



**Judge Derrick Choice
Justice of the Peace Pct. 1
Smith County, Texas**

JUVENILE CRIMINAL DIVERSION PLAN HB 3186

EFFECTIVE DATE: JANUARY 1, 2025

HB 3186 – Goes into effect on January 1, 2025 and Diversion Process only applies to offenses which occur on or after January 1, 2025. Courts must pay attention to the actual offense date when a case is filed before proceeding.

Most of the statutes mention in the body of this plan are requirements listed in the code of criminal procedure. Any other statutes will contain the proper code description.

DEFENDANTS THAT ARE ELIGIBLE FOR DIVERSION

- Defendants under 17 years of age at the time of the offense.
- Defendant have not been diverted in the previous 365 days,
- Has NEVER had an unsuccessful diversion,
- There is no objection from the Smith County Attorney, and
- Must have written consent of the defendant and the parent. (Art. 45.057 (a) – Parent “includes a person standing in parental relation, a managing conservator, or a custodian.)

365 DAYS

- Art. 45-304 (b) A child is eligible to enter into a diversion agreement under that subchapter only once every 365 days.
- 365 days between dates of agreements, not offenses or dispositions.
- Determining whether a Juvenile is eligible for diversion;
- Employing authorized diversion strategies;
- Presenting and maintaining diversion agreements;
- Monitoring diversions;
- Maintaining records on if Diversions are successful; and
- Coordinating referrals to courts

JUDICIAL EDUCATION REQUIREMENTS – Government Code 22.1105 (a) In every Year that ends in a 0 or 5, JP's must complete education related to youth diversion and understanding relevant issues of child welfare, including issues related to mental health and children with disabilities.

YOUTH DIVERSION PLAN AND LOCAL AGREEMENTS (ART. 45.306)

- This plan is designed for Justice of the Peace Pct. 5, Smith County as a whole
- This plan may include agreements with service providers that provide services for diversion strategies. (A governmental agency, political subdivision, open-enrollment on-line course provider, community service, non-profit organizations, or any other entity that provides services to children or families).
- The Justice court may adopt rules necessary to coordinate services or implement the requirements of the bill.

YOUTH DIVERSION COORDINATOR DUTIES

HB 3186 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)

Justice of the Peace Pct. 5, Smith County has not experienced a large amount of fine only, non-traffic offenses necessitating the need for a “Youth Diversion Coordinator”. Therefore, the Smith County Justice of the Peace, Pct. 5 and the clerks in that office will assist each other with the following duties:

PROCEDURE ON HOW CASES ARE DIVERTED

Art. 45.305 authorizes diversion by 3 differ strategies:

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

INTERMEDIATE DIVERSION The J.P. or clerk must advise the Juvenile and parent **before** the case is filed of the option of intermediate diversion. (Strategies, diversion agreement, time period, etc., are the same whether intermediate diversion or diversion by the court.)

INTERMEDIATE DIVERSION REQUIREMENTS

- Juvenile 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.

DIVERSION STRATEGIES - Art. 45.305 lays out many diversion strategies that may be employed

- Requiring the child to participate in a program, teen court, school-related program, educational program, self-improvement program;
- Referring a child to a service provider
 1. At-risk youth services;
 2. Work and job skills training;
 3. academic monitoring or tutoring;
 4. community-based services;
 5. counseling (private or in-school);
 6. mentoring services;
 7. participate in dispute resolution,
 8. submit to alcohol/ drug testing;
 9. Complying with physician or health professional treatments;
 10. Ordering a child to pay restitution not to exceed \$100 (applies to offense against property under Title 7 of the Penal code);
 11. Perform up to 20 hours of community service;
 12. Any other reasonable action determined by the court.
- 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.

DIVERSION BY THE COURT

- Must divert the case of an eligible defendant without requiring a plea.
- Successful compliance results in closure of the case and report to court of successful diversion.
- Failure to comply with the diversion results in referral to the court for a hearing under Art. 45.311

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 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.
- Must include:
 1. Possible outcomes of successful/unsuccessful diversions;
 2. Explanation that participating is not an admission of guilt and that a guilty plea is not required to participate;
 3. Explanation of the monitoring process;
 4. 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.

DIVERSION AGREEMENT – PROCEDURE

- Charges 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.
- A copy of the agreement must be provided to the child and parent, Administrative Assistant, and Justice of the Peace.

REFERRAL FOR HEARING – Art. 45.311

- If a child appears not to have successfully completed the diversion, the Justice Court will hold a non-adversarial hearing to confer with the parent and child.
- The Justice Court may hear from any person the court finds helpful in determining the best path forward.

Options at this hearing may include:

- Amending or setting aside diversion agreement terms;
- Extending the diversion period for a limit not to exceed more than one year from the initial start date;
- Continuing the hearing for up to 60 days;
- Ordering the Parent to perform any act or to refrain from any act;
- Determining the diversion to be successful or unsuccessful. (Unsuccessful diversions may be referred to the juvenile court or to the County Attorney for criminal filing.)

PARENT ORDERS

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 Parents are enforceable by contempt.**

FEES – (Art. 45.312)

- The Justice Court may collect a \$50.00 administrative fee to defray the costs if this is an accepted term in the diversion agreement.
- This fee will be waived if child's family is indigent, and diversion may not be contingent on payment of a fee.
- The Justice Court will, and must, maintain records of all fees paid. The fees must be placed by the treasurer into a special account only used to offset the costs of youth diversion programs.

RECORDS – (Art. 45.313)

- The Justice Court must maintain statistics for each diversion strategy authorized.
- Other than statistical records, all records are confidential under CCP Art. 45.0217. 6
- All records shall be expunged without the requirement of a motion or request, on the child's 18th birthday.

CASES THE CAN BE DIVERTED

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

JUVENILE CASES THAT ARE NOT DIVERTED

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.

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.

Art. 45.041{b-3) amended to say: if diversion is not required, the judge must allow a defendant who is a child to elect to discharge fines and court costs with community service or tutoring, or pay the fines and court costs now, later, or on a payment plan.