

Improving Outcomes in Juvenile Cases

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Resources

- Texas Juvenile Law, 9th Edition
<https://www2.tjtd.texas.gov/publications/legal/texas-juvenile-law-9.pdf>
- Texas Juvenile Mental Health and Intellectual and Developmental Disabilities Law Bench Book
<https://www.texasicmh.gov/media/secdb2j/jbb-2023-for-web.pdf>

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Legal Resources

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

3

Coming Attractions

- Juvenile Deskbook, Chapter 3A
- Juvenile Diversion Flowchart
- Juvenile Diversion Forms (this winter, allegedly)

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Let's start
with a poll.



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True or False

Either:

- I was involved in the justice system as a juvenile; or
- The only reason I wasn't involved in the justice system as a juvenile was that I wasn't caught.

(This audience is sworn to secrecy. Loc promised not to blackmail you.)

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Agenda

Kids today

Value of diversion

Preparing for 2025

How diversion will work

What if no diversion?

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The bad news

Adolescents are impulsive, short-sighted, exceptionally sensitive to the prospect of immediate rewards, and less likely to consider the long-term consequences of their actions—a pattern that is even more pronounced in the context of similarly-aged peers.

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GOOD NEWS!

Only a small fraction of offenders will continue to offend in adulthood. (Piquero, Farrington, and Blumstein 2003)

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Our goal is to positively impact the children who could go either way.

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Proper mindset

Don't think like a referee.

11

Think like a coach.

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State of the Judiciary

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What is Judge Hecht talking about?

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Goals of diversion

- hold juveniles accountable for their behavior without formal court proceeding,
- reduce stigma,
- reduce coercive entry into the system and unnecessary social control,
- reduce recidivism,
- provide youths with services they would not have otherwise received, and
- connect them to broader community service alternatives

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Why do we care about
diversion programs?

They work.

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Diversion works.

The preponderance of evidence indicates that youth whose cases are formally processed in juvenile court typically have worse outcomes than similar youth whose cases are handled informally, both in terms of future involvement in the justice system and success in education and employment.

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Diversion works, part 2.

This is especially true for youth accused of lower-level misbehavior and those who do not have a long history of past arrests.

<https://www.aecf.org/blog/what-is-juvenile-justice>

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Study in Michigan in 1987 of adolescent diversion program

At a 1-year follow up, youths who received services through a diversion program had a 22 percent recidivism rate, compared with a 32 percent recidivism rate for youths who were diverted but received no services, and a 34 percent recidivism rate for youths who went through formal court processing.

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Conclusion of 2013 Meta-analysis

Low-risk youth placed in diversion programs reoffend 45% less often than do youth with similar case histories who face formal court processing or more intensive sanctions.

Source:

<https://www.aecf.org/blog/re-writing-the-playbook-for-reducing-juvenile-delinquency>

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What about fines?

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2016 study of juvenile cases in Allegheny Pa.

Financial burden of a fine increases the likelihood of recidivism among adolescent offenders.

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2023 study of juvenile cases in Florida

Fees exacerbate the risk of recidivism for youth formally processed into the Florida juvenile system.

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Theories why fines makes things worse

1. Individuals who experience strains and stressors often become upset and then sometimes cope with those negative emotions (e.g., frustration, anger, fear) through offending to either end or escape from strains.
2. Negative emotions stemming from “unjust treatment” from conventional others, like a court, further may reduce the individual’s stake in conformity.

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Thoughts on why fines might make it worse

- The strain may be heightened among youth assigned fees and/or restitution with little ability to legally pay those monetary sanctions (e.g. too young to work, living in poverty, ect.), and this may increase the likelihood to perceive the imposition of such sanctions as unjust.

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Texas Youth Diversion and Early Intervention Act

Technically effective
January 1, 2024, but
only applies to offenses
occurring on or after
January 1, 2025.

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You can still
transfer cases to
Juvenile Court

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

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Child is to be offered diversion except as otherwise provided.

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This statute does not apply to traffic offenses.

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What is a traffic offense?

Term is not defined in code of criminal procedure, so the general meaning is to be applied.

Transportation Code defines it as any offense under chapter 521 or any Rules of the Road offense.

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What about
driving under the
influence?

Offense is located under
Tex. Alcoholic Beverage
Code section 106.041,
so not a “traffic offense”
as defined by the
Transportation Code
section 720.002(f)(2).

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This statute only applies to individuals who were under 17
years of age **at the time of the offense.**

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“Child is eligible to enter into diversion agreement ... only once every 365 days.”

TJCTC position is that we look at the dates of the agreements, not offenses or dispositions.

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Child is only eligible for diversion if they have never had an unsuccessful diversion

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How will we know if the child has never had an unsuccessful diversion?

35

The child is not eligible for diversion if the attorney for the state objects.

The court does not have this discretion.

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A court may not divert a child from criminal prosecution without the written consent of the child and the child's parent.

"Parent" includes anyone in a parental relationship with the child.

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Time for a poll.



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Poll question 2

The juvenile before you, Thea, is eligible for diversion. However, you don't think they have a good attitude and you don't think they are sincere about completing the program. What do you do?

- A. Decline diversion for the juvenile.
- B. Refer the child to diversion anyway.

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2025 is coming

Youth Diversion Plans
Youth Diversion Coordinators
Funding for Diversion

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Youth Diversion Plan, CCP Art. 45.306

Legislature had a choice. Either it
was one size fits all ...

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Youth Diversion Plan, CCP Art. 45.306

... or it was the
paradox of choice.

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Youth Diversion Plan, CCP 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 may 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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Local Agreements

- The plan may be devised for a county or a municipality or an individual court within a county.
- Local governments may create and collaborate on a regional youth diversion plan
- Plan may include an agreement with a “service provider” for diversion strategies.

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Local Agreements, Part 2

- Plan may include non-mandatory guidelines for disposition or diversion by law enforcement

- Courts or local governments may adopt rules necessary to coordinate services or implement the requirements of the bill.

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“Service Provider”

CCP 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 Coordinator

CCP Art. 45.307 creates the role of “youth diversion coordinator” to fulfill certain responsibilities.

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Duties of the Youth Diversion Coordinator

- 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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Who can take this role?

- 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.

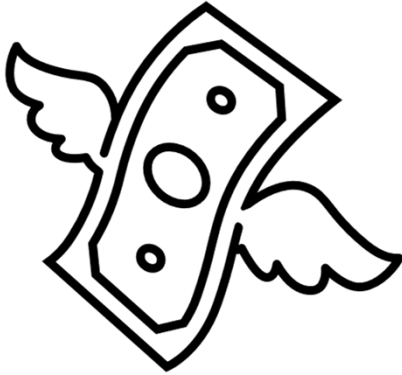
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Who pays for this?

The “truancy prevention and diversion” account/fund will be called the “youth diversion” fund. Local Gov’t Code section 133.125(a).



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Youth Diversion Account

This account can be used for juvenile case managers and programs designed to prevent/reduce juvenile referrals to court.

Multiple courts, counties, municipalities may contract for juvenile case managers/youth diversion coordinators.

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

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CCP Art. 45.312 – fees for diversion

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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New source of revenue

Justice courts are to assess a \$50 fee for convictions for graffiti for criminal actions occurring on or after January 1, 2025.

Money to be placed in County Juvenile Delinquency Prevention Fund and provide funding for diversion.

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How is this supposed to work?

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Before the case is filed in court

- Graduated sanctions under Education Code § 37.114 for school offenses
- Intermediate diversion; CCP Art. 45.309
- Diversion by court; CCP Art. 45.310

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

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Intermediate diversion

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

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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 the case and report to the court of successful diversion.



Failure to comply results in referral to the court for a hearing under CCP 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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More on diversion agreements

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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Procedure for diversion agreements

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 other person specified in the youth diversion plan.

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Diversion strategies may 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 program.

CCP Art. 45.305

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More diversion strategies

Referring a child to a service provider, addressing, for example:

- 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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Still more diversion strategies

Requiring a child to:

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

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Yet even more diversion strategies

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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Word to the wise: sometimes focus less on what they did, more on why they did it.

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Sometimes, it's apparent that mental illness or intellectual disability is at play

Questions to ask:

- Do you receive any services at school?
- Do you have an IEP or BIP?
- Do you receive any support at your school I should know about?
- Does the support affect your education?
- Do you go to an ARD meeting?

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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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What sort of creative solutions do you have for your courtroom?

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Referral for hearing under CCP 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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Possible outcomes when referred to hearing

- 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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Records of diversion program

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.

CCP Art. 45.313

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Time for a poll.



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Poll question 3

Little Bronson commits an offense on 1/1/25, enters into a diversion agreement on 3/6/25, and successfully complies. The case is closed 8/25/25.

Bronson allegedly commits a new offense 1/29/26 and appears before the court on 2/24/26. Is he eligible for diversion at that time?

- A. Yes
- B. No

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Poll question 4

Bronson enters into a new diversion agreement for the second offense on 4/1/26. There is concern that he has failed to comply with the agreement. The court holds a hearing on 8/27/26. If the judge wants to extend Bronson's agreement, what is the latest date he can extend it to?

- A. 1/29/27 (a year after the offense was committed)
- B. 4/1/27
- C. 8/27/27

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What if the case is not diverted?

- The old system
- Before entering judgment
- Changes to fines and costs

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The old system

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

If a child is eligible for diversion, contests the charge, and either

- (1) The court determines there is enough evidence to support a finding of guilt; or
- (2) The jury returns a verdict of guilty

The court shall provide the child and the parents the opportunity to be placed in diversion. Proceed to sentencing if they decline.

CCP Art. 45.041(a-2)

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Fines and costs

If diversion is not required, a judge *shall* ~~may~~ allow a defendant who is a child to elect at the time of conviction to discharge the fine and costs by performing community service or receiving tutoring.

Art. 45.041(b-3) (as of 1/1/25)

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Time for a
poll.



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Poll question 4

Amber declines to participate in diversion. After her criminal jury trial, but before conviction, Amber accepts diversion. She fails to comply. After a hearing, the court finds that the diversion was unsuccessful.

The prosecutor refiles the case. The jury returns a verdict of guilty. Must the court offer Amber diversion yet again?

A. Yes

B. No

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Questions?

Mark Zuniga

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