

DRIVING UNDER THE INFLUENCE AND ALCOHOL AWARENESS

Eric G. Ransleben
The Law Offices of Eric G. Ransleben
Trophy Club, Texas

OBJECTIVES

- ☐ Identify the elements of DUI under the Alcohol Beverage Code;
- ☐ Compare DUI to other common alcohol related offenses pertaining to youth and the operation of motor vehicles;
- ☐ Explain evidentiary issues unique to DUI; and
- ☐ Describe changes to Texas laws governing alcohol awareness and community service for minor alcohol-related offenses.

Elements of DUI

- ☐ Generally - Alcoholic Beverage Code, Chapter 106, Provisions Relating To Age.
- ☐ §106.041 - Driving or Operating Watercraft Under The Influence of Alcohol by Minor
 - A minor (under the age of 21), operates a motor vehicle in a public place, or a watercraft, while having any detectable amount of alcohol in the minor's system.
 - An offense under this section is a Class C misdemeanor, except a minor who is not a child (17-20) with two priors, then Class B misdemeanor.

DUI vs. DWI

- ❑ Can a minor be charged with Driving While Intoxicated?
- ❑ Can an adult be charged with Driving Under the Influence?
- ❑ What is the difference between the alcohol limitation under DUI and DWI?
- ❑ Can a minor charged with DUI receive Deferred Disposition?
- ❑ Can a minor charged with DWI receive Deferred Adjudication?

Proof of “any detectable amount of alcohol”

- ❑ By what means may law enforcement obtain evidence to support charge?
- ❑ Can you prosecute a case based on smell of alcohol alone?
- ❑ Can a minor submit/refuse a request for breath specimen? TC §724.012(a)
- ❑ Can a child submit/refuse a request for breath specimen? TC§724.012(a), FC §51.09, FC §52.02(c)?
 - How about without an attorney? FC §52.02(d)

Proof cont...

- ❑ Can a child submit/refuse a blood specimen with, or without an attorney? FC §51.09
- ❑ Can a child be required to submit to a mandatory blood specimen for DUI? TC 724.012(b)
- ❑ Caveat: Remember to distinguish between “minor”, “child”, and “minor child”

Consequences for DUI

- ☐ ABC §106.041(d) - in addition to any fine or order issued under §106.115, the court shall order:
 - 20-40 hours community service (first offense)
 - 40-60 hours community service (second offense)
- ☐ ABC §106.041(e) - community service must be related to education about or prevention of misuse of alcohol
- ☐ ABC §106.041(f) - a minor with two or more prior convictions is not eligible for deferred

Consequences of DUI cont...

- ☐ ABC §106.041(g) - an offense under this section is NOT a lesser included offense under Section 49.04, 49.045, or 49.06, Penal Code
- ☐ ABC §106.041(h) - previous conviction in this section means:
 - Prior adjudication under Title 3, Family Code
 - Deferred Disposition
- ☐ ABC §106.041(i) - a peace officer may issue a citation in lieu of arrest

Consequences of DUI cont...

- ☐ ABC §106.115(a) - the court shall require the defendant to attend an alcohol awareness program (AAP) approved by the DSHS, whether deferred or conviction.
 - If defendant has previous convictions then the court may require AAP
 - If the defendant is under 18, the court may require the parent or guardian to attend also

Consequences of DUI cont...

- ▣ ABC §106.115(b1) - If the defendant resides in a county with a population less than 75,000, AND access to an AAP is not readily available, the court may allow an online AAP if allowed by DSHS, or require not less than 8 hours community services related to alcohol abuse prevention or treatment and approved by DSHS under (b3).
 - Ostensibly, CS ordered herein would be in addition to CS ordered under §106.041(d)

Consequences of DUI cont...

- ▣ ABC §106.115 (b2) - if the defendant is enrolled in an institution of higher learning located in a county in which access to an AAP is readily available, the court may consider the defendant to be a resident of that county
- ▣ If the defendant is not so enrolled, or if the court does not consider the defendant to be a resident of that county, then residence is determined by the residence listed on DL, ID, Voters Registration, or on file with public school district.

Consequences of DUI cont...

- ▣ ABC §106.115 (b3) - the DSHS shall create a list of community services related to alcohol abuse prevention or treatment in each county in the state to which a judge may sentence a defendant under (b1)
- ▣ ABC §106.115(c) - the court shall order the defendant to present proof of satisfactory completion of AAP or CS within 90 days of final conviction
 - The court may extend this period for an additional 90 days for good cause
 - The court may reduce the fine in half upon proof

Consequences of DUI cont...

- ☐ ABC §106.115 (d) - if no proof of AAP, or CS presented, the court shall order a DL suspension, or deny the issuance of a DL for:
 - Not to exceed 6 months (first offense)
 - Not to exceed 1 year (previous conviction)
- ☐ In addition, the court may also order the defendant, parent, managing conservator, or guardian to do any act or refrain from any act preventing successful completion of AAP or CS

ABC §106.115 vs. §106.071

- ☐ Which section allows the court to substitute any CS for CS related to education about or prevention of misuse of alcohol?
- ☐ Which section requires a 30-day DL suspension for conviction?
- ☐ Which section provides that a minor, who is not a child, who has been previously convicted at least twice of an offense to which the section applies, has committed a Class B misdemeanor?
