

Juvenile Criminal Law

Hon. Sarah Rasberry, Justice of the Peace, Polk County

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Resources

TJCTC website (www.tjctc.org)

- Juvenile Deskbook and other publications
- Charts and Checklists page
- Legal Question Board
- Forms
- Webinar archive

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Resources

Statutes (www.statutes.legis.state.tx.us)

- Code of Criminal Procedure (CCP) - Chapter 45
- Transportation Code (TC) – Chapter 729
- Family Code (FC) – Chapter 51
- Education Code (EC) – Chapter 37
- Health & Safety Code (HSC) – Chapter 161, Subchapter N
- Alcoholic Beverage Code (ABC) – Chapter 106

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Topics

Jurisdiction and transfer to juvenile court

Juvenile criminal protections and procedure

General expunctions

School offenses

Tobacco offenses

Distracted driving offenses

Alcohol offenses

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Jurisdiction & Transfer to Juvenile Court

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Fine-Only Misdemeanors Committed by Children

- Fine-only misdemeanors committed by children may be handled as criminal cases in justice court.
 - Otherwise, must be filed as “non-criminal” case in juvenile court.
- “**Child**” = a person who is at least 10 and has not yet turned 17.
 - Someone under 10 cannot be held responsible in court for their conduct, they are legally an “**infant**.”
 - If the offense occurred when the person was under 17, but they have since turned 17, they are still legally treated as a child.

FC §51.02(2), CCP Art. 45.058(h)

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Discretionary Transfer to Juvenile Court

- Any criminal case other than a **traffic offense** *may* be transferred to juvenile court from the justice court.
- If the case **is** transferred:
 - Issue a written order to transfer.
 - Forward the criminal complaint & all other case documents to the juvenile court.
 - The juvenile court will process the referral as a CINS case.
(conduct indicating a need for supervision)
- If the case **is not** transferred:
 - Send notice of the complaint and a copy of the final disposition to the juvenile court.

Family Code §51.08(a), (c)

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Mandatory Transfer to Juvenile Court

Fine-only misdemeanors **must** be transferred to juvenile court **if**:

- 2 or more fine-only misdemeanor convictions (not including traffic) and the justice court does not have a **juvenile case manager**
 - (see Chapter 9 of Juvenile Deskbook for info on JCMs)
- or**
- 2 or more fine-only misdemeanor convictions (not including traffic) **and** that complaint was dismissed due to mental illness, disability, or lack of capacity under Penal Code §8.08.
 - More information on this in Chapter 3 of the Juvenile Deskbook.

Family Code §51.08

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What to do if the Juvenile Case is **not** transferred

Who do I notify?

When do I set a hearing?

Who can be present in the court room with a juvenile?

How do I ensure the court is applying all of the protections?

- CCP. Ch. 45 covers the procedures
- TJCTC Deskbook Ch.3 & 8 cover Plea, Parental Presence, Notifications and other matters.

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General Procedures & Protections

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General Procedural Protections - Notification

- The judge **must** issue a summons to the child's parent, guardian, or managing conservator to be present during the defendant's plea and all other proceedings related to the case.
- Summons **must** direct the parent to appear in court with the child and include that failure to comply is a Class C misdemeanor and may result in their arrest.

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General Procedural Protections - Plea

Plea must be in open court **unless** the defendant has not had the disabilities of minority removed

and

- ❖ Is younger than 17 years of age and charged with an offense other than sexting offense under PC 43.261
- ❖ Is younger than 18 years of age if they are charged with sexting offense under PC 43.261
- ❖ Plea cannot be mailed in, satisfied by payment, or given over the phone. The child must plea in front of the judge.
- ❖ Attorney cannot enter a plea for a child, without the child present.
- * Prosecutor does not have to be present for plea

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General Procedural Protections – Hearing

Hearing Date: Parent or Guardian may be present. If the parent or guardian has been summonsed and do not appear, the Court may still take the child's plea in open court and proceed against the child without the child's parent present. *Consider appointing an attorney or guardian ad litem.*

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General Procedural Protections - Other

- ❖ **Mental Capacity of Child:** Issue can be raised by the defendant, parent, prosecutor or by the court on its own motion. If the issue is raised, the judge must determine whether probable cause exists to believe the child lacks capacity to understand the proceedings or govern their behavior to comply with right or wrong.
- ❖ **Interpreter:** Not required for a parent that has been summoned to court unless they are a witness or the court considers imposing an order on the parent.
- ❖ **Case Records:** (other than traffic offenses) are confidential and may only be released to someone listed under CCP 45.0217(b).

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What if the Child Never Shows Up?

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Failure to Appear

Options for the court if the juvenile never showed up to court **to enter a plea:**

Summon the parent & order them to bring the child

Issue a capias/arrest warrant

Place the juvenile in Omni if the juvenile has a driver's license

Issue a Notice of Continuing Obligation to Appear if the juvenile is now 17

CCP Art. 45.058

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Summoning the Parent

- **Issue a summons for the parent** that includes an order for the parent to appear at the hearing and bring the child.
 - The summons must include a warning that failure to appear may result in arrest and is a Class C misdemeanor.
CCP Art. 45.057(e)
- If the parent fails to appear + a sworn complaint is filed charging the parent with FTA, a warrant can be issued for the parent's arrest.
 - Follow the notice provisions in CCP 45.014(e). See Chapter 3 of the Criminal Deskbook.

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Issuing a Capias/Arrest Warrant

- **Capias:** order to a peace officer to bring a defendant directly before the court issuing the capias.
 - Officer picks up the juvenile and brings them straight to court.
 - The juvenile is **not** taken into secured custody.

CCP Art. 23.01

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Issuing a Capias/Arrest Warrant

- A capias can be issued as long as:
 - A sworn complaint has been filed,
 - Notice has been given to the defendant that complies with CCP 45.014(e), and
 - The defendant fails to appear as required by that notice.

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Issuing a Capias/Arrest Warrant

- Peace officers must follow special rules for juveniles
 - Many departments won't process warrants for children, so you may find it more effective to try another option.
- An arrest warrant **cannot** issue for Class C Education Code offenses.
 - For example, Disruption of Class
Education Code 37.085

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Notice of Continuing Obligation to Appear

- This is an option when the juvenile defendant turns 17 before appearing in court.
- See Chapter 2 of the Juvenile Deskbook for details

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Orders in Juvenile Cases

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What if the Child is Found Guilty?

- Just like in a regular criminal case, the juvenile may not be convicted unless they plead guilty or nolo or are proven guilty beyond a reasonable doubt at trial.
- If they plead guilty or nolo, the court may allow the child to have the case dismissed through **deferred disposition, DSC dismissal, or a teen court program** (as applicable).
 - See Chapter 3 of the Juvenile Deskbook and Chapter 5 of the Criminal Deskbook for more on these options.

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What if the Child is Found Guilty?

- If a child is **convicted** of a criminal offense, the court must create a judgment, just like in an adult criminal case.
- This judgment will impose a fine and costs and may order the child or parent to do certain things or not do certain things.
- See “Additional Orders for Juveniles” chart on TJCTC website for options and ideas.

CCP Art. 45.057(b)

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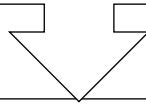
Conviction vs. Deferred Disposition

- Be very clear in your judgment and order if you are placing the child on deferred disposition under Art. 45.051 of the CCP or issuing orders on a conviction as allowed by Art. 45.057.
- If a **conviction order** is violated, the penalty is contempt, and there is no reward for compliance.
- If a **deferral order** is violated, the penalty is conviction after a show cause hearing, and the reward for compliance is dismissal of the case.

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Conviction After Failure to Comply with Deferred Disposition Order

If the child doesn't comply with the terms of the deferred disposition, the court must hold a show cause hearing. If there is no good cause for the failure to comply, the court enters a conviction.



You must create a judgment of conviction at that point, and you may place orders in that judgment of conviction, as described in the Additional Orders handout.

These orders may be the same as the ones from the deferred disposition, or different.

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Discharge of Fines & Costs

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Discharge: Choice by Juvenile

The judge **may** allow a juvenile defendant to choose, at the time of conviction, to discharge the fine and costs by:

- Paying the entire fine and costs when sentence is pronounced,
- Paying the entire fine and costs at some later date,
- Paying the fine and costs pursuant to a payment plan, or
- Performing community service or receiving tutoring.

CCP Art. 45.041(b-3)

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Discharge: Choice by Juvenile

- The juvenile defendant's choice **must** be:
 - In writing,
 - Signed by the juvenile defendant, and
 - Signed by a parent or guardian if one is present.
- The court **must** keep the written choice and give a copy to the juvenile defendant.

CCP Art. 45.041(b-5)

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Alternatives to Payment of Fine and Costs

- Just like with adult defendants, the judge **must** determine at the time of sentencing (*and reconsider later if necessary*) if a child is unable to immediately pay the fine and costs.
- If they are unable to immediately pay, the court must enter an order allowing them to dispose of them via alternative methods.
 - Payment Plan
 - Community Service
 - Tutoring (only applies to juvenile cases)
 - Waiver

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Who is Responsible for Paying Fines and Costs?

It is the juvenile defendant's responsibility to pay any fines and costs assessed against him or her.

The parent of a juvenile defendant does **not** have any obligation to pay the fines or costs for the juvenile.

This means that you cannot consider the assets of the parent when determining if a child can pay fines or costs!!

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Community Service

Minimum of \$100 credit for every 8 hours of community service.

No more than 16 hours per week

Community service may be performed at:

- Any Governmental Agency
- Nonprofit Organization
- Organization that provides services to the general public that enhances social welfare
- Educational Institution

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Examples of Community Service

Work related job skills training

Preparatory class for the high school
equivalency exam or similar

Alcohol or Drug Abuse Program

Rehabilitation Program

Counseling Program

Mentoring Program

Tutoring Program

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Waiver of Fines & Costs

Costs: **may** waive all or part **if**:

- **Defendant was a child at the time of the offense; or**
- Is indigent/does not have sufficient resources to pay all or part of the amount due.

Fines: **may** waive all or part **if**:

- The second bullet above is true, **and**
- Discharging the fine through community service or a payment plan would impose an undue hardship on the juvenile.

CCP Art. 45.0491

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What If the Child Doesn't Obey the Court Order (Including Not Paying)?

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Contempt

- Holding a juvenile defendant in contempt of court for failing to obey a court order is allowed **after** the juvenile has been given:
 - Notice of the failure to comply and a hearing.
- What the judge **can** order:
 - A fine of up to \$500, and/or
 - Suspension or denial of issuance of the juvenile's driver's license until the juvenile complies with the order.CCP Art. 45.050(c)

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Contempt

- **The judge cannot order the juvenile to serve jail time.**
- If the juvenile's driver's license is suspended:
 - Send the order to DPS, and
 - Notify DPS once the juvenile has complied so the suspension can be removed.

CCP Art. 45.050(c)

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Contempt

- Orders directed to parents as part of their child's case are also enforceable by contempt.
- Punishment is based on whether the contempt orders are punitive or coercive (remember this from earlier!)
 - **Punitive contempt:** fine of up to \$100, confinement in jail for up to 3 days, or both.
 - **Coercive contempt:** fine and/or jail time of up to 3 days or until the person complies.

CCP Art. 45.057(l), GC §21.002(c)

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Referral to Juvenile Court

- If the juvenile defendant has not yet turned 17 and fails to obey court orders under circumstances that constitute contempt of court,
- The judge may, after giving notice of the violation and holding a hearing, refer the child to juvenile court for delinquent conduct based on the contempt of court.
 - This is done **instead** of holding the juvenile in contempt in justice court.

CCP Art. 45.050(c)

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Capias Pro Fine

- **Remember** – A capias pro fine is an order to a peace officer to bring a defendant before the court so the judge can:
 - Determine why the defendant hasn't paid the judgment and
 - Order alternative methods of satisfaction of the judgment.
- **A capias pro fine may never be issued for a person who is currently under 17.**

CCP Art. 45.045(b)

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Capias Pro Fine

If defendant **turns 17** and still has outstanding fines, fees, or costs, a capias pro fine may only be issued if certain requirements are met.

- Some are general requirements that apply to all capias pro fines and some are requirements that are specific to juveniles who have now turned 17.

For more info on these requirements, see:

- Chapter 3 of the Juvenile Deskbook; and
- Refer to the information on capias pro fines from your previous materials.

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General Expunctions

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General Expunctions

Juvenile-specific expunction laws are found in CCP Art. 45.0216.

These expunction laws don't apply to:

- Alcohol offenses under ABC Chapter 106
- Tobacco offenses under HSC Chapter 161

These juvenile expunction laws are separate from, and in addition to, the general expunction laws found in CCP Chapter 55.

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Expunction of Convictions

- A juvenile defendant can't apply for **expunction of a conviction** until he/she turns 17.
- Expunction of a conviction is allowed if the juvenile has only **one** fine-only misdemeanor conviction as a juvenile.
 - Convictions for traffic, alcohol, or tobacco offenses don't count toward the number of convictions.
 - Traffic convictions can't be expunged, and alcohol and tobacco cases have their own guidelines, discussed later.
 - Cases dismissed by deferred disposition or referral to teen court don't count toward the number of convictions.

CCP Art. 45.0216(b)

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Expunction of Acquittals & Dismissals

- **Any** case record can be expunged under CCP Art. 45.0216 **IF**:
 - The offense occurred when the defendant was under 17, and
 - The case was **dismissed** or the defendant was **acquitted (found not guilty.)**
- Includes:
 - Traffic offenses
 - Cases dismissed after successful completion of deferred disposition or teen court.
- The defendant does not have to be any certain age to request expunction under this section.

CCP Art. 45.0216(h)

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More Information On Expunctions

- For more info on general expunctions, including procedures for getting an expunction, see Chapter 8 of the Juvenile Deskbook and Chapter 10 of the Criminal Deskbook
- Very helpful Expunctions Chart on the ***Charts & Checklists Page.***

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School Offenses

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School Offenses

“School offenses” are:

- **Any** Class C misdemeanors (other than traffic offenses),
- Committed:
 - By a child enrolled in public school, and
 - On property that is under the control and jurisdiction of a school district.

Education Code §37.141

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School Offenses

- Note that an offense doesn't have to have anything to do with education to be a "school offense," it just has to happen on school property.
- Some will relate to education, such as disruption of class.
- But a child charged with, for example, disorderly conduct for damaging property on school grounds will be handled under the rules for "school offenses."

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Disruption of classes and other school activities:

- Is **not** an offense if a student engages in this conduct **at their own school** (would be if they did it at another school, for example, the school their significant other attends.)

Truancy:

- Is **not** a school offense since it is **not a criminal offense**.
- Refer to Chapter 1 of the Juvenile Deskbook for information on truancy.

EC §§ 37.124, 37.126, FC Ch. 65

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Discipline

School offenses are initially handled by the school through a system of graduated sanctions, instead of being sent to court.

- Citations may **not** be issued for school offenses.
- If the child fails to comply with or complete the graduated sanctions, **then** a complaint can be filed in justice court.
 - See Chapter 6 of the Juvenile Deskbook for a discussion of graduated sanctions.

EC §§ 37.143 & 37.144

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Filing a Complaint

- Complaints for school offenses have specific requirements.
 - See Chapter 6 of the Juvenile Deskbook and Education Code Sec. 37.146 for more information.
- After a complaint has been filed, a **summons** may be issued for the child.
 - An arrest warrant or capias should only issue if the child fails to appear in response to the summons (and only if not an education code offense).
 - Instead of a warrant or capias, some courts issue a writ of attachment, which has the same effect of having the child picked up and brought directly to the court.

EC §37.145

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Why Are Rules Different for a “School Offense”

- The Legislature’s goal is to decrease the number of student referrals to criminal court, and the number of youth exposed to the criminal justice system because of common misbehavior.

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Tobacco Offenses

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Tobacco Offenses

With some exceptions, it is an offense for a person younger than 21 years of age to:

- Possess,
 - Purchase,
 - Consume,
 - Accept, or
 - Falsely represent himself or herself to be 21 years of age or older to obtain,
 - A cigarette, e-cigarette, or tobacco product.
- The offense is punishable by a fine not to exceed \$100.

HSC §161.252

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Use the
Tobacco
Flowchart to
Answer:

1. Does the court have the option to **not require** the defendant to take a tobacco awareness course after they are found guilty?

2. What happens if the juvenile completes the class and it was a first offense?

3. What happens if the juvenile fails to complete the class?

4. What happens if the defendant joins the military a week after receiving their ticket?

5. Is a defendant eligible for an expunction if they do not complete the awareness course?

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Distracted Driving Offenses

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Distracted Driving Offenses

While operating a motor vehicle:

- A person under the age of 18 may not operate a motor vehicle while using a wireless communication device.

While operating a motorcycle or moped:

- A person under the age of 17 who holds a restricted motorcycle license or a moped license may not operate a motorcycle or moped while using a wireless communication device, except in an emergency.

These laws cover **more** than just texting.

- Applies to **ALL** uses of a wireless communication device **UNLESS** there is an emergency.
- **CAN'T** use Bluetooth or other "hands free" device while driving.

TC §545.424

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Distracted Driving - Fines

- The offense of driving while using a mobile electronic device is a fine-only misdemeanor.
- Punishment:
 - 1st offense: fine of at least \$25 but not more than \$99.
 - Subsequent offenses: fine of at least \$100 but not more than \$200.

TC §545.424(g)

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Alcohol Offenses

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Scenario:

Johnny Joker who is 20 years old receives a citation for Minor in Consumption of Alcohol. It is the morning of the first appearance date. Johnny's mother calls the Court and states " My darling child received a citation and we live 3 hours away. He was only at the party because his friends forced him to go. We do not have any way to come to the court. Can I just pay this over the phone so he does not have to worry anymore? I am great friends with Judge Judy here in my county. She said I can just pay it and your Judge can make sure Johnny keeps his clear record.

Questions:

1. When can the parent or child pay for the citation over the phone?
2. Can another Judge take the child's plea?
3. Does a parent need to be present? Charlie is 20 years old!

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Alcoholic Beverage Code Offenses:

- Purchase of alcohol by minor – §106.02
- Attempt to purchase alcohol by minor - §106.025
- Consumption of alcohol by minor - §106.04
- Possession of alcohol by minor - §106.05
- Misrepresentation of age by minor - §106.07
 - Misrepresentation to a person selling or serving alcohol.
- DUI by minor - §106.041
 - Any detectable alcohol; does **not** require intoxication

Penal Code Offenses:

- Public intoxication by minor - §49.02

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Definitions – “Minor”

- A person under 21 years of age.
- Only applies to offenses under Alcoholic Beverage Code Chapter 106.

ABC §106.01

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When Must a Plea in an Alcohol Case be in Open Court?

- **If the defendant is under 17:**
 - **All pleas must** be made in open court for any ABC age-related offense.
 - Parental presence **is** required (just like in other juvenile cases).
 - **If the defendant is at least 17:**
 - **Guilty and nolo pleas** must be made in open court
 - Does **not** apply to public intoxication since that’s a Penal Code offense.
 - **Not guilty** pleas may be accepted by mail or at the window.
 - Parental presence is **not** required.
- CCP Art. 45.0215, ABC §106.10

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Defenses

- Defenses are issues that the defendant may raise **at trial following a plea of not guilty**. If they can prove a defense applies, they should be **acquitted** (found not guilty) of the offense.
- See Chapter 4 of the Juvenile Deskbook for **defenses** to age-related alcohol offenses.

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If the Defendant is Found Guilty

A judgment must be entered that **will** include:

- An assessment of a fine and court costs
- Community service hours that must be completed.

Additionally, the judgment **must sometimes** include:

- An order to take an alcohol awareness class (mandatory if no previous convictions)
- An order of driver license suspension (mandatory except for conviction of DUI by a Minor)

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What Statute Applies to Determine Punishment?

DUI by a Minor

- Has its own punishment section – ABC §106.041
- Still a Class C misdemeanor

Public Intoxication by Minor

- Punished under ABC §106.071 even though the offense is found in the Penal Code.

Other age-related alcohol offenses

- Punished under ABC §106.071
- All offenses are Class C misdemeanors
 - Punishable by up to a \$500 fine.
 - Specific requirements for orders based upon whether the case ends in a conviction or deferral.

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Use the Alcohol Case Chart to Answer:

Must the court order an alcohol awareness course on a second offense of MIP?

How long does the court order DL suspension for on a first offense of DUI by a Minor?

How many hours of community service must be ordered for a second offense of DUI by a Minor?

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How Do We Know How Many Convictions They Have?

- Although they generally don't count as a criminal conviction, the following can be alleged in a complaint as a prior offense for purposes of enhancing the penalty for the offense:
 - A prior **adjudication** (determination that the child engaged in the conduct) in juvenile court for an age-related alcohol offense.
 - A prior order of deferred disposition for an age-related alcohol offense.
 - **Even if** the deferral was successfully completed, and the case dismissed.

ABC §106.071(f)

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When Don't You Have Jurisdiction?

Justice court **won't** have jurisdiction when jailtime is a possible punishment.

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- An alcohol awareness program **must** be ordered, if the defendant has no prior convictions.
 - ***For this purpose, deferred dispositions or juvenile adjudications do not count as prior convictions.***
- The community service requirements are the **same as they would be on conviction.**
- There is **no** ordered DL suspension.

If the
Defendant is
Placed on
Deferred
Disposition

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Additional Conditions on Deferred Disposition

- As a part of deferred disposition, the court can also order any condition listed under CCP Art. 45.051(b), or any other reasonable condition.
- These conditions can also be included on orders for deferred disposition on offenses that are not alcohol or drug offenses, **but where alcohol or drugs were clearly involved.**

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If Defendant Does Not Successfully Complete Deferred Disposition

- If defendant fails to comply with any requirement, including community service and/or alcohol awareness program: **Hold a show cause hearing.** If the defendant doesn't appear or fails to show good cause, **enter judgment of conviction.**
 - The judgment **must** comply with the requirements shown in the chart.

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How Long Do They Have to Take the Alcohol Class Ordered on Final Conviction?

Defendant **must** provide documentation to the court **within 90 days** of the **date of the final conviction.**

- For good cause, the court may extend the compliance period for up to an additional 90 days.
- If the defendant provides evidence of completion, the court **MAY** reduce the fine by $\frac{1}{2}$.

ABC §106.115(c)

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What if They Don't Take the Alcohol Class Ordered on Final Conviction?

If the defendant fails to provide evidence of completion within the required time period, the court **must** order DPS to suspend or deny issuance of defendant's driver's license.

- Up to 6 months if this is defendant's first age-related alcohol offense conviction.
 - Up to 1 year if defendant has prior age-related alcohol offense convictions.
 - **Note:** this is **in addition to** any suspension that occurs as a result of conviction for the current age-related alcohol offense case.
-
- The court **may** order the defendant or parent(s) to do, or refrain from doing, any act if the court determines such order will increase the likelihood the defendant will present evidence of completion

ABC 106.115(d)

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What if They Don't Do Community Service Ordered on Final Conviction?

- Since there is no specific penalty provided for failing to complete community service, the court would follow the **juvenile contempt** process under Art. 45.050 of the CCP that we discussed earlier in this class.

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More Information on Alcohol Courses, Community Service, & DL Suspension

- See Chapter 4 of the Juvenile Deskbook as well as ABC Sections 106.041, 106.071, & 106.115.
- See Community Service/Alcohol Class Options from the Charts & Checklists Page.

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Alcohol Case Reporting Requirements

The court **must** report to **DPS**:

- Notice of conviction of a minor for any ABC age-related offense.
- Notice of deferred disposition of a minor for any ABC age-related offense.
- Notice of acquittal of a minor for a DUI by a Minor offense.
 - Since the minor's license is automatically suspended on arrest, this notice is how the suspension gets lifted.

ABC §106.117

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Alcohol Case Reporting Requirements

- The court **must** report convictions of minors for all ABC offenses to the **Alcoholic Beverage Commission (TABC)** *upon request*.
- DPS and TABC reporting requirements **do not** apply to the offense of Public Intoxication by a Minor because it's not an ABC offense.

ABC §106.116

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Expunction of Alcohol Cases

- **Convictions:** When a person turns 21, if they have only **one** ABC conviction as a minor, the court **shall** expunge the conviction upon application.
- **Arrests:** A defendant arrested for **one** ABC offense while a minor who was **not** convicted of the offense, may apply to have their arrest record for that offense expunged.
 - This is a **separate process** from the expunction of arrest records process discussed in the previous class. That process applies to all arrest record expunctions EXCEPT arrest for a Ch. 106 ABC offense.
- For more info, including the procedures for getting an expunction, see Chapter 4 of the Juvenile Deskbook

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Questions?