



Austin Municipal Court Youth Diversion Plan

Effective January 1, 2025



I. Description

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 (Appendix B) establishes realistic and reasonable terms for a diversion action plan (DAP). 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 Youth Services, a unit of the Austin Municipal Court (AMC), the prosecutor, and judge. If the child satisfies all the requirements of their diversion agreement, there will be no further proceedings related to the case.

If the child withdraws or does not successfully complete the diversion agreement, an AMC 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 developmental 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 emphasize 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 45.304 Code of Criminal Procedure*)

A child may enter into a diversion agreement once every 365 days. 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;
- d. The child does not accept the terms of the diversion.

IV. Diversion Evaluation, Intake, and Implementation

The prosecutor and JCM shall review citations issued for those 17 and under assigned to AMC. If the child is eligible for diversion, the prosecutor will notify Youth Services of the recommended strategy tier.

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

V. Diversion Agreement

There shall be a written binding diversion agreement that contains the components required in Article 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. An identification of the alleged conduct and diversion agreement terms in clear

- and concise language understandable to the child.
- b. Positive and negative consequences of successful completion of, or failure to comply with, the terms of the diversion agreement.
- c. An explanation that a guilty plea is not required, and that participation is not an admission of guilt.
- d. An explanation of the review and monitoring process for compliance with the diversion 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 acknowledgement that upon termination, the case will be referred to court.

VI. Participation and Case Management

Youth Services and the prosecutor 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, AMC will conduct a non-adversarial hearing to determine if the diversion was unsuccessful.

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 assigned juvenile 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.
 - The statute of limitations is tolled during the diversion period for the purposes of the prosecutor refiling the charge. Art. 45.311(f)
- 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 Austin Youth Diversion (AYD) 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 AYD 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.

Appendix A

Glossary of Terms

Term	Article	Definition
Charge	45.301(1)	A formal or informal allegation of an offense, including a citation, written promise to appear, complaint, or pending complaint.
Child	45.058(h-1)	A person at least 10 years of age and younger than 17 years of age.
Court	45.301(3)	A justice court, municipal court, or other court subject to this chapter.
Diversion	45.301(4)	An intervention strategy that redirects a child from formal criminal prosecution and holds the child accountable for the child's actions.
Diversion Agreement	45.308(a)	Identifies the parties to the agreement and the responsibilities of the child and parent to ensure their meaningful participation in a diversion.
Diversion Plan (DAP)	45.306	A written plan that describes the types of strategies that will be used to implement youth diversion. (Austin Municipal Court refers to this document as the Diversion Action Plan).
Offense	45.301(5)	A misdemeanor punishable by fine only, other than traffic offense.
Parent	45.057(3)	Includes a person standing in parental relation, a managing conservator, or a custodian.
Youth Diversion Coordinator	45.307	A designee of the court responsible for assisting the court in executing the youth diversion plan. (Austin Municipal Court Youth Services has designated the Youth Services supervisor as the Youth Diversion Coordinator)
Youth Diversion Plan	45.306	A written plan that describes the types of strategies that will be used to implement youth diversion.

Definitions of terms are sourced directly from the specific Article within the Code of Criminal Procedure where they are defined.

Additional Terms and Definitions

Austin Youth Diversion (AYD)	Name of the youth diversion program within the Austin Municipal Court.
Juvenile Case Manager (JCM)	An Austin Municipal Court employee assigned to the Youth Services Unit providing administrative assistance to the court, supervision and case management to juveniles with pending court cases.

Appendix B

Austin Youth Diversion Tier Placement, Duration and Strategy

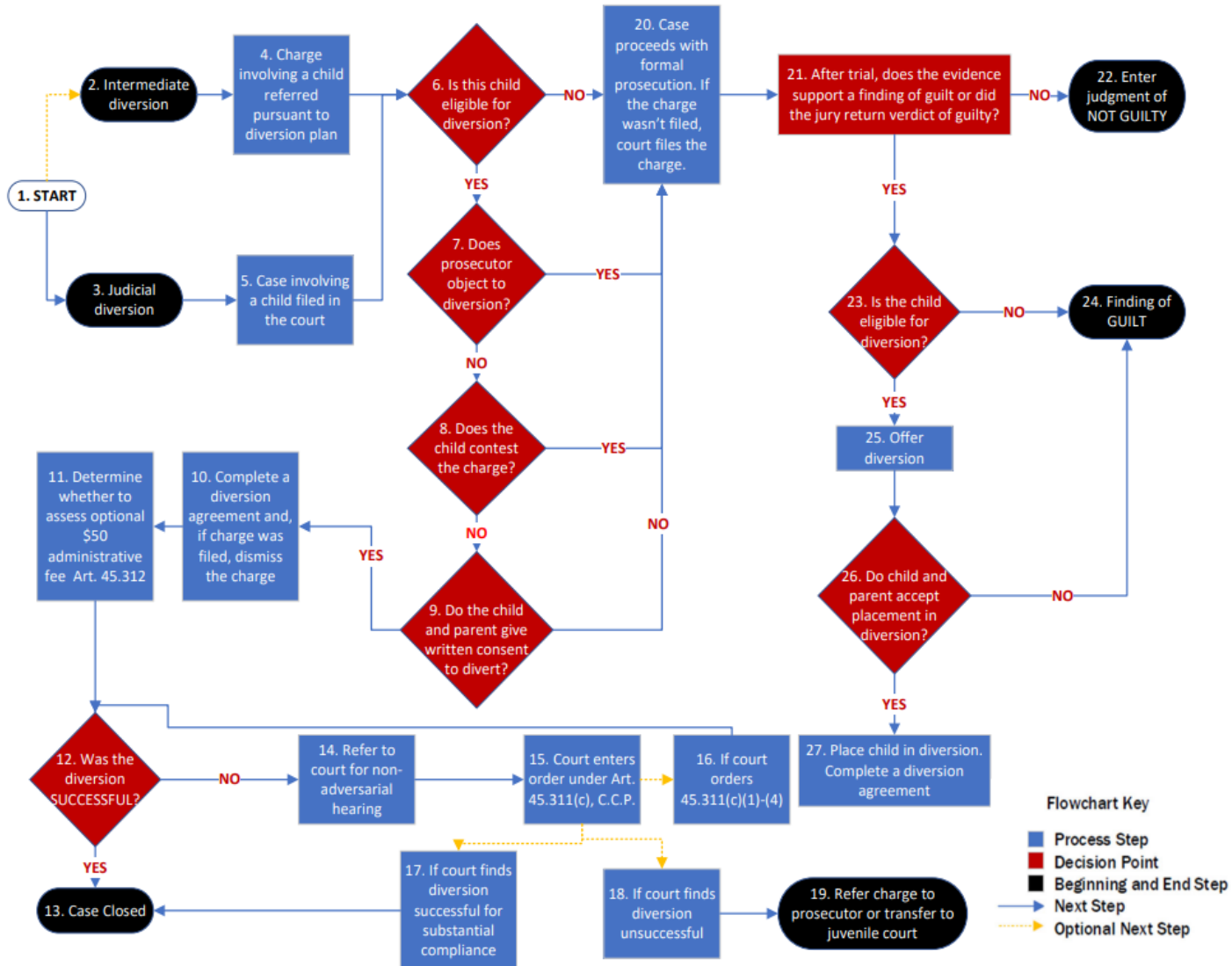
Tier 1	Criteria
	• First time offenders for: ○ Park violations or similar (including Park Curfew) ○ Trespassing ○ Possession of Tobacco ○ Lake offenses
	Duration of Tier 1 Intermediate Diversion
	• 60-90 days (can be extended up to a total of 180 days*)
	Case Strategy Options/Completion Requirements
	• First time offender class/state mandated class or approved equivalent • Class or program as designated by the court • Community service restitution (CSR) – <i>optional (20 hours maximum)</i>
Tier 2	Criteria
	• First time offenders for: ○ Disorderly Conduct (no indications of aggression) ○ Unauthorized Burning ○ Bullying related offenses (non-aggravated) • First time offenders who have had previous interventions at school and/or with juvenile justice • First time Tier 1 offense with identified barriers including but not limited to: ○ Anger management ○ Current use/abuse of drugs or alcohol ○ Behavioral/Mental health concerns ○ Academic difficulties ○ Harmful social connections ○ Complex family dynamics ○ Expressed parental concern • Repeat Tier 1 offenders
	Duration of Tier 2 Intermediate Diversion
	• 60-90 days (can be extended up to a total of 180 days*)
	Case Strategy Options/Completion Requirements
	• Completion of ordered classes (ex. Alive at 25, Unlicensed Driver course) • CSR – <i>required, minimum 8 hours (20 hours maximum)</i> • Consistent and sustained school attendance • Report to and participate in scheduled meetings with assigned JCM
Tier 3	Criteria
	• First time offenders for: ○ Possession of Drug Paraphernalia (PDP) ○ Theft

	○ Disorderly Conduct (with indications of aggression/violence) ○ Bullying related offenses (aggravated) ○ Destruction of Property ○ Minor in Possession of Alcohol (MIP) or other drug/alcohol related offense ○ Gang related or indicators of gang involvement OR ● Any first-time offense with two or more identified barriers including but not limited to: ○ Anger management ○ Current use/abuse of drugs or alcohol ○ Behavioral/Mental health concerns ○ Academic difficulties ○ Harmful social connections ○ Complex family dynamics ○ Expressed parental concerns ● Repeat offenders ● Prior unsuccessful deferral
	Duration of Tier 3 Intermediate Diversion
	● 90-180 days (extension past 180 days may be ordered by judge after a non-adversarial hearing*)
	Case Strategy Options/Completion Requirements
	● Completion of ordered classes (ex. Alive at 25, Teen Driver's Safety course) ● Completion of ordered resource referral (ex. LifeWorks Counseling, Integral Care) ● CSR – <i>required, minimum 16 hours (20 hours maximum)</i> ● Consistent and sustained school attendance ● Report to and participate in scheduled meetings with assigned JCM

**The judge presiding over the non-adversarial hearing may extend the diversion for up to one year from the original start date per Art. 45.311 CCP.*

Appendix C

Process Overview Flowchart



Appendix D



Austin Municipal Court Youth Services

Address: 6800 Burleson Road Building 310, Suite 175 Austin, Texas 78744
Mailing Address: PO BOX 2135 Austin, Texas 78768-2135
Phone: 512-974-4659 Fax: 512-974-4822
Email: Youth@austintexas.gov



Youth Diversion Agreement

Diversion is not an admission of guilt, and a guilty plea is not required to participate in Austin Youth Diversion (AYD). 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 document constitutes a diversion agreement between Austin Municipal Court and

Child (printed name)

Parent (printed name)

This diversion agreement is entered into as:

____ Intermediate diversion under Article 45.309 of the Code of Criminal Procedure
____ Judicial diversion under Article 45.310 of the Code of Criminal Procedure

During the period of this agreement:

Austin Municipal Court shall refrain from processing criminal cases based upon allegations of conduct for the charge/offense of _____. Alleged to have occurred on or about the ____ day of _____, 20__.

Term of diversion agreement:

Child and parent agree to contact the assigned JCM, _____
(email and phone #) to provide and update contact information such as address, phone number and email.

Start Date	the _____ day of _____ 20__
Duration	____ Days (<i>not to exceed 180 days</i>)
Community Service Ordered	____ Hours Agency/Location: _____
Class Ordered	____ Unlicensed Driver ____ Alive at 25 ____ Theft ____ PDP/Marijuana ____ Vaping/Tobacco ____ Underage Drinking ____ Other _____ Other _____ Date/Time/Location: _____
Programming	____ Life skills ____ Character class ____ Anger Management ____ Mental Health ____ Substance Abuse Evaluation ____ School Program ____ Family Support ____ Other: _____ Contact Information for Programming: _____
Other	_____

Successful Completion: Upon successful completion of this diversion agreement, Austin Municipal Court shall not accept charges related to the case.

_____ acknowledges that, upon successful completion of this diversion agreement, they will **NOT** be eligible for diversion for a period of 365 days. The case will be expunged on the child's 18th birthday.

Unsuccessful Completion: If the child does not successfully complete the terms of this diversion agreement, the child shall be referred to the court for a non-adversarial hearing. The hearing is a conference between the judge, child, parent, and any other person who may be of assistance to the child or court in determining what is in the best interest of the child and the long-term safety of the community.

Acknowledgment:

Child hereby knowingly and voluntarily consents to participating in the Austin Youth Diversion program in lieu of criminal prosecution, as provided in this agreement, acknowledges and accepts the terms of this agreement, and verifies that they received notice of their rights, including the right to refuse diversion.

Child's Signature

Date

Parent hereby knowingly and voluntarily consents to the above-named child participating in the Austin Youth Diversion program in lieu of criminal prosecution as provided in this agreement and acknowledges, and accepts the terms of this agreement, and verifies that the parent received notice of the child's rights, including the right to refuse diversion.

Parent's Signature

Date

JCM /Witness to agreement

Date