

I. Texas Youth Diversion & Early Intervention Act (HB 3186)

As provided by Chapter 45, subchapter "E" of the Texas Code of Criminal Procedure, and contingent on eligibility, a child shall be diverted from formal criminal prosecution through an established youth diversion program. Youth diversion is applicable for a child who is alleged to have engaged in conduct that constitutes a misdemeanor punishable by fine only, other than a traffic offense (Article 45.302 Code of Criminal Procedure). A child's participation is voluntary, requires the child to accept responsibility in the alleged conduct, and requires written consent from both the child and the parent in a diversion agreement.

Tier Placement, Duration, and Strategy Guide establish realistic and reasonable diversion action plan (DAP) terms. Terms may include a combination of conditions such as community service, an educational program, counseling, letters of apology, and/or restitution. Monitoring of a child's compliance with the DAP is monitored by the juvenile case manager, the prosecutor, and the judge. If the child satisfies all the requirements of their diversion agreement, there will be no further proceedings related to the case. The juvenile case manager may modify terms at any time during the youth diversion program.

If the child withdraws or does not successfully complete the diversion agreement, the judge will conduct a non-adversarial hearing to determine if the diversion was unsuccessful. If it is determined the diversion measures were unsuccessful, the charge may be filed for criminal prosecution with the prosecutor's approval.

If it is determined that more time is necessary for a young person to successfully complete diversion, a diversion contract can be extended and/or adjusted not to exceed 180 days (Article 45.309(a)). A judge, however, may extend up to one year from the original start of the diversion after a non-adversarial hearing (45.309(b)).

II. Objective

The purpose of this program and its related procedures are to:

- a. Reduce recidivism and the occurrence of problem behaviors through intervention without having to criminally adjudicate children in justice and municipal courts.
- b. Identify at-risk youth, including youth with mental health needs, substance use disorders, or intellectual and development disabilities and, where appropriate, make referral to early youth and intervention services under Subchapter D, Chapter 264 of the Family Code.
- c. Authorize diversions of children charged with certain offenses punishable by imposition of a fine from criminal adjudication that emphasizes accountability and responsibility of the parent and the child for the child's conduct while also promoting community safety.
- d. Increase collaboration between governmental, educational, and non-profit organizations in devising local and regional diversion strategies in rural and urban counties and municipalities.

III. Eligibility (Article 45.3.04 Code of Criminal Procedure)

A child may enter into a diversion agreement once every 365 days from the day of completion of the previous youth diversion program. After a child accepts responsibility for the charge alleging engagement in conduct that constitutes a misdemeanor punishable by fine only (other than a traffic offense), they must be diverted from formal criminal prosecution unless:

- a. The child has previously had an unsuccessful diversion under Subchapter E;
- b. Entering into diversion is objected to by the prosecutor;
- c. The child's parent does not provide written consent for the child to participate.

IV. Diversion Evaluation, Intake, and Implementation

The juvenile Case Manager (JCM) shall review citations issued for those 16 and under assigned to NBMC. If the child is eligible for diversion, the JCM will notify the Judge/Prosecutor of the recommended strategy tier.

Once eligibility has been established, JCM will notify the parent and child. If the parent and child agree to the child's participation, the juvenile case manager (JCM) shall meet with them to review the proposed DAP, evaluate the parent-child relationship, consider parent input, or, if appropriate, require the parent to participate in the case plan.

V. Diversion Agreement

There shall be a written binding diversion agreement that contains the components required in Articles 45.309 & 45.310 of the Texas Code of Criminal Procedure. The objectives shall:

- a. Consider the child's circumstances,
- b. Be rationally relevant to the alleged conduct,
- c. Be realistic to accomplish,
- d. Be in the best interest of the child and the community.

The written agreement shall contain the following components as required by law:

- a. Identify the alleged conduct and diversion agreement terms in clear and concise language that is understandable to the child.
- b. Positive and negative outcomes or consequences of successful diversion completion or failure to comply with the terms of the diversion agreement.
- c. An explanation that participation in a diversion is not an admission of guilt and a guilty plea is not required to participate in a diversion.
- d. An explanation of the process for reviewing and monitoring compliance with the terms of the agreement.
- e. The agreed length of the DAP.
- f. Signatures of the child and parent indicating each's consent to diversion, with the understanding that diversion is optional. Notification that the child and/or the child's parent may terminate the diversion at any time and acknowledgment that upon termination, the case will be referred to court.
- g. Understanding that the terms of an agreement may vary and may be modified depending on the circumstances of the child, including the child's age and ability, the charge being diverted, or the diversion strategy used. If terms are modified, the child may choose to volunteering exit the youth diversion program, and cases may be referred to the prosecutor for filing criminal charges

VI. **Participation and Case Management**

The juvenile case manager will monitor the child's compliance throughout the child's participation in the program. A JCM will perform case management duties and provide administrative court support. If the child satisfies all the requirements of their diversion agreement, there will be no further proceedings related to the case. If it is determined that more time is necessary for a young person to successfully complete diversion, a diversion contract can be extended and/or adjusted. If the child withdraws or does not successfully complete the diversion agreement, NBMC will conduct a non-adversarial hearing to determine if the diversion was unsuccessful or if the child decides to exit the program voluntarily.

VII. **Not Eligible for Diversion, Prosecutor Objection, Declined Participation by Child or Parent, or Unsuccessful Completion**

If a child is not eligible for diversion, the prosecutor objects, or the child and/or parent decline participation, the case is filed with the court to proceed with formal prosecution.

If a child is not compliant with the DAP, the case shall be set for a non-adversarial hearing before the judge. The judge will confer with all interested parties to determine what is in the best interest of the child, what protects the long-term safety of the community, and whether to:

- a. Declare the diversion unsuccessful and/or
- b. Amend or set aside terms in the diversion agreement.
- c. Extend the diversion period not to exceed one year from the initial start date.
- d. Continue the hearing for not more than sixty (60) days to allow additional time for compliance with the terms of the agreement.
- e. Require the parent(s) to perform any act or refrain from performing any act which the court determines will increase the likelihood the child will successfully complete the diversion and comply with any order of the court that is reasonable and necessary for the welfare of the child.
- f. Find substantial compliance and successful completion.
- g. Refer the case to the prosecutor for filing.
- h. Transfer the case to the Juvenile Court for an alleged Child in Need of Supervision (CINS) under Section 51.08 of the Texas Family Code.

VIII. **Judicial Diversion:**

If the child wants to contest the charges and/or if the parents do not give written consent for participation in the New Braunfels Youth Diversion (NBYD) program, the case will be referred to the prosecutor for filing of the case. The child will be set on a docket to determine if they would like to go to trial. If a verdict of guilt is returned, the presiding judge will determine if the child is eligible for diversion. If the child is eligible as outlined in section III of this plan, the judge may offer participation in the NBYD program.

If the child and parent consent, the JCM will proceed in, utilizing the recommended tier level to determine referrals, programming, monitoring compliance and informing the court of non-compliance. If the child or parent do not consent to the diversion program, the judge will continue with the finding of guilt and proceed with sentencing (see Appendix C for *Process Overview Flowchart*).

IX. **Expunction**

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.