

**BROWNSBORO MUNICIPAL COURT
STANDING ORDER
REGARDING
TEXAS YOUTH DIVERSION
AND
EARLY INTERVENTION PROGRAM
(effective date January 1, 2025)**

WHEREAS the Texas juvenile justice system is a bifurcated system consisting of distinct civil and criminal components. **Civil adjudication** entails juvenile probation and juvenile courts and is governed by the Family Code. **Criminal adjudication**, which is governed by the Code of Criminal Procedure, involves teenagers accused of felonies who are certified to stand trial as adults in district courts. In municipal courts, criminal adjudication mostly involves children (ages 10-16) accused of non-traffic Class C misdemeanors.

WHEREAS Texas law authorizes most Class C misdemeanors to be civilly adjudicated as Conduct Indicating a Need for Supervision (hereinafter referred to as "CINS") (See *Section 51.03 of the Family Code*).

WHEREAS because juvenile probation and juvenile courts are unable to accommodate the volume of such cases, few cases are handled as CINS. As a result, municipal and justice courts have become the first line of responders in most cases involving the misconduct of children.

WHEREAS the judiciary has worked with the legislature to improve how cases involving youth are handled in municipal courts and ensure that rights are protected, and disparities are addressed.

WHEREAS critics claim that disparities in how CINS and Class C misdemeanors are handled make the juvenile justice system unfair. When civilly adjudicated, Texas law provides for the possibility of statutory diversion prior to court. However, under current law, when criminally adjudicated, there is no similar statutory authorization. Therefore, municipal courts currently can only order diversion strategies after a case has resulted in a conviction or deferral of disposition.

WHEREAS HB 3186 (hereinafter referred to as "The Youth Diversion and Early Intervention Act") creates diversion strategies and procedures for children accused of certain fine-only offenses in municipal court and requires those courts to develop a plan which includes strategies to divert youth from criminal proceedings to programs intended to:

1. Reduce recidivism and the occurrence of problem behaviors through intervention without having to criminally adjudicate children in municipal courts;

2. Identify at-risk youth, including youth with mental health needs, substance use disorders, or intellectual and developmental disabilities and, where appropriate, make referral to early youth and intervention services under *Subchapter D, Chapter 264 of the Family Code (renumbered as Family Code 137.151 and 137.152)*;

3. Authorize diversions of children charged with certain offenses punishable by imposition of a fine from criminal adjudication that emphasize accountability and responsibility of the parent and the child for the child's conduct while also promoting community safety; and,

4. Increase collaboration between governmental, educational, and non-profit organizations in devising local and regional diversion strategies in rural and urban counties and municipalities.

As a result, thereof, H.B. 3186 increases opportunities for early identification of at-risk youth and for redirecting children accused of certain "gateway" Class C misdemeanors, making these strategies available at the front end of a case where they can be more effective. This would align municipal court practices with those used by juvenile probation and juvenile courts.

WHEREAS the Court deems it necessary and appropriate for there to be a standing order of the court setting forth appropriate procedures concerning diversion strategies and procedures for children accused of certain fine-only offenses.

THEREFORE, IT IS ORDERED:

(Throughout this Standing Order, unless specified otherwise, all references to new and amended articles in Chapter 45 are references to the *Code of Criminal Procedure*.)

The provisions of this Standing Order is limited to a child alleged to have engaged in conduct that constitutes a misdemeanor punishable by a fine only, other than a traffic offense. See *Article 45.302*.

For purposes of this Standing Order, the Court adopts the definitions set forth within *Article 45.301*, specifically denoted herein below as follows:

- (1) "**Charge**" means a formal or informal allegation of an offense, including a citation, written promise to appear, complaint, or pending complaint.
- (2) "**Child**" has the meaning assigned by *Article 45.058(h)*.
- (3) "**Court**" means a justice court, municipal court, or other court subject to *Chapter 45*,
- (4) "**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*.

(5) "**Offense**" means a misdemeanor punishable by fine only, other than a traffic offense.

(6) "**Parent**" has the meaning assigned by *Article 45.057(a)*.

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

(8) "**Youth diversion plan**" means a plan adopted under *Article 45.306*.

An additional definition adopted herein is:

"**Traffic Offense**" means (A) a violation of a penal statute cognizable under Chapter 729, Transportation Code, except for conduct for which the person convicted may be sentenced to imprisonment or confinement in jail; or (B) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state. *Family Code 51.02 (16)*.

Nothing within this Standing Order precludes a case from being referred, adjudicated, or disposed of as CINS under Title 3 of the Family Code, or precludes a permissive or mandatory waiver of criminal jurisdiction and transfer from a municipal court per *Section 51.08, Family Code*.

A child subject to this Standing Order shall be diverted from formal criminal prosecution with the following exceptions:

- (1) a child is eligible to enter into a diversion agreement only once every 365 days;
- (2) a child is not eligible for diversion if the child has previously had an unsuccessful diversion under *Subchapter E, Article 45, Youth Diversion, Code of Criminal Procedure*;
- (3) a child is not eligible for diversion if a diversion is objected to by the prosecutor; and,
- (4) a child may not be diverted from criminal prosecution without the written consent of the child and the child's parent.

Diversion strategies include, but are not limited to:

- (1) requiring a child to participate in a court-approved teen court program operated by a service provider; a school-related program; an educational program, including an alcohol awareness program, a tobacco awareness program, or a drug education program; a rehabilitation program; or a self-improvement program, including a program relating to self-esteem, leadership, self-responsibility, empathy, parenting, parental responsibility, manners, violence avoidance, anger management, life skills, wellness, or dispute resolution;
- (2) referring a child to a service provider for services, including at-risk youth services; juvenile case manager services; work and job skills training, including job interviewing and work preparation; academic monitoring or tutoring, including preparation for a high school equivalency examination; community-based services; mental health screening

and clinical assessment; counseling, including private or in-school counseling; or mentoring services;

- (3) requiring a child to participate in mediation or other dispute resolution processes; submit to alcohol or drug testing; or substantially comply with a course of treatment prescribed by a physician or other licensed medical or mental health professional; and,
- (4) requiring a child, by court order, to pay restitution not to exceed \$100 for an offense against property; perform not more than 20 hours of community service; or perform any other reasonable action determined by the court. *Article 45.305.*

A diversion strategy may be imposed in connection with:

- (1) an intermediate diversion under *Article 45.309*;
- (2) a diversion by a judge under *Article 45.310*; or,
- (3) a system of graduated sanctions for certain school offenses under *Section 37.144, Education Code.*

A diversion strategy may NOT, however, be used to require a child who is a home-schooled student, as that term is defined by *Section 29.916, Education Code*, to attend an elementary or secondary school, or to use an educational curriculum other than the curriculum selected by the parent.

The Court may designate a "Youth Diversion Coordinator" to assist the court in:

- (1) determining whether a child is eligible for diversion;
 - (2) employing a diversion strategy authorized by this Standing Order;
 - (3) presenting and maintaining diversion agreements;
 - (4) monitoring diversions;
 - (5) maintaining records regarding whether one or more diversions were successful or unsuccessful; and,
 - (6) coordinating referrals to court.
- (b) The responsibilities of the Youth Diversion Coordinator may be performed by:
- (1) a court administrator or court clerk, or a person who regularly performs the duties of court administrator or court clerk;
 - (2) an individual or entity that provides juvenile case manager services under *Article 45.056*;
 - (3) a court-related services office;

- (4) a community supervision and corrections department, including a juvenile probation department;
- (5) a county or municipal employee, including a peace officer;
- (6) a community volunteer;
- (7) an institution of higher education, including a public, private, or independent institution of higher education; or,
- (8) a qualified nonprofit organization as determined by the court.

A diversion agreement must identify the parties to the agreement and the responsibilities of the child and the child's parent to ensure their meaningful participation in a diversion under *Article 45.309 or 45.310*.

Stated objectives in a diversion agreement must be measurable, realistic, and reasonable and consider the circumstances of the child, the best interests of the child, and the long-term safety of the community.

A diversion agreement must include:

- (1) the terms of the agreement, including one or more diversions required to be completed by the child, written in a clear and concise manner, and identify any offense or charge being diverted;
- (2) possible outcomes or consequences of a successful diversion and an unsuccessful diversion;
- (3) 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;
- (4) an explanation of the process that will be used for reviewing and monitoring compliance with the terms of the agreement;
- (5) the period of the diversion;
- (6) a verification that:
 - (A) the child and the child's parent were notified of the child's rights, including the right to refuse diversion; and
 - (B) the child knowingly and voluntarily consents to participate in the diversion; and,
- (7) written acknowledgment and acceptance of the agreement by the child and the child's parent.

The terms of an agreement may vary depending on the circumstances of the child, including the child's age and ability, the charge being diverted, or the diversion strategy used.

A charge may not be filed against a child or, if filed, shall be dismissed by the court if the child:

- (1) does not contest the charge;
- (2) is eligible for diversion under *Article 45.304*; and,
- (3) accepts the terms of the agreement.

Entering into a diversion agreement under this Standing Order extends the court's jurisdiction for the term of the agreement.

On entering into a diversion agreement, a copy of the agreement shall be provided to the child and the child's parent, the clerk of the court, a youth diversion coordinator (if any), and any other person specified by the youth diversion plan.

Prior to the filing of a case, the child and the child's parent shall be advised that the case may be diverted under this article for a reasonable period not to exceed 180 days if:

- (1) the child is eligible for diversion under *Article 45.304*;
- (2) diversion is in the best interests of the child and promotes the long-term safety of the community;
- (3) the child and the child's parent consent to diversion with the knowledge that diversion is optional; and,
- (4) 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.

The terms of a diversion agreement under this Standing Order shall be in writing and may include any of the diversion strategies under *Article 45.305*.

The case of a child who successfully complies with the terms of a diversion agreement under this Standing Order shall be closed and reported as successful to the court.

A child who does NOT comply with the terms of a diversion agreement under this Standing Order shall be referred to court under *Article 45.311*.

The court shall conduct a non-adversarial hearing for a child who does not successfully complete the terms of a diversion under *Article 45.309 or 45.310*, and which is referred to the court.

The court shall confer with the child and the child's parent to determine whether a diversion should be declared unsuccessful by the court. The court may also hear from any person who may be of assistance to the child or the court in determining what is in the best interests of the child and the long-term safety of the community.

After the hearing, the court may enter an order:

- (1) amending or setting aside terms in the diversion agreement;
- (2) extending the diversion for a 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;
- (4) requiring the child's parent to perform any act or refrain from performing any act as 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;
- (5) finding the diversion successful on the basis of substantial compliance; or,
- (6) finding the diversion unsuccessful and:
 - (A) transferring the child to juvenile court for alleged conduct indicating a need for supervision under *Section 51.08, Family Code*; or,
 - (B) referring the charge to the prosecutor for consideration of re-filing.

An order under this Standing Order may not have the substantive effect of interfering with a parent's fundamental right to determine how to raise the parent's child, unless the court finds that the interference is necessary to prevent significant impairment of the child's physical, mental, or emotional health.

An order under this Standing Order requiring the child's parent to perform any act or refrain from performing any act as 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 is enforceable against the parent by contempt.

The statute of limitations in *Article 12.02(b)* is tolled during the diversion period for purposes of referring the charge to the prosecutor for consideration of re-filing.

The clerk of the court shall collect from a child's parent a \$50 administrative fee to defray the costs of the diversion of the child's case.

The fee under this Standing Order may not be collected unless specified as a term of the diversion agreement accepted by the child's parent. If the fee is not paid after giving the child's parent an opportunity to be heard, the court shall order the parent, if financially able, to pay the fee to the clerk of the court.

The fee shall be waived by the court if the child's parent is indigent or does not have sufficient resources or income to pay the fee.

The court may adopt rules for the waiver of a fee for financial hardship.

The clerk of the court shall keep a record of the fees collected under this Standing Order and shall forward the funds to the municipal treasurer, or person fulfilling the role of the municipal treasurer, as appropriate.

The fee collected under this Standing Order shall be deposited in a special account that can be used only to offset the cost of the operations of youth diversion programs under this Standing Order.

Except for the fee authorized by this Standing Order, a fee may not be assessed for a child diverted herein.

The diversion of a child may not be contingent on payment of any fee.

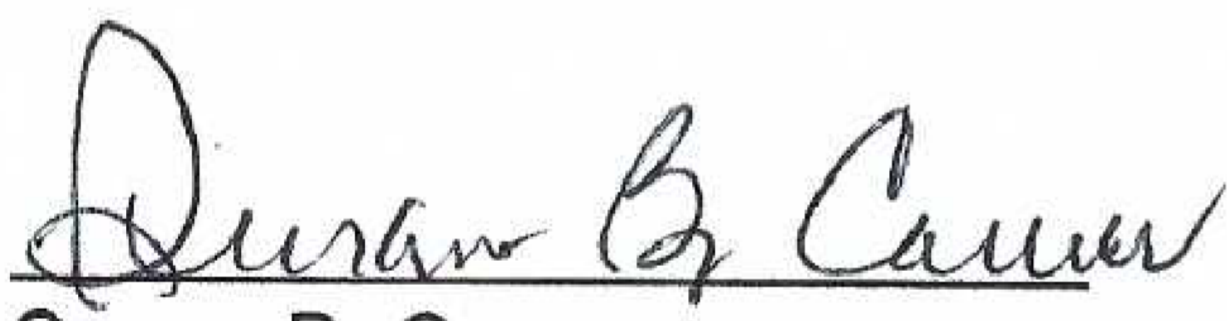
The clerk of the court shall maintain statistics for each diversion strategy authorized herein.

Other than statistical records referenced herein above, all records generated under this subchapter are confidential under *Article 45.0217*.

All records of a diversion pertaining to a child under this Standing Order shall be expunged without the requirement of a motion or request, on the child's 18th birthday.

A copy of this Standing Order and any amendments thereto shall be maintained on file for public inspection.

SIGNED AND ENTERED on this the 30th day of December, 2024.


Susan B. Carver
Presiding Judge

