

Q&A from Juvenile Criminal Diversion Webinar – October 30, 2023

Q: I see it says the court must divert any case (fine only, misdemeanor, eligible defendant), other than traffic offenses. Are there mandatory/discretionary Diversions like there is DSC? For instance, we must do it for x cases but we may do it for traffic offenses?

A: No, there is no discretion for the court. The statute expressly does not apply to traffic offenses.

Q: How can they do teen court if they haven't plead guilty or nolo and the charge is dismissed? Will teen court procedures be modified to accommodate the Juvenile Diversion program?

A: Teen court as authorized as a condition of diversion is not the same procedure as currently outlined to dismiss a criminal offense in the Code of Criminal Procedure. The teen court program is not being used to dismiss the case, the diversion is.

Q: If court chooses to add a fine for the parent? How does the court collect if a criminal case is not filed?

A: There is no authority to order a fine at all in a diversion case, and a court may never fine a parent in a juvenile criminal case. The only possible money collected is the \$50 administrative fee.

Q: If the defendant has a diversion in municipal court and then gets a violation in justice court, do they qualify for diversion in justice court?

A: Diversions in any court count toward the eligibility restrictions. So if a defendant has had an unsuccessful diversion in any court (including municipal court), or has entered a diversion agreement (including in municipal court) in the last 365 days, they would be ineligible for diversion in justice court.

Q: Do the alcohol and tobacco classes under this section still must be approved by TDLR?

A: Nothing limits what type of education programs, including alcohol or tobacco programs, can be taken if required by a diversion agreement.

Q: Does Art 45.041 (b-3), pertaining to discharging court costs, apply to any offense committed by a child (under 17), including traffic?

A: Yes.

Q: For truancy, must the kid be diverted prior to seeing the Judge if eligible?

A: No. The diversion program only applies to eligible criminal cases. Truant conduct cases are not criminal.

Q: The only juvenile offenses we receive are filed by police agencies, what do we do? do we hold off entering the citations into Odyssey until we know if they will be in diversion or do we need to have a reconfiguration to have a "dismissal" without finalizing much like the finding of true conduct without finalizing in a truancy case?

A: If an offense is filed, it should be entered into the system. Then, if the defendant is eligible and agrees to a diversion, it should be dismissed. If the diversion is unsuccessful, the offense would need to be re-filed if desired, it would not continue from the original filing.

Q: who do we report the successful/unsuccessful diversion to?

A: There is no central repository of records for this information. If the diversion was an intermediate diversion, it must be reported to the court. The court should ensure that the juvenile diversion coordinator, or any person responsible for keeping statistics, receives all necessary information.

Q: Will the mandatory sanctions for MIP/MIC or Tobacco related offenses still be required if the diversion agreement expires or they're non-compliant?

A: If the case is not being diverted, the standard procedures and requirements for criminal cases, based on the age of the defendant and the offense charged, would still be followed.

Q: For court hearings (show cause)? does the judge need to be present?

A: Yes. The judge must determine whether to continue the hearing, extend the diversion, or determine it successful or unsuccessful.

Q: Can you clarify if the JP finds it in the best interest of the child/community to transfer the case to Juvenile Services, does a diversion have to be offered before?

A: The justice court can transfer a juvenile criminal case to juvenile court without offering diversion.

Q: if a juvenile fails to successfully complete the diversion, is it our responsibility to let the County Attorney know for re-filing?

A: Nothing expressly requires this, but we would recommend that the court should do so.

Q: If a case is diverted and an agreement is made, then the defendant is unsuccessful, but the prosecutor does not refile, it remains dismissed?

A: Correct.

Q: If the court has a Juvenile Case Manager already established, will the funding for the position change with this update?

A: Only if desired. Additional funding paths may be available, so courts or counties may elect to fund the position differently. No existing funding is going away, so there wouldn't be a need to change otherwise.

Q: So normally when we get a Juvenile case we enter it into the system and send out pre-trial notifications for them to show up for court. With the diversion, would you suggest we send out notices for them to come in to the court to offer them diversion plan if they are eligible??

A: Yes.

Q: Can hearings be done by Zoom?

A: Yes.

Q: Doesn't the case have to be expunged if successfully diverted?

A: The case is expunged when they turn 18, regardless of whether it was successfully diverted.

Q: What if they failed to appear for diversion hearing?

A: Assuming we are discussing the hearing after referral for possible noncompliance (show cause), we would recommend sending a summons to the parent to bring the child to court, and if necessary, issuing an attachment for the parent and/or child. There is not an explicit provision to find the diversion unsuccessful for failure to appear like there is for deferred disposition. The hearing is supposed to be non-adversarial and focused on problem-solving, and to meet that goal, the presence of the parent and child is needed.

Q: On a case dismissed for diversion, and if it's extended due to failure to comply, and the State's witness is no longer in law enforcement (which happens a lot now), then the Court would let it die?

A: It is up to the state, not the court, to elect whether or not to refile criminal charges against the defendant.

Q: It is criminal until diversion is entered correct?

A: Yes.

Q: Is Driver's License Suspension still an option if they don't appear?

A: This only applies to failing to appear for certain offenses under Ch. 521 of the Transportation Code (see p. 29 of the Criminal Deskbook). These offenses are not eligible for diversion, as they are traffic offenses.

Q: So the decision to offer a diversion program does not need to have the Judge involved...is that correct? This would be the Diversion Coordinator or Case Manager offering the program.

A: Only if a court/county is using intermediate diversion. Otherwise, the judge must make the determination of eligibility.

Q: What happens if the statute of limitations is reached before the end of diversion and they are unsuccessful?

A: The statute specifies that the statute of limitations is tolled during any diversion.

Q: Does the court need to report their written plan to TJCTC?

A: No, though it must be kept on file at the court for public inspection.