

Judge Joyce I. Spisak
 Presiding Judge
 Fredericksburg Municipal Court

Phone: (830) 997-9935
 FAX: (830) 997-1540
 Mail: 125 W. Main
 Fredericksburg, TX 78624

MINORS AND ALCOHOL

- I. STATISTICS RELATED TO UNDERAGE DRINKING
 - A. Municipal Courts Statistics for 2009
 1. 34,745 non-driving juvenile ABC cases
 2. 2,852 DUI-Minor cases filed
 3. Public Intoxication by Minor under P.C. § 49.02(c) is NOT included in the above figures
 - B. Accident Statistics from 2009
 1. Underage alcohol use more likely to kill young people than all illegal drugs combined
 2. Approximately 5,000 people under age 21 die from alcohol-related injuries each year
 3. Approximately 120,000 alcohol-related visits to emergency rooms involving people under 21 each year
- II. PURPOSES BEHIND LAWS RELATED TO UNDERAGE DRINKING
 - A. Family Code, Sec. 51.01
 1. To promote the concept of punishment for criminal acts
 2. To provide treatment, training, and rehabilitation
 3. To provide for the care, protection, and wholesome moral, mental, and physical development of children coming within its provisions
 - B. Alcoholic Beverage Code, Sec. 1.03
 1. "(A)n exercise of the police power of the state for the protection of the welfare, health, peace, temperance, and safety of the people of the state. It shall be liberally construed to accomplish this purpose."
- III. DISTINGUISHING A MINOR FROM A CHILD
 - A. MINOR
 1. Alcoholic Beverage Code, Sec. 106.01: "'minor' means a person under 21 years of age."
 - B. CHILD
 1. Penal Code, Sec. 8.07: "A person may not be prosecuted for or convicted of any offense that the person committed when younger than 15 years of age except: . . ."
 2. Family Code, Sec. 51.02: "Child means" (A) 10 years of age or older and under 17; or (B) 17 (under 18) but delinquent conduct before age 17
- IV. ALCOHOLIC OFFENSES RELATED TO AGE
 - A. Set forth in Chapter 106 of the Alcoholic Beverage Code
 1. Purchase of Alcohol by Minor, § 106.02
 2. Attempt to Purchase Alcohol, § 106.025
 3. Consumption of Alcohol, § 106.04
 4. Driving/Operating Watercraft Under Influence of Alcohol, § 106.041
 5. Possession of Alcohol, § 106.05
 6. Misrepresentation of Age, § 106.07

- B. Set forth in Article 49.02 of the Penal Code
 - 1. Public Intoxication
- V. SPECIFIC OFFENSES
 - A. Minor Purchasing Alcohol
 - 1. Exception: No offense IF purchase is made under immediate supervision of peace officer engaged in enforcement of ABC
 - B. Attempt to Purchase
 - 1. Must be:
 - a. Intent to commit offense
 - b. An act that is:
 - ii. More than preparation, and
 - iii. That tends, but fails to effect commission of the offense intended
 - C. Consumption of Alcohol
 - 1. Affirmative Defense: Alcoholic beverage consumed in visible presence of minor's adult parent, guardian, or spouse
 - D. Minor Driving/Boating Under the Influence
 - 1. Offense if:
 - a. Operate vehicle in public place or operate a watercraft
 - b. While having any detectable amount of alcohol in system
 - 2. Punished under §106.041
 - E. Misrepresenting Age
 - 1. Falsely stating one is 21, or
 - 2. Presenting false documents indicating age of 21 or older
 - 3. To a person engaged in selling alcoholic beverages
 - F. Public Intoxication by Minor
 - 1. Must be:
 - a. In a "public place" and
 - b. Intoxicated to a degree that may endanger oneself or another
 - 2. Defense:
 - a. Alcohol/substance was administered for therapeutic purposes, and
 - b. As part of professional medical treatment by licensed physician
- VI. SPECIAL RULES FOR PUBLIC INTOXICATION OF CHILDREN
 - A. May NOT be released with a citation under Code of Criminal Procedure Art. 14.031
 - B. May be released to parent, guardian, custodian or other responsible adult Code of Criminal Procedure, Art 45.058
 - 1. Must be held in non-secure custody until release
 - C. Minors (including children) are punished under ABC "in the same manner as if the minor committed an offense" under the ABC § 106.071
- VII. ALCOHOLIC BEVERAGE CODE PUNISHMENTS
 - A. Punishments Provisions
 - 1. Sections 106.071 sets out punishments for all alcohol related offenses listed in Section V above, except Driving or Boating While Intoxicated (DWI/BWI)
 - 2. Section 106.041 sets out punishments for DWI/BWI

- B. First & Second Convictions are Class C Misdemeanors with maximum fines of \$500
 - 1. DUI is the same, but controlled by ABC §106.041
 - C. Third & Subsequent Convictions are enhanced with fines of \$250 to \$2,000; or jail time up to 180 days; or both
 - 1. DUI is the same, but controlled by ABC §106.041
- IX. DEFERRED DISPOSITION
- A. Section 106.115 of the ABC mandates certain provisions for deferred dispositions.
 - 1. The Court “Shall” require defendant to attend an Alcohol Awareness Program approved by Texas Commission on Alcohol and Drug Abuse
 - a. Approved Courses may be found at:
http://www.dshs.state.tx.us/offendered/oe_rosters.shtm
 - b. No TCADA approved online courses
 - B. Alcohol Awareness Course
 - 1. If completed, Court may reduce fine by half (½) that assessed
 - 2. If Defendant fails to complete the course on time, the Court may grant another 90 days, but
 - 3. Court **MUST** order DPS to suspend or deny the Defendant’s driver’s license for six (6) months for a first offense, and one (1) year for a second
 - C.. Mandatory Community Service
 - 1. If Deferral is granted, the Court “Shall” order Community Service, See §106.071 (d)(1)
 - 2. First Offense, 8-12 hours Community Service
 - a. First DWI offense, 20-40 hours
 - 3. Second Offense, 20-40 hours Community Service
 - a. Section DWI, 40-60 hours
 - 4. Community Service “must be” related to education about or prevention of misuse of alcohol. See, §106.071 (e)
 - a. If no such programs are available the Court “may” order Community Service “it considers appropriate for rehabilitative purposes.”
 - D. Mandatory DL Suspension in Deferred Disposition
 - 1. The Court “Shall” order suspension of driving privileges for:
 - a. First offense - 30 days
 - b. Second offense - 60 days
 - c. Third & subsequent offenses - 180 days
 - 2. See, §§ 106.071(d)(2) and 106.071 (d)(2)
 - 3. The Court does **NOT** order suspension for DWI because those offenders are subject to administrative suspension.
 - E. A person seventeen (17) years of age or older with two (2) prior convictions in **NOT** eligible for Deferred Disposition. See 106.071(i)
 - F. What Constitutes a Prior Conviction?
 - A. A prior adjudication under Title 3 of the Family Code (Juvenile Court)
 - B. A prior order of deferred disposition under ABC, Section 106.071
- X. CHILD OFFENDERS (AGED OVER 10 AND LESS THAN 17)

- A. On finding a child committed an offense over which the Court has jurisdiction, Court MAY issue order:
 - 1. Referring child or parent to child welfare services
 - 2. Requiring child to attend special program in best interest of child
 - 3. Requiring parent do any act/refrain from act that will increase likelihood child will comply
 - a. Parenting Class
 - b. Attend Child's School Classes

XI. ENFORCEMENT OPTION

- A. Court may issue order to parent to do any act or refrain from doing any act that may increase likelihood that minor will complete Alcohol Awareness Program. See ABC 106.115(d) and Code of Criminal Procedure Art. 45.057(b)(3)
- B. Notify DPS the defendant has failed to appear or is in default on payment
 - 1. DPS will withhold license under Traffic Code Section 521.201(8)
- C. Proceedings against parent
 - 1. Charge with Failure to Appear, See, Code of Criminal Procedure, Arts. 45.0215(d) and 45.057(g) and Bench Book, Checklist 13-17
 - a. Must have been properly served with summons to appear (See Code of Criminal Procedure Section 45.2020)
 - 2. Contempt for failure to comply with Court's order(s), See Code of Criminal Procedure, Art. 45.054(b) and Bench Book, Checklist 13-16
 - a. Proceed under Government Code, Section 21.002(c)
 - i. Fine of \$100 and/or jail for three (3) days
- D. Juvenile Contempt Under Code of Criminal Procedure 45.050 See also Art 45.057(f) and Bench Book, Checklists 13-15 and 13-27
 - 1. Procedure
 - a. Notice of Contempt
 - b. Hearing
 - 2. Judicial Choices (17)(a child), See Section 45.050(c)
 - a. After hearing Court may:
 - a. Refer child to Juvenile Court for Delinquent Conduct, OR
 - b. Retain jurisdiction and hold child in contempt
 - i. \$500 maximum fine and/or
 - ii. DL suspension until full compliance
 - 3. Defendant failed to obey the order while seventeen (17) or older, See Section 45.050(d)
 - a. Must have been convicted before 17th birthday;
 - b. Failure to obey occurred under circumstances constituting contempt
 - 4. Defendant engaged in conduct that amounted to contempt before seventeenth (17th) birthday, See, Section 45.050(e)
 - a. Court must have been unable to hold contempt proceedings before defendant turned seventeen (17)

NOTE: For more detailed information on Contempt Proceedings, see the Bench Book, Chapter 13 and Checklists 13-15, 13-16, 13-17, and 13-27

FREDERICKSBURG MUNICIPAL COURT

NOTICE OF RIGHT OF EXPUNCTION

Expunge means to erase, remove or wipe out. When a case is expunged, the judge issues an order requiring the conviction, along with the complaints, verdicts, sentences and other documents to be expunged (removed) from the applicant's records.

ALCOHOL RELATED OFFENSES:

To be eligible, the minor must not have been convicted of more than one alcohol-related offense and is now 21 years old (Section 106.12{a}, Texas Alcoholic Beverage Code). Deferred disposition is NOT a conviction; therefore, if a minor was placed on deferred disposition for his or her alcohol violation, he/she is NOT ELIGIBLE to have his/her alcohol case expunged.

To expunge the offense, the person must file with the municipal court that tried the case (the municipal court in which the minor entered a plea) a sworn application that the person only has had one conviction (the offense the person is trying to expunge) and is now 21 years of age (Section 106.12{b}, TABC.). The sworn application must contain the name and address of the organization that he or she performed his/her alcohol-related community service and alcohol awareness course. There is a \$30.00 fee to defray mailing costs for the expungement process. The fee is to be paid at the time the sworn application is submitted to the court. After the order is issued, the applicant is released from all disabilities arising from the conviction. In addition, the case may not be shown or made known for any purpose (Section 106.12{c}, TABC.).

PENAL CODE OFFENSES:

Art. 45.0216 Texas Code of Criminal Procedure provides that a child who is at least 10 years of age and under 17 and has been convicted on only one fine-only offense described Sections 8.07(a)(4) and (5) of the Texas Penal Code may apply to the court in which he or she was convicted to have the conviction expunged. Section 8.08 of the Penal Code provides for the age affecting criminal responsibility. Subsections 8.07(a)(4) and (5) include penal ordinance offenses and fine-only misdemeanor offenses.

When the child reaches the age of 17, he or she may apply to the court in which the conviction occurred to have the conviction expunged. The application must be in writing and made under oath. It must contain a statement that the person was not convicted while a child of any offense described by Subsections 8.07(a)(4) or (5) Texas Penal Code, other than the offense the person seeks to have expunged.

Art. 45.0216. EXPUNCTION OF CERTAIN CONVICTION RECORDS OF CHILDREN:

- (a) In this article "child" has the meaning assigned by Section 51.02 of the Texas Family Code.
- (b) A person convicted of not more than one offense described by Section 8.07(a)(4) or (5) of the Texas Penal Code, while the person was a child may, on or after the person's 17th birthday, apply to the court in which the child was convicted to have the conviction expunged as provided by this article.
- (c) The person must make a written request to have the record expunged and the request must be sworn to under oath.
- (d) The request must contain the person's statement that the person was not convicted while the person was a child of any offense described by Section 8.07(a)(4) or (5) of the Texas Penal Code, other than the offense the person seeks to have expunged.

(e) The judge shall inform the person and any parent in open court of the person's expunction rights and provide them a copy of this article.

(f) If the court finds that the person was not convicted of any other offense described by Section 8.07(a)(4) or (5) of the Texas Penal Code, while the person was a child, the court shall order the conviction, together with all complaints, verdicts, sentences and prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person's record. After entry of the order, the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose.

(g) This article does not apply to any offense otherwise covered by:

1. Chapter 106, Texas Alcohol and Beverage Code;
2. Chapter 161, Texas Health and Safety Code; or
3. Section 25.094, Texas Education Code.

(h) Records of a person under 17 years of age relating to a complaint dismissed as provided by Articles 45.051 or 45.052 may be expunged under this article.

(i) There is a \$30.00 fee to defray mailing costs for the expungement process. The fee is to paid at the time the request is submitted to the court.

(j) The procedures for expunction provided under this article are separate and distinct from the expunction procedures under Chapter 55.

HEALTH AND SAFETY CODE OFFENSES, TOBACCO:

An individual may apply to the court, in which the conviction occurred, to have the conviction expunged. The request must be in writing and made under oath. The applicant must have completed the Tobacco Awareness Course for each conviction. There is a \$30.00 fee to defray mailing costs for the expungement process. The fee is to paid at the time the sworn request is submitted to the court.

An individual convicted of an offense under Section 161.252 of the Texas Health & Safety Code may apply to the court to have the conviction expunged. If the court finds that the individual satisfactorily complied the tobacco awareness program or tobacco-related community service ordered by the court, the court shall order the conviction and any complaint, verdict, sentence or other document relating to the offense to be expunged from the individual's record and the conviction may not be shown or made known for any purpose.

A copy of Article 45.0216, Texas Code of Criminal Procedures is appended hereto as Attachment 1 and made a part of this document.

ACKNOWLEDGEMENT OF RECEIPT OF NOTICE OF RIGHT OF EXPUNCTION

I/we hereby acknowledge that I/we received a copy of this Notice of Right of Expunction and Article 45.0216, Texas Code of Criminal Procedures, in open court on this the _____ day of _____, 20_____.

Defendant's signature

Parent's signature

Defendant's printed name

Parent's printed