article [45.308](#).

(b) Each justice and municipal court shall adopt a youth diversion plan.

(c) A youth diversion plan may be devised for a county or municipality or an individual court within a county or municipality.

(d) In accordance with Chapter [791](#), Government Code, a local government may enter into an agreement with one or more local governments to create a regional youth diversion plan and collaborate in the implementation of this subchapter.

(e) A youth diversion plan may include an agreement with a service provider to provide services for a diversion strategy.

(f) A youth diversion plan may contain guidelines for disposition or diversion of a child's case by law enforcement. The guidelines are not mandatory.

(g) A current youth diversion plan must be maintained on file for public inspection in each justice and municipal court, including courts that collaborate with one or more counties or municipalities.

(h) A court or local government may adopt rules necessary to coordinate services under a youth diversion plan or to implement this subchapter.

Art. 45.307. YOUTH DIVERSION COORDINATOR. (a) A court may designate a youth diversion coordinator to assist the court in:

- (1) determining whether a child is eligible for diversion;
- (2) employing a diversion strategy authorized by this subchapter;
- (3) presenting and maintaining diversion agreements;
- (4) monitoring diversions;
- (5) maintaining records regarding whether one or more diversions were successful or

unsuccessful; and

(6) coordinating referrals to court.

(b) The responsibilities of the youth diversion coordinator may be performed by:

(1) a court administrator or court clerk, or a person who regularly performs the duties of court administrator or court clerk;

(2) an individual or entity that provides juvenile case manager services under Article [45.056](#);

(3) a court-related services office;

(4) a community supervision and corrections department, including a juvenile probation department;

(5) a county or municipal employee, including a peace officer;

(6) a community volunteer;

(7) an institution of higher education, including a public, private, or independent institution of higher education; or

(8) a qualified nonprofit organization as determined by the court.

Art. 45.308. DIVERSION AGREEMENT. (a) A diversion agreement must identify the parties to the agreement and the responsibilities of the child and the child's parent to ensure their meaningful participation in a diversion under Article [45.309](#) or [45.310](#).

(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 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) an explanation of the process that will be used for reviewing and monitoring compliance with the terms of the agreement;

(5) the period of the diversion;

(6) a verification that:

(A) the child and the child's parent were notified of the child's rights, including the right to refuse diversion; and

(B) the child knowingly and voluntarily consents to participate in the diversion;

and

(7) written acknowledgment and acceptance of the agreement by the child and the child's parent.

(d) The terms of an agreement 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.

(e) A charge may not be filed against a child or, if filed, shall be dismissed by the court if the child:

- (1) does not contest the charge;
- (2) is eligible for diversion under Article [45.304](#); and
- (3) accepts the terms of the agreement.

(f) Entering into a diversion agreement under this article extends the court's jurisdiction for the term of the agreement.

(g) On entering into a diversion agreement, a copy of the agreement shall be provided to the child and the child's parent, the clerk of the court, a youth diversion coordinator, and any person specified by the youth diversion plan.

Art. 45.309. INTERMEDIATE DIVERSION. (a) If provided by a youth diversion plan, a youth diversion coordinator or juvenile case manager shall advise the child and the child's parent before a case is filed that the case may be diverted under this article for a reasonable period not to exceed 180 days if:

- (1) the child is eligible for diversion under Article [45.304](#);
- (2) diversion is in the best interests of the child and promotes the long-term safety of the community;
- (3) the child and the child's parent consent to diversion with the knowledge that diversion is optional; and
- (4) the child and the child's parent are informed that they may terminate the diversion at any time and, if terminated, the case will be referred to court.

(b) The terms of a diversion agreement under this article must be in writing and may include any of the diversion strategies under Article [45.305](#).

(c) The case of a child who successfully complies with the terms of a diversion agreement under this article shall be closed and reported as successful to the court.

(d) A child who does not comply with the terms of a diversion agreement under this article shall be referred to court under Article [45.311](#).

Art. 45.310. DIVERSION BY JUSTICE OR JUDGE. (a) If a charge involving a child who is eligible for diversion is filed with a court, a justice or judge shall divert the case under this article as follows:

- (1) if the child does not contest the charge, a justice or judge shall divert the case under this article without the child having to enter a plea; or

(2) if the child contests the charge, a justice or judge shall divert the case under this article at the conclusion of trial on a finding of guilt without entering a judgment of conviction as provided by Article [45.041](#).

(b) A diversion under this article may not exceed 180 days.

(c) The terms of a diversion agreement under this article must be in writing and may include any of the diversion strategies described by Article [45.305](#).

(d) The case of a child who successfully complies with the terms of a diversion agreement under this article shall be closed and reported as successful to the court.

(e) A child who does not comply with the terms of a diversion agreement under this article shall be referred to court for a hearing under Article [45.311](#).

Art. 45.311. REFERRAL TO COURT. (a) A court shall conduct a non-adversarial hearing for a child who does not successfully complete the terms of a diversion under Article [45.309](#) or [45.310](#) and is referred to the court.

(b) 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.

(c) After the hearing, a court may enter an order:

(1) amending or setting aside terms in the diversion agreement;

(2) extending the diversion for a period not to exceed one year from the initial start date of the diversion;

(3) 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;

(4) subject to Subsection (d), requiring the child's parent to perform any act or refrain from performing any act as 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;

(5) finding the diversion successful on the basis of substantial compliance; or

(6) finding the diversion unsuccessful and:

(A) transferring the child to juvenile court for alleged conduct indicating a need for supervision under Section [51.08](#), Family Code; or

(B) referring the charge to the prosecutor for consideration of re-filing.

(d) An order under Subsection (c)(4) 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.

(e) An order under Subsection (c)(4) is enforceable against the parent by contempt.

(f) The statute of limitations in Article [12.02](#)(b) is tolled during the diversion period for purposes of Subsection (c)(6)(B).

Art. 45.312. LOCAL YOUTH DIVERSION ADMINISTRATIVE FEE. (a) The clerk of a justice or municipal court may collect from a child's parent a \$50 administrative fee to defray the costs of the diversion of the child's case under this subchapter.

(b) The fee under this article may not be collected unless specified as a term of the diversion agreement accepted by the child's parent. 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.

(c) A court shall waive the fee if the child's parent is indigent or does not have sufficient resources or income to pay the fee.

(d) A court may adopt rules for the waiver of a fee for financial hardship under this article.

(e) An order under Subsection (b) is enforceable against the parent by contempt.

(f) The clerk of the court shall keep a record of the fees collected under this article and shall forward the funds to the county treasurer, municipal treasurer, or person fulfilling the role of a county treasurer or municipal treasurer, as appropriate.

(g) The fee collected under this article shall be deposited in a special account that can be used only to offset the cost of the operations of youth diversion programs under this subchapter.

(h) Except for the fee authorized under Subsection (a), a fee may not be assessed for a child diverted under this subchapter.

(i) The diversion of a child may not be contingent on payment of a fee under this article.

Art. 45.313. DIVERSION RECORDS. (a) A justice or municipal court shall maintain statistics for each diversion strategy authorized by this subchapter.

(b) Other than statistical records, all records generated under this subchapter are confidential under Article [45.0217](#).

(c) All records of a diversion pertaining to a child under this subchapter shall be expunged without the requirement of a motion or request, on the child's 18th birthday.