

Juvenile Criminal Diversions

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Resources

Chapter 45, Subchapter E of the Code of Criminal Procedure
HB 3186 of the 88th Regular Legislative Session (Texas Youth
Diversion and Early Intervention Act)

(Resources below coming winter 2023)

Juvenile Deskbook, Chapter 3A

Juvenile Diversion Flowchart

Juvenile Criminal Diversion Forms

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Agenda

Legislative History/Background

When Diversion?

How to Prepare for 2025

How Diversion?

What if no Diversion?

Q&A

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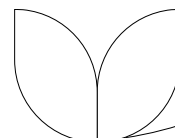
The Backstory

“School to Prison Pipeline”

Failure to Attend School -> Truancy

School Offense Changes

Previous Efforts at Diversion



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When Must a Juvenile Criminal Case Be Diverted?

When Does This Take Effect?

Eligibility for Diversion – Defendants

Eligibility for Diversion – Offenses

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When Does This Take Effect?

HB 3186 goes into effect on Jan. 1, 2024, but the diversion process only applies to **offenses which occur on or after Jan. 1, 2025.**

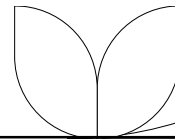
This means courts must pay attention to the actual offense date when a case is filed before proceeding!

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What Defendants are Eligible for Diversion?

- Under 17 years of age **at the time of the offense**
- Has not been diverted in previous 365 days
- Has never had an unsuccessful diversion – how do we know?
- No objection from the prosecutor
- Written consent of defendant and parent – who is a parent?
 - Art. 45.057(a) - "Parent" includes a person standing in parental relation, a managing conservator, or a custodian.

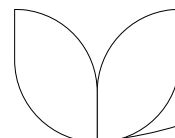


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“Every 365 Days”?

Art. 45.304(b) – “A child is eligible to enter into a diversion agreement under this subchapter only once every 365 days.”

TJCTC interpretation – 365 days between dates of agreements, not offenses or dispositions



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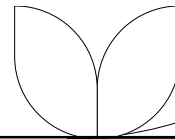
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What Type of Cases are Diverted?

The court **must** divert any fine-only misdemeanor alleged to have been committed by an **eligible** defendant **other than traffic offenses**

What are traffic offenses?

Nothing in the Code of Criminal Procedure defines that term. Ch. 720 of Transportation Code defines as any offense under Ch. 521 of Transp. Code or any Rules of the Road offense.

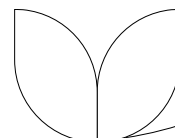


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Can the Case go to Juvenile Court Instead?


Yes. Art. 45.303 allows for cases to be sent to juvenile court just as they currently can.

See Chapter 3, Section A of the *Juvenile Deskbook* for details.



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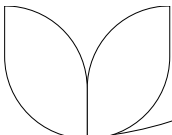
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Scenario 1

A juvenile is eligible for diversion, but the judge thinks they don't have a good attitude and doesn't believe they are sincere about following the requirements.

What should the judge do?



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Preparing for 2025

- Youth Diversion Plans
- Youth Diversion Coordinators
- Funding for Diversion
- Judicial Education



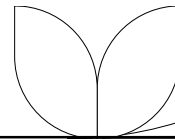
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Youth Diversion Plan (Art. 45.306)

Each justice and municipal court must adopt a youth diversion plan **no later than January 1, 2025**.

The plan must be in writing and describe the types of strategies that will be used (but strategies that may be imposed **are not** limited by the plan).

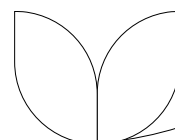
The plan must be maintained on file for public inspection.



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Youth Diversion Plan – Local Agreements

- Plans may be created for individual courts, or may be created for a county or municipality.
- Local governments may also collaborate to create regional youth diversion plans.
- Plans may include agreements with service providers to provide services for diversion strategies.
- Courts or local governments may adopt rules necessary to coordinate services or implement the requirements of the bill.



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“Service Provider”

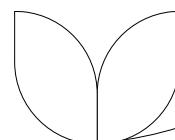
Art. 45.301(7): “Governmental agency, political subdivision, open-enrollment charter school, nonprofit organization, **or other entity that provides services to children or families**”

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Youth Diversion Plan – Law Enforcement

Plans may contain non-mandatory guidelines for disposition or diversion of a case by law enforcement.



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Youth Diversion Coordinator

The bill creates a new position of “youth diversion coordinator” and allows courts to designate someone to fulfill the responsibilities and duties laid out in the statute.

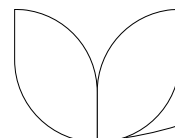
- Art. 45.307

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Youth Diversion Coordinator – Duties

- Determining whether a child is eligible for diversion;
- Employing authorized diversion strategies;
- Presenting and maintaining diversion agreements;
- Monitoring diversions;
- Maintaining records on if diversions are successful or unsuccessful; and
- Coordinating referrals to court.

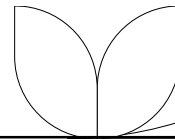


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Youth Diversion Coordinator – Who?

- Court administrator or clerk or juvenile case manager;
- Court-related services office;
- CSCD, including juvenile probation department;
- County or municipal employee, including peace officer;
- Community volunteer;
- Institution of higher education (public/private/independent);
- Qualified nonprofit organization as determined by court.



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How Do We Pay For This?

LGC § 133.102(e), 133.125, 134.103(b), 134.156; CCP Art. 45.056

“Truancy prevention and diversion” account/fund is changed to “youth diversion” account/fund; information added on how money can be spent (for juvenile case managers and programs designed to prevent/reduce juvenile referrals to court).

Expands abilities to contract for juvenile case managers/youth diversion coordinators among multiple courts/counties/municipalities.

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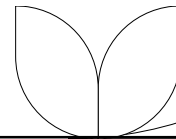
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How Do We Pay For This? (cont.)

CCP Art. 102.0171

JP and municipal courts added to the list of courts that must assess a \$50 fine on conviction of Penal Code § 28.08 (graffiti) – only for offenses (not convictions) occurring after Jan. 1, 2025.

This money is to be placed in the County Juvenile Delinquency Prevention Fund; and “provide funding for youth diversion under subchapter E, Chapter 45” has been added to the list of what the fund can be used for.



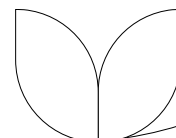
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Judicial Education Requirements

Government Code § 22.1105(a)

In every year that ends in a 0 or 5, JPs must complete education related to youth diversion and understanding relevant issues of child welfare, including issues related to mental health and children with disabilities.

Sept. 1, 2024 – Aug. 31, 2025 – next year!



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How Are Juvenile Criminal Cases Diverted?

Diversion Before Court

Diversion Agreement

Diversion Strategies

Referral for Hearing & Diversion Outcomes

Fees and Records

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Before the Case is Filed in Court

Art. 45.305 authorizes diversion by 3 different strategies:

- Graduated sanctions under Education Code Sec. 37.144 for school offenses
- Intermediate diversion (Art. 45.309)
- Diversion by court (Art. 45.310)

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Intermediate Diversion



A youth diversion plan may provide that a youth diversion coordinator or juvenile case manager must advise the child and parent before a case is filed of the option of intermediate diversion.

Strategies, diversion agreement, time period, etc., are same whether intermediate diversion or diversion by court.

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Intermediate Diversion – Requirements



Child must be eligible for diversion;

Diversion is in the best interest of the child and promotes safety of the community;

Child and parent consent with the knowledge that diversion is optional; and

Child and parent are informed that they may terminate at any time which will result in referral to court.

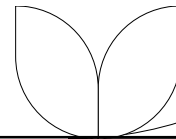
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Diversion by Court

Must divert the case of an eligible defendant without requiring a plea.

Successful compliance results in closure of case and report to court of successful diversion.

Failure to comply results in referral to the court for a hearing under Art. 45.311.



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Diversion Agreement

- Must be in writing and identify the period of diversion (not to exceed 180 days) and a clear and concise description of the diversions, including the offense and charge being diverted.
- Must outline identity and responsibilities of the child and the parent, and contain a written acknowledgement and agreement from the child and the parent.
- Must be measurable, realistic, and reasonable, considering the circumstances, the child's age and ability, the charge being diverted, the best interest of the child, and the safety of the community.

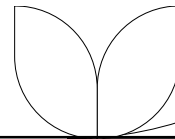
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Diversion Agreement (cont.)

Must include:

- Possible outcomes of successful/unsuccessful diversions;
- Explanation that participating is not an admission of guilt and that a guilty plea is not required to participate;
- Explanation of the monitoring process;
- Verification that the child and parent were notified of the child's rights, including the right to refuse diversion, and that the child knowingly and voluntarily consents to diversion.



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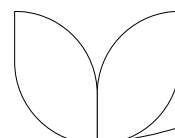
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Diversion Agreement – Procedure

Charge may not be filed (or must be dismissed if filed) if the child is eligible and accepts the terms.

The court's jurisdiction is extended over the case for the diversion period.

Copy of the agreement must be provided to the child and parent, clerk, youth diversion coordinator, and any person specified in the youth diversion plan.



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Diversion Strategies

Art. 45.305 lays out many available diversion strategies that may be employed. They include:

Requiring the child to participate in a program, including teen court; school related program; educational program, including alcohol, tobacco, or drug education; rehab; or self-improvement programs.

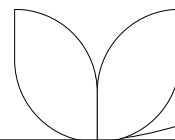
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Diversion Strategies (cont.)

Referring a child to a service provider, including:

- At-risk youth services;
- juvenile case manager services;
- work and job skills training;
- academic monitoring/tutoring (including GED prep);
- community-based services;
- mental health screening & clinical assessment;
- counseling (private or in-school);
- mentoring services.



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More Diversion Strategies

Requiring a child to:

- Participate in mediation or other dispute resolution;
- Submit to alcohol/drug testing; or
- Comply with treatment prescribed by physician or health professional

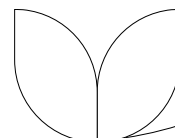
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More Diversion Strategies (cont.)

Ordering a child to:

- Pay restitution not to exceed \$100 (applies to offense against property under Title 7 of the Penal Code);
- Perform up to 20 hours of community service; or
- **Perform any other *reasonable* action determined by the court.**



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Diversion Strategies – Home-Schooled Children

Diversion strategies may not require a home-schooled student to attend an elementary or secondary school, or use an educational curriculum other than the one selected by the parent.

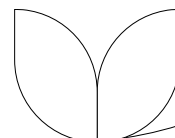
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Referral for Hearing – Art. 45.311

If a child appears not to have successfully completed the diversion, the court must hold a non-adversarial hearing to confer with parent and child.

May hear from any person the court finds helpful in determining the best path forward.



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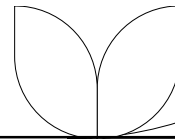
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Referral for Hearing – Outcomes

Options at the hearing include:

- Amending or setting aside diversion agreement terms;
- Extending the diversion period for a period not to exceed one year from the initial start date;
- Continuing the hearing for up to 60 days;
- Ordering the parent to perform any act or refrain from any act;
- Determining the diversion to be successful or unsuccessful.

Unsuccessful diversions may be referred to the juvenile court or to the prosecutor for criminal filing (SOL tolled).



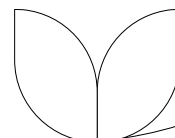
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Referral for Hearing – Parent Order

Any order to the parent may not have the substantive effect of interfering with a parent's fundamental right to determine how to raise the child, unless the court finds it necessary to prevent significant harm to the child's physical, mental, or emotional health.

Orders to the parent are enforceable by contempt.



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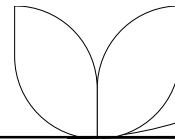
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Youth Diversion – Fees (Art. 45.312)

Court may collect from a child's parent a \$50 administrative fee to defray the costs if this is an accepted term in the diversion agreement.

Waived if indigent, and diversion may not be contingent on payment of a fee.

Court must maintain records of all fees paid, and the fees must be placed by the treasurer into a special account only used to offset the costs of youth diversion programs.



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Youth Diversion – Records (Art. 45.313)

Courts must maintain statistics for each diversion strategy authorized.

Other than statistical records, all records are confidential under CCP Art. 45.0217.

All records shall be expunged without the requirement of a motion or request, on the child's 18th birthday.

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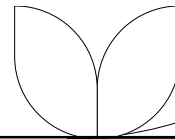
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Scenario 2

Timmy commits an offense on 1/1/25, enters into a diversion agreement on 3/6/25, successfully complies with case closure on 8/25/25.

Timmy commits a new offense on 1/29/26 and appears before the court on 2/24/26. Is he eligible for diversion?

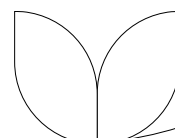


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Scenario 3

Timmy enters into his new diversion agreement on 4/1/26. The court believes Timmy has failed to comply and holds a hearing on 8/27/26. To what date can the court extend Timmy's agreement, if desired?



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What if a Juvenile Criminal Case Is Not Diverted?

Juvenile Protections
Before Entering Judgment
Fines and Costs Changes

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Juvenile Protections

Juvenile criminal cases which are not diverted, either because the defendant is not eligible or because they are traffic offenses, will still be processed under previous juvenile criminal law.

Full details are covered in Chapter 3 of the Juvenile Deskbook.

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Before Entering Judgment

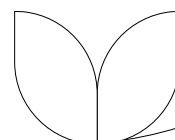
Art. 45.041(a-2) added to require the court to make diversion an option (up to child/parent) if the child is going to be found guilty at trial and is eligible for diversion under CCP Art. 45.304.

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Fines and Costs

Art. 45.041(b-3) amended to say: if diversion is not required, judge **must** allow a defendant who is a child to elect to discharge fine/costs with community service or tutoring, or pay the fine/costs now, later, or on a payment plan (previously was may).



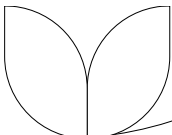
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Scenario 4

Audrey declines to participate in diversion. After her criminal trial, before entering conviction, Audrey accepts the diversion. She then fails to comply, and after a hearing, the court finds the diversion unsuccessful.

The prosecutor refiles the case, and the jury returns a verdict of guilty. Must the court again offer Audrey diversion?



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Questions?



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