

**BURNET COUNTY
JUSTICE OF THE PEACE COURTS**

**YOUTH DIVERSION PLAN
Texas Code of Criminal Procedure, Article 45.306**

In accordance with Title 1 of the *Texas Code of Criminal Procedure, Chapter 45, Subchapter E*, the Justice of the Peace Court, Precinct One, Burnet County, Texas, has adopted this Youth Diversion Plan, effective January 1, 2025. This plan provides that all eligible children, at least ten (10) years of age and younger than seventeen (17) years of age, that has been referred to this Justice Court for engaging in conduct that constitutes a misdemeanor offense punishable by fine only, other than a traffic offense, be afforded the opportunity to enter into a diversion agreement prior to disposal of the aforementioned misdemeanor offense.

The Justice of the Peace will designate a Youth Diversion Coordinator who will advise the child and the child's parent/guardian/custodian before a case is filed, so that the case may be diverted for a reasonable period not to exceed 180 days if:

- a. The child is eligible;
- b. Diversion is in the best interest of the child and promotes the long-term safety of the community;
- c. The child and parent/guardian/custodian consent to the diversion with the knowledge that it is optional; and
- d. The child and parent/guardian/custodian are informed that they may terminate the diversion at any time, and if terminated, the case will be referred to court.

Diversion eligibility will be determined using the following guidelines:

- a. A child is eligible to enter into a diversion agreement only once every 365 days;
- b. A child is not eligible for diversion if the child has previously had an unsuccessful diversion under Subchapter E;
- c. A child is not eligible for diversion if a diversion is objected to by the prosecutor;
- d. A court may not divert a child from criminal prosecution without the written consent of the child and the child's parent/guardian/custodian.
- e. Determine if the child contests the charge:
 - 1) If the child does not contest the charge, divert the case without the child having to enter a plea.
 - 2) If the child contests the charge, the case proceeds with formal criminal prosecution.

A diversion agreement may be entered into before charges are filed with the court defined as, intermediate diversion, or after charges are filed defined as, diversion by judge. In either instance, the diversion agreement will be in writing and must identify the parties to the agreement and contain the specific responsibilities of the child and parent/guardian/custodian to

ensure their meaningful participation. The terms of the agreement must include at least one diversion strategy to be completed by the child and must identify the offense or charge being diverted.

The Youth Diversion Coordinator will review the terms and conditions of the diversion agreement, including possible outcomes or consequences of a successful or unsuccessful diversion, and provide copies to the child and parent/guardian/custodian. The Youth Diversion Coordinator will provide an explanation of the process used for reviewing and monitoring compliance with the terms, including the period of the diversion (not to exceed 180 days initially).

A verification that the child and parent were notified of the child's rights, including the right to refuse, and that the child knowingly and voluntarily consents to the diversion; and written acknowledgement and acceptance by the child and child's parent must be included in the agreement.

The Youth Diversion Coordinator responsibilities will include, but are not limited to:

- a. Ensuring all diversion documentation is complete and reported in a timely manner;
- b. Facilitating referrals to the appropriate agencies for services;
- c. Assisting in the collection of the Local Youth Diversion Administrative Fee, if the fee is imposed;
- d. Facilitating the completion by the child of no more than twenty (20) hours of Community Service Restitution, if assessed;
- e. Providing copies of all diversion agreements and relevant information to the child and parent/guardian/custodian.

Participation in the diversion program is not an admission of guilt and a guilty plea is not required to participate. At the end of the diversion period, determine whether the diversion was successful. If the child successfully complies with the terms of the diversion agreement, close the case and report it to the court as successful.

Diversion strategies outlined in the diversion agreement 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. *Code of Criminal Procedure Art. 45.308(b)*.

Available diversion strategies may include, but are not limited to:

Requiring a child to participate in a program, including:

- A court-approved teen court program operated by a service provider;
- A school-related program;
- An educational program, including alcohol awareness, tobacco awareness, or drug education;
- A rehabilitation program; **or**

- A self-improvement program, including self-esteem, leadership, self-responsibility, empathy, parenting, parental responsibility, manners, violence avoidance, anger management, life skills, wellness, or dispute resolution;

Referring a child to a service provider for services, including:

- At-risk youth services under *Chapter 264, Subchapter D, Family Code*;
- Juvenile Case Manager services;
- Work and job skills training;
- Academic monitoring or tutoring (included GED prep);
- Community-based services;
- Mental health screening and clinical assessment;
- Counseling (private or in-school); **or**
- Mentoring services;

Requiring a child to:

- Participate in mediation or another dispute resolution;
- Submit to alcohol/drug testing; **or**
- Substantially comply with treatment prescribed by physician or health professional; **and**

Ordering a child to:

- Pay restitution not to exceed \$100 (applies to an offense against property under *Title 7 of the Penal Code*);
- Perform up to 20 hours of community service; **or**
- **Perform any other reasonable action determined by the court.** *Code of Criminal Procedure Art. 45.305.*

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.

If the child does not comply with the terms of the diversion agreement, the child may be referred to court for a non-adversarial hearing. At this hearing, the court may hear from any person the court finds helpful in determining the best path forward, considering the best interests of the child and long-term safety of the community. *Code of Criminal Procedure Art. 45.311(a),(b).*

After said hearing, the court may enter an order:

- a. Amending or setting aside terms in the diversion agreement;
- b. Extending the diversion for a period not to exceed one (1) year from the initial start date of the diversion;
- c. Issuing a continuance for the hearing for a period not to exceed sixty (60) days to allow an opportunity for compliance with the terms of the diversion;
- d. Subject to *Article 45.311(d)*, requiring the parent/guardian/custodian to perform or refrain from performing any act 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;
- e. Finding the diversion successful on the basis of substantial compliance; **or**
- f. Finding the diversion unsuccessful and:

- 1) Transferring the child to juvenile court for alleged Conduct Indicating a Need for Supervision (CINS) under *Section 51.08 of the Texas Family Code*;
- 2) Referring the charge to the prosecutor for consideration for criminal filing (the statute of limitations for filing the criminal offense is **tolled**, or paused, during any diversion period). *Code of Criminal Procedure Art. 45.311©(6), (f)*.

A Local Youth Diversion Administrative Fee of \$50 may be collected from the parent/guardian/custodian (not the child) but **only** as a condition of the diversion agreement. *Code of Criminal Procedure Art. 45.312(a), (b)*. Diversion may not be made contingent on payment of a fee. *Code of Criminal Procedure Art. 45.312(i)*.

No other costs or fees may be assessed for a diversion. *Code of Criminal Procedure Art. 45.312(h)*.

The fee **must** be waived if the parent is indigent or does not have sufficient resources or income to pay the fee, and a court may adopt rules for waiver of the fee for financial hardship. *Code of Criminal Procedure Art. 45.312(c), (d)*. If the parent is able to pay but fails to do so after being ordered to pay, the court may enforce the order by contempt. *Code of Criminal Procedure Art. 45.312(b)*.

The clerk of the court shall keep a record of the fees collected under *Article 45.312, Texas Code of Criminal Procedure*, and ensure that the fees are deposited into a special account that can only be used to offset the cost of operations of the Youth Diversion Program.

The Justice Court **must** maintain statistics for each diversion strategy authorized. Other than these statistical records, all records are confidential under *Art. 45.0217 of the Code of Criminal Procedure*, and all records **must** be expunged without the requirement of a motion or request, on the child's 18th birthday. *Code of Criminal Procedure 45.041(a-2)*.

Cases can still be referred directly to juvenile court or can be transferred to juvenile court following a waiver of criminal jurisdiction. *Code of Criminal Procedure Art. 45.303*.

Diversion Agreement
Municipal Court of _____

This document constitutes a Diversion Agreement between the Municipal Court of _____ (Municipal Court) and _____ (Child) and _____ (Parent). This Diversion Agreement is entered into as an (Intermediate Diversion under Article 45.309 of the Code of Criminal Procedure) (Judicial Diversion under Article 45.310 of the Code of Criminal Procedure).

The objectives of this agreement are entered into with consideration of the circumstances of the child, the best interests of the child, and the long-term safety of the community.

This agreement shall be effective on the ____ day of _____, 20__ and shall be in effect for a period of _____ days (*not to exceed 180 days*). During the period of this agreement, Child and Parent shall inform the Municipal Court of the best address to receive notices, and of changes to that address. Child and Parent agree to contact _____, (Juvenile Case Manager) (Youth Diversion Coordinator) of the Municipal Court, at the end of the diversion period to discuss the status of completion of this agreement.

During the period of this agreement, Child shall complete: (*Specify Child's responsibilities and check applicable Diversion Strategies*) _____

- Teen Court
- School-related program: _____
- Educational program: _____
- Rehabilitation program: _____
- Self-improvement program: _____
- Referred to a Service Provider: _____
- Tutoring
- Community-based Services: _____
- Mental health screening
- Clinical assessment
- Counseling
- Mentoring
- Mediation
- Alcohol Testing
- Drug Testing
- Course of treatment prescribed by a physician
- Restitution (*Diversion by Judge Only; Requires separate Order*)
- Community Service (*Diversion by Judge Only; Requires separate Order*)
- Other: _____ (*Diversion by Judge Only; Requires separate Order*)

During the period of this agreement, Parent shall: (*Specify Parent's responsibilities*) _____

During the period of this agreement, Parent (shall) (shall not) pay to the clerk of the Municipal Court a \$50 administrative fee to defray the costs of this diversion.

DIVERSION AGREEMENT (Arts. 45.308, C.C.P.) (Page 2 of 2)

During the period of this agreement, Municipal Court shall refrain from processing criminal cases based upon allegations of conduct which occurred on or about the ____ day of _____, 20__ (Case). The following charge or offense is being diverted: _____.

Upon successful completion of this Diversion Agreement, the Municipal Court shall not accept charges related to the Case. Child acknowledges that, upon successful completion of this diversion agreement, Child will be ineligible for diversion for a period of 365 days.

If Child and Parent do not successfully complete the terms of this diversion agreement, the child shall be referred to the court for a hearing, for the purpose of a conference between the judge of the Municipal Court, Child, and Parent. Child and Parent may, after notifying the Municipal Court, bring any other person who may be of assistance to Child or the Municipal Court in determining what is in the best interests of Child and the long-term safety of the community.

Diversion is not an admission of guilt and a guilty plea is not required to participate in diversion.

Child hereby knowingly and voluntarily consents to diversion from criminal prosecution, as provided in this agreement, acknowledges and accepts the terms of this agreement, and verifies that Child received notice of the child's rights, including the right to refuse diversion.

Child's Signature Date

Parent hereby knowingly and voluntarily consents to diversion from criminal prosecution, as provided in this agreement, acknowledges and accepts the terms of this agreement, and verifies that Parent received notice of the child's rights, including the right to refuse diversion.

Parent's Signature Date

Editor's Note: Diversion under Subchapter E of Chapter 45 of the Code of Criminal Procedure applies to non-traffic offenses committed on or after January 1, 2025. See H.B. 3186 (88th Legislature, 2023).

REFERRAL TO COURT FOR HEARING – NONCOMPLIANCE WITH DIVERSION AGREEMENT (Arts. 45.310 and 45.311, C.C.P.)

CAUSE NUMBER: _____

§

IN THE MUNICIPAL COURT

§

CITY OF _____

§

_____ COUNTY, TEXAS

NOTICE TO APPEAR FOR REFERRAL HEARING

Child's Name: _____ Charge being Diverted: _____

Address: _____

Parent's Name: _____

Address (if different from Child's address): _____

The Court's records show that you have failed to comply with the diversion agreement entered into by you and your parent on _____, 20__ according to its terms. **You and your parent are hereby ordered** to appear before the _____ Municipal Court at _____ o'clock __.m., on the ____ day of _____, 20__, for a hearing to determine whether diversion should be declared unsuccessful. Specifically, the records show you failed to:

_____.

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. If applicable, please contact the Court and provide the name and address of such person.

If the Court finds the diversion unsuccessful, the Court will either 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.

Judge, Municipal Court
City of _____
_____ County, Texas

(municipal court seal)

Editor's Note: Diversion under Subchapter E of Chapter 45 of the Code of Criminal Procedure applies to non-traffic offenses committed on or after January 1, 2025. See H.B. 3186 (88th Legislature, 2023).

ORDER ON REFERRAL HEARING – NONCOMPLIANCE WITH DIVERSION AGREEMENT (Art. 45.311, C.C.P.)

CAUSE NUMBER: _____

§

IN THE MUNICIPAL COURT

§

CITY OF _____

§

_____ COUNTY, TEXAS

ORDER

The Court finds that on the ___ day of _____, 20___, _____ (Child) and _____ (Parent) signed a Diversion Agreement for the following charge: _____.

The Court further finds that Child and Parent were sent notice that they were ordered to appear for a referral hearing on the ___ day of _____, 20___, to determine whether diversion should be declared unsuccessful and that Child and Parent (did) (did not) appear as set forth in the notice.

The Court hereby **ORDERS**:

The following terms of the Diversion Agreement are set aside: _____

The following terms of the Diversion Agreement are amended as follows: _____

The diversion period is extended for the following period (*not to exceed one year from the original start date of the diversion*): _____

A continuance for the referral hearing (*not to exceed 60 days*) to allow an opportunity for compliance with the terms of the diversion agreement. Said hearing is set for the ___ day of _____, 20___.

Having found that it will increase the likelihood that Child will successfully complete the diversion, Parent shall (perform) (refrain from performing) the following act: _____.

Having found it reasonable and necessary for the welfare of Child, Parent shall comply with the following Order: _____

The Court finds the diversion **SUCCESSFUL** based on substantial compliance.

The Court finds the diversion **UNSUCCESSFUL** and

By separate Order, transfers Child to juvenile court for alleged conduct indicating a need for supervision under Section 51.08 of the Family Code. (*See Form: Waiver of Jurisdiction and Transfer to Juvenile Court*)

Refers the charge to the Prosecutor for consideration of re-filing.

Rendered and entered this ___ day of _____, 20___.

(municipal court seal)

Judge, Municipal Court
City of _____

County, Texas

Editor’s Note: Diversion under Subchapter E of Chapter 45 of the Code of Criminal Procedure applies to non-traffic offenses committed on or after January 1, 2025. See H.B. 3186 (88th Legislature, 2023). An order under Article 45.311(c)(4) related to the child’s parent 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. Art. 45.311(d), C.C.P. Such orders are enforceable against the parent by contempt. Art. 45.311(e), C.C.P.

DISMISSAL OF CHARGE PURSUANT TO DIVERSION AGREEMENT (Art. 45.308(e), C.C.P.)

CAUSE NUMBER: _____

STATE OF TEXAS

§

IN THE MUNICIPAL COURT

VS.

§

CITY OF _____

§

_____ COUNTY, TEXAS

ORDER OF DISMISSAL

WHEREAS, the charge against the above named defendant (Child) alleges that Child committed the following offense: _____, **the Court Hereby Finds** that Child does not contest the charge, is eligible for diversion under Article 45.304, and accepts the terms of the Diversion Agreement, signed on the ___ day of _____, 20__ by Child and _____ (Parent).

THE COURT ORDERS:

The charge in the above referenced cause number is **HEREBY DISMISSED**.

(municipal court seal)

Judge, Municipal Court Date

City of _____

_____ County, Texas

Editor's Note: Diversion under Subchapter E of Chapter 45 of the Code of Criminal Procedure applies to non-traffic offenses committed on or after January 1, 2025. See H.B. 3186 (88th Legislature, 2023).

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF _____, TEXAS,

ON BEHALF OF THE _____ MUNICIPAL COURT

AND _____, SERVICE PROVIDER

This Memorandum of Understanding ("MOU") set forths the responsibilities of the City of _____, Texas, on behalf of the Municipal Court ("the Court") and _____, ("Provider") regarding the services provided herein.

I.
PURPOSE

The purpose of this MOU is for the Provider to provide the services listed herein to youth ("Client") agreeing to receive the services through a Youth Diversionary Agreement entered into with the Court.

II.
TERM

The MOU will commence upon signing of both parties, and have an initial term of one year beginning _____ and ending _____ ("Initial Term"). Upon expiration of the Initial Term, the MOU shall automatically renew for additional _____ year terms, unless terminated in the manner set forth below. The terms of this MOU shall remain in force during the Renewal Term(s).

III.
TERMINATION

Either party to this MOU may terminate it, along with the rights and duties imposed under this MOU during the Initial Term or Renewal Term by providing _____ days written notice of termination to the other party hereto.

IV.
RECITALS

WHEREAS the Court is established under the auspices of applicable Texas municipal and statutory law, and desires to partner for the provision of services under its Youth Diversionary Plan, and

WHEREAS the Provider is a 501c3 nonprofit (or a for-profit) organization established to provide the services described in this MOU, the Provider desires to provide the services,

NOW THEREFORE, the Court and Provider have entered into this MOU, whereby the Provider will provide services to youth ("Client") participating under a Youth Diversionary Agreement ("Agreement") during the Initial or Renewal Term.

IV.
UNDERTAKING OF THE PARTIES

[THE FOLLOWING ARE EXAMPLES OF TERMS YOU MIGHT CONSIDER ADDING TO AN MOU WITH A SERVICE PROVIDER]

The Court and Provider agree that, during the term of this MOU, the Court shall be responsible for the following:

1. Understanding the voluntary nature of participation in the services by clients, and shall notify Provider of any circumstances that may affect the Client's ability to participate with Provider.
2. Provide brochures and business cards regarding the services to prospective Clients.
3. Establish a secure mechanism to correspond with Provider regarding the Client's participation.
4. To the extent allowed by law, provide sufficient information in the referral to best assist the Provider in engaging the client in services, including but not limited to parental/legal guardian contact information, etc.
5. Inform Provider within _____ days of the Client's anticipated contact with the Provider by secure correspondence, including e-mail.

The Court and Provider agree that, during the term of this MOU, the Provider shall be responsible for the following:

1. Provide services at no cost to Clients, or if necessary, shall bill the Client directly in an amount not to exceed statutory limits. The Court shall not be obligated for any costs related to the services.
2. Ensure compliance with the MOU by informing its personnel of the terms of this MOU and the procedures to be followed in provision of the services.
3. Provide scheduled written updates to the Client, the Client's parents, and the Court's Youth Diversionary Coordinator ("YDA") on the participation and progress being made by each client receiving services the Agreement.
4. Obtain from the prospective Client and his or her parents/legal guardian, a Release of Information Form permitting Provider to speak with the prospective Client, the Court, and other stakeholders, as needed.
5. Adhere with all confidentiality and HIPAA laws in providing the services.
6. Ensure that services are available per the Provider schedule agreed-upon.
7. Provide assurance(s) to the Court that all due diligence is performed to ensure the safety of the Client e.g. evidence of performance of staff criminal background checks, safety of in-person facilities or security of virtual sessions.
8. Immediately inform the YDA of any changes affecting its performance of this MOU, including but not limited to the level of services that it provides.

The Court and Provider further agree that:

The Court, under Texas Constitution Article XI, Section 7 shall provide no indemnification of Provider.

This MOU shall be governed under Texas law. Venue for any litigation of any dispute, claim or controversy arising out of or as a result of this MOU lie exclusively in _____ County, Texas.

The Court and Provider agree to first engage in alternative dispute resolution prior to resorting to any further legal action.

Each person who signs this MOU below on behalf of a party hereto declares that he or she has the capacity and authority to bind the party on whose behalf he or she signs.

If any term of this MOU is deemed to be unlawful or otherwise unenforceable, the offending term shall be severed from the MOU and the remaining terms shall remain in effect.

AGREED:

PROVIDER	CITY OF _____ ON BEHALF OF THE, _____ MUNICIPAL COURT, TEXAS
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

SAMPLE