



CITY OF BAYTOWN MUNICIPAL COURT

YOUTH DIVERSION PLAN HB 3186

Effective Date January 1, 2025

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ORDER ADOPTING A YOUTH DIVERSION PLAN (45.306, C.C.P.)

IT IS ORDERED pursuant to Article 45.306 (b) of the Texas Code of Criminal Procedure that the Court adopts the Youth Diversion Plan hereafter referred to as the "Baytown Youth Diversion Program" or "Diversion Program."

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, City Prosecutor and Youth Diversion Coordinator/ Juvenile Case Manager after assessment and collaboration with all interested parties and service providers.

IT IS FURTHER ORDERED that the procedures, components, and applicable law referenced in the Baytown Youth Diversion Program shall be maintained on file for public inspection under Article 45.306(g).

SIGNED AND ENTERED on this 31st day of December, 2024.



Julie K. Escalante, Presiding Judge
Baytown Municipal Court of Record
Baytown, Texas

Definitions (45.301, C.C.P.)

Charge- means a formal or informal allegation of an offense, including a citation, written promise to appear, complaint, or pending complaint.

Child- has the meaning assigned by Article 45.058(h). A person at least 10 years of age and younger than 17 years of age.

Court- means a justice court, municipal court, or other court subject to this chapter.

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.

Offense- means a misdemeanor punishable by fine only, other than a traffic offense.

Parent- has the meaning assigned by Article 45.057(a). Includes a person standing in parental relation, a managing conservator, or a custodian.

Service provider- means a governmental agency, political subdivision, school district, open-enrollment charter school, nonprofit organization, or other entity that provides services to children or families.

Youth diversion plan- means a plan adopted under Article 45.306. A written plan that describes the types of strategies that will be used to implement youth diversion.

Additional Definitions

Juvenile Case Manager (JCM)- provides services in cases involving juvenile offenders before a court consistent with the court's statutory powers.

YOUTH DIVERSION PLAN (45.306, C.C.P.)

In compliance with H.B. 3186, the Baytown Municipal Court of Record hereby adopts the Youth Diversion Plan to begin on January 1, 2025. Hereafter referred to as the “Baytown Youth Diversion Program” or “Diversion Program.” This plan shall be maintained on file at the court and on the court website for public inspection under Article 45.306(g).

Purpose

The purpose of youth diversion is to provide an alternative way for youth to account for their actions in a way that encourages responsibility and deters future involvement in the criminal justice system. The program aims to reduce recidivism, promote accountability, and provide educational and rehabilitative opportunities for youth. The diversion strategies are set forth to better accommodate each individual child’s needs and provide supports for the family.

Types of Diversion (Articles 45.309 & 45.310)

The Baytown Municipal Court has elected to proceed with both Intermediate Diversion (45.309) and Judicial Diversion (45.310)

- Intermediate Diversion (45.309): 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:
 - the child is eligible for diversion under Article 45.304;
 - diversion is in the best interests of the child and promotes the long-term safety of the community;
 - the child and the child's parent consent to diversion with the knowledge that diversion is optional; and
 - 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.
- Diversion by Justice or Judge (45.310): 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:
 - 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
 - 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.

Applicability (Article 45.302)

- Offense must be a misdemeanor punishable by a fine other than a traffic offense.
 - In (Section 720.002) “Traffic offense” means an offense under Chapter 521; or Subtitle C.

Eligibility (Article 45.304)

- Child must be in between the ages of 10-16 at the time the diversion agreement is signed. If a child turns 17 prior to signing the diversion agreement they are ineligible and will move forward with judicial process.
- Child must not have entered into a diversion program in the last 365 days starting on the date the previous diversion agreement was signed by the child and child's parent.
- Child cannot be on a diversion plan in another court.
- A child is not eligible for diversion if the child has previously had an unsuccessful diversion under Subchapter E.
- A court may not divert a child from criminal prosecution without the written consent of the child and child's parent.
- The offense must fall under the City of Baytown jurisdiction.
- If an child receives more than one non-traffic charge in one instance; all non-traffic offenses are eligible for diversion.
 - Prosecutor discretion regarding a child who obtained non-traffic citations at different times prior to signing the diversion agreement.
 - Prosecutor has final discretion on all non-traffic cases eligible for diversion.
- If a child is not eligible for diversion, the prosecutor objects, or the child and/or child's parent decline participation, the case is filed with the court to proceed with formal prosecution.

Youth Diversion Coordinator (Article 45.307)

- The Juvenile Case Manager (JCM) will accept the role as the Youth Diversion Coordinator and assist the court with diversion by:
 - Determining if the child is eligible for diversion.
 - Presenting and maintaining diversion agreements
 - Monitoring diversions
 - Maintaining records

Diversion Agreement Form (Article 45.308)

- A diversion agreement is a legally binding written contract that must be agreed upon by the child and the child's parent. The agreement will consider the circumstances of the child, best interest of the child and the long term safety of the community.
 - The agreement will include one or more diversions strategies to be completed by the child written in a clear and concise manner and identifying any charge being diverted.
 - State the possible outcomes or consequences of a successful and unsuccessful diversion.
 - Explanation that participation in a diversion is not an admission of guilt and a child that does not contest a charge(s) shall be diverted without entering a plea.
 - Explanation of the process that will be used for reviewing and monitoring compliance with the terms of the agreement.
 - The period of the diversion. (Not to exceed 180 days)
 - Verifications that the child and the child's parent were notified of the child's rights, including the right to refuse diversion, and that the child knowingly and voluntarily consents to participate in the diversion.

Diversion Case Management- Intake, Assessment and Monitoring Process

- The JCM will review all non-traffic charges to determine if the child is eligible for Intermediate diversion. JCM will follow the prosecutor standing order to further determine the child diversion eligibility
- If eligible, notice will be sent out to child and child's parent detailing information on the diversion program.
- JCM will call child and/or child's parent regarding the diversion program if a phone number is available on the citation.
- Child and child's parent are required to contact JCM to schedule an intake appointment.
 - If the child and/or child's parent fails to contact the JCM on or prior to the scheduled intake meeting, the charge(s) will be filed and the case(s) will be placed on the juvenile docket. The child and child's parent will be summons to appear in court to answer to the charges.
 - The child is still eligible for consideration for diversion if they appear in court on the juvenile docket. The Judge will move forward with Judicial Diversion.
- JCM, child and child's parent will meet on Zoom or Tyler virtual for an intake meeting.
- JCM will present an affidavit form for child and child's parent to review and sign stating that the child has not participated diversion by signing an agreement in the last 365 days or has had an unsuccessful diversion.
- All rights will be explained to the child and child's parent such as:
 - Child has the right to plea on the case- not guilty- schedule a trial by judge or jury.
 - Child has the right to not move forward with diversion- plea- guilty/non-contest: move forward with judicial process to which the case will be filed in court and the child and child's parent must appear before the Judge.
 - Child has the right to request an attorney.
- Upon decision of the child and child's parent to move forward with diversion. The JCM will conduct an assessment to determine best diversion strategies to better fit the needs of the child.
- JCM will review the Diversion Agreement Form with the child and child's parent to ensure all expectations are understood and agreed upon. The child and/or child's parent have the right to contest the diversion strategies detailed on the form.
- The child and the child's parent are both required to sign and agree to the strategies stated on the Diversion Agreement Form. (Copy of agreement will be provided to the child and child's parent)
- JCM will monitor and follow up with the child and child's parent during the diversion period by:
 - Contacting the child and child's parent as needed to discuss progress on diversion strategies.
 - Offer resources as needed/requested during the diversion period.

Diversion Strategies (Article 45.305)

- JCM may choose one or more diversion strategies listed below and/or may elect other strategies not listed that serves in the best interest of the child. The court will continue to seek out collaborations and partnerships with other organizations to better adhere to the needs of each child participating in diversion.

Child

- Community service- not more than 20 hours (court order required)
- Attend/view a webinar- hosted by the Baytown Municipal Court

- Submit to professional counseling and/or receive mental health support.
- Complete a course online such as:
 - tobacco awareness program, theft course or any other applicable course; costs associated with strategy
- Attend a session with Gradcafe
- Attend tutorials
- Maintain good attendance
- TRIAD class
- Picture project
- Other

Child's Parent

- The child's parent is responsible for a \$50 administrative fee under Article 45.312 for the cost of diverting a case. If a parent is facing hardship and is unable to pay, the court may waive this fee after a payment review is completed and the parent is found to be experiencing financial hardship.
- Must provide transportation for child to complete diversion strategies.
- Provide any new contact information updates during diversion period.
- Attend family counseling

Diversion Compliance/Successful Completion of the Diversion Agreement

- Diversion Agreement will be reported as successful to the court and shall be closed.

Failure to comply with Diversion Agreement (Article 45.311)

- Child will be referred to court.
 - The court shall conduct a non-adversarial hearing for the child who does not successfully complete the terms of the diversion under Article 43.309 or 45.310.

Local Youth Diversion Administrative Fee (Article 45.312)

- Deposited in a special account that can be used only to offset the cost of the operations of the youth diversion programs.

Diversion Records (Article 45.313)

- The court shall maintain statistics for each diversion strategy authorized by Subchapter E. The court software will automatically report required statistics to the OCA.
- The court will establish key metrics for evaluation such as:
 - success rates
 - recidivism rates
 - compliance rates
 - participation feedback
- Other than statistical records, all records generated under this subchapter are confidential under Article 45.0217.

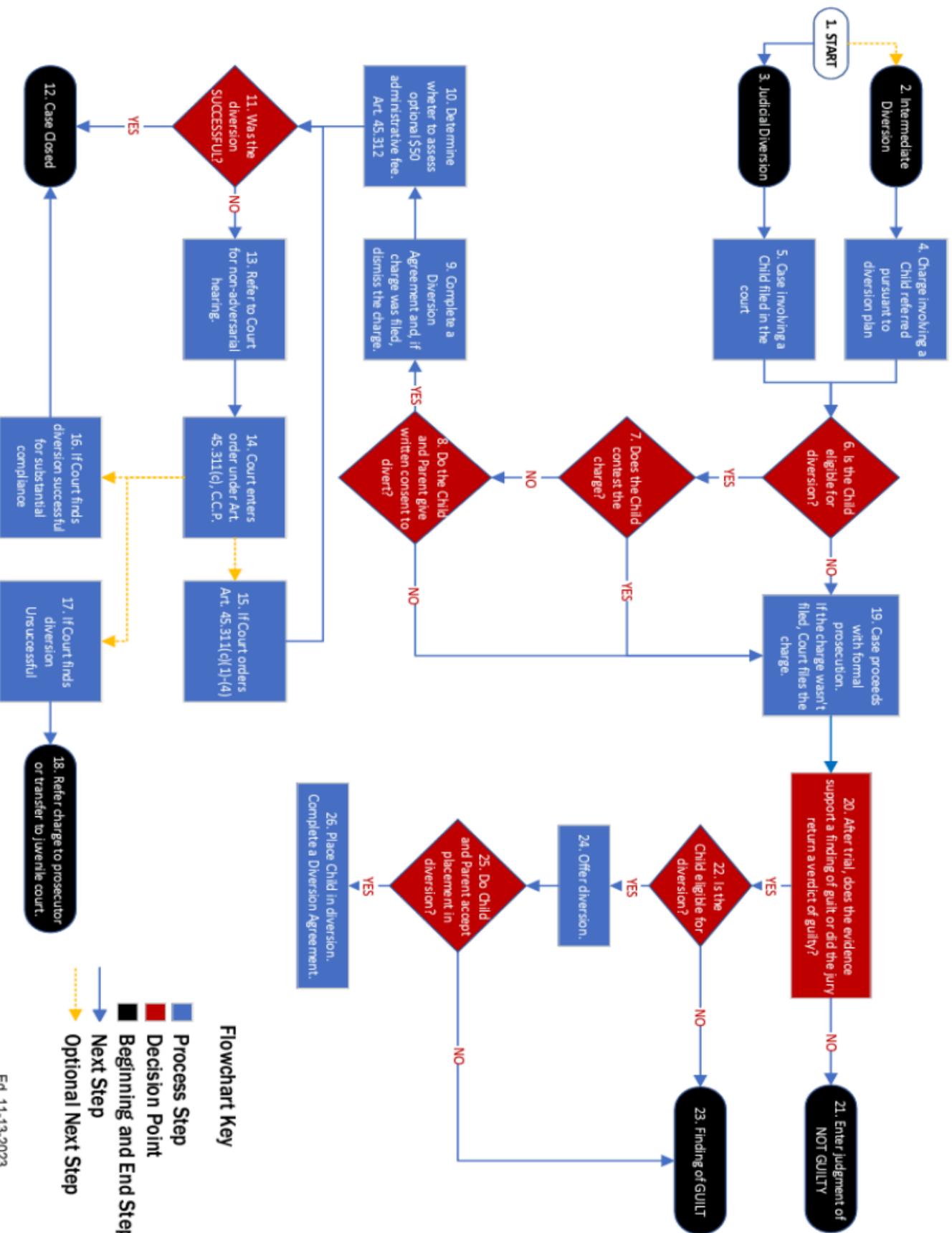
Expungement (Article 45.313)

- All records of a diversion pertaining to a child under Subchapter E shall be expunged without the requirement of a motion or request on the child's 18th birthday.

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.

REFERENCE(S)

Texas Municipal Courts Education Center. (2024, December 18). Youth Diversion - Texas Municipal Courts Education Center. <https://www.tmcec.com/youth-diversion/>

Texas Youth Diversion & Early Intervention Act. (2024). Texas Youth Diversion & Early Intervention Act – HB3186. <https://www.tmcec.com/wp-content/uploads/2024/12/3186-Diversion-Plan-11.18.24-Lubbock-County.pdf>

Posts, V. M. (2024, December 5). Youth diversion plans: elements to consider. Full Court Press. <https://tmcecblog.com/2024/12/04/youth-diversion-plans-elements-to-consider/>