



CRIME PREVENTION HANDOUT

THE ALCOHOLIC BEVERAGE CODE SECTIONS REFERENCING MINORS

CHAPTER 106. PROVISIONS RELATING TO AGE

Sec. 106.01. DEFINITION

In this code, "minor" means a person under 21 years of age.

Sec. 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.

Sec. 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

Sec. 106.03. SALE TO MINORS

(a) A person commits an offense if with criminal negligence he sells an alcoholic beverage to a minor.

(b) A person who sells a minor an alcoholic beverage does not commit an offense if the minor falsely represents himself to be 21 years old or older by displaying an apparently valid Texas driver's license or an identification card issued by the Texas Department of Public Safety, containing a physical description consistent with his appearance for the purpose of inducing the person to sell him an alcoholic beverage.

(c) An offense under this section is a Class A misdemeanor.

Sec.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.

Sec. 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 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.

(c) If it is shown at the trial of the defendant that the defendant is a minor who is not a child and who has been previously convicted at least twice of an offense under this section, the offense is punishable by:

(1) a fine of not less than \$500 or more than \$2,000;

(2) confinement in jail for a term not to exceed 180 days; or

(3) both the fine and confinement.

(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.
- (f) 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.
- (g) An offense under this section is not a lesser included offense under Section 49.04, Penal Code.
- (h) For the purpose of determining whether a minor has been previously convicted of an offense under this section:
 - (1) an adjudication under Title 3, Family Code, that the minor engaged in conduct described by this section is considered a conviction 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.
- (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.
- (j) In this section:
 - (1) "Child" has the meaning assigned by Section 51.02, Family Code.
 - (2) "Motor vehicle" has the meaning assigned by Section 32.34(a), Penal Code.
 - (3) "Public place" has the meaning assigned by Section 1.07, Penal Code.

Sec. 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.

Sec. 106.06. PURCHASE OF ALCOHOL FOR A MINOR; FURNISHING ALCOHOL TO A MINOR

- (a) Except as provided in Subsection (b) of this section, a person commits an offense if he purchases an alcoholic beverage for or gives or with criminal negligence makes available an alcoholic beverage to a minor.
- (b) A person may purchase an alcoholic beverage for or give an alcoholic beverage to a minor if he is the minor's adult parent, guardian, or spouse, or an adult in whose custody the minor has been committed by a court, and he is visibly present when the minor possesses or consumes the alcoholic beverage.
- (c) An offense under this section is a Class A misdemeanor.

Sec. 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.

Sec. 106.071. PUNISHMENT FOR ALCOHOL-RELATED OFFENSE BY MINOR

- (a) This section applies to an offense under Section 106.02, 106.025, 106.04, 106.05, or 106.07.
- (b) Except as provided by Subsection (c), an offense to which this section applies is a Class C misdemeanor.
- (c) If it is shown at the trial of the defendant that the defendant is a minor who is not a child and who has been previously convicted at least twice of an offense to which this section applies, the offense is punishable by:
 - (1) a fine of not less than \$250 or more than \$2,000;
 - (2) confinement in jail for a term not to exceed 180 days; or
 - (3) both the fine and confinement.
- (d) In addition to any fine and any order issued under Section 106.115:
 - (1) the court shall order a minor placed on deferred disposition for or convicted of an offense to which this section applies to perform community service for:
 - (A) not less than eight or more than 12 hours, if the minor has not been previously convicted of an offense to which this section applies; or

(B) not less than 20 or more than 40 hours, if the minor has been previously convicted once of an offense to which this section applies; and

(2) the court shall order the Department of Public Safety to suspend the driver's license or permit of a minor convicted of an offense to which this section applies or, if the minor does not have a driver's license or permit, to deny the issuance of a driver's license or permit for:

(A) 30 days, if the minor has not been previously convicted of an offense to which this section applies;

(B) 60 days, if the minor has been previously convicted once of an offense to which this section applies; or

(C) 180 days, if the minor has been previously convicted twice or more of an offense to which this section applies.

(e) Community service ordered under this section must be related to education about or prevention of misuse of alcohol if programs or services providing that education are available in the community in which the court is located. If programs or services providing that education are not available, the court may order community service that it considers appropriate for rehabilitative purposes.

(f) For the purpose of determining whether a minor has been previously convicted of an offense to which this section applies:

(1) an adjudication under Title 3, Family Code, that the minor engaged in conduct described by this section is considered a conviction 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.

(g) In this section, "child" has the meaning assigned by Section 51.02, Family Code.

(h) A driver's license suspension under this section takes effect on the 11th day after the date the minor is convicted.

(i) A defendant who is not a child and who has been previously convicted at least twice of an offense to which this section applies is not eligible to receive a deferral of final disposition of a subsequent offense.

Sec. 106.08. IMPORTATION BY A MINOR

No minor may import into this state or possess with intent to import into this state any alcoholic beverage.

Sec. 106.09. EMPLOYMENT OF MINORS

(a) Except as provided in Subsections (b) and (c) of this section, no person may employ a person under 18 years of age to sell, prepare, serve, or otherwise handle liquor, or to assist in doing so.

(b) A holder of a wine only package store permit may employ a person 16 years old or older to work in any capacity.

(c) A holder of a mixed beverage permit may employ a person under 18 years of age to work in any capacity other than the actual selling, preparing, or serving of mixed beverages.

(d) The fact that a person is 18, 19, or 20 years of age is not a ground for refusal of an original or renewal permit or license issued under Chapter 35 or 73 of this code, provided that such person to whom a permit or license is issued may carry out the activities authorized by those chapters only while in the actual course and scope of the person's employment

Sec. 106.10. PLEA OF GUILTY BY MINOR

No minor may plead guilty to an offense under this chapter except in open court before a judge

Sec. 106.11. PARENT OR GUARDIAN AT TRIAL

(a) Except as provided in Subsection (d) of this section, no person under 18 years of age may be convicted of an offense under this chapter unless his parent or legal guardian is present in court.

(b) If the parent or legal guardian of a person under 18 years of age accused of a violation of this chapter resides within the jurisdiction of the court before whom the case is to be heard, the court shall summon the parent or legal guardian to appear in court and shall require him to be present at all proceedings in the case.

(c) If the parent or legal guardian of a person under 18 years of age accused of a violation of this chapter resides outside the jurisdiction of the court before whom the case is to be heard, the court shall give written notice of the charge against the person to the parent or legal guardian.

(d) If the court is unable to locate or to compel the presence of the person's parent or legal guardian after diligent effort, the court may waive the requirement of presence of a parent or legal guardian.

Sec. 106.115. ATTENDANCE AT ALCOHOL AWARENESS COURSE; LICENSE SUSPENSION

(a) On the placement of a minor on deferred disposition for an offense under Section 49.02, Penal Code, or under Section 106.02, 106.025, 106.04, 106.041, 106.05, or 106.07, the court shall require the defendant to attend an alcohol awareness program approved by the Texas Commission on Alcohol and Drug Abuse. On conviction of a

minor of an offense under one or more of those sections, the court, in addition to assessing a fine as provided by those sections, shall require a defendant who has not been previously convicted of an offense under one of those sections to attend the alcohol awareness program . If the defendant has been previously convicted once or more of an offense under one or more of those sections, the court may require the defendant to attend the alcohol awareness program. If the defendant is younger than 18 years of age, the court may require the parent or guardian of the defendant to attend the program with the defendant. The Texas Commission on Alcohol and Drug Abuse:

- (1) is responsible for the administration of the certification of approved alcohol awareness programs;
 - (2) may charge a nonrefundable application fee for:
 - (A) initial certification of the approval; or
 - (B) renewal of the certification;
 - (3) shall adopt rules regarding alcohol awareness programs approved under this section; and
 - (4) shall monitor, coordinate, and provide training to a person who provides an alcohol awareness program.
- (b) When requested, an alcohol awareness program may be taught in languages other than English.
- (c) The court shall require the defendant to present to the court, within 90 days of the date of final conviction, evidence in the form prescribed by the court that the defendant, as ordered by the court, has satisfactorily completed an alcohol awareness program or performed the required hours of community service. For good cause the court may extend this period by not more than 90 days. If the defendant presents the required evidence within the prescribed period, the court may reduce the assessed fine to an amount equal to no less than one-half of the amount of the initial fine.
- (d) If the defendant does not present the required evidence within the prescribed period, the court:
- (1) shall order the Department of Public Safety to suspend the defendant's driver's license or permit for a period not to exceed six months or, if the defendant does not have a license or permit, to deny the issuance of a license or permit to the defendant for that period; and
 - (2) may order the defendant or the parent, managing conservator, or guardian of the defendant to do any act or refrain from doing any act if the court determines that doing the act or refraining from doing the act will increase the likelihood that the defendant will present evidence to the court that the defendant has satisfactorily completed an alcohol awareness program or performed the required hours of community service.
- (e) The Department of Public Safety shall send notice of the suspension or prohibition order issued under Subsection (d) by first class mail to the defendant. The notice must include the date of the suspension or prohibition order, the reason for the suspension or prohibition, and the period covered by the suspension or prohibition.

Sec. 106.116. REPORTS OF COURT TO COMMISSION

Unless the clerk is otherwise required to include the information in a report submitted under Section 101.09, the clerk of a court, including a justice court, municipal court, or juvenile court, shall furnish to the commission on request a notice of a conviction of an offense under this chapter or an adjudication under Title 3, Family Code, for conduct that constitutes an offense under this chapter. The report must be in the form prescribed by the commission.

Sec. 106.117. REPORT OF COURT TO DEPARTMENT OF PUBLIC SAFETY

- (a) Each court, including a justice court, municipal court, or juvenile court, shall furnish to the Department of Public Safety a notice of each:
- (1) adjudication under Title 3, Family Code, for conduct that constitutes an offense under this chapter;
 - (2) conviction of an offense under this chapter;
 - (3) order of deferred disposition for an offense alleged under this chapter; and
 - (4) acquittal of an offense under Section 106.041.
- (b) The notice must be in a form prescribed by the Department of Public Safety and must contain the driver's license number of the defendant, if the defendant holds a driver's license.
- (c) The Department of Public Safety shall maintain appropriate records of information in the notices and shall provide the information to law enforcement agencies and courts as necessary to enable those agencies and courts to carry out their official duties. The information is admissible in any action in which it is relevant. A person who holds a driver's license having the same number that is contained in a record maintained under this section is presumed to be the person to whom the record relates. The presumption may be rebutted only by evidence presented under oath.
- (d) The information maintained under this section is confidential and may not be disclosed except as provided by this section. A provision of Chapter 58, Family Code, or other law limiting collection or reporting of information on a juvenile or other minor or requiring destruction of that information does not apply to information reported and maintained under this section.

For more information, visit the Texas Alcoholic Beverage Commission at <http://www.tabc.state.tx.us/>