

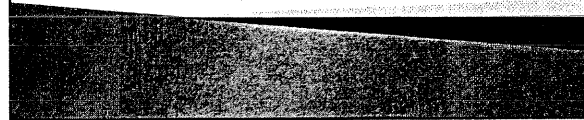
JOYCE SPISAK, PRESIDING JUDGE
CITY OF FREDERICKSBURG

**MINORS & CHILDREN
WITH ALCOHOL
OFFENSES**



Minor's Complaint

➤ "If I'm old enough to fight and die for my country, I ought to be old enough to drink."



Minors, Children and Alcohol

2009 Municipal Courts Statistics


34,745 non-driving juvenile alcohol cases filed

2,852 DUI-Minor cases filed



STATISTICS RELATED TO UNDERAGE DRINKING

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




JUVENILE JUSTICE CODE PURPOSE

- ▶ **§ 51.01 Family Code**
 - To promote the concept of punishment for criminal acts
 - To provide treatment, training, and rehabilitation
 - To provide for the care, protection, and wholesome moral, mental, and physical development of children coming within its provisions

**Public Policy
Alcoholic Beverage Code § 1.03**

This code is an 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.



Who is a Minor?

MINOR

A person under 21 years of age

Texas Alcoholic Beverage Code §106.01

Who is a Child?

Child

A child means a person who is (a) 10 years of age or older AND under 17 years of age; or (b) 17 years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct in need of supervision as a result of acts committed before becoming 17 years of age

Family Code §51.02

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Alcohol Offenses

▶ Chapter 106 ABC

- § 106.02 Purchase of Alcohol by Minor
- § 106.025 Attempt to Purchase Alcohol
- § 106.04 Consumption of Alcohol
- § 106.041 Driving a Motor Vehicle or Operating Watercraft Under the Influence of Alcohol
- § 106.05 Possession of Alcohol
- § 106.07 Misrepresentation of Age

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Penal Code 49.02

Public Intoxication

NEW OFFENSE as of 9/01/09

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Specific Offenses

Minor Purchasing Alcohol

▶ Exception:

No offense IF purchase is made under immediate supervision of peace officer engaged in the enforcement of ABC

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Attempt to Purchase

- ▶ Must be:
 - Intent to commit offense
 - Minor performs an act amounting to more than preparation that tends, but fails to effect commission of the offense intended

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Minor in Possession

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

Section 106.05

EXCEPTIONS TO MIP OFFENSE

- ▶ 1. While in course & scope of minor's employment **IF** the minor is an employee of a licensee or permittee and the employment is not prohibited by the ABC;
- ▶ 2. In visible presence of his **adult** parent, guardian or spouse, or other adult to whom the minor has been committed by a court; **OR**
- ▶ 3. Under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of the ABC.

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Consumption of Alcohol

Affirmative Defense:

Alcoholic beverage consumed in visible presence of minor's **adult** parent, guardian, or spouse

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Minor Driving/Boating Under the Influence

Offense if

- operate vehicle in public place or operate a watercraft
- while having **any** detectable amount of alcohol in system

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Misrepresenting Age

- ▶ Falsely stating one is 21
- ▶ Presenting false documents indicating age of 21 or older
- ▶ To a person engaged in selling alcoholic beverages

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Public Intoxication by Minor
Penal Code § 49.02

- Must be in a "public place" and intoxicated to a degree that may endanger oneself or another
- Defense: Alcohol/substance was administered for therapeutic purposes and as part of professional medical treatment by licensed physician

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Public Intoxication of Children
Special Rules

- ▶ **May NOT be released under CCP Art. 14.031 (cannot issue citation, then release child)**
- ▶ **May be released under CCP Art 45.058 to parent, guardian, custodian or other responsible adult or held in Non-Secure custody until released**
- ▶ **Minors/children are punished under ABC "in the same manner as if the minor/child committed an offense" under § 106.071, Alcoholic Beverage Code applies**

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"Child" Offenders (CCP Art 5.057)

- ▶ Court **MAY** issue an order:
 - Referring a child or parent to child welfare services
 - Requiring a child to attend a special program that is in the best interest of the child

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MINOR'S APPEARANCE AND PLEA

Must a minor (17 or over, but under 21) appear in person in open court to enter a plea?

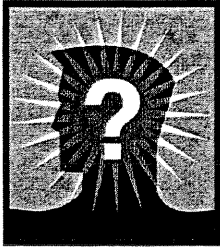
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Sec. 106.10 of the Alcohol and Beverage Code

"no minor may plead GUILTY to an offense under this chapter except in open court before a judge."

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What about a No Contest or a Not Guilty Plea?



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Punishments

ABC Punishment

- ▶ § 106.071
- ▶ § 106.041 DUI ONLY

First & Second Offenses

- ▶ Class C Misdemeanor w/ Max Fine \$500
- ▶ DUI same, but remember, ABC §106.041 controls

Third & Subsequent Offenses

Fine of \$250 to \$2,000; jail up to 180 days; or both

DUI Fine \$500 to \$2,000
§106.041(c)(1)

NOTE: No Deferred Disposition or Deferred Adjudication, if a minor has 2 or more convictions §106.071(i)

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Additional Mandatory Punishment for 1st Offense

- ▶ Deferred:
 1. Alcohol Awareness Course (AAC)
 2. Alcohol Related Community Service (ARCS)
- ▶ Conviction:
 1. & 2. above **AND**
 3. Driver's License Suspension

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1. Alcohol Awareness

A. The Court "**Shall**" require attendance at an approved Alcohol Awareness Program **AND** submit proof of said attendance to the Court within 90 days (§ 106.115)

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What if there is no AAC in your area?

Call 800-832-9623

Go on-line for a listing of locations

http://www.dshs.state.tx.us/offendered/oe_rosters.shtm

Contact the training coordinator at your Regional MADD organization to schedule AAC date and time in your city/county

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Alcohol Awareness Course

B. **On Completion:** Court **may** reduce fine by 1/2

NOTE: There are **NO** TCADA approved online courses

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C. **Failure to Complete AAC:**

Court **may** grant an additional 90 days to complete AAC

If AAC not completed, the Court **MUST** order DPS to suspend/deny DL for 6 months (first offense)

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QUESTION ?

If a minor has been previously convicted of an alcohol offense, is the minor **required** to complete AAC ?

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ANSWER:

NO; however, the Court **MAY** require the individual to attend the AAC program

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**Order to Parent
(ABC 106.115 [a] and [d][2])**

May order parent to complete AAC with minor **IF** the minor is younger than 18
paragraph (a)

Court may order parent to do/refrain from doing act that increases likelihood that the minor will complete the AAC or CSR
paragraph (d) (2)

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2. Mandatory Community Service [§106.071 (d)(1)]

- A. The Court **"Shall"** order CS
 - 1. First Offense, **8-12 hours**
-- First DUI, **20-40 hours**
 - 2. Second Offense, **20-40 hours**
-- Second DUI, **40-60 hours**

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- B. Community Service "must be" related to education about or prevention of misuse of alcohol [§106.071 (e)]

- 1. If no such programs are available the Court "may" order CS "it considers appropriate for rehabilitative purposes."

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ARCS Alternatives

Tour the emergency room at a local hospital, interview an ER doctor and write a paper

Watch "Shattered Dreams" and write paper

Interview EMTS and write a paper

"Operation Intervention" – within 100 miles of New Braunfels; Contact Sgt. Heath Purvis at (830) 221-4117

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3. Mandatory DL Suspension

On conviction Court **Shall** order suspension §106.071(d)(2)]

- (A) 30 days first offense
- (B) 60 days second offense
- (C) 180 days third & subsequent

*** DUI offenders are subject to administrative suspension **NOT** court ordered suspension

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What Constitutes a Prior Conviction?

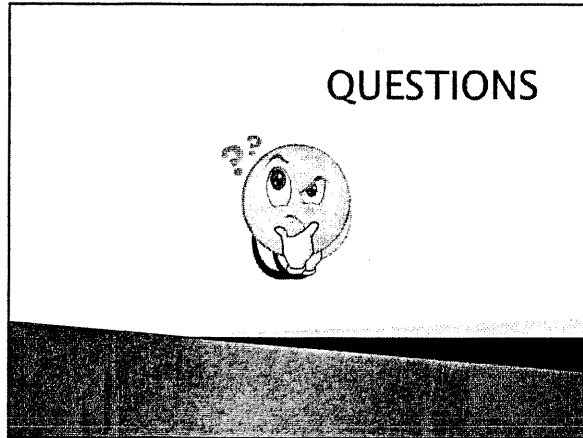
- (1) Prior adjudication under Family Code, Title 3 (Juvenile Court)
- (2) Prior order of deferred disposition under §106.071

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Third Offense Limitation

A defendant who is **17 or older** with two or more priors is **not** eligible for deferred disposition or deferred adjudication §106.071(i)

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