

ORDER ADOPTING A YOUTH DIVERSION PLAN

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 “Hays County Interlocal Youth Diversion Plan” or “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 Juvenile Judge, City or County Prosecutor and Juvenile Case Manager (Youth Diversion Coordinator) 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 Hays County Interlocal Youth Diversion Program shall be maintained on file for public inspection.

SIGNED AND ENTERED on this 5 day of December, 2024.

HAYS COUNTY-INTERLOCAL **YOUTH DIVERSION PLAN**

In order to implement a Youth Diversion program in line with the requirements of Subchapter E, Chapter 45, Texas Code of Criminal Procedure, the undersigned Hays County justice courts and municipal courts enter this Youth Diversion Plan.

Unless otherwise specifically excepted, this Plan is intended to address the processing of formal or informal allegations of non-traffic offenses punishable by fine only, including citations, written promises to appear, complaints, or pending complaints, by children between the ages of 10 and 17.

Such allegations shall be diverted from formal criminal prosecution when committed by eligible children and when the State has not objected to diversion. A child is eligible to enter the agreement only once every 365 days. However, a child is not eligible if the child has previously had an unsuccessful diversion or if the State objects to the diversion.

Hays County Youth Diversion Coordinator

All diversion agreements will be generally managed and supervised by the Hays County Youth Diversion Coordinator. Specifically, the Coordinator shall:

- 1) Determine whether a child is eligible for diversion;
- 2) Employ authorized diversion strategies;
- 3) Present and maintain diversion agreements;
- 4) Monitor diversions;
- 5) Maintain records of successful or unsuccessful diversion; and
- 6) Coordinate referrals to the courts.

Ultimate decisions regarding specific diversion agreements remain at the discretion of the individual originating justice of the peace or municipal judge. In addition, the Coordinator will be answerable to all undersigned courts for actions taken in relation to cases arising out of their courts; however, the primary employment supervisor of the Coordinator shall be _____.

In addition to the duties specifically noted above, the Coordinator should generally maintain current knowledge of juvenile procedures statewide in municipal and justice courts; develop contacts with statewide partners in furthering the goals of the youth diversion program; and develop ties and partnerships with potential service providers to enhance the youth diversion program.

Diversion Agreement Procedures

Diversion agreements under this Plan will consist of two broad styles of diversion, intermediate diversion and diversion by court. Under an intermediate diversion plan, the Coordinator shall receive an eligible case prior to the case being filed. Diversion by court involves a similarly situated case that has been previously filed for whatever reason but is now eligible for diversion. For the purpose of diversion by court, an eligible defendant may accept diversion at the

pre-trial stage or after a finding of guilt by either judge or jury. A child is eligible for both intermediate diversion and diversion by court if, along with any requirements above:

- 1) Diversion is in the best interests of the child and promotes the long-term safety of the community;
- 2) The child and the child's parent consent to diversion with the knowledge that diversion is optional; and
- 3) 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 the Court.

If the child is otherwise eligible and meets the above requirements, the Coordinator shall become familiar with the individual facts of the case and individual child. After this, the Coordinator shall transmit recommendations regarding the appropriate diversion strategies (discussed later) to the individual judge from whose court the case arises. In doing so, the Coordinator and judge shall consider the unique circumstances of the child, the best interests of the child, and the long-term safety of the community. The suggested and approved diversion strategies must be measurable, realistic, and reasonable.

Once approved, the Coordinator shall present an individualized Diversion Agreement (attached) to the child and parent. While the Coordinator can answer general questions regarding the diversion program, they may not provide legal advice to the child or parent. Once signed by the child and the parent, the Coordinator shall send the agreement to the originating court for signature by the originating judge. Once the originating court receives the completed Diversion Agreement, it shall enter an Order of Dismissal-Youth Diversion Program (attached).

The primary duty for reporting completion of diversion strategies falls upon the diverted child and parent. While the Coordinator shall make reasonable efforts to maintain complete, accurate, and up-to-date records regarding completion of diversion strategies, the child and parent must ultimately ensure that compliance is communicated to the Coordinator. Upon completion of the agreed upon term of diversion, the Coordinator shall check their records for an individual case against the agreed-upon conditions of diversion.

If the child and parent have successfully complied with the agreement, then the case will be fully closed out and the originating court will be notified that no further action is necessary. If the child and parent have not successfully complied with the agreement, then the case will be referred to the originating court for a non-adversarial hearing. The referral shall include the original referral documentation, the original agreement, and necessary records reflecting the lack of compliance. Once the originating court receives this referral and backing documentation, it will set the case for hearing.

At the hearing on the unsuccessful diversion, the originating court shall provide an opportunity for the child and the child's parent to explain why the diversion should be considered successful. In addition, the court may provide an opportunity for the Coordinator, and any other person who the Court determines may be of assistance, to make recommendations. At the conclusion of the hearing, the Court may:

- 1) amend or set aside terms in the diversion agreement;
- 2) extend the diversion for a period not to exceed one year from the initial start date of the diversion;

- 3) issue 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) require 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) find the diversion successful on the basis of substantial compliance; or
- 6) find the diversion unsuccessful and:
 - a. transfer the child to juvenile court for alleged conduct indicating a need for supervision under Section 51.08, Family Code; or
 - b. refer the charge to the prosecutor for consideration of re-filing.

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 that the interference is necessary to prevent significant impairment of the child's physical, mental, or emotional health.

Disposition of Records

After a successful diversion, all records (including those held by law enforcement and the court) are deemed confidential and may not be disclosed to the public unless required by law. The Hays County Youth Coordinator shall maintain the full records until the diverted child's 18th birthday, at which time the records shall be expunged without the requirement of a motion or request from the parties. The task of maintain timelines and processes in the most effective way as required under this section shall be left to the best judgment of the Coordinator.

The Coordinator shall maintain statistical records for each diversion. These statistical records are not confidential. The Coordinator shall maintain separate statistics for both the Interlocal Program in its entirety and individual originating courts.

Diversion Fees

As part of the agreement in each diversion case, the originating court shall charge the child's parent a \$50 administrative fee to defray the costs of the program. This fee will apply per case. If the fee is not paid, the originating court may hold a hearing regarding non-payment, *which shall be short of a hearing on potential unsuccessful diversion*. If the child's parent is indigent, as determined by the standard procedures used by the originating court, or if the child's parent present sufficient evidence that they do not have sufficient resources or income to pay the fee, then the originating judge may waive the \$50 administrative fee. In any case, non-payment of the \$50 diversion fee, standing alone, shall not result in an unsuccessful diversion.

The clerk of the originating court shall accept this fee and forward it to the Hays County Treasurer to be placed in _____ account, which has been created so that it can only be used to offset the cost of the operations of the youth diversion program.

Diversion Strategies

Diversion strategies available for recommendation by the Hays County Youth Diversion Coordinator include, but are not limited to, all strategies listed in Art. 45.305, to the degree that they are presently available within Hays County:

- Teen Court

- *Not currently present in Hays County*
- School-related programs
 - To be facilitated through the child's given school-district or homeschool program (this requirement may not be used to impose a school program on a home-schooled student that requires them to attend an elementary or secondary school or use an educational program other than that selected by the parent);
- Educational programs
 - For instance, programs provided by third-party vendors not directly affiliated with Hays County, such as alcohol awareness programs, tobacco awareness programs, drug education programs, DUI Education, Alive at 25, Life Skills classes, etc.
- Rehabilitation programs
 - To be assessed and investigated by the Coordinator for approval.
- Self-improvement programs
 - For instance, programs provided by third-party vendors regarding self-esteem, leadership, self-responsibility, empathy, parenting responsibility, manners, violence avoidance, anger management, life skills, wellness, and dispute resolution.
- Referral to a Service Providers
 - For instance, referral to at-risk youth service providers, juvenile case manager services, work and job skills training, etc.
- Tutoring
 - Standard tutoring through third-party or school district providers and GED examination preparation programs.
- Community-based Services
 - To be assessed and investigated by the Coordinator for approval.
- Mental health screening and clinical assessment
 - For instance, referral to Hill Country MHDD, the Scheib Mental Health Center, a private provider, etc.
- Counseling
 - Including mental health providers as noted above and private or in-school counseling as agreed upon by the Coordinator and the child's school district
- Mentoring
 - Including peer support programs, third-party life skill programs, etc.
- Mediation
 - As necessary on a case-by-case basis for potential property crimes, etc.
- Alcohol Testing
 - *Not currently available for Hays County justice courts*; however, depending on the facts, potentially requirable on a schedule from an approved third party provider.
- Drug Testing
 - *Not currently available for Hays County justice courts*; however, depending on the facts, potentially requirable on a schedule from an approved third party provider.
- Courses of treatment prescribed by a physician

- Either through recommended mental health evaluation treatment, or in coordination with the current private provider, including a condition such as, 'following all recommendations of current medical provider.'
- Restitution
 - Not to exceed \$100 and requires a separate order from the Court.
- Community Service
 - Not to exceed 20 hours and requires a separate order from the Court.
- Any other reasonable action as required by the originating Court.

Effective Date

This Hays County Interlocal Youth Diversion Plan shall become effective on the date it is signed by the last of the Parties to this Agreement. The Agreement shall remain in effect until terminated.

Signatures

JUSTICE OF THE PEACE, PCT. 1-1

J. Anne Prado

J. Jo Anne Prado

JUSTICE OF THE PEACE, PCT. 1-2

Maggie H. Moreno

J. Maggie H. Moreno

JUSTICE OF THE PEACE, PCT. 2-1

Beth Smith

J. Beth Smith

JUSTICE OF THE PEACE, PCT. 2-2

J. JR Mendoza

J. JR Mendoza

JUSTICE OF THE PEACE, PCT. 3

Andrew W. Cable

J. Andrew Cable

JUSTICE OF THE PEACE, PCT. 4

John Burns

J. John Burns

JUSTICE OF THE PEACE, PCT. 5

J. Sandra Bryant

J. Sandra Bryant

MUNICIPAL JUDGE, CITY OF KYLE

Andrew W. Cable

J. Andrew Cable

MUNICIPAL JUDGE, CITY OF BUDA

Beth Smith

J. Beth Smith

Signed _____, 2024
Dec. 13th

Youth Diversion: Process Overview Flowchart

H.B. 3186

See Accompanying Commentary

