



## CITY OF HUNTSVILLE

Municipal Court

Incorporated in 1845 under the Republic of Texas

717 FM 2821 Rd W, Ste 200, Huntsville, Tx 77320 • Phone (936) 291-5476 • [mcourt@huntsvilletx.gov](mailto:mcourt@huntsvilletx.gov)

### ORDER ADOPTING A YOUTH DIVERSION PLAN

**IT IS ORDERED** pursuant to Article 45.306 (b) of the Texas Code of Criminal Procedure that the Court adopts a Youth Diversion Plan.

**IT IS FURTHER ORDERED** that the program shall not limit the types of strategies or services that may be imposed as needed in the best interest of the child and to promote the long-term safety of the community. Strategies and services may be tailored to an individual case as determined by the Judge, Prosecutor and Youth Diversion Coordinator after assessment and collaboration with all interested parties and service provider.

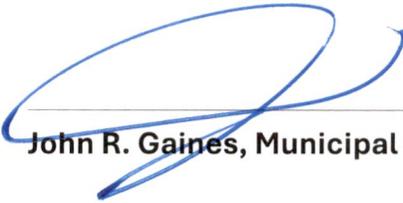
**IT IS FURTHER ORDERED** that the procedures, components, and applicable law referenced in the program shall be maintained on file for public inspection.

**IT IS FURTHER ORDERED** this Court will offer both Judicial Diversions (mandatory) and Intermediate Diversions (optional)

**IT IS FURTHER ORDERED** this Court has opted to waive the optional \$50.00 Local Youth Diversion Administrative fee.

SIGNED AND ENTERED on this 3/5<sup>th</sup> day of December, 2024.



  
John R. Gaines, Municipal Court Judge



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# **HUNTSVILLE MUNICIPAL COURT YOUTH DIVERSION PLAN**

## **I. *Description***

As provided by Chapter 45, subchapter “E” of the Texas Code of Criminal Procedure, and contingent on eligibility, a child shall be diverted from criminal prosecution through an established Youth Diversion Plan.

The Youth Diversion Plan allows a child the opportunity to complete a plan with realistic and reasonable terms set by the Municipal Court Judge, Prosecutor or the Juvenile Case Manager, (JCM). Terms may include a combination of conditions such as community based service, an educational program, counseling, letter of apology, peer group participation, and/or restitution, etc. A child’s participation is voluntary and requires the child to accept responsibility for his or her conduct and engage in a diversion agreement.

The Juvenile Case Manager will monitor the child’s compliance throughout their participation in the program which may run up to 180 days. If the child satisfies all the requirements of their diversion agreement, there will be no further proceedings related to the case. If the child withdraws or fails to successfully complete the diversion agreement, the JCM will refer the case to the Huntsville Municipal Court to conduct a hearing to determine if the diversion was unsuccessful. If it is determined the diversion measures were unsuccessful, the court may transfer the child to a juvenile court or formally file the charge against the child for criminal prosecution, with the prosecutor’s approval.

If it is determined that more time is necessary for a child to successfully complete the diversion, a diversion contract can be extended and/or adjusted.

## **II. *Eligibility***

- The child is charged with a Class C Misdemeanor offense punishable by fine only, other than a traffic offense.
- The child has not entered into a diversion agreement in the past 365 days.
- The child is not eligible for diversion if the child previously had an unsuccessful diversion.
- The child is not eligible for diversion if a diversion is objected to by the prosecutor.
- The child may not be diverted from criminal prosecution without the consent of the child and the child's parent/guardian.
- The child must be at least 10 years of age and younger than 17 years of age.

## **III. *Youth Diversion Goals***

- Prevent formal criminal prosecution.
- Empower the child to accept responsibility for his/her actions.
- Encourage acceptance of their consequences.
- Deter future criminal conduct.
- Prevent the creation or extension of criminal records.
- Reduce the reoccurrence of problem behaviors leading to gateway misdemeanors.
- Avoid currency punishments for youth and their parent/guardians with limited financial resources.

## **IV. *Youth Diversion Plan***

- Bring together participants (e.g., child and parent/guardian), Prosecutor, Juvenile Case Manager, etc.
- Conduct a meeting and review charge(s).
- Ensure the child and parent/guardian understand participation is not an admission of guilt and is voluntary.
- Discuss the next course of action for the diversion plan.
- Set requirements and ensure the child and parent/guardian comprehend the diversion agreement.

- The child and parent/guardian accept and sign the individualized, written diversion agreement. The agreement will include the terms of compliance, duration of the agreement, and date by which conditions must be met.

## **V. *Strategies***

The prosecutor may require a child to participate in a program, as referred in Chapter 45, Code of Criminal Procedure, Subchapter E. Youth Diversion, Art. 45.305, which includes but are not limited to:

- Perform community-based services at a non-profit organization or government agency that provides services to the public that enhance the social welfare and general well-being of the community.
- Attend a work or job skills training program.
- Attend a GED preparatory class to prepare for the high school equivalency examination, administered under section 7.11, Texas Education Code.
- Attend a drug or alcohol abuse program.
- Attend a theft intervention program.
- Partake in counseling, including private or in-school based.
- Partake in a mentoring program.
- Require the child to pay restitution for an offense against property.

## **VI. *Case Management***

During the diversion period, the Judge, Juvenile Case Manager, or Prosecutor will follow up periodically for the sole purpose of evaluation program progress. Follow up measures may include:

- Follow-up calls to the child and/or parent/guardian.
- Contacting the community service provider.
- Communication with school officials/counselors.
- Conduct additional meetings as needed.
- Referrals to educational classes and community service providers.

## **VII. Conclusion of Case**

If the child successfully complies with the terms set forth in the diversion agreement, the case is closed without further prosecution and is reported as successfully completed. Should the child voluntarily withdraw from the diversion agreement or fail to comply with the terms of the agreement, the court will:

- Conduct a Show Cause Hearing.
- Determine if an extension period should be granted to comply with the diversion agreement.
- Review the terms of the diversion agreement and amend if needed.
- Transfer the child to juvenile court.
- Issue an order of contempt against the parent/guardian.

## **VIII. Procedures**

Upon receipt of a citation or complaint for a juvenile non-traffic violation:

- Juvenile Case Manager gathers all pertinent information to submit to Prosecutor for review. Prosecutor will determine if the case will be filed or if the juvenile is eligible for participation in the Youth Diversion Plan.
- If violation was sent to the Court by electronic ticketing system, the JCM will process a dismissal for the Prosecutor. This will be dismissed and refiled as a diversion if child and parent/guardian agree.
- An intake appointment will be scheduled by the Juvenile Case Manager to go over the diversion plan, determine eligibility, expectations, court orders, and goals. Paperwork will be signed at this time if all parties agree to diversion.
- The program is for 90 days initially but could go longer if necessary. (Not to exceed 180 days).
- Once the program is complete, the Juvenile Case Manager will draft a compliance judgment for the Judge to review and sign. The case is then closed without further prosecution.
- If the child fails to comply with the program expectations, the Juvenile Case Manager will set the case for a Show Cause Hearing.

- If unsuccessful, the court could hold the child in contempt and refer to the juvenile court to handle.

***Some of the programs we can offer but are not limited to:***

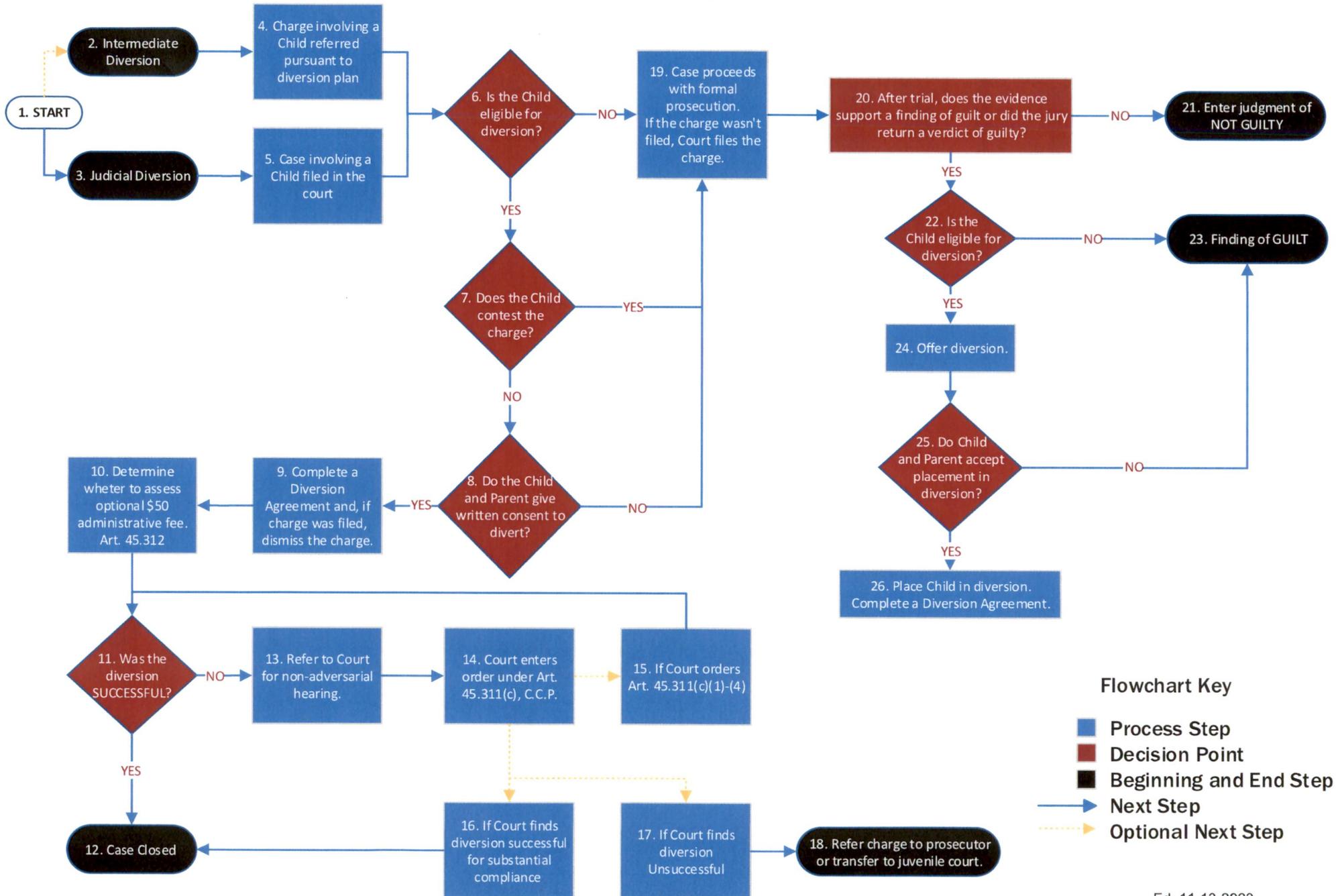
Courses through Court Solutions Online ([www.JuvClass.com](http://www.JuvClass.com))

Peer Group/Mentoring  
Alcohol Education for Minors  
Anger Management  
Conflict Management  
Consequences of Crime  
Decision Making & Good Judgment  
Digital Citizenship  
Impulse Control  
Making Good Choices  
Marijuana/THC Awareness  
Minor in Possession (MIP) Drug & Alcohol  
Responsibility & Character Building  
Theft & Shoplifting  
Vaping, Tobacco & Nicotine Awareness  
Community Based Service  
Monitoring of school grades, attendance and behavior

# Youth Diversion: Process Overview Flowchart

## H.B. 3186

*See Accompanying Commentary*



**Flowchart Key**

- Process Step
- ◆ Decision Point
- Beginning and End Step
- Next Step
- - - Optional Next Step

## Youth Diversion: Flowchart Commentary

- Box 1. Generally, a child shall be diverted from formal criminal prosecution as provided by Subchapter E of Chapter 45 of the Code of Criminal Procedure. How diversion proceeds will depend on the type of diversion. There are two types of diversion: intermediate diversion and diversion by judge (or judicial diversion). All courts must do judicial diversion. Courts may also opt to do intermediate diversion. Arts. 45.309, 45.310, C.C.P. **Subchapter E only applies to non-traffic offenses committed on or after January 1, 2025.** Art. 45.302, C.C.P.; H.B. 3186 (88th Regular Legislative Session).
- Box 2. Courts that opt to do intermediate diversion must include that type of diversion in their diversion plan. Intermediate diversion occurs prior to filing the charge. A youth diversion coordinator or juvenile case manager must advise the child and child's parent before the charge is filed that a case may be diverted for up to 180 days if the requirements in Article 45.309(a)(1)-(4) are met. Art. 45.309, C.C.P.
- Box 3. Subchapter E provides for judicial diversion after a charge involving a child is filed and after a finding or verdict of guilt in the trial of a child, whether bench or jury trial. Judicial diversion may not exceed 180 days. Art. 45.310, C.C.P.
- Box 4. The process for referral of charges under intermediate diversion should be addressed in the diversion plan. After referral, certain determinations must be made before proceeding to diversion.
- Box 5. If a charge involving a child who is eligible for diversion is filed with the court, the judge must divert the case under Article 45.310. After such a charge is filed, certain determinations must be made before proceeding to diversion.
- Box 6. Whether intermediate or judicial diversion, a child must be eligible for diversion. A child is eligible to enter into a diversion agreement under Subchapter E only once every 365 days: A child is not eligible for diversion if the child previously had an unsuccessful diversion under Subchapter E or if the prosecutor objects to the diversion. Art. 45.304, C.C.P.
- Box 7. The child has a right to go to trial. Therefore, if the child contests the charge, set the child for trial. See Boxes 20-26 for diversion after trial.

- Box 8.** A court may not divert a child from criminal prosecution without the written consent of the child and child's parent. Art. 45.304(e), C.C.P.
- Box 9.** Article 45.308 lists the requirements for a diversion agreement. 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 diversion agreement.
- Box 10.** Article 45.312 authorizes a court to collect from a child's parent a \$50 administrative fee (Local Youth Diversion Administrative Fee) to defray the costs of the diversion of the child's case under Subchapter E. This fee is optional. It may not be collected unless it is specified as a term of the diversion agreement accepted by the parent. Diversion may not be contingent upon payment of this fee. Art. 45.312, C.C.P.
- Box 11.** By the end of the diversion period, determine whether the child has successfully complied with the terms of the diversion agreement.
- Box 12.** The case of a child who successfully complies with the terms of the diversion agreement shall be closed and reported to the court as successful. Arts. 45.309(c), 45.310(d), C.C.P.
- Box 13.** A child who does not comply with the terms of the diversion agreement shall be referred to court for a non-adversarial hearing. Arts. 45.309(d), 45.310(e), C.C.P. This non-adversarial hearing is an opportunity for a judge to confer with the child and parent to determine whether a diversion should be declared unsuccessful by the court. The court may also hear from any person who may assist 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, C.C.P.
- Box 14.** After the hearing, a court may enter one of the orders listed in Article 45.311(c). See Boxes 15, 16, and 17 for possible orders.
- Box 15.** Under Article 45.311(c)(1)-(4), a court may enter an order: (1) amending or setting aside terms in the diversion agreement; (2) extending the diversion 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 agreement; and (4) require the child's parent to perform (or refrain from doing) certain acts 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. If the court orders any of these, the next step is to determine whether the child has successfully completed the terms of the agreement under the order. Go to Box 11.

- Box 16.** The court may enter an order finding the diversion successful on the basis of substantial compliance. Art. 45.311(c)(5), C.C.P. After such an order, the case shall be closed. Arts. 45.309(c), 45.310(d), C.C.P.
- Box 17.** The court may enter an order finding the diversion unsuccessful. Art. 45.311(c)(6), C.C.P.
- Box 18.** Upon a finding of an unsuccessful diversion, the court may transfer the child to juvenile court for alleged conduct indicating a need for supervision under Section 51.08 of the Family Code or refer the charge to the prosecutor for consideration of re-filing. Art. 45.311(c)(6), C.C.P.
- Box 19.** If a child either is ineligible or contests the charge or the child or parent does not give written consent to diversion, the case proceeds with prosecution. Arts. 45.304, 45.310, C.C.P.
- Box 20.** Making the determination in this box will either result in a finding of Not Guilty or potentially another opportunity for diversion.
- Box 21.** If the answer to the question in Box 20 is No, enter a judgment of Not Guilty.
- Box 22.** If the answer to the question in Box 20 is Yes, determine if the child is eligible for diversion. Art. 45.041(a-2), C.C.P. See Box 6.
- Box 23.** If the child is ineligible or the child or parent does not accept placement in diversion, find the child guilty and proceed to sentencing. Art. 45.041(a-2), C.C.P. All options normally available to the judge at this point in the case are still available, including deferred disposition.
- Box 24.** If the child is eligible, provide the child and parent the opportunity for placement in diversion under Article 45.310 (Diversion by Judge). Art. 45.041(a-2), C.C.P.
- Box 25.** If the answer is Yes, go to Box 26. If the answer is No, go to Box 23.
- Box 26.** If the child and parent accept, place the child in diversion under Article 45.310. Art. 45.041(a-2), C.C.P. Do not enter an adjudication of guilt or a judgment of conviction. Art. 45.041(a-2); Art. 45.310(a)(2), C.C.P. Complete a diversion agreement. Art. 45.308, C.C.P. Then go to Box 10.