

**KERMIT MUNICIPAL COURT**  
**JUDGE'S STANDING ORDER**  
**YOUTH DIVERSION PROGRAM**

**OPEN TO PUBLIC INSPECTION**

**QUICK SYNOPSIS OF YOUTH DIVERSION IN KMC**

**ELIGIBILITY:** - at least 10 years of age and younger than 17 years of age are eligible to enter into a diversion agreement only once every 365 days

**PLEA:** – none is taken

**CHARGES DIVERTED:** – any class C fine only misdemeanor except traffic violations

**DIVERSION COST:** - \$50.00

**AGREEMENT:** - must be agreed to by both the child and the parent in writing

**LENGTH OF TIME DIVERTED:** - 90 to 180 days to complete

**EXTENSIONS:** - (1) 30 day extension with good cause

**YOUTH DIVERSION COORDINATOR:** - Irma Del Toro

**TYPES OF CHARGES FOR DIVERSION:**

Alcohol (any except DUI)

Assault

Criminal Mischief

Disorderly Conduct

Driving Under the Influence / Minor

Failure to Identify

Littering

Possession of Drug Paraphernalia

Possession of Fireworks

Public Intoxication

Theft/Shoplifting

Truancy

Tobacco

Vandalism

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**DIVERSION PROGRAMS**

<b>Alcohol Awareness (required course)</b>	<b>6hr</b>				
Alcohol Education for Minors	2hr	4hr	6hr		
Anger Management	4hr	8hr	10hr	12hr	
Cognitive Thinking & Decision Making Skills	4hr	8hr			
Drug & Alcohol Education	4hr	6hr	8hr	12hr	16hr
Life Skills	6hr	10hr	20hr		
Marijuana/THC Education	4hr				
Vaping & Nicotine Awareness	2hr	4hr	6hr		
<b>Texas Tobacco Awareness Class (required course)</b>	<del>4hr</del>	<b>8hr</b>	<b>12hr</b>	<b>16hr</b>	
Theft/Shoplifting	2hr	4hr	8hr	12hr	
Victim Impact of Alcohol & Drug Use	2hr				
Parenting Skills	8hr	12hr			
Alcohol/Drug Testing					
Community Service (limited to 20 hrs.)					
Residential Treatment Program					
Local Mental Health Authority (LMHA) Counseling					
Restitution (not to exceed \$100)					

**MISDEMEANOR FINE ONLY OFFENSES DIVERTED**

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.

**DIVERSION ELIGIBILITY**

At least 10 years of age and younger than 17 years of age

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;

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- (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.

**DIVERSION STRATEGIES.**

Article 45.305 provides a robust non-exhaustive itemization of strategies that may be adopted.

(a) Diversion strategies include:

- (1) requiring a child to participate in a program, including:
  - (A) a court-approved teen court program operated by a service provider;
  - (B) a school-related program;
  - (C) an educational program, including an alcohol awareness program, a tobacco awareness program, or a drug education program;
  - (D) a rehabilitation program; or
  - (E) 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:
  - (A) at-risk youth services under Subchapter D, Chapter 264, Family Code;
  - (B) juvenile case manager services under Article 45.056;
  - (C) work and job skills training, including job interviewing and work preparation;
  - (D) academic monitoring or tutoring, including preparation for a high school equivalency examination administered under Section 7.111, Education Code;
  - (E) community-based services;
  - (F) mental health screening and clinical assessment;
  - (G) counseling, including private or in-school counseling; or
  - (H) mentoring services;
- (3) requiring a child to:
  - (A) participate in mediation or other dispute resolution processes;
  - (B) submit to alcohol or drug testing; or
  - (C) substantially comply with a course of treatment prescribed by a physician or other licensed medical or mental health professional; and

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(4) requiring a child, by court order, to:

- (A) pay restitution not to exceed \$100 for an offense against property under Title 7, Penal Code;
- (B) perform not more than 20 hours of community service; and/or
- (C) perform any other reasonable action determined by the court.

(b) A diversion strategy may be imposed under:

- (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, Education Code.

(c) A diversion strategy under this subchapter may not require a child who is a home-schooled student, as defined by Section 29.916, Education Code, to:

- (1) attend an elementary or secondary school; or
- (2) use an educational curriculum other than the curriculum selected by the parent.

**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(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.

**YOUTH DIVERSION COORDINATOR**

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.

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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.

The Kermit Municipal Court youth diversion coordinator is the court's juvenile case manager.

**DIVERSION AGREEMENT** - must be agreed to by both the child and the parent or guardian in writing

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.

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**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.

If a parent declares "indigent", a Financial Affidavit must be completed for the court's review.

There are two additional important requirements in Article 45.312 relating to the LYDAF.

(1) 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.

(2) 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.

**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.

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.

**JUDGEMENT**

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.

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**IT IS ORDERED** this court will implement the Texas Youth Diversion and Early Intervention Act effective January 1, 2025, as required by H.B. 3186.

SIGNED and ENTERED this 23<sup>rd</sup> day of December 2024.

  
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PRESIDING JUDGE