



# Midland County Justice Court – Juvenile Diversion Plan

**Effective Date:** January 1, 2025

**Authority:** Texas Code of Criminal Procedure, Article 45.306

## I. Purpose

This Youth Diversion Plan is adopted pursuant to *Article 45.306 of the Texas Code of Criminal Procedure*. Its purpose is to reduce juvenile recidivism, promote early intervention for at-risk youth, and provide alternatives to formal criminal prosecution for eligible juveniles accused of non-traffic Class C misdemeanors.

## II. Scope

This plan applies only to children who are at least **10 years of age and under the age of 17** alleged to have committed an offense punishable by fine only, excluding traffic offenses.

## III. Diversion Strategies

The court may use one or more of the following strategies authorized under *Article 45.305*:

- Referral to Teen Court or peer-led accountability programs
- Enrollment in educational or rehabilitative programs such as:
  - Alcohol or drug awareness
  - Anger management or conflict resolution
  - Life skills or decision-making courses
- Mental health screening and/or counseling referrals
- Participation in school-based behavioral programs
- Academic tutoring or GED preparation
- Community service (not to exceed 20 hours)
- Restitution (not to exceed \$100 for property offenses)
- Participation in a mentoring program

## IV. Diversion Agreement Requirements

Diversion agreements under this plan will:

- Identify the child and parent/legal guardian as parties
- Set measurable, reasonable goals considering the child's age and circumstances
- Include a defined term not to exceed **180 days**
- Explain that the agreement is not a finding of guilt and no plea is required
- Include written acknowledgment by both the child and parent/guardian

## V. Implementation Process

- Diversion may occur before or after a complaint is filed, at the discretion of the court or youth diversion coordinator
- Participation is voluntary and requires written consent of both the child and parent/guardian
- A case will be closed upon successful completion of the agreement
- Unsuccessful completion may result in referral to court for further proceedings under *Article 45.311*

## VI. Oversight and Coordination

This court designates the court clerk as the Youth Diversion Coordinator. The coordinator will:

- Determine eligibility
- Maintain and monitor diversion agreements
- Coordinate referrals to service providers

## VII. Service Providers

The court collaborates with the following entities to implement this plan:

- Midland ISD and associated counselors
- Permian Basin Regional Council on Alcohol and Drug Abuse
- Midland Teen Court
- West Texas Centers (mental health services)
- Qualified local nonprofit youth mentoring and education programs

## VIII. Records and Confidentiality

All juvenile records are confidential in accordance with *Article 45.0217*. Records of successful diversions will be reported to the court. **Records shall be expunged upon the child's 18th birthday without the need for a motion or fee.**

## IX. Administrative Fee

Pursuant to *Article 45.312 of the Texas Code of Criminal Procedure*, the Court may collect a **\$50.00 administrative fee** from the parent or legal guardian of the participating child to help defray the costs of the diversion program. This fee:

- Must be included as a term in the diversion agreement and accepted in writing by the parent or guardian,
- May be waived by the Court if the parent is found indigent or unable to pay, and
- Shall not be a condition for participation in the program or used as a barrier to diversion eligibility.

All collected fees will be deposited in a local account used exclusively to fund youth diversion operations.

**H.B. 3186**

**Texas Youth Diversion and Early Intervention Act**

**Effective: January 1, 2025**

**TMCEC:** Tragic events like the one in Uvalde have increased awareness about the importance of identifying and responding to at-risk youth and those with mental illness. Experts believe that early identification and intervention involving gateway offenses is crucial in reducing recidivism, system involvement, costs, and in helping youth access necessary services.

In 2019, the Texas Judicial Council began working with justice and municipal court representatives, juvenile prosecutors, and juvenile defense attorneys to propose statutory changes. The proposed changes were devised by the Texas Judicial Council's Youth Diversion Workgroup and recommended by the Texas Judicial Council's Criminal Justice Committee in 2022 to the legislature. The changes aim to help identify at-risk youth and those living with mental illness and keep them from spiraling deeper into the criminal justice system while also holding them accountable for their actions.

The Texas juvenile justice system consists 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 a relatively small number of teenagers accused of felonies who are certified to stand trial as adults in district courts. In municipal and justice courts, criminal adjudication mostly involves children (ages 10-16) accused of non-traffic Class C misdemeanors.

Texas law authorizes most Class C misdemeanors to be civilly adjudicated as conduct indicating a need for supervision (CINS) (See Section 51.03 of the Family Code). Prior to 1987, CINS was the exclusive method for handling such cases. Since then, the number of CINS cases has dwindled. Because juvenile probation and juvenile courts are unable to accommodate the volume of such cases, few cases are handled as CINS. Annually, 30,000-50,000 juvenile justice cases that could be civilly adjudicated as CINS are criminally adjudicated as Class C misdemeanors. With limited financial resources and public recognition for the important role they play in the juvenile justice system, municipal and justice courts have become the first line of responders in most cases involving the misconduct of children. For nearly two decades, the judiciary has worked with the legislature to improve how cases involving youth are handled in municipal and justice courts and ensure that rights are protected and disparities are addressed. 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 in municipal and justice courts, there is no similar statutory authorization.

H.B. 3186 increases opportunities for early identification of at-risk youth and for redirecting children accused of certain "gateway" Class C misdemeanors. Currently, municipal and justice courts can only order diversion strategies after a case has resulted in a conviction or deferral of disposition. H.B. 3186 makes these strategies available at the front end of a case where they can be more effective. This aligns municipal and justice court practices with those used by juvenile probation and juvenile courts. The bill also recalibrates and expands opportunities for collaboration

and financial resources in both rural and urban parts of Texas. H.B. 3186 requires the adoption of a youth diversion plan for every municipal and justice court no later than January 1, 2025.

Note: Throughout this bill summary, unless specified otherwise, all references to new and amended articles in Chapter 45 are references to the Code of Criminal Procedure.

### **Section by Section Analysis:**

#### **Section 1. Citation**

H.B. 3186 may be cited as the Texas Youth Diversion and Early Intervention Act.

#### **Section 2. Subchapter E. Youth Diversion**

Rather than reinventing the processes known to work in municipal and justice courts, H.B. 3186 provides for youth diversion in municipal and justice courts by supplementation, specifically, adding a new subchapter (Subchapter E) to Chapter 45 of the Code of Criminal Procedure.

According to the bill's legislative history, Subchapter E should be construed to accomplish the following objectives:

1. Reduce recidivism and the occurrence of problem behaviors through intervention without having to criminally adjudicate children in justice and 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.
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.
4. Increase collaboration between governmental, educational, and non-profit organizations in devising local and regional diversion strategies in rural and urban counties and municipalities.

**A. Definitions.** Article 45.301 contains definitions of terms that are used throughout Subchapter E. "Charge" means a formal or informal allegation of an offense, including a citation, written promise to appear, complaint, or pending complaint. "Court" means a justice court, municipal court or other court governed by Chapter 45 of the Code of Criminal Procedure. "Diversion" means an intervention strategy that redirects a child from formal criminal prosecution and holds the child accountable for the child's actions. "Service provider" means a governmental agency, political subdivision (local governments, including a school district), open-enrollment charter school, nonprofit organization, or other entity that provides services to children or families. Other terms defined include "offense," "parent," and "youth diversion plan."

**B. Applicability.** Article 45.302 limits the application of Subchapter E to a child alleged to have engaged in conduct that constitutes a misdemeanor punishable by fine only, other than a traffic offense.

Note: “Offense” means a misdemeanor punishable by a fine other than a traffic offense. “Traffic offense” is defined in Section 51.02(16) of the Family Code, which parallels Sections 8.07(2) and (3) of the Penal Code (Age Affecting Criminal Responsibility).

**C. Transfer to Juvenile Court Not Affected.** Article 45.303 states that nothing in Subchapter E 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 or justice court per Section 51.08 of the Family Code.

**D. Diversion Eligibility.** Current law contains neither a mandate for diversion nor uniform criteria for determining eligibility. Article 45.304 requires a child to be diverted from formal criminal prosecution as provided by Subchapter E with the following exceptions: (1) a child is eligible to enter into a diversion agreement under this subchapter 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; (3) a child is not eligible for diversion if a diversion is objected to by the prosecutor; and (4) a court may not divert a child from criminal prosecution without the written consent of the child and the child’s parent.

**E. Diversion Strategies.** Current law does not provide an inventory of diversion strategies that may be used by municipal and justice courts. Article 45.305 provides a robust non-exhaustive itemization of strategies that may be adopted. Diversion strategies include: (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.

A diversion strategy may be imposed in connection with (1) an intermediate diversion under Article 45.309, (2) a diversion by a justice or judge under Article 45.310, or (3) a system of graduated sanctions for certain school offenses under Section 37.144 of the Education Code. A diversion strategy may not, however, be used to require a child who is a home-schooled student to attend an elementary or secondary school or to use an educational curriculum other than the curriculum selected by the parent.

Note: Many, but not all, of the diversion strategies in Article 45.305 look familiar. A lot of them are conditions or requirements authorized as a part of a deferred disposition or elsewhere in existing law. H.B. 3186 does not change these laws, but rather allows the possibility for teen court, juvenile case management, or other strategies to be used prior to court without a criminal

adjudication.

**F. Youth Diversion Plan.** Article 45.306 states that a youth diversion plan is a written plan that describes the types of strategies that will be used to implement youth diversion. A youth diversion plan does not limit the types of diversion strategies that are authorized to be imposed in a diversion agreement under Article 45.308 (Diversion Agreement).

Article 45.306 requires each justice and municipal court to adopt a youth diversion plan. However, it also allows a youth diversion plan to be devised for a county or municipality or an individual court within a county or municipality.

To promote collaboration and the leveraging of resources, Article 45.306(d) authorizes local governments to enter into an agreement to create a regional youth diversion plan and collaborate in the implementation of Subchapter E per Chapter 791 of the Government Code (Interlocal Cooperation Contracts). Similarly, because local governments may not have adequate staffing resources, a youth diversion plan may include an agreement with a service provider to provide services for a diversion strategy.

May law enforcement be incorporated into a youth diversion plan? Yes, it is a possibility. H.B. 3186 provides maximum flexibility for local governments throughout Texas in devising a youth diversion plan in light of available resources and circumstances. Subchapter E is court focused. It primarily supplements processes and procedures pertaining to children that are already familiar to municipal and justice courts. It does not change procedures prescribed for law enforcement. Article 45.306(f), however, states that a youth diversion plan may contain guidelines for disposition or diversion of a child's case by law enforcement, but the guidelines are not mandatory.

Be ready for public inspection requests. Article 45.306(g) requires that a current youth diversion plan be maintained on file for public inspection in each justice and municipal court, including courts that collaborate with one or more counties or municipalities.

Because successful implementation of Subchapter E will require more than simply adopting a youth diversion plan, Article 45.306(h) authorizes a court or local government to adopt rules necessary to coordinate services under a youth diversion plan or to implement the subchapter.

**G. Youth Diversion Coordinator.** Who will be designated youth diversion coordinator in your local municipal or justice court? Article 45.307 authorizes a court to designate a youth diversion coordinator who assists the court in: (1) determining whether a child is eligible for diversion; (2) employing a diversion strategy authorized by Subchapter E; (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.

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.

**H. Diversion Agreement.** A diversion agreement is a legally binding contract. Article 45.308 requires a diversion agreement to 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 (Intermediate Diversion) or Article 45.310 (Diversion by Justice or Judge). 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 has seven statutory requirements: (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 identifying 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) verifications that the child and the child's parent were notified of the child's rights, including the right to refuse diversion, and that 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.

Diversion agreements are not one-size-fits-all. They are intended to be customized. Article 45.308(d) states that the terms of a diversion 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.

In addition to being a contract, there are other significant legal implications associated with a diversion agreement as it pertains to the initial criminal allegation. Under Article 45.308(e), a charge is prohibited from being filed against a child or, if filed, is required to 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. However, entering into a diversion agreement under Article 45.308 extends the court's jurisdiction for the term of the agreement.

On entering into a diversion agreement, Article 45.308(g) requires the clerk of the court, a youth diversion coordinator, or a person specified by the youth diversion plan to provide a copy of the agreement to the child and the child's parent.

**I. Intermediate Diversion vs. Diversion by a Justice or Judge.** To avoid a one-size-fits-all approach, Subchapter E provides courts great latitude to tailor their diversion plans to meet the varying needs of both rural and urban cities and counties. This focus on flexibility is reflected in the difference between two distinct statutory frameworks: intermediate diversion and diversion by a justice or judge.

Intermediate diversion under Article 45.309 is only authorized if specified in a youth diversion plan under Article 45.306. It requires a youth diversion coordinator or juvenile case manager to

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: (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 are authorized to terminate the diversion at any time and, if terminated, the case will be referred to court. The terms of an intermediate diversion must 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 Article 45.309 shall be closed and reported as successful to the court. A child who does not comply with the terms of a diversion agreement under Article 45.309 shall be referred to court under Article 45.311.

For a diversion by a justice or judge under Article 45.310, if a charge involving a child who is eligible for diversion is filed with a court, a justice or judge shall divert the case in one of two ways: (1) if the child does not contest the charge, a justice or judge is required to divert the case without the child having to enter a plea; or (2) if the child contests the charge, a justice or judge is required to divert the case at the conclusion of trial on a finding of guilt without entering a judgment of conviction as provided by Article 45.041 (Judgment). A diversion by a justice or judge may not exceed 180 days. The terms of a diversion agreement under Article 45.310 are required to be in writing and may include any of the diversion strategies described by Article 45.305. The case of a child who successfully complies with the terms of a diversion agreement under Article 45.310 shall be closed and reported as successful to the court. A child who does not comply with the terms of the diversion agreement under Article 45.310 shall be referred to court for a hearing under Article 45.311.

Note: As reflected in Article 45.310, a legislative preference for youth diversion should not be construed by judges and court personnel as diminishing a child's right to trial. At the same time, it is important to stress that invoking the right to trial does not alleviate a judge's statutory obligation to divert at the conclusion of trial on a finding of guilt without entering a judgment of conviction.

**J. Referral to Court.** Article 45.311 requires a court to conduct a non-adversarial hearing for a child who does not successfully complete the terms of either an intermediate diversion under Article 45.309 or a diversion by a justice or judge under Article 45.310 and is referred to the court. The hearing is an opportunity for a justice or judge to 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 a hearing, per Article 45.311(c), a 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 either transferring the child to juvenile court for alleged CINS under Section 51.08 of the Family Code (Transfer From Criminal Court) or referring the charge to the prosecutor for consideration of re-filing. The statute of limitations in Article 12.02(b) of the Code of Criminal Procedure is tolled during the diversion period. This means that from the start date to the end date of a diversion agreement, the statute of limitations clock does not run, making it possible for a case to be filed in municipal court more than two years from the offense date.

Note: There is an important caveat regarding orders affecting parents. Under Article 45.311(e), orders against parents are enforceable by contempt. However, Article 45.311(d) prohibits such orders from having 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.

**K. Local Youth Diversion Administrative Fee (LYDAF).** Article 45.312 authorizes the clerk of a court to collect from a child's parent a \$50 administrative fee to defray the costs of the diversion of the child's case. The LYDAF may not be collected unless specified as a term of the diversion agreement accepted by the child's parent. However, if the fee is not paid after giving the parent an opportunity to be heard, the court shall order the parent, if financially able, to pay the fee to the clerk. An order to pay is enforceable by contempt. However, if the parent is indigent or does not have sufficient resources or income to pay, a court shall waive the fee. A court may adopt rules for LYDAF financial hardship waivers.

There are two additional important requirements in Article 45.312 relating to the LYDAF. First, the clerk of the court is required to keep a record of fees collected and shall forward the funds to the local government treasurer or person fulfilling the role of treasurer. Second, the fee shall be deposited in a special account that can be used only to offset the cost of the operations of youth diversion programs under Subchapter E.

Article 45.312 also contains two important prohibitions. Except for the LYDAF, no additional fee may be assessed for a child diverted under Subchapter E. The diversion of a child may not be contingent on payment of the LYDAF.

Note: The LYDAF is different than most fees collected in municipal and justice courts typically associated with children accused of Class C misdemeanors. Its collection is not triggered by a judgment/conviction or a deferred disposition. There is no state mandate to collect the LYDAF. Rather, state law authorizes its collection. And it is not collected from the child-defendant, but rather the child's parent, subject to the terms of the youth diversion agreement. (In contrast, parents are under no legal obligation to pay any cost assessed against a child in a criminal adjudication.) While 90% of state court costs in criminal cases are remitted to the state, the LYDAF, which is not a state criminal court cost, is 100% locally retained and can only be used to offset the cost of the operations of youth diversion programs under Subchapter E. Article 45.312 implicitly states that the LYDAF may not be collected without complying with the requirements of Subchapter E.

**L. Diversion Records.** Article 45.313 requires justice and municipal courts to maintain statistics for each diversion strategy authorized by Subchapter E. Such data can be used by courts and local

governments for planning and gauging diversion efforts. However, all records generated under Subchapter E, other than statistical records, are confidential under Article 45.0217 (Confidential Records Relating to Charges Against or Conviction of a Child). All youth diversion records of a child under Subchapter E are required to be expunged, without a motion or request, on the child's 18th birthday.

### **Sections 3-8. Other Changes to Chapter 45 of the Code of Criminal Procedure**

The addition of Subchapter E (Youth Diversion) to Chapter 45 of the Code of Criminal Procedure required making conforming amendments in other Subchapters of Chapter 45. Some of these changes are substantive.

**A. Plea by Minor and Appearance by Parent.** Article 45.0215(a) is amended to reflect that the provisions in present law pertaining to a plea by a minor and the appearance of a parent must be read in conjunction with the general statutory directive in Subchapter E to divert children.

**B. Judgment.** H.B. 3186 amends Article 45.041 adding Subsection (a-2) and amending Subsection (b-3).

Youth diversion does not negate the right to trial. Subsection 45.041(a-2) provides that if a child who is eligible for diversion under Article 45.304 goes to trial, and if the court determines that the evidence presented in a bench trial would support a finding of guilt, or if a jury returns a verdict of guilty, the court must provide the child and the child's parents the opportunity for diversion per Article 45.310 (Diversion by Justice or Judge). If the child and the child's parent decline the diversion, the court shall find the child guilty and proceed to sentencing.

If a diversion is not required under Subchapter E, who chooses how a child defendant shall discharge the judgment? Subsection 45.041(b-3), as amended, states that if a diversion is not required under Subchapter E or Subsection (a-2), a judge *must* allow a defendant who is a child to elect at the time of conviction to discharge the fine and costs either by: (1) performing community service or receiving tutoring under Article 45.049 (Community Service in Satisfaction of Fine or Costs) or (2) pay the fine and costs per Article 45.041(b). Under current law, a judge may, but is not required to, allow a child to make such an election.

Note: While H.B. 3186 excludes traffic offenses from the scope of statutory diversion under Subchapter E, no such exclusion exists for the amendment to Article 45.041(b-3). Accordingly, even children convicted of traffic offenses must be allowed to elect how they will discharge the judgment. These elections under Article 45.041(b-3) should be carefully documented by courts. It is also important to remember that a defendant may discharge the obligation to perform community service at any time by paying the fine and costs assessed.

**C. Community Service.** Article 45.049(f) specifies the circumstances when certain government actors are not liable for damages arising from community service. H.B. 3186 extends such protections to community service performed as part of a diversion under Subchapter E. Because it is anticipated that juvenile probation departments will take on an increased role under Subchapter

E in some jurisdictions, H.B. 3186 amends Article 45.049(I) to include local juvenile probation departments among the entities authorized to supervise community service.

#### **D. Sections 6-8. Juvenile Case Management**

In 2018, the Texas Judicial Council's Juvenile Justice Committee recommended that the legislature amend the law to clarify and expand the use of juvenile case managers in Texas.

Article 45.056 authorizes local governments to employ a juvenile case manager to assist in administering cases involving children. As conceptualized by University of Texas Law Professor Robert O. Dawson, juvenile case managers generally operate as several positions rolled into one: an innovative problem-solver that is part court clerk, part probation officer, and part social worker.

In 2011, the legislature's commentary to S.B. 61 stated that although their roles vary, juvenile case managers are intended to serve as problem solvers by fostering interaction between youth and judges, integrating social services into the disciplinary process, and cooperating with children, parents, schools, and courts to best serve the interests of children and the community. The commentary also stated that despite the increased use of juvenile case managers since first authorized in 2001 and the creation of the juvenile case manager fund in 2005, the legislative intent behind the creation of this unique position remains largely unrealized.

Although the exact number of juvenile case managers is unknown, in 2018 it was estimated that there were only 170 juvenile case managers throughout Texas. Most juvenile case managers operate in or near urban and suburban areas, leaving rural areas underserved. Although Article 45.056 has long authorized shared employment of juvenile case managers, there is little evidence to show that rural areas use case managers on a regional basis. Some courts and local governments cannot afford to hire a juvenile case manager and others do not have enough juvenile case filings to warrant hiring a juvenile case manager. Consequently, under current law, only local governments that can afford to hire a juvenile case manager have one.

H.B. 3186 aims to increase the juvenile case manager services throughout Texas by encouraging collaboration between governmental, educational, and non-profit organizations in devising local and regional diversion strategies in rural and urban counties and municipalities.

It does this in multiple ways:

- Article 45.056(a)(1) is expanded to authorize contracting (and joint contracting) for juvenile case manager services to comply with the requirements of youth diversion under Subchapter E.
- Article 45.056(b) is expanded to allow local entities to jointly apply to the Criminal Justice Division of the Office of the Governor for reimbursement of all or part of the costs of employing one or more juvenile case managers or contracting for juvenile case manager services for purposes of youth diversion. To be eligible for reimbursement, an application must be presented to the governor's office with a comprehensive plan to reduce juvenile crimes and a youth diversion plan under Article 45.306 that addresses the role of the juvenile case manager in youth diversion efforts.
- Article 45.056(c) is amended to provide that an entity that jointly employs a juvenile case manager, jointly contracts for juvenile case manager services, or jointly contributes to the

costs of a juvenile case manager or juvenile case manager services under Subsection (a)(3) “employs” a juvenile case manager for purposes of Chapter 102 of the Code of Criminal Procedure (Costs, Fees, and Fines Paid by Defendants) and Chapter 102 of the Government Code.

- Article 45.056(d) is expanded to authorize a court or governing body to pay the costs of contracting for juvenile case manager services under the renamed Local Youth Diversion Fund (currently Local Truancy Prevention and Diversion Fund in Section 134.156 of the Local Government Code).
- Article 45.056(e), as amended and reenacted, states that a juvenile case manager, rather than a juvenile case manager “employed under Subsection (c),” shall give priority to cases brought under Section 25.093 of the Education Code (Parent Contributing to Nonattendance), Truancy Court Proceedings (Chapter 65 of the Family Code), and youth diversion under Subchapter E.
- Article 45.056(g), as amended, requires a court, rather than an “employing” court, to implement the rules adopted under Subsection (f) (which requires a governing body to adopt reasonable rules for juvenile case managers).
- Article 45.056(h), as amended, requires the commissioner’s court or governing body of the municipality that administers a local youth diversion fund, rather than a local truancy prevention and diversion fund, under Section 134.156 of the Local Government Code to require periodic review of juvenile case managers to ensure the implementation of the rules adopted under Subsection (f).

**Note:** Changes made to the Code of Criminal Procedure, Local Government Code, and Government Code reflect a shift toward youth diversion with a focus that includes, but is broader than, truancy prevention. As further discussed below, changes made to Article 45.056(b) not only increase the scope of costs the governor’s office can reimburse to include those related to juvenile case management, but also increase the number of municipal and county governments who may apply individually or jointly for reimbursement funding. This could prove to be a much-needed boon for rural Texas counties and cities that have historically been ineligible for reimbursement because Article 45.056 only contemplated reimbursement for cities and counties that employed juvenile case managers.

### **Sections 9-11, 14, 15, 16-18. Other New Potential Youth Diversion Funding Sources and Related Issues**

In addition to the Local Youth Diversion Administrative Fee (LYDAF) in Article 45.312 and broader eligibility for reimbursement under Article 45.056(b) described above, H.B. 3186 recalibrates, expands, and adds to existing funding sources for the purposes of youth diversion under Subchapter E.

**A. Child Safety Fund.** Under current Article 102.014 of the Code of Criminal Procedure, monies collected for the Child Safety Fund are used by municipalities and counties to pay for school crossing guard programs. If a municipality does not operate a school crossing guard program or if the money received from fines from municipal court cases exceeds the amount necessary to fund the school crossing guard program, a municipality may expend the additional money for programs designed to enhance child safety. Similar provisions exist for counties where money is similarly

collected in justice, county, and district courts. As amended, youth diversion is added to the list of ways a municipality or county may expend additional child safety funds.

**B. Juvenile Delinquency Prevention Funds.** In 2015, graffiti (Section 28.08 of the Penal Code) became a Class C misdemeanor when the pecuniary loss in property damage is less than \$100. However, Article 102.0171 of the Code of Criminal Procedure (Juvenile Delinquency Prevention Funds) was never amended to allow municipal or justice courts to collect the \$50 per conviction fine authorized for other trial courts. As amended, municipal and justice courts are added to the trial courts authorized by Article 102.0171(a) to collect this \$50 per conviction fine for graffiti and deposit it in a municipal juvenile delinquency prevention fund. Funding for youth diversion under Subchapter E is added to the list of potential uses for money in this fund.

**C. State and Local Youth Diversion Funds.** One way the costs of implementing Subchapter E will be defrayed is by renaming and expanding the use of state and local funds currently earmarked for truancy prevention and diversion. Both state and local funds are renamed. As amended, Section 133.125 of the Local Government Code provides that money in the state general revenue fund shall be appropriated from the legislature to the governor's office for purposes of distribution to local government entities for purposes of youth diversion. (See previous discussion of Article 45.056 of the Code of Criminal Procedure.)

Since 2019, state law has required local governments to collect a consolidated fee on conviction of nonjailable misdemeanors (Section 134.103 of the Local Government Code). The local consolidated fee is \$14, and 35.7143% (\$5) is presently allocated to the Local Truancy Prevention and Diversion Fund. Under current law, these funds can only be used to finance the salary, benefits, training, travel expenses, office supplies, and other necessary expenses relating to the position of a juvenile case manager employed under Article 45.056 of the Code of Criminal Procedure. As previously described, under the amended and renamed Local Youth Diversion Fund, the term "employed" is expanded to include joint contracting for juvenile case manager services and joint contributing to the costs of a juvenile case manager or juvenile case manager services for the purposes of Section 134.156 of the Local Government Code.

But what if a local government does not need or want juvenile case management as part of its youth diversion plan? For more than four years, local governments have been required to collect \$5 per case per conviction in all Class C misdemeanors. Many municipal and justice courts, particularly in rural Texas, presently have no way to spend money in the Local Truancy Prevention and Diversion fund because of current limitations in Section 134.156 of the Local Government Code. H.B. 3186 helps remedy this bottleneck by adding Subsection 134.156(a-1) to the Local Government Code, which authorizes the governing body of a county or municipality that does not employ or contract with a juvenile case manager, in consultation with a court, to direct money in the Local Youth Diversion Fund to support local mental health authorities, juvenile alcohol and substance abuse programs, educational and leadership programs, teen court programs, and any other project designed to prevent or reduce the number of juvenile referrals to court.

**Note:** By amending Article 45.056 and Section 134.156 of the Local Government Code, the legislature clearly intends to expand the use of juvenile case managers by making juvenile case management not just a job, but a service that can be contracted on an as-needed basis or that can be shared between courts in municipalities and counties. Thankfully, local governments without

juvenile case management services will now be able to use the Local Youth Diversion Fund to support a local mental health authority and other programs and projects designed to prevent or reduce the number of juvenile referrals to court.

### **Section 12. Early Youth Intervention Services**

Under current law, Section 264.302(e) of the Family Code (Early Youth Intervention Services) requires the Department of Family and Protective Services (DFPS) to provide services for a child and the child's family if a contract to provide services under that section is available in the county and the child is referred to DFPS as an at-risk child by: (1) a juvenile court or probation department as part of progressive sanctions, (2) a law enforcement officer or agency under Section 52.03 of the Family Code (Disposition Without Referral to Court), or (3) a municipal or justice court under Article 45.057 of the Code of Criminal Procedure (Offenses Committed by Juveniles).

H.B. 3186 amends Section 264.302(e)(3) by adding referrals of children and parents as part of an intermediate diversion under Article 45.309 or a diversion by a justice or judge under Article 45.310.

Note: Increasingly, public welfare depends on municipal and justice courts understanding their role in referring children and their families to early youth intervention services. Under H.B. 3186, for interventions to occur, courts must act. This requires developing a working knowledge of local service providers and opening channels of communication.

### **Section 13. Judicial Instruction Related to Certain Alleged Child Offenders**

Under current law, Section 22.1105(a) of the Government Code requires judges, including municipal judges and justices of the peace, to complete a course of instruction relating to understanding relevant issues of child welfare and the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Section 1400 et seq.) every judicial academic year that ends in a 0 or a 5.

H.B. 3186 amends Section 22.1105(a) to change the required course to one with instruction related to youth diversion and understanding relevant issues of child welfare, including issues related to mental health and children with disabilities, every judicial academic year that ends in a 0 or a 5.

### **Sections 19-21. Implementation and Effective Dates**

H.B. 3186 takes effect January 1, 2024. Each justice and municipal court is required to implement a youth diversion plan under Subchapter E not later than January 1, 2025.

Changes made by H.B. 3186 apply to an offense committed on or after January 1, 2025. An offense committed before January 1, 2025, is governed by the law in effect on the date the offense was committed. Former law is continued in effect for that purpose. To determine application, an offense was committed before January 1, 2025, if any element of the offense occurred before that date.