

ALCOHOL OFFENSES IN MUNICIPAL COURT

2010-2011 TMCEC
Regional Seminar

2009 Municipal Court Statistics

- * 34,745 non-driving juvenile ABC cases
- * 2,852 DUI-Minor cases filed

Impact on Community

Few Offenses affect our community to the degree that substance abuse may.

Public perception is that Municipal Courts hear only traffic related offenses.

Public perception is that Municipal Courts are created solely to generate revenue

Reality

- * Underage alcohol use more likely to kill than all illegal drugs combined
- * 5,000 under age 21 die from alcohol-related injuries each year
- * 120,000 alcohol-related Emergency rooms visits each year

Consequences

Personal Consequences:

- Health
- Work
- Family
- Personal Relationships

Legal Consequences

Legal Consequences:

- Punishment: Fines, Probation, and Jail
- Disqualification/ Employment Opportunities
- Legal Costs for legal counsel

Impact on Court

- Increased possibility of trial requests
- Increased conflict
- Increased contact with Attorneys
- Increased requests for Deferred Disposition
- Increased requests for "alternative disposition"
- Expunction and Non-Disclosure requests

Trial Issues

- Greater need for specificity in complaint
- Processing jail paperwork
- Defendant notification issues
- Officer education
- Deviation from traditional citation processes

Class "C" Offenses: Adult Offenses

- Offenses related to alcohol filed and heard in municipal court:
- Public Intoxication
 - Sale, Possession or Consumption of Alcohol (adult) where prohibited/after hours/TABC laws
 - Open Container of Alcohol in MV
 - City Ordinance Violations (alcohol in park, etc.)
 - Ancillary Offenses such as disorderly conduct, criminal mischief, assault and "public order" offenses

Public Intoxication

Elements of Offense:

- **Intoxicated**
- **In a public place**
- **"To a degree that they may be a danger to self or others"**

Punishment:

- **Fine of not less than \$1 nor more than \$500**

Possession of Alcohol M.V. (Penal Code 49.031)

Elements

- Possession of alcoholic beverage
- In a motor vehicle "located on a public highway"
- With an "open container" of alcohol
- In the passenger area of the motor vehicle defined as "the area of a motor vehicle designed for the seating of the operator and passengers of the vehicle.
- Does not include glove compartment or storage container that is locked; trunk; or area behind the last upright seat of the vehicle, if the vehicle does not have a trunk.

Possession of Alcohol In Motor Vehicle (Cont.)

- Exceptions such as limo, bus, living quarters of motorized house coach
- Peace officer cannot arrest – must issue citation
- Notice must contain date and time of appearance
- Fine not to exceed \$500
- Found in Penal Code – Not Trans. Code

T.A.B.C. Offenses

- Adults can be charged with possession and consumption of alcohol related offenses
- Most possession / sale/ consumption of alcohol by adult are related to hours or place of consumption
- Some offenses are related to "licensed premises" issues

Adult City Ordinance Violations

- Many cities, particularly home-rule or charter municipalities adopt ordinances related to possession or consumption in certain areas
- Some city ordinances are related to special event or permit violations
- While city ordinances are punished by fine:
 - convictions are not reported to DPS, and
 - Offenses generally cannot be enhanced

JUVENILE ALCOHOL OFFENSES

Goal of Juvenile Justice

- § 51.01 Family Code – goal and purpose of juvenile justice processes:
 - Treatment, training, and rehabilitation;
 - Care, protection, wholesome moral, mental, and physical development of children
- Chapter 45 of Texas Code of Criminal Procedure reflects same goal

Purpose: T.A.B.C.

- Texas Alcoholic Beverage Code Sec. 1.03:
 - “Protection of the welfare, health, peace, temperance, and safety of the people of the state”

“Minor” or “Child”

- Both minors and children must make a physical appearance in open court (no mail)
- Minors (under 21) who are 17 or older may appear without parent/ guardian
- Children may not be released on citation
- Children must be released to parent/guardian
- Must be held in “non-secure” custody
- Both punished under ABC § 106.071

Alcohol Offenses – Under 21

- **Public Intoxication by a Minor**
- **Minor In Possession of Alcohol**
- **Minor Consumption of Alcohol**
- **Minor Driving Under the Influence**
- **Minor Purchasing/ Attempting to Purchase Alcohol**
- **Misrepresentation of Age by Minor (or the purpose of obtaining alcohol)**

Parental Orders

- **Court may order parent to do/refrain from any act that increases likelihood minor will complete AAC**
- **T.A.B.C. Sec. 106.115 (d)**

Additional Sanctions for Children

- **T.C.C.P. Art. 45.057 also allows the Court to issue an order:**
 - Referring child or parent to child welfare services
 - Requiring Child to attend special program in best interest of Child

Additional Sanctions Upon Conviction

T.A.B.C. Sec. 106.0171 requires that, a defendant who is under 21 and found guilty of a alcohol related offense **MUST:**

- complete an Tx. Dept. of Health approved "Alcohol Awareness Course for Minors"
- Provide proof of completion of alcohol related community service; and
- The Court must suspend drivers license and notify DPS

Public Intoxication by Minor

- Same basic elements of offense as applied to adult (intoxicated to a degree that they may be a danger to self or others)
- Offense found in Penal Code
- Punishment is found under Sec. 106, T.A.B.C.
- Requires additional sanctions:
 - Alcohol Awareness Course required
 - Community Service in addition to fine
 - Suspension of Drivers License

Minor Driving Under Influence

- A.B.C. 106.041, D.U.I. Elements:
 - Minor (under 21)
 - Operating motor vehicle
 - in a Public Place
 - "Any detectable amount"
 - Alcohol (only)
 - In the Minor's system

Mandatory Community Service

- Upon conviction, or deferred disposition, the Court must order that the defendant, in addition to any fine, perform community service.
- First Offense, 8-12 hrs
- Second Offense, 20-40 hrs
- First DUI, 20-40 hrs
- Second DUI, 40-60 hrs

Type of Community Service

- Community Service "must be" related to education about or prevention of misuse of alcohol
- If no such programs are available the Court "may" order comm. Serv. That the Court considers appropriate for rehabilitative purposes."

Drivers License Suspension

On Conviction Court "Shall" Order Suspension:

- (A) 30 days first offense
- (B) 60 days second offense
- (C) 180 days third & subsequent
- The Court does NOT notify DPS of DL suspension on D.U.I. as D.P.S. processes these administratively

"Prior Conviction"

For purposes of TABC Sec. 106, "Prior Conviction" means:

- Prior adjudication under Family Code, Title 3 (Juvenile Court)
- Prior conviction in any municipal or justice court, or
- Prior order of deferred disposition under ABC, even if dismissed

Limitation on Deferred Disposition

- On a third offense for any offense punishable under Sec. 106.071 of TABC, a defendant who is 17 y.o.a. or older is **NOT** eligible for dismissal by Deferred Disposition

Deferred Disposition

- Court may grant Deferred Disposition (45.051)
- If Deferred Granted, the Court must still order:
 - Completion of "Alcohol Awareness Course for Minors", and
 - Provide proof of completion of alcohol related community service
- No report of conviction and No D.L. suspension

ADULT ENHANCEMENTS

- Tx. Penal Code 12.43(c) provides for enhancement of certain class "c" offenses related to alcohol
- Enhancement to Class "B" offense prosecuted in the County Court as to:
 - Disorderly Conduct (P.C. 42.01), and
 - Public Intoxication (P.C. 49.02)

Requirements -Adult Enhancement

In order to enhance Class "C" to Class "B":

- Three (3) prior offenses within last 24 months, based on
- Offense dates, not date of conviction
- Can enhance based on a combination of these two offenses
- Fourth (4th) offense punished by 180 days in jail and / or \$2,000 fine

Enhancements for Minors

- T.A.B.C. 106.071 provides enhancement of third (3rd) alcohol offenses as a minor
- Filed in County Court
- Punishment:
 - 180 days and/or \$250-\$2,000 fine
 - 180 day DL suspension
 - 20-40 hrs. alcohol related community service

Minor DUI Enhancement

3rd Offense: "Misdemeanor"

- 180 days and/or \$500-\$2,000 [County Court]
- 40-60 hrs. community service
- Alcohol Awareness Course (same as 106.071)
- DL suspension:
 - 180 days w/Breath Test and any detectable amount OR if not given Breath Test
 - 240 days if refuses Breath Test
 - 1 year if prior DWI, Intoxication Assault or Manslaughter

Reporting Requirements

- Courts are required to report to DPS certain information regarding Alcoholic Beverage Code offenses committed by minors.
- The information maintained by DPS regarding Alcoholic Beverage Code offenses reported by courts is confidential and may not be released, except to law enforcement agencies and to courts to enable them to carry out their official duties.

Reporting Requirements

- Upon conviction, the judge is required to order in the judgment, the suspension or denial of issuance of the minor's driver's license for the following Alcoholic Beverage Code offenses:
- Purchase of Alcohol by a Minor (Sec. 106.02);
- Attempt to Purchase Alcohol by a Minor (Sec. 106.025);
- Consumption of Alcohol by a Minor (Sec. 106.04);
- Possession of Alcohol by a Minor (Sec. 106.05); and
- Misrepresentation of Age by a Minor (Sec. 106.07).

Drivers License Suspension

Suspension or Denial effective the 11th day after the judgment.

Report of suspension or denial of driver's license notifies DPS of the conviction. Court must use DPS form DIC-15. The length of Suspension or denial is for:

- 30 days for a first conviction.
- 60 days for a second conviction.
- 180 days for a third or subsequent conviction

Failure to Complete AA Course

- If the defendant fails to show evidence of completion of the alcohol awareness program or the performance of the community service:
- judge is required to order DPS to suspend/deny issuance of the DL for not more than six months (Sec. 106.115(d)); and
- clerk reports the judge's order to DPS using form DIC-15, which notifies DPS of the beginning and ending of the suspension or denial of issuance period. Sec. 521.345, T.C.

Reporting Deferred

- Courts must report to DPS an Alcoholic Beverage Code offense deferred under Article 45.051, C.C.P. Sec. 106.117(a)(3), A.B.C.
- Report must be submitted to DPS when deferred granted
- Notice of the deferred disposition must be in a form prescribed by DPS w/ driver's license number
- If the defendant fails to complete alcohol awareness the court must order DPS to suspend driver's license and report to DPS on the DIC-15 form.

Report of Acquittal -D.U.I.

- **Section 106.117(a)(4), A.B.C., requires courts to report to DPS the acquittal of the offense of driving under the influence of alcohol (DUI) by a minor. The court must submit this report on the DPS form DIC-15.**

Report – Open Container Alcohol

- Although possession of alcoholic beverage in motor vehicle is in the Penal Code 49.031, it is considered a traffic offense. Courts are required to report convictions of this offense to DPS.
- Courts that report manually can submit the conviction report on a copy of the citation or use DPS form DR-18 and complete as any other traffic conviction.
