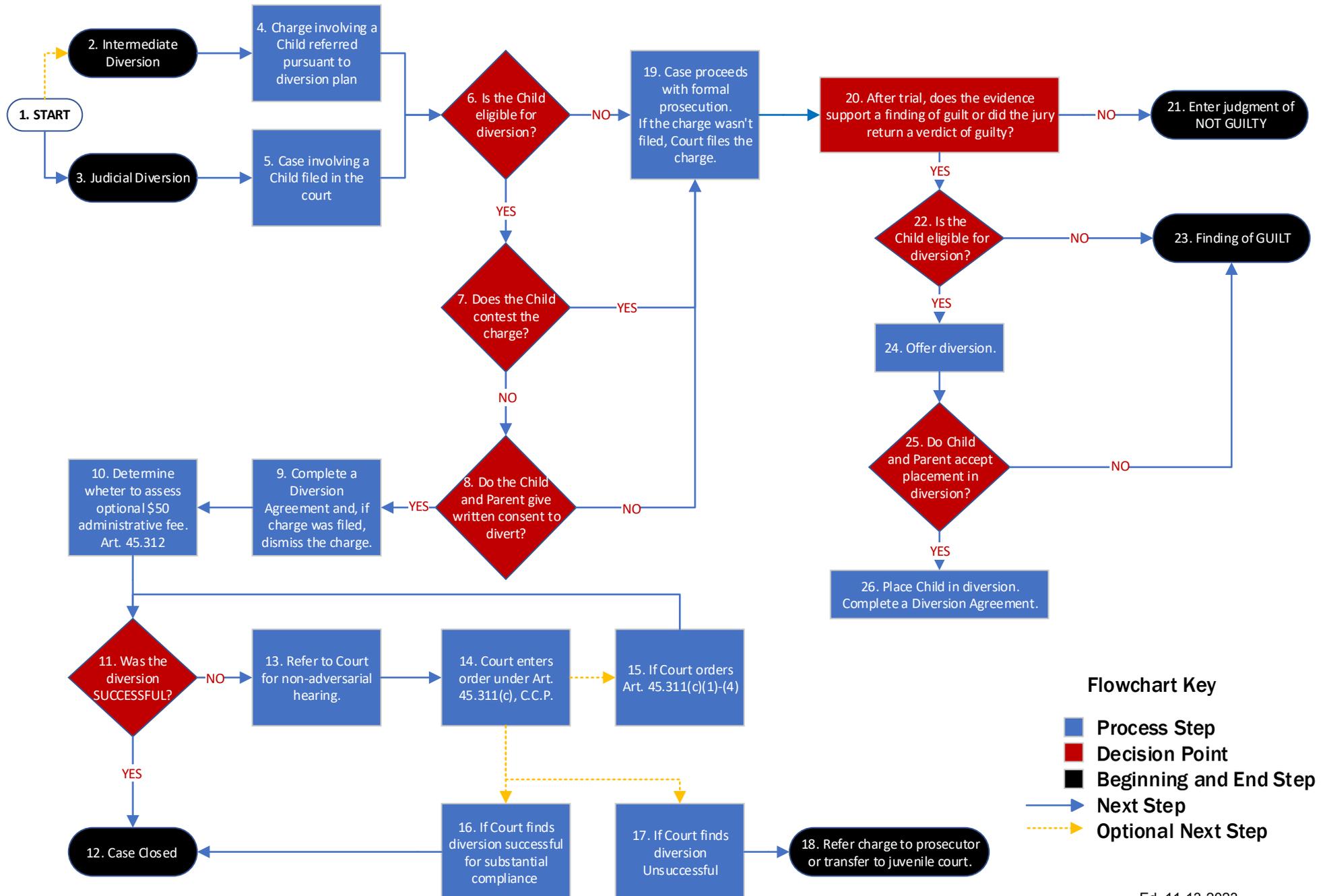


# Youth Diversion: Process Overview Flowchart

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.