

# Juvenile Criminal – Advanced Topics

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# Resources

Juvenile Deskbook

Charts:

- Alcohol Offense Charts
- Awareness Program and Community Service Options Handout
- Conviction Order Options for Juveniles and Parents.
- Expunction Chart
- Juvenile Diversion Flowchart
- Tobacco Flowchart

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# agenda

- Jurisdiction and Transfer to Juvenile Court
- Juvenile Diversion
- Failure to Show
- Contempt/Capias Pro Fine
- School Offenses
- Tobacco
- Alcohol

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## The Bad News

- Adolescents are impulsive, short-sighted, exceptionally sensitive to the prospect of immediate rewards, and less likely to consider the long-term consequences of their actions—a pattern that is even more pronounced in the context of similarly-aged peers.

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## The Good News

Only a small fraction of offenders will continue to offend in adulthood.

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## Proper Mindset: Think Like a Coach

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## Jurisdiction and 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.

## Ages to Consider

- “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. 45A.453(a)

## 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 (1/2)

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**

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## Mandatory Transfer to Juvenile Court (2/2)

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**

## Juvenile Diversion

## What is Deferred Disposition?

1. Defendant is charged.
2. Defendant pleads guilty.
3. Court makes orders
4. If Defendant complies, dismissal.
5. If Defendant doesn't comply, adjudication of guilt

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## Diversion ≠ Deferred

1. Either Defendant is never charged or charges are dropped.
2. Child does not plead guilty and does not admit guilt.
3. Child and parent sign agreement to do tasks.
4. If Child does not comply, the court can (re-)refer case for prosecution.

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## Goals of Diversion

- hold juveniles accountable for their behavior without formal court proceeding,
- reduce stigma,
- reduce coercive entry into the system and unnecessary social control,
- reduce recidivism,
- provide youths with services they would not have otherwise received, and
- connect them to broader community service alternatives

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## Diversion Works (1/2)

The preponderance of evidence indicates that youth whose cases are formally processed in juvenile court typically have worse outcomes than similar youth whose cases are handled informally, both in terms of future involvement in the justice system and success in education and employment.

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## Diversion Works (2/2)

- This is especially true for youth accused of lower-level misbehavior and those who do not have a long history of past arrests.
- <https://www.aecf.org/blog/what-is-juvenile-justice>

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## What About Fines?

- 2016 study of juvenile cases in Allegheny Pa.: Financial burden of a fine increases the likelihood of recidivism among adolescent offenders.
- 2023 study out of Florida: Fees exacerbate the risk of recidivism for youth formally processed into the Florida juvenile system.

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## General Rule

- A child is to be offered diversion unless ineligible.

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## First Element

- This statute only applies to individuals who were under 17 years of age **at the time of the offense.**

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**“Child is eligible to enter into diversion agreement ... only once every 12 months.”**

TJCTC position is that we look at the dates of the agreements, not offenses or dispositions.

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## **Second Element of Eligibility**

This statute does not apply to “traffic offenses.”

Meaning assigned by Family Code. CCP Art. 45A.501; See also Chapter 729 of the Transportation Code

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## What about Driving Under the Influence?

Offense is located under Tex. Alcoholic Beverage Code section 106.041, so not a “traffic offense” as defined by the Transportation Code section 720.002(f)(2).

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**Child is only eligible for diversion if they have never had an unsuccessful diversion**

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**The child is not eligible for diversion if the attorney for the state objects.**

The court does not have this discretion.

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**A court may not divert a child from criminal prosecution without the written consent of the child and the child's parent.**

"Parent" includes anyone in a parental relationship with the child.

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## Diversion Agreement Must Include: (1/3)

- 1) The terms of the agreement, including one or more diversions required to be completed by the child, written in a clear and concise manner and identifying any offense or charge being diverted;
- 2) Possible outcomes or consequences of successful diversion and unsuccessful diversion;
- 3) an explanation that participation in a diversion is not an admission of guilt and a guilty plea is not required to participate in a diversion;

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## Diversion Agreement Must Include: (2/3)

- 4) an explanation of the process that will be used for reviewing and monitoring compliance with the terms of the agreement;
- 5) the period of the diversion;
- 6) a verification that:
  - (A) The child and the child's parent were notified of the child's rights, including the right to refuse diversion; and
  - (B) The child knowingly and voluntarily consents to participate in the diversion; and

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## **Diversion Agreement Must Include: (3/3)**

- 7) written acknowledgment and acceptance of the agreement by the child and the child's parent.

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**Original Term for Diversion Agreement is for  
180 days**

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## Referral for hearing under CCP Art. 45A.511

If a child appears not to have successfully completed the diversion, the court must hold a non-adversarial hearing to confer with parent and child.

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## The Weird Thing About Art. 45A.511 Hearings

- Either the criminal action was dismissed or wasn't filed in the first case.
- However, the judge will be making findings and possibly issuing orders that are subject to contempt, so a cause number is advisable.

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## Possible Outcomes for Art. 45A.511 Hearing

- Amending or setting aside diversion agreement terms;
- Extending the diversion period for a period not to exceed one year from the initial start date;
- Continuing the hearing for up to 60 days;
- Ordering the parent to perform any act or refrain from any act;
- Determining the diversion to be successful or unsuccessful.

Unsuccessful diversions may be referred to the juvenile court or to the prosecutor for criminal filing (SOL tolled).

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## Referral for Hearing – Parent Order

- Any order to the parent may not have the substantive effect of interfering with a parent's fundamental right to determine how to raise the child, unless the court finds it necessary to prevent significant harm to the child's physical, mental, or emotional health.
- Orders to the parent are enforceable by contempt.

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## Records of Diversion Program

Courts must maintain statistics for each diversion strategy authorized.

Other than statistical records, all records are confidential under CCP Art. 45A.462.

All records shall be expunged without the requirement of a motion or request, on the child's 18th birthday.

CCP Art. 45A.513

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## Time for Polls

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## Poll Question #1

Rebecca is eligible for diversion but has a terrible attitude. No one thinks she will successfully complete a diversion agreement. Do we have to offer her one?

A. Yes

B. No

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## Poll Question #2

Rebecca rejects diversion. She refuses to waive a jury. The jury indicates that they have enough evidence to convict. Does the judge have to offer her diversion before rendering a verdict?

A. Yes

B. No

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# General Procedures & Protections

If the child is not eligible for diversion.

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## 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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## Plea in Person

**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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## Hearings

- **Hearing Date:** Parent or Guardian may be present. If the parent or guardian has been summoned 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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## Other Procedural Protections

**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 45A.055(b).

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## What if the Child Doesn't Show 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 not 17.

CCP 45A.456

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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. 45A.457(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 45A.005(e). See Chapter 3 of the Criminal Deskbook.

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## Issuing a Capias/Arrest Warrant (1/2)

- **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 (2/3)

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 45A.104(e), and
- The defendant fails to appear as required by that notice.

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## Issuing a Capias/Arrest Warrant (3/3)

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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## What if the Child is Found Guilty? (1/2)

- 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. 45A.457(b)

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## Fine: Choice by Juvenile

The judge shall 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 or at a later date,
- Paying the fine and costs pursuant to a payment plan, or
- Performing community service or receiving tutoring.

CCP Art. 45A.253(b-3)

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## 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. 45A.253(c)

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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 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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## 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. 45A.257

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## Contempt by Child (1/2)

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. 45A.461(c)

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## Contempt by Child (2/2)

**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. 45.461(c)

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## Contempt by Parent

- 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. 45A.457(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. 45A.461(c)

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## Capias Pro Fine (1/2)

- Remember – A capias pro fine is an order 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. 45A.259

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## Capias Pro Fine (2/2)

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.

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 classes.

## School Offenses

## Definition

“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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## Thoughts on School Offenses

- 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.)

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## 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.

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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.

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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?

Legislature wants to decrease the number of referrals to criminal court and avoid “the school to prison pipeline.”

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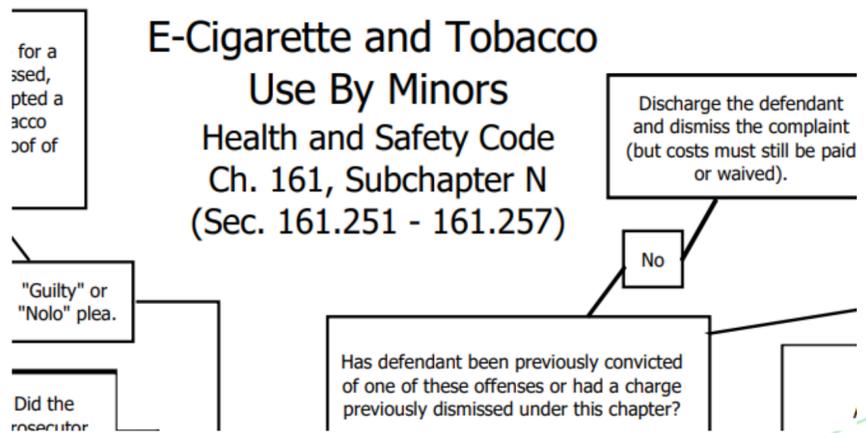
## Tobacco Offenses

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## Resource for Tobacco Offenses

The TJCTC Tobacco Flowchart



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## Questions on Tobacco Offenses

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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# Alcohol Offenses

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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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# My AI Won't Produce a Picture of a "Preteen Drinking Something that Looks Like a Beer"

For the purposes of Chapter 106 of the Alcoholic Beverage Code, a "minor" is a person under 21 years of age

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## Does a Plea in an Alcohol Case have to be in Open Court?

If 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).
- CCP Art. 45A.452

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## If Defendant Older But a Minor

If 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.

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 includes:
  - An assessment of a fine and court costs
  - Community service hours that must be completed.
- Additionally, the judgment sometimes must 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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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.

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## Time to Take 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 ½.
- ABC §106.115(c)

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## What if They Don't Take the Class?

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.

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## Other Incentives

- 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 is 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. 45A.461 of the CCP that we discussed earlier in this class.

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## Alcohol 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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# Thank you

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