



OFFICE OF THE DIRECTOR OF POLICE
THE UNIVERSITY OF TEXAS SYSTEM

TRAINING BULLETIN 012
ALCOHOL CONSUMPTION BY MINORS
MARCH 23, 2015



I. PURPOSE

The purpose of this training bulletin is to provide guidance to University of Texas System Police officers regarding enforcement of the laws related to a minor consuming an alcoholic beverage.

II. DEFINITIONS

Definitions for the terms "alcoholic beverage" and "minor" are found in the Texas Alcoholic Beverage Code:

- Chapter 1 Section 1.04 (1) "Alcoholic beverage" means alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.
- Chapter 106 Section 106.01 "minor" means a person under 21 years of age.

III. STATE LAW

Chapter 106 in the Alcoholic Beverage Code (ABC) is where provisions related to age are found.

CONSUMPTION OF ALCOHOL BY A MINOR. Section 106.04

(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.

- (e) Subsection (a) does not apply to a minor who:
- (1) requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person;
 - (2) was the first person to make a request for medical assistance under Subdivision (1); and
 - (3) if the minor requested emergency medical assistance for the possible alcohol overdose of another person:
 - (A) remained on the scene until the medical assistance arrived; and
 - (B) cooperated with medical assistance and law enforcement personnel.

FAILURE TO IDENTIFY TEXAS PENAL CODE Chapter 38.02

- (a) A person commits an offense if he intentionally refuses to give his name, residence address, or date of birth to a peace officer who has lawfully arrested the person and requested the information.
- (b) A person commits an offense if he intentionally gives a false or fictitious name, residence address, or date of birth to a peace officer who has:
- (1) lawfully arrested the person;
 - (2) lawfully detained the person; or
 - (3) requested the information from a person that the peace officer has good cause to believe is a witness to a criminal offense.

IV. PROCEDURE

The key word in the applicable ABC statute is the term “consume”. Officers must establish the necessary elements to prove the minor consumed an alcoholic beverage. UTSP officers typically rely on their observations as a law enforcement officer to address consumption. As examples, these include:

- (1) Officer observed the minor drinking from a container clearly marked as an alcoholic beverage (e.g. a labeled bottle or beer container).
- (2) Officer observed a minor consume from a container not marked as an alcoholic beverage but the officer verified by sight/smell that the container contained an alcoholic beverage (e.g. a red Dixie cup).
- (3) Prior to being asked by the officer, the minor admits to consuming an alcoholic beverage. The officer should confirm that, at the time of consumption, the minor was not in the visible presence of the minor’s adult parent, spouse or guardian.

- (4) Officers, through discussion with their Municipal Judge, or a Justice of the Peace, understand what level of proof a Judge requires in their respective court to meet the definition of the term “consume”. Some judges, as an example, may feel the officer has to see the minor drinking and swallowing the beverage. Other judges may let the totality of the circumstances based on the officer’s observations assist in the determination for consumption.

In the cases of (3) and (4), above, the circumstances can be challenging regarding the dialog exchange between the minor and officer. Courts have held that an officer may ask a minor his/her date of birth as this information is used to determine the identification of an individual. Accordingly, as a result of disclosing his/her date of birth, the minor is not engaging in self-incrimination for the offense of minor in possession of an alcoholic beverage.

However, directly asking a minor if he/she has consumed an alcoholic beverage could lead to a claim of self-incrimination because whether the minor consumed an alcoholic beverage or not is not required for the identification process. Please see Texas Penal Code 38.02, Failure to Identify, for the applicable elements.

There are several established and recognized options to consider that would allow the officer to testify on the totality of circumstances that concluded with the determination that an offense of a minor consuming an alcoholic beverage has been committed.

Options include:

- While talking with the minor, the officer detected the odor of an alcoholic beverage on the minor’s breath. There is no requirement to link the odor to a specific alcoholic beverage (e.g. beer), only that the odor was unique to an alcoholic beverage.
- Further observations by the officer at the scene that cans/bottles, cups, or beer kegs were present in the quantity that all persons present could have been consuming, or at the very least in possession, given that no one present at the scene that is 21 or older.
- Occasionally, the officer may be asked about other liquids that contain alcohol and could be mistaken for an alcoholic beverage odor. An appropriate officer’s response would be that no containers of those type were found at the scene (e.g., mouthwash, non-alcoholic beer). These are liquids that contain alcohol but do not meet the Alcoholic Beverage Code’s definition of an alcoholic beverage and as such are not regulated by provisions in the Code. The definition of an alcoholic beverage is found in the definition section listed above.



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