

**Parmer County**  
**Agreement of Understanding**  
**Regarding Youth Diversion Plan**  
**Between Deaf Smith County and Parmer County**

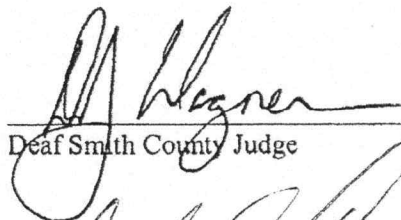
Whereas, the Texas Legislature has required that a Youth Diversion Plan be instituted for every Municipal and Justice Court no later than January 1, 2025.

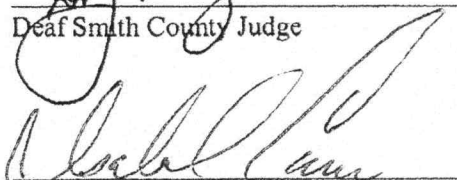
Whereas, Deaf Smith County has adopted a Youth Diversion Plan which meets with this requirement.

Whereas, Deaf Smith County has agreed to handle juveniles from Parmer County that would be subject to the Youth Diversion Plan.

The Administrative Fee allowed by HB 3186 will be retained by Deaf Smith County. If mileage expense is incurred by Deaf Smith County related to a Parmer County juvenile participating in the Youth Diversion Plan, the mileage will be reimbursed to Deaf Smith County at the allowable IRS rate.

Parmer County and Deaf Smith County hereby enter into this mutual agreement of Understanding whereby all Parmer County Juveniles that will be subject to the Youth Diversion Plan as set up by the Texas Legislature will be handled by the Deaf Smith Youth Diversion Plan, which is attached hereto as Exhibit "A."

  
Deaf Smith County Judge

  
Parmer County Judge

## DEAF SMITH COUNTY YOUTH DIVERSION PLAN

The Texas Legislature, in the 88<sup>th</sup> Regular Session (2023), passed H.B. 3186, which increases opportunities for the early identification of at-risk youth and to redirect children accused of certain Class C misdemeanor offenses. By participating in this program, the juvenile is given an opportunity to avoid a conviction of the offense on their record. This opportunity is available at the front end of a case where it can be more effective. The bill, H.B. 3186, also recalibrates and expands opportunities for collaboration and financial resources in both rural and urban parts of Texas and requires the adoption of a youth diversion plan for every municipal and justice court no later than January 1, 2025.

“Diversion” means an intervention strategy that redirects a child from a formal criminal prosecution and holds the child accountable for the child’s actions. The term includes two types of diversion: (1) **intermediate diversion** under Article 45.309, which occurs **before** a charge involving an eligible child is filed and (2) **diversion by judge** under Article 45.310, which occurs **after** a charge involving an eligible child is filed or after a trial involving an eligible child results in a verdict or finding of guilt. Courts may choose to implement intermediate diversion, but all courts have requirements related to diversion by judge. Regardless which type of diversion the court implements, the purpose is generally the same.

If the youth diversion plan provides for intermediate diversion, a youth diversion coordinator or juvenile case manager must advise the child and the child’s parent before a case is filed 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 interests of the child and promotes the long-term safety of the community
- c. the child and the child’s parent consent to the diversion with the knowledge that it is optional; and
- d. 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.

## ELIGIBILITY

After receiving a charge (non-traffic) involving a child, whether filed or not, determination is made if the child is eligible for diversion by meeting the following requirements:

- a. A child may enter into a diversion agreement if the child is younger than 17 years of age at the time of the offense; (must be after January 1, 2025)
- b. A child may enter into a diversion agreement once every 365 days.
- c. The child does not contest the charge (divert the case without having to enter a plea)

A child is **not eligible** for diversion if:

- d. The child has previously had an unsuccessful diversion
- e. The prosecutor objects to the diversion
- f. The child contests the charge (case proceeds with formal criminal charges)

The diversion agreement must:

- a. Identify the parties to the agreement and the responsibilities of the child and parent to ensure their meaningful participation in a diversion, whether intermediate diversion or diversion by judge.
- b. State 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 be in writing and include:

- a. 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 identifying any offense or charge being diverted
- b. The possible outcomes or consequences of a successful diversion and an unsuccessful diversion
- 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. The period of the diversion
- e. Verification that the child and parent were notified of the child's rights, including the right to refuse diversion; and the child knowingly and voluntarily consents to participate in the diversion; and
- f. A written acknowledgment an acceptance of the agreement by the child and the child's parent.

Determine whether to assess the optional \$50.00 local youth diversion administration fee to defray the costs of the diversion of the child's case.

- a. The fee may not be collected unless specified as a term of the diversion agreement accepted by the child's parent.
- b. A court shall waive the fee if the parent is indigent or does not have sufficient resources of income to pay the fee.
- c. The clerk of the court shall keep a record of the fees collected under Art. 45.312 and shall forward the funds to the municipal treasurer or person fulfilling that role, as appropriate.

Provide a copy of the agreement to the child, parent, clerk of the court, youth diversion coordinator, and any person specified by the youth diversion plan.

At the end of the diversion period, determine whether the diversion was successful.

- a. **If the child successfully complies** with the terms of the diversion agreement, close the case and report it to the court as successful.
- b. **If the child does not comply** with the terms of the diversion agreement, refer the child to the court for a hearing.

The court shall conduct a non-adversarial hearing for a child who does not successfully complete the terms of the diversion agreement and is referred to the court. After the hearing, a 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 year from the initial **start date** of the diversion
- c. Issue a continuance for a hearing for a period not to exceed 60 days to allow an opportunity for compliance with the terms of the diversion
- d. Subject to Art. 45.311(d), require the parent 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. Find the diversion successful on the basis of substantial compliance; or
- f. Find 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 Family Code; or
  - (2) Referring the charge to the prosecutor for consideration of re-filing.

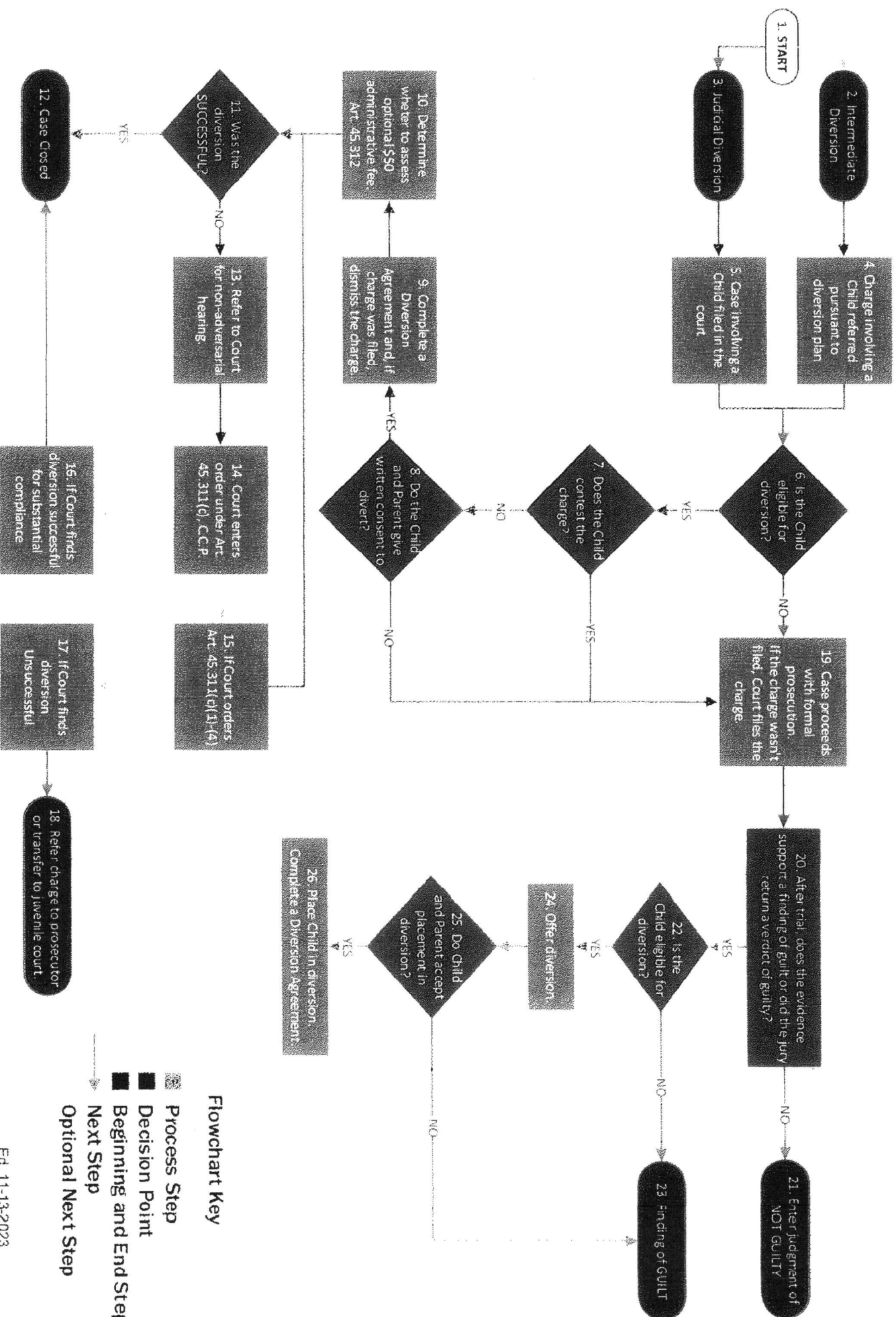
The court shall maintain statistics for each diversion strategy authorized by Subchapter E.

**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 18<sup>th</sup> birthday.**

# Youth Diversion: Process Overview Flowchart

H.B. 3186

See Accompanying Commentary



- Flowchart Key**
- Process Step
  - ◆ Decision Point
  - Beginning and End Step
  - Next Step
  - Optional Next Step

## Youth Diversion: Flowchart Commentary

- Box 1. Generally, a child shall be diverted from formal criminal prosecution as provided by Subchapter E of Chapter 45 of the Code of Criminal Procedure. How diversion proceeds will depend on the type of diversion. There are two types of diversion: intermediate diversion and diversion by judge (or judicial diversion). All courts must do judicial diversion. Courts may also opt to do intermediate diversion. Arts. 45.309, 45.310, C.C.P. **Subchapter E only applies to non-traffic offenses committed on or after January 1, 2025.** Art. 45.302, C.C.P.; H.B. 3186 (88th Regular Legislative Session).
- Box 2. Courts that opt to do intermediate diversion must include that type of diversion in their diversion plan. Intermediate diversion occurs prior to filing the charge. A youth diversion coordinator or juvenile case manager must advise the child and child's parent before the charge is filed that a case may be diverted for up to 180 days if the requirements in Article 45.309(a)(1)-(4) are met. Art. 45.309, C.C.P.
- Box 3. Subchapter E provides for judicial diversion after a charge involving a child is filed and after a finding or verdict of guilt in the trial of a child, whether bench or jury trial. Judicial diversion may not exceed 180 days. Art. 45.310, C.C.P.
- Box 4. The process for referral of charges under intermediate diversion should be addressed in the diversion plan. After referral, certain determinations must be made before proceeding to diversion.
- Box 5. If a charge involving a child who is eligible for diversion is filed with the court, the judge must divert the case under Article 45.310. After such a charge is filed, certain determinations must be made before proceeding to diversion.
- Box 6. Whether intermediate or judicial diversion, a child must be eligible for diversion. A child is eligible to enter into a diversion agreement under Subchapter E only once every 365 days. A child is not eligible for diversion if the child previously had an unsuccessful diversion under Subchapter E or if the prosecutor objects to the diversion. Art. 45.304, C.C.P.
- Box 7. The child has a right to go to trial. Therefore, if the child contests the charge, set the child for trial. See Boxes 20-26 for diversion after trial.

- Box 8. A court may not divert a child from criminal prosecution without the written consent of the child and child's parent. Art. 45.304(e), C.C.P.
- Box 9. Article 45.308 lists the requirements for a diversion agreement. A charge may not be filed against a child or, if filed, shall be dismissed by the court if the child does not contest the charge, is eligible for diversion, and accepts the terms of the diversion agreement.
- Box 10. Article 45.312 authorizes a court to collect from a child's parent a \$50 administrative fee (Local Youth Diversion Administrative Fee) to defray the costs of the diversion of the child's case under Subchapter E. This fee is optional. It may not be collected unless it is specified as a term of the diversion agreement accepted by the parent. Diversion may not be contingent upon payment of this fee. Art. 45.312, C.C.P.
- Box 11. By the end of the diversion period, determine whether the child has successfully complied with the terms of the diversion agreement.
- Box 12. The case of a child who successfully complies with the terms of the diversion agreement shall be closed and reported to the court as successful. Arts. 45.309(c), 45.310(d), C.C.P.
- Box 13. A child who does not comply with the terms of the diversion agreement shall be referred to court for a non-adversarial hearing. Arts. 45.309(d), 45.310(e), C.C.P. This non-adversarial hearing is an opportunity for a judge to confer with the child and parent to determine whether a diversion should be declared unsuccessful by the court. The court may also hear from any person who may assist the child or the court in determining what is in the best interests of the child and the long-term safety of the community. Art. 45.311, C.C.P.
- Box 14. After the hearing, a court may enter one of the orders listed in Article 45.311(c). See Boxes 15, 16, and 17 for possible orders.
- Box 15. Under Article 45.311(c)(1)-(4), a court may enter an order: (1) amending or setting aside terms in the diversion agreement; (2) extending the diversion 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 agreement; and (4) require the child's parent to perform (or refrain from doing) certain acts 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. If the court orders any of these, the next step is to determine whether the child has successfully completed the terms of the agreement under the order. Go to Box 11.



- Box 16. The court may enter an order finding the diversion successful on the basis of substantial compliance. Art. 45.311(c)(5), C.C.P. After such an order, the case shall be closed. Arts. 45.309(c), 45.310(d), C.C.P.
- Box 17. The court may enter an order finding the diversion unsuccessful. Art. 45.311(c)(6), C.C.P.
- Box 18. Upon a finding of an unsuccessful diversion, the court may 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. Art. 45.311(c)(6), C.C.P.
- Box 19. If a child either is ineligible or contests the charge or the child or parent does not give written consent to diversion, the case proceeds with prosecution. Arts. 45.304, 45.310, C.C.P.
- Box 20. Making the determination in this box will either result in a finding of Not Guilty or potentially another opportunity for diversion.
- Box 21. If the answer to the question in Box 20 is No, enter a judgment of Not Guilty.
- Box 22. If the answer to the question in Box 20 is Yes, determine if the child is eligible for diversion. Art. 45.041(a-2), C.C.P. See Box 6.
- Box 23. If the child is ineligible or the child or parent does not accept placement in diversion, find the child guilty and proceed to sentencing. Art. 45.041(a-2), C.C.P. All options normally available to the judge at this point in the case are still available, including deferred disposition.
- Box 24. If the child is eligible, provide the child and parent the opportunity for placement in diversion under Article 45.310 (Diversion by Judge). Art. 45.041(a-2), C.C.P.
- Box 25. If the answer is Yes, go to Box 26. If the answer is No, go to Box 23.
- Box 26. If the child and parent accept, place the child in diversion under Article 45.310. Art. 45.041(a-2), C.C.P. Do not enter an adjudication of guilt or a judgment of conviction. Art. 45.041(a-2); Art. 45.310(a)(2), C.C.P. Complete a diversion agreement. Art. 45.308, C.C.P. Then go to Box 10.