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PUNISHMENT OF MINOR ALCOHOL OFFENSES

Juveniles and Alcohol in Municipal Courts


- In 2009, there were:
 - 34,745 non-driving juvenile ABC cases filed in municipal courts alone.
 - 2,852 DUI of Alcohol cases filed in municipal courts.
- Over 37,500 Juvenile Alcohol related cases under the ABC
 - This doesn't include any Public Intoxication cases filed (which reside in the Penal Code)

Minors, not children?

- Codes use the terms “child” and “minor” to specify certain age groups
- The terms are not synonymous
- We must look to individual codes to gain an understanding of the terms and definitions




Alcoholic Beverage Code

- §106.01 of the ABC defines a person who is under the age of 21 as being a minor.
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Status Offenses

- Actions that are prohibited for minors because of their age.
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Why have status offenses?

- The basis for status offenses is believed to stem from the legal theory of *parens patriae*
- *Parens patriae* is Latin for “father of the people” and refers to the public policy power of the state to act as a parent for children in need of protection

Public Policy of the ABC

- Sec. 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.

Juvenile Justice Code Purposes

- (§ 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 the wholesome, moral, mental, and physical development of children coming within its provisions

Why have status offenses?

- Paternal role: protecting the children
- Treatment, training, rehabilitation
- Protecting society, maintaining order
- Setting example for the future
- Conduct is sometimes seen as gateway conduct to more severe behavior
- *These should be kept in mind when dealing with minors and alcohol offenses.*

Minor Alcoholic Beverage Code Offenses

- Purchase of alcohol by a minor
- Attempt to purchase alcohol by a minor
- Consumption of alcohol by a minor
- Driving (or boating) under the influence of alcohol by a minor
- Possession of alcohol by a minor
- Misrepresentation of age by a minor
- *All are found in the Chapter 106 of the Alcoholic Beverage Code*
- *Public Intoxication under the Penal Code (also punished under the ABC)*

Purchase of Alcohol by a Minor 106.02 ABC

- Minor commits an offense if the minor purchases an alcoholic beverage
- Exception
 - No offense if the minor purchases under the immediate supervision of a peace officer engaged in enforcement of ABC
- Punishable by 106.071

Attempt to Purchase Alcohol by a Minor 106.025 ABC

- Offense if with intent to commit an offense under 106.02, minor does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended
- Punishable by 106.071

Consumption of Alcohol by a Minor 106.04 ABC

- A minor commits an offense if he consumes an alcoholic beverage
- Affirmative Defense
 - The alcoholic beverage was consumed in the visible presence of the minor's adult parent, guardian, or spouse.
- 3rd offense → not eligible for deferred disposition
- Punishable under 106.071

DUI/BUI 106.041 ABC



- Offense for a minor to operate a motor vehicle in a public place, or a watercraft, while having any detectable amount of alcohol in system
- 3rd offense → not eligible for deferred disposition
- Punished under its own provision (106.041)

Possession of Alcohol by a Minor 106.05 ABC

- Offense for a minor to possess an alcoholic beverage
- Exception- Minor may possess an alcoholic beverage:
 - In the course of employment not prohibited by ABC;
 - If in the visible presence of adult parent, guardian, spouse; OR
 - Under the immediate supervision of a peace officer
- Punishable under 106.071

Misrepresentation of Age by a Minor 106.07 ABC

- Offense for a minor to falsely state they are 21 or older or presents document indicating age 21 or older to a person engaged in selling or serving alcoholic beverages
- Punishable under 106.071



Public Intoxication, 49.02

PC

- For a long time, Municipal and Justice Courts did not have jurisdiction over the Public Intoxication of Children!
- HB 558 Changed it all
- September 1, 2009
- We did have jurisdiction of adult minors charged with DUI

Public Intoxication, 49.02 PC

- Offense for a person to appear in a public place while intoxicated to the degree that they may endanger themselves or another
- Defense to prosecution:
 - Alcohol or other substance was administered for therapeutic purposes and as a part of the person's professional medical treatment
- If committed by a person under 21, punishable under 106.071 ABC

Public Intoxication of Children

- Children Charged with PI
 - May NOT be released under Art. 14.031, CCP
 - May be released to child's parent, guardian, custodian, or other responsible adult under Art. 45.058, CCP
 - May be issued a citation upon release to parent, guardian, custodian, or other responsible adult under Art. 45.058
 - Punished under Section 106.071 if committed by a minor

Penalties: 106.071 ABC

- 1st Conviction
 - Class C misd. (max \$500 fine)
 - Mandatory alcohol awareness program
 - Mandatory 8-12 hr alcohol-related community service
 - DL suspension or denial– 30 days; effective 11th day after conviction

Penalties: 106.071 ABC

- 2nd Conviction
 - Max \$500 fine
 - optional alcohol awareness program
 - Mandatory 20-40 hrs alcohol-related community service
 - DL suspension or denial – 60 days
- 3rd conviction
 - Enhanceable to include jail time
 - DL suspension- 180 days

DUI Penalties: 106.041 ABC

- 1st Conviction
 - Max \$500 fine
 - Mandatory alcohol awareness
 - Mandatory 20-40 hrs of alcohol-related community service
 - Administrative DL suspension (court does not suspend)

DUI Penalties: 106.041 ABC

- 2nd Conviction
 - Max \$500 fine
 - *Optional* alcohol awareness
 - Mandatory *40 to 60* hours of alcohol-related community service
 - Administrative DL suspension
- 3rd Conviction
 - Enhanceable to include jailtime

Alcohol Awareness Program


- Required on conviction or as a condition of deferred under 106.115 for the following offenses:
 - 106.02: Purchase of Alcohol by a Minor
 - 106.025: Attempt to Purchase Alcohol by a Minor
 - 106.04: Consumption of Alcohol by a Minor
 - 106.041: Driving (or Boating) Under the Influence
 - 106.05: Possession of Alcohol by a Minor
 - 106.07: Misrepresentation of Age by a Minor
 - 49.02 PC Public Intoxication

Alcohol Awareness Program

- If completed
 - Court may reduce fine to half the amount assessed
- Failure to complete
 - Court can give another 90 days
 - Court must order DPS to suspend or deny issuance of DL for up to 6 months (1st) or 1 year (2nd)
- Must be approved by the Texas Commission on Alcohol and Drug Abuse (TCADA)
 - Information about programs can be found at www.dshs.state.tx.us/offendered
 - No known, TCADA approved online courses



Parents

- ABC Sect. 106.115(d)
 - Court may order parent to do any act or refrain from an act to increase likelihood that minor will complete alcohol awareness program after child fails to complete program
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Alcohol-Related Community Service

- Must be related to education about or prevention of misuse of alcohol if programs are available in the community (106.071, 106.041)
- If programs are not available in the community, court may order community service that it considers appropriate for rehabilitative purposes (106.071)

Driver License Suspension

- The court shall order DPS to suspend a license or permit (or deny issuance)
 - 30 days, first offense
 - 60 days, second offense
 - 180 days, third offense
- Use DIC-15 form

Offenses Committed by Juveniles 45.057 CCP

- On a finding by a municipal court that a **child** committed an offense that the court has jurisdiction of, the court has jurisdiction to enter an order:
 - Referring child or parent for child welfare services
 - Requiring child to attend a special program in the best interest of the child
 - Requiring parent to do any act or refrain from any act that will increase the likelihood of compliance

Juvenile Contempt: 45.050 CCP

- Court must provide notice of and conduct hearing before it may
 - Refer child to juvenile court for delinquent conduct, OR
 - Retain jurisdiction and hold child/person in contempt
 - \$500 max fine **and/or**
 - DL suspension until full compliance

Statistics (18-22 year olds)

Full Time College Students

- Alcohol Use in the Past Month:
63.7%
- Binge drinking :
43.6%
- Heavy Use Rates:
17.2%

Those Not Full Time

- Alcohol Use in the Past Month:
53.5%
- Binge drinking :
38.4%
- Heavy Use Rates:
12.9%



Statistics

- Underage alcohol use is more likely to kill young people than all illegal drugs combined
- Approximately 5,000 persons under age 21 die from alcohol-related injuries involving underage drinking each year
- Approximately 120,000 alcohol-related visits to the emergency department involving people under the age of 21



Statistics

- Compared with non-drinking classmates, teens who drink are more likely to:
 - Die in a car crash
 - Get pregnant
 - Flunk school
 - Be sexually assaulted
 - Become an alcoholic later in life
 - Take their own life through suicide

For More Information

- http://www.tabc.state.tx.us/laws/underage_drinking_laws.asp
- www.madd.org
- The Recorder May 2009 “Online Alcohol Awareness Classes”
- <http://www.2young2drink.com/>
- Listservs : send your name, title, court name, telephone number, and email address to Hope Lochridge at lochridge@tmcec.com

Questions?

- Thank you for your time!

