

PART FOUR:

**SENTENCING FOR ALCOHOL AND TOBACCO
RELATED OFFENSES**

I. Alcohol

A. Alcohol Related Offenses

1. Alcohol: Purchase of by Minor TEX. ALC. BEV. CODE §106.02

§ 106.02. Purchase of Alcohol by a Minor

- (a) A minor commits an offense if the minor purchases an alcoholic beverage. A minor does not commit an offense if the minor purchases an alcoholic beverage under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code.
- (b) An offense under this section is punishable as provided by Section 106.071.

Alcohol: Attempt to Purchase by Minor TEX. ALC. BEV. CODE §106.025

§ 106.025. Attempt to Purchase Alcohol by a Minor

- (a) A minor commits an offense if, with specific intent to commit an offense under Section 106.02 of this code, the minor does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.
- (b) An offense under this section is punishable as provided by Section 106.071

Alcohol: Consumption of by Minor TEX. ALC. BEV. CODE §106.04

§ 106.04. Consumption of Alcohol by a Minor

- (a) A minor commits an offense if he consumes an alcoholic beverage.
- (b) It is an affirmative defense to prosecution under this section that the alcoholic beverage was consumed in the visible presence of the minor's adult parent, guardian, or spouse.
- (c) An offense under this section is punishable as provided by Section 106.071.
- (d) A minor who commits an offense under this section and who has been previously convicted twice or more of offenses under this section is not eligible for deferred disposition. For the purposes of this subsection:
 - (1) an adjudication under Title 3, Family Code, that the minor engaged in conduct described by this section is considered a conviction of an offense under this section; and
 - (2) an order of deferred disposition for an offense alleged under this section is considered a conviction of an offense under this section.
- (e) Subsection (a) does not apply to a minor who:
 - (1) requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person;
 - (2) was the first person to make a request for medical assistance under Subdivision (1);
and
 - (3) if the minor requested emergency medical assistance for the possible alcohol overdose of another person:
 - (A) remained on the scene until the medical assistance arrived; and
 - (B) cooperated with medical assistance and law enforcement personnel.

Alcohol: Possession of by Minor TEX. ALC. BEV. CODE §106.05

§ 106.05. Possession of Alcohol by a Minor

(a) Except as provided in Subsection (b) of this section, a minor commits an offense if he possesses an alcoholic beverage.

(b) A minor may possess an alcoholic beverage:

- (1) while in the course and scope of the minor's employment if the minor is an employee of a licensee or permittee and the employment is not prohibited by this code;
- (2) if the minor is in the visible presence of his adult parent, guardian, or spouse, or other adult to whom the minor has been committed by a court; or
- (3) if the minor is under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code.

(c) An offense under this section is punishable as provided by Section 106.071.

(d) Subsection (a) does not apply to a minor who:

(1) requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person;

(2) was the first person to make a request for medical assistance under Subdivision (1);

and

(3) if the minor requested emergency medical assistance for the possible alcohol overdose of another person:

(A) remained on the scene until the medical assistance arrived; and

(B) cooperated with medical assistance and law enforcement personnel.

Alcohol: Misrepresentation of Age by Minor TEX. ALC. BEV. CODE §106.07

§ 106.07. Misrepresentation of Age by a Minor

(a) A minor commits an offense if he falsely states that he is 21 years of age or older or presents any document that indicates he is 21 years of age or older to a person engaged in selling or serving alcoholic beverages.

(b) An offense under this section is punishable as provided by Section 106.071.

Alcohol: Public Intoxication by a Minor TEX. PENAL CODE §49.02

§ 49.02. Public Intoxication

(a) A person commits an offense if the person appears in a public place while intoxicated to the degree that the person may endanger the person or another.

(a-1) For the purposes of this section, a premises licensed or permitted under the Alcoholic Beverage Code is a public place.

(b) It is a defense to prosecution under this section that the alcohol or other substance was administered for therapeutic purposes and as a part of the person's professional medical treatment by a licensed physician.

(c) Except as provided by Subsection (e), an offense under this section is a Class C misdemeanor.

(d) An offense under this section is not a lesser included offense under Section 49.04.

(e) An offense under this section committed by a person younger than 21 years of age is punishable in the same manner as if the minor committed an offense to which Section 106.071, Alcoholic Beverage Code, applies.

2. Definitions.

A "minor" means a person under 21 years of age.

"Child" means a person who is:

- (A) ten years of age or older and under 17 years of age; or
- (B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

"Intoxicated" means:

- (A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body; or
- (B) having an alcohol concentration of 0.08 or more.

"Public place" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

3. Sentencing Options:

(i) Applicable to Purchase, Attempt to Purchase, Consumption Possession, or Misrepresentation of Age by Minor.

Conviction following plea of guilty, no contest, or finding of guilt:

- Class C misdemeanor; fine not to exceed \$500;
- Not less than 8 or more than 12 hours of community service work related to education about or prevention of misuse of alcohol if programs or services providing that education are available in the community; if programs or services providing that education are not available, the court may order community service that it considers appropriate for rehabilitative purposes;
- Attendance at an alcohol awareness program approved by the Department of State Health Services or a drug and alcohol driving awareness program approved by the Texas Education Agency; if the defendant is younger than 18 years of age, the court may require the parent or guardian to attend the program with the defendant.
- Order directing the Department of Public Safety to suspend or deny issuance of the defendant's driver's license for 30 days; the suspension takes effect on the 11th day after the date of conviction.

TEX. ALC. BEV. CODE §106.071

(ii) Suspension of sentence and deferral of final disposition.

- Attendance at an alcohol awareness program approved by the Department of State Health Services or a drug and alcohol driving awareness program approved by the Texas Education Agency; if the defendant is younger than 18 years of age, the court may require the parent or guardian to attend the program with the defendant.
- Not less than 8 or more than 12 hours of community service work related to education about or prevention of misuse of alcohol if programs or services providing that education are available in the community; if programs or services providing that education are not

available, the court may order community service that it considers appropriate for rehabilitative purposes.

Applicable to “minor in possession of alcohol.” If a defendant, charged with “minor in possession” is a resident of Texas and is granted a deferral of disposition, the defendant is entitled to elect whether to perform the required community service in (1) the county in which the court is located, or (2) the county in which the defendant resides, but only if the governmental entity or nonprofit organization agrees to supervise the defendant and report to the court on the defendant’s community service work. If the educational programs or services are not available in the county of the defendant’s residence, the court may order community service appropriate for rehabilitative purposes.

TEX. CODE CRIM. PROC. §45.049.

- (iii) Attendance at Alcohol Awareness Course. If the defendant resides in a county with a population of 75,000 or less and access to an alcohol awareness program is not readily available in the county, the court may allow the defendant to take an online alcohol awareness program, if any, or require the defendant to perform not less than 8 hours of community service related to alcohol abuse prevention or treatment and approved by the Department of State Health Services. (Community service ordered under this subsection is in addition to community service ordered as a sanction.)

If the defendant is enrolled in an institution of higher education located in a county in which access to an alcohol awareness program is readily available, the court may consider the defendant to be a resident of that county. If the defendant is not enrolled in such an institution of higher education or if the court does not consider the defendant to be a resident of the county in which the institution is located, the defendant's residence is the residence listed on the defendant's driver's license or personal identification certificate issued by the Department of Public Safety. If the defendant does not have a driver's license or personal identification certificate issued by the Department of Public Safety, the defendant's residence is the residence on the defendant's voter registration certificate. If the defendant is not registered to vote, the defendant's residence is the residence on file with the public school district on which the defendant's enrollment is based.

The Department of State Health Services shall create a list of community services related to alcohol abuse prevention or treatment in each county. The Department of State Health Services may approved an on-line alcohol awareness program.

B. Driving or Operating Watercraft Under the Influence of Alcohol by Minor

1. Driving or Operating Watercraft Under the Influence of Alcohol by Minor TEX. ALC. BEV. CODE §106.041

§ 106.041. Driving Under the Influence of Alcohol by Minor

(a) A minor commits an offense if the minor operates a motor vehicle in a public place, or watercraft, while having any detectable amount of alcohol in the minor's system.

(b) Except as provided by Subsection (c), an offense under this section is a Class C misdemeanor.

...

(d) In addition to any fine and any order issued under Section 106.115, the court shall order a minor convicted of an offense under this section to perform community service for:

(1) not less than 20 or more than 40 hours, if the minor has not been previously convicted of an offense under this section; or

- (2) not less than 40 or more than 60 hours, if the minor has been previously convicted of an offense under this section.
- (e) Community service ordered under this section must be related to education about or prevention of misuse of alcohol.
- ...
- (g) An offense under this section is not a lesser included offense under Section 49.04, 49.045, or 49.06, Penal Code.
- ...
- (i) A peace officer who is charging a minor with committing an offense under this section is not required to take the minor into custody but may issue a citation to the minor that contains written notice of the time and place the minor must appear before a magistrate, the name and address of the minor charged, and the offense charged. ...

"Watercraft" means a vessel, one or more water skis, an aquaplane, or another device used for transporting or carrying a person on water, other than a device propelled only by the current of water.

2. Sentencing Options:

- (i) Conviction following plea of guilty, no contest, or finding of guilt:
 - Fine not to exceed \$500;
 - Not less than 20 or more than 40 hours of community service related to education about or prevention of misuse of alcohol;
 - Attendance at alcohol awareness program approved by the Department of State Health Services or a drug and alcohol driving awareness program approved by the Texas Education Agency; if the defendant is younger than 18 years of age, the court may require the parent or guardian to attend the program with the defendant.
- (ii) Deferred Disposition:
 - Attendance at alcohol awareness program approved by the Department of State Health Services or a drug and alcohol driving awareness program approved by the Texas Education Agency; if the defendant is younger than 18 years of age, the court may require the parent or guardian to attend the program with the defendant.

C. Procedures Relative to Alcohol Awareness Course:

1. Applicability.

A minor defendant is required to take the alcohol awareness program if convicted of, or granted deferred disposition in connection with, the following offenses:

- Public Intoxication
- Purchase of Alcohol by a Minor
- Attempt to Purchase Alcohol by a Minor
- Consumption of Alcohol by a Minor
- Driving or Operating Watercraft Under the Influence of Alcohol by a Minor
- Possession of Alcohol by a Minor
- Misrepresentation of Age by a Minor

2. Requirements.

Relative to the requirement that the defendant complete an alcohol awareness program:

- (i) Evidence of completion is required within 90 days from date of conviction;
- (ii) For good cause, the time of completion may be extended for no more than 90 days;
- (iii) When evidence of completion is presented timely, the court may reduce the fine to an amount equal to not less than one-half of initial fine;
- (iv) When evidence of completion is not timely presented:
 - The court will order the Department of Public Safety to suspend or deny the defendant's driver's license for a period not to exceed 6 months;
 - (*Optional*) The court may order the defendant or the defendant's parent, managing conservator, or guardian to do any act or refrain from doing any act if it is determined that doing the act or refraining from doing the act will increase the likelihood that the defendant will present evidence of satisfactory completion of the alcohol awareness program.

TEX. ALC. BEV. CODE §106.115.

3. Notices to Department of Public Safety:

The court is required to notify the Department of Public Safety of each conviction, order of deferred disposition, and acquittal of an offense under Chapter 106 of the Texas Alcoholic Beverage Code.

TEX. ALC. BEV. CODE §106.117.

D. Expunction

1. Requirements:

- Not more than one (1) conviction of an Alcoholic Beverage Code offense while a minor (under 21);
- Payment of a \$30 fee to defray the cost of notifying state agencies of an order of expungement.

2. Procedure:

- On attaining 21 years of age, defendant may apply to convicting court for expunction by making a sworn statement that defendant was not convicted of any violation of Alcoholic Beverage Code while a minor other than the one sought to be expunged;
- Defendant pays \$30 fee on filing the application;
- Court orders conviction, together with all complaints, verdicts, sentences, and other documents relating to the offense to be expunged from record;

- Conviction may not be shown or made known for any purpose;
- Defendant released from all disabilities resulting from conviction.

TEX. ALC. BEV. CODE §106.112.

II. Tobacco

A. Tobacco Related Offenses

1. Tobacco: Possession, Purchase, Consumption, or Acceptance of Cigarettes or Tobacco Products by Minor (Under 18 years of age) TEX. HEALTH & SAFETY CODE §161.252

§ 161.252. Possession, Purchase, Consumption, or Receipt of Cigarettes or Tobacco Products by Minors Prohibited

- (a) An individual who is younger than 18 years of age commits an offense if the individual:
- (1) possesses, purchases, consumes, or accepts a cigarette or tobacco product;
 - ...
 - (b) It is an exception to the application of this section that the individual younger than 18 years of age possessed the cigarette or tobacco product in the presence of:
 - (1) an adult parent, a guardian, or a spouse of the individual; or
 - (2) an employer of the individual, if possession or receipt of the tobacco product is required in the performance of the employee's duties as an employee.
 - (c) It is an exception to the application of this section that the individual younger than 18 years of age is participating in an inspection or test of compliance in accordance with Section 161.088.
 - (d) An offense under this section is punishable by a fine not to exceed \$250.

Tobacco: Misrepresentation of Age by Minor TEX. HEALTH & SAFETY CODE §161.252

§ 161.252. Possession, Purchase, Consumption, or Receipt of Cigarettes or Tobacco Products by Minors Prohibited

- (a) An individual who is younger than 18 years of age commits an offense if the individual:
- ...
 - (2) falsely represents himself or herself to be 18 years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive a cigarette or tobacco product.
 - (b) It is an exception to the application of this section that the individual younger than 18 years of age possessed the cigarette or tobacco product in the presence of:
 - (1) an adult parent, a guardian, or a spouse of the individual; or
 - (2) an employer of the individual, if possession or receipt of the tobacco product is required in the performance of the employee's duties as an employee.
 - (c) It is an exception to the application of this section that the individual younger than 18 years of age is participating in an inspection or test of compliance in accordance with Section 161.088.
 - (d) An offense under this section is punishable by a fine not to exceed \$250.

Sentencing Options:

(i) Conviction:

- Fine not to exceed \$250;
- Court must suspend execution of sentence for 90 days, require defendant to attend a tobacco awareness program, and present evidence of satisfactory completion of the program;
- (*Optional*) Court may require a parent or guardian to attend tobacco awareness program with defendant. Notice to the parent of the possible imposition of this requirement should be included in the summons issued to the parent.

(ii) Satisfactory Completion of Tobacco Awareness Course:

- On receipt of the evidence of satisfactory completion of the tobacco awareness course, the court must discharge the defendant and dismiss the complaint;
- Defendant is released from all penalties and disabilities resulting from the offense except that the defendant is considered to have been convicted of the offense if the defendant is subsequently convicted of an offense committed after the dismissal.

(iii) Failure to Complete Tobacco Awareness Course:

- If defendant does not provide the evidence of satisfactory completion of the tobacco awareness course within the 90 day period allowed, the court must order the Department of Public Safety to suspend or deny issuance of any driver's license or permit to the defendant;
- Court must specify the period of the suspension or denial, which may not exceed 180 days after the date of the order.
- The Department of Public Safety is to notify defendant of the court's action.

(iv) Suspension of sentence and deferral of final disposition:

The provisions of the Health and Safety Code governing this offense, do not make reference to deferred disposition. The statute specifically provides that the dispositional procedures are remedial and are not intended as punishment.

However, a justice court is given the authority to exercise jurisdiction over any matter in which a court under this subchapter may: (1) impose a requirement that a defendant attend a tobacco awareness program or perform tobacco-related community service; or (2) order the suspension or denial of a driver's license or permit.

TEX. HEALTH & SAFETY CODE §161.256.

2. Expunction:

1. Requirements:

- Defendant convicted of possession, purchase, consumption or receipt of cigarettes or tobacco products, may apply to court to have conviction expunged;

- ❑ Payment of a \$30 fee to defray the cost of notifying state agencies of an order of expungement.

2. Procedure:

- ❑ If court finds that defendant satisfactorily completed tobacco awareness program, court shall order the conviction, and any complaint, verdict, sentence, or other document relating to the offense to be expunged from record;
- ❑ Conviction may not be shown or made known for any purpose.

TEX. HEALTH & SAFETY CODE §161.255.